

Kluwer Patent Blog

Kluwer Patent Blog Poll

Rik Lambers (Brinkhof) · Thursday, April 24th, 2014

At the Kluwer Patent Blog we keep our fingers on the pulse of patent litigation. With their trained fingertips our contributors measure the heart rate of new case law and developments from their various countries. When the normal and regular rhythm changes to an irregular pulse, they are ready to post their findings on this blog.

Once in a while we like to take a poll instead of the regular pulse. Instead of reporting on what *we* think of recent developments, we ask *your* opinion on the current patent beat: with another Summer on the horizon it is the time for the second [Kluwer Patent Blog poll](#).

This time we would like your opinion on what has made many readers' hearts skip a beat the past months (well, the weak at heart at least): the applicability of the Agreement on the Unified Patent Court on opted-out patents.

This issue has rendered many opinions, including [an interpretative note of the UPC's Preparatory Committee](#) and [this \(reactive\) post](#) from the Hoffman Eitle firm on this blog. If you need to refresh your memory, we suggest to read this contribution and then make up your own mind to answer the poll's question below.

In short, the Unified Patent Court Agreement ('UPCA') provides for substantive law provisions in Chapter V (e.g. as regards indirect infringement). These provisions may differ from the applicable provisions under the national laws of the contracting states. Art. 83 (1) UPCA allows for infringement or revocation actions of European patents to be brought before national courts during a transitional period, while Art. 83 (3) UPCA allows for applicants or patent holders to opt-out from the exclusive jurisdiction of the Unified Patent Court. The Preparatory Committee thinks the opt-out provision also entails an opt-out of substantive UPCA law, i.e. national courts should apply their applicable national law. Some commentators have a different opinion for reasons set out in above mentioned post of our contributors.

What do you think? To get a readable pulse rate we would like to have your Yes or No on the following proposition (your whys and wherefores are more than welcome in the comment section to this post):

National courts should apply the substantial provisions of the UPCA on a European patent which is opted out from the UPCA.

The poll is accessible below. You may also access the poll in the upper right corner of this website. Your responses are anonymous, although you may include your name and email address at the end of the poll, if you wish. The poll will remain open through July 1st 2014. We will compile the results in a special Summer post on the Blog.

[SURVEYS 2]

To make sure you do not miss out on regular updates from the Kluwer Patent Blog, please subscribe [here](#).

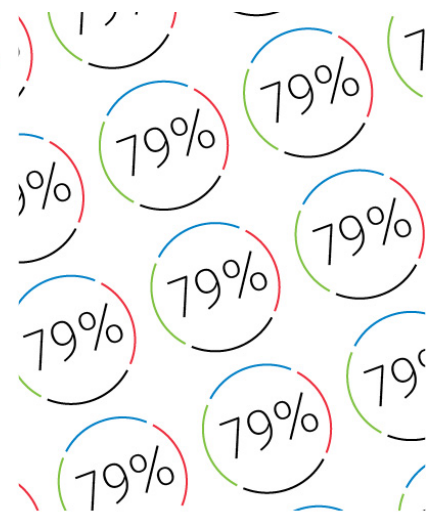
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