

The Unitary Patent and dispute resolution: What Difficulties? What Solutions?

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Pierre Véron
Honorary President
EPLAW
(European Patent Lawyers Association)

VÉRON VA
& ASSOCIÉS
A V O C A T S
Paris ■ Lyon

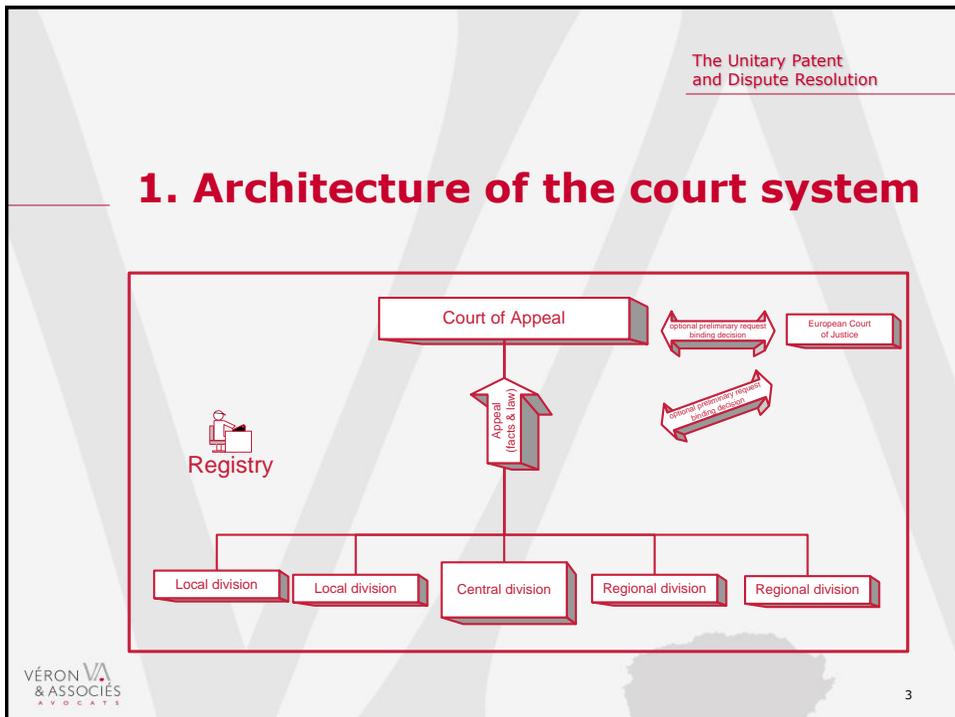
The Unitary Patent
and Dispute Resolution

15 minutes, 15 problems, 15 solutions

1. Architecture
2. Primacy of EU law
3. Relationship ECJ
4. Financing
5. Judges
6. Jurisdiction
7. SPC
8. Applicable law
9. Language regime
10. Torpedo
11. Bifurcation
12. Type of procedure
13. Ancillary matters
14. Transitional period
15. Central division

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2. Primacy of Union law



Draft agreement Article 14a:

“Primacy and respect of Union law

The Court shall apply Union law in its entirety and respect its primacy.”

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3. Relationship with ECJ

Draft agreement Art 14b

"Requests for preliminary rulings

(1) As a court common to the Contracting Member States and part of their judicial system, the Court shall cooperate with the Court of Justice of the European Union to ensure the proper application and uniform interpretation of Union law, as any national court, in accordance with Article 267 of the TFEU in particular. Decisions of the Court of Justice of the European Union shall be binding on the Court."



4. Financing

Draft agreement, article 18

"(1) The budget of the Court shall be financed by the Court's own financial revenues and at least in the transitional period referred to in article 58 as necessary, by contributions from the Contracting Member States. The budget shall be balanced.

(2) The Court's own financial revenues shall comprise court fees and other revenues."

5. Judges

Will all the Member States be able to meet the requirement of draft Agreement Article 10?

“Eligibility criteria for the appointment of judges

(1) The Court shall comprise both legally qualified judges and technically qualified judges. Judges shall ensure the highest standards of competence and proven experience in the field of patent litigation.

(2) Legally qualified judges shall possess the qualifications required for appointment to judicial offices in a Contracting Member State.

(3) Technically qualified judges shall have a university degree and proven expertise in a field of technology. They shall also have proven knowledge of civil law and procedure relevant in patent litigation. »

6. Jurisdiction

- Scope of jurisdiction unclear for licence agreements
- Unfair competition related to patent infringement not included

7. SPC

- A SPC is a national property right granted by a national patent office – unlike the Unitary Patent or the current European patent granted by the EPO
- Strange to have a national property right included in the basket of supranational Unified Patent Court Agreement (meaning that the DE division could have to deal with validity and infringement of a FR SPC?)

8. Applicable law

The language of draft Agreement Article 14e does not make clear which rules of private international law will be applied:

“(2) To the extent that the Court shall base its decisions on national law, including where relevant the law of non-contracting States, the applicable law shall be determined:

(a) by directly applicable provisions of Union law, or

(b) in the absence of directly applicable provisions of Union law or where the latter do not apply, by international instruments containing private international law rules; or

*(c) in the absence of provisions referred to in (a) and (b), **by national provisions on private international law as determined by the Court.**”*

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9. Language of proceedings: 1st instance

Regional division



Language of the court
(national or EPO language)

Local division

Central division



Language of the patent

Regional division

Local division



Language of the court
(national or EPO language)

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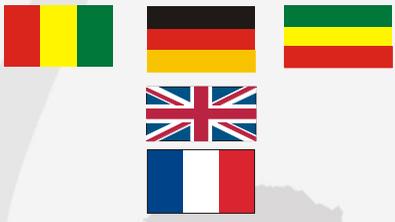
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9. Language of proceedings: appeal

- Language of 1st instance
- Language of the patent (upon the parties' agreement)
- Language chosen by the court and approved by the parties

Court of Appeal

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10. Torpedo is dead

(actions for a declaration of non-infringement then for infringement)

The action for a declaration of non-infringement before the central division shall be stayed once an infringement action is initiated within three months before local division

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11. Bifurcation to the discretion of the court

The draft agreement leaves the local or regional division the discretion to bifurcate
(i. e. to stay the infringement proceedings pending the revocation action)

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12. Type of procedure



Front loading system
Not drips and drabs system

13. Ancillary matters

- Legal aid
- Service (notification of summons)
- Enforcement

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58 14. Transitional period

01/01/2014
Entry into operation
Unified Patent Court
Agreement

01/01/2019
End of
Transitional Period



- National courts still competent for EP
- European Patent holders may opt out from Unified Patent Court (withdrawal possible)

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15. Where?

**will be
located the
Central
Division:**

**Paris?
Munich?
London?**



VÉRON VA
& ASSOCIÉS
AVOCATS

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Pierre Véron



1, rue Volney
75002 Paris
Tel. +33 (0)1 47 03 62 62
Fax +33 (0)1 47 03 62 69

53, avenue Maréchal Foch
69006 Lyon
Tel. +33 (0)4 72 69 39 39
Fax +33 (0)4 72 69 39 49

pierre.veron@veron.com
www.veron.com

Thank you

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& ASSOCIÉS
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