

Decision in Spanish challenge of Unitary Patent Package on 5 May 2015

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The crucial decision of the European Court of Justice (CJEU) on Spain's objections to the Unitary Patent Package will be delivered on 5 May 2015. The date was published on the CJEU's website earlier this week.



The decision could remove what is widely seen as the last major stumbling block for the creation of the Unitary Patent (UP) and the Unified Patent Court (UPC). Spain seeks annulment of two regulations forming part of the Unitary Patent Package: [Regulation No 1257/2012](#), on the creation of unitary patent protection conferred by a patent and [Regulation No 1260/2012](#), governing the applicable translation arrangements. Spain argues the language regime disfavors those who don't have English, French or German as their mother tongue and is therefore discriminatory. Also, it challenges the use of enhanced cooperation to create the UP system, and the key role which is envisaged for the European Patent Office.

Spain's arguments were rejected last November by Advocate-General (AG) Yves Bot in his Opinion on the cases [C-146/13](#) and [C-147/13](#). Usually, the CJEU follows the AG's Opinion, but this is not necessarily so. As is explained in the [press release](#) on Bot's Opinion: 'The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.'

Supporters of the system, however, reacted with relief on the outcome. Confidence that the system will be approved by the European judges has grown. As the [UPC Preparatory Committee](#) declared: 'The opinion is certainly good news (...) and should provide a boost for Signatory States in their endeavours to implement the package and ratify the Agreement.'

Opponents of the UPC voiced dissent. A recent declaration of about forty IP lawyers and legal experts, '[the dangerous precedent of the patent package](#)', reported on by the [IP.Kat](#), is a clear attempt to induce the CJEU judges to lay aside the AG's decision. Their petition was contested in reactions of [Wouter Pors of Bird & Bird](#) and [Pieter Callens of Eubellius](#).

Dr. Ingve Björn Stjerna, a well-known critic of the UPC Agreement, refuted Bot's Opinion as well. 'Once again, the legal issues are subordinated to the political interest in the implementation of the "Unitary Patent Package", however, based on a widely not very convincing argumentation. Especially the Statement in case C-146/13 largely tries to avoid any contextual debate of the critical aspects raised, e. g. in relation to the adequacy of legal protection at the European Patent Office, while contradictions and misunderstandings occur repeatedly', he wrote in an [article](#).

Even if the CJEU agrees with the AG and decides that the Spanish challenges should be dismissed, not all court battles are over. Last week the European Software Market Association (ESOMA) asked [the Belgian Constitutional Court](#) to block the Unitary Patent.

ESOMA believes that the Unitary Patent 'denies Belgians equality before the law, discriminates on basis of language, violates the separation of powers, and is an illegal political maneuver by the European Patent Office'.

On the organization's website, co-plaintiff Pieter Hintjens, ESOMA founder and chairman, states: 'The sociopathic patent system has attacked US businesses for decades. At least the US Supreme Court can fix the worse offenses. In Europe we will be left defenseless. The Unitary Patent Court is free from all oversight. It is a looming nightmare.'

Nightmare or a dream coming true? Reactions on the outcome of the court cases will undoubtedly be mixed and passionate. About the Belgian case not much is known yet. But 5 May, all eyes in the European patent sector will be focused on the CJEU's decision in Luxembourg.

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