

The second Spanish Challenge against the Unitary Patent

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The Unified Patent Court

Two legal actions brought by Spain before the CJEU

- Action C-146/13 in respect of Regulation N° 1257/2012 of 17 December 2012 implementing **enhanced cooperation** in the area of the creation of unitary patent protection
- Action C-147/13 in respect of Regulation N° 1260/2012 of 17 December 2012 implementing **translation** arrangements

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Proceedings before the CJEU

- 22 March 2013: Spanish actions
- BE, CZ, DK, DE, FR, LU, HU, NL, SE, UK and the EU Commission support the EU Parliament and the EU Council
- 1 July 2014: hearing
- 18 November 2014: opinion of Advocate General Yves Bot (FR)
- Judgment expected in 2015

Enhanced cooperation

Legal grounds of the Spanish action I (C-146/13) all rebutted by the AG

1. Breach of the values of the rule of law insofar as a regulation has been established on the basis of a right granted by the European Patent Office, whose acts are not subject to judicial review.
2. Non-existence of an act of the European Union and, in the alternative, lack of a legal basis for Regulation N° 1257/2012 in that it does not introduce measures guaranteeing the uniform protection envisaged in Article 118 TFEU [The Treaty on the Functioning of the European Union].
3. Misuse of power through the use of enhanced cooperation for purposes other than those provided for in the Treaties.
4. Infringement of Article 291(2) TFEU and, in the alternative, misapplication of the Meroni case-law in the regulation of the system for setting renewal fees and for determining the 'share of distribution' of those fees.
5. Misapplication of the Meroni case-law in the delegation to the European Patent Office of certain administrative tasks relating to the European patent with unitary effect.
6. Breach of the principles of autonomy and uniformity in the application of European Union law, as regards the rules governing the entry into force of Regulation N° 1257/2012.

Important remark by AG

The Member States party to the UPC Agreement have a legal duty to ratify this Agreement

The EU's power to implement enhanced cooperation has not been left in the hands of the Member States party to the UPC Agreement:

- *"The principle of sincere cooperation requires the participating Member States to take all appropriate measures to implement enhanced cooperation, including ratification of the Agreement on a Unified Patent Court, as such ratification is necessary for its implementation."* (§179)
- ***By refraining from ratifying the Agreement on a Unified Patent Court, the participating Member States would infringe the principle of sincere cooperation in that they would be jeopardising the attainment of the Union's harmonisation and uniform protection objectives."*** (§180)

Legal grounds of the Spanish action II (C-147/13) also all rebutted by the AG

- Infringement of the principle of non-discrimination by introducing a scheme to the detriment of persons whose mother tongue is not English, French or German, the scheme being disproportionate to the objective pursued.
- Lack of legal basis for Article 4 by regulating translation in the event of a dispute, which does not directly affect the language arrangements for the intellectual property right referred to in the second paragraph of Article 118 TFEU.
- Infringement of the principle of legal certainty.
- Failure to have regard to the case-law in Meroni by delegating the administration of the compensation scheme (Article 5) and the publication of the translations (Article 6(2)) to the European Patent Office.
- Infringement of the principle of the autonomy of European Union law by making the application of the Regulation dependent on the entry into force of the Agreement on a Unified Patent Court.

The AG's opinion as regards the language arrangements:

- EU law has no principle of equality of languages.
- The language arrangements chosen do certainly entail a curtailment of the use of languages, but they pursue a legitimate objective of reducing translation costs.
- To limit the number of languages for the European patent with unitary effect is appropriate because it ensures unitary patent protection throughout the territory of the participating Member States whilst enabling a significant reduction in translation costs to be achieved.

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Thank you

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