

Kluwer Patent Blog

Despite the defeat at the CJEU, Spain will not join the Unitary Patent system

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Spain will not change its mind and join the Unitary Patent package, now that the Court of Justice of the European Union (CJEU) has dismissed its legal challenges of the patent package, laid out in the EU Regulations 1257/2012 and 1260/2012 and the UPC Agreement. This is the expectation of the Confederation of Employers and Industries of Spain (CEOE). Spanish industry is much better off outside the system, according to the CEOE, which answered questions by Kluwer IP Law. ‘All Spanish companies will be able to use the system without suffering from the disadvantages.’



Over the last years, the Spanish government has always opposed the new Unified Patent Court and Unitary Patent system. Would the Confederation of Employers and Industries of Spain (CEOE) like this to change now that the European Court of Justice dismissed the Spanish complaints against the system on 5 May 2015?

‘The CEOE has strongly supported the position of the Spanish Government regarding the so called ‘Unitary Patent (UP) package’. In the view of Spanish industry, the proposals adopted in the two EU Regulations and in the UPC Agreement will not be beneficial for most EU enterprises and will be very detrimental to SMEs.

The decisions of the CJEU on the Spanish appeals recognize that the UP system creates discrimination among enterprises in EU member states. This is a very dangerous precedent for the future development of a balanced EU. Therefore, CEOE does not support any change in the Spanish position.’

The main objection of Spain against the system was the language regime. Unitary Patents can no longer be filed in Spanish, but have to be translated in English, German or French. What is the CEOE’s opinion on this issue?

‘The objections of CEOE mainly concern the negative effects that the new system would have on the competitiveness of Spanish enterprises. One of the reasons, but not the only one, is the unbalanced and discriminatory language regime.

Our main aim was that all languages would be accepted for prosecuting European patents with a unitary effect. This could easily have been done, as national patent offices in the EU are currently prosecuting patents in their own languages. Countries not willing to exercise this option, could have opted-out and followed the current trilingual system of the EPO.

The second alternative was to adopt a single language regime (English for example), so all member states would have been on an equal footing. The solution to adopt three official languages, i.e. French, English and German, is certainly the worst solution. This gives a competitive advantage to enterprises which use one of these languages, to the detriment of enterprises of other Member States.’



The lack of democratic control within the European Patent Office was another argument Spain used in its case against the UP system. It seemed to gain importance due to the ongoing unrest at the European Patent Office (EPO) about president Battistelli’s reported autocratic behavior. Has this issue drawn any attention in Spain?

‘The EPO does not work efficiently. There are a lot of problems with the staff and this leads to backlogs that give legal uncertainty to industry. To put the future of the EU patent system in the hands of the EPO before fixing this is irresponsible.

On the other hand one of the main reasons why EPO is inefficient and expensive is the three language system. It would simplify and reduce the costs of prosecuting European patents, if English was the only official language at the EPO.’

Why does the CEOE think Spanish companies are better off outside the Unitary Patent package?

‘All Spanish companies which see advantages in the Unitary Patent system will be able to use it (just like US or Japan companies will do), but will not suffer from the disadvantages. Spanish companies will not be obliged to respect in Spain Unitary Patents which have been granted without a Spanish translation with legal effects. Nor will Spanish companies be exposed to lawsuits over products and activities developed in Spain, before a Unified Patent Court in a foreign country and in a foreign language.’

What about the position of SMEs?

‘Apart from the issues mentioned above, litigation under the UPC will be unaffordable for SMEs. Just have a look at the very high court fees that have recently been proposed by the UPC Preparatory Committee. The fee for invalidation, for example, would be 20.000 euros. On top of that, you have the costs of lawyers, translations, etcetera.

Only big companies will be able to litigate. If SMEs are sued for infringement, they will have to give up, even if the patent of the plaintiff is invalid.’

Initially Italy was opposed to the UP system, just like Spain, but it has recently changed its mind. Do you understand that?

‘As far as we know the change of position of the Italian Government has been mainly due to the strong pressure of big industry. Unfortunately SMEs normally do not have a voice on these issues. In contrast, in Spain, CEOE pays a lot of attention to SMEs point of view. SMEs represent 99% of European enterprises, and two thirds of EU employment.’

Is a change in the Spanish position likely after the general elections in Spain later this year?

‘The CEOE expects and advocates that Spain will remain outside the system, at least until the UPC and the European Unitary Patent have started functioning and one can see how this goes.

We don’t expect the Spanish Government to change its position, neither now nor after the general

elections, whatever the result of those elections will be. The position of Spain regarding the UP and UPC reflects the general interest of the Spanish industry. This should be understood and defended whatever political party is in power.’

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