

What developments for the European patent system ?

# The European patent package!

Strasbourg, 28/11/2014 | Thierry SUEUR



# A Historical Achievement

- The CEIPI was 10 years old when the first proposal for a Community Patent and a Community Patent Court was presented.
- 40 years later, we have the legal instruments in place and the preparation for their entry into force is well advanced.
- The names have changed: we are talking now of a European patent with unitary effect (EU Regulations 1257/2012 and 1260/2012 of 17 December 2012) and a Unified Patent Court (Agreement between EU Member States signed on 19 February 2013 in Brussels)
- But it is the same old dream that is coming true !
- Are we happy? Well, most of us are and look forward to reaping the benefits of the new economic tools for competitiveness and growth.

# Not Totally Perfect ?

- There is still some grumbling and mumbling about deficiencies of the legal texts (although one often gets the impression that some people tend to call « deficiencies » the provisions they just don't like)
- The preparation of the Rules of Procedure for the UPC and of the Implementing Rules for the unitary protection is thus full of suggestions for plugging « holes » or correcting « mistakes » in the Regulations and the UPCA.
  - examples: - Art. 83 of the UPCA on the transitional provisions
    - may a unitary patent be surrendered by its owner?
- Allow me here a plea from industry : let's stop trying to rewrite the legal texts as one would have liked them to be, it is only fuelling legal uncertainty where little exists

# Much more important : developing one's own strategy

- There are a lot of strategical decisions to be taken, some even before the entry into force of the new system. Here are some of them.
- Do I want to opt out of the jurisdiction of the UPC for all or part of my existing portfolio of European patents ?
- For each new patent granted by the EPO:
  - shall I request unitary effect or shall I stay with the current European patent?
  - If the latter, do I request opt-out to avoid the jurisdiction of the UPC?
- If I want to sue for infringement of one of my European patents, shall I go before the UPC or before a national court?
- If I want to have one of my competitors' European patent revoked, shall I launch an opposition at the EPO or sue for nullity before the UPC?

# Reasons for using the system from day one

- Business / Market approach
  - one patent
  - one court
- Complexity and high cost of the existing systems
  - no sense in postponing access to much awaited simplified post-grant procedures and improved court proceedings
- European citizen approach
  - need to be where Europe happens
- Prepare further development of the company
  - advanced protection in countries where we are not yet present
- Be there first
  - no point in letting others shape the system

# What might still cause the system to fail?

- Unreasonably high cost for the unitary protection compared to average protection for European patents (validation in 3-4 countries, not including Spain and Italy)
  - major issue: the level of renewal fees for the UP and their progressivity over time
  - decision of the Select Committee expected by end June 2015
- Lack of confidence in the UPC
  - core issue is not the Rules of Procedure
  - much more important is the training, selection and appointment of highly qualified and experienced judges as only this will provide the necessary quality and predictability of the decisions
  - level of court fees will also play a role but the crucial part will be the amounts the winning party can recover from the losing party

**THANK YOU FOR YOUR ATTENTION !**

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