

German Local Divisions Status of Implementation and Expectations

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Status of the Four German Local Divisions Expectation of Practice of Bifurcation

Local Divisions - Where?

Status German Local
Divisions

German Government to decide

Düsseldorf, Munich and Mannheim appear to be certain

Fourth location:

- Fourth Local Division at all?
- Hamburg?
- "A location in the eastern part of Germany", Leipzig?

"Rooms":

- Undecided
- To be paid by local government (Bavaria, Hamburg ...)

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3

Local Divisions - Language?

Status German Local
Divisions

German Government to decide on additional language

Decision for all German Local Divisions, not only some

German litigators want English

German judges appear to be split

German Government is willing, but refers to judges

If judges so want, English will be second language in Local
Divisions

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Local Divisions - Judges? (1)

Status German Local Divisions

Local Divisions Germany

- 2 German legally qualified judges
- 1 foreign legally qualified judge
- 1 technical judge **(on application)**



Initially: Part Time Judges

- => National judges working as European judges (no attorneys)
- => Düsseldorf judges in Local Division Düsseldorf
(Contrary to rumours speaking of mixing judges)

Legal Difficulties:

Insurance, right to return etc. expected to be resolved

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5

Local Divisions - Judges? (2)

Status German Local Divisions

Names:

Expression of interest was due on November 15.

All judges appear to be interested, but only one coming-out.

Court of Appeals of Düsseldorf encourages national judges to inform Court of Appeals on filing of expression of interest

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6

Local Divisions - Judges? (3)

Status German Local
Divisions

Education:

Department of Justice, Federal Patent Court and National Munich Court currently providing seminars and practical experience for

Judges from member states with little patent litigation experience

Judges from “experienced” countries

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Local Divisions - Personnel?

Status German Local
Divisions

To be paid by Member State

No activity apparent so far.

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8

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Content

Status of the Four German Local Divisions
Expectation of Practice of Bifurcation

9

Bifurcation by the Parties - Transitional Period (1)

Dual Jurisdiction

Art. 83 UPCA provides for dual jurisdiction:

“(1) During a transitional period of seven years an action for infringement or for revocation of a European patent ... may still be brought before national courts“

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10

Transitional Period (2)

Dual Jurisdiction

Simple and complicated constellations possible:

Simple Constellations:

Infringement action with National Court in Mannheim
 Revocation action with (national) Federal Patent Court

Infringement action with UPC (Local Division) London
 Revocation action with Central Division

Infringement action with National Court in Düsseldorf
 Revocation action with Central Division

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11

Transitional Period (3)

Dual Jurisdiction

Also: Complicated Constellations:

Infringement action with National Court in Düsseldorf
 Revocation action with Central Division
 Infringement action with National High Court London
 Infringement action with Local Division The Hague (for all countries
 but for Germany and United Kingdom)

Impossible Constellation:

Action for declaratory non-infringement with Central Division
 Infringement action with National Court

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12

Transitional Period (4)

Dual Jurisdiction

In the shoes of the National Infringement Court confronted with UPC-Revocation Action

No-Bifurcation Court (e.g. High Court in London)

- > Court must not decide on validity?
- Does Court have means to stay?
- Does law provide for rehearing?

Traditional Bifurcation Court

- > Stay or no stay according to national laws

German National Court: Current standard considerations will apply.

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13

Transitional Period (5)

Dual Jurisdiction

In the shoes of the UPC Local Division confronted with national revocation action:

Is stay possible?

Rule 295 (k): The Court may stay proceedings in any other case where the proper administration of justice so requires.

For how long?

Rule 37.4 mutatis mutandis? Likely not.

Will a rehearing be possible?

Art. 81, Rule 245 do not seem to apply. Likely not.

German Local Division: Will likely stay infringement proceedings.

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14

Bifurcation by the Local Divisions - Principle

Expectation Bifurcation

Current German Two Tier System:

German Infringement Court must not (cannot) decide on validity

Art. 33 (3) UPCA, RoP 37:

Local Division can decide on validity, but is not obliged to

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15

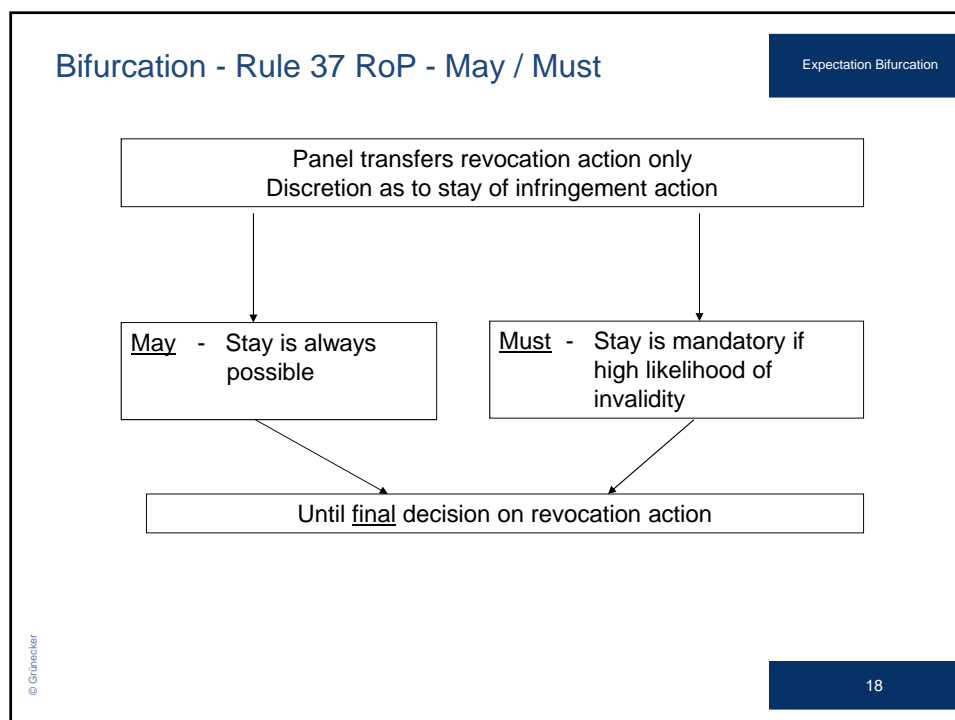
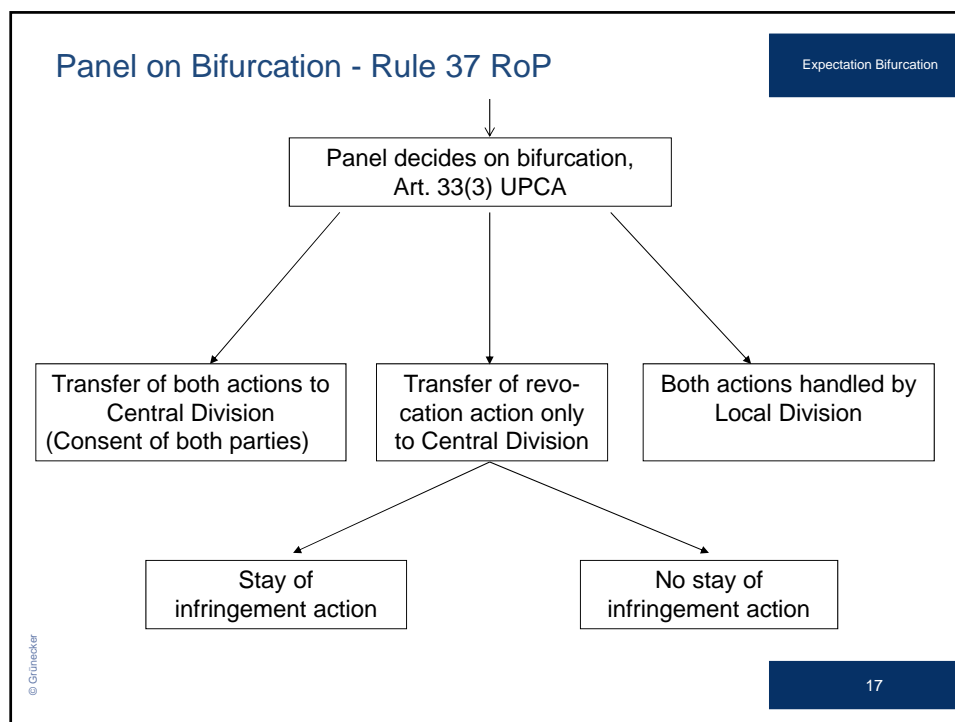
Time of Bifurcation - Standard Procedure

Expectation Bifurcation

	<i>Infringement</i>	<i>Revocation</i>	<i>Amendment</i>	
Written Procedure	Statement of Claim			Claimant / Proprietor
	Statement of Defence	Counterclaim for Revocation		Defendant
	Reply	Defence to the Counterclaim	Application to amend	Claimant / Proprietor
	Rejoinder	Reply	Defence to Application to amend	Defendant
		Rejoinder	Reply	Claimant / Proprietor
			Rejoinder	Defendant
		Closure of Written Procedure & Decision on Bifurcation: Panel decides to proceed with the case, Art. 33(3)(a)		<ul style="list-style-type: none"> ➤ No bifurcation ➤ Joint decisions on Infringement Action and Counterclaim for Revocation
Interim Proceedings and Oral Hearing	Completion of 1 st Instance at Local/Regional Division (Interim Proceedings and Oral Hearing)			
	2 nd Instance (if applicable) at Court of Appeal			
2 nd Instance				

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16



Expectations

Expectation Bifurcation

German Local Divisions will rarely bifurcate

Mixture of

- Reason
- Competition
- Compositions of Panels and
- Interest of Judges

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19

Expectations - Reason

Expectation Bifurcation

Bifurcation can lead to differing claim construction in Local and Central Division

Bifurcation (mostly) takes time

Bifurcation increases costs

And yes: Bifurcation at least theoretically allows coercion into settlement

Central Division is not more qualified to decide on validity

=> Bifurcation will be the exception

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20

Expectations - Competition

Expectation Bifurcation

Normal Plaintiff seeks reliable, fast and preferably cheap decision

=> Plaintiff seeks Division rarely bifurcating

Trolls (might) seek bifurcation and fast infringement decision

=> Troll seeks Division often bifurcating

=> The “Bifurcating Division” will get few cases.

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21

Expectations - Majority in Panel

Expectation Bifurcation

When deciding on bifurcation, panel will consist of

- Two local national legal judges
- One legal judge from the pool (likely not from Austria) and
- (Likely) a technical judge (pursuant to RoP 33, 34).

=> Local Division will not bifurcate easily.

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Expectations - Interest of Judges

Expectation Bifurcation

When deciding on bifurcation, judges have received all briefs concerning validity

German legal judges have experience with revocation actions

Judges want to decide the entire case – not only a part of it

Judges want to work, they want to decide cases

=> Division will not bifurcate easily

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23

Expectations

Expectation Bifurcation

German Local Divisions will rarely bifurcate

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24

Thank you!

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25