

# 'My main regret is that the Unitary Patent Package will not cover all European countries'

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Kluwer Patent blogger

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**The story of the creation of the Unitary Patent and the Unified Patent Court was like the game 'Fortunately, unfortunately', according to Pierre Véron. The French patent litigation specialist was the founder and first president of the European Patent Lawyers Association (from 2001) and has been involved in the creation of the Unitary Patent Package from the very beginning. Less than four months before the launch of the new system, Kluwer IP Law interviewed Véron and asked him how it all started.**

'As EPLAW we met with the European Commission many times during the decade 2000-2010. The Commission considered the creation of a patent covering the whole of EU as one of its highest priorities. In 2007, I was appointed as the French expert patent litigator to assist the Commission in the drafting of what became the Unified Patent Court Agreement, signed in Brussels on 19 February 2013. Later, during the decade 2010-2020, I was a member of the drafting committee of the Rules of Procedure of the new court. In that period I was also heard by the European Parliament on the future European patent litigation system.

It was a very exciting experience to build a new international court without any model or precedent.'

## ***What issues were debated most at the time?***

'During the decade 2000-2010, the main issue was what institutional framework would be the most appropriate. There was a certain competition between the EU Commission, which favoured the creation of a court within the European Court of Justice, and the European Patent Office, which pushed for the so-called European Patent Litigation Agreement (EPLA) between the countries of the European Patent Convention. Eventually, the UPC Agreement was neither one nor the other.'



***Did you expect the process of creation of the Unitary Patent and the Unified Patent Court system would take so long? And have you ever had concerns that the project would fail?***

‘To kill the time during their long travels by car, some families play to the game “Fortunately, unfortunately”, where each player adds a new sentence to a story, starting by “Fortunately”, then by “Unfortunately”. “John was in an airplane. Unfortunately, the motor exploded. Fortunately, there was a parachute in the airplane. Unfortunately, there was a hole in the parachute. Fortunately, there was a haystack on the ground. Unfortunately, there was a pitchfork in the haystack, etc.”

This has been more or less the story of the Unified Patent Court: fortunately, a draft agreement was reached between a number of EPC countries; unfortunately, an ECJ opinion stated that it was not possible to embark non-EU countries; fortunately, another draft agreement was signed between only EU countries; unfortunately it was attacked before the German *Bundesverfassungsgericht*; fortunately this court rejected the recourse; unfortunately, another recourse was lodged; fortunately, it was also rejected and so on.’

***Are you satisfied about the system as it has turned out?***

‘A lawyer is never satisfied by a new legal system that he has not designed himself in all details! However, I feel this system is the best possible compromise between often opposite demands of stakeholders.’

***What are issues in the new system that you are disappointed about?***

‘My main regret is that the new system will not cover all European countries: the ECJ opinion has not accepted EPC non-EU countries (like Switzerland, or Norway), the Brexit has deprived us of the UK judges and practitioners, and Spain and Poland are very unlikely to join.’

***Spain has always objected to the language regime. Have alternatives, such as an English-only system or a system with more official languages ever been a serious option?***

‘An English-only system was politically impossible. The current language regime is as open as possible: in each local or regional division, the language of the country where it seats will be an option (in addition to English, in most cases). In fact, the Spanish language objection was not about the court’s language regime. Rather, it was about the EPO’s language regime, as Spain has never accepted that Spanish is not one of the official languages of the EPO.’

***Why are the creation of the Unitary Patent and the Unified Patent Court so important, in your view?***

‘Because it creates the so-called European Patent with Unitary Effect, best known as Unitary Patent, which is really a genuine European Patent, valid for all the participating EU Member States, rather than a bundle of national patents. And above all, because it creates a court where you can litigate in one single case the validity and infringement of a patent for the whole of Europe, instead of being obliged to start parallel actions in various jurisdiction.’

***A completely new UPCA, Unitary Patent Regulations and Rules of Procedure were designed (of which a final trilingual version is available on Pierre Veron's website). Isn't it a leap in the dark? Are you concerned unforeseen issues will come to the surface and lead to legal uncertainty?***

‘The Rules of Procedure have been discussed between seasoned experts in patent litigation and civil proceedings during dozens of meetings. More than 18 drafts were prepared and made available for comments (110 were received in writing). On 26 November 2014, a one-day meeting in Trier gathered more than 100 representatives of the interested circles to comment on the latest draft. There will certainly be unforeseen issues (by way of example, in 2014, holding certain oral hearings by video conference was not felt as a priority, whilst it proved to be one during the peak of the pandemic).’

***Do you expect the foundations of the system, for instance the solutions to the withdrawal of the UK from the project as a consequence of the Brexit (no London central division branch), will be challenged before the UPC and/or CJEU?***

‘Experience has proven that, about this new court, whatever may be challenged in EU courts or constitutional courts will be challenged. But I am rather confident on the outcome of any challenge based on the eventual location of the section of the Central Division which was planned to be based in London.’

***A general view seems to be that Germany will have much influence on (the jurisprudence of) the UPC. Do you agree? What will the role of France be?***

‘Germany is the largest EU country, at least for patent litigation. It has attracted a large volume of litigation. It is not surprising that it has some influence on the functioning of the new court. But France will host the seat of the Court of First Instance in Paris and will certainly also exert a great influence.’

***You have co-organized several UPC mock trials to get familiar with the rules and procedures of the new court, most recently last November. Did any surprises come to the surface, such as unresolved issues about the interpretation of the new UPC rules?***

‘I have been indeed involved in the design or in the conduct of four mock trials organized in Paris by the Union pour la Jurisdiction unifiée du brevet (UJUB), Union for the UPC, a French association created by all the interested circles in France. The last one took place on 21 November 2022. The script of these four mock trials were carefully designed to highlight some difficult problems in the UPC Agreement or in the Rules of Procedure (documents and video recordings are available here). There are still unresolved issues about the interpretation of the new UPC Rules of Procedure, but they do not exceed what can be expected of any new court system.’

***What (else) did you learn from the recent mock trial?***

‘Everyone noticed the enthusiasm of the participants – judges or representatives (lawyers and patent attorneys) for the new system.’

***Is there anything else I should have asked or you'd like to mention?***

'The Unified Patent Court will start its operations court on the 1<sup>st</sup> of June 2023: see you in court then!'