

Kluwer Patent Blog

Top ten of most popular articles of 2023

Kluwer Patent blogger · Saturday, January 6th, 2024

The Unified Patent Court, what else? For the patent community 2023 was a historical year. After two decades of hard work and debates, but also delays, court cases, Brexits and other disappointments, the new European patent court finally opened its doors and the Unitary Patent saw the light of day. Unsurprisingly, the new patent system is one of the main topics figuring in the top ten of best-read articles the Kluwer Patent Blog published last year.



photo DilokaStudio, Freepik

Number 10 in the list, an article by Oswin Ridderbusch and Alexa von Uexküll of Vossius & Partner discusses the [First changes to ongoing SPC reform outlined by European Parliament](#). As the article sets out, ‘there will be considerable pressure to finalize and adopt the SPC reform before the next European elections which take place in June 2024.’ After explaining which changes are envisaged, the article concludes: ‘It remains to be seen to what extent these modifications will be finally endorsed by the European Parliament’s JURI Committee and also what amendments are envisaged by the Council of the EU. In particular, it may be expected that the highly controversial pre-grant opposition system and possibly also the handling of invalidation actions against unitary SPCs by the EUIPO could still be put into question.’

In **number 9**, [BREAKING: The EPO is able to listen](#), Thorsten Bausch of Hoffmann Eitle points out with irony a problem which has earned the EPO many top ranking articles on this blog over the last decade: its habit of ignoring criticism or input from staff members and representatives and users, about a wide range of issues. According to the article, this time the EPO is listening: ‘...well, at least the EPO’s Boards of Appeal, represented by their President Mr. Josefsson, are. Mr. Josefsson announced in the Boards of Appeal and key decisions 2023 conference just a few minutes ago that in view of the feedback received by users (...) he will no longer pursue the planned shortening of the period for replying to the grounds of appeal.’

8, 7, 6: Unified Patent Court

Number 8, [‘Current level of transparency at the Unified Patent Court is far below standard’](#), is one of the articles in our top ten which is dedicated to the UPC. The interview with Dutch and European patent attorney Joeri Beetz touches upon an issue which is broadly seen as a problematic feature of the new court: its IT system. ‘The official UPC website has improved a little bit in recent weeks, but it is still very difficult to see what cases are pending, and impossible to see what they are about. Only some decisions are partly published, but certainly not in a structured way that allows for proper analysis by the general public. Authorised and registered representatives can see a bit more by entering the non-public CMS, but also for them 99% of the documents submitted to the Court are inaccessible.’

In [The UPC is dead. Long live the UMC!](#), the **number 7** in the list, Miquel Montaña of Clifford Chance discusses the German dominance of the new European court: ‘In reality, we are not seeing a cosmopolitan court but a German court or, to be more precise, a Munich court, which begs the question as to whether the UPC should be renamed the Unified Munich Court (“UMC”). The objective data speak for themselves: Of the 78 decisions approved by the end of November, half came from the Munich Central and local divisions. If one adds the decisions from other German local divisions (7 from Hamburg and 6 from Düsseldorf), it turns out that the German divisions have issued two thirds (i.e. 66 %) of the total decisions.’



More on the court in **number 6**: [UPC grants 10x Genomics preliminary injunction, NanoString appeals](#), a September article analysing the UPC’s decision to grant ‘US biotech company 10x Genomics a preliminary injunction against rival NanoString. It was the UPC’s first PI in a case where an oral hearing was held with both parties. NanoString has announced it will appeal the order in the UPC Court of Appeal in Luxembourg.’ A hearing in the appeal case was held in December.

Back to the EPO for **number 5**: [EPO makes correct diagnosis but prescribes the wrong medication with the Proposed Amendments to the Rules of Procedure of the Boards of Appeal](#). This is an article which was published in September and can be seen as the ‘prequel’ to – and, who knows, reason for the news in – number 9 of this list: ‘While we applaud the EPO’s desire to improve timeliness of appeal proceedings, it is unlikely that the proposed changes will deliver this goal. At the same time, they are unfair on Respondents and will decrease the quality of decisions. (...) Based on our previous experiences of EPO User Consultations, we suspect that the patient may have some undiagnosed hearing difficulties on top of the chronic timeliness disorder. Thus, we would not be surprised to see the proposed amendments implemented despite being the wrong medicine and despite substantive criticism also by others. But we are not (yet) giving up hope.’

Number 4, [First developments at the Unified Patent Court](#), published late August, is an overview of – indeed – ‘first time’ steps at the UPC. It is about 12 infringement claims from Panasonic against various subsidiaries of Oppo and Xiaomi, the Milan local division and preservation of evidence, protective letters and the new [EPO dashboard with information about the Unitary Patent](#). The blogpost also points out that ‘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.'

A lot of graphics and numbers, focused mostly on the Unitary Patent, were published late July by Laurence Lai of Simmons & Simmons in: [UPC proceedings and Unitary Patents: statistics and trends two months in](#), the **number 3**. The conclusion: 'What is becoming clear is that if there were prizes being given out related to unitary patents and the UPC, Germany would take them all home. Germany ranks highest with the most owners of unitary patents, the second most owners of opt-outed patents and applications, the most UPC representatives, UPC division with the most infringement actions, and UPC division with the most revocation actions. German is also the second most popular language for the translation used to request unitary effect. Gut gemacht!'

EPO wins

Although the start of the Unitary Patent system was definitely the most impactful event in the patent world last year, the top positions in the list of most read articles are for... the EPO, what else? Although **number 2**, a critical interview about the EPO's functioning with [Beat Weibel of Siemens: Low quality patents harm European industry](#), discusses the EPO's influence on the UP system as well. Weibel, who started an industry initiative to discuss deteriorating patent quality, says: 'The declining search and examination quality of EPO patents is not only harmful because inventions are not protected but they also create a lot of uncertainty for the industry. The problem has aggravated due to the Unitary Patent system, as thousands of Unitary Patents will flood countries where traditional European patents were not often validated in the past. The Industry Patent Quality Charter (IPQC) offered to enter into a dialogue with the EPO, but as the EPO has so far declined to discuss the problems, the IPQC will now turn to national governments for help.'



photo Polina Tankilevitch

The **number 1** of this year is [EPO Propaganda Master Class – or: How to Justify Higher Fees for Lower Quality Work](#). One keeps wondering what the EPO managers and president António Campinos think when they read texts like these which, as mentioned before, have been appearing on this blog and in other media for many years now. The start of the article: 'It will be nothing new for regular readers of this blog that I and many others have long been advocating for more well-qualified examiners at the EPO, e.g. [here](#). Obviously, these examiners also need to be given adequate time to scrutinize the ever-increasing number of new patent applications per year thoroughly.'

Alas, it will also be no secret that the policy of the EPO upper management, unfortunately endorsed by the Administrative Council, has been exactly the opposite for the last ten years. While the number of new European Patent Applications per year **increased** by about 10%, i.e from 174.500 to 193.500, during the time period from 2018 to end of 2022, the number of examiners

actually **decreased** by about 10%, i.e. from 4315 to less than 4000. On top of this, there has been pressure on the EPO by the Administrative Council (AC) to grant as many patents per year as possible.'

India



blog posts in this young New Year!

A last remark about this list: exceptionally, it turned out an article from 2021 was rediscovered by many readers last year and scored the third place in the popularity chart of this blog. As it wasn't published in 2023, it didn't make it to our top ten, but of course **Compulsory License: India**, including requirements for obtaining a compulsory license and jurisprudence, gets its well-deserved special mention here. We hope you will enjoy our old and new

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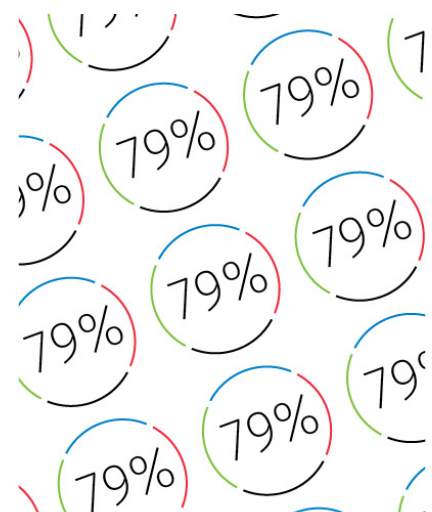
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