

Fordham Conference 2015 - Unitary Patent and UPC - in practice

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The Unitary Patent and the UPC in Practice

Paul England (Taylor Wessing) described the infringement position under the UPC Agreement and the UP Regulation (1257/2012). He explained that there was concern that the UP Regulation infringement provisions would be referable to the CJEU which was seen as undesirable and these were replaced with Article 5(3).

This article can be interpreted to mean the relevant law is the place of business or domicile of the infringer or German law. However, it can also be interpreted to mean the relevant law is the relevant UP law which has been enacted in the relevant Member State (which loops it back to the UPC Agreement and UP Regulation). The latter interpretation is said to be preferred because it results in uniform treatment of unitary patents, it results in equality of treatment for EPs and UPs and seems to have been the intention behind Article 5(3).

A member of the audience expressed the view that validity and scope are intended to be uniform across the Member States. However, it was pointed out that different laws have different flesh put on them in different countries, so the question remains which tradition is to be preferred, for example on a doctrine of equivalents. The Court of Appeal will be very busy in clarifying such issues.