

US Bar - EPO Liaison Council
29th Annual Meeting
Munich, 18 October 2013

2. Unitary patent protection and
Unified Patent Court

State of play

- October 2013 -

D522 International Legal Affairs
European Patent Office, Munich



The Union's patent package – Legal instruments

- **Unitary patent protection**
 - > EU Regulation No. 1257/2012 of 17.12.2012
 - > Introduction of a European patent with unitary effect
 - > EU Regulation No. 1260/2012 of 17.12.2012
 - > Translation arrangements for the European patent with unitary effect
 - > Entry into force on 20.1.2013
 - > **Applicable**
 - as of the date of the entry into force of the Agreement on a Unified Patent Court



The Union's patent package – Legal instruments

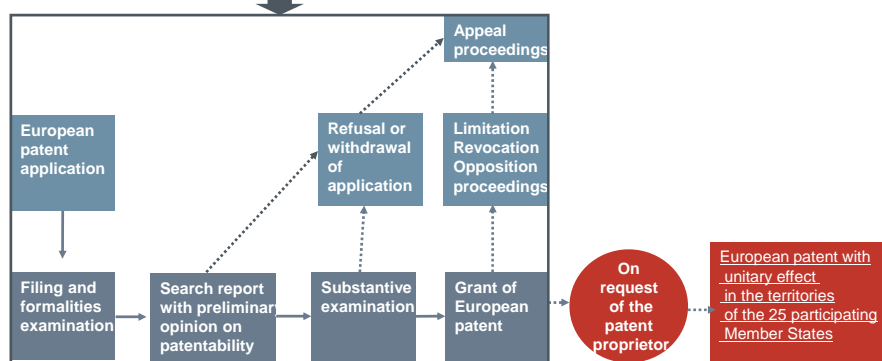
➤ Unified Patent Court

- > Agreement on a Unified Patent Court of 19.2.2013
 - > a court common to the Member States of the EU
 - > specialised in patent litigation
- > Signed by 25 EU Member States
- **Entry into force** 4 months after the deposit of the 13th instrument of ratification or accession
 - including DE, FR and UK
- Target date set by Signatory States : "early 2015"



Unitary patent protection - Concept

Same grant procedure as for a classical European patent



The European patent is deemed not to have taken effect as a national patent in the 25 participating MS

Unitary patent protection – New tasks for the EPO (I)

The participating Member States will entrust tasks to the EPO

1. **Receiving** and **examining** requests for unitary effect
2. **Registering** unitary effect
 - or, where the conditions for obtaining unitary effect have not been complied with, **refusing** requests for unitary effect
3. **Publishing translations** during the transitional period
4. Setting up and maintaining a new "**Register for unitary patent protection**"
 - containing entries re. assignment, transfer, lapse, licensing, limitation or revocation of European patents with unitary effect

Unitary patent protection – New tasks for the EPO (II)

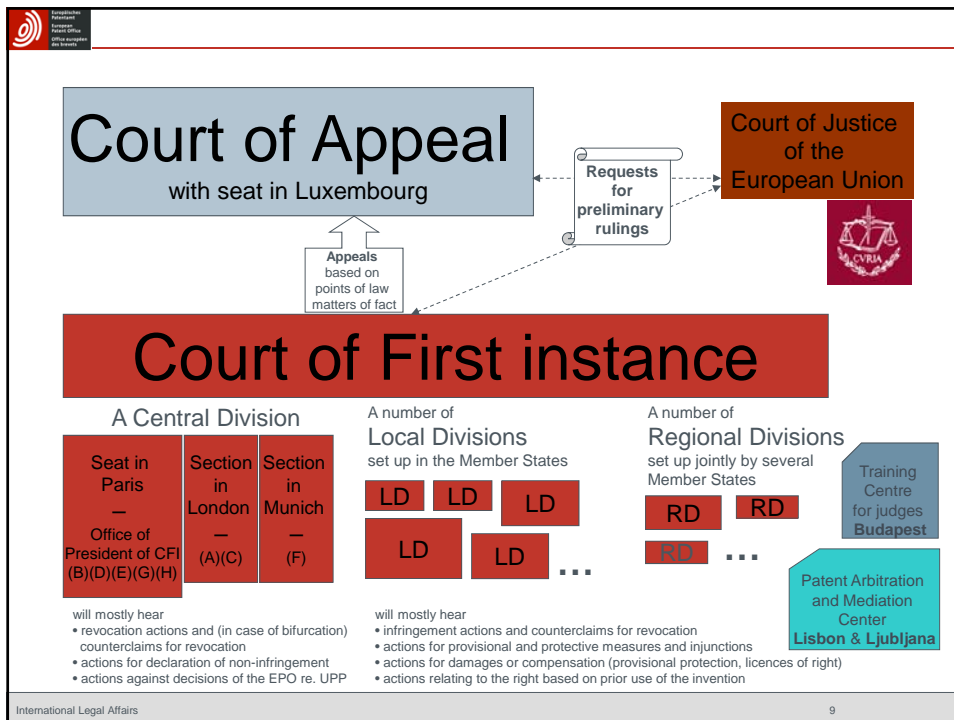
5. Collecting **annual fees** for European patents with unitary effect
 6. **Distributing** part of the annual fees to the participating Member States
 7. Administering a **compensation scheme**
 - reimbursement of translation costs (up to a ceiling) for certain applicants filing applications in an official language of the Union other than English, French or German
- New tasks are deliberately conceived as straightforward *ex parte* registration tasks
- carried out by the EPO on the basis of "internal rules of the EPO"
 - decisions of the EPO re. unitary patent protection may be appealed to the Unified Patent Court

Challenges for the EPO and Member States

- Target date for start of new system: "**early 2015**"
- Member States have set up a **Select Committee** to adopt the legal and financial framework
 - discussion on draft implementing rules has started
 - on the model of the tried and tested rules and procedures in the EPC, incl. remedies such as *restitutio*, additional fee in case of late payment
 - discussion on financial aspects will start soon
 - critical is the overall **financial sustainability** of new system
 - costs for EPO: new tasks, compensation scheme
 - distribution to Member States
 - setting the level of annual fees
 - » **low enough** to be attractive to users
 - » **high enough** to ensure cross-subsidy of European patent grant procedure at the EPO

The Unified Patent Court - Key features

- **Supranational** – but not an institution of the European Union
- Dealing with **disputes between private parties**
- **Specialised** in patent litigation
- Court of First Instance **and** Court of Appeal
- Link with the Court of Justice of the EU, as any national court
- **Decentralised** Court of First Instance composed of
 - > a central Division
 - with seat in Paris and 2 sections in London and Munich
 - > a number of local divisions hosted by EU Member States
 - > a number of regional divisions shared by a group of Member States
- **Centralised** Court of Appeal (in Luxembourg)



The Unified Patent Court - Preparatory work

- > The 25 Signatory States have set up a **Preparatory Committee** which has distributed preparatory work five **subgroups**
 - Legal Framework group
 - Financial Framework group
 - IT group
 - Facilities group
 - Human resources and training group
- > For further details on progress, see a dedicated website launched by the Preparatory Committee, at <http://www.unified-patent-court.org/>
 - roadmap with list of tasks to be dealt with before start of operations
 - public consultation and hearing on the UPC's Rules of Procedure

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UPP and UPC: what you need to think about now

- It's all about choices
 - not only **between**
 - new UPP (which offers protection in 25 MSs + one-stop shop post-grant + protection at the EU's external borders) **or**
 - "classical" EP (validation and maintenance country by country)
 - but also **between**
 - litigation in the UPC (mandatory for UPP) and, within the UPC, between different divisions **or**
 - in national courts (if opt-out and choice of forum during transitional period for EP)
- Need to compare costs UPP-EP
 - but level of renewal fees must be known for complete picture
- Choices must be well informed and adapted to business model
 - no "one size fits all"
- To leave all options open for the time being, make sure that any new EP application designate all 25 EU Member States

Further questions

- More information on the EPO's Website at
<http://www.epo.org/law-practice/unitary.html>
- Questions can always be addressed via e-mail to
International_legal_affairs@epo.org

- **Thank you for your attention**