Preparing for the Unified Patent Court - Opt out or stay in?

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As the Unitary Patent Court system is expected to start functioning in 2017, proprietors of European patents are faced with the choice to opt some or all of the protection of the Unitary Patent (UP) out of the jurisdiction of the Unified Patent Court (UPC). At the regional and national divisions, judgments will be made by panels consisting of three legally qualified judges. One or two of them will be allocated from a special pool of UPC judges (Article 18(3)). As the Unitary Patent (UP) system is expected to start functioning in 2017, proprietors of European patents are faced with the choice to opt some or all of the protection of the Unitary Patent (UP) out of the jurisdiction of the Unified Patent Court (UPC). At the regional and national divisions, judgments will be made by panels consisting of three legally qualified judges. One or two of them will be allocated from a special pool of UPC judges (Article 18(3)).

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The procedure is that the Court of First Instance will decide within 12 to 15 months. But the fact that the UPC is completely new is certainly an issue. There is no established case law, so observers fear the judgments could lead to unpredictable, with consequences affecting over 400 million consumers in up to 25 European countries. This is especially for regional and national divisions of the UPC which have limited experience with patent litigation.

What other factors should patent holders consider in deciding to opt out or not opt out of the jurisdiction of the UPC? Kluwer IP Law found a lot of interesting comments from patent experts and recommends clicking the links for more extensive reading.

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