

# The Unitary Patent and the Unified Patent Court

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

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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

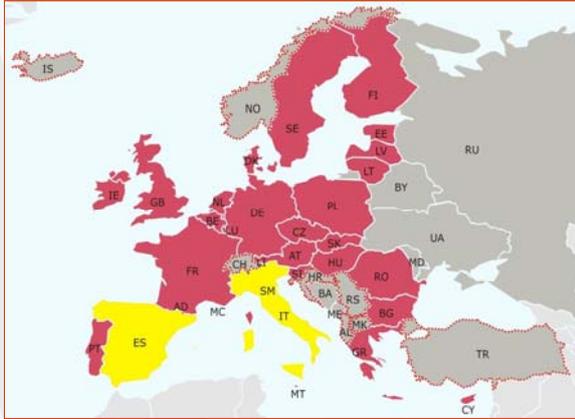
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## A changing territory



- 25 UP (EPO + EU + UP)
- NON UP (EPO + EU)
- EPO (NON EU)
- COE (NON EPO – NON EU)

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(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
      Registry[Registry] --- Divisions[Local division, Local division, Central division, Regional division, Regional division]
      Divisions -- "Appeal (facts & law)" --> CourtOfAppeal[Court of Appeal]
      CourtOfAppeal <--> ECJ[European Court of Justice]
      ECJ <--> CourtOfAppeal
  
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**6 (2a)**  
**Panel: 1<sup>st</sup> instance local division**



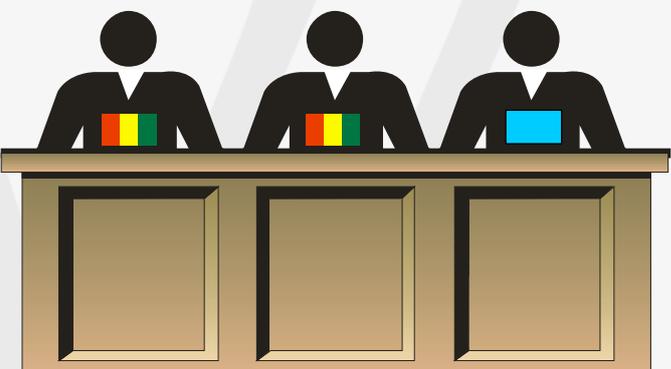
**Member State with < 50 cases**

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**6 (3) & (4)**  
**Panel: 1<sup>st</sup> 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: 1<sup>st</sup> 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

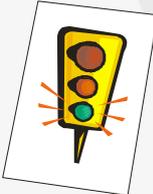
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## 15 Jurisdiction

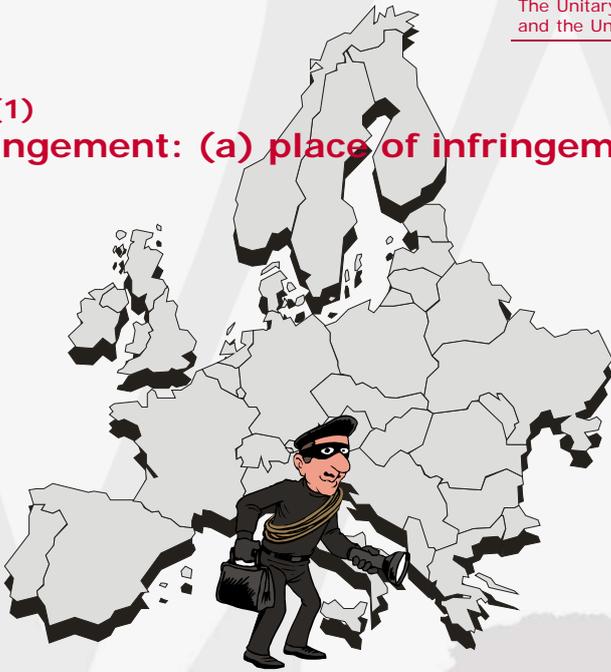
- Infringement
- Declaration of non-infringement
- Revocation
- Miscellaneous



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



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



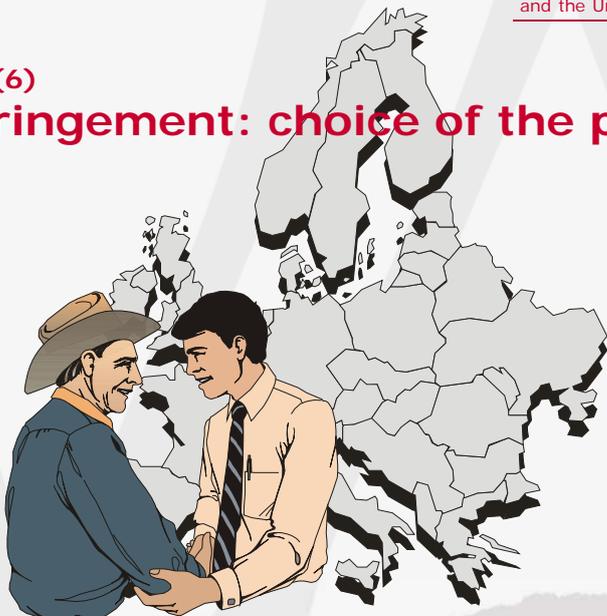
A cartoon illustration of a man with a mustache and glasses, wearing a yellow shirt and blue trousers, pointing towards a sign that reads "HOME SWEET HOME" with a heart symbol. The sign is placed on a map of Europe. The background features a large, faint map of Europe.

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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 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

01/06/2012 Infringement action

30/06/2013 Counterclaim for 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

30/06/2012 Revocation action Central division

01/09/2013 Infringement action Local division

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

Regional division Local division Central division Regional division Local division

Revocation action

Action for a declaration of non-infringement

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

30/06/2012 Action for declaration of non-infringement Central division

01/09/2013 Infringement action Local division

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

**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: 1<sup>st</sup> instance

Regional division



**Language of the court**  
(national or EPO language)

Local division

Central division



**Language of the patent**

Regional division

Local division



**Language of the court**  
(national or EPO language)

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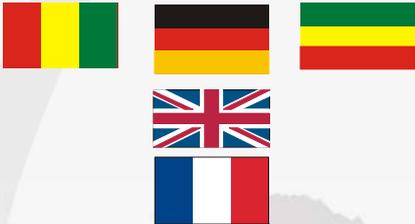
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## 30 Language of proceedings: appeal

- Language of 1<sup>st</sup> instance
- Language of the patent (upon the parties' agreement)
- Language chosen by the court and approved by the parties

Court of Appeal

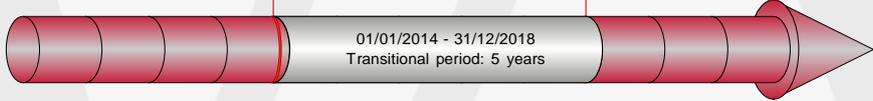
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## 58 Transitional period

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 PSPRP

**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**

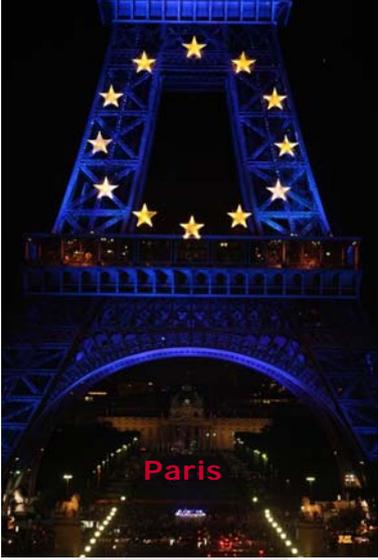
8. Rules on infringement should **not** be EU law (art. 6 – 8)
9. Legal privilege to be better protected
10. SPC provisions to be added

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**Where  
will it be located?**



**Munich**      **Luxembourg**

**Paris**

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**Pierre Véron**



**Thank you**

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