The Unified Patent Court

almost 1000 days after: state of the play in September 2015

Global Pharma IP Forum • London Stock Exchange
28 September 2015

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What happened in 2013-2015?

1. Legal sources
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. IT system
10. Judges' selection
11. Representation

The Unified Patent Court

Signature of the Unified Patent Court Agreement by the Participating Member States on 19 February 2013

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The Unified Patent Court

Legal sources

- 17 December 2012 **Regulation** 1257/2012 enhanced cooperation creation of unitary patent protection
- 17 December 2012 **Regulation** 1260/2012 (translation arrangements)
- 19 February 2013 **Agreement** on a Unified Patent Court and draft Statute
- 31 October 2014 Draft **Rules of procedure** Unified Patent Court (V17)

http://www.upc.documents.eu.com/PDFs/2014-10-31_Agreement_UPC_DE-EN-FR_and_Rules_Procedure_UPC_DE-EN-FR_Draft_17_and_Trier_hearing.pdf

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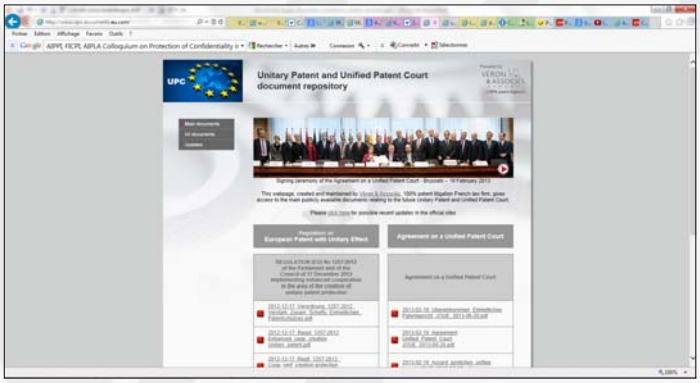
The main publicly available documents can be found on

www.upc.documents.eu.com



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Spanish challenge rejected on 5 May 2015

- 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)

- Immediately thereafter Italy decided to join the Unitary Patent

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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

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Main

Purposes 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

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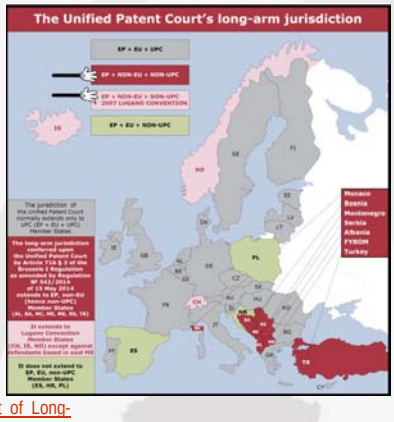
The Unified Patent Court

Third

Purpose of Regulation No 542/2014

Create long arm jurisdiction for certain acts of infringement of a EP-non EU patent eg Turkey, Switzerland



http://www.veron.com/publications/Publications/Extent_of_Long-Arm_Jurisdiction_Conferred_upon_the_UPC_P_Veron_2015_37_EIPR_p588.pdf

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Ratifications

- Entering into force when 13 contracting States including **FR**, **UK** and **DE** have ratified
- 8 ratifications so far:
  AU, **FR**, SE, BE, DK, MT, LU and PT

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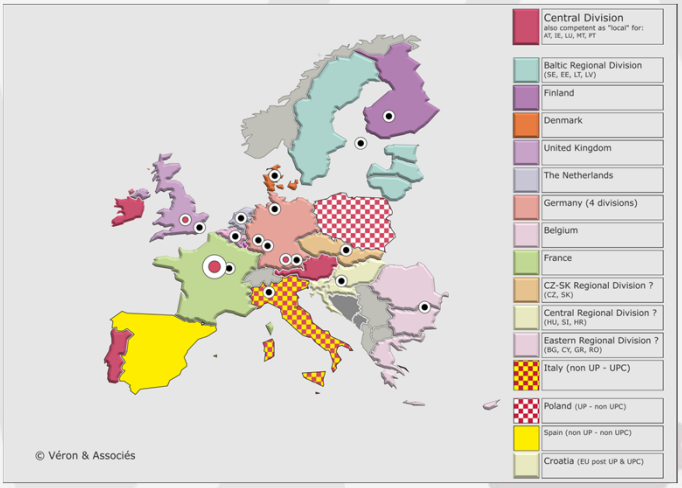
The Unified Patent Court

The Court of first instance: central, local and regional divisions

(based on the intentions to create divisions as supposed in September 2015)



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The Unified Patent Court

Court of appeal

Luxembourg
Hemicycle
Kirchberg

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The Unified Patent Court

Court of First Instance

London
Aldgate Tower (City)

Paris
Palais de Justice

Munich
Bundespatentgericht

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The Unified Patent Court

The President?

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The Unified Patent Court

The Preparatory Committee

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

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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****.*"

www.unified-patent-court.org/news/71-interpretative-note-consequences-of-the-application-of-article-83-upca

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1 October 2015

Protocol for the provisional application of the UPCA

*"... would allow for the **provisional application of the institutional, organisational and financial provisions of the UPCA and Statute during a period of approximately six months** before the UPCA enters into force.*

This will allow all legal texts and all decisions and appointments to be adopted in accordance with the relevant procedures."

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Alignment of national laws on UPC Agreement?

Should UPC signatory states align their national laws as to infringing acts (indirect infringement, exceptions to infringement) with the patent package?

- NL ready to do so
- Others consider

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Summary

Rules of Procedure

- Drafting process
- Hot topics

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The Unified Patent Court

Drafting process: stages 17 +

26 November 2014: Public hearing in Trier

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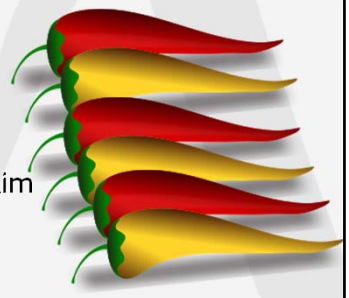
The Unified Patent Court

Rules of Procedure: hot topics in Trier



- 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

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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

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Berlin 25-26 June 2015

Joint meeting Legal Framework Working Group, Preparatory Committee + Drafting Committee about the 18th draft

Johannes Karcher coordinator of the Legal Framework Working Group

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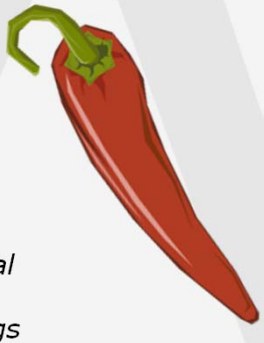
Rules of Procedure: hot topics in Berlin



- Proprietorship and registration for opt out and for proceedings
- Language of the proceedings when Contracting Member States "*designate one or more of the official languages of the European Patent Office as the language of proceedings of their local or regional division*".

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The Unified Patent Court

Costs

"(1) The budget of the Court shall be financed by the Court's own financial revenues…

(2) The Court's own financial revenues shall comprise court fees and other revenues.

(3) Court fees shall be fixed by the Administrative Committee. They shall consist of a fixed fee, combined with ***a value-based fee*** *above a pre-defined ceiling."*

(Art. 36 of the Agreement)

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The Unified Patent Court

Public consultation on the rules on court fees and recoverable costs

- On 8 May 2015 the Preparatory Committee launched a public consultation on the fee structure for the Court
- The consultation document "Rules on Court fees and recoverable costs" comprises two options for a revised Rule 370, a table of fees, a scale of ceilings for recoverable costs and an Explanatory Note
  http://www.unified-patent-court.org/images/UPC_Court_Fees_and_Recoverable_Costs_Consultation_Document_FINAL.pdf
- Responses had to be sent to the Secretariat before 31 July 2015; analysis underway

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The Unified Patent Court

Costs

"5. *The assessment of the value of the relevant action (Rule 370.3) shall reflect the objective interest pursued by the filing party at the time of filing the action. In deciding on the value, the Court shall in particular take into account the guidelines laid down in the decision of the Administrative Committee for this purpose."*

"Guidelines for the calculation of value-based fees" are being prepared

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What's next?

2015: Administrative Committee's final approval

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IT System

- Unified Patent Court Case Management System is on its way
- User workshops in Stockholm, Luxembourg, Dusseldorf, Munich and Rome between October and December
- http://prototype.unified-patent-court.org

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The Unified Patent Court

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."

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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

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Judges' selection

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

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The Unified Patent Court

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

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The Unified Patent Court

Representation

- On 13 June 2014 the Preparatory Committee launched a public consultation (closed on 31 July
- At its meeting on 3 September 2015 it approved the following draft European Patent Litigation Certificate and Explanatory Memorandum:

www.unified-patent-court.org/images/documents/Draft-EPLC-2015-07-01-final-clear.pdf

www.unified-patent-court.org/images/documents/Explanatory-memorandum-EPLC-2015-07-01-final-clear.pdf

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Representation

3 August 2015: Proposal for a Code of Conduct for the UPC has been submitted by EPLAW, EPLIT and epi to the Preparatory Committee

1. Relationship with the Court
2. Fair conduct of proceedings
3. Contact with Judges of the Court
4. Demeanour in Court
5. False or misleading information
6. Privileged information
7. Dealing with witnesses and party experts
8. Change of representation

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Thank you

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