

Transitional provisions of the draft Agreement on the European and EU Patents Court

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Article 58 draft Agreement on the European and EU Patents Court (Council Doc. 7928/09)

(1) During a transitional period of **seven years** after the [entry into force of the Agreement], proceedings for infringement or for revocation of a European patent may still be initiated before the national courts or other competent authority of a Contracting State having jurisdiction under national law.

(2) Any proceedings pending before a national court at the end of the transitional period shall continue to be subject to the transitional regime.

EU Council's conclusions of 4 December 2009 on an enhanced patent system in Europe

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24. The transitional period **should** not last longer than **five years** after the entry force of the Agreement on the EEUPC.

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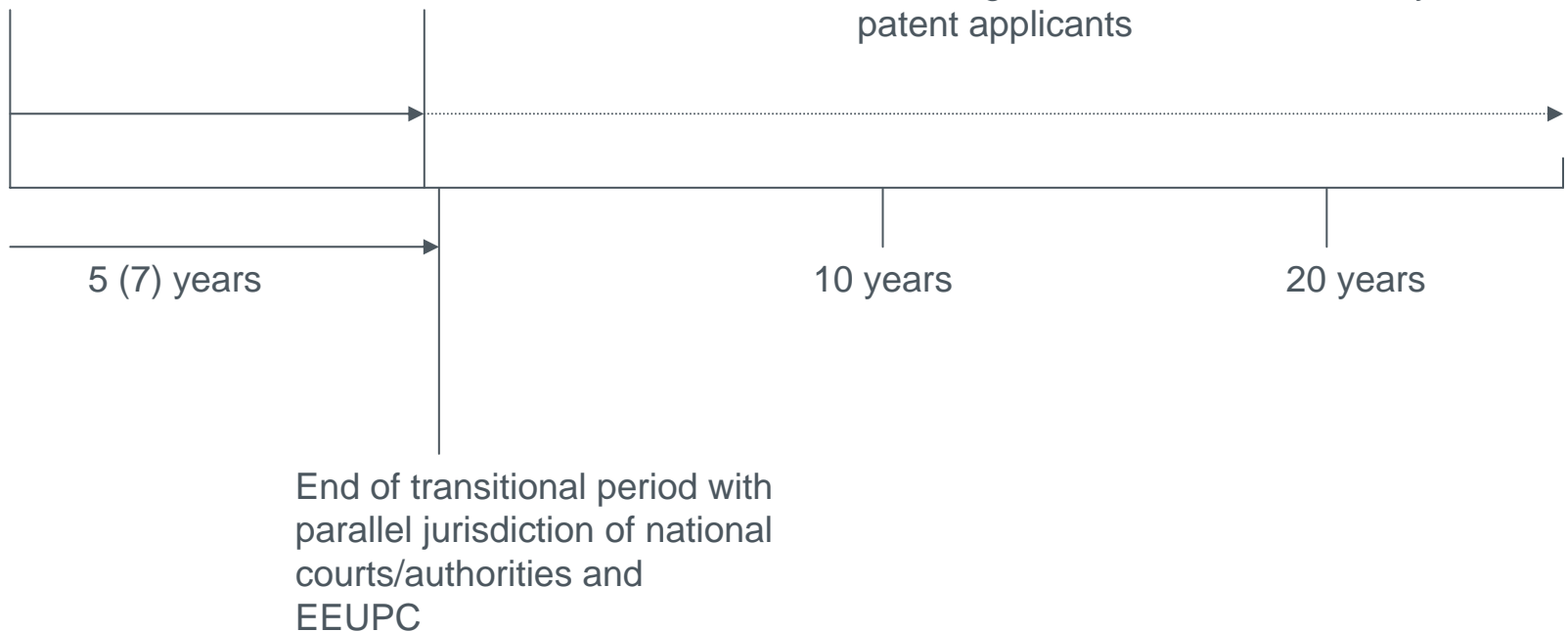
(4) Unless proceedings have already been initiated before the Court, holders of European patents granted or applied for prior to the [entry into force of the Agreement] shall have the **possibility to opt out** from [the scope of application of the Agreement]. To this end they shall **notify** their opt-out to the Registry **by the latest one month before expiry of the transitional period**.

Jurisdiction of national courts/authorities and the European and EU Patents Court (EEUPC)

Entry into force
of draft
Agreement on
the EEUPC

End of opt-out
possibility: one
month before the end
of transitional period

National courts/authorities with
exclusive jurisdiction in disputes related
to European patents which were
excluded from the scope of application
of the Agreement on the EEUPC by
patent applicants



Problems related to patent litigation in Europe

- Application and interpretation of European Patent Convention not fully harmonised
- Multiple litigation and diverging decisions by national courts on the same European patent
- Jurisdiction of too many courts/authorities in relation to the number of patent cases in Europe
- *Forum shopping* due to differences in practice and procedural law

Risks related to the proposed opt-out scheme

- Existing problems relating to patent litigation could be perpetuated:
 - Harmonisation of interpretation of European patent law could be delayed
 - Multiple litigation/diverging decisions on the same European patent will continue to exist
 - *Forum shopping* will continue
- Patent applicants could be put at an unlawful advantage over potential defendants as the opt-out scheme denies defendants the option of addressing the EEUPC

Possible solutions

- No opt-out scheme but extended transitional period (e.g. ten years) with parallel jurisdiction of national courts/authorities and the EEUPC
- Revision of the EEUPC patent litigation system on expiry of the transitional period in order to deal with potential deficiencies in the new system

Note: National courts/authorities retain jurisdiction in disputes related to national patents

Thank you for your attention

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