

Kluwer Patent Blog

European (Unitary) Patents and changing borders

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Secessionist pressure grows in Catalonia, after regional elections on 27 September 2015 (qualified as an informal referendum on independence) were won by supporters of an independent Catalonia. In Scotland supporters of independence have been far from silenced since they lost a referendum on the same issue last year.



Kluwer IP Law found the following [article](#) by Francisco Moreno, Head of the Francisco SME Legislation and Policy Area in the Spanish Ministry of Industry, Energy and Tourism, on his (Spanish language) personal blog patentes.wordpress.org interesting in this respect of changing borders.

By Francisco Moreno

What happens to patents when a state falls apart (Czechoslovakia, USSR, Yugoslavia), when two states are united (Germany), when a part of a state declares independence (Kosovo) or when a part of a state passes to another (Crimea)? And do the leaders of Scotland and Catalonia consider patents in their plans of independence?

States falling apart

Curiously, patents existed behind the Iron Curtain. In the USSR they were abolished by Lenin, but reintroduced later, although in practice only foreigners who wanted to protect their inventions in the Soviet Union applied for patents. The USSR was a PCT member since 1978.

In May 1991, during the Perestroika, a western-style patent law was adopted. It had very little effect however, as in December 1991 the USSR ceased to exist. Soon after that, Russia formally applied at the WIPO to be recognized as the successor of the USSR, which happened.

On Christmas 1991, Russia and six other former Soviet republics signed an agreement in Minsk to recognize patents and to maintain international obligations assumed in the USSR era.

Other former Soviet republics, such as Lithuania, simply created a mailbox to deposit patent applications pending the opening of a national patent office and ratified the WIPO treaties as soon as possible.

The Minsk agreement resulted in the creation of the Eurasian Patent Convention, which provides a

system similar to the current European patent system. Ukraine signed but never ratified the Convention and ceased to be a member in 2014 after the annexation of Crimea by Russia.

The former states of Yugoslavia found different solutions. Several declared themselves successor states, others announced treaties would remain in force in their territory. As to patent protection, there were varying solutions as well. Croatia protected former Yugoslav patents by offering the possibility to re-register them in Croatia. It seems that in Slovenia Yugoslav patent law was applied until the government passed a new one.

In Czechoslovakia the Czech Republic and Slovakia simply declared to the WIPO that treaties signed by Czechoslovakia would be respected (1993).

Unification

The German ‘reunification’ of 1990 was in fact the dissolution of the German Democratic Republic (GDR) and the inclusion of its territory in the Federal Republic of Germany (FRG). Rights and obligations of western Germany, for example the membership status of WIPO or EPO, extended to the territory of the former GDR.



In 1992 legislation was introduced to extend the effect of patents filed before reunification to the whole of the country. The last East German patent, filed on 2 October 1990, expired in October 2010.

Kosovo broke away from Serbia in February 2008 by a unilateral declaration of independence. The United Nations does not recognize it as a state, so it cannot be party to the WIPO treaties. Nor does it have any formal relationship with the EPO. However, the Kosovo Patent Office recognizes a grant by the EPO as evidence of patentability.

Annexation

In March 2014, Crimea declared independence and after a referendum the peninsula formally joined Russia. By law, Russia recognizes Ukraine’s patents only if the owner adopts the Russian nationality or agrees with being registered as a Russian company. This could only be done during a short period, that ended on 1 January 2015.

Aspirations for independency: Scotland

In 2013 the Scottish government drew up a plan which said it would continue protecting IP in a future independent Scotland. In the plan, the UK system was qualified as bureaucratic and expensive and a proposal was made to introduce utility models.




It wasn’t clear from the plan whether Scotland wanted to create its own IP office and hire examiners or if it wanted to outsource examination (e.g. to the bureaucratic and expensive

UKIPO). Neither was there any mention of unilateral recognition of UKIPO patents or patent applications or whether Scotland wanted to join the EPO and the Unitary Patent.

Last year, EPO president Benoît Battistelli said that Scotland would have to apply for EPO membership and that the membership process would take time since it requires an invitation from a two third majority of EPO member states. Battistelli suggested that Scotland could temporarily be a ‘validation state’ (like Morocco, Tunisia and Moldova). Since EPO (and EU) membership is a precondition for joining the Unitary Patent (UP), in the short term this doesn’t appear possible for Scotland.

Catalonia

The Government of Catalonia has said it would be entitled to declare independence if  secessionist political forces obtained an absolute majority in the elections for the regional parliament.

How would Catalonia arrange IP protection? It seems clear it would want to join the Unitary Patent. In the ‘[Chronicle of a premeditated offensive](#)’ [my comments in brackets], the Government of Catalonia affirms:

‘The State [Spain] is not affiliated with the European Patent [with Unitary Effect], a fact that has an impact on Catalan companies, which tend to have more international scope. The Spanish Government does not wish to adhere to the Unitary Patent because it is only published in English, German and French [Spain would have accepted a system in which Spanish was one of the languages, like at the OHIM, or an ‘English only’ system].

This issue is a major grievance for Catalan companies, which are more international, as they have to request a patent in Spain along with an international patent [This is not true: a granted European patent can have effect in Spain].

This means they have to submit two applications and go through two registration processes, as well as paying twice, while for example a French company only has to submit one application [Incorrect: it is not necessary to file two applications. If a European Patent has been granted to a company and it wants protection in the UP states and in Spain, it has to pay a fee to the EPO for protection in the UP states and a lower fee to the Spanish IPO for protection in Spain. But this is the same for a company in Madrid, Barcelona or Lille].’

Also, the program of the secessionist ‘Junts pel Sí’ – Together for yes – states: ‘*We want to join the Unitary Patent, the European Patent Convention, the EPO and the WIPO.* [the order should be the other way around: first join the WIPO (you need the OK from the United Nations Security Council), then the EPO and then the UP].’

And: ‘*We will assume all kinds of IP protection and publish all decisions about applications and decisions to grant protection in the Official IP Bulletin.*’

However, this doesn’t make clear whether:

1) Patents will be granted with or without prior examination. The former would require relatively high investments, outsourcing examination to another office or unilaterally recognizing the validity of patents granted by another office; the latter would require little more than buying a stamp

“GRANTED”;

2) Pending patent applications or patents granted by the Spanish Patent and Trademark Office (OEPM) will have effect in Catalonia and under what conditions (e.g. translation into Catalan).

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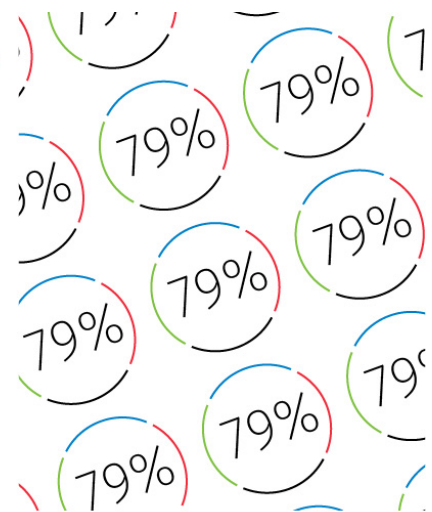
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