

Basics of the Unitary Patent system. Part 3: Languages before the Unified Patent Court

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Europe is preparing for the launch of the new Unitary Patent and the Unified Patent Court (UPC). A provisional phase for the UPC is expected to start later this year, with a view to a full start of the system in the spring of 2017. In a series of articles, Kluwer IP Law explains the upcoming changes and the consequences they have for patent practitioners. The third blogpost: languages before the UPC.



1. What are the possible languages of proceedings at the local and regional divisions of the UPC?

The basic rule is that the language of proceedings before a local division of the UPC shall be the national language or (if there is more than one national language) one of the national languages of the Contracting Member State hosting a local division. For regional divisions, it shall be one of the official languages designated by the Contracting Member States sharing a regional division (article 49 (1) UPCA).

In addition to or instead of the official language(s), the Contracting Member State(s) may also designate one or more of the official languages of the EPO (i.e. French, German and English) as the possible languages of proceedings.

In practice, most local divisions shall use their national language(s) and English. E.g. in Germany it shall be possible to choose German or English as the language of proceedings. In the Netherlands there will be the possibility to litigate in Dutch or in English. One of the Contracting Member States with the most language possibilities shall be Belgium. In Belgium, the claimant shall have the possibility to choose as the language of proceedings Dutch, French, German or English. The planned Nordic-Baltic regional division has chosen to only appoint English as its official language of proceedings, excluding its national languages.

The Registrar shall maintain a list of the languages designated by each local or regional division. This list shall be publically available online on the [UPC-website](#) (Rule 14.3. RoP).

2. Who determines the language of proceedings before the Court of First Instance?

In principle, the claimant chooses in its Statement of Claim one of the possible languages of proceedings designated by the local or regional division (Rule 13 RoP).

There is one obligatory, but very exceptional deviation from this rule in case only one local or regional division has jurisdiction, i.e. when a patent infringement only took place in the territory of one local or regional division and the defendant is domiciled in the territory of that same local or regional division. In such a case the claimant has to use the official language of the Contracting Member state (even if that Contracting Member State also offers the opportunity to litigate in one of the EPO languages) as the language of proceedings (Rule 14.2. (b) RoP). If the Contracting Member State(s) of that local or regional division has/have more than one official language the claimant shall have to take into account the national language rules. When a designation of the Contracting Member State so indicates, the proceedings shall have to be conducted in the official language of the region in which the defendant has his domicile or its principal place of business. If there is more than one defendant, each originating from a different language region, the claimant may choose between one of the two languages. Where a designation by a Contracting Member State having several official languages so indicates, proceedings shall be conducted in the official language of the defendant. In case of several defendants each with different official languages, the claimant may choose the applicable official languages. This exception is often referred to as the "Belgian" exception, because it will probably only apply to Belgium. If in a case where the infringement is limited to Belgium, the defendant has its domicile in Flanders, the language of proceedings shall have to be Dutch. If the defendant has its domicile in the French speaking region of Belgium, French shall be the language of proceedings.

Parties and/or the Court can also deviate from the chosen language of proceedings in the following circumstances:

- At any time during the written procedure, the parties may agree to use the language in which the patent was granted, subject to approval by the competent panel (art 49 (3) UPCA and Rule 321 RoP). If the panel does not approve their choice, the parties may request that the case be referred to the central division.

- At any time during the written procedure and the interim procedure, the judge-rapporteur may, of his own motion or on a request by a party, after consulting the panel, propose to the parties that the language of the proceedings be changed to the language in which the patent was granted, on grounds of convenience and fairness (art. 49 (4) UPCA and Rule 322 RoP).

- At the request of one of the parties and after having heard the other parties and the competent panel, the President of the Court of First Instance may decide to use the language of the patent. In this case the President of the Court of First Instance shall assess the need for specific translation and interpretation arrangements (art 49 (5) UPCA and Rule 323 RoP).

3. What shall be the language of proceedings at the central division?

The language of proceedings at the central division shall be the language in which the patent concerned was granted (article 49 (6) UPCA).

4. What shall be the language of proceedings during the appeal proceedings?

In principle, the language of proceedings before the Court of Appeal shall be the language of proceedings that was used in the proceedings before the Court of First Instance (article 50 (1) UPCA).

As in the First Instance proceedings, parties can always agree to use the language in which the patent was granted (article 50 (2) UPCA).

The Court of Appeal itself may decide, in exceptional cases and to the extent deemed appropriate, to use another official language of a Contracting Member State, but this is subject to the agreement by the parties (article 50 (3) UPCA).

5. Does the language of proceedings also apply to the judges?

The basic rule is that the whole proceedings shall take place in the language of the proceedings. Pleadings and other documents, including written evidence, shall all be lodged in the language of the proceedings (Rule 7.1. RoP). However, at the request of Germany the final draft of the RoP now includes an important exception for judges.

The local or regional division can decide that the judge-rapporteur may order to provide that judges may use the official language(s) of the division in the oral proceedings and for the delivery of their decision(s). The decision shall then be accompanied with a certified translation in the language of proceedings.

This means that even if the language of proceedings is one of the EPO languages designated by that division (e.g. English in Germany), the judges may use their official language (i.e. German) for the oral proceedings and for delivering their decision. This exceptions shall only apply if the Contracting Member State has indicated this in the designation of the languages of the division.

6. Do orders of the UPC have to be translated to be enforceable?

Yes. One of the conditions for orders of the UPC to be enforceable is that the claimant has to provide a certified translation of the order into the official language of the Contracting Member State where the enforcement shall take place (Rule 118.8 RoP). This shall e.g. be important in case of an order to preserve evidence (saisie-contrefaçon). The order shall have to be translated by a certified translator in the official language of the Contracting Member State before it can be enforced in that Member State.

Pieter Callens (Eubelius, Belgium) is co-author of the book '[Introduction to the Unitary Patent and the Unified Patent Court](#)'. An updated version of this book shall become available in 2016.

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