

EN  
E-012200/2013  
Answer given by Mr Barnier  
on behalf of the Commission  
(8.1.2014)

The Commission fails to see how the recent Union legislation on patents, namely Regulations 1257/2012 and 1260/2012, could increase the activity of so called "patent trolls" in Europe. To the extent that the Honourable Member's question pertains to the Unified Patent Court (UPC), it should be noted that the UPC agreement is an instrument under international law and is not part of Union law. The matter is thus outside the Commission's remit. The Commission will, however, provide the following factual information.

The UPC as a common specialized patent court will increase legal certainty, and a centralized patent revocation procedure will leave less room for "patent trolls" to exploit current fragmentation.

The UPC Agreement provides for safeguards against "patent trolls". No automatic injunctions shall be granted: the UPC has the discretion to weigh the parties' interests and to take into account the potential harm from the grant/refusal of the injunction. The Rules of Procedure (draft of 25 June 2013) foresee a possibility to require reasonable evidence that the patent is valid and being infringed and to order an adequate security for any injury likely to be caused to the alleged infringer if the injunction is later revoked.

The UPC is a single court competent for both patent infringement and revocation actions. A local/regional division has only a possibility, after having heard the parties, to refer a counterclaim for revocation to the central division. The Rules of Procedure provide that in case of a high probability that the patent will be held invalid in the revocation procedure the court must stay the infringement proceedings. The objective is to ensure that the patent validity is dealt with before the infringement action can proceed.