

The Future of Patent Litigation in Europe

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Royal Society of Chemistry

serle court

The Present Position

- national or EP (bundle of) patents
- infringement litigated nationally
 - significant local variation
- revocation centrally for EPs (only if brought within 9 months of grant), otherwise nationally

“Unitary” and “Unified”

■ Unitary Patent

- not a “Community Patent”
- not an EPC “European Patent”
- but a “European Patent with unitary effect”

■ Agreement on a Unified Patent Court

■ Statute of the Unified Patent Court

■ Rules of Procedure (currently v15 draft)

... , but not quite “United”

■ **Unitary Patent**

– not all EU MSs

■ **Central Division**

– but de-centralised: Paris, Munich and London

■ **Opt-outs**

■ **Answer to the Ultimate Question: Rule 42**

The Future Position: Outline

- **UPC exclusive jurisdiction**
 - over UPs
 - and eventually over EPs
- **Local / Regional Divisions:**
 - most infringement actions
- **Central Division**
 - *e.g.* pure revocation or declaration of non-infringement
- **common procedure**
 - mainly written, with short hearing(s)
- **common appellate court**

The Future Position: Some Potential Issues Pt I

■ Languages – rule 14(2)

- language in which the Df normally conducts business

■ Representation

- includes PAs (and some academics?)

■ Judges

- Technical

- how technical – PAs, academics, industry?
- how conflicted if only part-time?

■ Procedural appeals on with the leave of “the Court”

- which Court, 1st instance or CA?

The Future Position: Some Potential Issues Pt II

- **preliminary injunctions**
- **bifurcation**
 - **discretion**
 - **CD revocation stayed if subsequent infringement action**
- **competition between Divisions?**
 - **one-sided as no equivalent revocation centre**

The Future Position: What to consider

- **opt-out considerations**
- **national patents vs UPs**
- **privilege**
 - **limited to UPC proceedings**
- **ownership and insolvency issues**

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- All areas of IP law and practice, in particular patents, trade marks, copyright and designs. Over 95 reported cases since 2000, of which two thirds were appeals or judicial reviews. Appeared often before the General Court and Court of Justice (Luxembourg) in appeals from OHIM and Article 267 references (over 40 cases), and in the European Patent Office (Legal and Technical BoA and Examination Division). Acted for the Comptroller-General of Patents, the Registrar of Trade Marks, the UK government, ITMA, CIPA and AIPPI UK Group.