

Information for our clients · July 2015

compact

special

The Unitary Patent and
the Unified Patent Court



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Dear Reader,

The Unitary Patent and the Unified Patent Court will cause significant changes in the European patent landscape: For the first time, a uniform patent protection throughout the European Union is envisaged. The application and procurement procedure will be simplified. The enforcement will be concentrated on a few European courts.

The Unitary Patent and the Unified Patent Court came into being at the end of 2012. The process of ratification is under way. The European Commission hopes that the required number of ratifications will be reached before the end of 2016 and that the new patent system will then come into force. The necessary political will is clearly visible.

With the coming into force of the so called patent package, the new Unified Patent Court will start working. The court will not only have jurisdiction over disputes arising out of Unitary Patents but also arising out of already existing European patents. Therefore, already today applicants and owners of European patents have to consider whether to stay in the Unified Patent Court system with their European patents or to opt out.

With this compact Special we would like to give you a first overview on the Unitary Patent and the Unified Patent Court as well as strategic considerations for future patent applications and patent litigation.

As always, we would be happy to receive your questions and comments and we hope that you will have an inspiring and useful reading.

Yours
Patent Law Team

The Unitary Patent and the Unified Patent Court

I. Introduction

I.1 Existing Patent Protection

Currently, technical inventions may be protected in Europe by

- national patents and
- European patents.

National patents are granted by national patent offices (in Germany by the German Patent and Trademark Office). They usually require representation by local counsel and follow with regard to procurement, legal effects and enforcement as well as with regard to revocation and declaration of nullity the respective national law.

European patents are granted by the European Patent Office (EPO) on the basis of the Convention on the Grant of European Patents (EPC). They are granted in a centralized procurement procedure which is followed by a centralized opposition procedure before the EPO. After its grant a European patent dissolves into a bundle of national parts which have the same effect as national patents, i.e. enforcement, revocation and nullification follow the respective national patent law.

The EPC comprises at present 38 European states; ten of them are not member states of the European Union. These are, for example, Norway, Switzerland and Turkey. The applicant designates the states in which the European patent shall come into force upon its grant, i.e. in which states it shall be validated. There are different validation requirements in each contracting state, for example with regard to translations and costs. Also the renewal fees vary from state to state. The main advantage of the European patent is its uniform procurement and opposition procedure which has cost advantages in so far as only fees for attorneys and the patent office accrue once only. However, a European patent does not distinguish itself from national patents with regard to its enforcement.

I.2 Creation of the Unitary Patent

In order to provide a uniform enforcement, efforts were made over decades to create a patent which has a uniform effect within the whole European Union. The long way to the Unitary Patent with all its trials and tribulations is not to be discussed here in detail. Only two core issues shall be highlighted:

A stumbling block has always been the language issue. Under the EPC, the official languages for the procedure before the EPO are limited to three languages only (English, French and German), whereby different translation requirements exist in the contracting states. It has been a major demand that likewise there should be a minimum of translation requirements with regard to the Unitary Patent to be created.

A further obstacle has been the issue where the new EU patent courts should be located. In the European Union currently by far the most patent infringement proceedings are dealt with by the German courts.¹ Germany had no interest to impair its position by the creation of a new European patent court system.

A breakthrough was finally reached when, by the end of 2012, the Unitary Patent was created by way of the so called enhanced cooperation.

I.3 Legal Basis – The “Patent Package”

The Unified Patent Court system is based in essence on three pillars, the so called patent package:

- the Unitary Patent Regulation²,
- the Translation Regulation³ and
- the Agreement on the Unified Patent Court (AUPC)⁴.

The Unitary Patent is created by the Unitary Patent Regulation. The Translation Regulation deals with the language regime for this Unitary Patent. Unitary Patent Regulation and Translation Regulation came into force on 20 January 2013. However, both regulations shall apply only as of the date of entry into force of the AUPC.

The AUPC has the character of an international treaty. It is a so called special agreement in the meaning of art. 142 et seq. EPC and has been signed on 19 February 2013 by all EU member states with the exception of Spain and Poland. It will enter into force as soon as at least 13 member states have ratified the Agreement, among them the three member states with the highest number of European patents in force, i.e. Germany, the United Kingdom and France (art. 89 par. 1 AUPC).

This legislative regulation will be completed by additional rules and fee schedules:

- Uniform renewal fees applicable to the Unitary Patent have already been set by the EPO⁵.
- Rules of procedure of the Unified Patent Court have been created, but need to be adopted by the administrative committee.
- The fee structure of the Unified Patent Court is currently subject to a public consultation launched by the preparatory committee.

2. The Unitary Patent

2.1 Application Procedure

The Unitary Patent system uses the application procedure before the EPO. Thereby the building of a complete new procurement authority was avoided. Instead, it was possible to revert to the proven competence of the EPO.

The whole application and examination procedure before the EPO remains unchanged. The applicant for a European patent may apply for it having unitary effect within one month after the mention of the grant is published in the European Patent Bulletin.⁶ In this case it becomes retroactively unitary effect within all participating member states as of the date of its grant (art. 4 par. 1 Unitary Patent Regulation).

2.2 The Languages Regime

The languages regime of the EPO principally applies: A patent application may be filed in English, French or German. Furthermore, a patent application may also be submitted in any other language to the EPO; in such a case a translation into English, French or German has to be filed within two months.

The official language of the EPO in which the application was submitted or into which the application was translated, is the language of the procedure before the EPO. European patent specifications are published in the language of the procedure and contain a translation of the patent claims into the two other official languages of the EPO (art. 14 par. 6 EPC). In principle this also applies to Unitary Patents.

A validation of a Unitary Patent will not be necessary and therefore also any translation requirements with regard to validation will fall away. However, within the transitional period of art. 6 Translation Regulation

- Unitary Patents granted in French or German have to be translated completely (that is not only with regard to the patent claims) into the English language and
- if the Unitary Patent was granted in the English language, a complete translation of the patent specification into any other official language of the European Union has to be submitted (art. 6 par. 1 Translation Regulation).

The transitional period of art. 6 Translation Regulation ends no earlier than six and no later than twelve years after the date of application of the Translation Regulation. Whether this transitional period already ends before the above-mentioned twelve years have elapsed, depends on whether or not high quality machine translations of patent applications and patent specifications into all official languages of the European Union are then available (art. 6 par. 3 Translation Regulation). Such machine translations from English into German are already offered by the EPO on its Internet homepage.

Once the transitional period has elapsed, an application in one of the three official languages of the EPO (English, French or German) with a translation of the patent claims into the respective two other official languages only will be sufficient.

However, there is an exception in case of litigation: In the event of a dispute relating to an alleged infringement of a Unitary Patent the patent proprietor shall provide at the request of the alleged infringer a full translation of the patent specification into the official language of the member state in which the alleged patent infringement has taken place or in which the alleged infringer is domiciled. Also the

court may request a complete translation of the patent specification into the language of the court proceedings. In both cases the costs for translations are to be borne by the patent owner (art. 4 par. 3 Translation Regulation).

2.3 The Unitary Effect

The Unitary Patent provides uniform protection and has equal effect in all the participating member states.

It may only be licensed, transferred, revoked or lapsed in respect of all the participating member states. However, it may be licensed in respect of the whole or also only a part of the territories of the participating member states (art. 3 par. 2 Unitary Patent Regulation).

The substantive provisions regarding the effect of the Unitary Patent are surprisingly not provided for in the Unitary Patent Regulation. This has the background that the United Kingdom suggested to delete entirely the provisions of art. 6 through 8 of the former draft regulation which dealt with the substantive effects of the Unitary Patent. The United Kingdom feared that otherwise the Court of Justice of the European Union would have to rule on substantive patent law which might have overburdened the court. However, the complete elimination of any substantive law provisions in the Unitary Patent Regulation could have made it questionable whether this regulation may be based on art. 118 of the Treaty on the Functioning of the European Union (TFEU).

As a compromise, art. 5 Unitary Patent Regulation now provides that the Unitary Patent confers on its proprietor the right to prevent any third party from committing acts against which that patent provides protection. What acts these are maybe concluded from the AUPC: Art. 25 and 26 AUPC prohibit direct and indirect patent infringement. Art. 27 AUPC provides limitations thereof such as, e.g., acts done privately or for experimental purposes. Art. 28 AUPC provides for a right on prior use of the invention. From the perspective of the law maker, all of this has the character of national law and therefore is not subject to control by the Court of Justice of the European Union.

The Unitary Patent therefore provides some specialties from the perspective of the law of the European Union: The Unitary Patent is granted by the EPO which is no organization of the European Union. Decisions of the procurement and opposition proceedings cannot be reviewed by European courts; legal protection is only granted within the EPO by its Boards of Appeal. And finally, the substantive effect of the Unitary Patent is not provided for by a regulation of the European Union, but rather – this is the conception of the law maker – on the level of the national law, and therefore is also beyond the reach of control by the Court of Justice of the European Union.

3. Unified Patent Court System

3.1 The Unified Patent Court

3.1.1 Organisation of the Court

The AUPC creates a complete new jurisdiction: the Unified Patent Court.

The Unified Patent Court comprises two instances, a Court of First Instance and a Court of Appeal. Furthermore, a registry and various committees exist, i.a. an administrative committee and a budget committee.

The Court of First Instance is divided into various divisions. It comprises

- a central division,
- regional divisions and
- local divisions.

The Court of Appeal has no divisions.

3.1.1.1 The Central Division

The central division has its seat in Paris, with sections in London and Munich.

The central division sits in a composition of two legally qualified judges which have to be nationals of different contracting states and one technically qualified judge. The central division is chaired by a legally qualified judge.

With regard to the substance of the matter, the panels of the central division are allocated in accordance with the International Patent Classification (IPC) of the World Organization for Intellectual Property (WIPO). The section in London deals with IPC classes A (human necessities) and C (chemistry, metallurgy) and the section in Munich deals with IPC class F (mechanical engineering, lighting, heating, weapons, blasting). All other substantive matter is dealt with in Paris.

3.1.1.2 Local and Regional Divisions

Any contract member state is free to apply for the installation of a local division for its territory. The decision is made by the administrative committee.

Regional divisions are built the same way for the territory of multiple member states.

Local and regional divisions comprise each three legally qualified judges. Upon request of the parties or if the court deems this to be necessary, a technically qualified judge is allocated to the panel. Again, the panel is chaired by a legally qualified judge.

Local and regional divisions have a multi-national composition, as is the case with each panel of the Unified Patent Court. Of the three legally qualified judges in principle only one is a national of the respective member state or member states hosting the local or regional division respectively. In member states where, during a period of three successive years prior or subsequent to the entry into force of the AUPC, 50 or more patent cases pro calendar year on average have been commenced, two of the three legally qualified judges are nationals of the respective member state hosting the local division. For each 100 patent cases commenced per calendar year, a contracting member state may apply for an additional local division, with a maximum of four local divisions for one member state. This may be the case in particular with Germany. It is highly likely that local divisions will be domiciled in Düsseldorf and Mannheim. Further local divisions in Hamburg and Munich are in the discussion.

3.1.1.3 The Court of Appeal

The Court of Appeal has its seat in Luxembourg.

The Court of Appeal is composed of five judges: three legally qualified judges who shall be nationals of different contracting member states and two technically qualified judges.

3.1.2 Jurisdiction

3.1.2.1 Jurisdiction as to Subject Matter

The Unified Patent Court has the exclusive jurisdiction for court proceedings provided for in art. 32 par. 1 AUPC insofar as they are based on

- Unitary patents,
- “classical” European patents or
- supplemental protection certificates.

The court proceedings provided for in art. 32 par. 1 AUPC comprise in particular patent infringement actions, actions for revocation of patents (also in the form of counter claims for revocation of patents) as well as provisional injunctions.

The enumeration in art. 32 par. 1 AUPC is exclusive; any other court proceedings will remain with the jurisdiction of the national courts. The Unified Patent Court therefore has for example no jurisdiction over actions arising from patent license agreements or actions for the transfer of patents and patent applications filed by a third party which came into the position of the invention in bad faith.

The Unified Patent Court will therefore not only have jurisdiction with regard to Unitary Patents but also for “classical” European patents, i.e. for European patents without unitary effect. For a transitional period, the patent owner may give a declaration that his European patent shall not fall under the jurisdiction of the Unified Patent Court. This transitional period will last seven years and may be prolonged for further seven years. However, thereafter all European patents will fall under the jurisdiction of the Unified Patent Court. The only alternative will be to file a national patent application.

3.1.2.2 The Competence of Central, Local and Regional Divisions

The parties may agree on a division to be competent for infringement and revocation actions. If no such agreement is concluded the following rules apply:

3.1.2.2.1 Patent Infringement Actions

Patent infringement actions are to be filed with the local or regional division at the domicile of the defendant or at the place where the patent infringement took place or threatens to take place.

The central division is competent for infringement actions if the defendant has no domicile in any contracting member state or if in the respective member state no local or regional division exist.

The central division has furthermore jurisdiction over actions for declaration of non-infringement of a patent. Such action pending with the central division is stayed if, within three months upon filing the declaration action, patent infringement proceedings based on the same patent are commenced between the same parties at a local or regional division. This safeguards that infringement proceedings cannot be withdrawn from a local or regional division against the will of the plaintiff.

However, there is an exception to this rule in case the alleged infringement has taken place in the territory of at least three regional divisions. Then, upon request of the defendant, the regional division shall transfer the case to the central division (art. 33 par. 2 AUPC). This exception makes infringement actions before the regional division less attractive because in case of a presumably massive patent infringement the plaintiff must fear that the case is transferred to the central division. Such transfer may cause a loss of time and has potentially the disadvantage of a change of language of the proceedings. It may further have the disadvantage that not the principle of bifurcation will apply but rather that the central division will most likely hear both actions, i.e. infringement action and revocation action, at the same time. This may cause an additional loss of time.

3.1.2.2.2 Revocation Actions

Revocation actions are to be filed with the central division.

Counterclaims for revocation of patents may also be filed with the local or regional division where a respective patent infringement action is pending. It is then in the discretion of the local or regional division

- to decide on both actions and to seek the aid of a technically qualified judge,
- to transfer the revocation action to the central division and to stay or continue the infringement action, or
- to transfer the whole case to the central division upon consent of both parties.

Therefore it will in principle possible that a local division practices a procedure as it is currently done by the German patent infringement courts, i.e. that revocation actions are transferred to the central division and to stay infringement actions only if there is a high likelihood that patent will be revoked.

Revocation actions do not require prior opposition proceedings before the EPO. Pending opposition proceedings before the EPO do not block revocation actions before the Unified Patent Court. However, the Unified Patent Court may stay its proceedings in such a case if a rapid decision may be expected from the EPO.

3.1.3 Qualification of the Judges

Legally qualified judges shall possess the qualifications required for appointment for judicial offices in a contracting member state.

Technically qualified judges shall have a university degree and proven expertise in a field of technology. They are appointed from a pool of judges on a case by case basis for a certain technical field.

According to art. 15 par. 1 AUPC judges shall ensure the highest standards of competence and shall have proven experience in the field of patent litigation. This requirement can hardly be balanced with the further requirement of a

multi-national composition of all panels of the Unitary Patent Court. The problem is that in the vast majority of the contracting member states only a few or no patent litigation at all is commenced. Judges from such contracting states will have little or no experience in the field of patent litigation. However, the AUPC solves this conflict of objectives by letting it suffice that judges have only theoretical knowledge which can be obtained by training. Whether this will safeguard confidence of the potential plaintiffs in the qualification of the panels of the Unified Patent Court remains to be seen.

3.2 Rules of Procedure

The main features of the proceedings are outlined in the AUPC. For details the AUPC refers to rules of procedure which will have to be adopted by the administrative committee. The signatory states have set up a preparatory committee which has developed draft rules of procedure. The current 17th draft of 31 October 2014 comprises 382 rules.

3.2.1 Stages of Proceedings

The court proceedings are divided into three parts:

First there is an exchange of briefs. In principle only four briefs are to be exchanged (statement of claim, statement of defense, reply to statement and rejoinder to the reply) which shall safeguard a speedy procedure.

The written procedure is followed by an interim procedure which may include an interim conference led by the judge-rapporteur and which may be held as a video or telephone conference. Thereafter again written submissions may be exchanged.

Finally, an oral hearing will be held before the entire panel which is led by the presiding judge.

3.2.2 Language of the Proceedings

Before the central division the language of the proceedings is always the language in which the patent was granted.

The language of the proceedings before a local division is in principle the official language of the hosting member state. Notwithstanding the above, the respective member state may designate one of the official languages of the EPO (English, French or German) as the language of the proceedings before the respective local division. The same applies for proceedings before the regional divisions whereby the respective contracting member states determine the official language of one of the contracting member states as language of the proceedings.

The parties may agree on the use of the language in which the patent was granted as language of the proceedings, subject to approval by the competent panel. If the panel objects, the parties may request that the case will be referred to the central division.

Furthermore, the president of the Court of First Instance may, on the grounds of fairness, decide on the use of the language in which the patent was granted as the language of the proceedings upon request of one of the parties and after having heard the other party and the court panel.

The language of the proceedings before the Court of Appeal is the language of the proceedings before the Court of First Instance, unless the parties agree on the use of the language in which the patent was granted as language of the proceedings. Subject to an agreement by the parties, the Court of Appeal may decide on another official language of a contracting member state as language of the proceedings.

4. Entry into Force and Transitional Provisions

4.1 Entry into Force

The AUPC now needs to be ratified by at least 13 signatory states, among them Germany, France and The United Kingdom.

Currently seven signatory states have ratified: Austria, Belgium, Denmark, France, Luxembourg, Malta and Sweden.

Spain and Italy have not concurred in the enhanced cooperation but rather filed actions the Counsel's decision authorising this procedure with the Court of Justice of the Euro-

pean Union. Both law suits have been rejected on 16 April 2013⁷. Italy has in the meantime signed the AUPC and has announced that it is a priority to join the Unitary Patent. Spain has filed two further law suits against the Unitary Patent Regulation and the Translation Regulation on 22 March 2013. These law suits have been rejected by the Court of Justice on 7 May 2015⁸. Poland has participated in the enhanced cooperation; however Poland did not sign the AUPC. Poland and Spain as well as (since June 2013) Croatia may join the Agreement since they are member states to the European Union. However, the EPC member states which are no European Union member states⁹ do not have this possibility.

4.2 Transitional Provisions

For at least a transitional period, Unitary Patents will not have effect in all member states of the European Union:

According to art. 18 par. 2 Unitary Patent Regulation, a Unitary Patent has only effect in such member states in which at the time of the grant of the patent the AUPC was in force. An extension of the territorial scope of already granted Unitary Patents to later ratifying or joining states is not provided for in the Agreement. Since most likely not all participating member states will ratify the AUPC at the same time, there will be Unitary Patents with different territorial scope for at least a transitional period.

Art. 83 par. 1 AUPC allows for a transitional period of seven years from the coming into force of the Agreement during which patent infringement actions and actions for revocation with regard to "classical" European patents may be filed either with the Unified Patent Court or with the national patent courts.

The applicant or owner of a European patent can exclude the competence of the Unified Patent Court by giving a declaration in accordance with art. 83 par. 3 AUPC (opt-out). The declaration must be given at least within one month prior to the end of the transitional period. This is to safeguard proprietors of European patents from being forced into the Unified Patent Court system against their will. The applicant or owner of a European patent may withdraw this exclusion declaration at any time (art. 83 par. 4 AUPC; opt-in).

The transitional period may be extended for seven further years (art. 83 par. 5 AUPC) which will give the Unified Patent Court system an opportunity to establish confidence in its quality.

5. Strategic Considerations

5.1 Application Procedure

The unitary effect of Unitary Patents will clearly simplify matters. It will allow the applicant to assess the effects of patent protection in the participating member states on the basis of only one legal regime. Also the patent administration will be considerably simplified: instead of administering a number of patents, there only will be a single patent to be administered with deadlines being surveyed and annual fees being paid in time.

Also the reduced translation requirements will bring fundamental simplification compared to the current status in a number of EPC states.

Whether in the future it is advisable to apply for Unitary Patents, "classical" European patents or national patents (or in Germany utility patents) is of course also a question of costs. The EPO has adopted the "true top 4" level according to which renewal fees are based on the sum of the renewal fees currently paid for the four most frequently validated EU member states (Germany, France, United Kingdom and the Netherlands). Speaking purely financially, this makes the Unitary Patent attractive for:

- Applicants who currently validate in four or more countries,
- Applicants who currently validate in fewer than countries, but who expect that the reduced administration costs compensate for increased renewal fees,
- Applicants who currently validate in fewer than four countries, but who wish to acquire broader protection.

5.2 Court Proceedings

5.2.1 The Need for a Decision with regard to "classical" European Patents

It is a complex task to balance the pros and cons of national jurisdiction on the one side and of the Unified Patent Court on the other side.

This will become very clear already during the transitional period of art. 83 par. 1 AUPC. This art. provides that lawsuits before the national courts have no exclusive effect on lawsuits before the Unified Patent Court and vice versa.

Such an exclusive effect exists only with regard to the opt-out or opt-in declaration in accordance with art. 83 paras. 3 and 4 AUPC respectively; an opt-out or opt-in declaration is blocked if a lawsuit (patent infringement action or revocation action) is already pending before a national court or the Unified Patent Court. However, if no opt-out or opt-in declaration is given, there is an alternative competence between the Unified Patent Court and national courts for matters based on “classical” European patents, i.e. during the transitional period lawsuits with regard to “classical” European patents may be filed with either the national courts or the Unified Patent Court.

The patent owner may for example decide to file a patent infringement action with a national court (for example with the Regional Court of Düsseldorf in Germany) which then is answered by the defendant with a revocation action before the central division of the Unified Patent Court. This might happen quite frequently.

The possibility of a forum shopping following from art. 83 par. 1 AUPC for patent infringement and revocation actions forces the proprietor of European patents already now to consider the pros and cons of each court system.

5.2.2 Pros and Cons of the Unified Patent Court System (Opt-in or opt-out?)

So what are the pros and cons?

Court proceedings under the Unified Patent Court system will tend to be easier and more cost effective since only a single patent infringement action and only a single revocation action, if any, is to be filed instead of a number of respective national court proceedings. Consequently, court costs and attorneys fees will be reduced.

The decision for the Unitary Patent and the Unified Patent Court will furthermore have the huge advantage that effective patent protection can be obtained for a number of states in which currently no effective enforcement of patents is possible.

At the moment, only in a handful of European states patent litigation is commenced: The judgments of national courts are limited to the respective national territory. It would theoretically also be possible that, e.g., before a German court one litigates the infringement a French patent. However, since the decision “GAT/LuK” of the Court of Justice of the European Union this possibility is practically barred. The introduction of the Unified Patent which will be enforced in one single court proceedings for all participating member states will have the effect that in a wide range of European Union member states for the first time ever patent protection will effectively be enforced.

The most striking disadvantage of the Unitary Patent will clearly be that it can be nullified with one single revocation action. The patent owner “raises the stakes” if he makes a decision for the Unitary Patent and the Unified Patent Court system.

A further disadvantage of filing a patent infringement action with the Unified Patent Court lies in art. 63 par. 1 AUPC: Under German law, the patent owner has a mandatory claim for injunctive relief in case of patent infringement. Under the AUPC, it is in the discretion of the Unified Patent Court to grant injunctive relief. It remains to be seen which aspects the Unified Patent Court will consider in its discretionary decision. However, it is not unlikely that collecting companies as well as other non-practicing entities will have to face an additional hurdle for obtaining injunctive relief. There is an ongoing discussion whether non-practicing entities shall be entitled to monetary relief only. The same applies for owners of standard-essential patents.

A further important issue will be how local and regional divisions will handle counterclaims for revocation of patents, i.e. whether they will transfer such counteractions or whether they will hear both, the patent infringement action and the revocation action. It is widely expected that the local divisions domiciled in Germany, which will comprise experienced German patent judges, will transfer revocation actions to the central division. If this should become common practice for the local divisions in Germany, it could possibly become equally attractive to file patent infringement actions with a local division of the Unified Patent Court in Germany as with a national German patent court. However,

the assessment of the pros and cons in this respect also depend on the quality and speediness of decisions of the central division. It might well be that it remains more attractive to keep on filing patent infringement actions with the national German patent courts rather than with the Unified Patent Court since the former procedure often awards the plaintiff the advantage of being able to enforce a judgment of first instance long before patent validity has been assessed by the German Federal Patent Court.

And finally the biggest obstacle for the Unitary Patent to overcome might be the uncertainty how the new patent regime and the new courts will prove themselves. The question whether the users will gain confidence in the Unified Patent Court system will depend in the first place on whether it will be possible to recruit highly qualified judges and to establish a body of high quality decisions. We will follow up this interesting future development.

- 1 According to Kühnen/Claessen, GRUR 2013, 592, 593, in 2011 the patent infringement actions were distributed within the European Union as follows: Germany some 1.250 actions, France and Italy each some 250 actions, the United Kingdom and the Netherlands each some 50 actions, in further 14 Member States less than 10 actions were filed and in the remaining eight Member States to the European Union no patent infringement actions were filed.
- 2 Regulation (EU) No. 1257/2012 of the European Parliament and of the Council of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection, OJ of EU no. L 361 of 31 December 2012, page 1.
- 3 Council Regulation (EU) No. 1260/2012 of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements, OJ of EU no. L 361 of 31 December 2012, page 89.
- 4 Agreement on the Unified Patent Court, Council document no. 16351/12 of 11 January 2013, OJ of EU no. C 175 of 20 June 2013, page 1.
- 5 Decision of the Select Committee of the Administrative Counsel of 24 June 2015.
- 6 See art. 9 par. 1 (g) Unitary Patent Regulation.
- 7 ECJ C-274/11 and C-295/11.
- 8 ECJ C-146/13 and C-147/13.
- 9 These states are Switzerland, Turkey, Norway, Liechtenstein, Monaco, Island, Republic of Macedonia, San Marino, Albania und Serbia.

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