

Kluwer Patent Blog

First developments at the Unified Patent Court

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The first two substantive public hearings of the Unified Patent Court will be held next month at the local division in Munich about applications for provisional measures.

The hearings, on 5 (and if necessary 6) September and 19 September 2023, concern applications for preliminary injunctions in infringement cases brought by 10x Genomics against Nanostring Technologies. According to a UPC announcement, ‘immediately before the second oral hearing on 19 September, the newly appointed technically qualified judge, Mr Udo Matter, will take his oath in open court.’ He is one of 21 new technically qualified judges that were appointed in June 2023.

It is one of the many ‘first time’ developments at the UPC, which opened its doors in June. Over 50 cases have been initiated at various but predominantly German divisions, although the court is still struggling to present all information on its site in a satisfactory, transparent way. The complicated case search facility requires users to choose the type of proceeding they want to find (Proceeding, Application, Appeal, Order), and in any of these four options a new choice has to be made, between 15 types of proceedings, 37 types of applications, 9 kinds of appeals and 11 kinds of orders.



Also, as was pointed out in IAM Media, ‘the system does not inform the user which local division will hear each suit nor which judges have been appointed to individual actions. (...) Another frustration, both for users of the CMS and the public system, is the delay between the filing of cases and their acceptance and publication by the UPC.’ Recently a separate search facility for Orders and Decisions has been launched.

An alternative for the UPC’s own information, is the website launch by Dutch patent attorney Joeri Beetz: ‘Search UPC – easy access to UPC and EPO register data’. Here one can choose to search for all or specific kinds of proceedings (infringement, revocation, provisional application) and/or for cases concerning a specific representative, company (although it seems something goes wrong there. When choosing for Panasonic, for instance, only one case pops up, whereas there are twelve. **UPDATE 28/8:** this has now been corrected). Also, one can search for patents and what the state of affairs is concerning opt outs, oppositions and UPC cases. The most recent case published on the site dates from 18 August 2023. At this moment, 35 infringement proceedings have been started,

six revocation actions and two actions for provisional application, according to the site.

Mobile communication and SEPs

The first cases filed at the UPC include 12 infringement claims from Panasonic against various subsidiaries of Oppo and Xiaomi, in the first major dispute over mobile communications and SEPs. They were filed at the local divisions in Mannheim and Munich. In a press release, Panasonic stated it expects ‘relevant actions will develop and proceed in parallel in Germany, the United Kingdom (UK), the newly established European Unified Patent Court (UPC) and China’.

Settlement

As was pointed out in an [article of EIP Amar](#), ‘many of the parties involved in (...) initial infringement actions are pairings familiar from litigation already being fought in UK, Germany or US, such as Edwards Life Sciences against Meril, Ocado against Autostore and Amgen against Sanofi / Regeneron’.

In June, Ocado filed three claims against AutoStore at the UPC local divisions in Milan and Düsseldorf and the Nordic-Baltic division in Stockholm. But on 22 July the two parties [announced a settlement](#) in their global patent dispute, ([described more in detail by JUVE Patent](#)), which had been running for some years already in the US, UK and Germany. It is not unthinkable the prospect of further litigation and associated costs at the UPC influenced the decision – although this remains speculation.

Milan and preservation of evidence

The reasoning behind two ex parte orders to preserve evidence, issued by the Milan local division on 13 and 14 June 2023 (Oerlikon vs Himson, [one](#) and [two](#)), reflects a strong influence of the Italian colour local associated with *descrizione*, [according to a Bird & Bird article](#). ‘The decision to grant the measure ex parte, and the dispensation of a security requirement, are commonly seen in Italian orders granting *descrizione*.’ [IP Watchdog points out](#) the cases were resolved in one day and concludes the ‘Milan Local Division is proving to be efficient, despite initial skepticism about Italian UPC court time decisions’.

Protective letters

In the case *MyStromer v Revolt Zycling* (UPC_CFI_177/2023) the UPC’s local division in Düsseldorf [ordered a preliminary injunction](#), despite the fact that Revolt had filed a protective letter. Belgian IP firm Inteo [commented on the case](#): ‘The Court also holds that the patent’s validity is sufficiently certain for a preliminary injunction, considering no relevant prior art was presented in the protective letter and that no opposition or national revocation actions had been filed. (...) But the order warns that you better present serious arguments, ideally including invalidity arguments and prior art if these are available, if you want a protective letter to be successful.’

According to Inteo, the ‘injunction issued by the Court covers Germany, the Netherlands, France and Italy. The territorial scope provided for an interesting wrinkle’. The patent at stake ‘is in force in Austria, Switzerland, Germany, France, Italy, Liechtenstein and the Netherlands. While Switzerland and Liechtenstein are not UPC jurisdictions, Austria is.’ A mistake of MyStromer, which filed a request for rectification under Rule 353, arguing that the omission of Austria was a

manifest error *in the decision*. ‘But the Court would have none of it, finding that the order was issued based on MyStromer’s request, which did not cover Austria.’

Unitary effect

Finally, the other component of the Unitary Patent Package: the European Patent Office (EPO) has published a dashboard that reveals the leading sources of requests for unitary effect, as well as in which of eight broad technology sectors these patents are classified.

At the moment 7740 requests for unitary effect have been received, 7262 Unitary Patents have been registered. 20,6% concern infrastructure and mechanics, 19,4% materials and production, 18,9% health, 11,7% electronics and physics, 11,5% digital, 8,6% mobility and space technologies, 6,5% energy.

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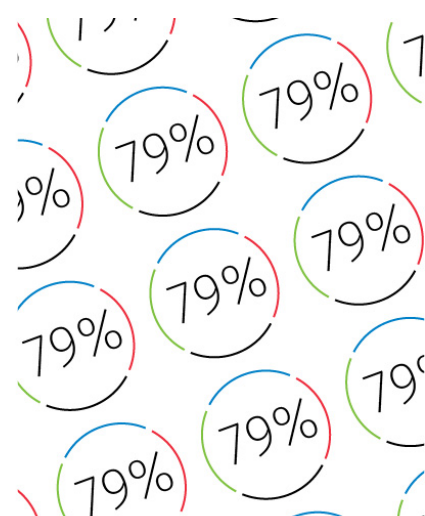
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