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Golconda and the Quest for Coherence: Unitary and National Patents in the European Landscape

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This article follows the jurisdictional analysis initiated in *Legal Inception: Harmonizing the UPC and National Courts through EU Law*. That piece focused on procedural structure. This one turns to the interpretive culture required to make that structure coherent.

The European patent system is no longer defined by its fragmentation—it is now defined by how that fragmentation is governed. The coexistence of national patents and the Unitary Patent (UP) is not an anomaly. It is an architecture. And the fate of that architecture—whether it results in pluralism or jurisprudential disorder—depends on our ability to synchronize legal tools, not merely procedural ones.

Magritte's *Golconda* is more than a visual metaphor. It is a diagnosis. Identical men in bowler hats, floating in neat rows—without interaction, without anchoring. It's an eerie echo of today's judicial landscape: symmetry without convergence. Mechanism without motion.

On one side, national patents remain subject to local procedure, interpretation, and legal culture. On the other, the UP, created by Regulation? (EU)? No? 1257/2012 and adjudicated by the UPC, reflects a supranational ambition. But this binary view misses the real issue: can the systems speak to each other, not just coexist?

Fragmentation is structural—coherence must be strategic

The language regime of the UP drives simplification. Yet beneath, divergence is systemic: definitions of indirect infringement, standards of proof, damages, and pre?trial methods vary significantly.

For instance, the contrast between Actavis v?. Eli ?Lilly (UKSC,?2017) and Okklusionsvorrichtung (BGH,? docket no X ZR 16/09) highlights differing approaches to functional interpretation. The Protocol on Article? 69 EPC aimed to unify, but in practice it fosters divergence.

The EPO's G?1/24 decision confirmed that claims must always be interpreted with reference to the description and drawings—a welcome step. As Adam Lacy and Thorsten Bausch observe, G?1/24 delivers "a short and sweet answer" — but one that leaves important questions open. It says nothing about description amendments, risks narrowing scope via validity-based interpretation, and invites strategic maneuvering across forums.

To these concerns, I add a structural critique. G?1/24 marks a shift away from "claim-only" practice, aligning with the UPC's purposive approach. Yet while it mandates reference to the description, it fails to define the method: as context? corrective? substantive source? And crucially, it says nothing about coherence between the EPO, the UPC, and national courts. Which brings us back to *Legal Inception*: without cross-system coordination, harmonization remains a slogan.

The UPC introduces unity—without eliminating duality

Under Article? 32 UPCA, the UPC holds exclusive jurisdiction over UPs. But European patents remain national. Consequently, patentees pursue hybrid strategies—UP in some territories, national validation elsewhere—leading to parallel litigation before UPC, Brussels, Munich, and domestic courts. This is no longer the exception—it is the procedural new normal.

Convergence will not come from governance—it will come from jurisprudence

What's missing isn't another rule—it's a shared method. The UPC Case Law Navigator is a strong foundation that must evolve into a cross?jurisdictional reference point.

Private initiatives already pave the way. The site of Pierre?Véron provides the most comprehensive, up-to-date database of UPC case law. More modest efforts—such as our own English-language glossary—clarify cross-border concepts, contributing quietly but significantly to a shared interpretive foundation.

The Brussels? I? bis Regulation facilitates procedural recognition—but alignment demands doctrinal proximity.

Judicial symposia exist—but they must scale

Formats like the European Patent Judges' Symposium, EUROTAB, and SACEPO bring together national judges, UPC judges, and EPO Boards. These are valuable but still occasional.

In France, the Third Chamber of the Paris High Court (i.e., *Tribunal judiciaire de Paris*), which holds exclusive jurisdiction over patent litigation, maintains a public page describing its caseload and procedural guidelines—demonstrating a commendable standard of institutional transparency (See here). A particularly telling initiative is the *Protocole de procédure en matière de contentieux de brevets d'invention* (i.e., Patent Litigation Protocol, or PPP), signed on 18 April 2023. Established collaboratively by judges and practitioners through professional associations, the PPP stands as a strong example of judicial–professional cooperation in building procedural clarity.

Beyond courts, institutional forums set the tone. The "Le droit des brevets en France et en Europe" conference (i.e., *"Patent Law in France and Europe"*) took place on 30 March 2023 at the Assemblée nationale, organized by the Institut Stanislas de Boufflers (See here)—bringing together academics, practitioners, and judges. The "Rencontres du droit des brevets" ("Patent Law Encounters") session on 26 April 2024 was held at the *Cour de cassation* (co-organized by the *Cour de cassation* and the Institut Stanislas de Boufflers), streamed on YouTube by the Cour de cassation (video). Similarly, the LES UPC conference cycle included *"UPC One Year Later: A First Overview"* in Milan on 30 May 2024 and then *"UPC Two Years Later: Case Law and Strategy considerations"* in Paris on 26 May 2025.

These events demonstrate that structured, multidisciplinary dialogue among judges, academics, and practitioners is both possible and valuable. They offer real-world templates for the kind of ongoing trilateral forums this article advocates.

Europe doesn't need uniformity—it needs choreography

Magritte's *Golconda* depicts repetition without relation. Europe's challenge is not to erase diversity, but to give it rhythm. The UPC, EPO, and national courts must remain distinct yet move in concert.

The tools are here. Foundations are laid. The choice now is professional and political: deliberate choreography over silent parallelism.

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This entry was posted on Friday, June 20th, 2025 at 8:00 am and is filed under Patents, Unitary Patent, UPC
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