Unified Patent Court

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We will get the behaviour that we incentivise
Structure of the UPC

- Court of Appeal
  - Local Division
  - Regional Division
  - Central Division
  - Local Division
  - Local Division

CJEU on EU law issues

Options for patentees

Patentee may sue in

- Location of infringement
- Defendant’s home court
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

Balanced between patentees and defendants
The spiral of patentee friendly courts

- Increased risk of business disrupting injunction compared to non-EU based competitors
- Increase need to reach cross licence with non-EU competitors
- Fewer EP patents than non-EU competitors
- Pay higher royalties to non-EU competitors
- Reduced cash available for R&D in Europe

Result

Non-UPC Region

UPC region

Manufacturers

Plaintiffs
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