

PRESIDÊNCIA DA REPÚBLICA

Decreto do Presidente da República n.º 90/2015

de 6 de agosto

O Presidente da República decreta, nos termos do artigo 135.º, alínea b), da Constituição, o seguinte:

É ratificado o Acordo Relativo ao Tribunal Unificado de Patentes, assinado em Bruxelas, em 19 de fevereiro de 2013, aprovado pela Resolução da Assembleia da República n.º 108/2015, em 10 de abril de 2015.

Assinado em 30 de julho de 2015.

Publique-se.

O Presidente da República, ANÍBAL CAVACO SILVA.

Referendado em 31 de julho de 2015.

O Primeiro-Ministro, *Pedro Passos Coelho*.

ASSEMBLEIA DA REPÚBLICA

Resolução da Assembleia da República n.º 108/2015

Aprova o Acordo Relativo ao Tribunal Unificado de Patentes, assinado em Bruxelas em 19 de fevereiro de 2013

A Assembleia da República resolve, nos termos da alínea i) do artigo 161.º e do n.º 5 do artigo 166.º da Constituição, aprovar o Acordo Relativo ao Tribunal Unificado de Patentes, assinado em Bruxelas em 19 de fevereiro de 2013, cujo texto, na versão autenticada na língua inglesa e respetiva tradução para a língua portuguesa, se publica em anexo.

Aprovada em 10 de abril de 2015.

A Presidente da Assembleia da República, *Maria da Assunção A. Esteves*.

AGREEMENT ON A UNIFIED PATENT COURT

The Contracting Member States:

Considering that cooperation amongst the Member States of the European Union in the field of patents contributes significantly to the integration process in Europe, in particular to the establishment of an internal market within the European Union characterised by the free movement of goods and services and the creation of a system ensuring that competition in the internal market is not distorted;

Considering that the fragmented market for patents and the significant variations between national court systems are detrimental for innovation, in particular for small and medium sized enterprises which have difficulties to enforce their patents and to defend themselves against unfounded claims and claims relating to patents which should be revoked;

Considering that the European Patent Convention («EPC») which has been ratified by all Member States of the European Union provides for a single procedure for granting European patents by the European Patent Office;

Considering that by virtue of Regulation (EU) No 1257/2012⁽¹⁾, patent proprietors can request unitary

effect of their European patents so as to obtain unitary patent protection in the Member States of the European Union participating in the enhanced cooperation;

Wishing to improve the enforcement of patents and the defence against unfounded claims and patents which should be revoked and to enhance legal certainty by setting up a Unified Patent Court for litigation relating to the infringement and validity of patents;

Considering that the Unified Patent Court should be devised to ensure expeditious and high quality decisions, striking a fair balance between the interests of right holders and other parties and taking into account the need for proportionality and flexibility;

Considering that the Unified Patent Court should be a court common to the Contracting Member States and thus part of their judicial system, with exclusive competence in respect of European patents with unitary effect and European patents granted under the provisions of the EPC;

Considering that the Court of Justice of the European Union is to ensure the uniformity of the Union legal order and the primacy of European Union law;

Recalling the obligations of the Contracting Member States under the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU), including the obligation of sincere cooperation as set out in Article 4(3) TEU and the obligation to ensure through the Unified Patent Court the full application of, and respect for, Union law in their respective territories and the judicial protection of an individual's rights under that law;

Considering that, as any national court, the Unified Patent Court must respect and apply Union law and, in collaboration with the Court of Justice of the European Union as guardian of Union law, ensure its correct application and uniform interpretation; the Unified Patent Court must in particular cooperate with the Court of Justice of the European Union in properly interpreting Union law by relying on the latter's case law and by requesting preliminary rulings in accordance with Article 267 TFEU;

Considering that the Contracting Member States should, in line with the case law of the Court of Justice of the European Union on non-contractual liability, be liable for damages caused by infringements of Union law by the Unified Patent Court, including the failure to request preliminary rulings from the Court of Justice of the European Union;

Considering that infringements of Union law by the Unified Patent Court, including the failure to request preliminary rulings from the Court of Justice of the European Union, are directly attributable to the Contracting Member States and infringement proceedings can therefore be brought under Article 258, 259 and 260 TFEU against any Contracting Member State to ensure the respect of the primacy and proper application of Union law;

Recalling the primacy of Union law, which includes the TEU, the TFEU, the Charter of Fundamental Rights of the European Union, the general principles of Union law as developed by the Court of Justice of the European Union, and in particular the right to an effective remedy before a tribunal and a fair and public hearing within a reasonable time by an independent and impartial tribunal, the case law of the Court of Justice of the European Union and secondary Union law;

Considering that this Agreement should be open to accession by any Member State of the European Union; Member States which have decided not to participate in