

The Current Status of the European Patent Package

AIPLA • EPLAW joint meeting
Munich • 13 June 2017

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The European Patent Package

Contents

- A new patent and a new court for patents in Europe:
how different will be the European patent landscape from the
US one? (comparison EU/US)
- Recent uncertainties
- Prepare for 2018

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Comparison EU/US The patents

- Three types of patent will be available in Europe:
 - ▶ national patent
 - ▶ classical European patent (bundle patent)
 - ▶ unitary patent (“European patent with unitary effect”)
 - ▶ Double patenting in some countries:
national + EP/UP (DE, FR?, NL?)
- Not all European countries will be covered by unitary patent (CH, IS, NO, TR outside) but also ES, HR, PL and probably other countries until after their ratification (e.g. CZ, SK, RO); **UK?**

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The European Patent Package

Territorial coverage

25 UP
(EPO + EU + UP)

IT
(EPO+ UPC + UP 2015)

PL
(EP+UP NON UPC)

ES
(EPO+EU NON UP NON UPC)

HR
(EU POST UP - POST UPC)

EPO
(NON EU)

(Five different Europes: EU, EPO, UP, UPC)

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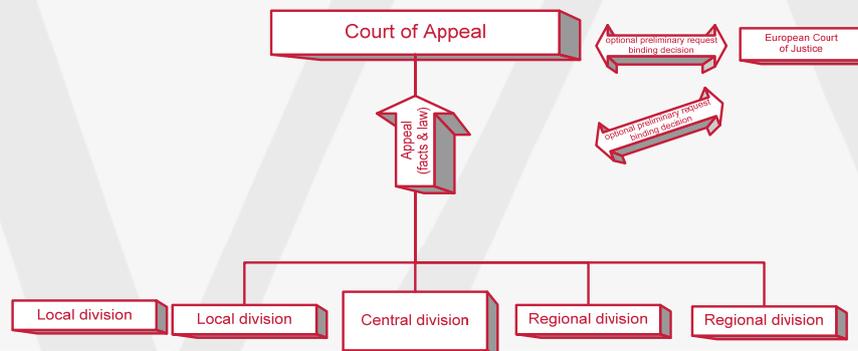
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Comparison EU/US

The courts: structure and people

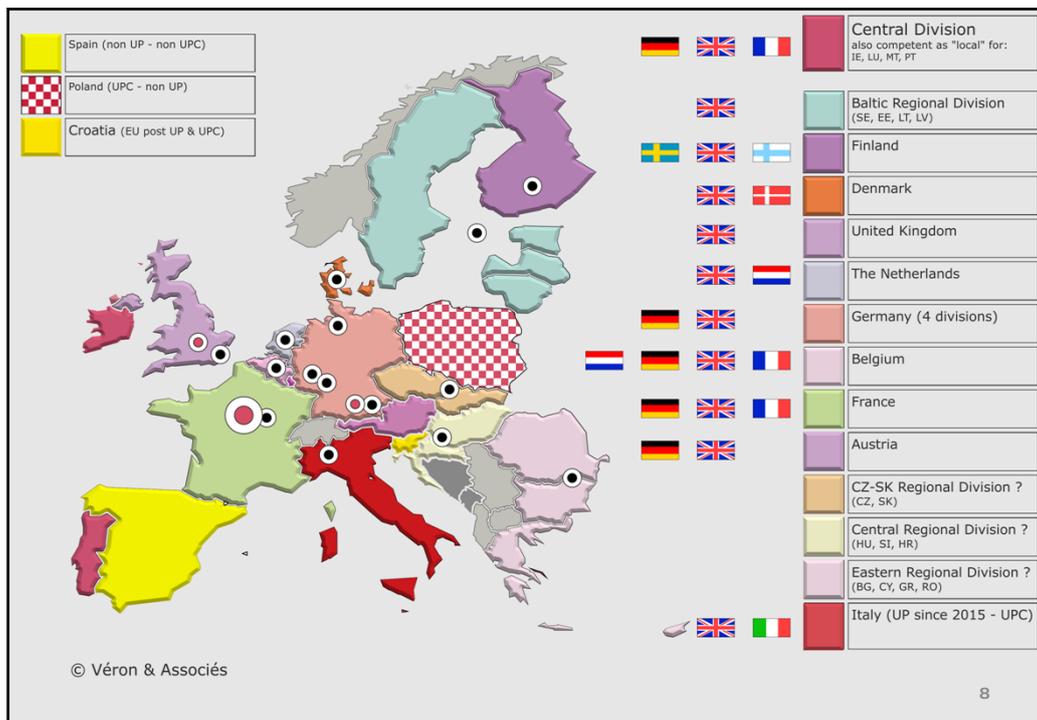
- Unified Patent Court (UPC) is a new court “common to several EU Member States” (not a federal court); comes as an addition to national courts
- A court without Supreme court level control (ECJ to control only EU law issues)
- A court staffed with specialist judges in both first instance and appeal (including technically qualified judges when validity at stake)
- Multinational panels
- Representation possible by attorneys-at-law and by patent attorneys

Architecture of the Unified Patent Court



Comparison EU/US The courts: venue and forum shopping

- During transitional period (7 years, possibly 14) concurrent jurisdiction of national courts and UPC for classical (bundle) EU patents to the choice of the plaintiff
- Patentee may “opt out” from the UPC system (not for unitary patent)
- Wider forum shopping + language shopping han beforehand in Europe even between the UPC divisions themselves (central and local)
- Much wider forum shopping than in the US (place of infringement, no need for domicile)



Comparison EU/US

The courts: discovery, proceedings

- No discovery available before the UPC
- Interlocutory injunction available; *saisie* available
- Superfast proceedings (predetermined schedule for the initial steps of the proceedings)
- Fully electronic proceedings
- All briefs and documents immediately available to the public unless specific request
- Written proceedings
- Case management (wide powers to the judge-rapporteur)

Comparison EU/US

The courts: hearing, remedies

- Hearing generally limited to 1 day (hearing of a witness in person exceptional)
- Time between commencement of proceedings and judgment expected to be around 1 year
- Permanent injunction should be widely available (at the court's discretion, but most judges seem prepared to refuse it only in exceptional cases)

Recent uncertainties

- Brexit related issues (political and legal)
- Reluctance of some countries to agree for a provisional application causes (last week) the Preparatory Committee to reschedule the entry into operation of the UPC (previously scheduled for early 2018)
- German Constitutional Court suggests (yesterday) that German government should suspend the ratification process

Prepare however for entry into force

- Before entry into force
- Transitional period

Prepare before entry into force

- National patent? Classical EP “bundle” patent? Unitary patent? Both (national + EP)?
Language of filing?
Order of applicants in the patent application?
- Review collaboration or joint research agreements
- Review co-ownership and licence agreements

Prepare for transitional period

- To opt out or to stay in?
- If no opt-out, concurrent jurisdiction of UPC and national courts (claimant’s choice)
- Applicable law may be different before the UPC and before national courts?

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Thank you

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