

# Kluwer Patent Blog

## Boost for Unitary Patent Package: CJEU dismisses Spanish challenge

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The European Court of Justice (CJEU) has just rejected Spain's challenge of the Regulations No 1260/2012 and No 1257/2012.

The eagerly awaited decision in the cases C-146/13 and C-147/13, implementing enhanced cooperation in the area of the creation of unitary patent protection, means an important obstacle for the creation of the Unified Patent Court and the Unitary Patent has been removed.

According to the CJEU's [press release](#), in Case C-146/13, Regulation (EU) No 1257/2012 'Spain contests (inter alia) the legality, in the light of EU law, of the administrative procedure preceding the grant of a European patent. It argues that that procedure is not subject to judicial review to ensure the correct and uniform application of EU law (...).

The Court rejects Spain's argument by pointing out that the regulation is in no way intended to delimit, even partially, the conditions for granting European patents – which are exclusively governed by the EPC – and that it does not incorporate the procedure for granting European patents laid down by the EPC into EU law. Instead, that regulation merely (i) establishes the conditions under which a European patent previously granted by the European Patent Office pursuant to the provisions of the EPC may, at the request of the patent proprietor, benefit from unitary effect and (ii) provides a definition of that unitary effect.'

The Court finds that Article 118 TFEU (Treaty on the Functioning of the European Union) concerning the uniform protection of intellectual property rights throughout the European Union is an adequate legal basis for the regulation. Also, it rejects Spain's point that the power to set the level of renewal fees and to determine the share of distribution of those fees cannot be assigned to the Member States acting in a select committee of the Administrative Council of the European Patent Organisation.

As to Case C-147/13, Regulation (EU) No 1260/2012, concerning the applicable translation arrangements, the CJEU 'acknowledges that the regulation differentiates between the official languages of the EU. However, it emphasises that the regulation has a legitimate objective, namely the creation of a uniform and simple translation regime for the EPUE so as to facilitate access to patent protection, particularly for small and medium-sized enterprises.

The complexity and particularly high costs of the current European patent protection system

constitute an obstacle to patent protection within the EU and affect adversely the capacity to innovate and compete of European businesses, particularly small and medium-sized enterprises.

The Court emphasises that the language arrangements established by the regulation make access to the EPUE and the patent system as a whole easier, less costly and legally more secure. The regulation is also proportionate, as it maintains the necessary balance between the interests of applicants for EPUEs and the interests of other economic operators in regard to access to translations of texts which confer rights, or proceedings involving more than one economic operator, by introducing a number of mechanisms (including a compensation scheme for the reimbursement of translation costs, a transitional period until a high quality machine translation system is available for all the official languages of the EU, and a full translation of the EPUE for operators suspected of infringement in the event of a dispute).’

On 18 November 2014, Advocate-General Yves Bot, in his Opinion on the cases ([here](#) and [here](#)), had already advised that the Spanish complaints should be rejected.

An analysis of today’s decision of the CJEU will be published on this blog shortly, when the full text is available.

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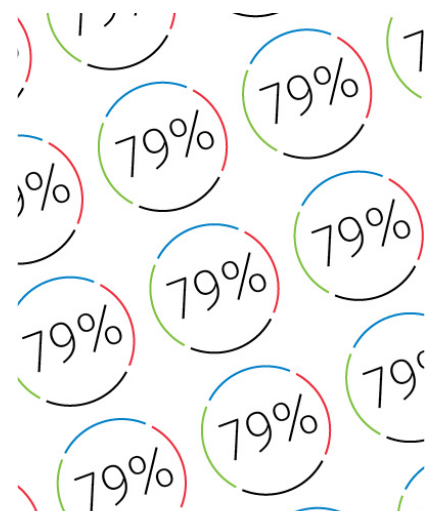
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