

# Kluwer Patent Blog

## Unitary Patents and the Unified Patent Court – Update

Brian Cordery (Bristows) · Thursday, March 7th, 2013

As previously reported on this blog, the new Unified Patent Court (UPC) will bring the biggest change in the patent litigation landscape Europe has ever seen. It will soon be possible to obtain a single court decision effective across the whole of a market worth around €10 trillion. The UPC will have jurisdiction over not only the new breed of Unitary Patents, but also traditional European Patents, whether already granted, or to be granted in the future. This short piece reports the latest developments in the implementation of this new regime in Europe:

- On 19 February 2013, the agreement to create the Unified Patent Court was finally signed by 24 of the current 27 states – all except Spain, Poland and Bulgaria, and with Bulgaria expected to follow relatively soon (the Bulgarian Government recently resigned, and this doubtless explains Bulgarian delay). Spain opted out due to concerns over the proposed language regime. Poland has concerns over the costs of implementing the agreement and the potential adverse effect on its economy. There is little prospect of either Spain or Poland joining the system any time soon.
- The ratification process now begins. The Commission's (rather optimistic) position is that ratification will be effected by sufficient states (i.e. UK, France and Germany plus 10 others) by November 2013, so that the system can be up and running by April 2014. Some countries, however, are predicted to be slow to ratify. One important country at least seems intent on doing so swiftly, namely France. At a conference on 18 February it was announced that ratification legislation would be presented to the National Assembly within a matter of days following the signing ceremony, with a view to completing the process before the end of the year. We await with interest how quickly other states follow.
- One vexed question was the meaning of the transitional provisions of the UPC under which patentees can opt out their existing European Patents, and those applied for in the coming years. Many had understood that the intention was that after a transitional period, these existing EPs would have to be litigated in the UPC: there would be a period of seven years when they could be opted out, but after that, the opt out would lapse. On 18 February 2013, the Commission clarified its position, stating that the opt out is intended to be for the life of the patent:

*“During a transitional period of 7 years, actions for infringement or for revocation concerning “classical” European patents without unitary effect can still be brought before national courts. A proprietor of or an applicant for a European patent granted or applied for prior to the end of the transitional period will also have the possibility to opt out from the exclusive competence of the*

*Court (unless an action has already been brought before the Court). To this end they shall notify their opt-out to the Registry by the latest one month before expiry of the transitional period. The transitional period may be prolonged up to a further 7 years by the Administrative Committee (decision making body within the court system composed of one representative per Contracting Member State).”*

It remains to be seen, of course, whether the UPC and indeed any national Courts who have to consider this question will agree. There is also a remaining concern that the power to opt out is to opt out of the *exclusive* competence of the UPC. Does this mean it retains non-exclusive competence shared with national courts? Only the Courts can decide those issues.

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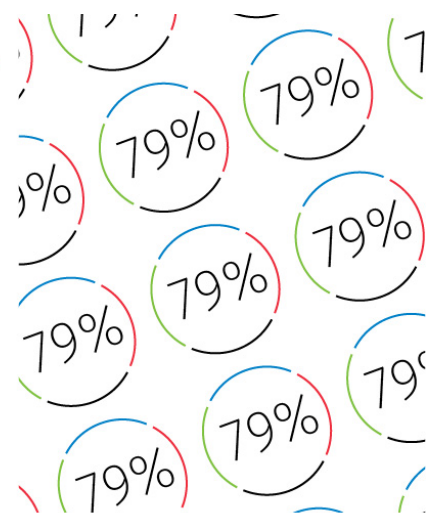
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