

The Unitary Patent and the Unified Patent Court

EPLAW European Patent Lawyers Association
Brussels • 2 December 2011

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EPLAW
(European Patent Lawyers Association)

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The Unitary Patent
and the Unified Patent Court

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

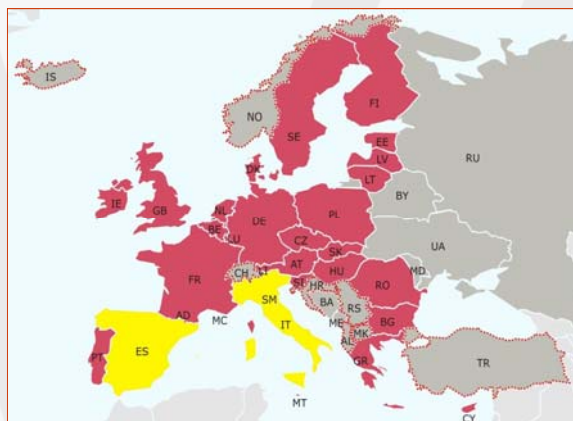
22 December 2011 Initialling Agreement (Warsaw)

12 June 2012 Signing Agreement

1 January 2014 Entry into force

31 December 2018 End transitional period

A changing territory



25 UP
(EPO + EU + UP)

NON UP
(EPO + EU)

EPO
(NON EU)

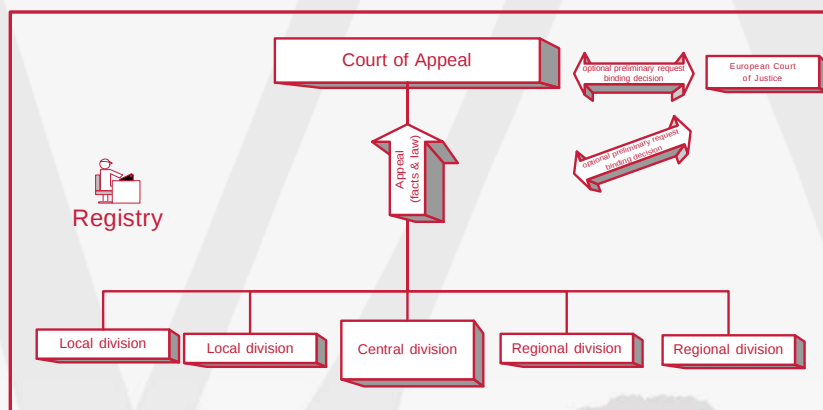
COE
(NON EPO – NON EU)

(Three different Europes: EU, EPO & UP)

Scope of application

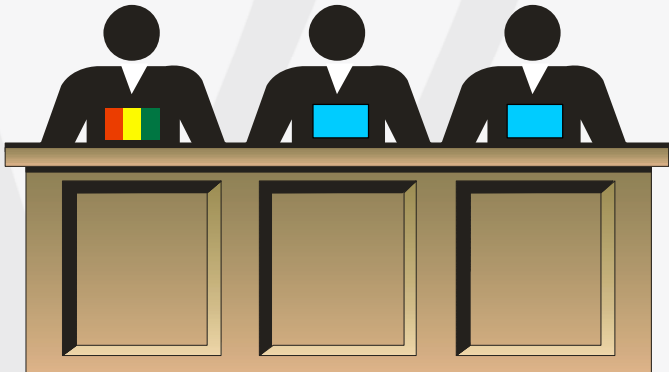
- Community patent
- SPC for a Community patent
- European patent
- Patent application

4 & 5 The Court



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6 (2a)
Panel: 1st instance local division



Member State with < 50 cases

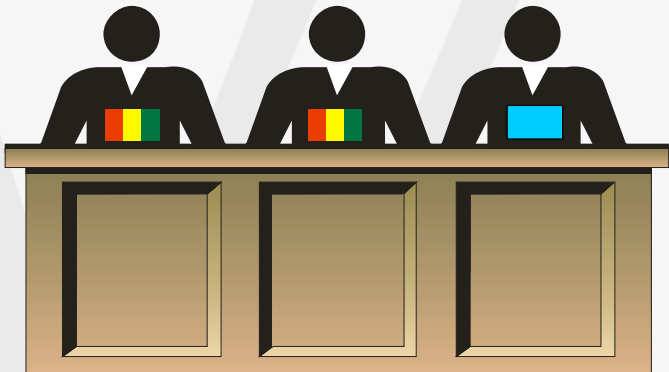
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The diagram shows three judges seated at a long wooden bench. The judge on the left has a French flag (vertical stripes of blue, white, and red) on their lapel. The judge in the middle has a blue rectangular flag on their lapel. The judge on the right has a blue rectangular flag on their lapel. The background is a light gray with a faint map of Europe.

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



Member State with > 50 cases
or regional division

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The diagram shows three judges seated at a long wooden bench. The judge on the left has a French flag (vertical stripes of blue, white, and red) on their lapel. The judge in the middle has a French flag (vertical stripes of blue, white, and red) on their lapel. The judge on the right has a blue rectangular flag on their lapel. The background is a light gray with a faint map of Europe.

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6 (5)
Panel: Additional technical judge



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6 (6)
Panel: 1st instance central division



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7 Panel: Court of Appeal



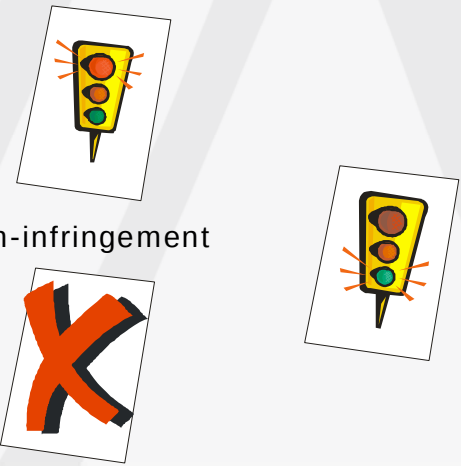
Applicable law

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

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15 Jurisdiction

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

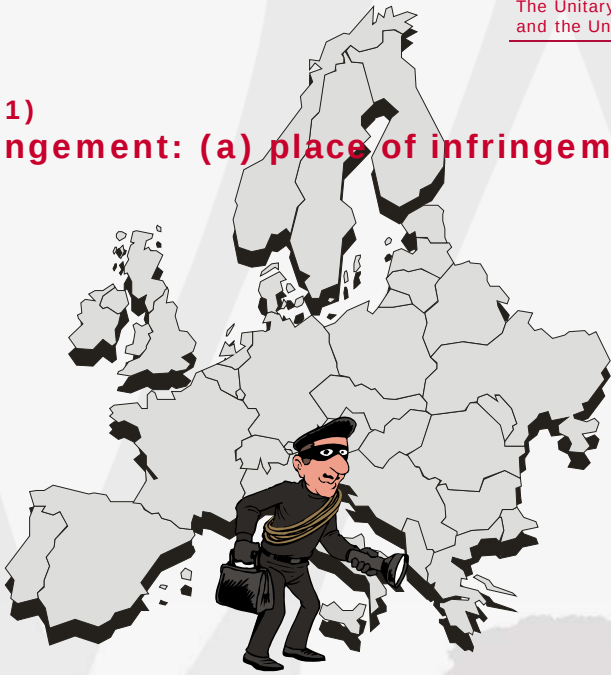


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15a (1) Infringement: (a) place of infringement



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



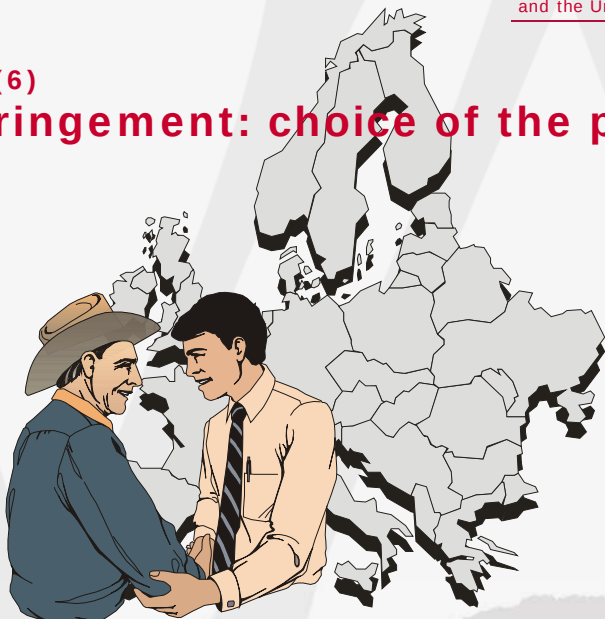
A cartoon illustration of a man with a mustache and glasses, wearing a yellow shirt and blue trousers, holding a sign that says "HOME SWEET HOME" with a heart. He is standing next to a map of Europe. The sign is pointing towards the map.

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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, and the other is wearing a yellow shirt and a tie. They are standing in front of a map of Europe.

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15a (2) Concurrence of actions: infringement then revocation



The local division has the discretion to:

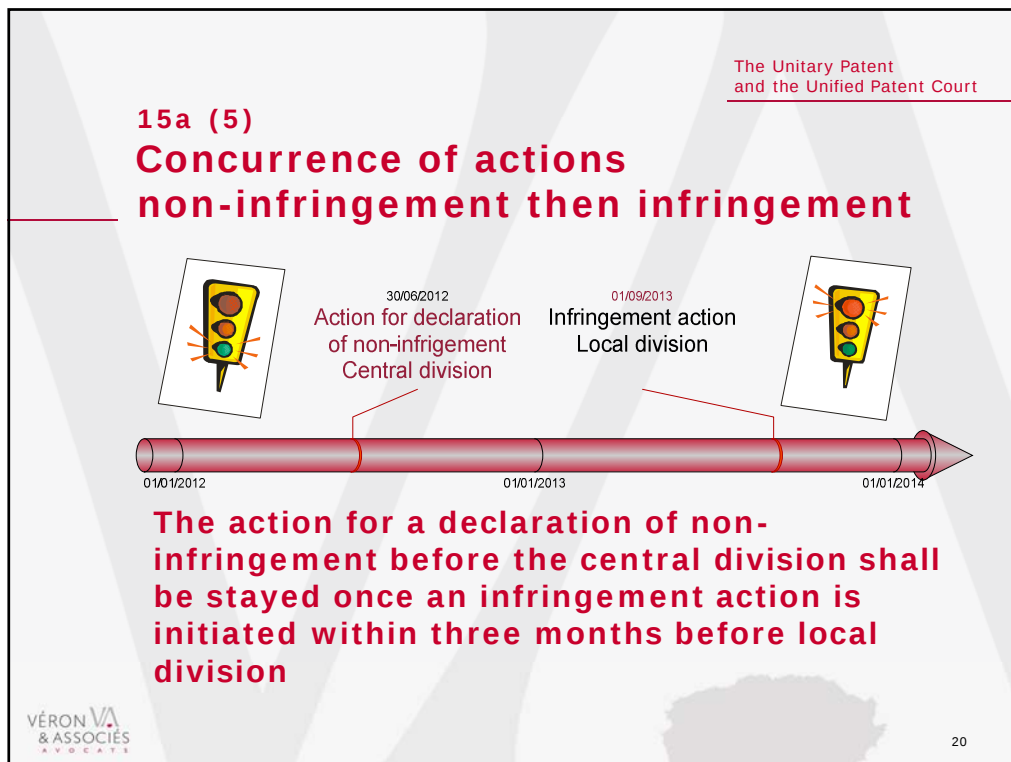
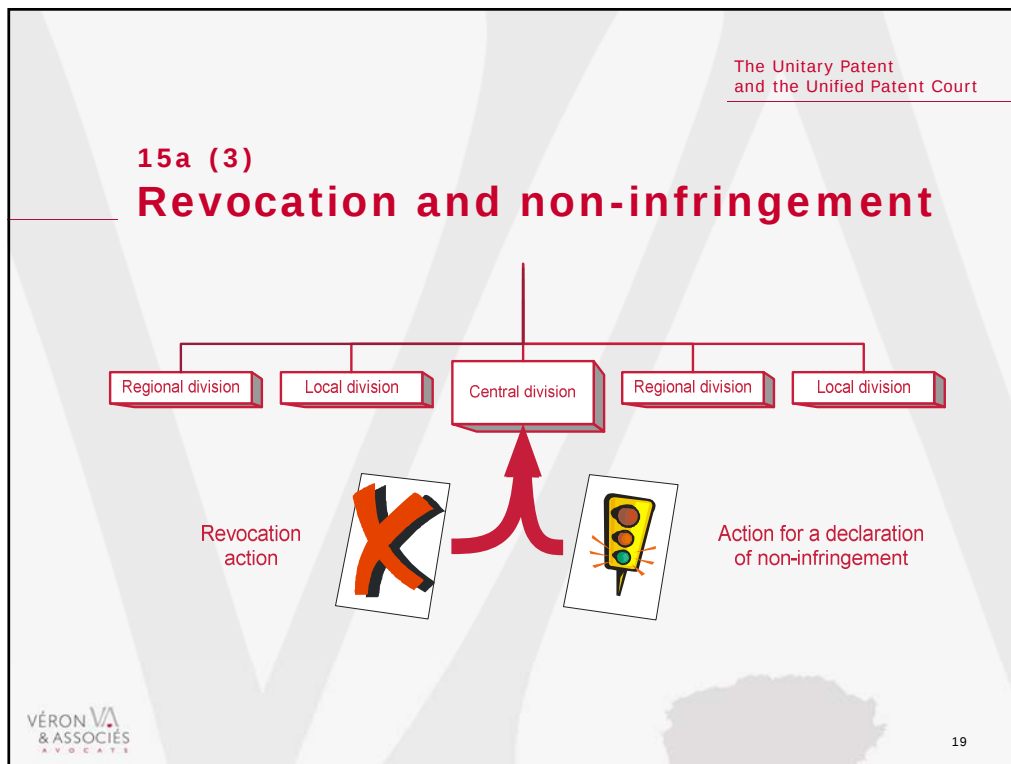
- ▶ proceed with the infringement proceedings and counterclaim for revocation (with a technically qualified Judge);
- ▶ refer the counterclaim for decision to the central division and proceed with the infringement proceedings; or
- ▶ with agreement of parties, refer the case to the central division

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

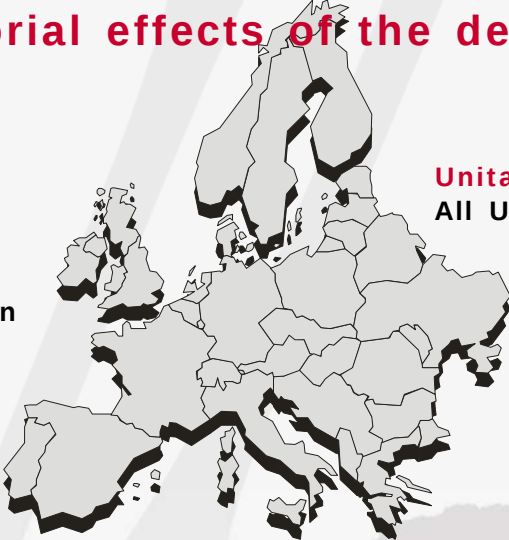


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16 Territorial effects of the decision

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: 1st instance



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





**Language
of the patent**



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



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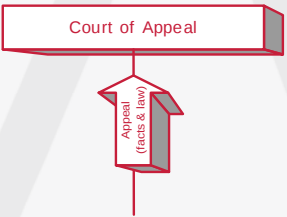
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30 Language of proceedings: appeal

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










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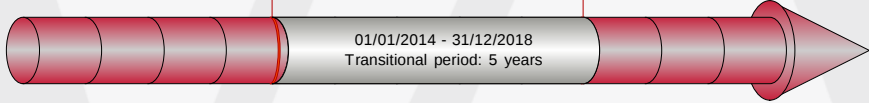
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58 Transitional period

01/01/2014
Entry into operation
Unified Patent Court
Agreement

31/12/2018
End of
Transitional Period



01/01/2014 - 31/12/2018
Transitional period: 5 years

- 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 PSRP

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?**

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Interim conference with the JR?



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Hearing of a witness in person?



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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

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

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**Where
will it be located?**



Munich



Luxembourg



Paris

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