

Is the Unified Patent Court (UPC) meeting expectations? A review after six months of operation

ZBM Patents & Trademarks

The Patent Mondays. Madrid, 20 November 2023

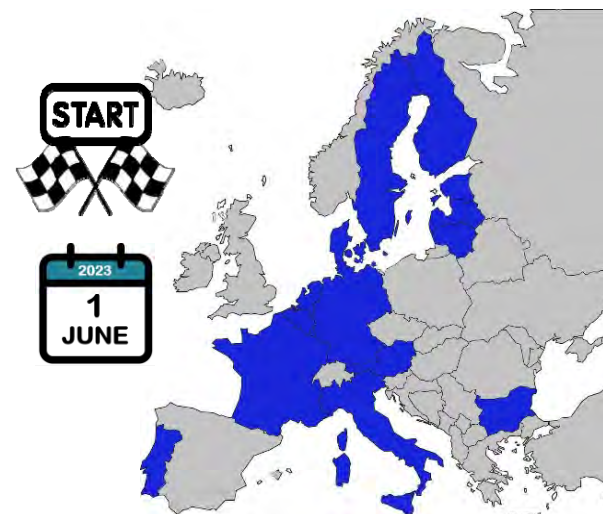
Noemí Daviu

Some highlights of the UPC

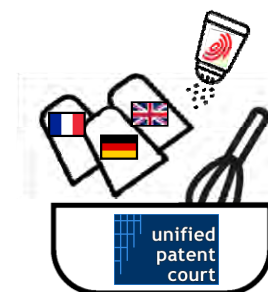
- **International court** common to a number of **EU states** that will allow to attack, defend and enforce patents granted by the European Patent Office (EPO) centrally through a **single court action**

- Initially will have effect in 17 countries
- The territorial scope of the UPC decisions will change over time as countries ratify

- System based on a **blend of procedural rules and practices** from different European legal systems
- **Independent** of the European Patent Office (EPO) and the national courts

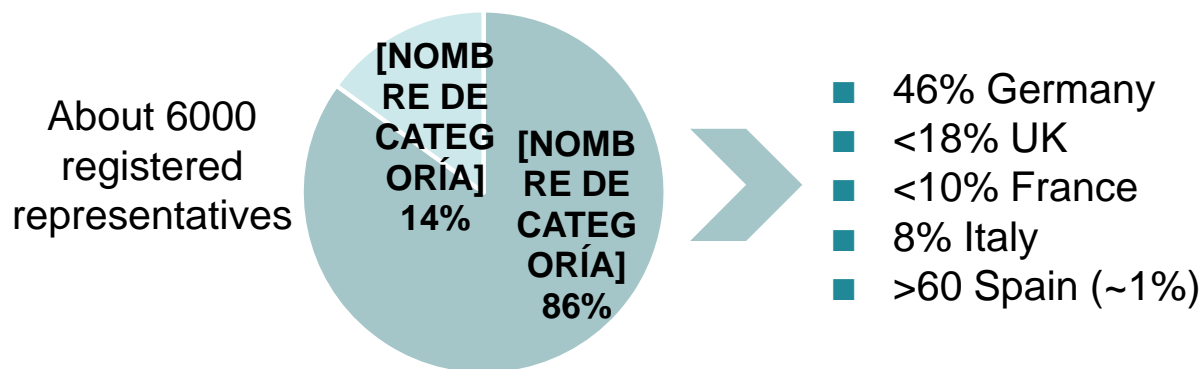


Austria France Sweden Belgium Denmark
Malta Luxembourg Portugal Finland Bulgaria
Netherlands Italy Estonia Lithuania Latvia
Slovenia Germany



Some highlights of the UPC

- **European Patent Attorneys** with appropriate qualifications (as well as **lawyers** authorized to practise in a court of a **contracting MS**) may act as representatives for parties before the UPC



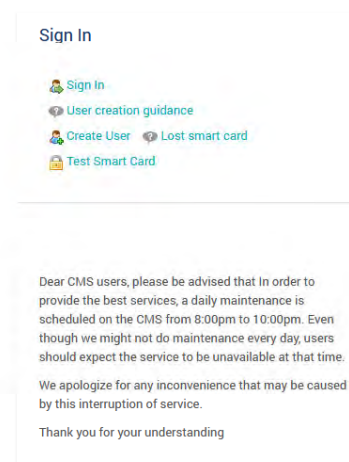
<https://www.unified-patent-court.org/en/registry/representation>, November 2023

- Fully electronic court: All documents will be filed through a digital platform; the Case Management System (CMS), accessible via smart cards




This is the Case Management System of the Unified Patent Court.

The CMS is the IT system to file actions, applications and any other submissions before the Unified Patent Court.
The Court will have exclusive jurisdiction on actions concerning European patents with unitary effect by virtue of Regulation (EU) No 1257/2012 (Unitary Patents), European patents without such an effect ("classical" European patents) and that were not opted out as to Art. 83(3) UPC Agreement, Supplementary protection certificates granted under Regulation (EC) No 469/2009 or Regulation (EC) No 1610/96 and published European patent applications, as laid down in Art. 32 UPC Agreement.



Competence of the UPC

Court	Patent type	Action type
 UPC	<ul style="list-style-type: none"> ■ EP Patents with Unitary Effect + Supplementary Protection Certificate (SPCs) ■ “Classic” EP-bundle patents in UPC countries + SPCs 	<ul style="list-style-type: none"> ■ Infringement actions ■ Declarations of non-infringement ■ Provisional and protective measures and injunctions ■ Revocation actions ■ Counterclaims for revocation ■ Damages or compensation derived from provisional protection ■ Prior use ■ Compensation for licenses EP-UE ■ EPO decisions on EP-UE

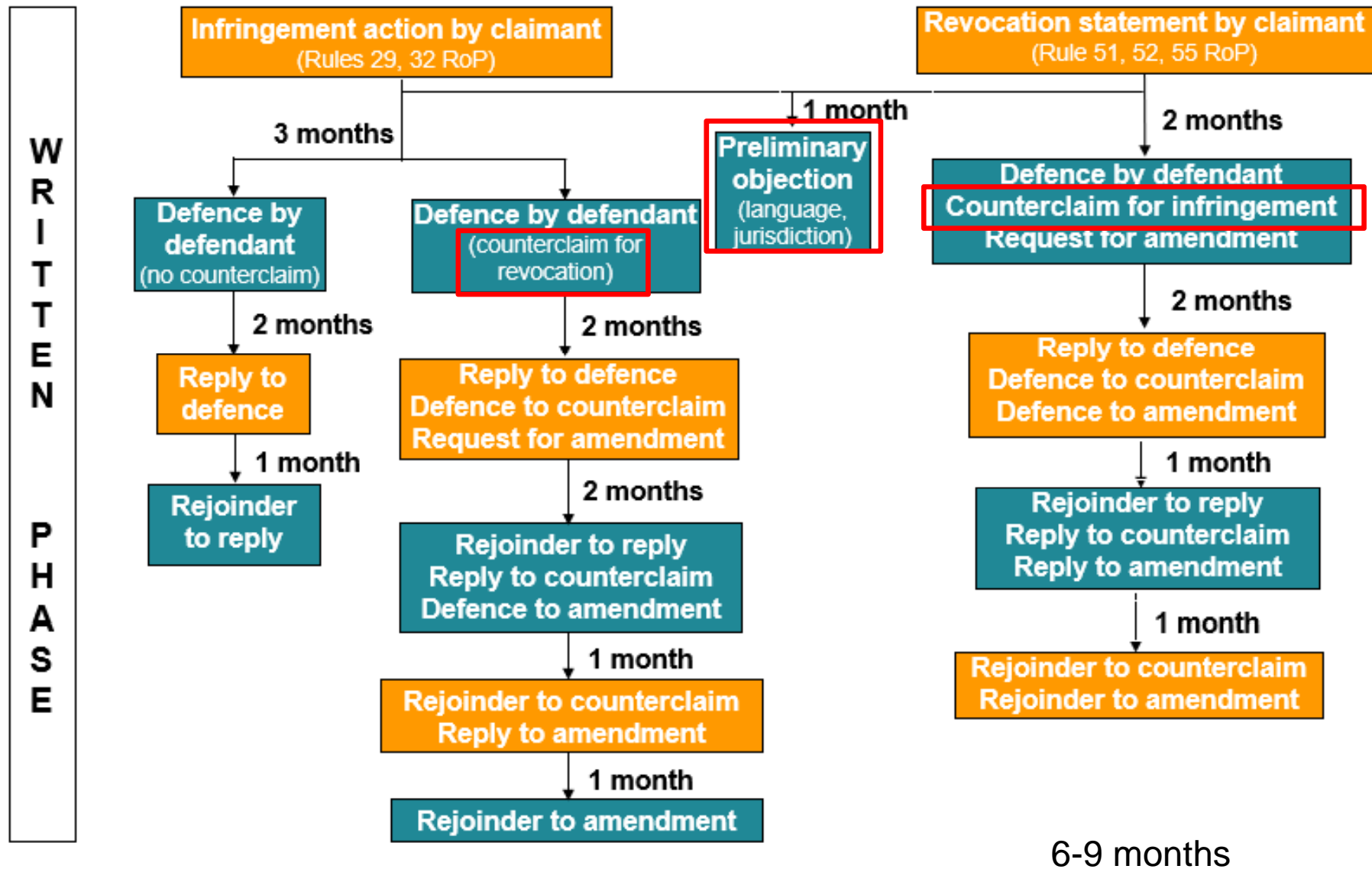


The **national courts** will remain competent for actions relating to patents and SPCs which do not come within the exclusive competence of the Court

Proceedings before the UPC

- Mainly written proceedings
 - **Front loading system** (set out the full case as early as possible)
- The procedure before the Court of First instance will have typically 3 main phases:
 - **written phase:** exchange of written pleadings between parties
 - **interim procedure:** possibility for a settlement explored
 - **oral hearing:** for an ordinary patent case it will last 1 day
- By default hearings to be held in person
- Public proceedings unless the Court decides to make them confidential
- **Very quick decisions** (12-14 months) of **direct application**
- Award of damages and decision on costs may follow

Time schedule typical infringement or revocation action



UPC Court fees

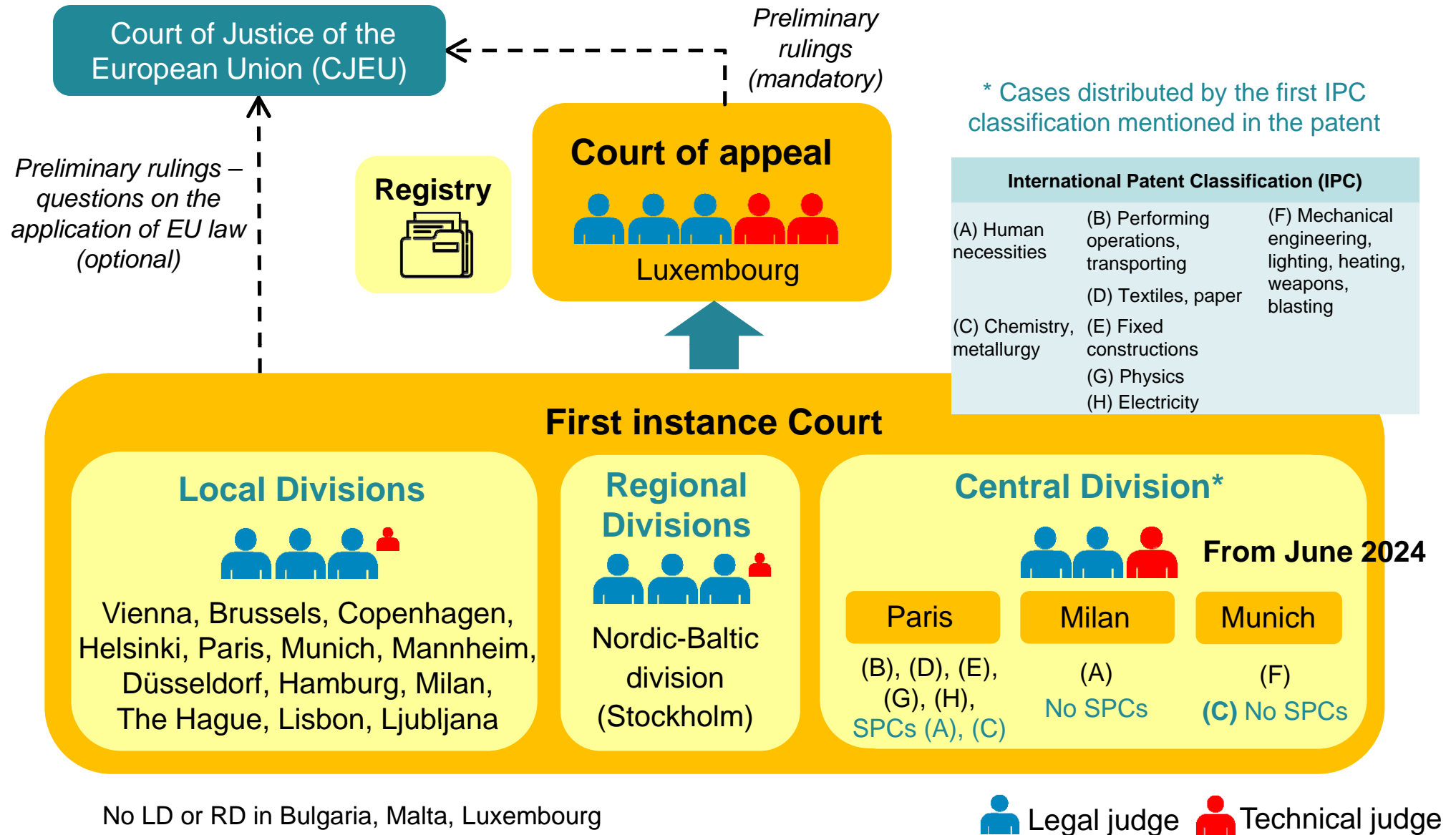
- Court fees to self-sustain the Court and allow for fair access to justice:
 - **fixed fee** for all actions (infringement, DNI: 11,000 EUR, revocation: 20,000 EUR)
 - **value-based fees** for actions whose value is above 500,000 EUR
 - **value-based fees** increase with the value of the action (maximum of 325,000 EUR for action value higher than 50 Mio EUR)

<https://www.unified-patent-court.org/en/registry/court-fees>



- Reduction or reimbursement of fees in certain cases
- In general, the **losing party will bear legal costs and other expenses** of the winning party (reasonable and proportionate costs) up to a ceiling
 - Guidelines for establishing the value of actions for the determination of Court fees and the ceilings for the recoverable costs for the representatives of the successful party (published on 24.04.2023)
- The costs of **legal services** (lawyers, patent attorneys) will be the most significant

Court structure



No LD or RD in Bulgaria, Malta, Luxembourg

<https://www.unified-patent-court.org/en/court/locations>

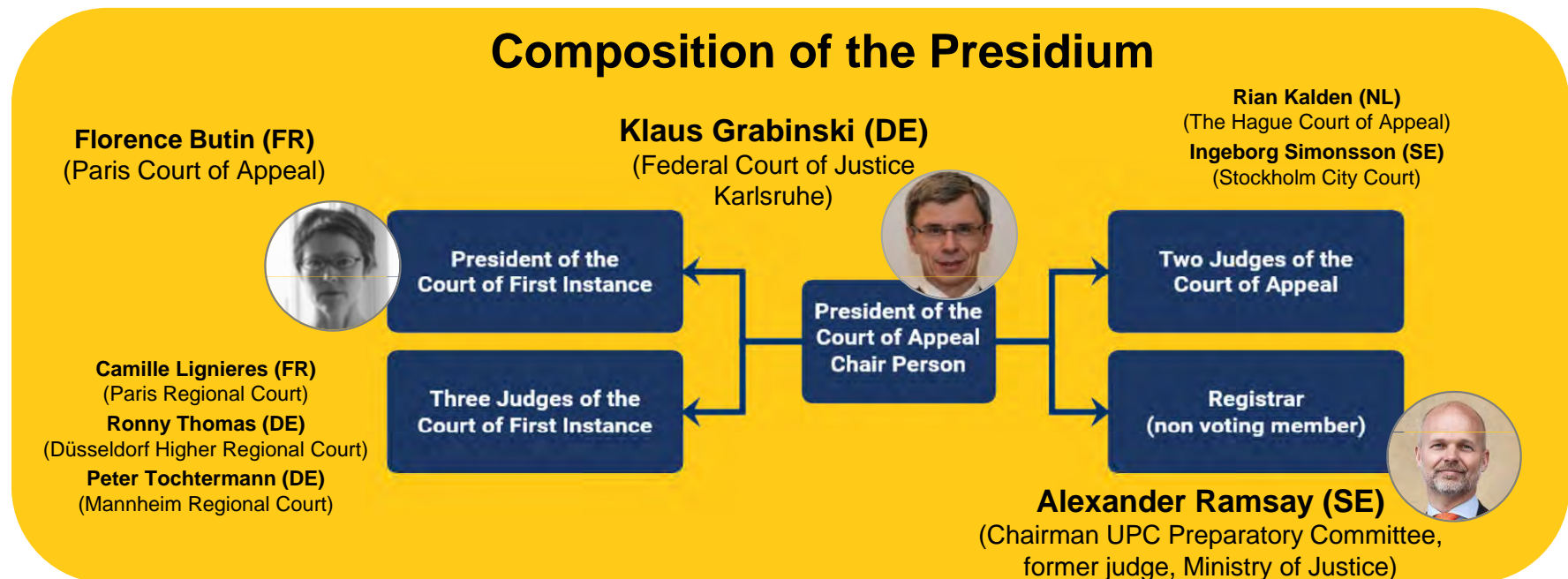
UPC judges

- The appointed judges include both legally qualified judges (LQJ) and technically qualified judges (TQJ)

<https://www.unified-patent-court.org/en/court/judges>

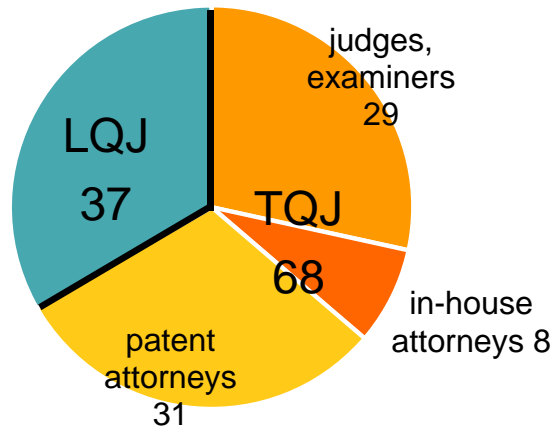


- On 24.04.2023 **Code of conduct** of the Judges published
 - Judges may not use their position for promoting their interests
 - Judges may not act as a representative in any matter before the UPC and may not give legal or technical advice on a case pending before the Court



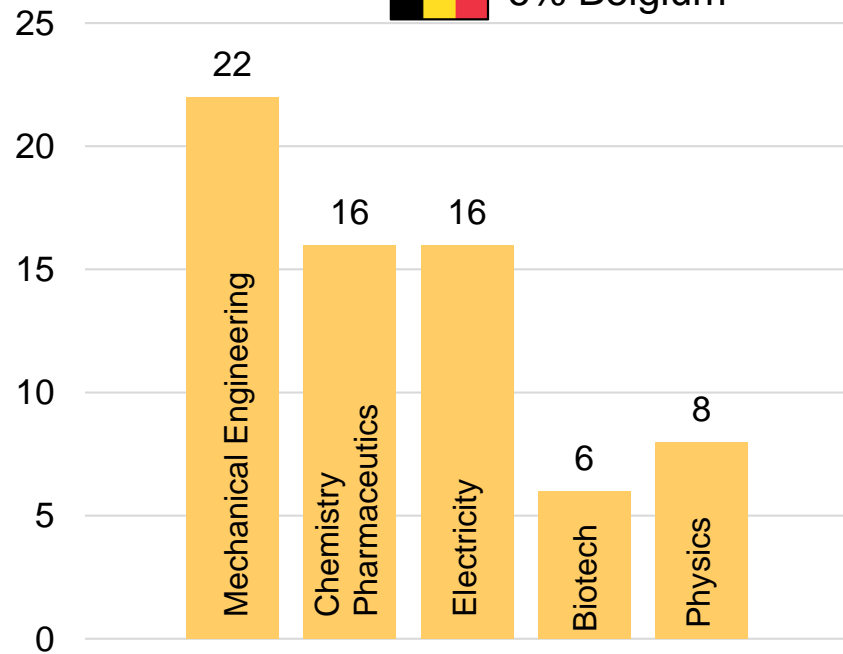
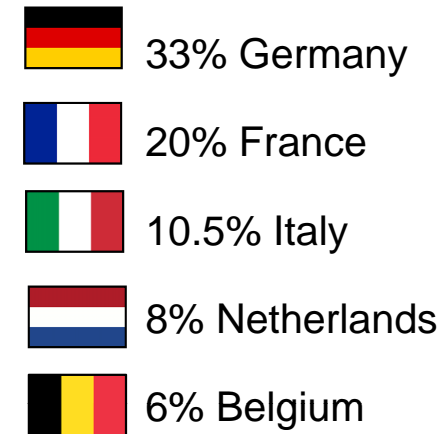
UPC judges-trends in the last appointments

- On 19.10.2022 85 judges (34 LQJ, 51 TQJ) appointed
- On 02.06.2023 new 21 TQJ appointed
- 3 TQJ resigned



In-house attorneys: CSL Behring, Airbus, Bose, 3M, Agva-Gevaert, Lundbeck, Orange, Nokia

Nationality UPC judges



TQJ by technical area

Languages of the proceedings

	Local / Regional division	Central Division (CD)
Court of First Instance	<ul style="list-style-type: none"> ■ Official local or designated regional language(s) ■ EPO languages if designated ■ Under certain conditions: the language of grant 	<ul style="list-style-type: none"> ■ Language of grant
Court of Appeal	<ul style="list-style-type: none"> ■ Language of Court of First Instance ■ If parties agree, the language of grant ■ “Exceptionally”, Court of Appeal may designate another language with the consent of parties 	

- Claimant chooses language → Language of the proceedings
- Registrar will maintain a list of languages used by LD/RD

Languages offered by the divisions

LEXOLOGY

English is a UPC language of proceedings except in France, Germany and Italy

HLK

European Union, France, Germany, Italy | May 22 2023

The UPC has today (22 May) confirmed the languages for the 1st instance Local and Regional Divisions. As expected, the Regional Division covering Sweden, Latvia, Lithuania and Estonia has adopted English as its language of proceedings.

The Local Divisions in Austria (Vienna), Belgium (Brussels), Denmark (Copenhagen), Finland (Helsinki), The Netherlands (The Hague), Portugal (Lisbon) and Slovenia (Ljubljana) have all adopted English as a language of proceedings in addition to the local language or languages. For example, at the Local Division in The Hague proceedings can be brought in either Dutch or English. The Local Division in Brussels will accept any of French, Dutch, German or English as the language of proceedings.

By contrast, the Local Divisions in France (Paris), Italy (Milan) and Germany (Düsseldorf, Hamburg, Mannheim, Munich) have adopted only the local language as a language of proceedings. Proceedings at the Local Division in Paris will have to be brought in French, at the Local Division in Milan in Italian, and at the four Local Divisions in Germany in German. It does remain possible that in a particular case the parties and the relevant Local Division could then agree to use the language of the patent instead of the local language.

Languages offered by the divisions

- But luckily on 1 June 2023 it was announced that the Local Divisions in Germany, France, Italy had designated English as a language of proceedings

	Division	Language(s)
Local Division	Vienna (AT)	German, English
	Brussels (BE)	Dutch, French, German, English *
	Copenhagen (DK)	Danish, English
	Helsinki (FI)	Finnish, Swedish, English
	Paris (FR)	French, English *
	Düsseldorf (DE)	German, English *
	Hamburg (DE)	German, English *
	Mannheim (DE)	German, English *
	Munich (DE)	German, English *
	Milan (IT)	Italian, English *
	The Hague (NL)	Dutch, English
	Lisbon (PT)	Portuguese, English
	Ljubljana (SI)	Slovenian, English
Regional Division	Nordic-Baltic (SE, EE, LT, LV)	English

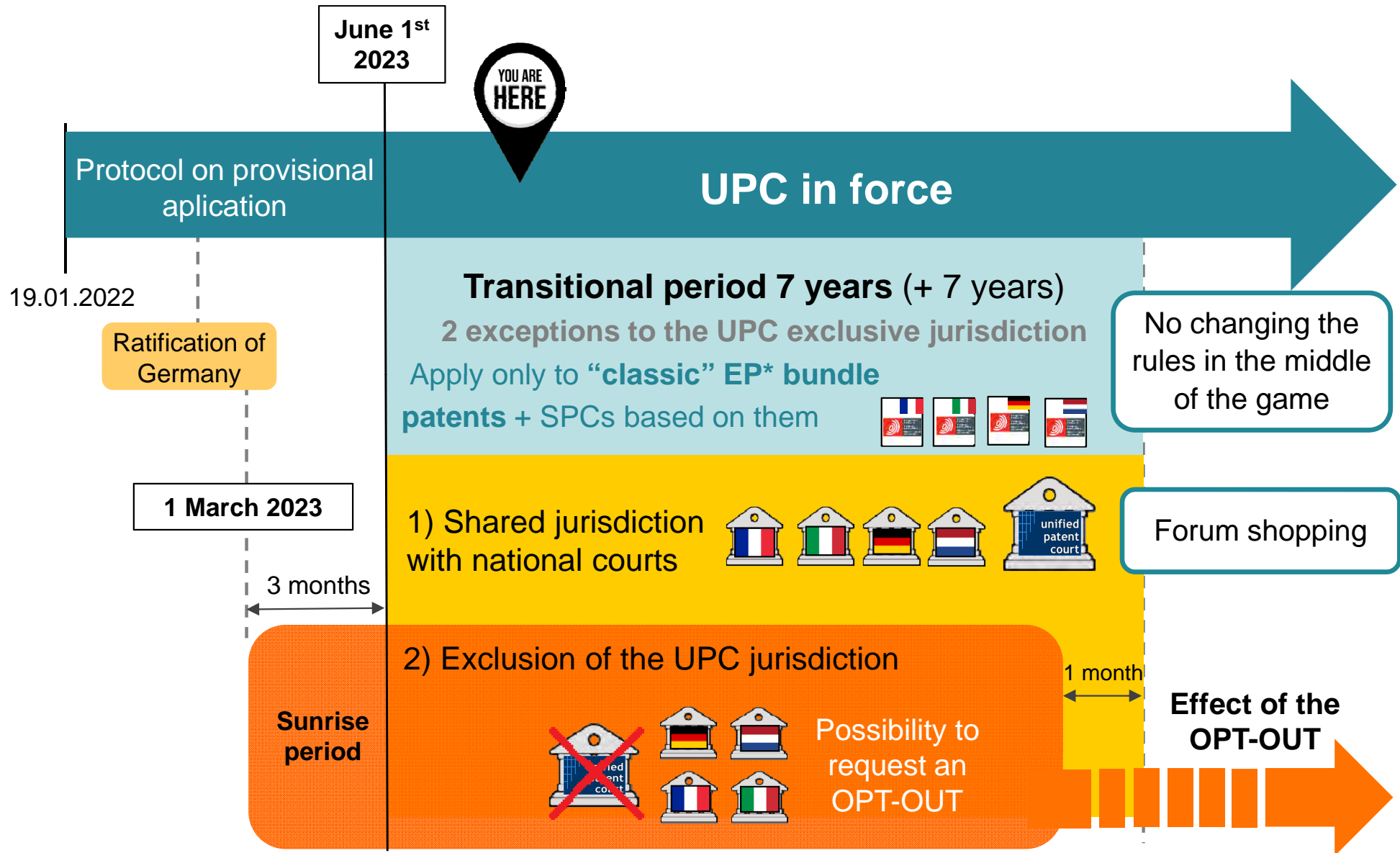
* judge-rapporteur may order that the oral proceedings, any orders or judgments are given in the national language (for orders or judgments there must be an English translation)



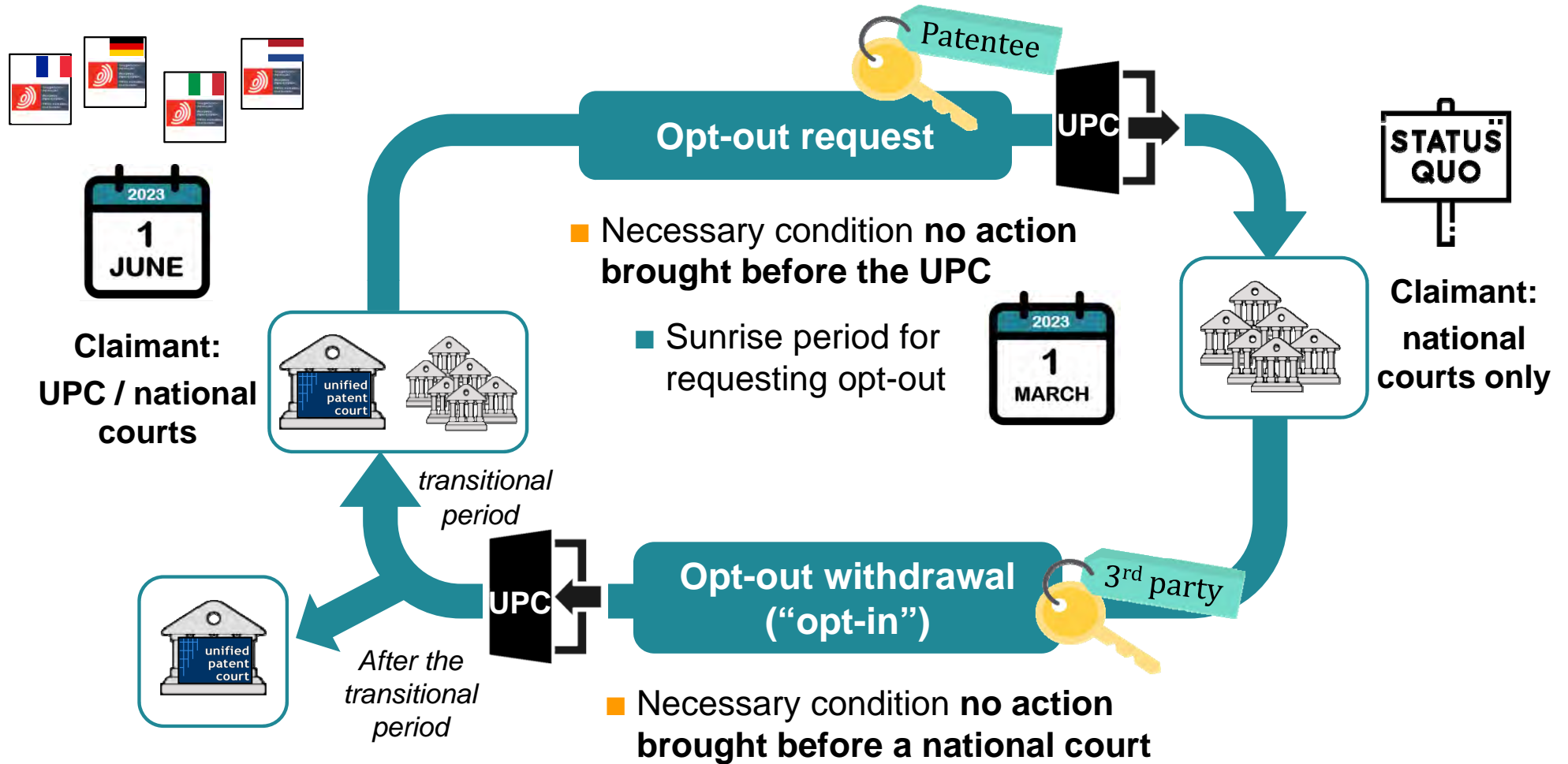
Competence Court First Instance

	Local / Regional division (LD, RD)	Central Division (CD)
Infringement Preliminary injunctions	<ul style="list-style-type: none"> ■ Place of infringement occurs ■ Place of residence or place of business of the defendant or one of the defendants 	<ul style="list-style-type: none"> ■ Defendant has no residence or place of business in a Contracting member state ■ Contracting member state concerned has no LD or RD ■ If a revocation action is pending before the CD, an infringement action (same parties, same patent) may be brought to the CD (alternatively: LD or RD)
<p>Many forum shopping possibilities for the patentee if infringement occurs in several countries</p>		
	Central Division (CD)	Local / Regional division (LD, RD)
Revocation Declaration of non-infringement (DNI)	<ul style="list-style-type: none"> ■ Competent division except in special cases 	<ul style="list-style-type: none"> ■ If an infringement action has been brought before a LD or RD (same parties, same patent) the action must be brought to the same LD or RD
<p>Limited forum shopping possibilities for 3rd parties: no ability to influence the first mentioned IPC (except for action with multiples patents having different first IPCs)</p>		

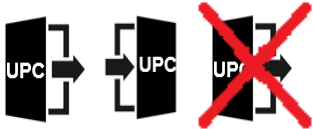


The transitional period



Exclusion of the competence of the UPC (opt-out)



Basic features of the opt-out

- Available for EP patents, EP patent applications and SPCs
- Must be filed by the **all the actual proprietor(s)** (not necessarily the one(s) identified in the national registers and including SPC holders)
 - The **licensees** cannot request the opt-out
- The application to opt out must be made in respect of **all of the designated/ granted states** (partial opt-out not possible)
- The opt-out is effective from the **date of registration**, not from the date of request
- If withdrawn, **no second opt-out** can be requested 
- The proprietor/applicant may **request to remove an unauthorised opt-out** (or opt-in) 
- The opt-out **can be challenged** in a preliminary objection 
 - The Registry will not refuse the action even if there is an opt-out

Checking for opt-outs

<https://www.unified-patent-court.org/en/registry/opt-out>



Unified Patent Court
Einheitliches Patentgericht
Jurisdiction unifiée du brevet

A single patent court for Member States of the European Union

EN FR DE

Search

[Home](#) [Court](#) [Registry](#) [Organisation](#) [News](#) [Vacant Positions](#) [Decisions and Orders](#) [FAQ](#)

Search for Opt-outs

[Home](#) » [Opt-Out](#)

PATENT NUMBER (EP-----) *

SUBMIT

Patent Number: EP3295663

- **Case Number:** App_544169/2023
- **Case Type:** WITHDRAW
- **Date of lodging:** July 5, 2023
- **Decision:** NOT_APPLICABLE

Patent Number: EP3295663

- **Case Number:** UPC_APP_112026/2023
- **Case Type:** OPT_OUT
- **Date of lodging:** May 12, 2023
- **Decision:** NOT_APPLICABLE

Statistics of opt-outs

- Opt-out cases according to Inpadoc (Coverage week 44/2023, November)

<https://www.epo.org/en/searching-for-patents/data/coverage>



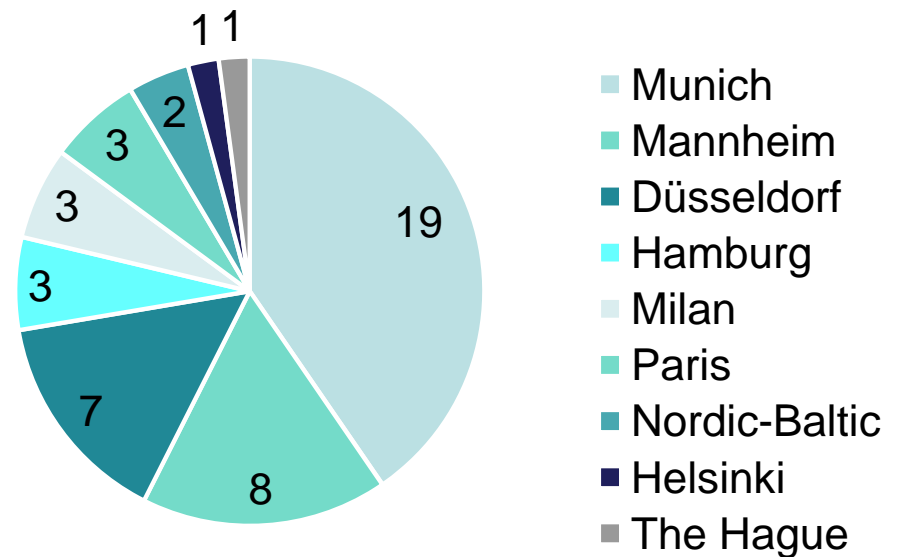
CC	Code	Number	Description
EP	P01	557083	OPT-OUT OF THE COMPETENCE OF THE UNIFIED PATENT COURT (UPC) REGISTERED
EP	P02	6309	OPT-OUT OF THE COMPETENCE OF THE UNIFIED PATENT COURT (UPC) CHANGED
EP	P03	289	OPT-OUT OF THE COMPETENCE OF THE UNIFIED PATENT COURT (UPC) DELETED
EP	P04	541	WITHDRAWAL OF OPT-OUT OF THE COMPETENCE OF THE UNIFIED PATENT COURT (UPC) REGISTERED
EP	P05	1	WITHDRAWAL OF OPT-OUT OF THE COMPETENCE OF THE UNIFIED PATENT COURT (UPC) CHANGED
EP	P06	1	WITHDRAWAL OF THE COMPETENCE OF THE UNIFIED PATENT COURT (UPC) DELETED

- Around 35-60% of all “opt-outable” patents (e.g., epi information issue 3, 2023: opt-outable patents estimated to be 1,5 million)

Statistics of cases at the UPC (CMS) on November 11th

- Estimate number (delay in showing the cases and not all proceedings are public)
- 21 revocation actions
 - 17 cases at the Paris CD
 - 4 cases at the Munich CD
- 13 counterclaims for revocation
 - 2 Hamburg, 4 Düsseldorf, 7 Munich
- 47 infringement cases
- 9 provisional measures
- 3 appeals
 - 1 related to a preliminary injunction
 - 2 related to procedural aspects
- Over 400 protective letters
(Rian Kalden, 18.10.2023, IAM Connect UPC 2023)

Infringement actions by Division



37 cases in German LDs (79%)

- For the time being the UPC agreement itself or the competence of the CD does not seem to have been challenged yet

Checking for UPC cases and decisions

<https://www.unified-patent-court.org/en/registry/cases>



Cases search

CASE NUMBER	<input type="text"/>
PATENT NUMBER	<input type="text" value="(EP-----)"/>
PARTY TYPE	<input type="text" value="- Any -"/>
PARTY NAME	<input type="text"/>
PROCEEDING TYPE *	<input type="text" value="- Select -"/>
DATE OF LODGING FROM	<input type="text" value="dd / mm / aaaa"/>
DATE OF LODGING TO	<input type="text" value="dd / mm / aaaa"/>
REPRESENTATIVE	<input type="text"/>
LANGUAGE OF PROCEEDINGS	<input type="text" value="- Any -"/>

Checking for UPC cases and decisions

<https://www.unified-patent-court.org/en/decisions-and-orders>



Location

[Show All](#)

Court of Appeal, Luxembourg

Luxembourg (LU)

Order

Decision

Central Division of the Court of First Instance

Paris (FR) Central Division - Seat

Order


Decision

Munich (DE) Central Division - Section

Order

Parties: Amgen, Inc. v. Sanofi-Aventis Deutschland GmbH
Case number: UPC_CFT 14/2023
Order/Decision reference: ORD_584907/2023
Type of action(s): Infringement Action
Court - Division: Court of First Instance - Munich (DE) Local Division
Language of Proceedings: German
Date: 3 November, 2023
Headnotes: Verfahrenssprache
Keynotes: Rule 322

[Read more](#)

 **Download DE PDF**

Order

Parties: Avago Technologies International Sales Pte. Limited v. Tesla Germany GmbH
Case number: UPC_CFL_54/2023
Order/Decision reference: ORD_577703/2023

Checking for UPC cases and decisions

Joeri Beetz: <https://upc.beetz.nl/#cases>

Patents

Opt outs, oppositions, UPC cases, ...

EP

Cases

- Infringement
- Revocation
- Provisional measures
- Appeal

Party:

Representative:


Appeal R223 06.11.2023 [View details](#)

Applicant Ocado Innovation Limited

Appeal R220(1) 26.09.2023 [View details](#)

EP 4 108 782
Appellants NanoString Technologies Germany GmbH; NanoString Technologies Netherlands B.V.; NanoString Technologies Inc.
Respondents President and Fellows of Harvard College; 10x Genomics, Inc.

Appeal R220(2) 13.09.2023 [View details](#)


Appellants Sanofi-Aventis Groupe S.A.; Regeneron Pharmaceuticals Inc.; Sanofi Winthrop Industrie S.A.; Sanofi-Aventis Deutschland GmbH
Respondent Amgen Inc.
Decision 16.10.2023 ECLI:EU:UP:2023:580110 

Checking for UPC cases and decisions

Joeri Beetz: <https://upc.beetz.nl/#cases>

Appeal under Rule 220(1)

Appellants	NanoString Technologies Germany GmbH NanoString Technologies Netherlands B.V. NanoString Technologies Inc. NanoString Technologies Inc.	Representatives	Oliver Jan Jüngst Oliver Jüngst
Repondents	President and Fellows of Harvard College 10x Genomics, Inc.	Representative	Tilman Mueller-Stoy

EP 4 108 782
COMPOSITIONS AND METHODS FOR ANALYTE DETECTION  **Espacenet**
European Patent Register

Case number	APL_576355/2023
Division	Court of Appeal
Language	German
Judges	Cornelis Schüller Peter Blok Klaus Grabinski Rainer Friedrich Francoise Barutel
Case created	25.09.2023
Case filed	26.09.2023

Other UPC actions for EP 4 108 782





Infringement	06.06.2023	View details
Claimants	President and Fellows of Harvard College; 10x Genomics, Inc.	
Defendants	Vizgen, Inc.; Vizgen, Inc.; Vizgen, Inc.	
Infringement	01.09.2023	View details
Claimants	President and Fellows of Harvard College ; 10x Genomics, Inc.	
Defendants	NanoString Technologies Inc.; NanoString Technologies Germany GmbH; NanoString Technologies Netherlands B.V.	
Prov. meas. R206	06.10.2023	View details
Applicants	10x Genomics, Inc.; President and Fellows of Harvard College	
Defendant	NanoString Technologies Inc.	
Decision	26.10.2023	ECLI:EU:UP:2023:579604

EPO opposition against EP 4 108 782

Opponent	NanoString Technologies, Inc., 18.07.2023
Representative	Bird & Bird LLP

Checking for UPC cases and decisions

Pierre Véron: <https://www.veron.com/upc-caselaw/?lang=en>

Date	Parties	Case number	Order/Decision reference	Type of action	Court - Division	Language of proceedings	Details	Documents
29/09/2023	Edwards Lifesciences Corporation /, Meril GmbH	UPC_CFI_15/2023	ORD_576853/2023	Infringement Action	Court of First Instance - Munich (DE) Local Division	German	1	  DE   EN
28/08/2023	Edwards Lifesciences Corporation v. Meril GmbH and Meril Life Sciences Pvt Ltd.	UPC_CFI_249/2023	ORD_567601/2023	Application for provisional measures	Court of First Instance - Munich (DE) Local Division	German	1	  DE   EN
23/08/2023	Edwards Lifesciences Corporation v. Meril GmbH and Meril Life Sciences Pvt Ltd.	UPC_CFI 15/2023	ORD_562614/2023	Infringement Action	Court of First Instance - Munich (DE) Local Division	German	1	  DE   EN

Infringement cases (ordered by value of action)

Patent	Title	Parties	Value of the action (EUR)	Local Division	Language	Judges	Opt-out
EP3666797	Antigen binding proteins to proprotein convertase subtilisin kexin type 9 (PCSK9)	Amgen vs Sanofi and Regeneron	100 million	Munich	German -> English	3+1	
EP3295663	DIGITALLY OVERLAYING AN IMAGE WITH ANOTHER IMAGE	AIM Sport Vision vs Supporor	15 million	Helsinki	English	3+1	12.05.2023 WD: 05.07.2023
EP4108782	COMPOSITIONS AND METHODS FOR ANALYTE DETECTION	10xGenomics vs Vizgen	10 million	Hamburg	German	3	
		Harvard College vs Nanostring	10 million	Munich	German	3	
EP2628464	PROSTHETIC VALVE	Edwards Lifesciences Corporation vs Meril	8 million	Nordic-Baltic	English	3+1	
EP3646825	A SYSTEM COMPRISING A PROSTHETIC VALVE AND A DELIVERY CATHETER	Edwards Lifesciences Corporation vs Meril GmbH	8 million	Munich	German	3	<i>Counterclaim for revocation</i>
EP4101791	A GRID FRAME STRUCTURE	Ocado vs Autostore	8 million	Milan	Italian	3	<i>Case settled</i>
EP2794928	COMPOSITIONS AND METHODS FOR ANALYTE DETECTION	Harvard College vs Nanostring	5 million	Munich	German	3	
EP3476616	Flachdruckoriginalplatte, verfahren zur Herstellung einer Flachdruckplatte und Druckverfahren	Fujifilm Corporation vs Kodak	5 million	Mannheim	English	3	
EP3511174	Flachdruckplattenoriginal, Verfahren Zur Herstellung einer Flachdruckplatte und Flachdruckverfahren	Fujifilm Corporation vs Kodak	5 million	Mannheim	English	3	
EP3594009	Originalplatte einer lithographischen Druckplatte und Verfahren zur Herstellung einer lithographischen Druckplatte	Fujifilm Corporation vs Kodak	5 million	Düsseldorf	English	3	
EP2794928	Compositions and methods for analyte detection	10xGenomics vs Nanostring	5 million	Munich	German	3	
EP3831282	Rremote monitoring of analyte measurements	Dexcom vs Abbott	4 million	Paris	English	2	19.05.2023 WD: 28.10.2023
EP4111949	Ttranscutaneous analyte sensors, applicators therefor, and needle hub comprising anti-rotation feature	Dexcom vs Abbott	4 million	Munich	English	3	

Infringement cases (ordered by value of action)

Patent	Title	Parties	Value of the action (EUR)	Local Division	Language	Judges	Opt-out
EP3024163	Radio communication device and constellation control method	Panasonic vs Xiaomi	4 million	Munich	German	3	17.05.2023 WD: 26.06.2023
		Panasonic vs Oppo	4 million	Munich	German	3	
EP2207270	Wireless communication base station apparatus, and wireless communication mobile station apparatus and control channel allocation method	Panasonic vs Oppo	4 million	Mannheim	German	3	17.05.2023 WD: 26.06.2023
		Panasonic vs Xiaomi	4 million	Mannheim	German	3	
EP2584854	Channel arrangement method and wireless communication base station device	Panasonic vs Xiaomi	4 million	Munich	German	3	09.05.2023 WD: 26.06.2023
		Panasonic vs Oppo	4 million	Munich	German	3	
EP3435866	Systems and methods for display device and sensor electronics unit communication	Dexcom vs Abbott	4 million	Paris	English	3	
EP3797685	Systems and methods for display device and sensor electronics unit communication	Dexcom vs Abbott	4 million	Munich	English	3	01.06.2023 WD: 03.07.2023
EP2628233 EP2867997	Power transmitter and power receiver for an inductive power system	Philips vs Belkin	4 million	Munich	German	3	<i>Counterclaim for revocation</i>
EP2197132	RADIO COMMUNICATION DEVICE AND RESPONSE SIGNAL SPREADING METHOD	Panasonic vs Oppo	4 million	Munich	German	3	09.05.2023 WD: 26.06.2023
EP2568724	Radio Communication Device and Radio Communication Method	Panasonic vs Oppo	4 million	Mannheim	German	3	17.05.2023 WD: 26.06.2023
		Panasonic vs Xiaomi	4 million	Mannheim	German	3	
EP2197132	RADIO COMMUNICATION DEVICE AND RESPONSE SIGNAL SPREADING METHOD	Panasonic vs Xiaomi	4 million	Munich	German	3	09.05.2023 WD: 26.06.2023
EP3096315	DEVICE AND METHOD FOR EXECUTION OF HUFFMAN CODING	Panasonic vs Oppo	4 million	Mannheim	German	3	17.05.2023 WD: 26.06.2023
		Panasonic vs Xiaomi	4 million	Mannheim	German	3	
EP3653540	<i>Storage systems and methods for retrieving units from a storage system</i>	<i>Ocado vs Autostore</i>	<i>3 million</i>	<i>Nordic-Baltic</i>	<i>English</i>	<i>3</i>	<i>Case settled</i>

Infringement cases (ordered by value of action)

Patent	Title	Parties	Value of the action (EUR)	Local Division	Language	Judges	Opt-out
EP3795501	A load handling device for retrieving units from a storage system	Ocado vs Autostore	3 million	Düsseldorf	German	3	Case settled
EP1793917	A DEVICE FOR CARBONATING A LIQUID WITH PRESSURIZED GAS	SodaStream vs Aarke AB	3 million	Düsseldorf	German	3	02.06.2023 WD: 31.07.2023
EP3221117	MULTIPLE EXTRUSION HEAD	KraussMaffei Extrusion vs Frank Podzelyny	2 million	Munich	German	3	
EP2867997	WIRELESS INDUCTIVE POWER TRANSFER	Philips vs Belkin	2 million	Munich	German	3	
EP2372863	Controlling inductive power transfer systems	Access Business Group vs Belkin	1.2 million	Munich	German	3	Counterclaim for revocation
EP3223320 EP3926698	LICHEMITTIERENDE DIODE	Seoul Viosys vs expert klein; expert e-Commerce GmbH	1 million	Düsseldorf	German	3	
EP3611989	Method and apparatus for transmitting wireless local area network information	Huawei vs Netgear	1 million	Munich	German	3	14.05.2023 WD: 24.05.2023
EP1838002	Programmable hybrid transmitter	Avago vs Tesla	1 million	Munich	German	3	Counterclaim for revocation
EP1612910	Überwachungsschaltung für die bordeigene Stromversorgung und Leistungsversorgungssteuerung	Avago vs Tesla	1 million	Hamburg	German	3	Counterclaim for revocation
EP3388490	DECORATING NATURAL LEATHER	Agfa vs Gucci	1 million	Hamburg	English	3	
EP2145848	False twist texturing machine	Oerlikon Textile GmbH vs Himson	750,000	Milan	Italian	3	
		Oerlikon Textile GmbH vs Baghat	750,000	Milan	Italian	3	
EP2546134	Combination structure of bicycle frame and motor hub	MyStromer vs Revolt Cycling	750,000	Düsseldorf	German	3	Counterclaim for revocation
EP2137782	DEVICE AND METHOD FOR CONVERTING LIGHT ENERGY INTO ELECTRICAL ENERGY	Plant-E Knowledge B.V. vs Arkyne Technologies S.L.	700,000	The Hague	Dutch -> English	3	

Infringement cases (ordered by value of action)

Patent	Title	Parties	Value of the action (EUR)	Local Division	Language	Judges	Opt-out
EP3375337	SANITATION BATH TUB DEVICE	Franz Kaldewei vs Bette	500,000	Düsseldorf	German	3	<i>Counterclaim for revocation</i>
EP3225320	Vorrichtung und Verfahren zum messen der Geradheit eines stabförmigen Werkstücks	MSG Maschinenbau vs EJP Maschinen	500,000	Munich	German	3	
EP2359858	Nutritional composition comprising indigestible oligosaccharides	Nutricia vs Nestlé	150,000	Düsseldorf	English	3	<i>Counterclaim for revocation</i>

- 29 cases in German (62% of the infringement cases)
- 14 cases in English (30%)
- 1 case in French
- 3 cases in Italian

Revocation cases (ordered by value of action)

Patent	Parties	Central Division	Value of the action (EUR)	Language	Judges	Comment
EP3666797 - Antigen binding proteins to proprotein convertase subtilisin kexin type 9	Sanofi vs Amgen	Munich	100 million	English	2	EPO opposition still possible Prelim. Objection - Bifurcation (infringement and revocation at UPC filed on the same day)
EP3646825 - A system comprising a prosthetic valve and a delivery catheter	Meril Italy vs Edwards Lifesciences	Paris	8 million	English	3	Prelim. Objection - Bifurcation ? (infringement action at UPC filed before the revocation action)
EP2794928 - Compositions and methods for analyte detection	Nanostring vs Harvard College	Munich	7.5 million	English	3	Bifurcation (revocation action at UPC filed before the infringement action)
EP4074373 - MRI-SAFE DISK MAGNET FOR IMPLANTS	Advanced Bionics vs MED-EL Elektromedizinische Geräte	Paris	5 million	English	2	EPO opposition ongoing
EP3883277 – Method for communicating spatially located information to a mobile terminal	Hanshow Germany vs SES-imagotag	Paris	2.5 million	French	2	EPO opposition ongoing
EP3456214 - Vaporizer	NJOY vs VMR Products	Paris	2 million	English	2	EPO opposition ongoing
EP3498115 - Vaporization device systems	NJOY vs Juul Labs	Paris	2 million	English	2	EPO opposition ongoing
EP2875740 - Vaporizer	NJOY vs VMR Products	Paris	2 million	English	2	
EP3626092 - Vaporizer	NJOY vs VMR Products	Paris	2 million	English	2	EPO opposition still possible
EP3504989 - Vaporization device systems	NJOY vs Juul Labs	Paris	2 million	English	2	EPO opposition ongoing

Revocation cases (ordered by value of action)

Patent	Parties	Central Division	Value of the action (EUR)	Language	Judges	Comment
EP3430921 - Vaporization device systems (2)	NJOY vs Juul Labs	Paris	2 million	English	2	EPO opposition ongoing
EP3504991 - Vaporization device systems	NJOY vs Juul Labs	Paris	2 million	English	2	EPO opposition ongoing
EP3504990 - Vaporization device systems	NJOY vs Juul Labs	Paris	2 million	English	2	EPO opposition ongoing
EP3613453 – Vaporizer	NJOY vs VMR Products	Paris	2 million	English	2	EPO opposition ongoing
EP3195963 - CUTTING INSERT	Walter AG vs Iscar	Paris	2 million	English	2	
EP3056563 - Method of producing retinal pigment Epithelial cell	Astellas vs Healios	Paris -> Munich	500,000	English	3	
EP3056564 - Method for purification of retinal pigment Epithelial cells	Astellas vs Healios	Paris -> Munich	500,000	English	3	EPO opposition ongoing
EP3170639 - Verfahren zur Steuerung der Geschwindigkeit und der Positionierung eines Werkzeugwechselwagens sowie Arbeitsstation für eine mit auswechselbaren Werkzeugen Bestückte Maschine	Ermer vs Konrad	Paris	500,000	German	2	
EP2681034 - Device and method for continuous generative production	Cead vs Bego Medical	Paris	499,000	German	2	
EP3414708 - Adaptive sensor sampling of a cold chain distribution system	BITZER Electronics vs Carrier Corp.	Paris	250,000	English	3	EPO opposition ongoing

Some of the cases the UPC has been dealt so far

- 2 orders for preserving evidence: *ex parte*, granted (Milan LD)
- 5 cases of preliminary injunctions
 - 2 granted: 1 *ex parte* (Düsseldorf LD) and 1 *inter partes* (Munich LD)
 - 3 denied: 1 lack of jurisdiction (Helsinki LD), 1 lack of infringement (Vienna LD), 1 lack of infringement/validity (Munich LD)
- Various procedural aspects
 - Where to file a revocation action and bifurcation
 - Access to the pleadings by third parties
 - Impact of protective letters
 - Extensions of the deadlines
 - Language of the proceedings
 - Aspects related to opt-outs

Provisional and protective measures at the UPC

- Preliminary injunctions: Court orders which are granted to a patentee against an alleged infringer before an infringement action is started
- Very attractive for claimants since they can be extremely far-reaching (injunction over 17 countries)
- The UPC contemplates a range of provisional remedies, including:
 - Provisional and protective measures such as **injunctions** against an alleged infringer or any intermediary
 - **Seizure or delivery up** of products suspected of infringing a patent
 - **Seizure of property** (blocking accounts)
 - Order to **preserve evidence** and **inspection of premises** or **saisie-contrafaçon**
 - Prohibition to remove from the UPC's jurisdiction any assets (**freezing orders**)

Provisional and protective measures at the UPC

- Preliminary measures may be granted after hearing the parties or without hearing the defendant (*ex parte*)
 - if delay would lead to irreparable harm
 - risk that evidence is destroyed
- Interests/ potential harm for the parties resulting from granting/refusal of the injunction will be weighed up
- The UPC will assess:
 - Why the remedy is necessary
 - Urgency of the case
 - Sufficient degree of certainty that the patent is valid and infringed

Provisional and protective measures at the UPC

- Adequate security for compensation may be required to the applicant in the event that the Court revokes the order for provisional measures
- If, within a specified time period (31 calendar days or 20 working days) provided for in the Court's order the applicant does not start proceedings on the merits of the case:
 - provisional measures will be revoked
 - Court may order the applicant, upon request of the defendant, to provide the appropriate compensation
- The decision is subject to appeal but generally will not have suspensive effect (unless the Court considers otherwise)
 - Appeal will not prevent continuation of the main proceedings but no decision will be taken

Protective letters at the UPC



- A letter in **anticipation** of a request for provisional injunction when a party foresees the risk that a patent may be enforced against them
- It must be filed with the Registry in the language of the patent (200 EUR)
- It must contain an indication of the facts, evidence and arguments for defending that the patent is invalid including the reasons why any application for provisional measures should be rejected
- The protective letter remains **confidential** and is only provided to the Court if an action is brought against the party that filed it prior to deciding whether a judgment should be made without the defendant being heard
- **If no provisional measures are requested** within 6 months from the date of receipt of the protective letter, the protective letter is removed from the registry unless an extension of 6 months is applied for (100 EUR)
- Request to be heard but it **does not prevent *per se* an *ex parte* preliminary injunction** – its use must be carefully considered

Ex parte orders to preserve evidence – Milan LD

Patent: EP2145848B1 - false twist texturing machine
Parties: Oerlikon textile vs Himson Engineering and Bhagat Group
Language: Italian
Division: Milan
Outcome: Orders granted



- **Oerlikon textile** is a German company which is the owner of the patent EP2145848B1 related to a false twist texturing machine
- **Himson Engineering** and **Bhagat Group** are two Indian companies that were showcasing two machines at the ITMA (International Textile Machinery Association) trade fair near Milan
- Trade Fair was to conclude on 14th June
- On 12th and 13th June Oerlikon filed two applications with the UPC to **preserve evidence** at the Milan LD aimed at acquiring and preserving evidence of the defendants' infringing activity

Ex parte orders to preserve evidence – Milan LD

- Due to the extreme urgency alleged by the plaintiff, and the inability to establish a panel of judge, the case was heard by a single judge
- *Ex parte* orders to preserve evidence were issued on 13th and 14th June (the next day) :
 - It was not possible to summon the defendants to appear before the court before the conclusion of the trade fair
 - Evidence would not be accessible to the plaintiff after the conclusion of the trade fair, as the defendants were foreign companies, and the evidence could be easily hidden or destroyed
- Presumption of **validity**: no oppositions filed before the EPO and no protective letters filed by the defendants
- Regarding the evidence of **infringement**, the claimant provided brochures of the defendants' machines, and photographic reproductions of the allegedly infringing machines taken at defendant's booth
- No security was not requested to the claimant

Ex parte preliminary injunction - Düsseldorf LD

Patent: EP2546134B1 - combination structure of a frame and a motor hub
Parties: myStromer vs Revolt Zycling
Language: German
Division: Düsseldorf
Outcome: Preliminary injunction granted (*ex parte*) despite protective letter



- **myStromer AG** is the patent owner of EP2546134B1 related to a combination structure of a frame and a motor hub
- **Revolt Zycling** announced on their website e-bikes with a certain bicycle frame and motor hub structure
- On June 19th, Revolt Zycling filed a **protective letter** at the UPC
- On June 21st, Revolt Zycling presented its e-bikes at the “Eurobike 2023” trade show in Frankfurt

Ex parte preliminary injunction - Düsseldorf LD

- On June 22nd myStromer AG filed a **Preliminary injunction** at the UPC arguing that the e-bikes presented by Revolt Zycling in the trade show were infringing the patent
- The Court granted the preliminary injunction on June 22nd, **the same day that the request was filed**, without hearing Revolt Zycling (*ex parte*)
- Urgency and irreparable harm were taken into account since the trade show which is of considerable relevance for the entire industry
- The arguments presented in the **protective letter** were considered but:
 - The non-infringing arguments were not convincing, and the exhaustion argument had apparently been dismissed in parallel proceedings before the Swiss Federal Patent Court
 - Revolt had not challenged the validity of the patent
- **Validity** of the patent was sufficiently secured because the patent was granted in 2015, no opposition had been filed nor any national nullity proceedings initiated

Ex parte preliminary injunction - Düsseldorf LD



- The preliminary injunction was granted for DE, FR, IT, and NL, but the patent is also in force in Austria
- Claimant asked for **correction of decision** and included Austria in the injunction order indicating that this was due to an oversight and relied on Article 34 UPCA:

Decisions of the Court shall cover, in the case of a European patent, the territory of those Contracting Member States for which the European patent has effect

- However, the Court dismissed that argument because it relates to the substance and it cannot be the basis for rectification of the decision
- The Court refused the correction and considered that injunction was given according to the claimant's request
- On October 18th, the UPC imposed for the first time a **penalty payment** of 26,500 EUR against the defendant because its compliance with the PI was limited and delayed

Inter partes Preliminary Injunction - Helsinki LD

Patent: EP3295663B1 - DIGITALLY OVERLAYING AN IMAGE WITH ANOTHER IMAGE
Parties: AIM Sport Vision vs Supponor
Language: English
Division: Helsinki
Outcome: Preliminary injunction dismissed due to lack of jurisdiction



- **AIM Sport Vision** is the patent owner of EP3295663B1 related to virtual advertising for sports stadiums. On May 12th AIM Sport Vision **filed an opt-out** (during sunrise period)
- On July 5th the **opt-out was withdrawn**
- On July 14th **AIM Sport Vision** filed an application for **Preliminary Injunction** against **Supponor** (several defendants)
- Oral hearing took place on September 21st at the Helsinki Local Division
- The Court's **decision was exceptionally given orally** after the hearing because UEFA had to decide on the acquisition of the systems provided by the parties in the days following the oral hearing

Inter partes Preliminary Injunction - Helsinki LD

- Written decision was issued on October 20th
- Discussion on the **validity of the withdrawal of the opt-out**
- When the opt-out was withdrawn, two actions were pending:
 - appeal from the decision of Munich Regional Court issued on 04.04.2022 concerning the infringement action
 - appeal against the decision of the German Federal Patent Court issued on 10.11.2022 considering the revocation action of the patent
- **Article 83 (4) UPCA -Transitional regime**

Unless an action has already been brought before a national court, proprietors of or applicants who made use of the opt-out ... shall be entitled to withdraw their opt-out at any moment
- The Court concluded that due to the national infringement and invalidity proceedings brought before the German national courts, the **withdrawal of the opt-out was ineffective** and the Preliminary Injunction was dismissed **due to lack of jurisdiction**

Inter partes Preliminary Injunction - Helsinki LD

Claimant arguments	LD arguments
<ul style="list-style-type: none">■ National court actions pending before the entry into force of the UPCA■ Art. 83(4) UPCA applies only after entry into force (from June 1st) due to the non-retroactivity of international treaties under the Vienna Convention on the Law of the Treaties■ The parties in the German litigations are not exactly the same as in the actions at hand	<ul style="list-style-type: none">■ The rule of non-retroactivity of international treaties is intended for the protection of parties in case of not foreseen before the entry into force of the international treaty■ Before the full entry into force of the UPCA on June 1st, certain articles of the UPCA came into force by virtue of the Protocol on Provisional Application of the UPCA and Sunrise Period began on 01.03.2023■ The proprietors who chose to use the opt-out system must have been perfectly aware that the UPCA had partly come into force■ Article 83(4) UPCA does not mention anything about the parties but only the patent in suit

Inter partes Preliminary Injunction - Vienna LD

Patent: EP3398487B1 - device for producing milk foam
Parties: CUP&CINO Kaffesystem vs Alpina Coffee Systems
Language: German
Division: Vienna
Outcome: Preliminary injunction denied because of lack of infringement



- **CUP&CINO Kaffesystem-Vertrieb** is the patent owner of EP3398487B1 related to a device for producing milk foam
- CUP&CINO sought provisional measures against alleged infringement by **Alpina Coffee Systems**
- Oral hearing took place on September 13th at the Vienna Local Division
- The Court denied the application of provisional measures because it was considered that there was **no infringement**
- During the oral hearing demonstrations of the machines by the parties were allowed

Inter partes Preliminary Injunction - Vienna LD

- **After the action was filed**, an appointed patent attorney declared an **opt-out** for EP3398487B1
- During the oral hearing the **impact of the opt-out request** was discussed
- Both parties agreed that the opt-out request did not affect the case related to the provisional measures but would impact the later main proceedings
- Discussion on the Rule 5.6 of the Rules of Proceedings (RoP):

*In the event that an **action has been commenced before the Court** ... prior to the date of entry of the Application to opt out in the register..., the Application to **opt out shall be ineffective**..., irrespective of whether the action is pending or has been concluded*

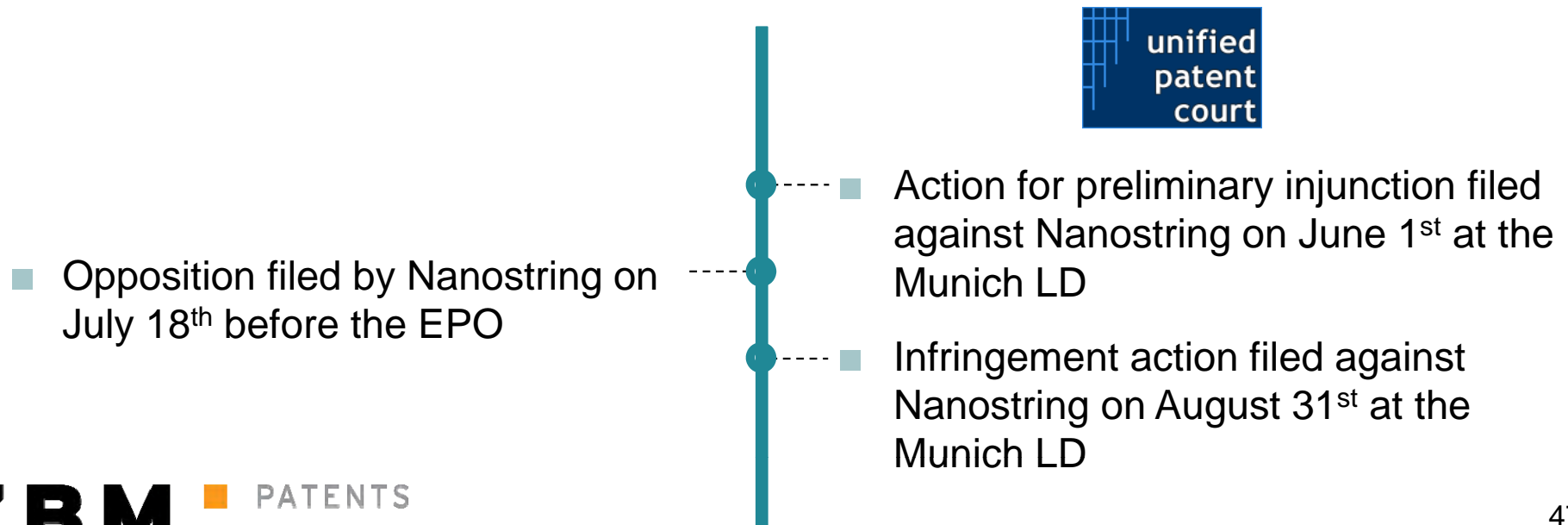
- According to the defendant, Rule 5.6 would not apply. In the German version used the word “Klage” instead of “action”, and “Klage” would not include a provisional measures
- However, the Court decided **the opt-out was no longer possible once a party has filed a suit**

10xGenomics vs Nanostring



- **Harvard College** is the patent owner of two EP patents related to compositions and methods for analyte detection
- **10xGenomics** has a licence of these patents
- **Nanostring** is a 10xGenomics competitor

- **EP4108782** – divisional patent of EP2794928. Unitary patent granted on June 7th (decision on unitary effect on June 12th)



10xGenomics vs Nanostring

- **EP2794928** – parent patent - classic EP granted without oppositions. In force in FR, DE, NL

- Nullity action pending before the German Federal Patent Court.
Preliminary opinion that the patent is valid in amended form on February 2nd

- Preliminary injunction granted against Nanostring on May 17th by the Munich Regional Court by the German part of the patent (currently under appeal)



- Action for preliminary injunction filed against Nanostring on June 1st at the Munich LD
- Revocation action filed by Nanostring on July 17th at the Munich CD
- Infringement action filed against Nanostring on September 18th at the Munich LD

First PI 10xGenomics vs Nanostring - Munich LD

Patent: EP4108782B1- Compositions and methods for analyte detection
Parties: 10xGenomics vs Nanostring
Language: German
Division: Munich
Outcome: Preliminary injunction granted (17 countries)



- **EP4108782** – Action for preliminary injunction filed against Nanostring on June 1st at the Munich LD
- Panel of judges: 3 legally qualified and 1 technically qualified
- Oral hearing took place on September 5th and 6th
- Decision issued on September 19th (over 100 pages)
- In the oral proceedings validity, infringement, urgency, irreparable damage and commercial factors were discussed
- Concerning the **validity** novelty, inventive step, added matter and sufficiency were discussed

First PI 10xGenomics vs Nanostring - Munich LD

Defendants arguments	LD arguments
<ul style="list-style-type: none">■ On urgency, PI should be refused on the grounds of delay because applicants delayed the grant of the patent to benefit from the unitary effect■ No need for injunction since one of the parties was a NPE (non-practising entity)■ On validity, it is sufficient that revocation was merely possible based on German case law■ Claims had been amended and the patentee was willing to consider further amendments (auxiliary requests)	<ul style="list-style-type: none">■ Advantages of the unitary effect justify delay■ Applicants acted as quickly as possible by filing the request on the first day possible (even before the patent was granted)■ This is of no significance, financial damage may justify the injunction■ Applicable standard is the preponderance of probability. Defendant has to demonstrate that the patent is probably invalid■ The conviction that the patent is valid is not diminished by the auxiliary request submitted by the applicants in the oral proceeding at the suggestion of the LD

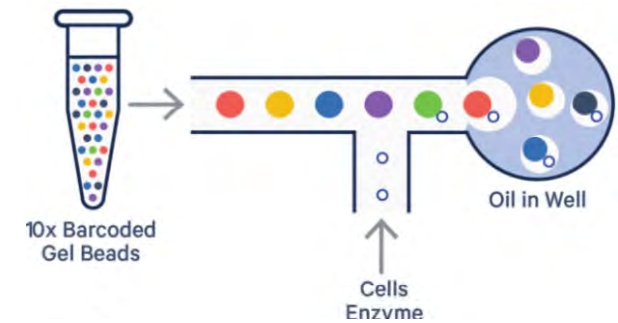
First PI 10xGenomics vs Nanostring - Munich LD



- The Court considered that the **validity and infringement** had been proved with **sufficient certainty**
- The Court ordered Nanostring to **cease and desist from offering the allegedly infringing products in all the 17 UPC countries**
- No security was required (sufficiently stable situation of applicant)
- For each failure to comply with the orders a penalty payment up to EUR 250,000 was decided
- Defendants had to reimburse the costs of the proceedings
- The case is under appeal. Hearing scheduled for December 18th

Second PI 10xGenomics vs Nanostring - Munich LD

Patent: EP2794928B1- Compositions and methods for analyte detection
Parties: 10xGenomics vs Nanostring
Language: German
Division: Munich
Outcome: Preliminary injunction denied



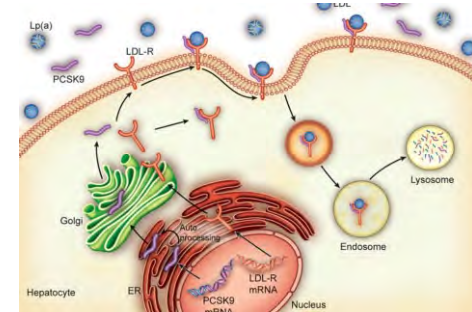
- **EP2794928** – Action for preliminary injunction filed against Nanostring on June 1st at the Munich LD
- Same panel of judges as for EP4108782: 3 legally qualified and 1 technically qualified
- Oral hearing took place on September 19th
- Decision issued on October 10th
- Neither **infringement** and **validity** were sufficiently certain
- **PI was denied**, despite the previous contrary decision issued by the Munich Regional Court on the German part of the patent

Second PI 10xGenomics vs Nanostring - Munich LD

Claimant arguments	LD arguments
<ul style="list-style-type: none">■ On validity applicants argued that on the basis of the preliminary opinion of the German Federal Patent Court there was no doubt about validity of the patent	<ul style="list-style-type: none">■ The patent as granted could not be maintained. The claims must be considered in their present form and not as they could be amended■ Doubts on whether the applicant's interpretation for infringement would impermissibly extend the scope of the claim■ On infringement, a particular feature had been left unexamined and open in the parallel German proceedings<ul style="list-style-type: none">■ This raised technical and legal questions that could not be answered satisfactorily in the context of a PI■ Doubts on the urgency because applicants could have enforced the patent in France and the Netherlands before June 1st and they did not do it

First bifurcation cases at the UPC

	Revocation action	Infringement action
EP3666797B1- antibody for reducing cholesterol levels Amgen	Munich CD English Sanofi	Munich LD German Sanofi, Regeneron



- **Amgen** is the patent owner of EP3666797B1 related to an antibody for reducing cholesterol levels
- The first day, almost simultaneously (and due to issues with the CMS):
 - **Sanofi** filed a revocation action of the patent (hard copy) at the UPC registry in Luxembourg designating the Munich CD at 11:26 am
 - **Amgen** filed an infringement action (hard copy) against Sanofi at the Munich LD at 11:45 am
- Amgen challenged the Court competence in Sanofi's action based on the fact that if an **infringement action has been brought** before a LD **the revocation action** between the same parties and same patent **must be brought to the same LD**

First bifurcation cases at the UPC

- On August 24th the Munich CD issued its first decision on a preliminary objection
- Judge reasoned that “has been brought” has to be interpreted as *the objective act of lodging a statement of claim or revocation*
- The precise **time and date of lodging the claim** determines which action was brought first, and not when the UPC accepts the claim
- Amgen challenged the hard-copy filing at the UPC registry in Luxembourg
- Discussion about Rule 4.2 of the Rules of Procedure:
 - Where it is not possible to lodge a document electronically for the reason that the electronic case management system of the Court has ceased to function a party may lodge a document in hard-copy form at the Registry or a sub-registry*
- The judge explained that Rule 4.2 gives parties a choice where it is impossible to lodge a document electronically, and that a “Registry” as defined in the UPCA includes the registry in Luxembourg
 - The LD may stay the case until the revocation case is decided
 - The infringement action may be transferred to the CD but this

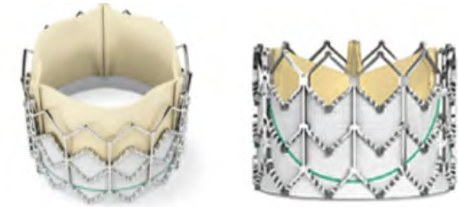
First bifurcation cases at the UPC

EP3646825 - A system comprising a prosthetic valve and a delivery catheter
Edwards Lifesciences

Revocation action Infringement action

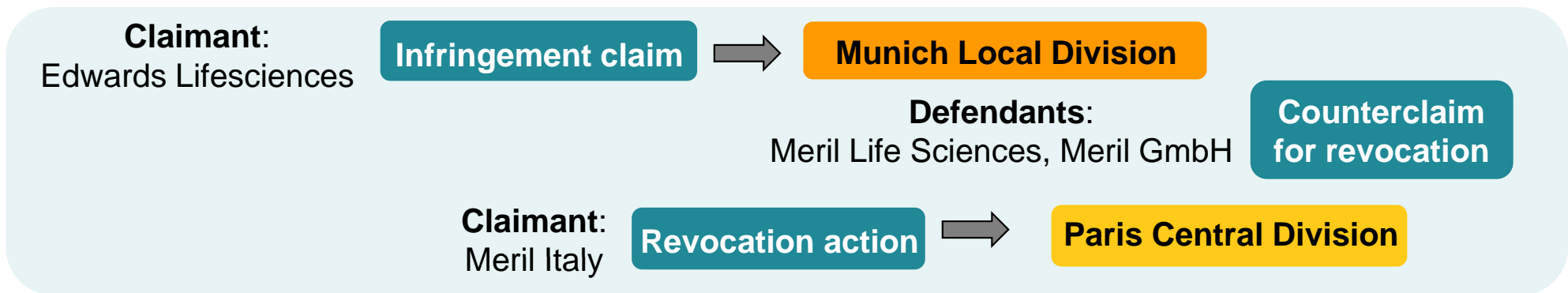
Paris CD
English
Meril Italy

Munich LD
German
Meril GmbH, Meril Life Sciences



- Infringement action filed by Edwards Lifesciences against **Meril GmbH and Meril Life Sciences** at the Munich LD on June 1st
- Revocation action filed by **Meril Italy** against Edwards Lifesciences at the Paris CD on August 4th
- Meril Italy is a wholly owned subsidiary of the defendant in the infringement dispute
- Preliminary objection at the Paris CD: is the if the CD is the correct forum to hear the case?
 - Are affiliates and the parent company the same party?
- Oral hearing held on October 26th
- Counterclaim for revocation filed on the infringement case on November 2nd

First bifurcation cases at the UPC



- The Court decided that Meril Italy's revocation action is admissible
 - Narrow definition of a "party": A wholly owned subsidiary may file a separate revocation action at the UPC even if the parent company is a party in a pending infringement case
- It remains to be seen how the Court will address this case to prevent two divisions from ruling on the validity of a patent
- Rules provide several possibilities: discretion of LD for *Unified proceedings* (likely at LD) or *bifurcation*
 - Central Division must stay revocation pending a decision of LD
 - LD should take into consideration how far the revocation action in the central division was advanced prior to the stay
- The decision may be appealed

First decisions changing the language of the proceedings

Patent: EP2137782 – Device and method for converting light energy into electrical energy
Parties: Plant-E Knowledge B.V. vs Arkyne Technologies S.L.
Language (division): Dutch (The Hague)
Outcome: Change of language of proceedings to English granted

1. Arkyne Technologies S.L.
Calle de la Tecnología 17 - 08840
Viladecans, Barcelona – Spain

- Arkyne requested to change the language of proceedings into (English)
 - small Spanish company in the start-up phase forced to incur considerable translation costs which causes disproportionate and unnecessary financial
 - Respondent is an international company that uses English as working language
- On October 18th the Court allowed the change to English
 - Language initially chosen was significantly detrimental to the Applicant, both parties have a good command of English and previous correspondence between the parties and most recent summons were all written in English

Patent: EP3666797 - Antigen binding proteins to proprotein convertase subtilisin kexin type 9
Parties: Amgen vs Sanofi and Regeneron
Language (division): German (Munich)
Outcome: Change of language of proceedings to English granted

- On November 3rd, the language was also changed into English (requested by defendant and agreed by claimant if language most appropriate for the Court).

Transparency at the UPC

- Access to pleadings: RoP 262.1(b): “*written pleadings and evidence, lodged at the Court ... shall be available to the public upon reasoned request*”
- 4 cases, different outcomes

Patent	Parties	Action type Division	Reasons for the request	Outcome	Date of order
EP3666797 - Antigen binding proteins to proprotein convertase subtilisin kexin type 9	Sanofi vs Amgen	Revocation Munich CD	patent at issue and its legal validity of interest to one of the applicant's clients	refused	20.09.2023
EP3056563 - Method of producing retinal pigment Epithelial cell	Astellas vs Healios	Revocation Munich CD	purposes of education and training	refused	21.09.2023
EP3653540 - STORAGE SYSTEMS AND METHODS FOR RETRIEVING UNITS FROM A STORAGE SYSTEM	Ocado vs Autostore	Infringement Nordic-Baltic RD	Interest to see how the claim was framed. Also access to any orders of the Düsseldorf and Milan Divisions	Access to the case of the NB LD granted, but not to cases of other divisions	17.10.2023
EP2145848 - False twist texturing machine	Oerlikon Textile GmbH vs Himson	Infringement Milan LD	defendant (no third party) requests to be able to examine the file before notification of the action	refused	27.09.2023

- On November 4th Ocado filed an appeal against the decision of the RD

Time extensions at the UPC

- Statement of claim served to multiple defendants. Request of a defendant to extent the deadline to the dealine of the defendant which was last served
- UPC may extent but also shorten a time period on a party's reasoned request

Patent	Parties	Action type Division	Date of service of statement of claim	Extension granted?
EP1612910 - Überwachungsschaltung für die bordeigene Stromversorgung und Leistungsversorgungssteuerung	Avago vs (1) Tesla Manufacturing Brandenburg and (2) Tesla Germany GmbH	Infringement Hamburg LD	Service to (1): 28.06.2023 Service to (2): 26.06.2023	No
EP3646825 – A system comprising a prosthetic valve and a delivery catheter	Edwards Lifesciences Corporation vs (1) Meril GmbH and (2) Meril Life Sciences	Infringement Munich LD	Service to (1): 07.07.2023 Service to (2): 01.08.2023	Yes, but exceptionally
EP3666797 - Antigen binding proteins to proprotein convertase subtilisin kexin type 9	Amgen vs (1) Sanofi-Aventis Deutschland GmbH (2) Sanofi-Aventis Groupe S.A. (3) Sanofi Winthrop Industrie S.A. (4) Regeneron	Infringement Munich LD	Statement of claim: 01.06.2023 Service to (1)-(3): 11.07.2023 Service to (4): 19.07.2023 Annexes rec.eived by Sanofi on10.08.2023	Yes, but exceptionally

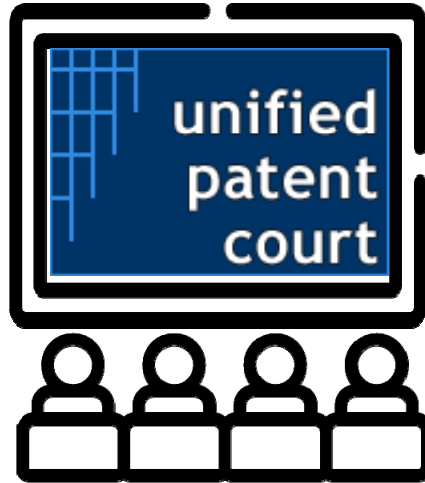
First decision of the Court of appeal -Time extensions

- First decision of the Court of appeal on **Amgen vs Sanofi** case pronounced orally after a hearing held on October 13th (written decision issued on October 16th)

Defendants arguments	Court of appeal decision
<ul style="list-style-type: none">■ Statement of claim validly filed even without annexes■ No extension of the time limit should be granted when annexes are filed at a later date if they are already known or publicly available■ Nevertheless, the Court exceptionally granted an extension to Sanofi to align the deadline for response to the one of Regeneron because work with new procedural UPC laws and CMS poses considerable challenges to parties	<ul style="list-style-type: none">■ Statement of claim validly filed even without annexes■ An extension of the time limit should be extended by the period during which the annexes were not available■ The type and/or content of the attachments is irrelevant. It is unreasonable to place the burden of proof of the relevance of the appendices to the preparation of the defense on the defendant

Is the UPC meeting expectations?

- Around 100 cases have already been filed in 6 months (probably more)
- Focus on German Divisions in infringement cases but also other divisions
- German language currently predominant in the infringement cases but this may change in the future
- UPC has attracted
 - big companies but also SMEs
 - cases from various industries, including the life science sector
 - cases with high economic value
- In cases for preliminary measures the UPC has shown
 - speedy proceedings (decision even on the same day)
 - they may be *ex parte* (even when protective letters are filed)
 - well-reasoned decisions
- UPC follows the foreseen tight time regime
- Limited access to UPC decisions and still issues with the CMS



Thank you for your attention

ndaviu@zbm-patents.eu