The Unitary Patent and the Unified Patent Court

EPLAW European Patent Lawyers Association
Brussels ● 2 December 2011

Pierre Véron
Honorary President
EPLAW
(European Patent Lawyers Association)

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
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

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)
Scope of application

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

The Court

4 & 5

The Unitary Patent and the Unified Patent Court
6 (2a)
Panel: 1st instance local division

Member State with < 50 cases

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

Member State with > 50 cases or regional division
Panel: Additional technical judge

Panel: 1st instance central division
Panel: Court of Appeal

Applicable law

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

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

15a (1) **Infringement: (a) place of infringement**
15a (1)
Infringement: (b) defendant’s domicile

15a (6)
Infringement: choice of the parties
15a (2)  
Concurrence of actions: infringement then revocation

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.

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

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.
15a (3) Revocation and non-infringement

Revocation action

Action for a declaration of non-infringement

Regional division | Local division | Central division | Regional division | Local division

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

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.
16 Territorial effects of the decision

European Patent
All the countries where the patent is in force

Unitary Patent
All UP countries

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
29 Language of proceedings: 1st instance

- Language of the court
- Language of the patent
- Language of 1st instance
- Language of the patent (upon the parties’ agreement)
- Language chosen by the court and approved by the parties

30 Language of proceedings: appeal
58

Transitional period

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

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)
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
The Unitary Patent and the Unified Patent Court

**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

**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
Where will it be located?

Munich

Luxembourg

Paris

Thank you

Pierre Véron

1, rue Volney
75002 Paris
Tel. +33 (0)1 47 03 62 62
Fax +33 (0)1 47 03 62 69

53, avenue Maréchal Foch
69006 Lyon
Tel. +33 (0)4 72 69 39 39
Fax +33 (0)4 72 69 39 49

pierre.veron@veron.com
www.veron.com