The Unitary Patent and Unified Patent Court

Some introduction

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Claims

1. Thermal heat pump, characterized by a heat pipe (11) in which the vapor passage (16) located between the heat transfer zone to the heat supply and the heat transfer zone to the heat removal has a cross section which varies across its length and which increases the velocity of the vapor flow to begin with and then decreases it and that a further, third heat transfer zone with heat supply or heat removal is located in the area of the increased vapor velocity.

European patent with unitary effect

European patent [EPC]

Council of Europe/EPO - Munich
European Patent Convention
38 member states

European patent with unitary patent effect [unitary patent]

European Parliament - Brussels
Council Regulations
24 EU member states

Unified Patent Court
International Agreement

national courts
national patent acts
### Unitary patent legislation (1)

#### Unitary Patent Package [UPP]

- **Council Regulations**
  - Regulation (EU) 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
  - Regulation (EU) 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 agreements

  **European patent with unitary effect**

- **Agreement** on a Unified Patent Court, Brussels, 11 January 2013 (Council of the European Union)

  **Unified Patent Court**

  **Unitary patent** [26 states]

  **EPC patent** [38 states]

### Unitary patent legislation (2)

#### Material scope

**Regulation 1257**

- **Patentability**
  - Subject matter

- **Conditions**

- **Rights**
  - Art. 5. Effect of unitary patent
  - Art. 7. Object of property
  - Art. 8. Licenses of right

- **Limitations**
  - Art. 27. Limitations
    - (a) private and non-commercial use
    - (b) experimental purposes
    - (c) breeding; developing
  - Art. 28. Prior use
  - Art. 29. Exhaustion

- **Other**
  - Recital 10. Compulsory license [member states]
    - **Unitary patent**

**Agreement**

- Art. 25. Right to exclude

**Implication:** Court of Justice EU no competence

**UPC:** exclusive competence
EPO member states: 28 + 10
[Norway, Switzerland, etc.]

EU member states: 28

Regulation: yes
Agreement: no

Croatia
Regulation: yes
Agreement: yes

Ratified Agreement

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Unitary patent court (1)

Court of Justice EU

Court of Appeal
Luxemburg

Court of First Instance

Local or Regional Division

Central Division

Local, UK, France, the Netherlands, Belgium, Italy, Austria, Denmark, Finland, Ireland, Germany (4)
Regional: Sweden-Estonia-Latvia-Lithuania

Paris: primary central division - ICT
Luxembourg: chemical, pharma, life science
Munich: mechanical engineering

Papers

• **ECON**
  – **Cost**
    • Bronwyn Hall
    • Bruno Van Pottelsberghe

• **LAW**
  – **Trust**
    • Esther van Zimmeren
Unitary patent court (2)

- **Local /regional divisions**
  - **Competence**
    - **Infringement suits**
    - **Location:** patentee can shop for forum
      - Default rule: local/regional division is competent
        - place of (threat of) infringement
        - seat of place of business of defendant
      - In case of infringement in three different states
        - defendant can ask for move to Central Division
      - In case infringer comes from outside EU
        - Central division or place infringement
    - **Scope:** decision of local/regional division is valid
      - On the territory of all participating member states

Unitary patent court (3)

- **Central division**
  - **Competence**
    - **Validity**
      - Direct procedures concerning validity;
      - Counterclaims – in an infringement suit - on validity can be sent to central division;
    - **Infringement**
      - Infringement procedures where infringement takes place on territory of a member state not having a local/regional division
      - Infringement cases where defendant lives outside EU
      - Infringement in territory from more than three member states (on request defendant)
  - **Location**
    - Paris, London, Munich
• Court of Justice EU
  – Competence
    • **Interpretation** EU legislation
      – EU Biotechnology Directive,
      – EU Enforcement Directive
      – Regulation (EU) 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
      – Regulation (EU) 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 agreements

• **NO Interpretation** substantive patent law
  – EPC
  – Agreement on a Unified Patent Court, 2013