

# The Unified Patent Court

State of the play in September 2014

September 2014 • MIP European Patent Forum 2014  
Munich • Paris

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The Unified Patent Court

## What happened in 2013-2014?

1. On the table today
2. Spanish challenge
3. Brussels regulation
4. Ratifications
5. Divisions to be created
6. Preparatory Committee
7. Applicable law in case of opt out
8. Rules of procedure
9. Judges' selection
10. Representation
11. Opt out provisions

## Signature of the Unified Patent Court Agreement by the Participating Member States on 18 February 2013



## On the table today



17 December 2012

**Regulation** 1257/2012 enhanced cooperation creation of unitary patent protection

[http://www.upc.documents.eu.com/PDFs/2012-12-17\\_Regul\\_1257-2012\\_Enhanced\\_coop\\_creation\\_Unitary\\_patent.pdf](http://www.upc.documents.eu.com/PDFs/2012-12-17_Regul_1257-2012_Enhanced_coop_creation_Unitary_patent.pdf)



17 December 2012

**Regulation** 1260/2012 (translation arrangements)

[http://www.upc.documents.eu.com/PDFs/2012-12-17\\_Regul\\_1260-2012\\_Enhanced\\_coop\\_Unitary\\_patent\\_translation.pdf](http://www.upc.documents.eu.com/PDFs/2012-12-17_Regul_1260-2012_Enhanced_coop_Unitary_patent_translation.pdf)



19 February 2013

**Agreement** on a Unified Patent Court and draft Statute

[http://www.upc.documents.eu.com/PDFs/2013-02-19\\_Agreement\\_Unified\\_Patent\\_Court\\_JOUE\\_2013-06-20.pdf](http://www.upc.documents.eu.com/PDFs/2013-02-19_Agreement_Unified_Patent_Court_JOUE_2013-06-20.pdf)



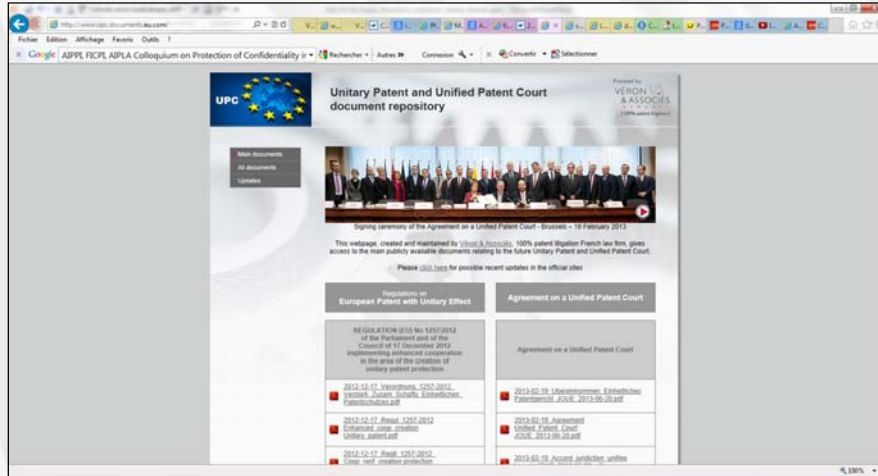
31 January 2014

**Draft Rules of procedure** Unified Patent Court (V16)

[http://www.upc.documents.eu.com/PDFs/2014-01-31\\_16th\\_Draft\\_Rules\\_Procedure\\_Prep\\_Com\\_Markup.pdf](http://www.upc.documents.eu.com/PDFs/2014-01-31_16th_Draft_Rules_Procedure_Prep_Com_Markup.pdf)

[http://www.upc.documents.eu.com/PDFs/Unitary\\_Patent\\_Reguls\\_and\\_Agreement\\_UPC\\_DE-EN-FR\\_and\\_Rules\\_Procedure\\_UPC\\_Draft\\_16\\_2014-01-31\\_DE-EN-FR\\_2014-07-03.pdf](http://www.upc.documents.eu.com/PDFs/Unitary_Patent_Reguls_and_Agreement_UPC_DE-EN-FR_and_Rules_Procedure_UPC_Draft_16_2014-01-31_DE-EN-FR_2014-07-03.pdf)

The main publicly available documents can be found on  
[www.upc.documents.eu.com](http://www.upc.documents.eu.com)



## The Spanish challenge

- Action C-146/13 in respect of Regulation (EU) No 1257/2012 (enhanced cooperation)
- Action C-147/13 in respect of Regulation (EU) No 1260/2012 (translation arrangements)
- Hearing 1<sup>st</sup> July 2014
- Advocate General opinion 21 October 2014
- Decision expected 2015

## Regulation No 542/2014 amending Regulation Brussels I

- Regulation (EU) No 542/2014 of the European Parliament and of the Council of 15 May 2014 amending Regulation (EU) No 1215/2012 as regards the rules to be applied with respect to the Unified Patent Court and the Benelux Court of Justice

## Purpose of Regulation No 542/2014

- Allow entry into force of the UPC Agreement
- Ensure compatibility of Regulation No 1215/2012 with the courts common to several Member States

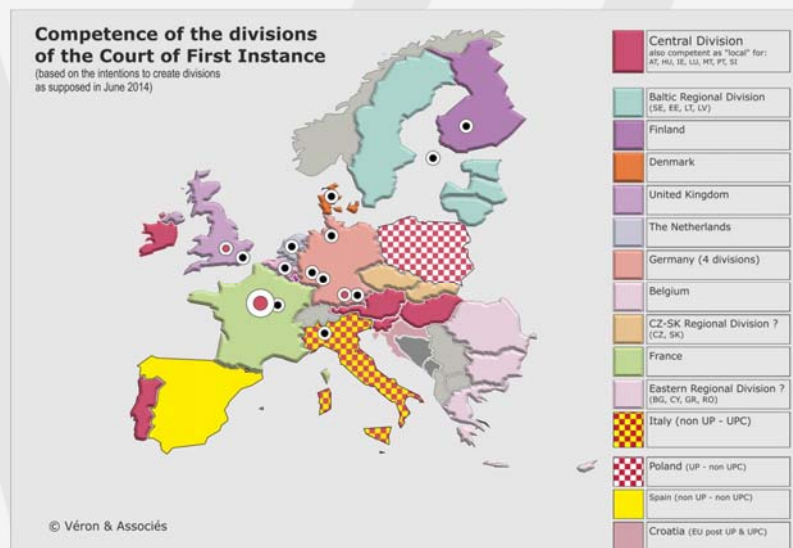


## Ratifications

- Entering into force when 13 contracting States including FR, UK and DE have ratified
- Ratifications so far:  
AU, FR, SE, BE and DK
- [http://ec.europa.eu/internal\\_market/indrop/patent/ratification/index\\_en.htm](http://ec.europa.eu/internal_market/indrop/patent/ratification/index_en.htm)

## Local and regional divisions currently contemplated

(based on the intentions to create divisions as supposed in June 2014)



## The Preparatory Committee

- Composed of all the Signatory States to the Unified Patent Court Agreement
- [www.unified-patent-court.org](http://www.unified-patent-court.org)
- 5 major work streams
  - Legal framework
  - Financial aspects
  - IT
  - Facilities
  - Human resources & Training

Interpretative note 29 January 2014

## Applicable law in case of opt out

“It is the Preparatory Committee’s view that **if a European patent... is opted out** (or during the transitional period the case is brought before a national court), **the Agreement no longer applies** to the application for the European patent... concerned. As a consequence the competent national court would have to **apply the applicable national law.**”

Summary

## Rules of Procedure

- Drafting process
- Hot topics

## Drafting process: stage 0



### SECOND VENICE RESOLUTION

San Servolo, 4<sup>th</sup> November 2006

We, the European Patent Judges named below, approve the attached principles for the Rules of Procedure of the European Patent Court

**4 November 2006, Venice Forum: European Patent Judges approve the principles of the Rules of Procedure**

## Drafting process: stages 1-5



**2007-2012: EU Commission's Expert group  
Judges, Lawyers and Business representatives**

## Drafting process: stages 6-16



**2012-2014: Drafting Committee  
Judges and Lawyers**



## Draft 15 (31 May 2013): 111 comments received

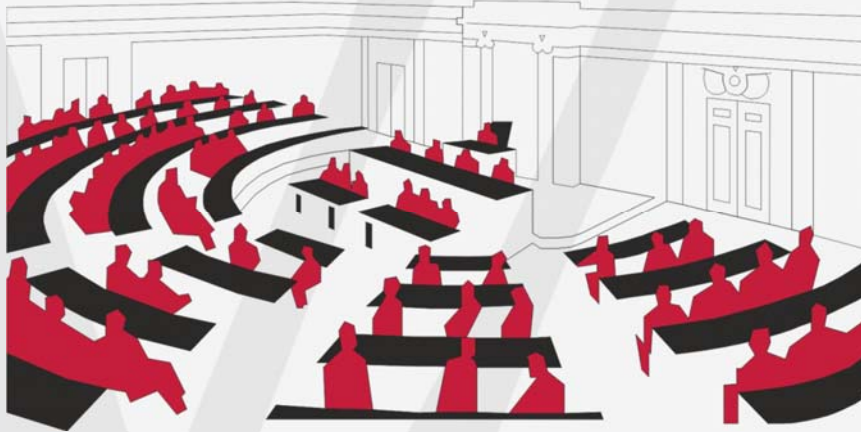


## Draft 16 (31 January 2014)

Currently under  
review by the  
Preparatory  
Committee



## Drafting process: stages 17 +



2014: Public hearing

## Drafting process: final approval



2015: Administrative Committee final approval

## Rules of procedure (382 rules)

- Draft **Rules of procedure** Unified Patent Court (V16) 31 January 2014  
[http://www.upc.documents.eu.com/PDFs/2014-01-31\\_16th\\_Draft\\_Rules\\_Procedure\\_Prep\\_Com\\_Markup.pdf](http://www.upc.documents.eu.com/PDFs/2014-01-31_16th_Draft_Rules_Procedure_Prep_Com_Markup.pdf)
- *“proceedings shall be conducted in a way which will normally allow the final oral hearing on the issues of infringement and validity at first instance to take place within **one year**”* (preamble)

## Rules of Procedure: hot topics

- Opt-out provisions
- Language of the statement of claim
- Bifurcation
- Decision on provisional measures
- Final decisions (permanent injunctions)
- Leave for procedural appeals
- Representatives authorised to practice

## 15 The judges

*"(1) The Court shall comprise both legally qualified judges and technically qualified judges."*

*Judges shall ensure the highest standards of competence and shall have **proven experience in the field of patent litigation**.*

*(2) Legally qualified judges shall possess the qualifications required for appointment to judicial offices in a Contracting Member State.*

*(3) Technically qualified judges shall have a university degree and proven expertise in a field of technology. They shall also have proven knowledge of civil law and procedure relevant in patent litigation."*

## 16 The judges: appointment

*"(1) The **Advisory Committee**\* shall establish a list of the most suitable candidates to be appointed as judges of the Court, in accordance with the Statute.*

*(2) On the basis of this list, the Administrative Committee shall appoint the judges of the Court acting by common accord.*

*(3) The implementing provisions for the appointment are set out in the Statute."*

*\* 14 (2) The Advisory Committee shall comprise patent judges and practitioners in patent law and patent litigation with the highest recognised competence. President: Lord Robin Jacob*

## Judges' selection

- Call for expression of interest by the Preparatory Committee fall 2013
- 1300 candidates
- At its 6<sup>th</sup> meeting (8 July 2014) a list of suitable candidates were approved by the Preparatory Committee
- Legally qualified judges
  - ▶ 170 eligible
  - ▶ 184 eligible with training
- Technically qualified judges
  - ▶ 341 eligible

## Training Center



- Training Centre for the Unified Patent Court (UPC) was officially opened on the 13 March 2014 in Budapest
- It will function as a coordinating office for the training of judges and candidate judges of the new court system

## Representation

- On 13 June 2014 the Legal Working Group of the Preparatory Committee has made available its proposals on the draft European Patent Litigation Certificate and Explanatory Memorandum
- Public consultation closed on 25 July 2014

## Opt-out provisions

- Why? any reason to pay fees for status quo?
- How much? “administrative level” or more?
- Who? all proprietors
- What? SPC goes with patent
- For how long? life of the patent
- Where? sunrise period EPO, Registry



## Unitary Patent and Unified Patent Court: original schedule

- 30 November 2013 • Ratification process completed
- April 2014 • First European Patent with Unitary Effect granted and Unified Patent Court in place

## Unitary Patent and Unified Patent Court: 2014 agenda

- Training of candidate judges
- Agreement on the Rules of Procedure and other rules, e.g. patent litigation certificate, legal aid, committees of the UPC
- Proposals and consultation on the rules for and the actual court fees
- Start of the public procurement of the IT system

## Unitary Patent and Unified Patent Court: revised schedule

# “Not before late 2015”

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## Thank you