

# Construction of the Unified Patent Court

*CEIPI Diploma on Patent Litigation in Europe  
Online • 23 February 2024*

**Pierre Véron**

Honorary President EPLAW (European Patent Lawyers Association)  
Member of the Expert Panel group of the Unified Patent Court  
Member of the Drafting Committee of the Rules of Procedure



Overview

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# Construction of the Unified Patent Court

- The problem
  - ▶ One European patent
  - ▶ 30+ courts to enforce it:
    - costs
    - conflicting patent decisions in Europe
- The UPC solution
  - ▶ 1970-1999 The prehistory
  - ▶ 1999-2023 The construction
  - ▶ 2023-2024 Entry into operation



Contents

# Construction of the Unified Patent Court

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Construction  
of the Unified Patent Court

### Why a new patent system in Europe?

A new system was needed to cure the defects of the current patent system in Europe

- Lack of real unitary patent protection
- Jurisdiction given to national courts in parallel proceedings

7

Construction  
of the Unified Patent Court

### 1970-2000 UPC prehistory

- 1975 The Community Patent Convention

28

Construction  
of the Unified Patent Court

### 1999-2023 The construction

- 1999 The French initiative
- 2000 EU Commission draft regulation
- 2000 European Patent Litigation Protocol
- 2003 EU Commission Community Patent
- 2003 European Patent Litigation Agreement
- 2007 EU Commission's Communication

28

Construction  
of the Unified Patent Court

### 2023-2024 Entry into operation

48



## Why a new patent system in Europe?

A new system was needed to cure the defects of the current patent system in Europe

- Lack of real unitary patent protection
- Jurisdiction given to national courts in parallel proceedings



## Lack of real unitary patent protection: the current European Patent is a “bundle” patent, not a unitary patent

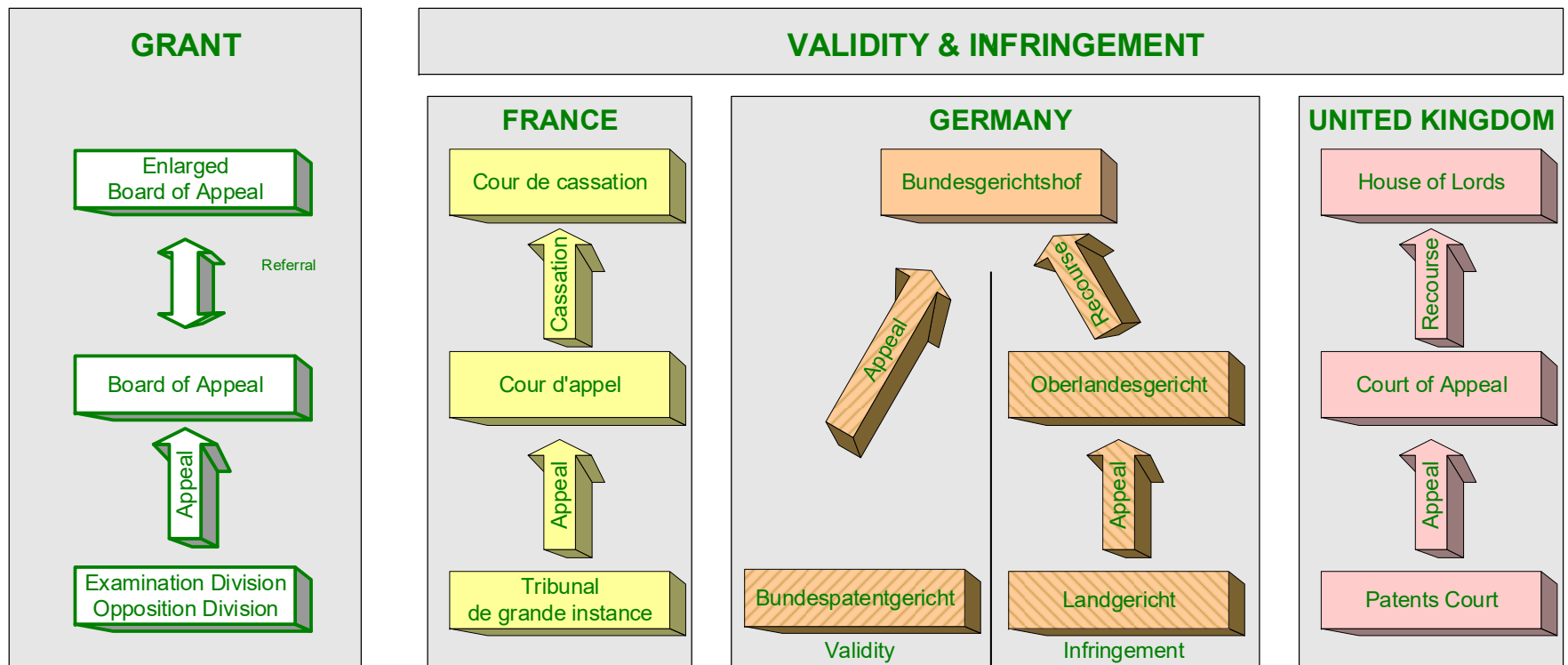
- The European Patent Office provides a single patent grant procedure, but does not grant a single patent as far as enforcement is concerned
- The so-called European Patents are not European Union patents or even Europe-wide patents: instead, they are a “bundle” of national patents.



1973

The current European Patent "bundle patent" :  
once granted by EPO it becomes a series of  
"national patents"

1973



## Jurisdiction for validity and infringement

Jurisdiction for validity and infringement given to national courts in parallel proceedings causes:

- *Forum shopping* strategies  
(choose the best court where to bring your case)
- Conflicting decisions  
(courts of various countries issue opposite rulings on the “same” patent)

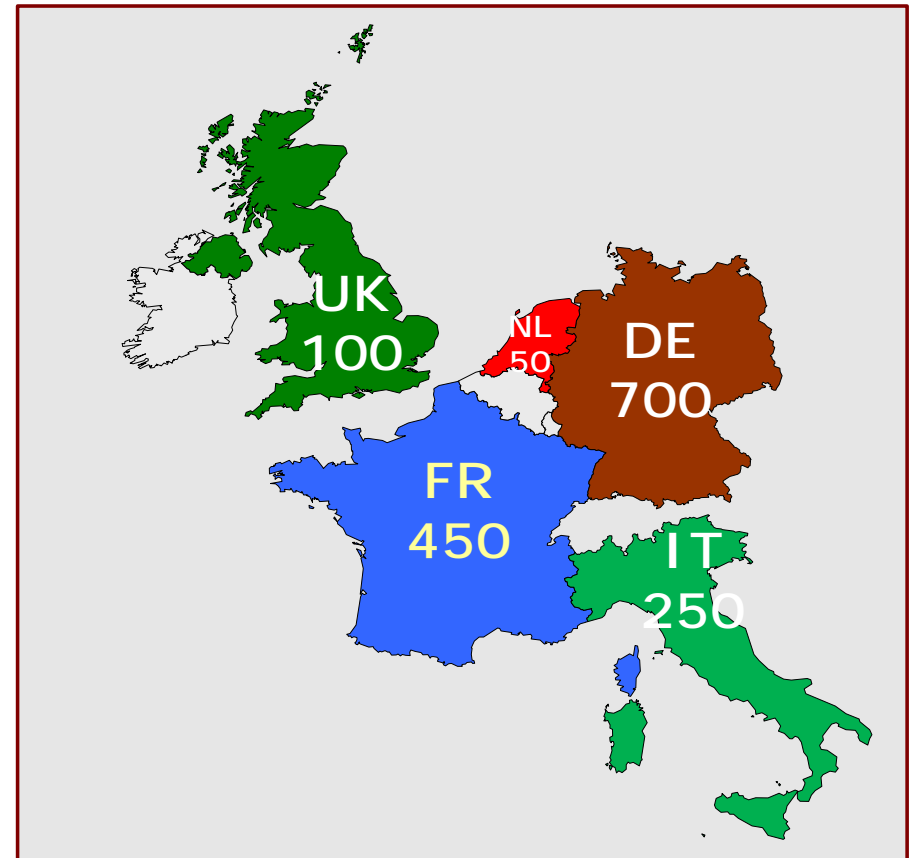


## Patent litigation in Europe: figures

Number of new patent cases per year (rough estimate) in countries with  $\geq 50$  cases/year

Source: Harhoff

[http://ec.europa.eu/internal\\_market/indprop/docs/patent/studies/litigation\\_system\\_en.pdf](http://ec.europa.eu/internal_market/indprop/docs/patent/studies/litigation_system_en.pdf)





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## *Forum shopping* in the current system: points to consider

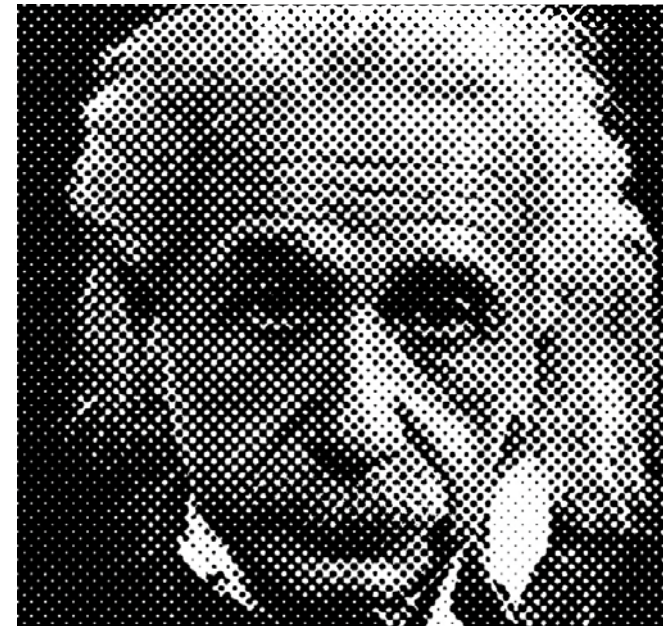
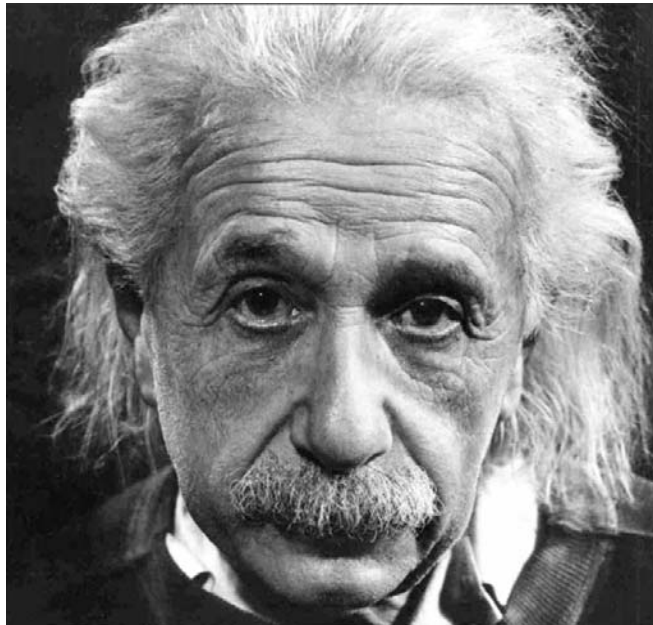
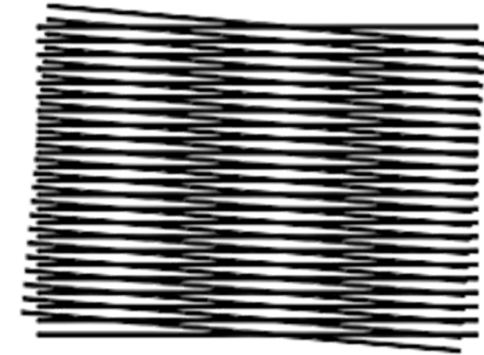
- Patentee or potential defendant?
- Place of business of the other party?
- Place of manufacture or marketing?
- Main markets for the products?
- Size of companies?



# Conflicting judgments: *Document Security Systems Inc. v. European Central Bank*



## The moiré effect

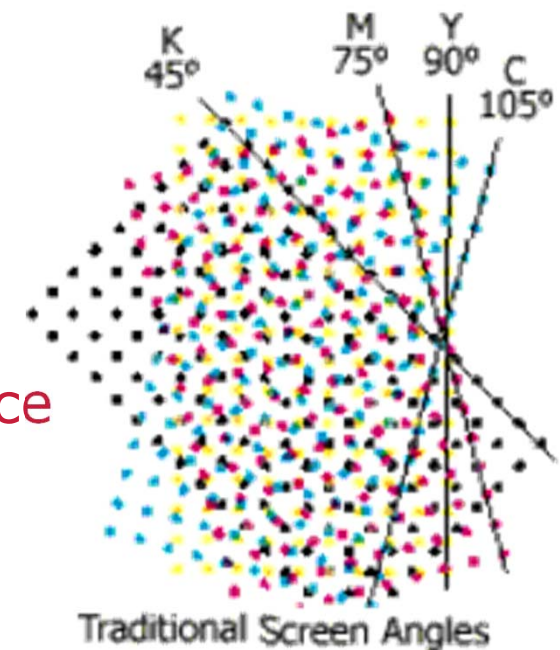


[European Central Bank v Document Security Systems Incorporated \[2008\] EWCA Civ 192 \(19 March 2008\)](#)

# Conflicting judgments

## *Document Security Systems v. European Central Bank (security)*

- **United Kingdom: patent invalid**  
*High Court 26 March 2007 EWCA 19 March 2008*
- **Germany: patent valid 1<sup>st</sup> instance**  
*Bundespatentgericht 27 mars 2007*  
**patent invalid appeal**  
*Bundesgerichtshof 8 July 2010*
- **France: patent invalid**  
*Tribunal de grande instance de Paris, 9 janvier 2008*
- **The Netherlands: patent valid 1<sup>st</sup> instance**  
*Rechtbank La Haye 12 mars 2008*  
**patent invalid appeal**  
*Bundesgerichtshof 21 December 2010*
- **Spain: patent valid 1<sup>st</sup> instance**  
*Madrid court first instance 2011*  
**patent invalid appeal**  
*Madrid court of appeal 2013*





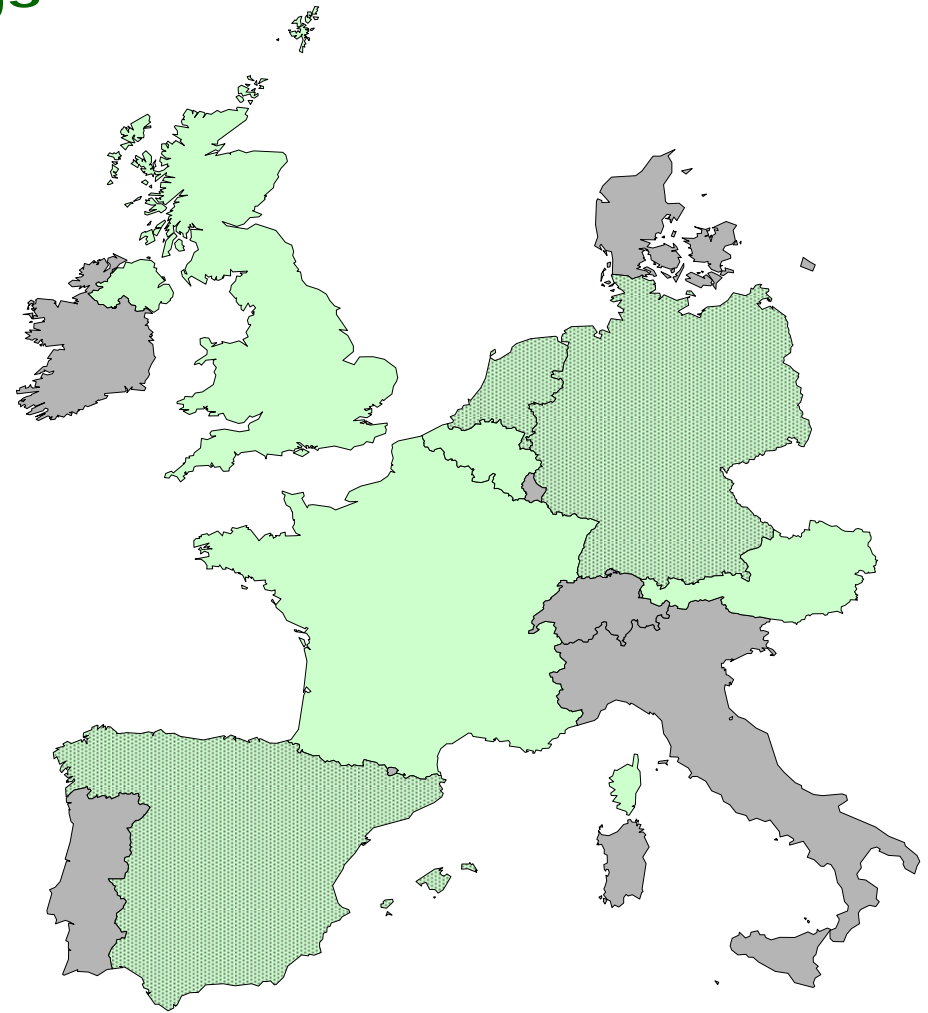
## Document Security System v. European Central Bank Outcome of the proceedings



Patent held invalid  
(1<sup>st</sup> instance & appeal)



Patent held  
valid 1<sup>st</sup> instance  
invalid appeal



# Conflicting judgments

*Novartis / Johnson & Johnson (contact lenses)*



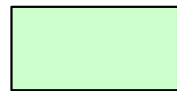
- **The Netherlands: patent valid and infringed**  
11 February 2009 *Rechtbank* The Hague
- **France: patent valid and infringed**  
25 March 2009 *Tribunal de grande instance* Paris affirmed by court of appeal 27 October 2010
- **United Kingdom: patent invalid for insufficient description (but meeting novelty and inventive step requirements)**  
*High Court* 10 July 2009
- **Germany: patent invalid for lack of novelty (but meeting description requirement)**  
*Bundespatentgericht* 10 December 2009





# Conflicting judgments

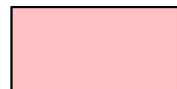
*Novartis / Johnson & Johnson (contact lenses)*



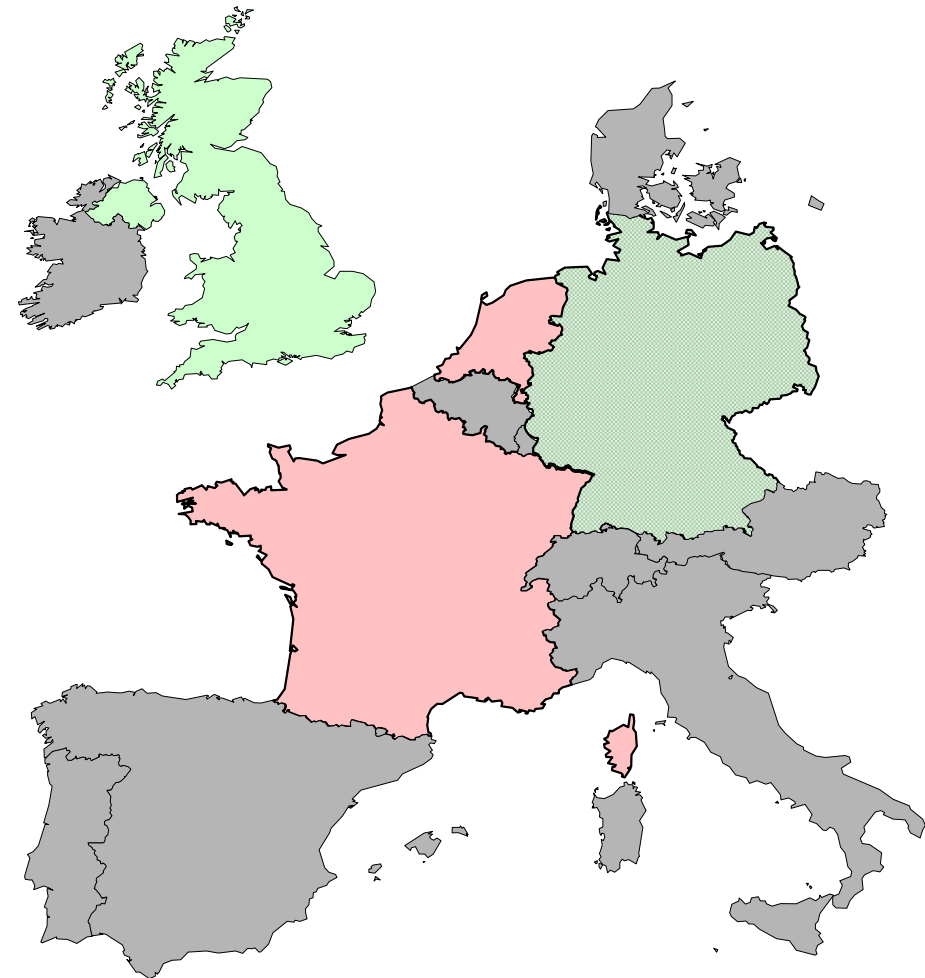
Patent held invalid  
novel but insufficient description



Patent held invalid  
sufficient description but not novel



Patent held valid  
and infringed



# Conflicting judgments

*MSD v generics EP 724 444*

(finasteride for the treatment of androgenic alopecia)



- **United Kingdom:**  
patent invalid 1<sup>st</sup> instance  
*6 June 2007 High Court*  
patent valid and infringed appeal  
*21 May 2008 EWCA*
- **Germany : patent invalid**  
*26 June 2008 Bundespatentgericht*
- **France : patent invalid**  
*28 September 2010 Tribunal de grande instance Paris affirmed by court of appeal 30 January 2015*
- **Spain : patent invalid**  
*Commercial court and court of appeal Madrid*
- **The Netherlands : patent valid and infringed**  
*23 April 2014 Rechtbank Den Haag*
- **Italy: patent valid in 1<sup>st</sup> instance and case settled on appeal**

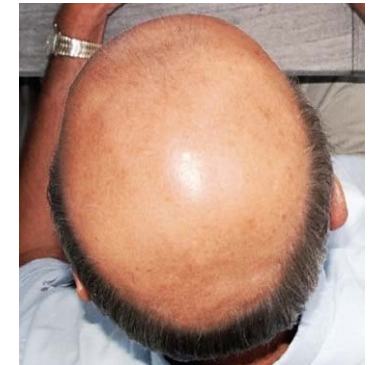




# Conflicting judgments

*MSD/ Mylan*

(finasteride for the treatment of androgenic alopecia)



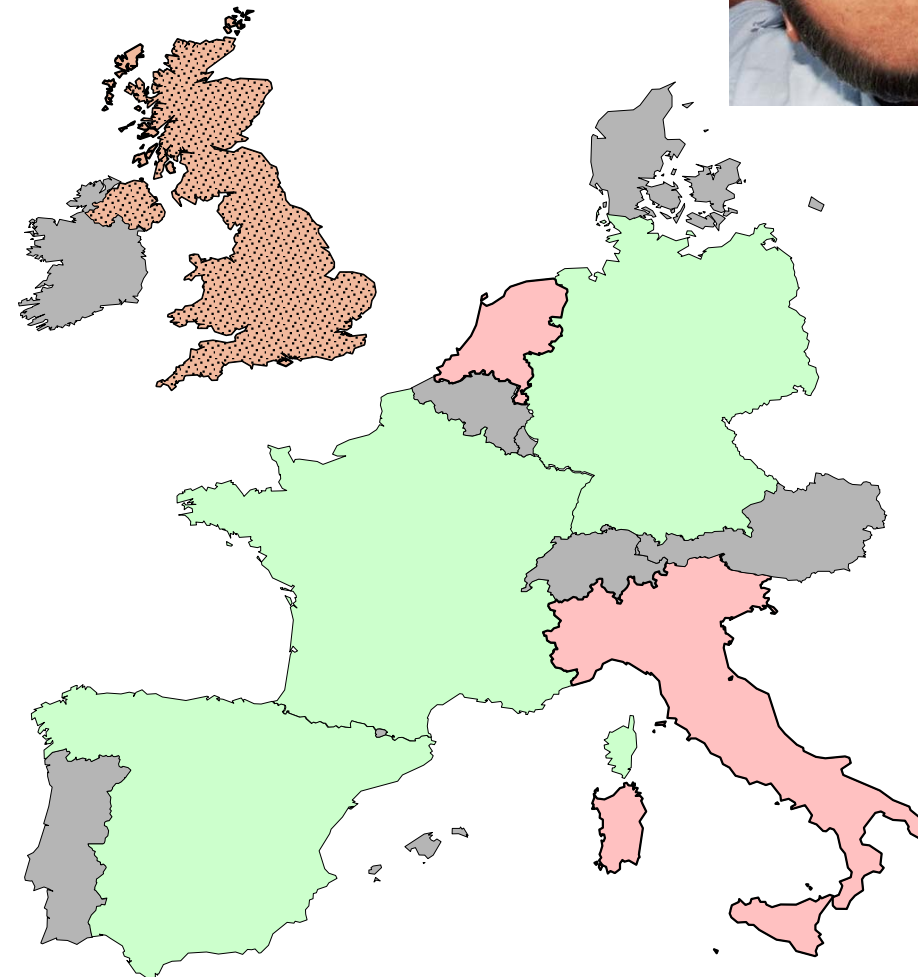
Patent held invalid



Patent held invalid  
(1<sup>st</sup> instance), valid and  
infringed (appeal)



Patent held valid and  
infringed (1<sup>st</sup> instance,  
no appeal reported)





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# Conflicting judgments

*AstraZeneca* (esomeprazole) EP 1 020 461

- **United Kingdom:**  
**patent valid 1<sup>st</sup> instance**  
*15 July 2011 High Court Chancery Division*
- **Switzerland:**  
**patent valid 1<sup>st</sup> instance**  
*12 May 2014 Bundespatentgericht*
- **Italy:**  
**patent valid 1<sup>st</sup> instance**  
*23 April 2012 Tribunale Milano*  
**patent valid and infringed 1<sup>st</sup> instance**  
*11 February 2011 Tribunale Torino*





# Conflicting judgments

*AstraZeneca* (esomeprazole) EP 1 020 461

- **The Netherlands:**  
**patent valid 1<sup>st</sup> instance**  
*6 June 2011 Rechtbank Den Haag*
- **France:**  
**patent invalid**  
*21 November 2014 Tribunal de grande instance Paris*
- **Germany:**  
**patent not infringed 1<sup>st</sup> instance**  
*17 December 2010 Landgericht Hamburg*
- **Sweden:**  
**patent not infringed appeal**  
*12 April 2011 Svea Hovrätt*





# Conflicting judgments

*AstraZeneca* (esomeprazole) EP 1 020 461



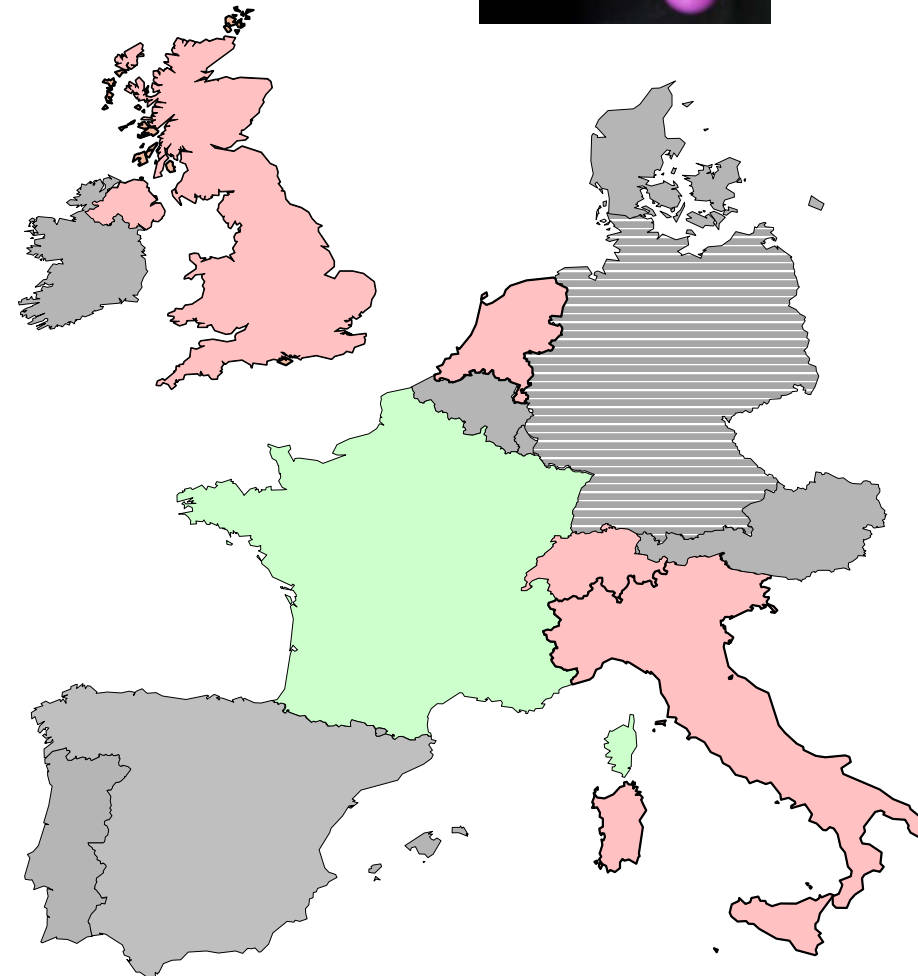
Patent held invalid  
(1<sup>st</sup> instance)



Patent held valid  
(1<sup>st</sup> instance)



Patent not infringed  
(1<sup>st</sup> instance)



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## A 40-year story (part 1)

1973 Birth of the European Patent

1975 Community Patent Convention

1999 French initiative

2000 Draft regulation on the community patent

2000 European Patent Litigation Protocol

2003 EU Commission's Communication

2003 European Patent Litigation Agreement

2007 EU Commission's Communication

2008 Draft agreement 14970/08



## A 40-year story (part 2)

2009-03-29 Draft agreement 7928/09

2009-04-24 Request for an opinion to CJEU

2011-03-10 Council decision 2011/167/UE  
Enhanced cooperation unitary patent protection

2011-03-08 CJEU negative opinion

2011-04-13 Prop. Regulation  
Enhanced cooperation unitary patent protection

2011-04-13 Prop. Regulation translation arrangements

2011-10-26 Draft agreement on a Unified Patent Court  
and draft Statute - Revised Presidency text 16023/11



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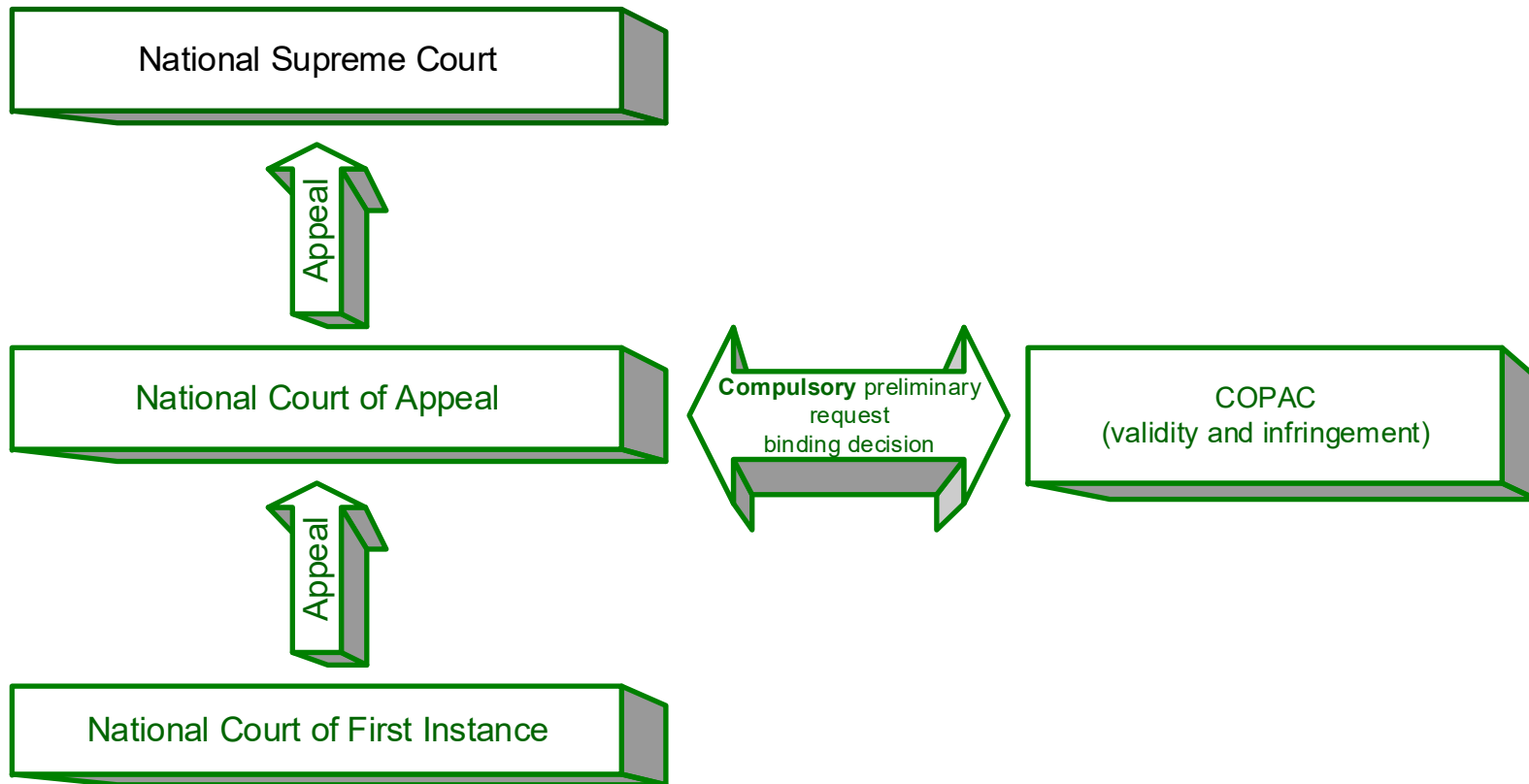
## 1970-1999 UPC prehistory

- 1975 The Community Patent Convention



# The Community Patent Convention

1975





# 1999-2023

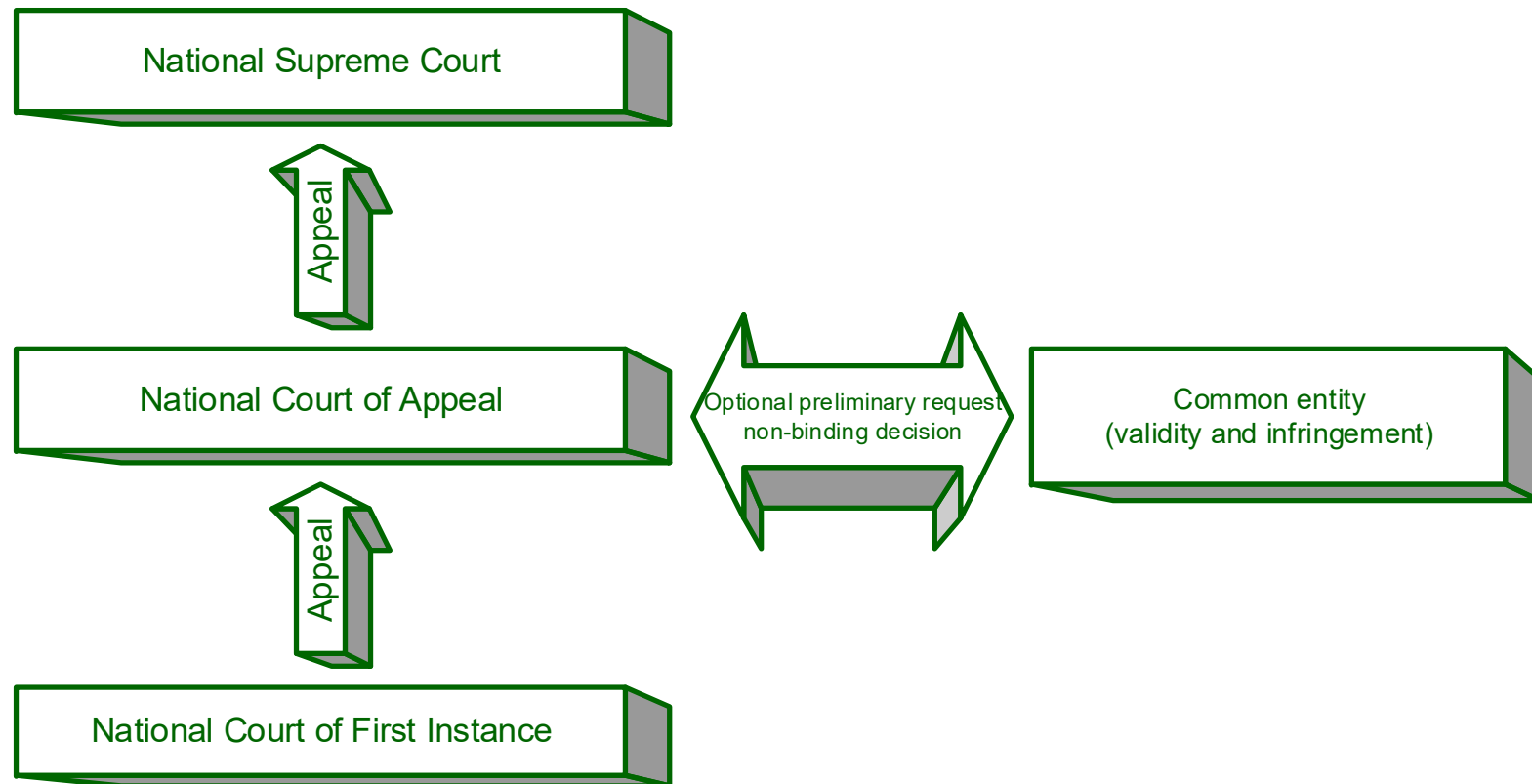
## The construction

- 1999 The French initiative
- 2000 EU Commission draft regulation
- 2000 European Patent Litigation Protocol
- 2003 EU Commission Community Patent
- 2003 European Patent Litigation Agreement
- 2007 EU Commission's Communication



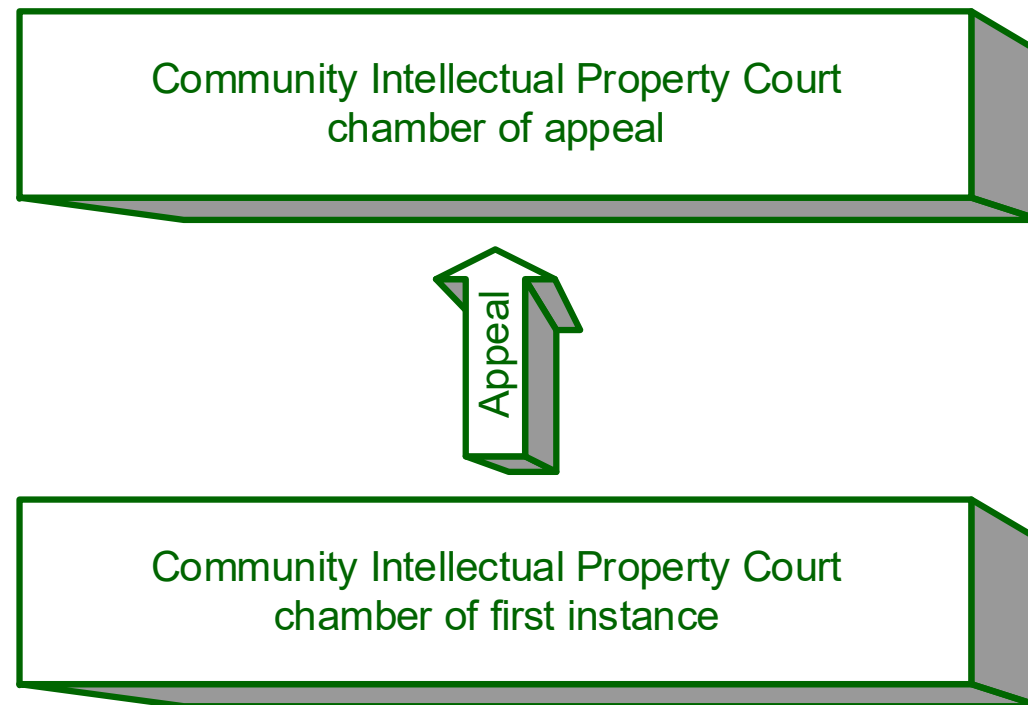
## European Patent: the French initiative

1999



## EU Commission draft regulation

2000



Brussels 19 September 2001

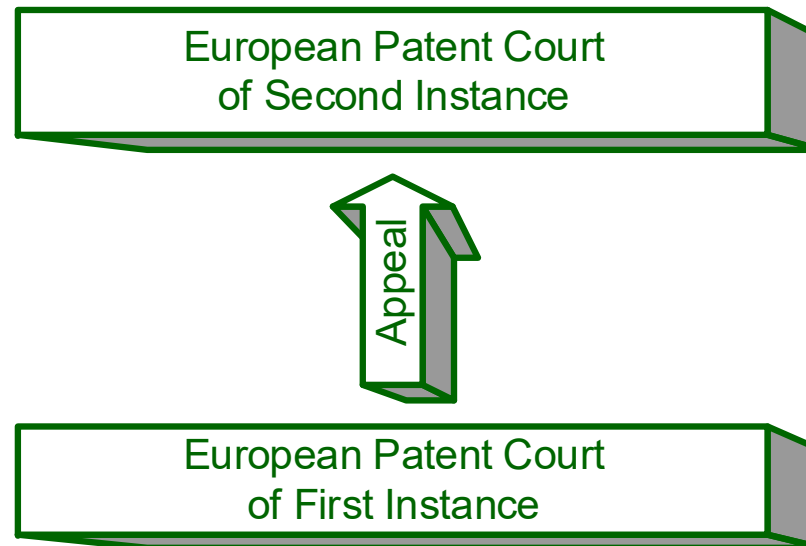
# First general meeting of EPLA



Mooney - Tilmann - Heinrich - Véron - MEP Lehne - de Visscher

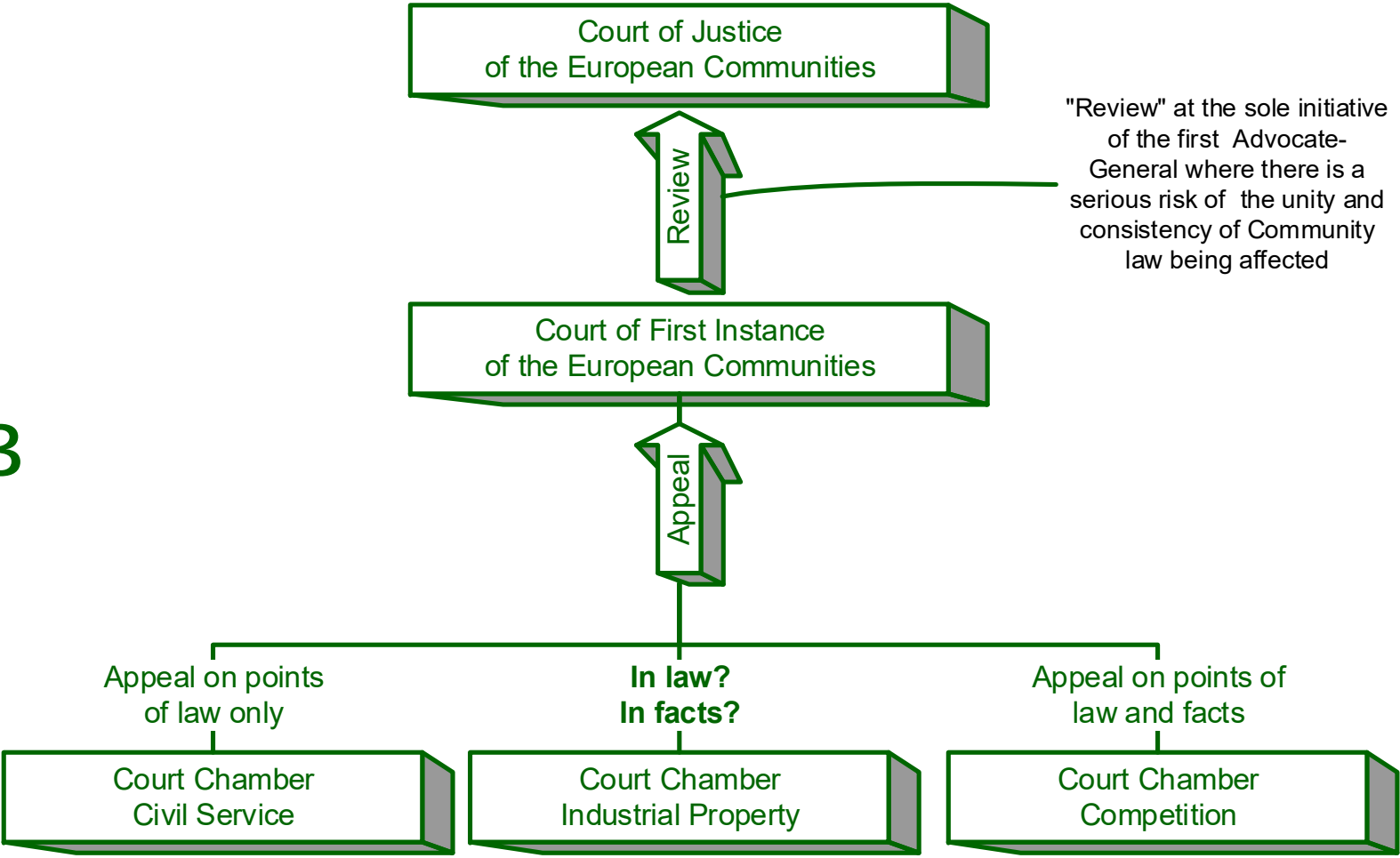
## EPLP *European Patent Litigation Protocol*

2000



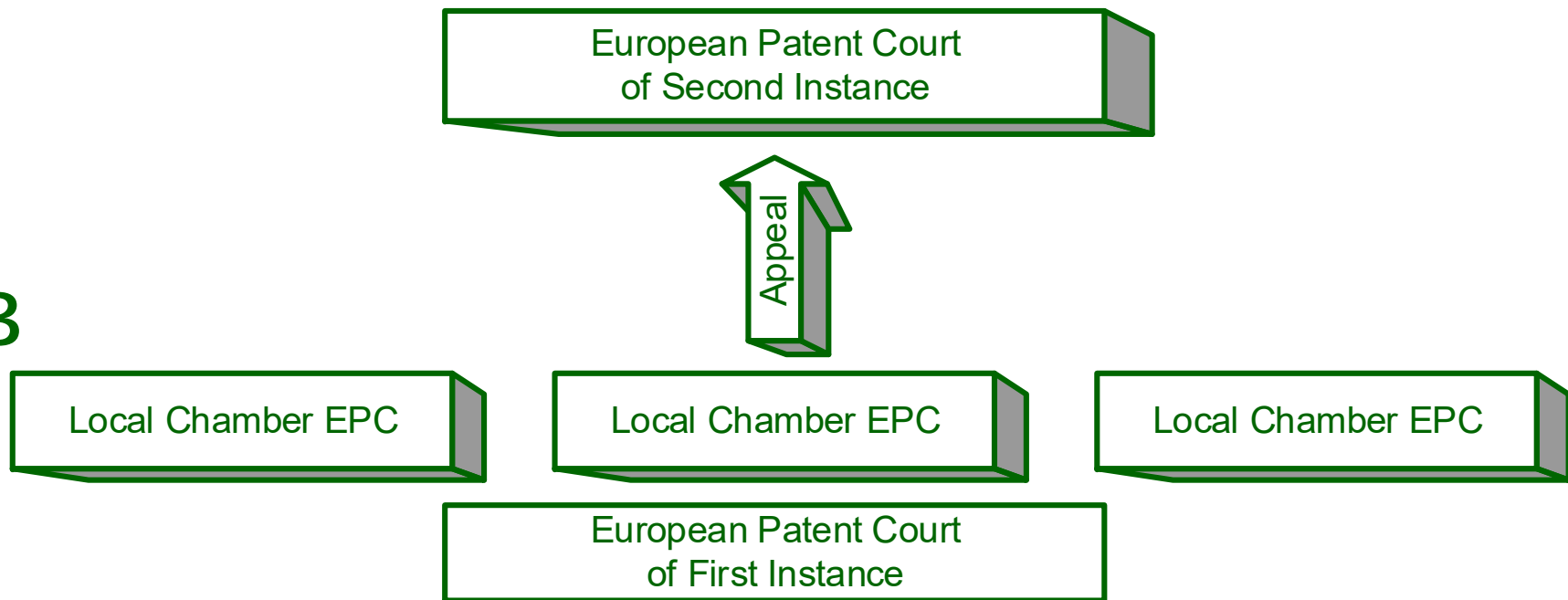
# Community Patent (draft regulation)

2003



# European Patent Litigation Agreement

2003



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## 2004 “EPLA” becomes “EPLAW”

- In 2002 the members of the Working Party on Litigation set up by the European Patent Office who had christened their baby “European Patent Litigation Protocol” (EPLP) considered that the name Protocol was no longer suitable and decided to call their future baby “European Patent Litigation Agreement” (EPLA).
- Our association was left with no other option than either to sue several EU Member States or to change its name.
- As professional litigators, we know that litigation is not always the best way to start building a strong and friendly relationship...
- The association therefore decided to change its acronym to EPLAW, its current name.





## Et Marius Franciscus fecit Venetiam...



Mario Franzosi 2005

\* And Mario Franzosi created Venice...



Lord Hoffmann  
(House of Lords)



Peter Meier-Beck  
Bundesgerichtshof



**Claude Vallet**  
**Paris Court**  
**then EPO Legal BOA**



**Massimo Scuffi**  
**Corte di cassazione**

## Venice mock trials



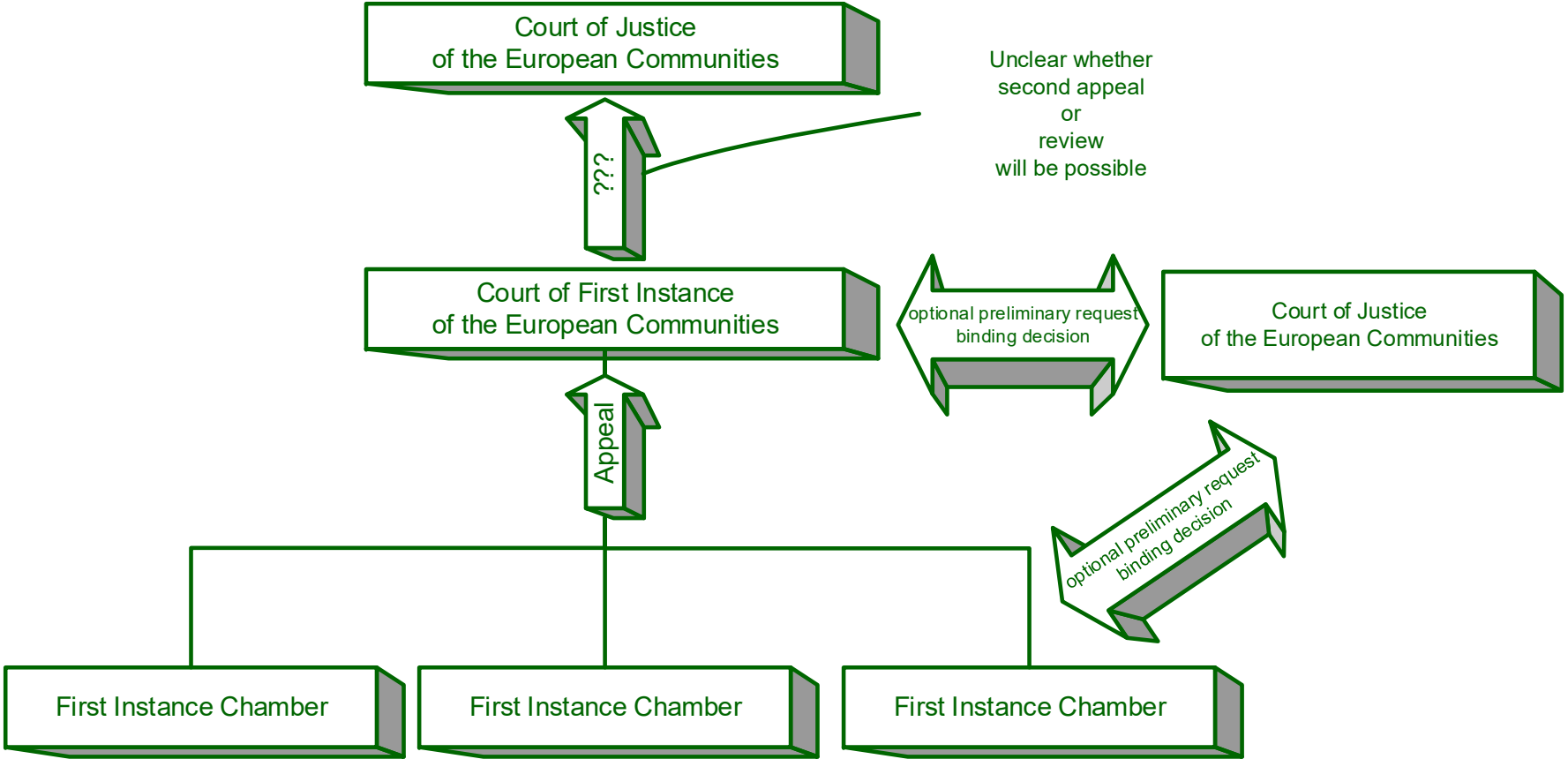


# Venice Scepter held by Kevin Mooney



15 November 2008 (Venice IV)

# 2007 Commission Communication

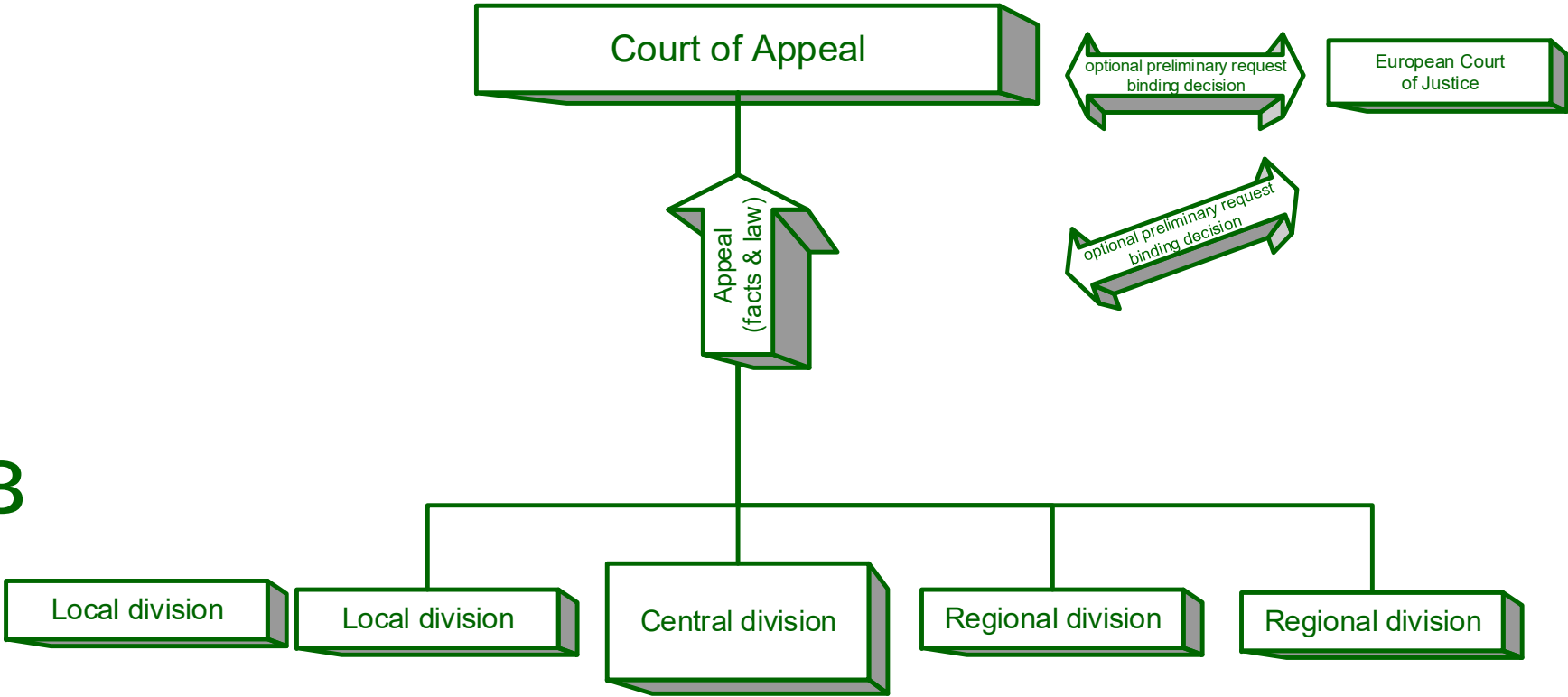


2007



# Draft Agreement on the European and Community Patent Court

2008



# Signature of the Regulations by the Presidents of the European Parliament and the Council on 17 December 2012

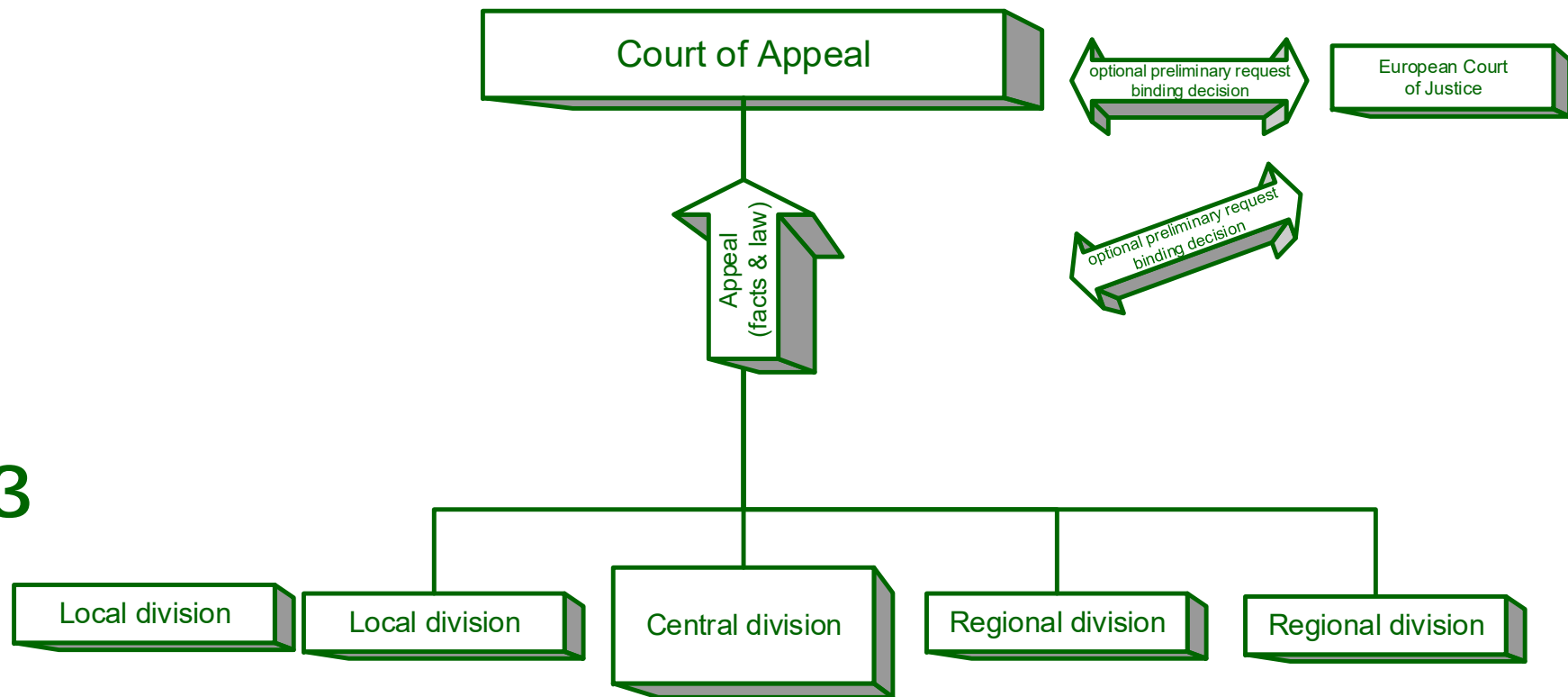
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# 19 February 2013

## Agreement on the Unified Patent Court



2013



Brussels 18 February 2013

# Presentation of the Patent Package Unitary Patent + Unified Patent Court



Brussels 18 February 2013

# Presentation of the Patent Package

## Unitary Patent + Unified Patent Court



Margot  
Fröhlinger



Kevin  
Mooney



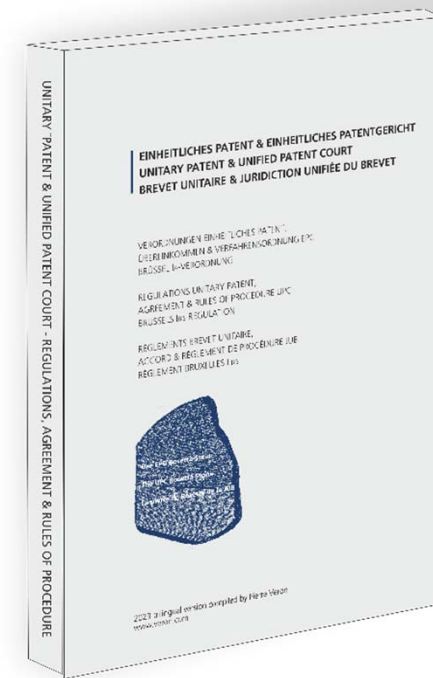
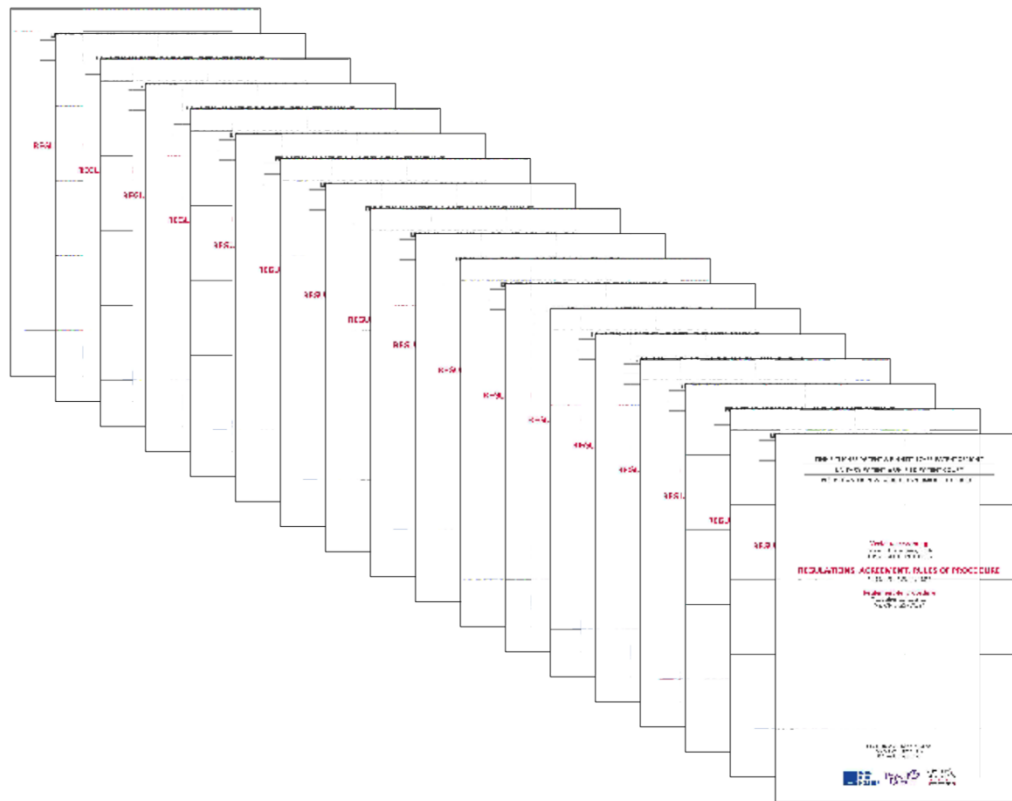
Michel  
Barnier

Brussels 19 February 2013

# Unified Patent Court Agreement signing ceremony



# Rules of procedure The making of (18+ drafts)





## Drafting process: stage 0



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

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

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



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

## The EPLAW/UPC band on Abbey Road



Pierre Véron, Willem Hoyng, Winfried Tilmann, Kevin Mooney  
Starting their European tour



Overview

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# The 10 main features of the UPC proceedings

1. One year for a judgment
2. Mainly written proceedings, in electronic form
3. The Registrar: an important person
4. Preformatted proceedings
5. Front-loading system
6. The Judge-rapporteur: a key person
7. One day hearing
8. Hearing of a witness in person exceptional
9. Appeal widely open
10. Court's fees



# The best of both worlds



with a hint  
of EPO  
dressing



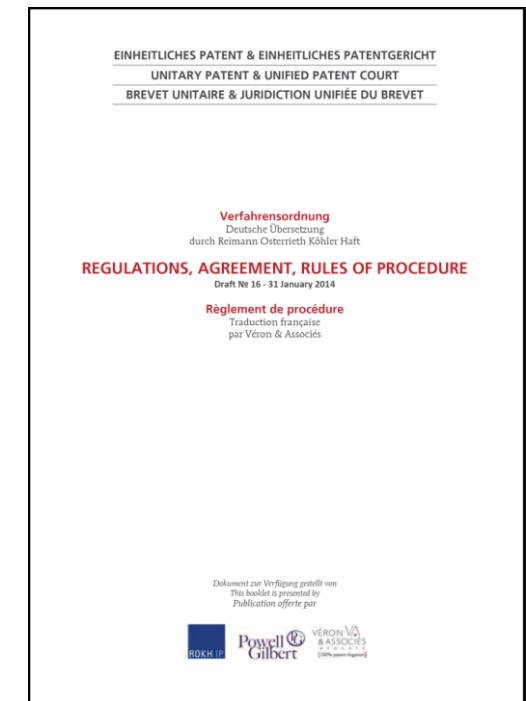
## Drafting process: stages 6-15



2012-2014: Drafting Committee Judges and Lawyers

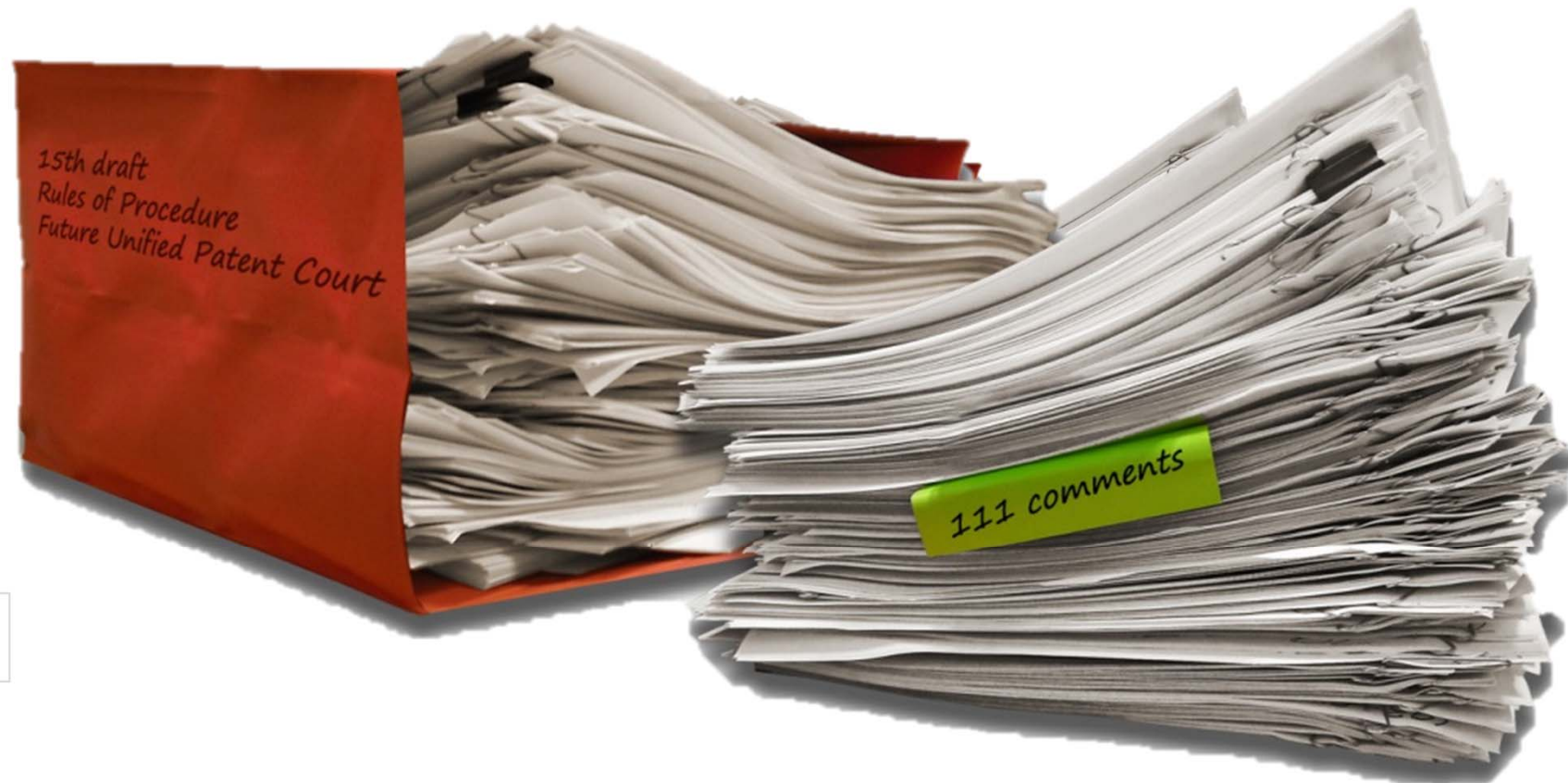
## Draft 16 (31 January 2014)

Reviewed and modified in 2014 by the Preparatory  
Committee



# Rules of procedure

## 111 comments received





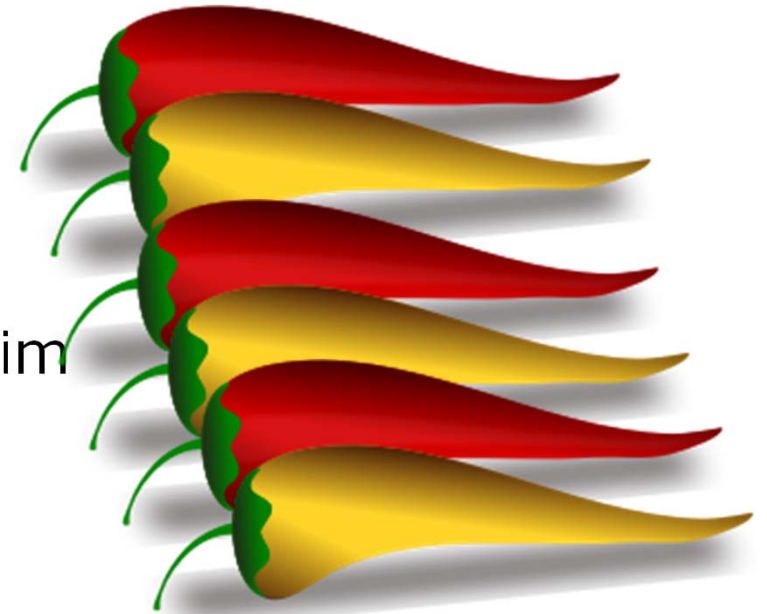
## Drafting process: stages 17 +



26 November 2014: Public hearing in Trier

# 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



## Ratification Process in Germany





# The Brexit and the UK withdrawal from the UPC



## The UK withdrawal from the UPC

On 26 April 2018, the United Kingdom ratified the UPC Agreement, thereby accepting Articles 20, 21 and 22 on the primacy of and respect for Union law and on the position of the ECJ.



But on 20 July 2020 it decided to withdraw this ratification: « *In view of the United Kingdom's withdrawal from the European Union, the United Kingdom no longer wishes to be a party to the Unified Patent Court system.*

*Participating in a court that applies EU law and is bound by the CJEU would be inconsistent with the Government's aims of becoming an independent self-governing nation. »*



# 21 February 2023

## Germany presses the ignition button



<https://www.unified-patent-court.org/en/news/germany-ratifies-agreement-unified-patent-court>

# 2023-2024 Entry into operation





30th May 2023

# INAUGURATION OF THE UNIFIED PATENT COURT

Hémicycle  
Luxembourg-Kirchberg



Unified Patent Court  
Einheitliches Patengericht  
Jurisdiction unifiée du brevet



THE GOVERNMENT  
OF THE GRAND DUCHY OF LUXEMBOURG  
Ministry of Foreign and European Affairs





Hearing room of the Court of Appeal  
Luxembourg - 30 May 2023





Oath taking ceremony of the judges  
of the Court of First Instance  
Paris - 1 June 2023





# First hearing of the Munich local division of the Court of First Instance Munich – 5 September 2023





**Hearing room of the Paris Central division  
of the Court of First Instance**



**Hearing room of the Paris Central division  
of the Court of First Instance**





Judge Rapporteur  
Paolo Catalozzi

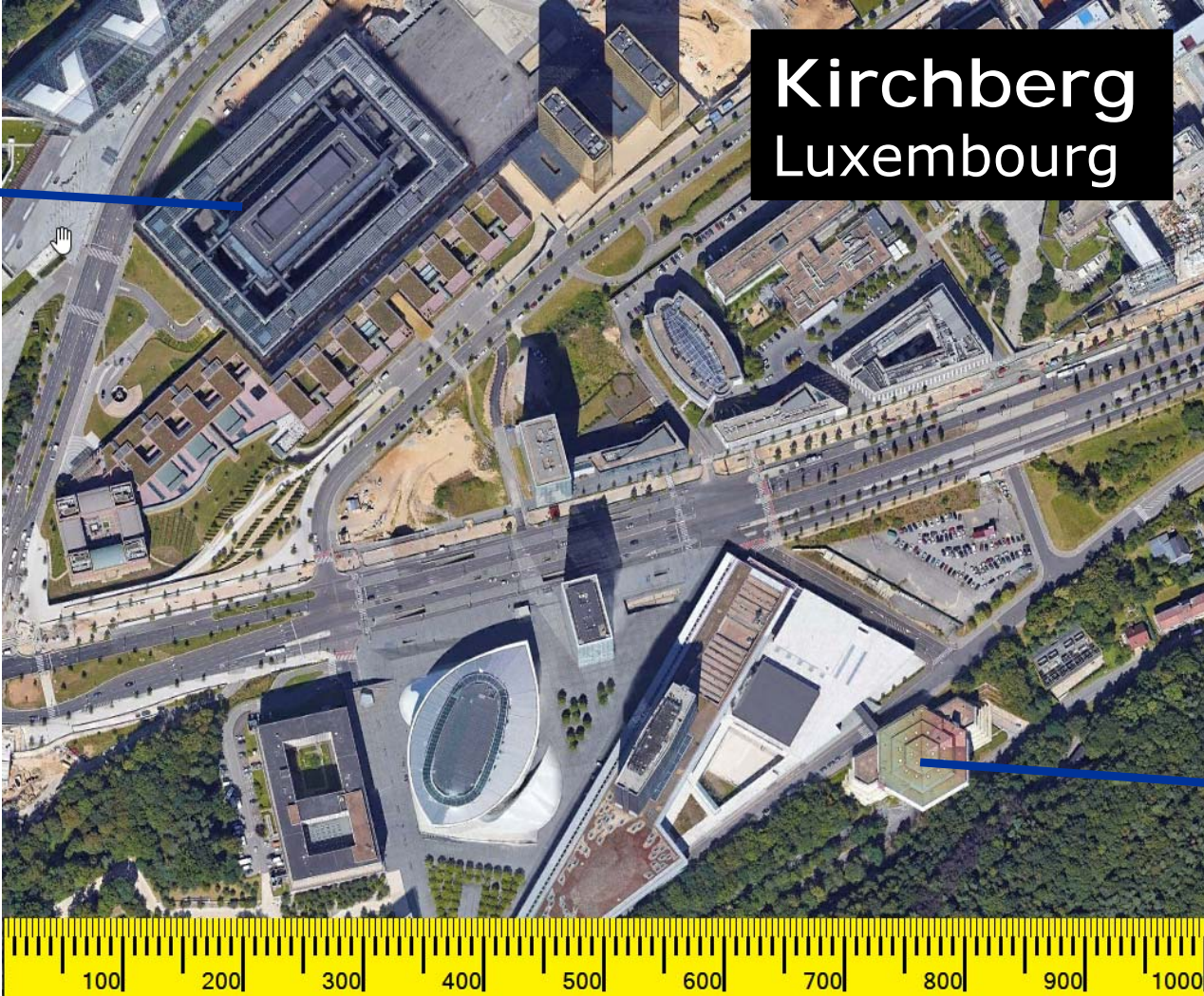


# First hearing of the Paris Central division of the Court of First Instance Paris - 26 October 2023

# So near yet so far

European  
Court of  
Justice

Kirchberg  
Luxembourg



Einheitliches  
Patentgericht  
Unified Patent Court  
Jurisdiction unifiée  
du brevet







**Seat of the Court of Appeal  
L'Hémicycle - Luxembourg**



## First hearing of the Court of Appeal Luxembourg - 18 December 2023








This is the Case Management System of the Unified Patent Court.

The CMS is the IT system to file actions, applications and any other submissions before the Unified Patent Court.

The Court will have exclusive jurisdiction on actions concerning European patents with unitary effect by virtue of Regulation (EU) No 1257/2012 (Unitary Patents), European patents without such an effect ("classical" European patents) and that were not opted out as to Art. 83(3) UPC Agreement, Supplementary protection certificates granted under Regulation (EC) No 469/2009 or Regulation (EC) No 1610/96 and published European patent applications, as laid down in Art. 32 UPC Agreement.

Business enquiries relating to the Unified Patent Court can be addressed using the contact form provided on the Court's site: <https://www.unified-patent-court.org/contact>.

### Sign In

-  [Sign In](#)
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-  [Create User](#)
-  [Lost smart card](#)
-  [Test Smart Card](#)

Dear CMS users, please be advised that in order to provide the best services, a daily maintenance is scheduled on the CMS from 8:00pm to 10:00pm. Even though we might not do maintenance every day, users should expect the service to be unavailable at that time.

We apologize for any inconvenience that may be caused by this interruption of service.

Thank you for your understanding



Proceeding Search

No.

Patent Number

Party type and description Only use letters and numbers and omit two-letter words. Example: to search by "Jean-Baptiste de La Chapelle" only enter "Jean-Baptiste Chapelle" or any other combination of these three words.

Representative

Case Visibility

Proceeding Type

Action / Application Type

Court Division

Language

Your Internal Reference

Keywords for Orders and Decisions

Date of lodging From  To

SEARCH 🔍

Number ↕	Proceeding Type	Court Division	Internal Reference	Patent no.	Date of lodging
No records to view					



## A single patent court for Member States of the European Union

- EN
- FR
- DE

- Home
- Court ▾
- Registry ▾
- Organisation ▾
- News
- Calendar
- Vacant Positions
- Decisions and Orders

### FAQ

## About the Unified Patent Court

The Unified Patent Court (UPC) is a Court, comprising judges from all participating Member States of the European Union. It is set up to decide in particular on the infringement and validity of both Unitary Patents and classic European Patents. The UPC is a Court common to currently seventeen EU Member States f...

[Read more](#)



Lisbon (PT) Local Division





[Home](#)

## Cases search

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PARTY NAME	<input type="text"/>
PROCEEDING TYPE	<input type="text" value="- Any -"/>
ACTION/APPLICATION TYPE	<input type="text" value="- Any -"/>
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DATE OF LODGING TO	<input type="text" value="jj/mm/aaaa"/> <input type="calendar"/>
DEFFENSATIVE	<input type="text"/>



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### Location

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#### Court of Appeal, Luxembourg

##### Luxembourg (LU)

Order

Decision

#### Central Division of the Court of First Instance

Paris (FR) Central Division - Seat

### Order

**Parties:** Plant-e, Plant-e Knowledge v. Arkyne Technologies S.L.

**Case number:** UPC\_CFL\_239/2023

**Order/Decision reference:** ORD\_8243/2024

**Type of action(s):** Infringement Action/Counterclaim for revocation

**Court - Division:** Court of First Instance - The Hague (NL) Local Division

**Language of Proceedings:** English

**Date:** 15 February, 2024

**Headnotes:** R.37.2 RoP order on the Application of Art. 33(3)(a) UP ...



**Keynotes:** Application of Art. 33(3)(a) UPCA

[Read more](#)



## Global search

## ▼ Field search

Date	equals to	jj/mm/aaaa	
Parties	<input type="text"/>		
Case number	<input type="text"/>		
Order/Decision reference	<input type="text"/>		
Type of action	<input type="text"/>		
Court - Division	<input type="text"/>		
Language of proceedings	Any		
Headnotes	<input type="text"/>		
Keynotes	<input type="text"/>		

## [www.veron.com/upc-caselaw](http://www.veron.com/upc-caselaw)

allows searching in the content of the decisions in full text, in all the languages of the decisions, or in the fields of the description sheet (date, parties, case number, decision number, type of action, court and division, language of proceedings) or by combining full text search and description search

31 January 2024

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## Case load of the Court: 217 cases

- 83 infringement actions  
with 26 counterclaims for revocation
- 22 applications for provisional measures
- 25 revocation actions (Paris CD: 21, Munich CD 4)
- 24 appeals





## The first 100 judgments

- [www.veron.com/upc-caselaw](http://www.veron.com/upc-caselaw) (free)
- The majority (58/100) are in German language, but this page provides a machine translation in English for all of them.
- Less decisions (33/100) are in English language.
- The 7 decisions in Italian and the 2 decisions in Dutch come with a machine translation in English.



## Improvement expected



Pierre Véron

Thank you



[pierre.veron@veron.com](mailto:pierre.veron@veron.com)