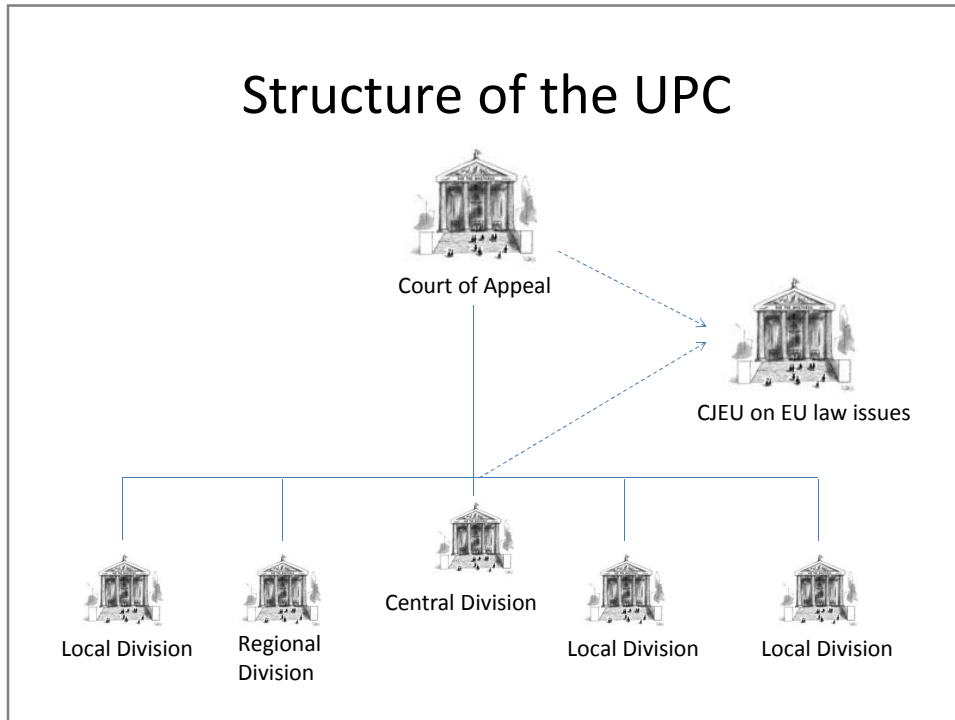


Unified Patent Court

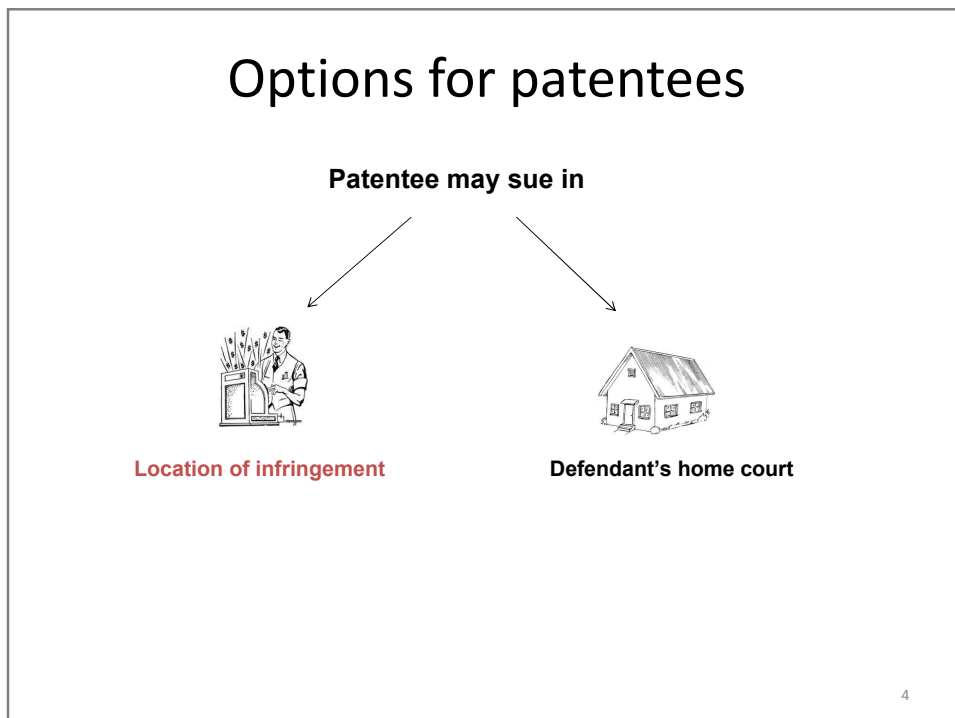
Richard Vary
Head of Litigation
Nokia

We will get the behaviour that we incentivise

Structure of the UPC



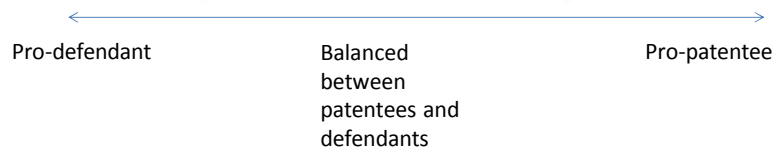
Options for patentees



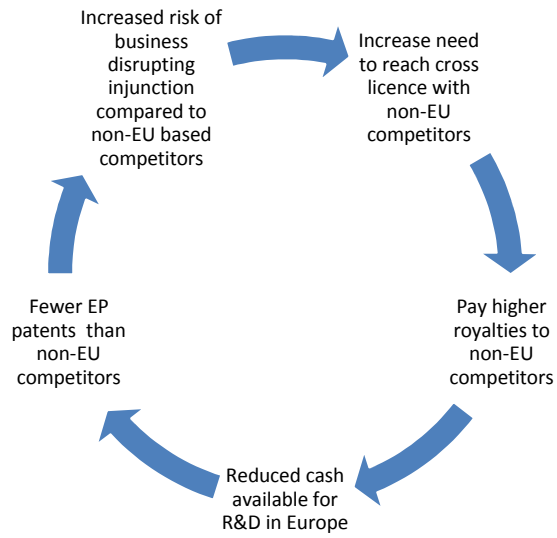
Likely behaviours of patentees

- Seek the division which offers
 - Fast trial
 - Likely to find infringement
 - Likely to grant injunction
 - Generous damages awards
 - Bifurcates validity or has low thresholds for validity
- Or just maximum inconvenience

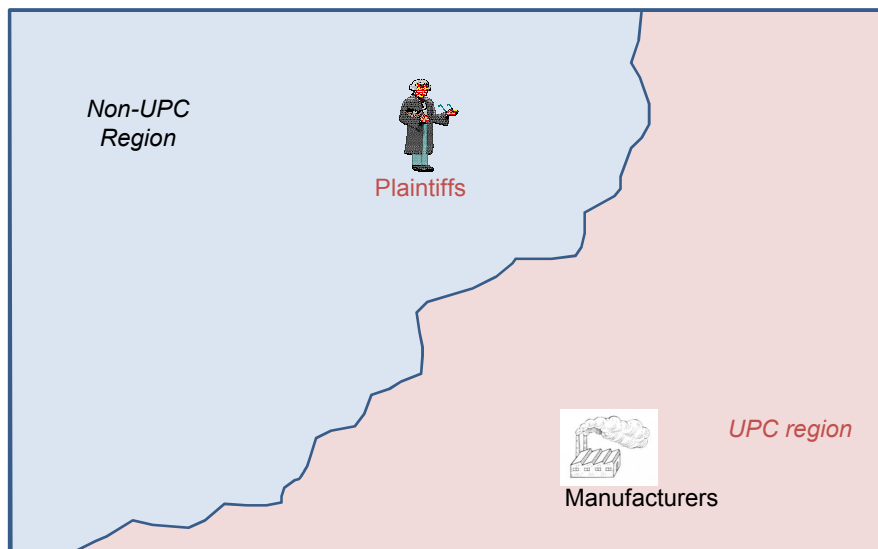
Result



The spiral of patentee friendly courts



Result



What can we do?

Can't do

Remove bifurcation

Change Art 33

Can do

Change Rules of procedure:
Public consultation starts in
May

Can set up an effective UK
division

Rules of Procedure

Patentee may sue in



Location of Infringement



Defendant's home court

- But court must transfer to most suitable venue

SECTION 7 – TRANSFER WHERE MORE THAN ONE DIVISION HAS COMPETENCE TO HEAR A CASE**Rule 97 – Transfer and factors the rapporteur general should consider when determining whether a division is suitable to hear a case where other divisions are also competent to hear the case under Articles 33(1) to (6)**

Where a party raises as a preliminary objection under Rule 19 that the division in which the case has been commenced is not the most suitable to hear the case and that another division is both competent under Articles 33(1) to (6) of the Agreement and more suitable, the judge rapporteur may decide under rule 20 to transfer the case to such other division.

The judge-rapporteur must have regard to the following factors when considering whether to make an order under rule 97.1

- (a) the financial value of the claim;
- (b) whether it would be more convenient or fair for hearings to be held in some other division;
- (c) the geographic location of the parties, and their representatives, witnesses or suitable experts;
- (d) the availability of a judge familiar with the technology in question;
- (e) the language of the patent, the prior art and any other documents likely to be relevant to the case;
- (f) the languages spoken by the parties and their representatives;
- (g) the facilities available to the division at which the claim is being dealt with, particularly in relation to –
 - (i) any disabilities of a party or potential witness;
 - (ii) any special measures needed for potential witnesses; or
 - (iii) security;
- (h) a party's right under Article 6 of the European Convention on Human Rights