Construction of the Unified Patent Court

CEIPI Diploma on Patent Litigation in Europe
Online ● 7 March 2025

Pierre Véron
Honorary President EPLAW (European Patent Lawyers Association)
Member of the Expert Panel group of the Unified Patent Court
Member of the Drafting Committee of the Rules of Procedure

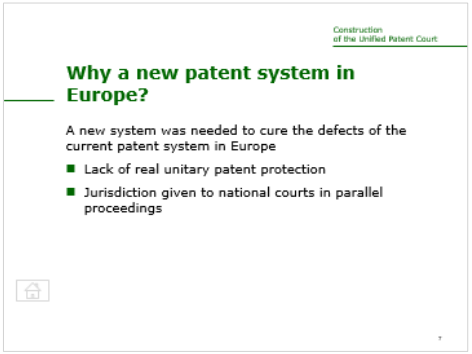
Overview

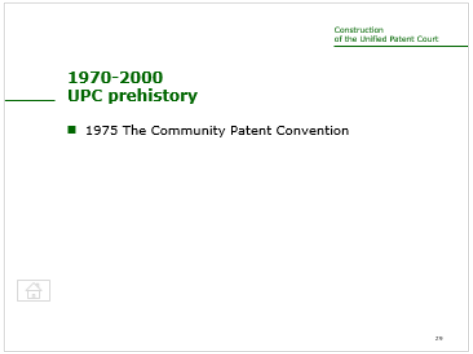
Construction of the Unified Patent Court

- The problem
  - One European patent
  - 30+ courts to enforce it:
    - costs
    - conflicting patent decisions in Europe
- The UPC solution
  - 1970-1999 The prehistory
  - 1999-2023 The construction
  - 1st June 2023 Entry into operation

Contents

Construction of the Unified Patent Court





Why a new patent system in Europe?

A new system was needed to cure the defects of the current patent system in Europe

- Lack of real unitary patent protection
- Jurisdiction given to national courts in parallel proceedings

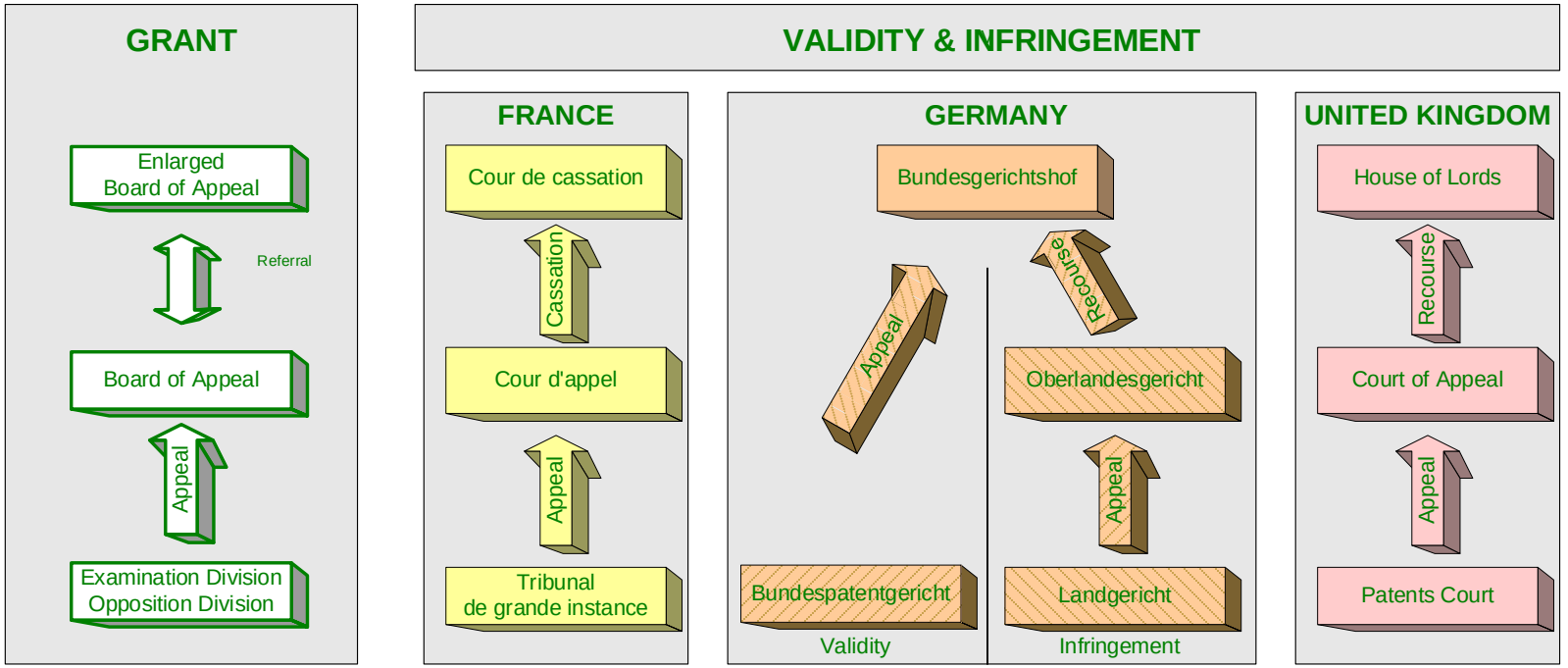
Lack of real unitary patent protection: the current European Patent is a “bundle” patent, not a unitary patent

- The European Patent Office provides a single patent grant procedure, but does not grant a single patent as far as enforcement is concerned
- The so-called European Patents are not European Union patents or even Europe-wide patents: instead, they are a “bundle” of national patents.

1973

The current European Patent “bundle patent” : once granted by EPO it becomes a series of “national patents”

1973



Jurisdiction for validity and infringement

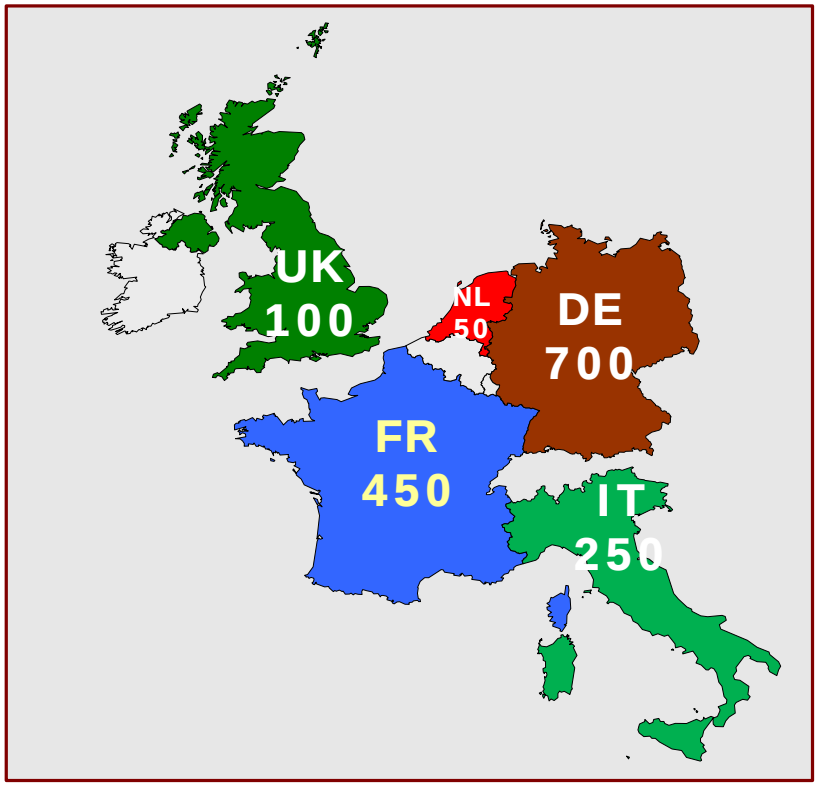
Jurisdiction for validity and infringement given to national courts in parallel proceedings causes:

- *Forum shopping* strategies
  (choose the best court where to bring your case)
- Conflicting decisions
  (courts of various countries issue opposite rulings on the “same” patent)

Patent litigation in Europe: figures

Number of new patent cases per year (rough estimate) in countries with ≥ 50 cases/year

Source: Harhoff
http://ec.europa.eu/internal_market/indprop/docs/patent/studies/litigation_system_en.pdf



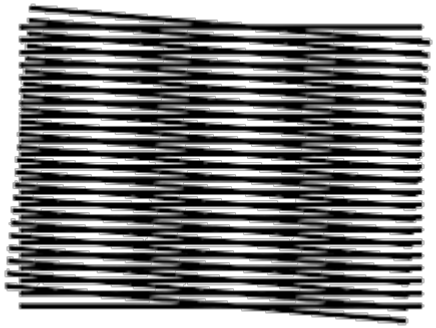
Forum shopping in the current system: points to consider

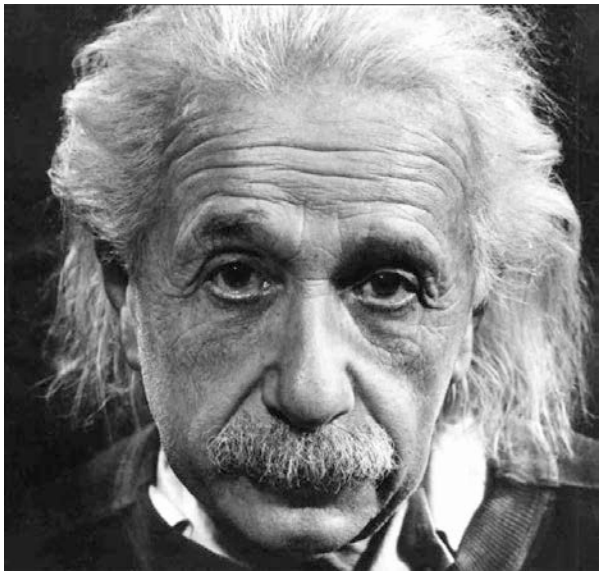
- Patentee or potential defendant?
- Place of business of the other party?
- Place of manufacture or marketing?
- Main markets for the products?
- Size of companies?

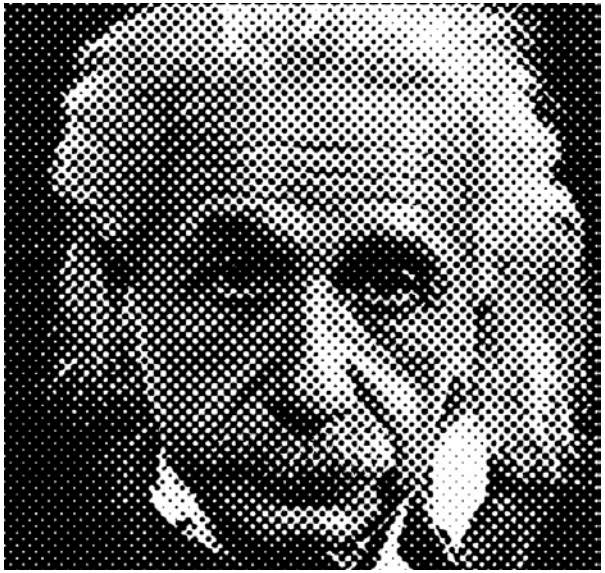
Conflicting judgments:

Document Security Systems Inc. v. European Central Bank

The moiré effect





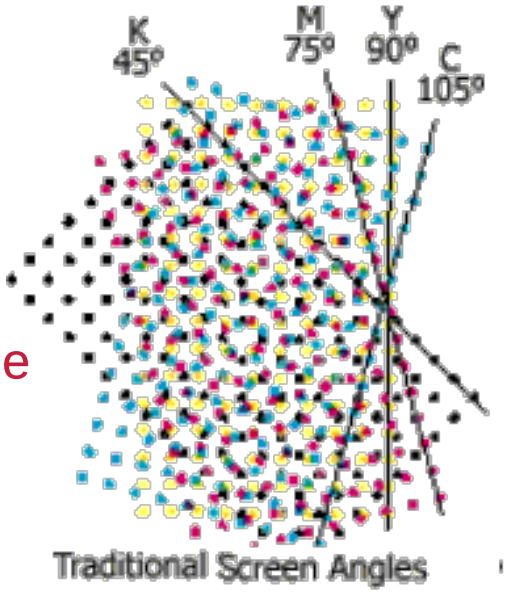


European Central Bank v Document Security Systems Incorporated [2008] EWCA Civ 192 (19 March 2008)

Conflicting judgments

Document Security Systems v. European Central Bank (security)

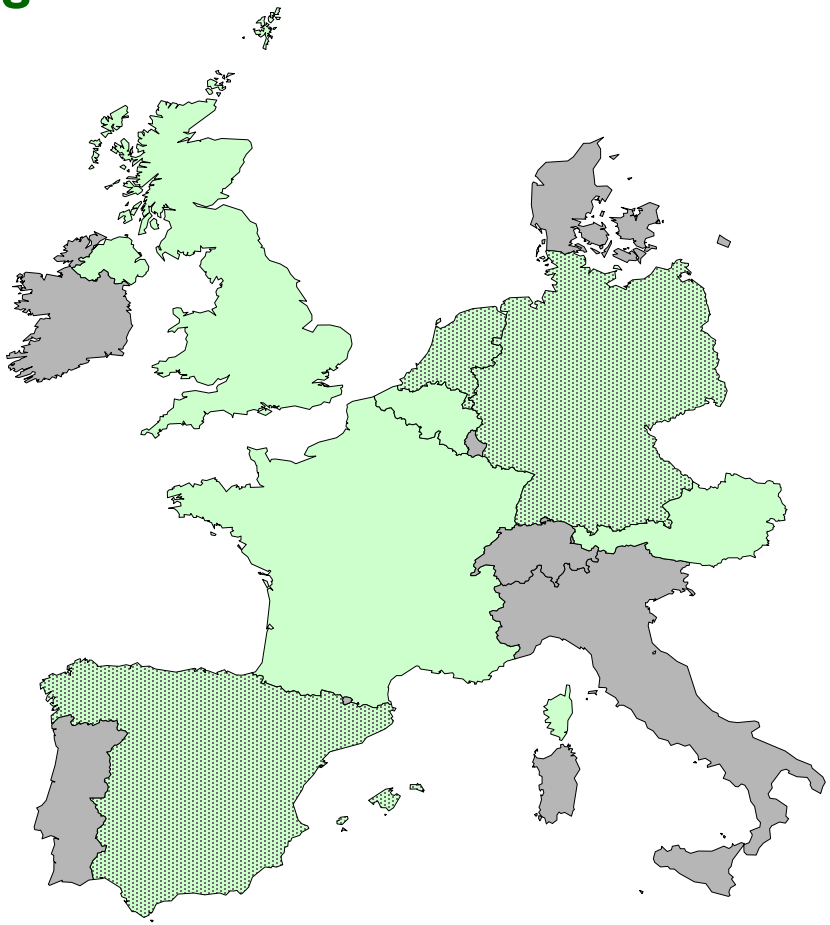
- United Kingdom: patent invalid
  High Court 26 March 2007 EWCA 19 March 2008
- Germany: patent valid 1st instance
  Bundespatentgericht 27 mars 2007
  patent invalid appeal
  Bundesgerichtshof 8 July 2010
- France: patent invalid
  Tribunal de grande instance de Paris, 9 janvier 2008
- The Netherlands: patent valid 1st instance
  Rechtbank La Haye 12 mars 2008
  patent invalid appeal
  Bundesgerichtshof 21 December 2010
- Spain: patent valid 1st instance
  Madrid court first instance 2011
  patent invalid appeal
  Madrid court of appeal 2013



Document Security System v. European Central Bank
Outcome of the proceedings

Patent held invalid
(1st instance & appeal)

Patent held
valid 1st instance
invalid appeal



Conflicting judgments

Novartis / Johnson & Johnson (contact lenses)

- The Netherlands: patent valid and infringed
  11 February 2009 *Rechtbank* The Hague
- France: patent valid and infringed
  25 March 2009 *Tribunal de grande instance* Paris affirmed by court of appeal 27 October 2010
- United Kingdom: patent invalid for insufficient description (but meeting novelty and inventive step requirements)
  High Court 10 July 2009
- Germany: patent invalid for lack of novelty (but meeting description requirement)
  Bundespatentgericht 10 December2009

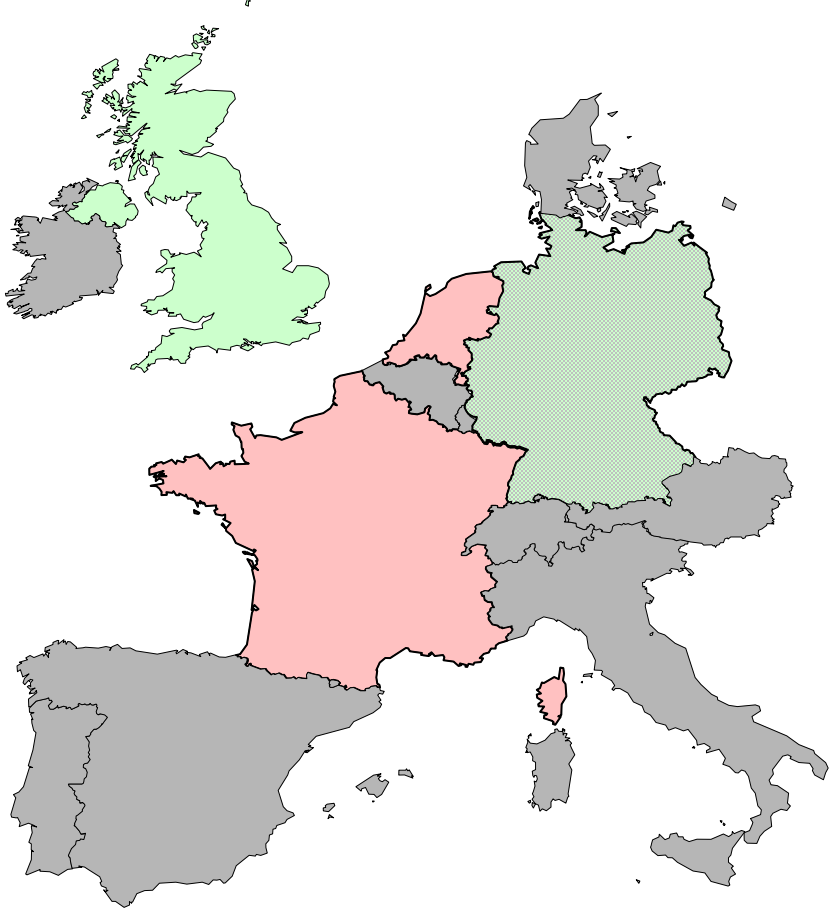
Conflicting judgments

Novartis / Johnson & Johnson (contact lenses)

Patent held invalid
novel but insufficient description

Patent held invalid
sufficient description but not novel

Patent held valid
and infringed



Conflicting judgments

MSD v generics EP 724 444

(finasteride for the treatment of androgenic alopecia)

- United Kingdom:
  patent invalid 1st instance
  6 June 2007*High Court*
  patent valid and infringed appeal
  21 May 2008 EWCA
- Germany : patent invalid
  26 June 2008 *Bundespatentgericht*
- France : patent invalid
  28 September 2010 *Tribunal de grande instance* Paris affirmed by court of appeal 30 January 2015
- Spain : patent invalid
  Commercial court and court of appeal Madrid
- The Netherlands : patent valid and infringed
  23 April 2014 *Rechtbank* Den Haag
- Italy: patent valid in 1st instance and case settled on appeal

Conflicting judgments

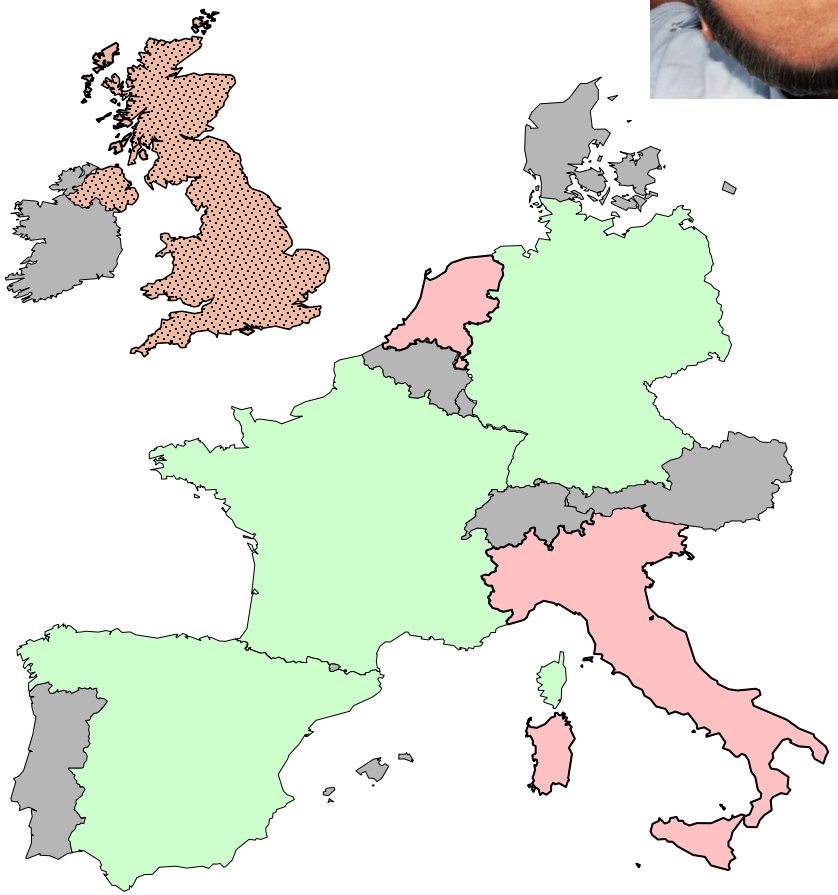
MSD / Mylan

(finasteride for the treatment of androgenic alopecia)

Patent held invalid

Patent held invalid (1st instance), valid and infringed (appeal)

Patent held valid and infringed (1st instance, no appeal reported)



Conflicting judgments

AstraZeneca (esomeprazole) EP 1 020 461

- United Kingdom:
  patent valid 1st instance
  15 July 2011 *High Court Chancery Division*
- Switzerland:
  patent valid 1st instance
  12 May 2014 *Bundespatentgericht*
- Italy:
  patent valid 1st instance
  23 April 2012 *Tribunale* Milano
  patent valid and infringed 1st instance
  11 February 2011 *Tribunale* Torino

Conflicting judgments

AstraZeneca (esomeprazole) EP 1 020 461

- The Netherlands:
  patent valid 1st instance
  6 June 2011 *Rechtbank* Den Haag
- France:
  patent invalid
  21 November 2014 *Tribunal de grande instance* Paris
- Germany:
  patent not infringed 1st instance
  17 December 2010 *Landgericht* Hamburg
- Sweden:
  patent not infringed appeal
  12 April 2011 *Svea Hovrätt*

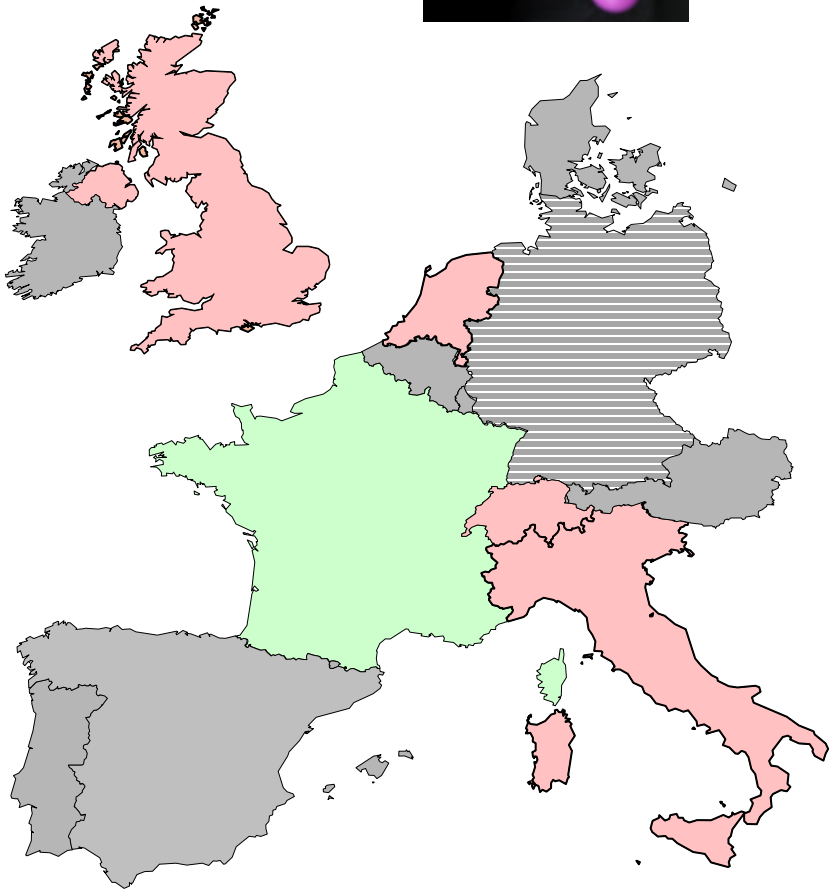
Conflicting judgments

AstraZeneca (esomeprazole) EP 1 020 461

Patent held invalid
(1st instance)

Patent held valid
(1st instance)

Patent not infringed
(1st instance)



Conflicting judgments

BSH Hausgeräte (vacuum cleaner) EP 1 434 512

- Sweden:
  - 1st instance: 21 December 2020, the Patent and Commercial Court, Stockholm declines jurisdiction over non-Swedish part of EP 1 434 512
  - Appeal: 24 May 2022 Patent and Commercial Court of Appeal requests preliminary ruling from CJEU
- CJEU ruling 25 February 2025, C-339/22:
  As courts of defendant Electrolux domicile, Swedish courts, have jurisdiction over infringement in Germany, Greece, Spain, France, Italy, the Netherlands, Austria, Sweden, the United Kingdom and Türkiye.

Conflicting judgments

BSH Hausgeräte (vacuum cleaner) EP 1 434 512

- Sweden:
  - patent (SE) invalid 1st instance
    September 2024 *Svea Hovrätt Patent- and marknadsdomstol (PMD)* Stockholm
  - Appeal pending before Patent and Commercial Court of Appeal
- Germany:
  - patent (DE) invalid 1st instance
    24 September 2020 *Bundespatentgericht*, 5 Ni 25/18 (EP)
  - patent (DE) valid appeal
    31 January 2023 *Bundesgerichtshof*, X ZR 19/2
  - Infringement case pending before Düsseldorf *Landgericht*

A 40-year story (part 1)

1973 Birth of the European Patent

1975 Community Patent Convention

1999 French initiative

2000 Draft regulation on the community patent

2000 European Patent Litigation Protocol

2003 EU Commission's Communication

2003 European Patent Litigation Agreement

2007 EU Commission's Communication

2008 Draft agreement 14970/08

A 40-year story (part 2)

2009-03-29 Draft agreement 7928/09

2009-04-24 Request for an opinion to CJEU

2011-03-10 Council decision 2011/167/UE
Enhanced cooperation unitary patent protection

2011-03-08 CJEU negative opinion

2011-04-13 Prop. Regulation
Enhanced cooperation unitary patent protection

2011-04-13 Prop. Regulation translation arrangements

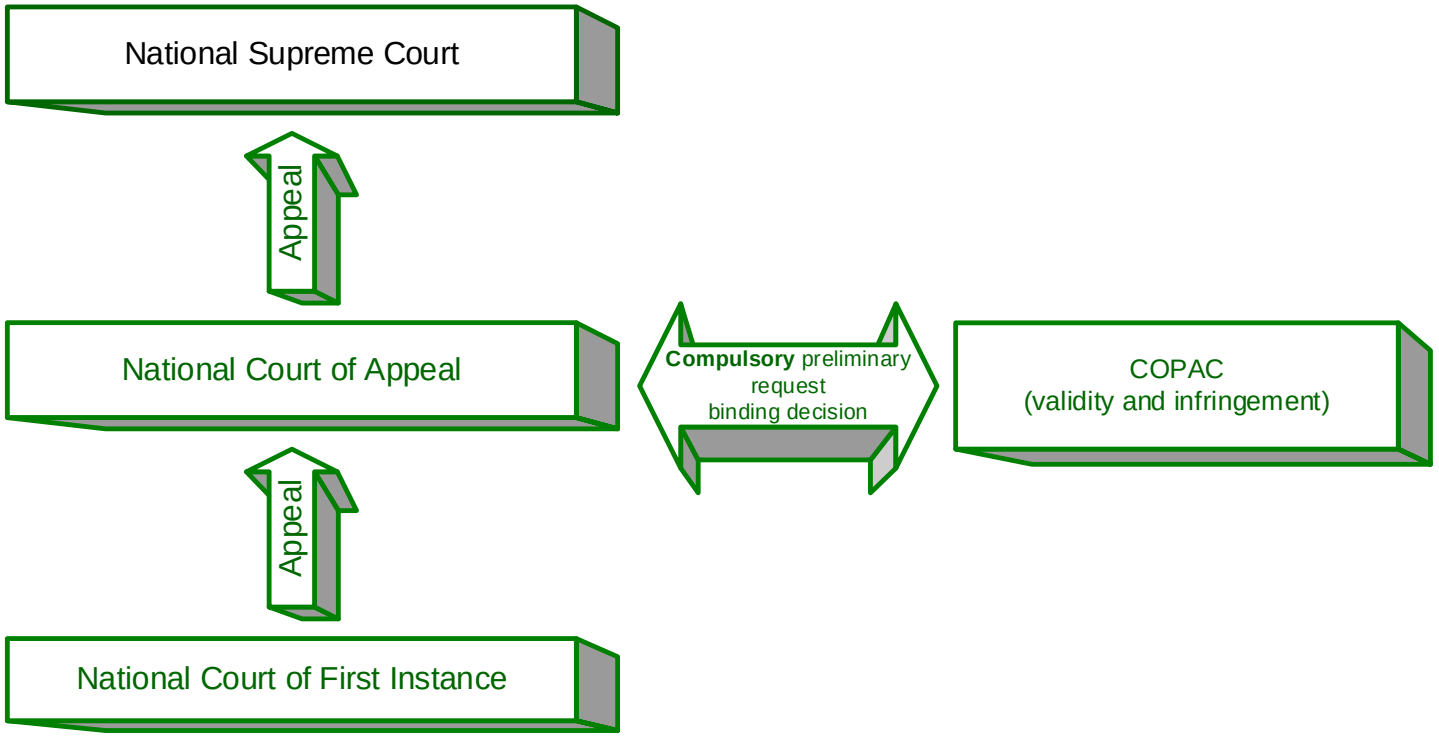
2011-10-26 Draft agreement on a Unified Patent Court and draft Statute - Revised Presidency text 16023/11

1970-2000
UPC prehistory

- 1975 The Community Patent Convention

The Community Patent Convention

1975

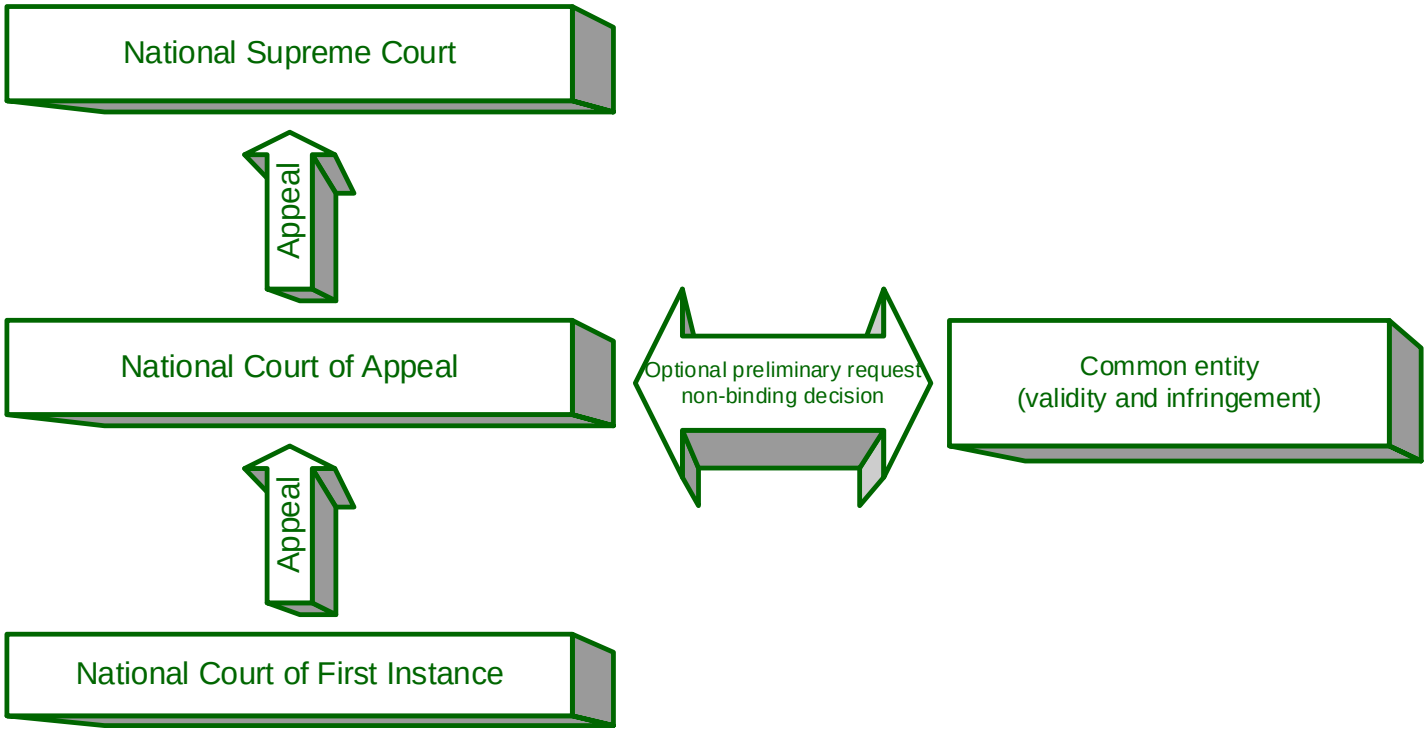


1999-2023
The construction

- 1999 The French initiative
- 2000 EU Commission draft regulation
- 2000 European Patent Litigation Protocol
- 2003 EU Commission Community Patent
- 2003 European Patent Litigation Agreement
- 2007 EU Commission's Communication

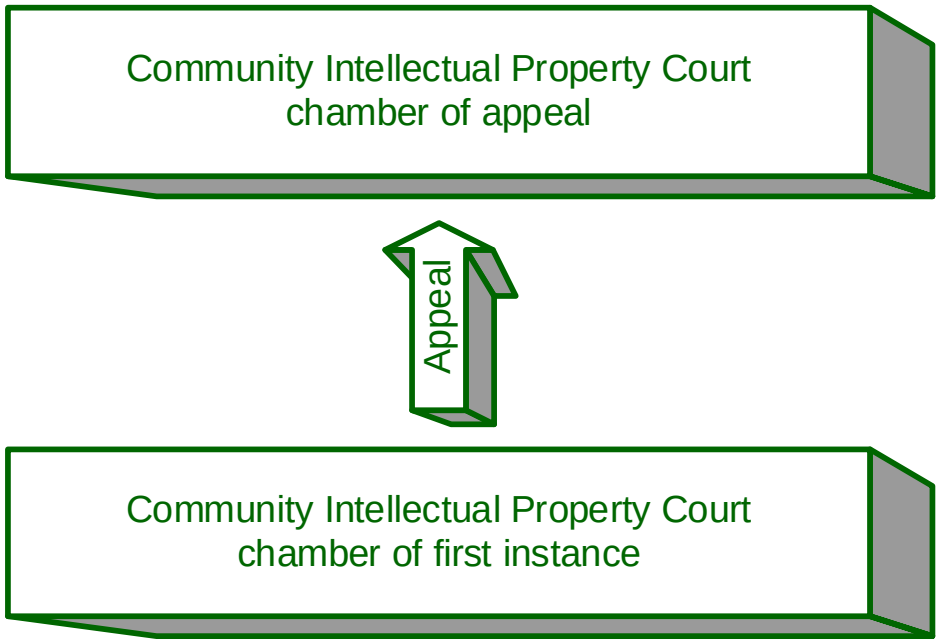
European Patent: the French initiative

1999



EU Commission draft regulation

2000



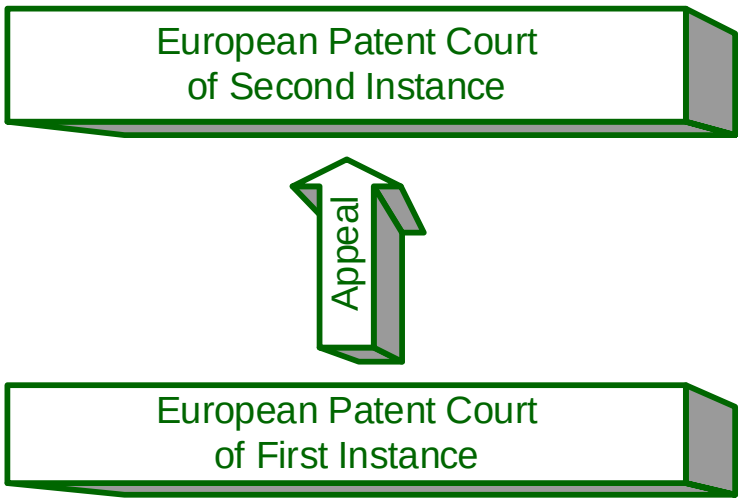
Brussels 19 September 2001

First general meeting of EPLA

Mooney - Tilmann – Heinrich – Véron – MEP Lehne – de Visscher

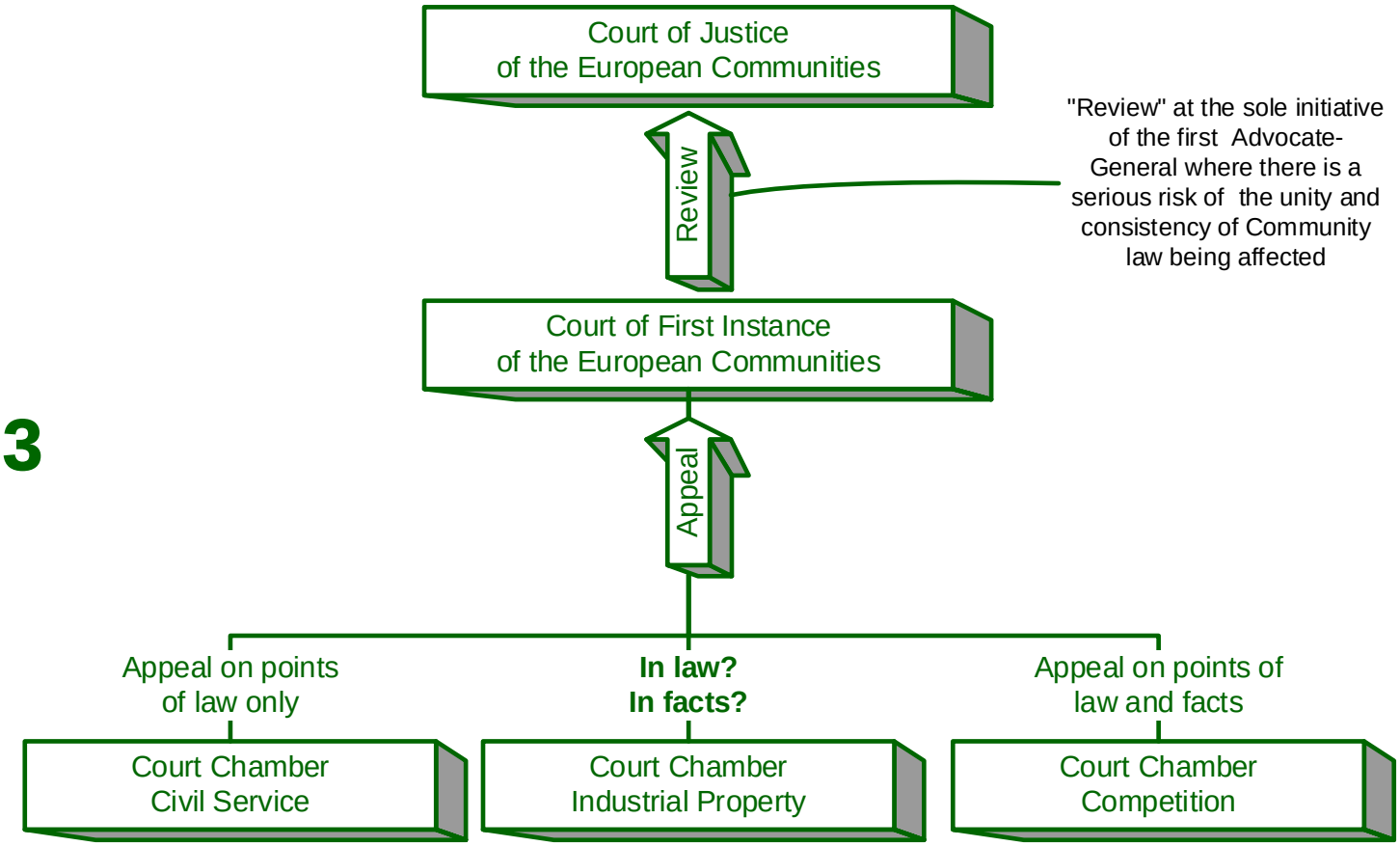
EPLP *European Patent Litigation Protocol*

2000



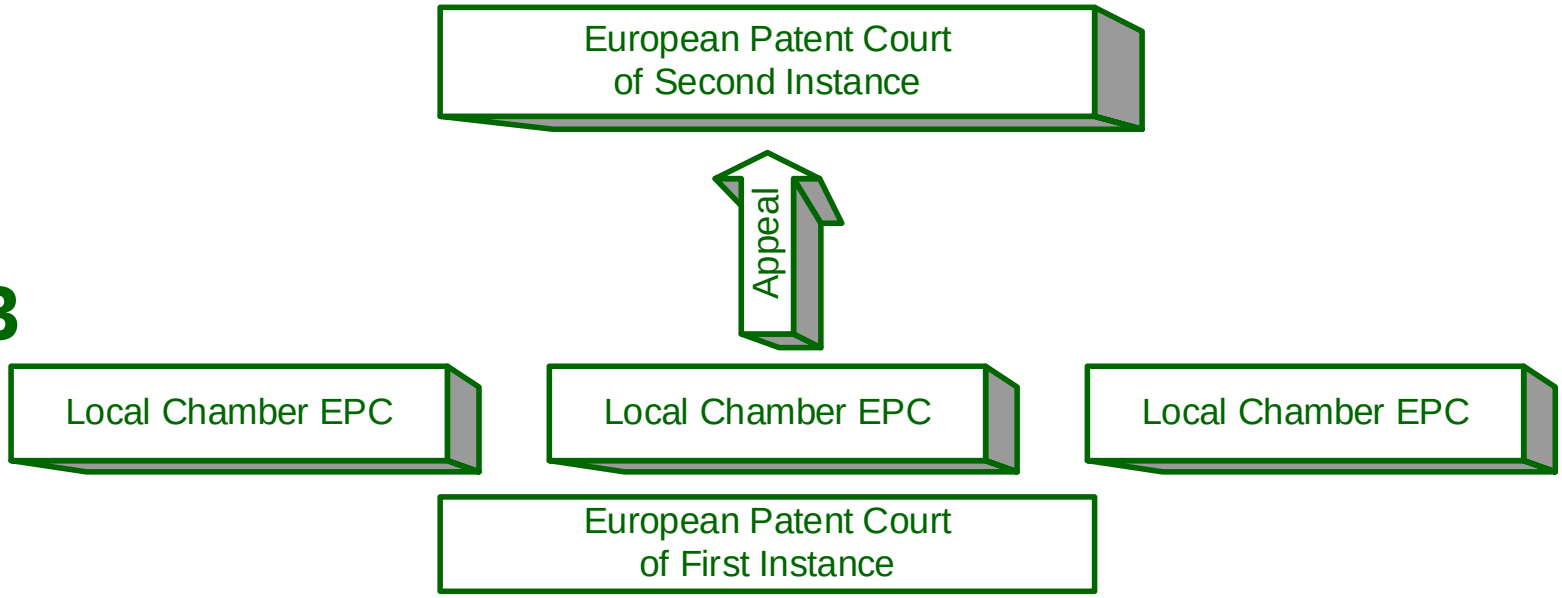
Community Patent (draft regulation)

2003



European Patent Litigation Agreement

2003



2004 “EPLA” becomes “EPLAW”

- In 2002 the members of the Working Party on Litigation set up by the European Patent Office who had christened their baby “European Patent Litigation Protocol” (EPLP) considered that the name Protocol was no longer suitable and decided to call their future baby “European Patent Litigation Agreement” (EPLA).
- Our association was left with no other option than either to sue several EU Member States or to change its name.
- As professional litigators, we know that litigation is not always the best way to start building a strong and friendly relationship…
- The association therefore decided to change its acronym to EPLAW, its current name.

Et Marius Franciscus fecit Venetiam…

Mario Franzosi 2005

* And Mario Franzosi created Venice…

Claude Vallet
Paris Court
then EPO Legal BOA

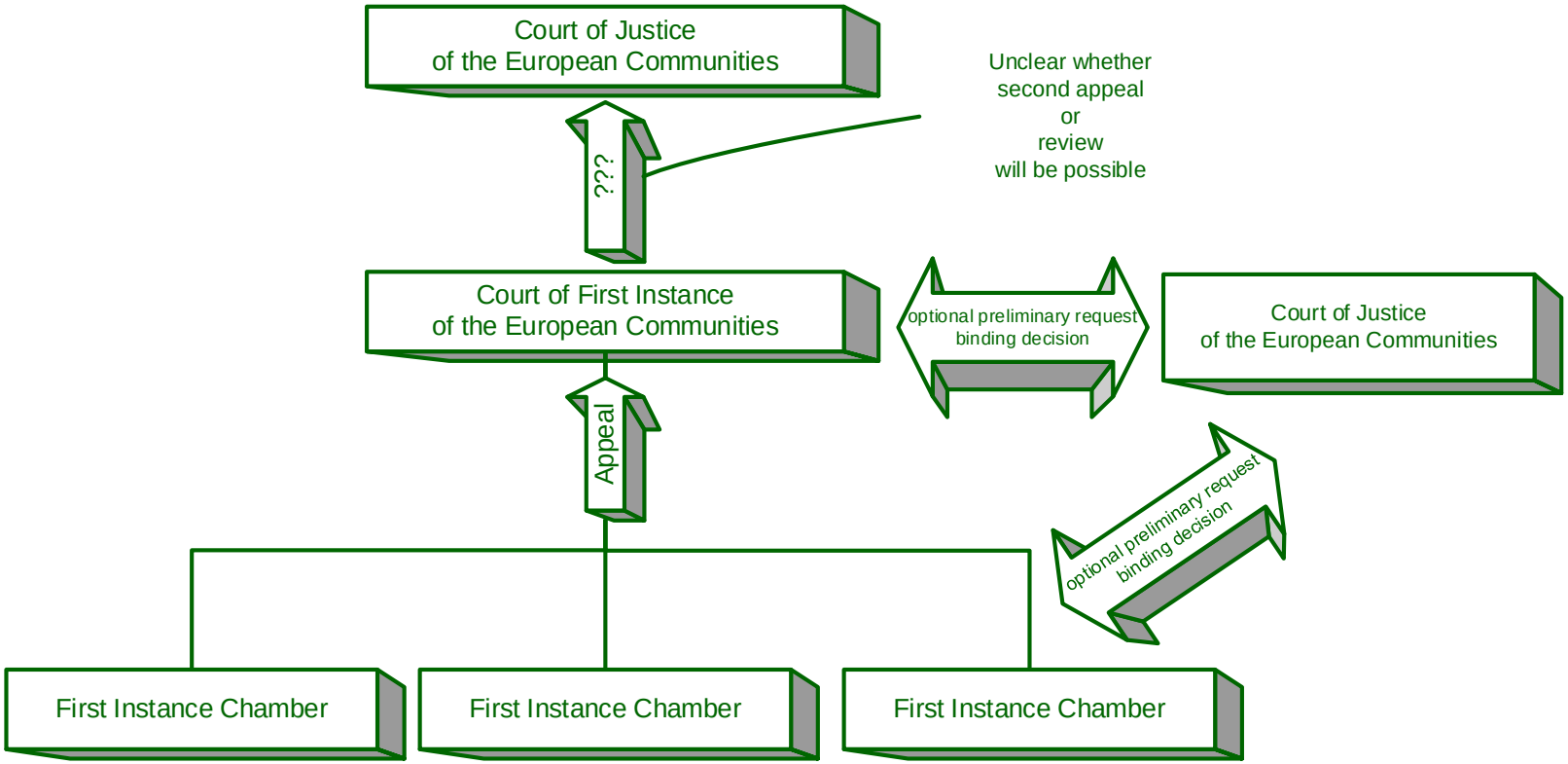
Massimo Scuffi
Corte di cassazione

Venice mock trials

Venice Scepter held by Kevin Mooney

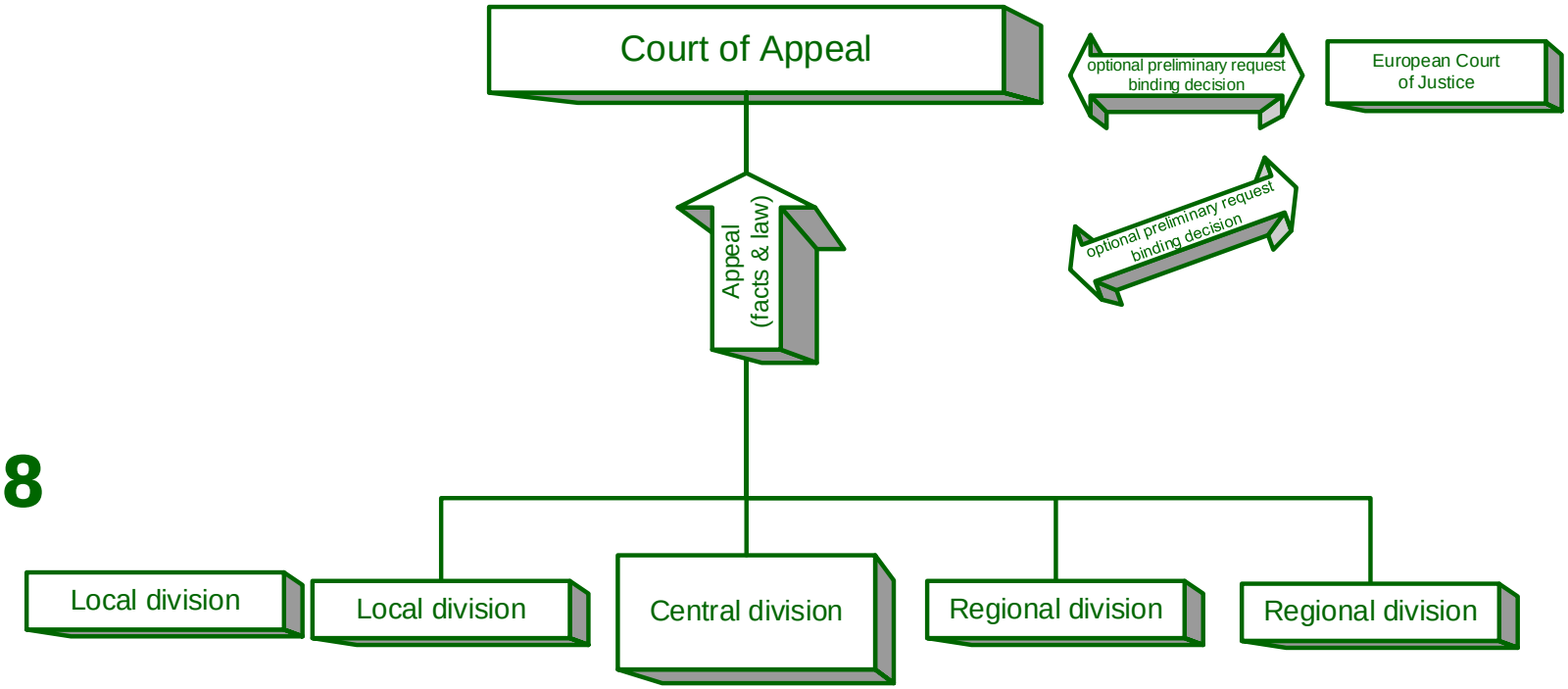
15 November 2008 (Venice IV)

2007
Commission Communication



2007

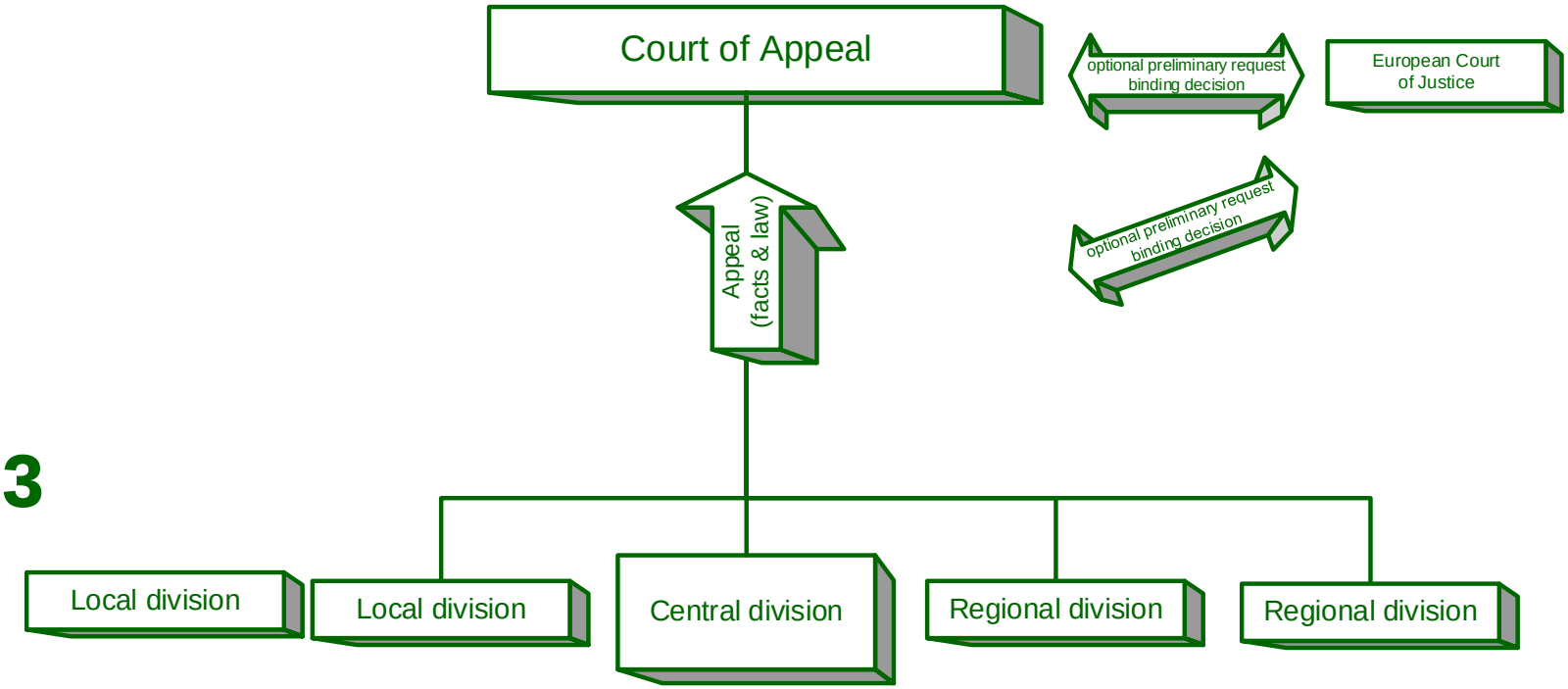
Draft Agreement on the European and Community Patent Court



2008

Signature of the Regulations by the Presidents of the European Parliament and the Council on 17 December 2012

19 February 2013
Agreement on the Unified Patent Court



2013

Brussels 18 February 2013

Presentation of the Patent Package Unitary Patent + Unified Patent Court

Brussels 18 February 2013

Presentation of the Patent Package
Unitary Patent + Unified Patent Court

Margot Fröhlinger

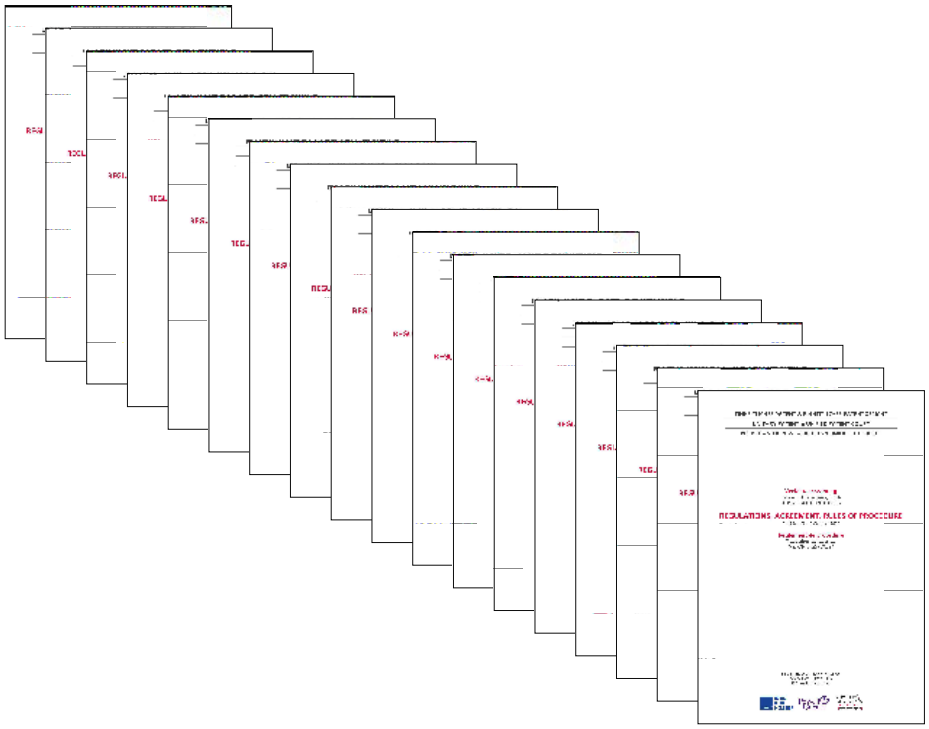
Kevin Mooney

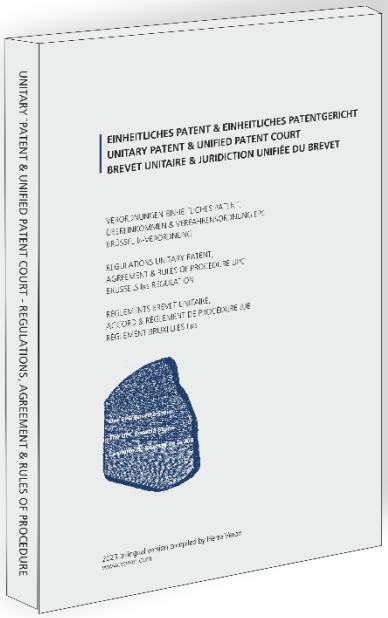
Michel Barnier

Brussels 19 February 2013

Unified Patent Court Agreement signing ceremony

Rules of procedure
The making of (18+ drafts)





https://www.veron.com/upc/livret-trilingue/

Drafting process: stage 0

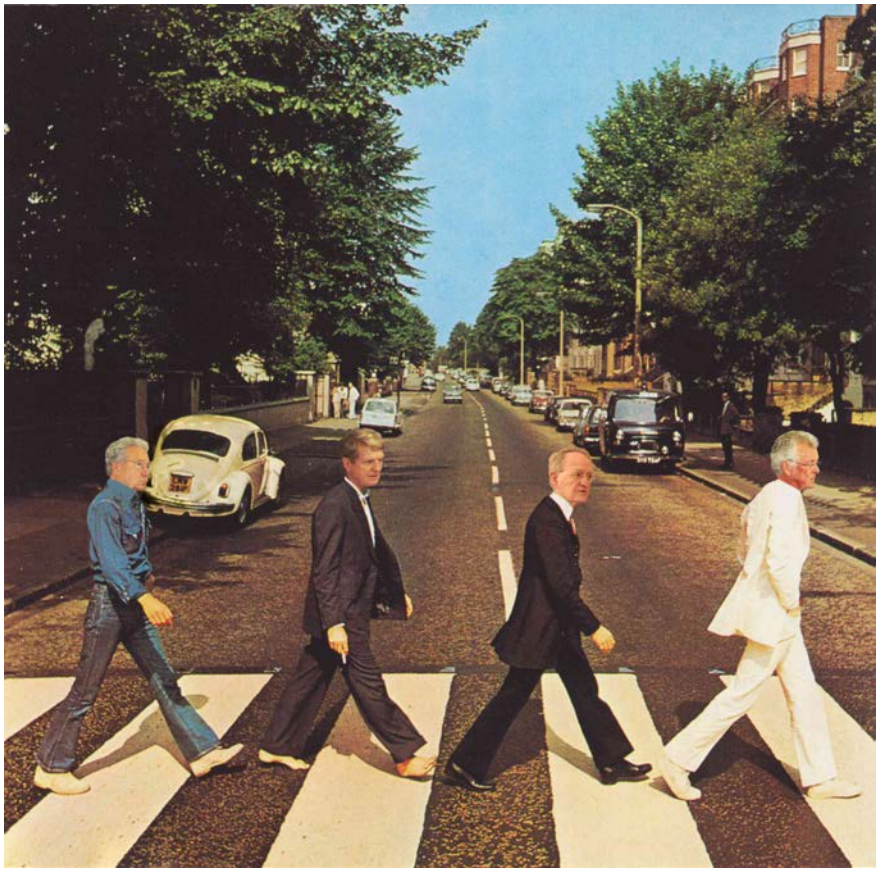
San Servolo, 4th November 2006

We, the European Patent Judges named below, approve the attached principles for the Rules of Procedure of the European Patent Court

4 November 2006, Venice Forum:
European Patent Judges approve the principles of the Rules of Procedure

2007-2012:
EU Commision's Expert group Judges, Lawyers and Business representatives

The EPLAW / UPC band on Abbey Road



Pierre Véron, Willem Hoyng, Winfried Tilmann, Kevin Mooney
Starting their European tour

Overview

The 10 main features of the UPC proceedings

1. One year for a judgment
2. Mainly written proceedings, in electronic form
3. The Registrar: an important person
4. Preformatted proceedings
5. Front-loading system
6. The Judge-rapporteur: a key person
7. One day hearing
8. Hearing of a witness in person exceptional
9. Appeal widely open
10. Court’s fees

The best of both worlds

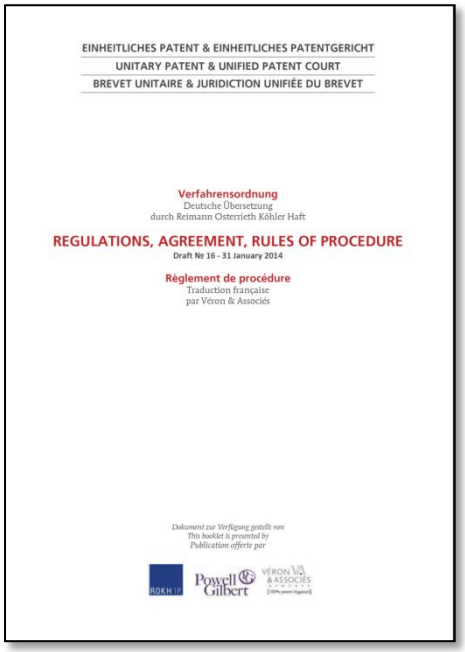
with a hint
of EPO
dressing

Drafting process: stages 6-15

2012-2014: Drafting Committee Judges and Lawyers

Draft 16 (31 January 2014)

Reviewed and modified in 2014 by the Preparatory Committee

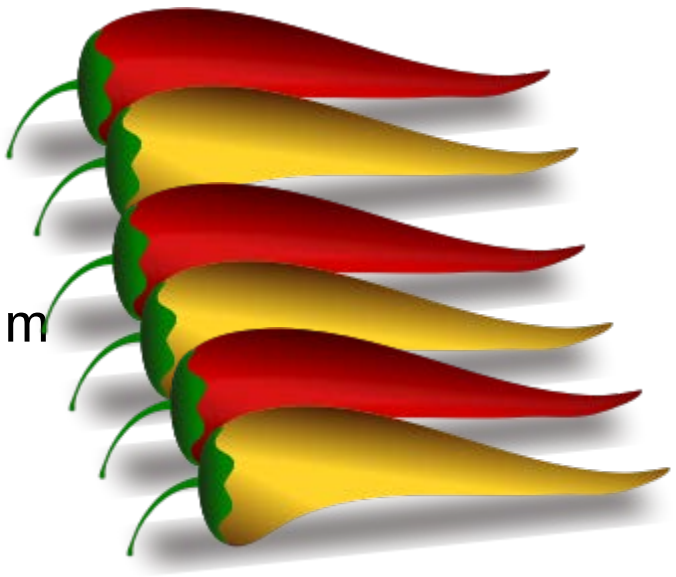


Rules of procedure
111 comments received

Drafting process: stages 17 +

26 November 2014: Public hearing in Trier

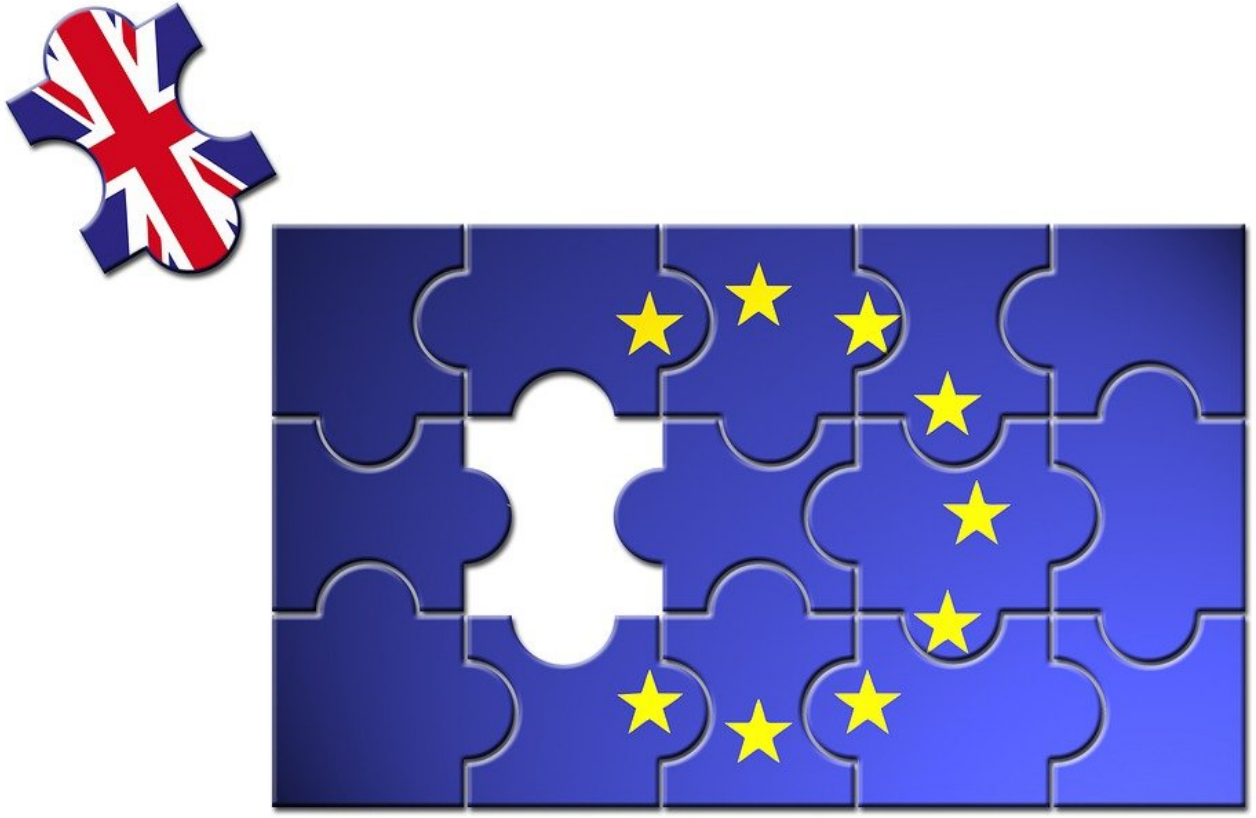
Rules of Procedure: hot topics in Trier



- Opt-out provisions
- Language of the Statement of claim
- Bifurcation
- Decision on provisional measures
- Final decisions (permanent injunctions)
- Leave for procedural appeals
- Representatives authorised to practice

Ratification Process in Germany

The Brexit
and the UK withdrawal from the UPC



The UK withdrawal from the UPC

On 26 April 2018, the United Kingdom ratified the UPC Agreement, thereby accepting Articles 20, 21 and 22 on the primacy of and respect for Union law and on the position of the ECJ.

But on 20 July 2020 it decided to withdraw this ratification: « *In view of the United Kingdom's withdrawal from the European Union, the United Kingdom no longer wishes to be a party to the Unified Patent Court system. Participating in a court that applies EU law and is bound by the CJEU would be inconsistent with the Government's aims of becoming an independent self-governing nation.* »

21 February 2023
Germany presses the ignition button

https://www.unified-patent-court.org/en/news/germany-ratifies-agreement-unified-patent-court

2023-2024
Entry into operation

30th May 2023

INAUGURATION OF THE UNIFIED PATENT COURT

Hémicycle
Luxembourg-Kirchberg

Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

THE GOVERNMENT
OF THE GRAND DUCHY OF LUXEMBOURG
Ministry of Foreign and European Affairs

Hearing room of the Court of Appeal
Luxembourg - 30 May 2023

Oath taking ceremony of the judges of the Court of First Instance Paris - 1 June 2023

First hearing of the Munich local division of the Court of First Instance Munich – 5 September 2023

Hearing room of the Paris Central division of the Court of First Instance

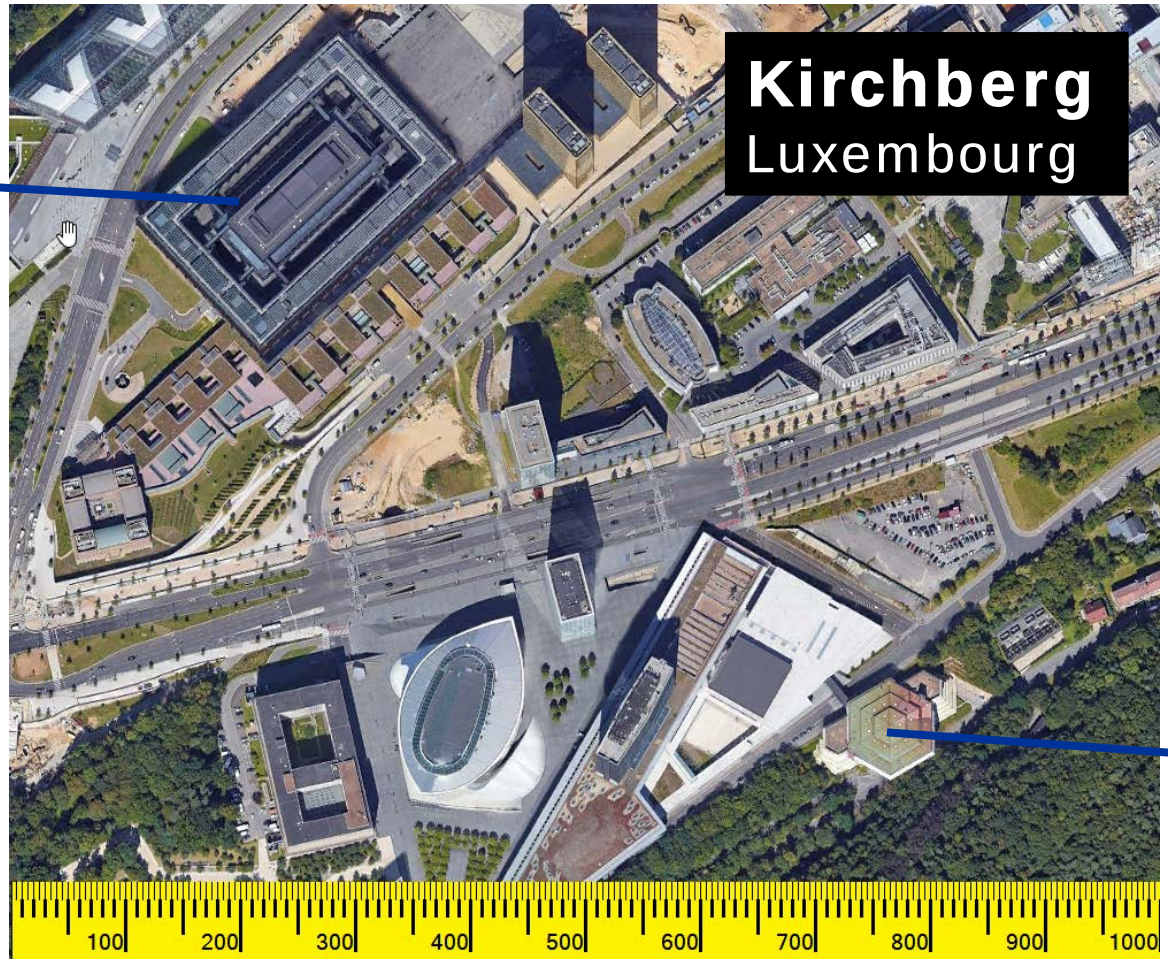
Hearing room of the Paris Central division of the Court of First Instance

Judge Rapporteur
Paolo Catallozzi

First hearing of the Paris Central division of the Court of First Instance Paris - 26 October 2023

So near yet so far

European Court of Justice



Einheitliches Patentgericht
Unified Patent Court
Juridiction unifiée du brevet

Seat of the Court of Appeal
L'Hémicycle - Luxembourg

First hearing of the Court of Appeal Luxembourg - 18 December 2023

Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

ENGLISH

This is the Case Management System of the Unified Patent Court.

The CMS is the IT system to file actions, applications and any other submissions before the Unified Patent Court.
The Court will have exclusive jurisdiction on actions concerning European patents with unitary effect by virtue of Regulation (EU) No 1257/2012 (Unitary Patents), European patents without such an effect ("classical" European patents) and that were not opted out as to Art. 83(3) UPC Agreement, Supplementary protection certificates granted under Regulation (EC) No 469/2009 or Regulation (EC) No 1610/96 and published European patent applications, as laid down in Art. 32 UPC Agreement.

Business enquiries relating to the Unified Patent Court can be addressed using the contact form provided on the Court's site: https://www.unified-patent-court.org/contact.

Sign In

- Sign In
- User creation guidance
- Create User
- Lost smart card
- Test Smart Card

Dear CMS users, please be advised that In order to provide the best services, a daily maintenance is scheduled on the CMS from 8:00pm to 10:00pm. Even though we might not do maintenance every day, users should expect the service to be unavailable at that time.

We apologize for any inconvenience that may be caused by this interruption of service.

Thank you for your understanding

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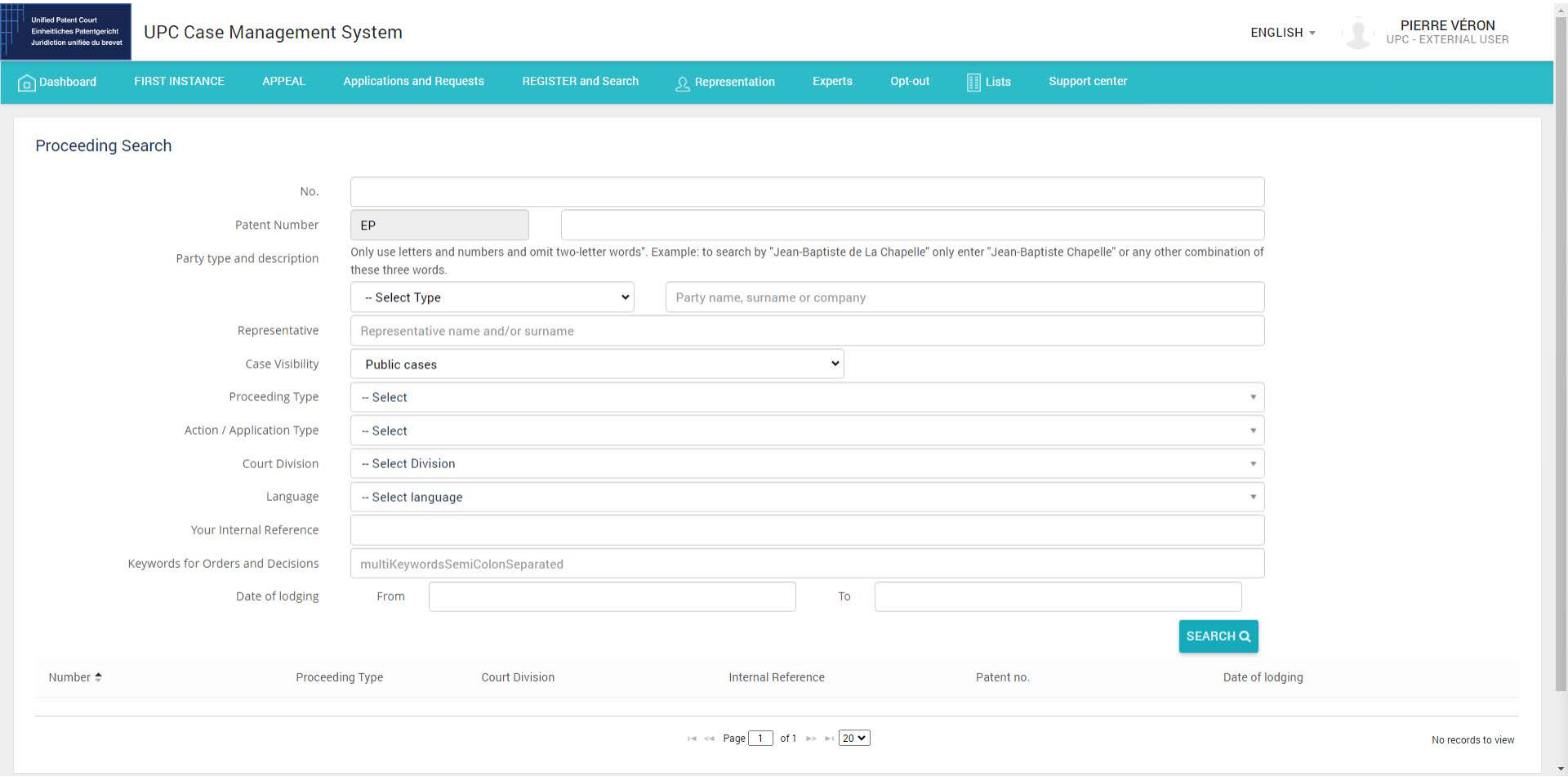
Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet
UPC Case Management System
ENGLISH
PIERRE VÉRON
UPC - EXTERNAL USER
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About the Unified Patent Court

The Unified Patent Court (UPC) is a Court, comprising judges from all participating Member States of the European Union. It is set up to decide in particular on the infringement and validity of both Unitary Patents and classic European Patents. The UPC is a Court common to currently seventeen EU Member States f...

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Order/Decision reference: ORD_8243/2024
Type of action(s): Infringement Action/Counterclaim for revocation
Court - Division: Court of First Instance - The Hague (NL) Local Division
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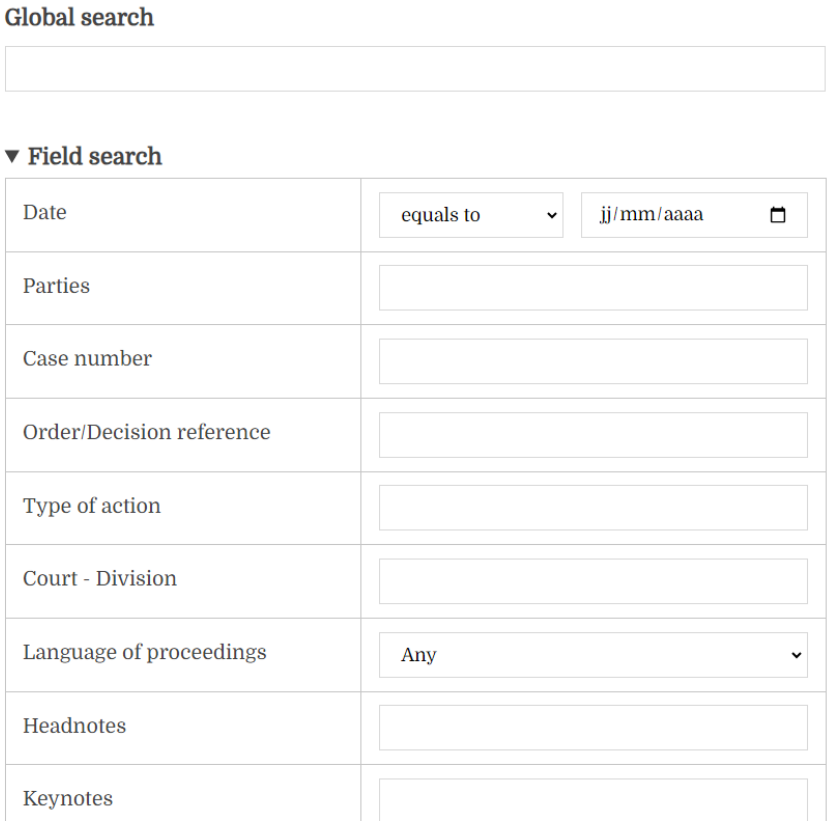

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Case load of the Court: 700 cases

- 251 infringement actions
  with 140 counterclaims for revocation
- 69 applications for provisional measures
- 55 revocation actions
  (Paris CD: 40, Munich CD 7, Milan CD: 7))
- 406 cases (including 42 appeals against final decisions)

https://www.unified-patent-court.org/en/news/unified-patent-court-published-its-first-annual-report

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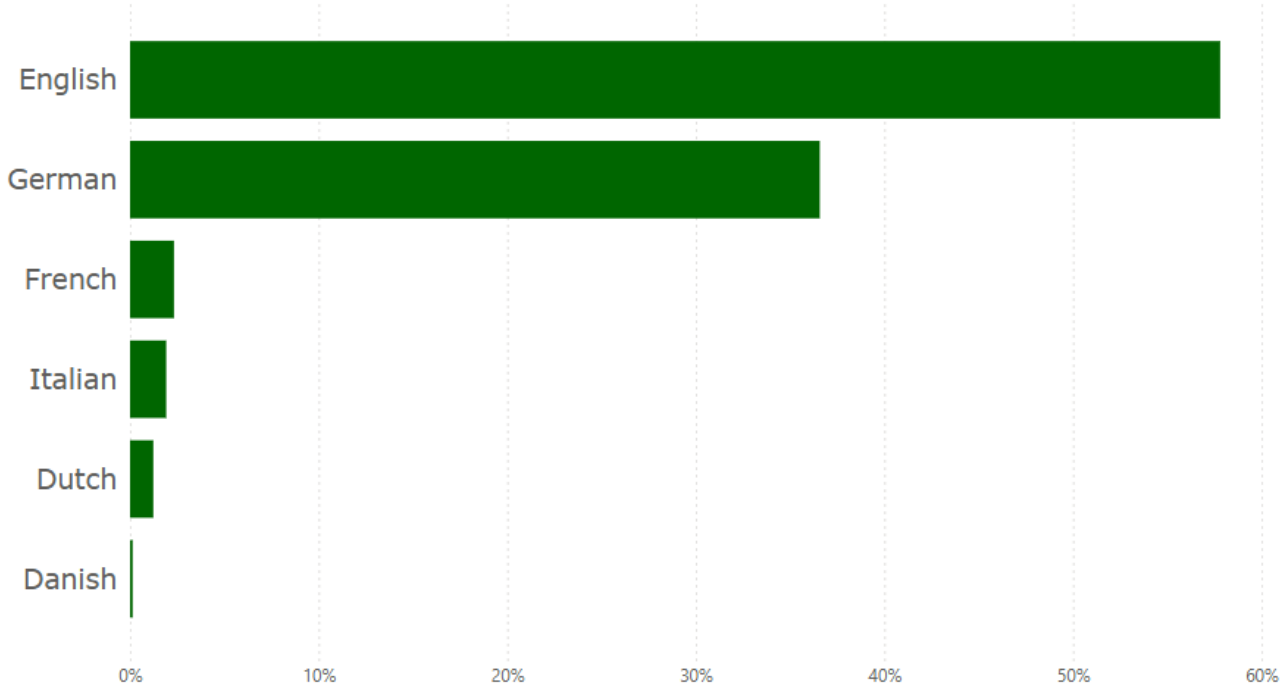

Pierre Véron

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