

# **The Unitary Patent and the Unified Patent Court**

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Honorary President  
EPLAW  
(European Patent Lawyers Association)

VÉRON VA  
& ASSOCIÉS  
A V O C A T S  
Paris ■ Lyon



The Unitary Patent  
and the Unified Patent Court

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## **A 38-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 Protocol**
- 2007 EU Commission's Communication**
- 2008 Draft agreement 14970/08**

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## A 38-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

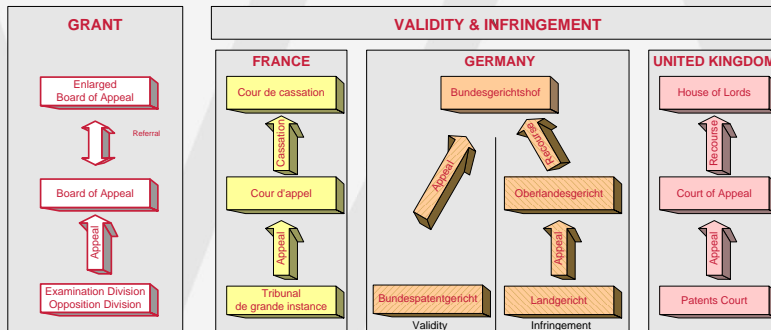
2011-04-13 Prop. Regulation  
Enhanced cooperation unitary patent protection

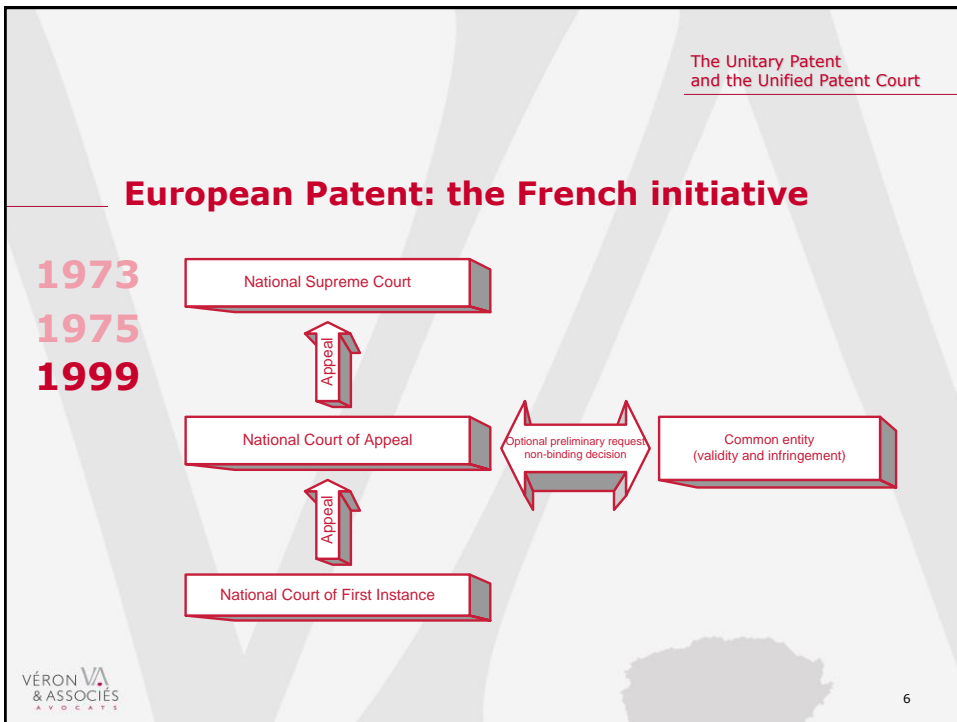
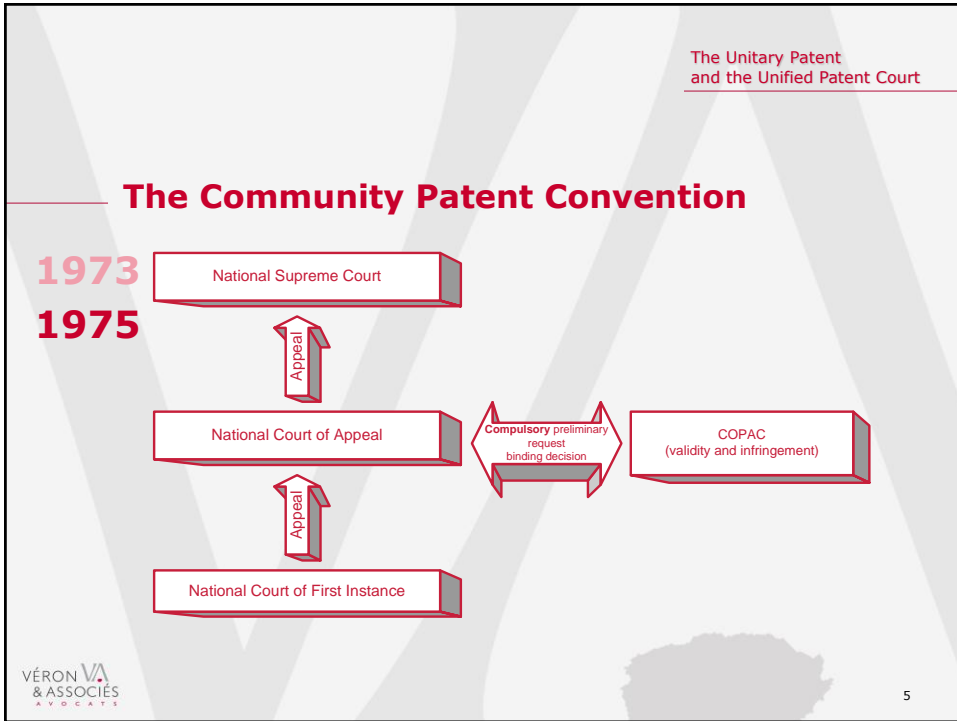
2011-04-13 Prop. Regulation translation arrangements

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

## Birth of the European Patent

1973





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### EU Commission draft regulation

**1973**  
**1975**  
**1999**  
**2000**

Community Intellectual Property Court  
chamber of appeal

Appeal

Community Intellectual Property Court  
chamber of first instance

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Detailed description: This slide illustrates the historical development of the Community Intellectual Property Court. It features a vertical timeline on the left with the years 1973, 1975, 1999, and 2000. The main content consists of two 3D-style rectangular boxes. The bottom box, representing the year 2000, is labeled 'Community Intellectual Property Court chamber of first instance'. An upward-pointing arrow labeled 'Appeal' connects this box to the top box, which is labeled 'Community Intellectual Property Court chamber of appeal'. The background has a faint map of Europe.

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### EPLP *European Patent Litigation Protocol* now Agreement

**1973**  
**1975**  
**1999**  
**2000**

European Patent Court  
of Second Instance

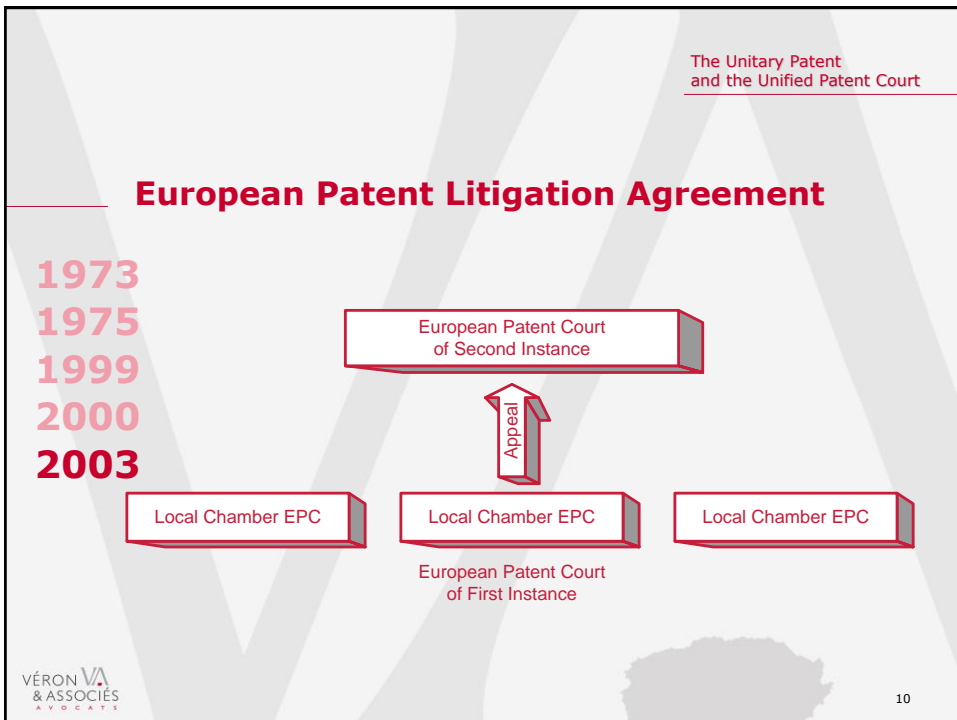
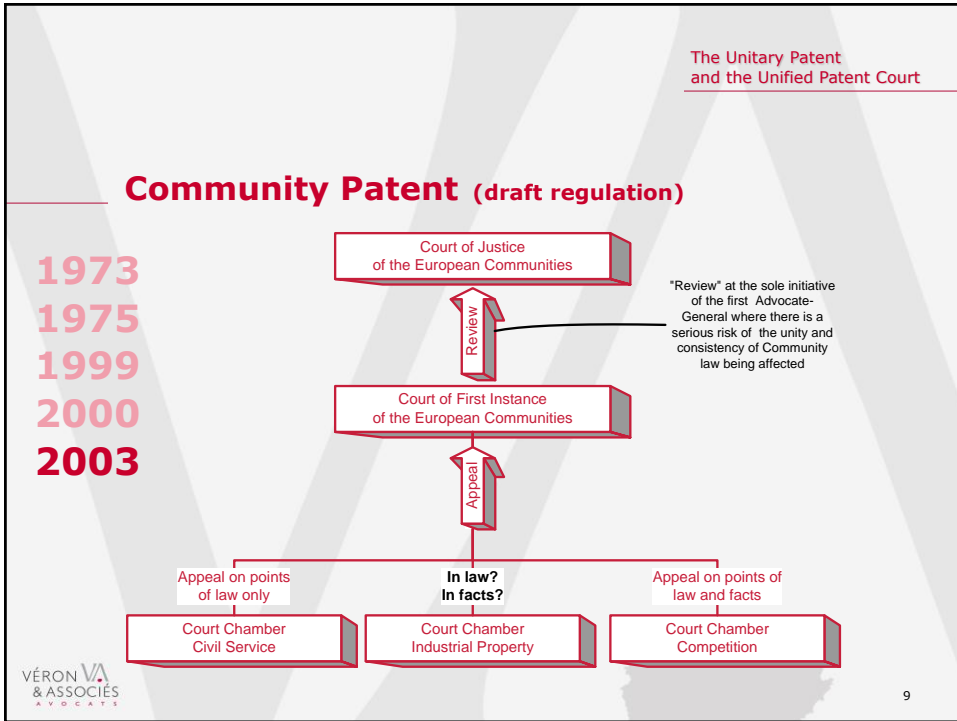
Appeal

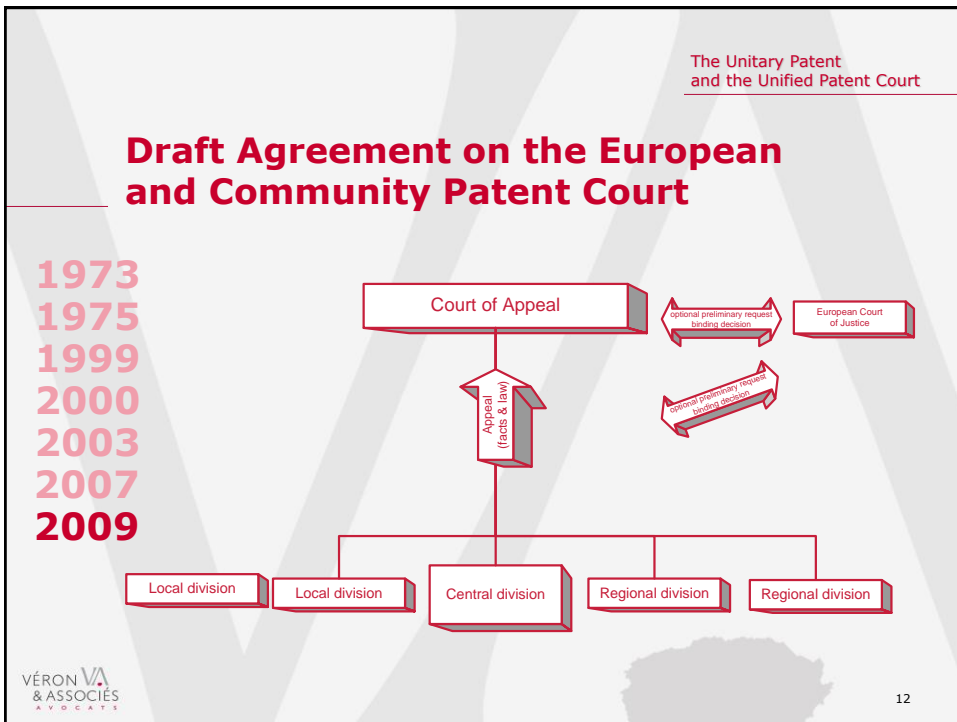
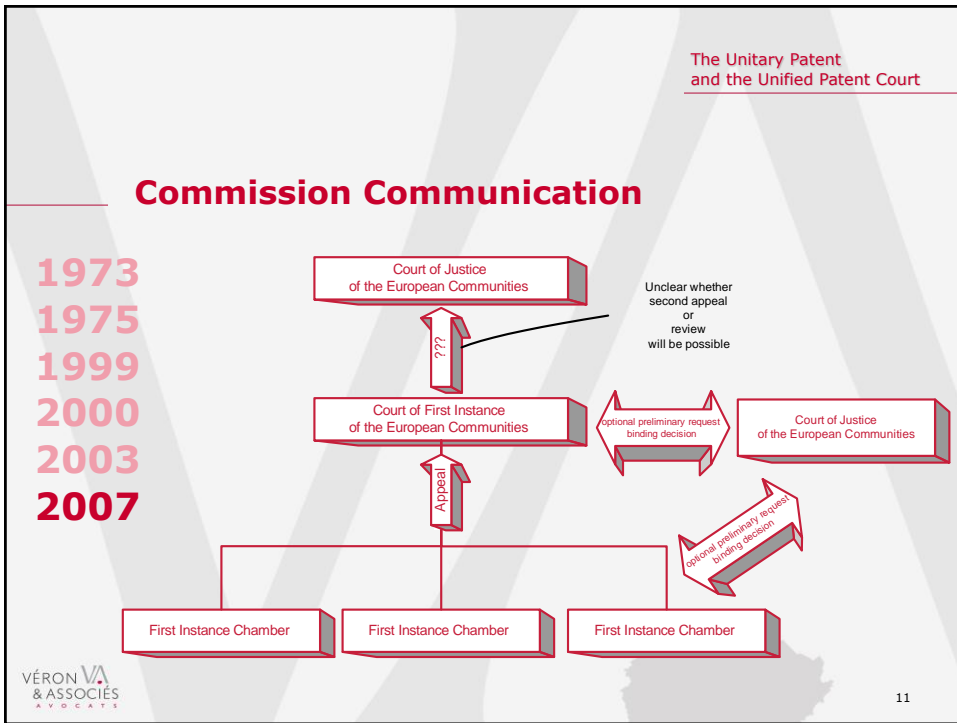
European Patent Court  
of First Instance

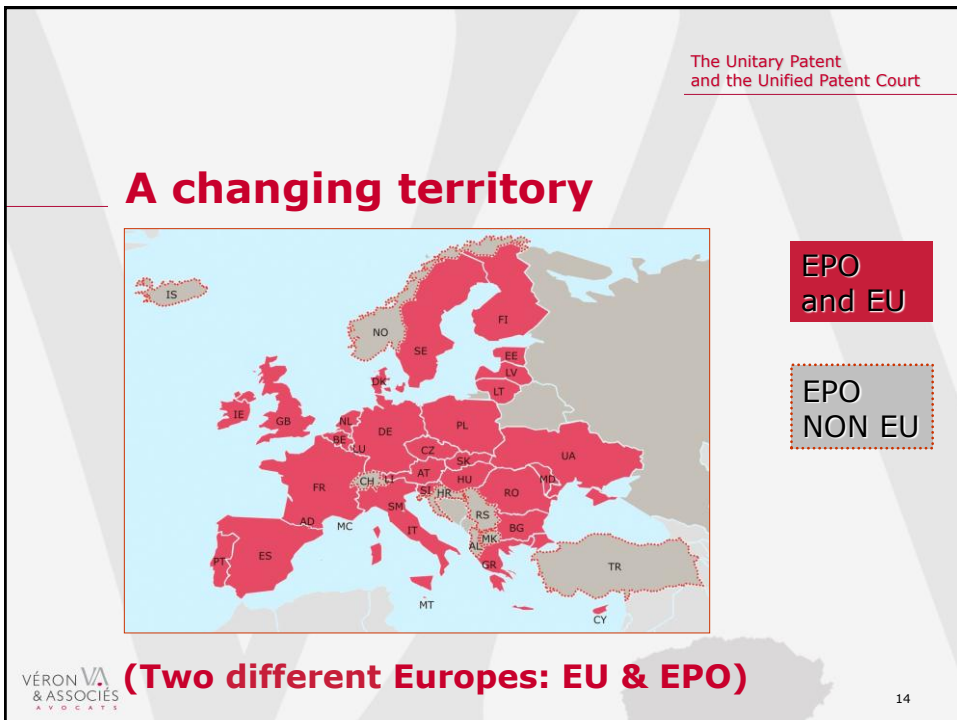
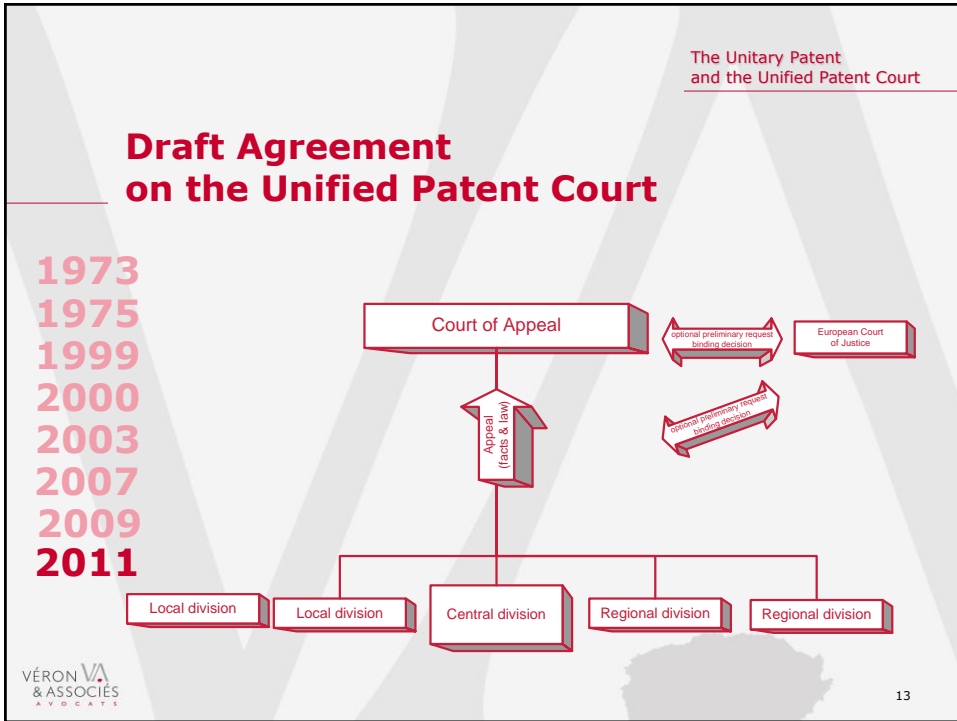
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Detailed description: This slide illustrates the historical development of the European Patent Court. It features a vertical timeline on the left with the years 1973, 1975, 1999, and 2000. The main content consists of two 3D-style rectangular boxes. The bottom box, representing the year 2000, is labeled 'European Patent Court of First Instance'. An upward-pointing arrow labeled 'Appeal' connects this box to the top box, which is labeled 'European Patent Court of Second Instance'. The background has a faint map of Europe.

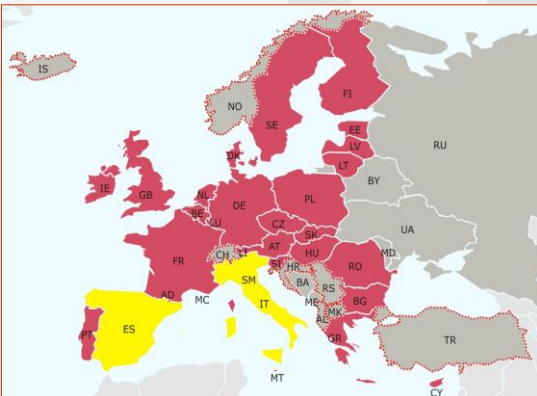






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## A changing territory



**25 UP**  
(EPO + EU + UP)

**NON UP**  
(EPO + EU)

**EPO**  
(NON EU)

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

**(Three different Europes: EU, EPO & UP)**

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## Current state of progress

- 13 April 2011  
 Proposal for a **Regulation**   
 implementing enhanced cooperation in  
 the area of the creation of unitary  
 patent protection
- 26 October 2011  
 Draft **Agreement**  
 Unified Patent Court and draft Statute  
 Revised Presidency text 16023/11

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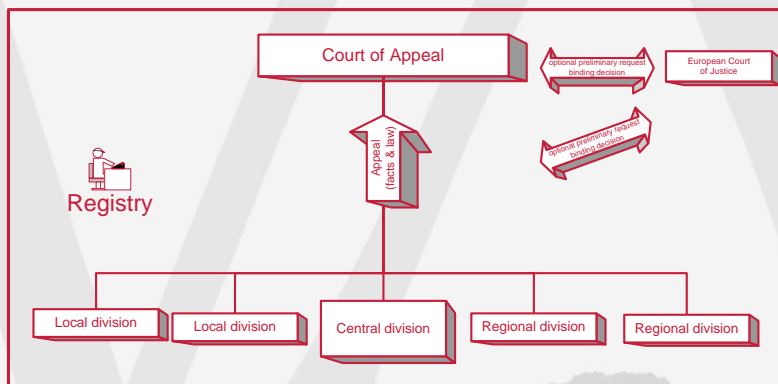
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## Scope of application

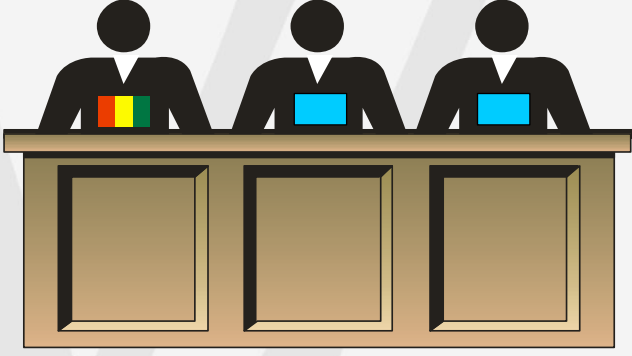
- Community patent
- SPC for a Community patent
- European patent
- Patent application

## 4 & 5 The Court



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**6 (2a)**  
**Panel: 1<sup>st</sup> instance local division**



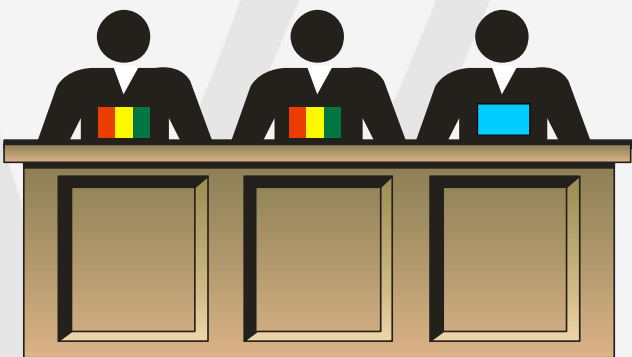
**Member State with < 50 cases**

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**6 (3) & (4)**  
**Panel: 1<sup>st</sup> instance local division**




**Member State with > 50 cases  
or regional division**

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**6 (5)**  
**Panel: Additional technical judge**

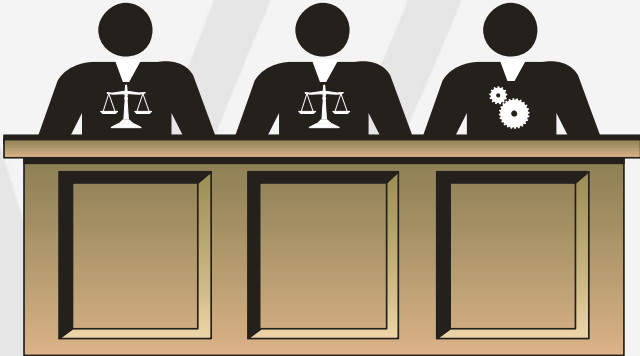


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**6(6)**  
**Panel: 1<sup>st</sup> instance central division**



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## 7 Panel: Court of Appeal



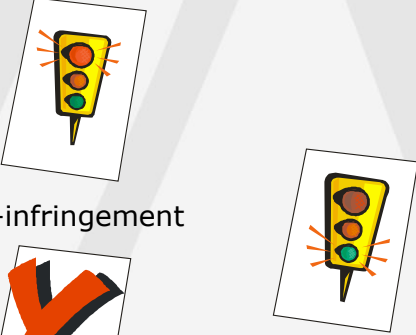

## Applicable law

- 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

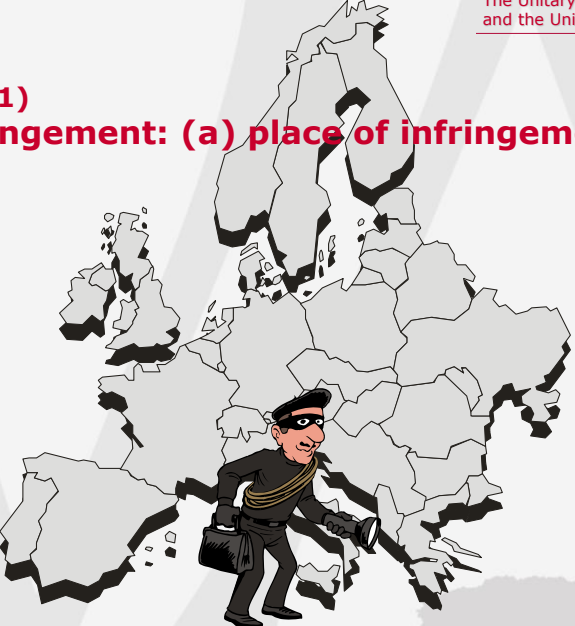



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## 15a (1) Infringement: (a) place of infringement




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



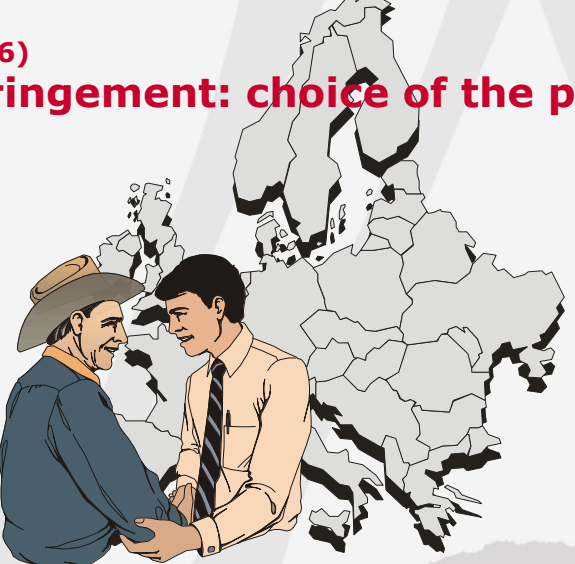
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Detailed description: This slide features a cartoon illustration of a man with a mustache and glasses, wearing a yellow shirt and blue trousers, holding a purple sign that says 'HOME SWEET HOME' with a red heart. He is pointing the sign at a map of Europe. The background consists of diagonal grey stripes. The text 'The Unitary Patent and the Unified Patent Court' is in the top right, and '15a (1) Infringement: (b) defendant's domicile' is in the center. The logo 'VÉRON VA & ASSOCIÉS AVOCATS' is in the bottom left, and the number '27' is in the bottom right.

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**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 cowboy 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 consists of diagonal grey stripes. The text 'The Unitary Patent and the Unified Patent Court' is in the top right, and '15a (6) Infringement: choice of the parties' is in the center. The logo 'VÉRON VA & ASSOCIÉS AVOCATS' is in the bottom left, and the number '28' is in the bottom right.



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## 15a (3) Revocation and non-infringement

Revocation action
Action for a declaration of non-infringement

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## 15a (5) Concurrence of actions non-infringement then infringement

30/06/2012
01/09/2013

Action for declaration of non-infringement Central division
Infringement action Local division

01/01/2012
01/01/2013
01/01/2014

**The action for a declaration of non-infringement before the central division shall be stayed once an infringement action is initiated within three months before local division**

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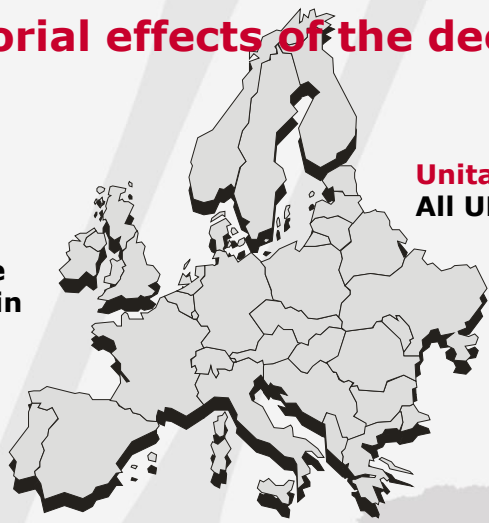
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## 16 Territorial effects of the decision

**European Patent**  
All the countries where the patent is in force



**Unitary Patent**  
All UP countries

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## 27 Plaintiffs

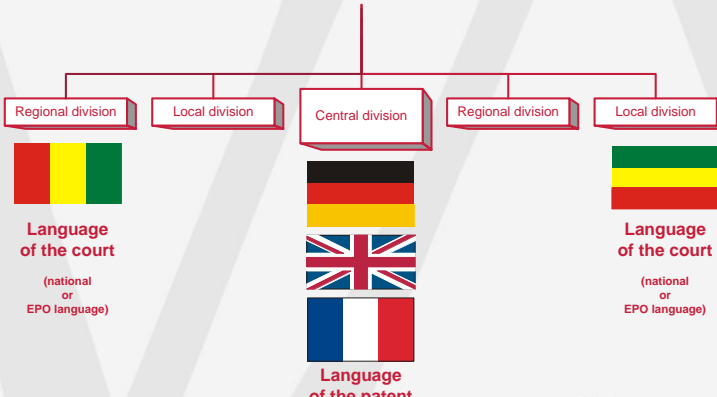
- The patentee
- The exclusive licensee, provided that the proprietor is given prior notice, unless the licensing agreement provides otherwise
- The non-exclusive licensee cannot initiate proceedings but can join them

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## 29 Language of proceedings: 1<sup>st</sup> instance



```


    graph TD
        Root[ ] --- L1[Regional division]
        Root --- L2[Local division]
        Root --- L3[Central division]
        Root --- L4[Regional division]
        Root --- L5[Local division]
        
        L1 --- I1[Italian flag]
        L1 --- I2[Language of the court]
        L1 --- I3["(national or EPO language)"]
        
        L3 --- G1[German flag]
        L3 --- G2[UK flag]
        L3 --- G3[French flag]
        L3 --- G4[Language of the patent]
        
        L5 --- S1[Spanish flag]
        L5 --- S2[Language of the court]
        L5 --- S3["(national or EPO language)"]
    
```

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## 30 Language of proceedings: appeal

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



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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)

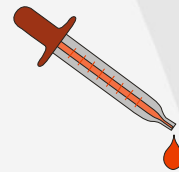
- Preliminary set of provisions for the Rules of procedure of the European and Community Patents Court – 16 October 2009 – unpublished (PSPRP)

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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?**

## Interim conference with the JR?



## Hearing of a witness in person?



## 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?



## Quality and costs?

- Inexperienced local divisions should be avoided
- Inexperienced judges should be avoided
- Rules of procedure should be made available before signature of Agreement
- Court fees should be determined now

## Choice should be available

- Option for parallel national litigation for EP patents
- Longer transitional period
- Termination provisions to be added

## Legal problems

- Rules on infringement should not be EU law
- Legal privilege
- SPC provisions

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## Thank you

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