

The Draft Agreement on the Unified Patent Court

The Future Unified Patent Litigation System in the European Union
ERA • Warsaw 23 September 2011

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(European Patent Lawyers Association)

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3 Scope

Unified Patent Court

- EPUE**
(EPO + EU + EPUE)
- NON EPUE**
(EPO + EU)
- EPO**
(NON EU)
- COE**
(NON EPO - NON EU)

(25 EPUE Member States)

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Unified Patent Court

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Scope of application

- European Patent with Unitary Effect (EPUE)
- SPC for a patent
- European patent
- Patent application

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Unified Patent Court

Applicable law

- 14e (1) substantive law
- 14e (2) conflict of law
- 14f-i definition of infringement
- 37-42 sanctions and damages



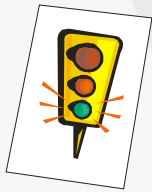
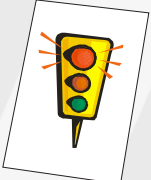
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Unified Patent Court

15 Jurisdiction


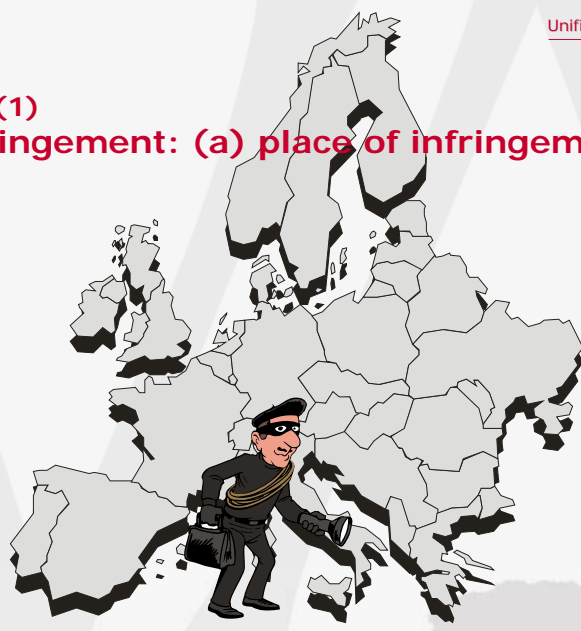
- Infringement
- Declaration of non-infringement
- Revocation
- Miscellaneous



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Unified Patent Court


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



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



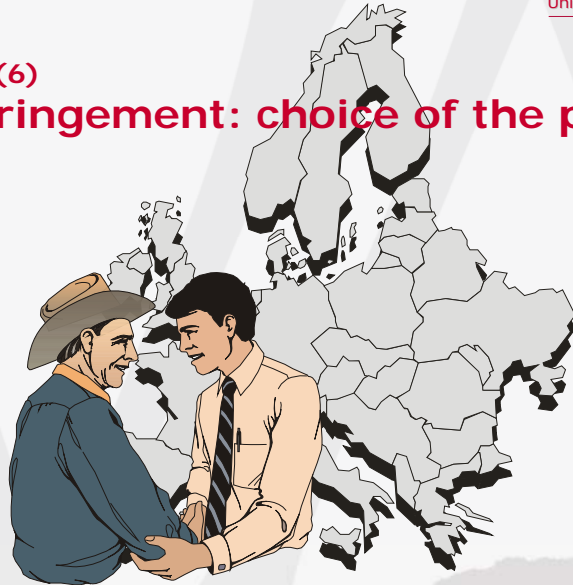
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Detailed description: This slide features a cartoon illustration of a man with a mustache and glasses, wearing a yellow shirt and blue trousers, holding a yellow sign with the words 'HOME SWEET HOME' and a red heart. He is pointing towards a map of Europe. The background is a light gray with a faint map of Europe. The text 'Unified Patent Court' is in the top right, and 'VÉRON VA & ASSOCIÉS AVOCATS' is in the bottom left. The number '7' is in the bottom right.

Unified Patent Court

**15a (6)
Infringement: choice of the parties**



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Detailed description: This slide features a cartoon illustration of two men shaking hands. One man is wearing a brown hat and a blue shirt, while the other is wearing a white shirt and a tie. They are standing in front of a map of Europe. The background is a light gray with a faint map of Europe. The text 'Unified Patent Court' is in the top right, and 'VÉRON VA & ASSOCIÉS AVOCATS' is in the bottom left. The number '8' is in the bottom right.

Unified Patent Court

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

The diagram shows a horizontal timeline arrow starting at 01/01/2012 and ending at 01/01/2014. A traffic light icon is positioned above the timeline at 01/06/2012, labeled 'Infringement action'. A large 'X' icon is positioned above the timeline at 30/06/2013, labeled 'Counterclaim for 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

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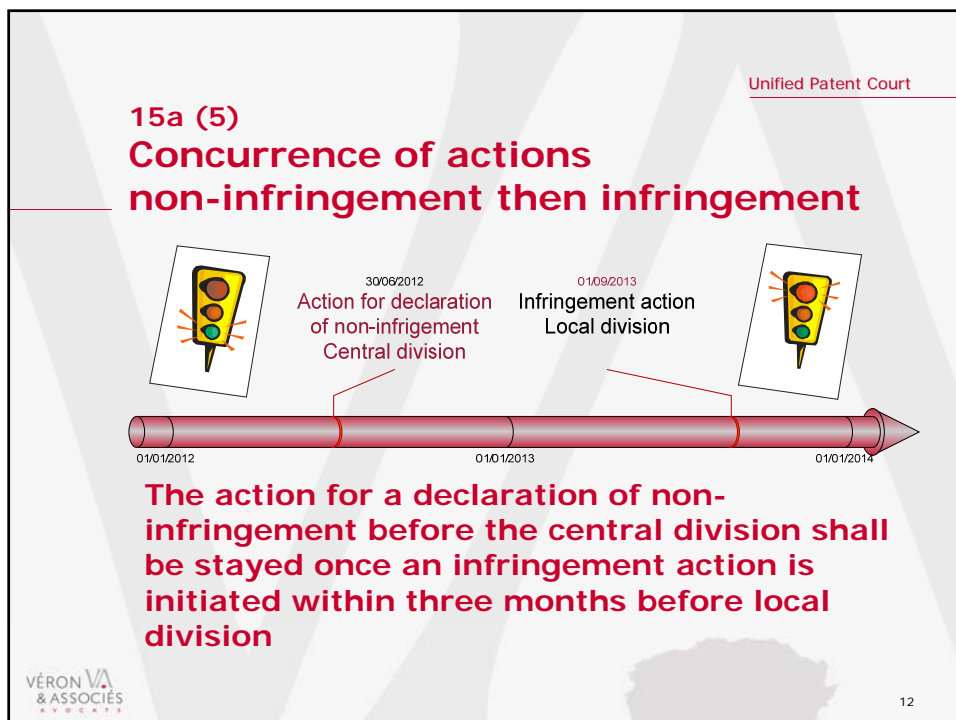
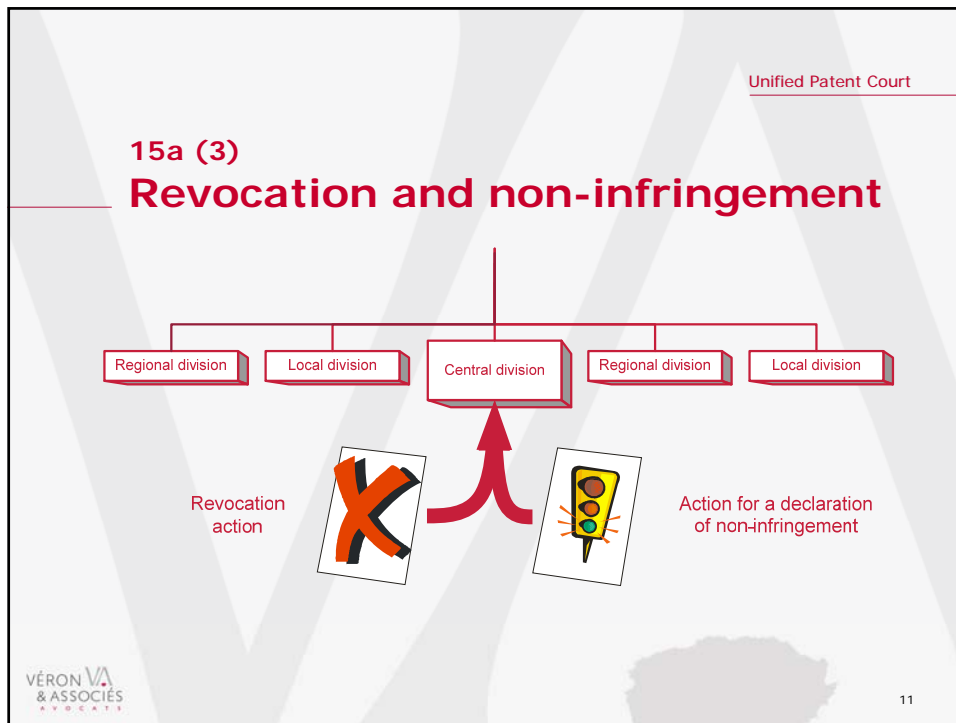
15a (4) Concurrence of actions: revocation then infringement

The diagram shows a horizontal timeline arrow starting at 01/01/2012 and ending at 01/01/2014. A large 'X' icon is positioned above the timeline at 30/06/2012, labeled 'Revocation action Central division'. A traffic light icon is positioned above the timeline at 01/09/2013, labeled 'Infringement action Local division'.

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

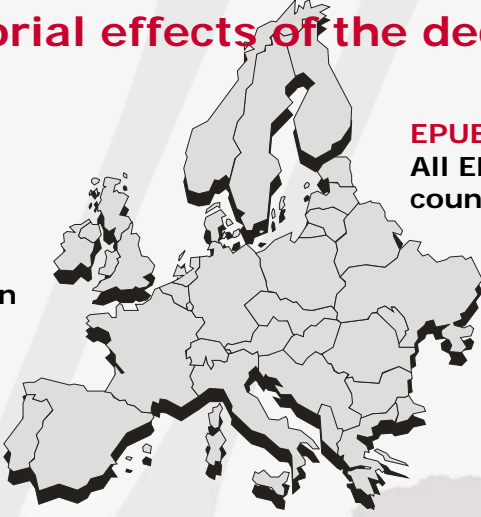
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16 Territorial effects of the decision

European Patent
All the countries where the patent is in force



EPUE Patent
All EPUE 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


Regional division



Language of the court
(national or EPO language)

Local division


Central division



Language of the patent

Regional division


Local division



Language of the court
(national or EPO language)

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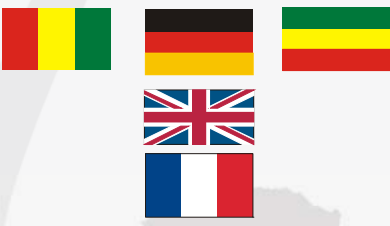
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30 Language of proceedings: appeal

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

Court of Appeal

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58 Transitional period

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

01/01/2019
End of
Transitional Period

01/01/2014 - 01/01/2019
Transitional Period : 5 years

- National courts still competent for EP
- European Patent holders may opt out from Unified Patent Court (no re-entry 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.

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Front loading system? or drips and drabs system?



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Interim conference with the JR?




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The slide features a central illustration of a judge with a large nose and glasses, wearing a black judicial robe over a blue shirt and orange tie, sitting at a wooden desk and reading a green document. The background consists of light grey diagonal stripes. The text 'Unified Patent Court' is in the top right, the title 'Interim conference with the JR?' is in the center, and the firm's logo 'VÉRON VA & ASSOCIÉS AVOCATS' is in the bottom left. The number '21' is in the bottom right.

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Hearing of a witness in person?



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The slide features a central illustration of a courtroom scene. A man in a grey suit and pink tie stands at a witness stand, looking towards a judge. The judge, an older woman with grey hair, sits on a bench behind him. A woman with blonde hair sits at a desk in the foreground, looking towards the witness. The background consists of light grey diagonal stripes. The text 'Unified Patent Court' is in the top right, the title 'Hearing of a witness in person?' is in the center, and the firm's logo 'VÉRON VA & ASSOCIÉS AVOCATS' is in the bottom left. The number '22' is in the bottom right.

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.

Where will it be located?



Pierre Véron



Thank you

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