

Kluwer Patent Blog

‘Unitary Patent system is an earthquake in slow motion’

Kluwer Patent blogger · Thursday, October 26th, 2023

The Unitary Patent system is doing much better than expected, with almost 80 cases in the first six months and about 20-25% of new European patents converted to UPs, according to Paul England. He is senior counsel at Taylor Wessing and co-author of the [Practitioner’s Guide to the Unified Patent Court](#) and the [Practitioner’s Guide to European Patent Law](#) (2d edition). Kluwer IP Law interviewed him and asked what his first impression was of the functioning of the system, which entered into force on 1 June of this year.

‘I was cautiously positive before the court began, but it has exceeded my expectations: I remember predicting that there would be 80 cases in the first year, but we are approaching that number in the first six months. I was less confident about Unitary Patent uptake, but this too is proving popular: I estimate about 20-25% of new European patents are being converted to UPs. This is excellent.

Another indicator of early success is the diversity of users. These range from small companies to big family names and they are operating across numerous technology sectors.

Someone commented to me that the UPC is an “earthquake” in the patent landscape. Perhaps a slow-motion earthquake is more accurate, but you get the picture.’

What are issues and decisions you’re particularly looking forward to? Have there been surprises so far?

‘There haven’t been any big surprises so far – everything has been dealt with as would be expected from the rules and I have been impressed with the pragmatic and sensible approach taken by the judges. I do think a better balance needs to be struck on access to pleadings and evidence. With one exception, requests for these have been rejected so far but the default ought to be that they are allowed unless there are specific reasons for protecting the confidentiality of the document concerned. However, this balance will hopefully come from the Court of Appeal.



There are all sorts of substantive patent law decisions that I am looking forward to seeing, such as

on scope of protection of claims, but we will have to wait for these to come out next spring after the first oral hearings. In the meantime, as an English lawyer, I am looking out for someone to try a ‘long-arm’ preliminary injunction that reaches the UK. But I haven’t seen one yet!’

Are there differences in the way the many local and central divisions operate and/or decide? Or is it too early to say?

‘It is early days, but I am interested to see if the other divisions follow the model that has been set by the Munich local division on preliminary injunctions. This court has made a good start on these and in particular it has been clear that the approach being taken is its own UPC approach. That is important at this early stage because it underlines that the UPC is a new jurisdiction and not captive to the way any one country does things. Hopefully the other divisions will follow suit.

It remains to be seen, but I do think there will be significant differences between the local divisions on how they handle expert evidence: whether they will rely on party appointed expert evidence seriously, given the expert duties in place, or whether they will rely on the technical judges or a court appointed expert. The first option is much to be preferred given the importance of detailed and comprehensive expert evidence in patent cases, particularly on validity.’

You’re based in London. As a specialist in a non-UPC-member state, how does the new system influence your activities?

‘The UPC occupies a great deal of my time now, often all of it, and I see myself as a UPC lawyer first and an English lawyer second. Indeed, all the Taylor Wessing European patent offices, including London, are now operating as a single, closely integrated UPC team that covers the whole system. Advising that team and our clients on UPC actions, after years of preparing for the court, has been a new and exciting turn in my career.’

Apparently, many cases are being filed in the German language, also the German divisions are most popular. What is your view on this German predominance in the system?

‘I think the popularity of the German divisions is in part a continuation of the large volume of cases that have always been filed in the German national courts. Many of them are quite local to Germany. It may also be because plaintiffs are accustomed to the German bifurcated system, where plaintiffs have a procedural advantage. Although that system is not replicated in the UPC I think the perception of plaintiff advantage has carried over.

I also think the other divisions will catch on, such as the Hague local division where the judges have huge experience of infringement and validity.’

A lot has been said about the CMS of the UPC. What improvements would you like to see?

‘It is predictable of course that any new IT system will have teething problems, particularly one as complex as this. The judges seem to be handling it well however and it will improve over time. More difficult is the public part of the CMS, which I think could be improved by an increase in transparency and smoother navigation of the user experience.’

Which prediction about the Unitary Patent system has proved completely wrong?

‘That parties would avoid it.’

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

Kluwer IP Law

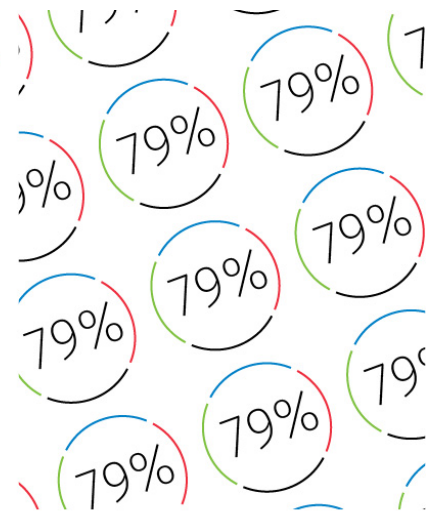
The **2022 Future Ready Lawyer survey** showed that 79% of lawyers think that the importance of legal technology will increase for next year. With Kluwer IP Law you can navigate the increasingly global practice of IP law with specialized, local and cross-border information and tools from every preferred location. Are you, as an IP professional, ready for the future?

Learn how **Kluwer IP Law** can support you.

79% of the lawyers think that the importance of legal technology will increase for next year.

Drive change with Kluwer IP Law.

The master resource for Intellectual Property rights and registration.



2022 SURVEY REPORT
The Wolters Kluwer Future Ready Lawyer
Leading change

This entry was posted on Thursday, October 26th, 2023 at 6:55 pm and is filed under [Patents](#). You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.