

The Unitary Patent and the Unified Patent Court

EPLAW European Patent Lawyers Association
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EPLAW
(European Patent Lawyers Association)

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The Unitary Patent
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What happened in 2010-2011?

- July 2010 CJEU Advocates General negative opinion
- December 2010 Enhanced Cooperation (Com Proposal)
- 2 March 2011 Enhanced Cooperation (Council decision)
- 8 March 2011 CJEU negative opinion
- 13 April 2011 Prop. Regulation translation arrangements
- 13 April 2011 Proposed regulation Enhanced Cooperation
- September 2011 Draft Agreement Unified Patent Court
- 23 September Warsaw conference
- October 2011 Venice Judges conference
- November 2011 Study Financing Unified Patent Court

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What next?

- 5 December 2011 Competitiveness Council**
- 22 December 2011 Initialling Agreement (Warsaw)**
- 12 June 2012 Signing Agreement**
- 1 January 2014 Entry into force**
- 31 December 2018 End transitional period**

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A changing territory

25 UP
(EPO + EU + UP)

NON UP
(EPO + EU)

EPO
(NON EU)

COE
(NON EPO - NON EU)

(Three different Europes: EU, EPO & UP)

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Scope of application

- Community patent
- SPC for a Community patent
- European patent
- Patent application

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4 & 5 The Court

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    graph TD
      subgraph Divisions
        LD1[Local division]
        LD2[Local division]
        CD[Central division]
        RD1[Regional division]
        RD2[Regional division]
      end
      R[Registry]
      CA[Court of Appeal]
      ECJ[European Court of Justice]

      LD1 --> CA
      LD2 --> CA
      CD --> CA
      RD1 --> CA
      RD2 --> CA
      R --> CA
      CA <--> |"optional preliminary request binding decision"| ECJ
      ECJ <--> |"optional preliminary request binding decision"| CA
  
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6 (2a)
Panel: 1st instance local division



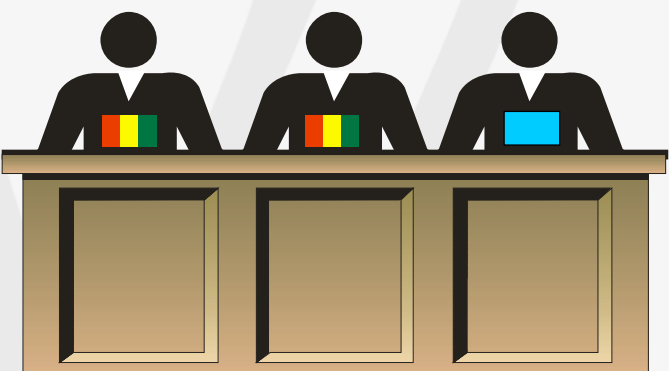
Member State with < 50 cases

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6 (3) & (4)
Panel: 1st instance local division



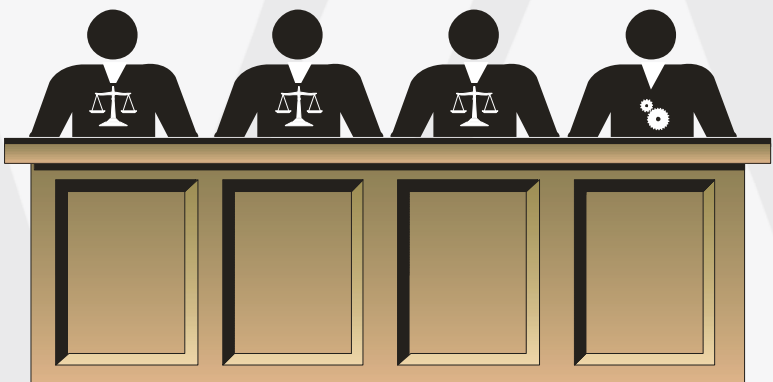
**Member State with > 50 cases
or regional division**

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**6 (5)
Panel: Additional technical judge**




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**6(6)
Panel: 1st instance central division**



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7 Panel: Court of Appeal



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Applicable law

- 14e(1) substantive law
- 14e(2) conflict of law
- 14f-i definition of infringement
- 39-43 sanctions and damages



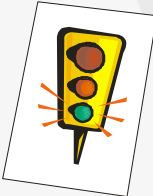
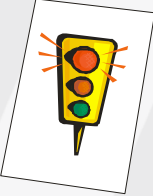
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15
Jurisdiction

- Infringement
- Declaration of non-infringement
- Revocation
- Miscellaneous

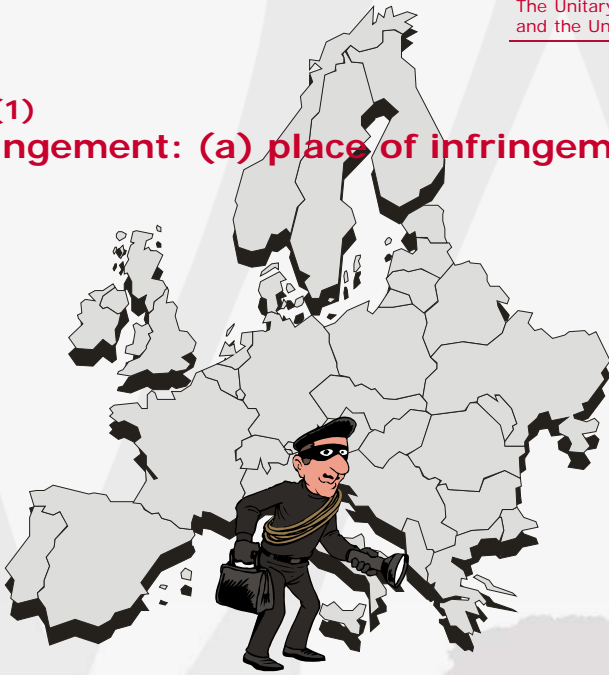


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15a (1)
Infringement: (a) place of infringement




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15a (1)
Infringement: (b) defendant's domicile



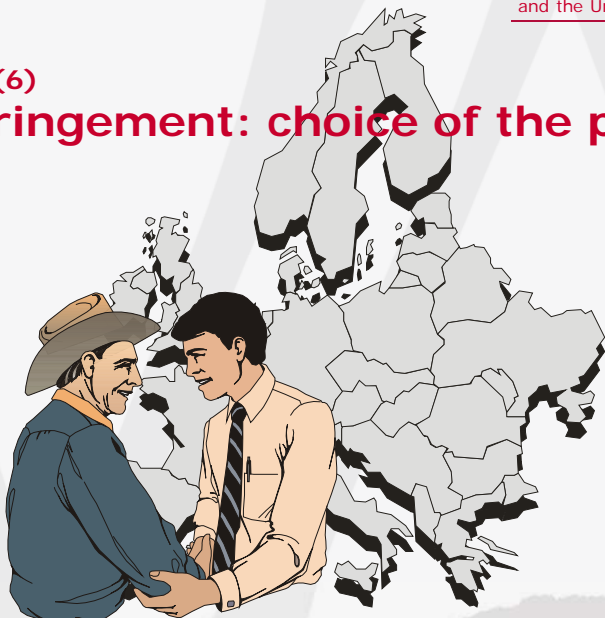
A cartoon illustration of a man with a mustache and glasses, wearing a yellow shirt and blue trousers, pointing towards a sign that says "HOME SWEET HOME" with a heart symbol. The sign is placed on a map of Europe. The background features a large, faint map of Europe.

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15a (6)
Infringement: choice of the parties



A cartoon illustration of two men shaking hands. One man is wearing a cowboy hat and a blue shirt, while the other is wearing a white shirt and a striped tie. They are standing in front of a map of Europe. The background features a large, faint map of Europe.

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15a (2) Concurrence of actions: infringement then revocation

01/01/2012 01/01/2013 01/01/2014

The local division has the discretion to:

- ▶ proceed with the infringement proceedings and counterclaim for revocation (with a technically qualified Judge);
- ▶ refer the counterclaim for decision to the central division and proceed with the infringement proceedings; or
- ▶ with agreement of parties, refer the case to the central division

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15a (4) Concurrence of actions: revocation then infringement

01/01/2012 01/01/2013 01/01/2014

The local division may either

- ▶ Proceed with the infringement proceedings, or
- ▶ stay the infringement proceedings, or
- ▶ if parties agree, refer the infringement action for decision to the central division

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15a (3) Revocation and non-infringement

The diagram shows a hierarchy of divisions. At the top is the 'Central division'. Below it are five boxes: 'Regional division', 'Local division', 'Central division', 'Regional division', and 'Local division'. Below the 'Central division' box, there are two icons: a red 'X' representing a 'Revocation action' and a traffic light representing an 'Action for a declaration of non-infringement'. A red arrow points from the 'Central division' box down to the 'Revocation action' icon, and another red arrow points from the 'Central division' box down to the 'Action for a declaration of non-infringement' icon.

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15a (5) Concurrence of actions non-infringement then infringement

The diagram features a horizontal timeline represented by a red arrow pointing to the right. The timeline has three marked dates: 01/01/2012, 01/01/2013, and 01/01/2014. Above the timeline, two traffic light icons are shown. The first icon is positioned between 01/01/2012 and 01/01/2013, with the text '30/06/2012 Action for declaration of non-infringement Central division' above it. The second icon is positioned between 01/01/2013 and 01/01/2014, with the text '01/09/2013 Infringement action Local division' above it.

The action for a declaration of non-infringement before the central division shall be stayed once an infringement action is initiated within three months before local division

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16 Territorial effects of the decision

European Patent
All the countries
where the patent is in
force

Unitary Patent
All UP countries

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27 Plaintiffs

- The patentee
- The exclusive licensee, provided that the proprietor is given prior notice, unless the licensing agreement provides otherwise
- The non-exclusive licensee cannot initiate proceedings but can join them

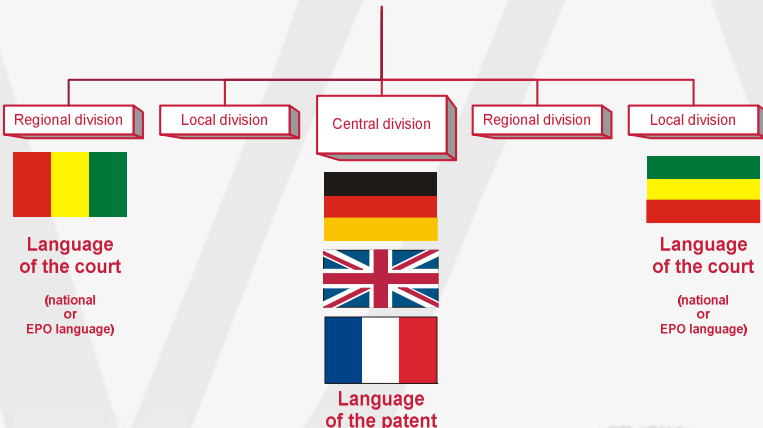
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29 Language of proceedings: 1st instance




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graph TD
    Root[ ] --- D1[Regional division]
    Root --- D2[Local division]
    Root --- D3[Central division]
    Root --- D4[Regional division]
    Root --- D5[Local division]
    D1 --- I[Italian flag]
    D2 --- I
    D3 --- G[German flag]
    D3 --- U[UK flag]
    D3 --- F[French flag]
    D4 --- S[Spanish flag]
    D5 --- S
    I --- I_L[Language of the court  
(national or EPO language)]
    S --- S_L[Language of the court  
(national or EPO language)]
    G --- U --- F --- P_L[Language of the patent]
    
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30 Language of proceedings: appeal



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graph TD
    CA[Court of Appeal] -- "Appeal (facts & law)" --> I[Italian flag]
    CA -- "Appeal (facts & law)" --> G[German flag]
    CA -- "Appeal (facts & law)" --> S[Spanish flag]
    CA -- "Appeal (facts & law)" --> U[UK flag]
    CA -- "Appeal (facts & law)" --> F[French flag]
    
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- Language of 1st instance
- Language of the patent (upon the parties' agreement)
- Language chosen by the court and approved by the parties

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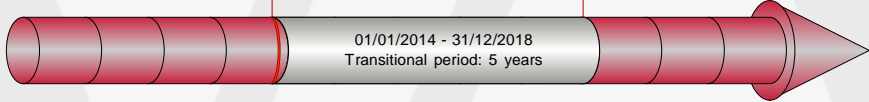
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58 Transitional period

01/01/2014
Entry into operation
Unified Patent Court
Agreement

31/12/2018
End of
Transitional Period



- National courts still competent for EP
- European Patent holders may opt out from Unified Patent Court (withdrawal possible)

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Rules of procedure (470 rules)

- Preliminary set of provisions for the Rules of procedure of the European and Community Patents Court – 16 October 2009 – unpublished (PSPRP)

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Rule 8 PSRP

Stages of the proceedings

- (a) the written procedure;
- (b) the interim procedure, which may include an interim conference with the parties;
- (c) the oral procedure, which shall include an oral hearing of the parties;
- (d) the procedure for the award of damages;
- (e) the procedure for a cost order.

**Front loading system?
or drips and drabs system?**

Interim conference with the JR?



Hearing of a witness in person?



Oral hearing

Rule 114 – Duration of the oral hearing

1. Without prejudice to the principle of proportionality, the presiding judge shall endeavour to complete the oral hearing within **one day**. The presiding judge may set time limits for parties' oral submissions in advance of the oral hearing, in accordance with the Practice Directions.
2. Oral testimony at the oral hearing shall be limited to issues identified by the judge-rapporteur or the presiding judge as having to be decided by oral evidence.
3. The presiding judge may, after consulting the panel, limit a party's oral submissions if the panel is sufficiently informed.

EPLAW concerns

Quality and costs?

1. Inexperienced local divisions should be avoided
2. Inexperienced judges should be avoided
3. Rules of procedure should be made available
4. Court fees and reimbursement should be determined now

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EPLAW concerns

Choice should be available

5. Option for parallel national litigation for EP patents should be possible
6. Longer transitional period
7. Review and termination provisions to be added

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EPLAW concerns

Legal problems




8. Rules on infringement should **not** be EU law (art. 6 – 8)
9. Legal privilege to be better protected
10. SPC provisions to be added

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**Where
will it be located?**



Munich **Luxembourg**

Paris

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Pierre Véron



Thank you

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