

Patenttiuudistus etenee - Yritysten näkemyksiä tuomioistuimesta – mitä muutoksia ja toimenpiteitä edessä?

EK:n Neuvottelukeskus
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Recent EPO results – food for thought...

- In 2015, European patent filings grew at nearly 279 000 (in 2014: 274 000, +1.6%).
- The number of European patent applications rose to 160 000 in 2015 (in 2014: 152 700, +4.8%).
- This increase was fueled mainly by companies from the US (+16.4%) and China (+22.2%).
- The top five countries of origin for European patent applications in 2015 were the US, Germany, Japan, France and the Netherlands.
- Europe's potential in terms of innovation and technology is also highlighted by the number of European patent applications filed relative to the country's population. Switzerland again topped the ranking in 2015, with 873 applications per million inhabitants. Second and third place went to the Netherlands (419) and Sweden (392), followed by Finland (365) and Denmark (346). The first non-European country was again Japan in ninth place (169).

<https://www.epo.org/news-issues/news/2016/20160303.html>

European Court of Justice 16 July 2015

The ECJ decision restored some of the balance in FRAND licensing of SEPs and we believe that regulatory focus will move to address "hold out" as opposed to "hold up".

SEPs remain patents

... injunctions remain available in court

Current Status

Timetable

- The UPC & UP will come into force when 13 countries have deposited their instruments of ratification
 - including at least France, Germany and UK
- Intended Official Start Date: start of 2017
 - Announced by UPC Preparatory Committee (official organisers) 20.10.15
 - The UPC Preparatory Committee intends to finish its prep work by mid-2016

Ratification Status

- 9 countries have so far deposited their instruments of ratification
 - BE, DK, FI, FR, LU, MT, PT, SE (Note includes FR, one of the 3 'trigger' countries)

Brexit will not stop UPC (?)

- UK is one of the three required Member States for UPC to start, BUT:
- **If UK referendum votes to exit EU:**
- UK can still ratify the UPC allowing it to start
 - It will take circa 2 years to formally exit the EU
 - UPC is only open to EU member states
 - So, UK would also exit UPC eventually
- **If UK exits EU before ratifying UPC:**
- UPC requires ratification by the 3 MSs with most EPs in force the year before the UPC was signed (Art. 89 UPC).
- So another MS (IT?) would presumably become one of the 3 required signatories with DE and FR, instead of the UK

Territorial scope

- 25/28 EU Member States now involved
 - Poland is 'in the club' but has decided not to sign anything for now
 - Spain is out and even mounted (an unsuccessful) legal challenge against the whole system
 - Croatia joined EU after UPCA was signed and is not a signatory
 - It is understood Croatia intends to join, but currently not a government priority
- All EU Member States are likely to join eventually?

OUT:
Poland
Spain
Croatia

13

'Balloon' effect:

- Not all 25 MSs are likely to ratify on Day 1
- UPC/UPP will only take effect in those countries that have ratified
- It will take effect later in MSs that ratify later, as and when they ratify
- Hence, likely to have an 'expanding' territorial effect in early years
- So date of UP relevant to what countries it covers

Effect of not opting-out existing EP patents/applications, i.e. default situation

- The unitary effect will apply automatically to all validated States that have ratified, but not beyond
- So expanding 'balloon effect' relevant here too

Jurisdictional Scope



UPC has 'exclusive' Jurisdiction over:

- All UPPs without exception
- EPs filed during 7 yr transitional period, unless opted out
- *Transitional period may be extended by further 7 yrs*
- All EPs filed after transitional period
- **Existing EPs unless opted out**
- Default is that existing EPs are in the new system
- *Patents granted by national Patent Offices are not in scope*

During transitional period legal actions on EPs can be started in UPC or national courts (first seized – by patent owner OR third party!)

After transitional period only opted out EPs and national patents left in national courts

Opting in and opting out of the UPC

Default = opted in



Existing patents will automatically come under the new court system unless opted out. No action needed.

To remain in the existing national court system, outside the jurisdiction of the UPC. Affirmative action is needed to opt-out.

This is a bit counter-intuitive as you have to:

- opt-out to stay in the current national system, but
- do nothing to transfer into the new UPC jurisdiction
- No opt-out fee (earlier €80 per EP patent family was proposed)

OPT-OUT



OPT-IN



Once opted out it is possible to affirmatively opt back in. Affirmative action needed.
You can opt out and back in only once.

Planning now....





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