

● Focus

59 Appearance of the book "Unified Patent Protection in Europe - A Commentary" edited by Winfried Tilmann and Clemens Plassmann



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It is a privilege to be the first to read a new Bible! That word is no exaggeration, because this commentary on the Unitary Patent and the Unified Patent Court just published by Winfried Tilmann and Clemens Plassmann is, indeed, a Bible, a reference-book for all those who have to study and to practice these new institutions.

All along its 3040 pages the book studies and explains in depth, article by article, regulations (EU) No 1257/2012 and 1260/2012 of 17 December 2012 on the European Patent with Unitary Effect, the Agreement on a Unified Patent Court of 19 February 2013, the draft Rules of Procedure of that Court and the supplementary texts gravitating around these planets of the new system (protocol on the provisional application, protocol on privileges and immunities, etc.).

The entry into force of the new system is presently only being suspended by a complaint before the *Bundesverfassungsgericht*, the federal constitutional court of Germany, challenging the compatibility of the new system with the German constitutional principles.

However, all agree that the entry into force of this "patent package" would be the most important event in Europe for patented inventions since that of the European Patent Convention in 1978.

Twenty known authors have cooperated in writing this impressive compendium: some are particularly well-known in the world of patents like the German judges Klaus Grabinski of the *Bundesgerichtshof*, Tilmann Büttner of the *Landgericht* Düsseldorf, and Peter Tochtermann of the *Landgericht* Mannheim, the scholars Jürgen Ahrens, em. professor University Osnabrück, and Jan Busche, professor Düsseldorf University, and patent litigation practitioners as Martin Chakraborty, Martin Fährndrich, Andreas von Falck, Miriam Gundt and Christian Stoll, all lawyers at Hogan Lovells, as well as patent attorneys Christoph Keussen and Max Tilmann.

No one was better qualified than Winfried Tilmann, em. professor at Heidelberg University, to conduct, together with Clemens Plassmann, partner of the international law firm Hogan Lovells, this orchestra of virtuosi: this expert in international patent litigation (who, for decades,

has practiced it first as a judge and then as an attorney) has closely followed the development of the "patent package" for more than 15 years, also as tireless member of the board of the European Patent Lawyers Association, to whose foundation and development he forcefully contributed.

Moreover, he has actively taken part in writing the 382 Rules of the draft Rules of Procedure of the Unified Patent Court which constitutes the first civil procedure code in Europe ever written, since it will be, when entering into force, the first procedural code to be uniformly applied by judges of different nationalities having their seat in different European countries, acting in the name of 27 member states participating in the new system and deciding on patent cases of businesses and individuals; presently designed for patent litigation only, it could later easily be adapted also for other kinds of disputes in the field of commercial law.

Certainly more than its modest title ("*Commentary*") implies, Winfried Tilmann, Clemens Plassmann and the other authors have written a veritable opus magnum.

It includes a historical introduction describing in detail the multiple pitfalls which arose during 40 years on the way leading to the unification of the patent systems in Europe: it discusses, in particular, the complaints brought by Spain and Italy before the Court of Justice of the European Union and the consequences of the referendum of June 2016 in the United Kingdom (Brexit).

But the work deals also with the most complex legal issues (for example, regarding the Agreement on a Unified Patent Court: articles 24 on the sources of law, 31 on international jurisdiction and 32 on the competence of the Court); it proposes answers to questions frequently discussed by practitioners, for example, regarding the law to be applied by the national courts when deciding, during the transitional period, on cases which normally fall under the jurisdiction of the Unified Patent Court (article 83), the authors courageously call into question the position which the preparatory committee of the Unified Patent Court has taken and speak in favour of the application of the Agreement instead of the national law of the court seized.

Indeed, one must compliment the courage of those who have undertaken this formidable work.

Compliments also to the courage of the UK publishing house for its decision to publish the English version of this monumental book (originally written in the German language) at a moment where the complaint before the *Bundesverfassungsgericht*, the Federal Constitutional Court in Germany, is still paralyzing the ratification process of the Agreement on a Unified Patent Court.

What a beautiful sign of hope for the future! Those who have hoped for a long time that this grand design will become reality cannot other than applaud Winfried Tilmann, Clemens Plassmann, the other authors and their publisher.