

The Brave New World - An update on the Unitary Patent and Unified Patent Court

Wouter Pors

Partner, The Hague

wouter.pors@twobirds.com

Patent litigation in Europe - current

- European Patent Convention

- 38 member states
- 28 European Union member states
- Central patent application procedure



- CJEU 13-7-2006, C-539/03, *Roche vs Primus & Goldenberg*:

- Granted patents are subject to the laws of the countries of registration, and so are claims for infringement
- Article 24 section 4 Brussels I Regulation 2012:
 - Validity exclusive jurisdiction of each country of registration

- No unitary patent right

- 38 countries to litigate in

- 38 national laws apply to infringement and validity

Unitary Patent & Unified Patent Court

Current Participants:

	Austria		Italy
	Belgium		Latvia
	Bulgaria		Lithuania
	Cyprus		Luxembourg
	Czech Republic		Malta
	Denmark		Netherlands
	Estonia		Portugal
	Finland		Romania
	France		Slovakia
	Germany		Slovenia
	Greece		Sweden
	Hungary		United Kingdom
	Ireland		



Current exceptions:

- Croatia (will join)
- Poland
- Spain

- Italy (in UPC, not in UP)

Patent litigation in Europe - future

- 3 options for patents
 - Traditional European patent, validated in countries of choice
 - European patent with Unitary effect, 24 EU member states
 - + option for traditional EP in remaining 14 countries
 - Poland, Italy and Spain currently do not participate
 - National patents
- New litigation system
 - Unified patent court, 25 EU member states
 - Unitary patents
 - Traditional European patents (not opted out/opted in again)
 - National courts
 - Traditional European patents (opted out)
 - National patents

Legal work completed and in progress

- Completed

- Unitary Patent Regulation 17-12-2012
- Regulation on translation arrangements 17-12-2012
- Unified Patent Court Agreement 19-02-2013

- In progress

- Ratification UPC Agreement Austria 07-08-2013
- Amendment Brussels I Regulation draft 26-07-2013 03-2014
- Unitary Patent Rules new draft 07-03-2014
- Rules of Procedure consultation (111 comments) 01-10-2013
 - 16th draft Rules of Procedure published 06-03-2014
- Expression of interest to become judge closed 15-11-2013
 - 1300 applications – initially ± 60 judges needed

- To be started

- Unitary SPC Regulation
- Amending other SPC Regulations
- Rules of Conduct for Representatives (CCBE, EPLAW, *epi*, EPLIT)

Implementation – where are we now?

- Declaration on preparation (implementation) signed 19-2-2013
 - Requires no ratification
 - Basis for Preparatory Committee
 - Dutch chair: Paul van Beukering
 - Basis for preliminary Advisory Committee
 - New basis for Drafting Committee
 - Road map and rules for Preparatory Committee discussed
 - Issues: Rules of Procedure; ICT; appointment and training of judges, HR, financials, venues, mediation, arbitration, rules of conduct
- EPO “Select Committee” met to discuss rules and fees 23-12-2013
 - First idea about renewal fees and court fees 1st half 2014
- Budapest training centre, first conference 13-03-2014
- Decisions on local and regional divisions 1st half 2014
- System live: participating states plan Early 2015
- Bottleneck: IT system
 - Buy or even lease temporary system "off the shelf"



The unitary patent system

24 EU Member States, currently not IT, PL and ES

Basis for EP with unitary effect:

- Granted European patent (3(1) Regulation)
- Patent has to have the same set of claims in respect of all participating member states
- Unitary effect has to be registered in the register for unitary patent protection at the EPO
- Deadline for filing the request: 1 month of the date of the publication of the mention of the grant of the EP (Art. 9(1)(g)); perhaps possibility to file request before grant; deadline is not extendable;
- Date of effect is the date of publication by the EPO of the mention of the grant of the EP (Art. 4(1)); retroactive effect (recital (8))

The unitary patent system

Effect of the European patent with unitary effect:

- *"The European patent with unitary effect shall confer on its proprietor the right to prevent any third party from committing acts against which that patent provides protection throughout the territories of the participating Member States in which it has unitary effect, subject to applicable limitations. "* (Art. 5(1))

Character of the European patent with unitary effect:

- Uniform protection and equal effect in all participating member states
- Exception: unitary effect only in participating member states in which the UPC has exclusive jurisdiction at the date of registration of the unitary effect
 - May develop from 13 to 28 over time
 - EPO information system will be essential
- Limitation, transfer, revocation or lapse only possible for whole territory
- Grant of a license is possible for part of the territory

The unitary patent system – translation requirements

Translational requirements during 12 year transitional period

- Regulation on translation arrangements
- If language of the proceedings was FR or DE, a full translation of the specification of the EP in EN is required (see Art. 6(1)(a)).
- If language of the proceedings was EN, full translation of the specification of the EP in any other official language of the Union is required (see Art. 6(1)(b))
- After a transitional period, no translation is required (Art. 3(1))
- In the event of a dispute at the request of an alleged infringer or the court
- In proceedings for damages, the court may assess whether the alleged infringer acted without knowing that he was infringing the patent before having been provided with a translation (Art. 4(4) of Regulation 1260/2012)

The unitary patent system

Institutional and financial provisions:

- EPO takes over administrative task (register, translation issues, collection and administration of renewal fees etc.) (see Art. 9 of the Regulation 1257/2012)
- UPC has the competence to decide on actions concerning decisions of the EPO within the administrative framework (Art. 32(1)(i) of the Agreement on the UPC)
- Renewal fees have to be paid to the EPO (Art. 11 of the Regulation)
- Renewal fee will be progressive
- Renewal fee will take the situation of specific entities into account (small and medium-sized enterprises)

What kind of patents will be available?

Options:

- Combination of EP/UP patents and national patents
- Parent UP/EP with a divisional of the same/different category
 - Nothing in the agreement or the regulation requires that a divisional application has to have the same “type” as the parent application
 - Consequence: parent could be e.g. a EP with unitary effect (UPC compulsory) and divisional could be a traditional EP (with possibility to opt out)
 - Double patenting not allowed according to Guidelines G/IV.5.4 (referring to G1/05 and G1/06) if there are two EPs from the same applicant, designating the same state(s) and having claims relating to the **same invention**
 - But: no objection if there is merely a partial overlap (see T877/06)
 - Consequence: possible to have one patent on a preferred embodiment and another patent on a broadly-defined invention

Broad options for divisionals

- As of **1-4-2014**, divisionals again can be filed until grant of the parent patent.
- EPO policy on divisionals is becoming more relaxed
 - Technical Board of Appeal 20-4-2012, T 667/08:
It is essential, when deciding on issues of added subject-matter, to identify the actual teaching conveyed by the original disclosure, i.e. the technical information that the skilled person reading the original disclosure would have derived from its content (description, claims and drawings) considered in its entirety. This approach might lead to the identification of subject-matter which has not been explicitly revealed as such in the application as filed, but nevertheless derives directly and unambiguously from its content. Literal support is not required by the wording of Article 123(2) EPC
 - It is therefore worthwhile to investigate the options for divisionals for applications still pending when the UPC enters into force

What kind of patents will be available?

Summary on potential types of patents:

- National patent(s) national courts
- Unitary Patent UPC
- EP (e.g. DE, CH, NL, IT, ES, ...) national or UPC
- Unitary Patent plus EP (e.g. CH, NO, ...) national &/or UPC

- Combination of national patents, traditional EP & Unitary Patent
- Including combining by divisionals
 - In order to have divisionals and optional national patents, start now!

UPC exclusivity and transitional regime

- Intention: UPC exclusive for Unitary and European patents
- Transitional regime [83]
 - UPC is exclusive for Unitary Patents
 - For traditional European patents 7 years non-exclusivity
 - Action may also be brought before national courts
 - Patentee may opt out, then only national courts have jurisdiction
 - Opt out works for lifetime of the patent
 - Opt out not possible if action is pending before UPC
 - Sunrise register at EPO prior to start of UPC
 - Patentee may opt in again at any time
 - Opt in not possible if action is pending before national court
 - Prep Com: substantive UPCA law does not apply in national courts
 - Unless adopted by national law (Philips proposal)
 - 7 year period may be extended tot 14 years

Opting out and opting in

- Opt-out option
 - Only available for traditional European patents
 - Preliminary register at EPO, UPC draft Rule 5.9 ->
 - Be ready to file when preliminary register starts
 - Final register at UPC
 - Works for the life of the patent
 - Excludes UPC jurisdiction completely for that patent
- Option to withdraw opt-out
 - Any formal requirements?
- What will the level of fees be?

Sunrise Period
September 2014?

Portfolio management

- Same type of patent for all inventions?
 - Easy and straight-forward strategy
 - Potentially most cost sensitive
 - Not necessarily the ideal IP right for a particular case, considering both available countries and strength of the invention
- Decision for a specific patent type on a case by case basis?
 - Optimal IP right for a particular case
 - Potentially relatively costly since detailed analysis required
- Generally same type of patent but different type if appropriate?
 - Compromise between costs and optimal protection

Strategic options for the patentee (1)

National patents

- In particular if patent is needed only in some jurisdictions
- example: patent relevant to a product which is developed for the entire European market and not differentiating between products for different countries

European patent with unitary effect

- If patent is strong (i.e. no doubts on patentability) and if patent protection is required in all of Europe (e.g. for a pharmaceutical compound)
Advantage: Injunction, including preliminary injunction (R.211 of preliminary rules of procedure) possible for all of Europe; validity confirmed for all of Europe
- Alternatively: If patentee has doubts on validity but does not wish to litigate the case in various jurisdictions

Strategic options for the patentee (2)

Traditional European patent – opting-out

- Example:
 - patent is relevant for several jurisdictions
 - Patent is of high economic value
 - Patentee is willing to litigate in various jurisdictions
 - Patent is of uncertain validity
- Advantage: patent cannot be revoked for all of Europe in one decision

Combination of parent and divisional application, one being a traditional EP with opt-out, the other a EU patent or EP without opt-out

- Double-shoot strategy, for very important products for which patent protection in several countries is required and where the validity of the patent is unclear

Strategic options – adverse party

Example: strong EP (no good invalidity arguments) – not opted out

- Unlikely that patentee would opt out, infringement proceedings before UPC likely
- Filing of a protective letter (R.207 of the preliminary Rules of Procedure)
 - Note: NGO's and companies have objected to protective letters and urge for high threshold for ex parte injunctions

Example: traditional EP (not-opted out) may be invalid

- Starting revocation action with the UPC before patentee has opted out (Art. 83(3) UPC Agreement)

Example: traditional EP (opted out) with uncertain validity

- Start revocation action with a national court to block opting in.
- Use of national courts with a less patentee-friendly history

Conclusions on portfolio strategy

Applicant/Patentee has many options for a filing/enforcement strategy

- Different IP rights
- Different court systems
- Combination of options
- Full strategical evaluation requires information on costs

Adverse party has limited influence on the available options

- Use of protective letters – if still available
- For weak EP (not-opted out) start UPC proceedings as soon as possible to avoid opting out
- For opted out EP with unclear validity start national proceedings as soon as possible to avoid opting in

Structure of the Unified Patent Court

- **Court of First Instance** [7]
 - Central Division
 - Seats: Paris (electronics – classes B, D, E, G + H), London (life sciences – classes A + C) and Munich (mechanical engineering – class F)
 - Locations vary, but judges are the same!
 - Regional divisions
 - Countries cooperating to form a division
 - Local divisions
 - Countries that set up their own division (max 4 per country)
- **Court of Appeal** [9]
 - Seat: Luxembourg
- **Registry** [10]
 - Seat: Luxembourg

Language of proceedings

- Statement of claim in language of defendant
 - Local and Regional Divisions may designate
 - Official languages of the country of local division [49(1)]
 - Designated official language(s) of region
 - Designated EPO language(s) – most choose English [49(2)]
 - Language to be used if more than one available
 - Language in which the defendant normally conducts its business in its Contracting Member State - What does “its” State mean? R14.2
 - Drafting committee will propose solution – plaintiff’s choice
 - Possible exception for strictly national infringement
 - Change of language by President CFI
 - Language in which patent was granted [49(5)]
 - Not to other EPO languages -> if patent in German or French, language not changed to English, even if Division regime would allow it

Language of proceedings

- **Court of First Instance** [49]
 - Central division
 - Language in which patent was granted
- **Court of Appeal** [50]
 - Language of first instance
 - Language in which patent was granted (panel cannot refuse)
 - Exceptional: Court decides other official language, if parties agree
- **Defendants may always request translations, others sometimes**

Local & Regional Divisions & language

- **Local divisions**
 - London – **English**
 - Düsseldorf, Munich, Mannheim, [Hamburg/Leipzig] – German & **English**
 - Paris – French
 - The Hague – Dutch & **English**
 - Brussels – Dutch & French & German & **English**
 - Milan – Italian
 - Helsinki – Finnish, Swedish & **English**
 - Copenhagen – Danish (& **English**?) – referendum 25-05-2014
- **Regional divisions**
 - Nordic: SE, EE, LT, LV – **English**
 - Czechoslovakian division: CZ, SK, (SL?), (HU?) – ?
 - Southeast: RO, BG, CY, GR, (SL?), (HU?) – Regional & **English** & French
- **Central division** – patent language: **English**, German, French
 - LU, MT
 - Undecided: AT, IE, PT [& HR, PL, Scotland]

Composition of the Unified Patent Court

- **Management** [11 – 14]
 - Preparatory Committee – state representatives
 - Preliminary Advisory panel – experts: selection of judges, etc
 - Sir Robin Jacob, Tony Huydecoper
 - Administrative, Budget Committee – state representatives
 - Advisory Committee – patent law experts
- **Judiciary**
 - Court of First Instance [8]
 - Multinational panel of 3 legal judges + 1 optional technical judge
 - Local division ≥ 50 cases: 2 local judges, otherwise 1 local, rest pool judges
 - Regional division: 2 regional judges, 1 pool judge
 - Court of Appeal [9]
 - Multinational panel of 5: 3 legal judges, 2 technical judges

Substantive law applied by the UPC

- To be applied in the following order: [20, 24]
 1. Union Law
 - Unitary Patent Regulation, Translation Regulation, SPC Regulation, Biotech directive, Brussels I Regulation, Enforcement Directive, etc
 2. UPC Agreement
 - Infringement (articles 25 - 30)
 3. European Patent Convention
 - Validity
 - Infringement (article 69)
 4. International agreements
 - TRIPs, Lugano Convention, Hague Evidence Convention, etc
 5. National law
 - Patent law, damages, ownership, licences, bankruptcy, etc

Substantive law applied by the UPC

- 2012-12-31 Regulation on translation arrangements
- 2012-12-31 Unitary Patent Regulation
- 2013-02-19 Minutes of the UPC signing and declaration
- 2013-02-19 UPC Agreement
- 2013-07-26 Amendment Brussels I Reg (UPC)
- 2014-01-31 Rules of Procedure 16th draft
- 2014-03-07 Draft Unitary Patent Rules
- Amendment of the TRIPs Agreement 2005 (not in force)
- Anti-Piracy Regulation
- Biotech Directive
- Brussels Regulation
- Community Patent Convention 1989
- Directive 2004-27-EC
- Directive 2004-28-EC
- Doha Regulation
- Enforcement Directive
- EP Committee on Legal Affairs Draft Report 13 Dec 2013
- EPC (2010)
- EU Service Regulation
- EU Treaty (consolidated 2010)
- Evidence Regulation
- Hague Evidence Convention
- London Agreement
- Lugano Convention
- Paris Convention
- Patent Cooperation Treaty
- Patent Law Treaty
- Regulation (EC) 1901-2006
- SPC Regulation 2009
- SPC Regulation plant protection products
- Strasbourg Convention
- Technology Transfer Guidelines
- Technology Transfer Regulation
- TRIPs Agreement

... and national law

Role of the Court of Justice of the EU

- Problem: lack of knowledge of patent law and technology
- Solution: limit the jurisdiction of the CJEU
 - Provisions on infringement moved from UP Regulation to UPC Agreement (articles 25 – 30)
 - Provisions on validity already in European Patent Convention
- Remaining jurisdiction
 - Unitary Patent Regulation: uniform protection (article 5)
 - Exhaustion (art 6), license declaration (art 8)
 - What if diverging national laws need to be applied?
 - Any EU-Regulation or Directive: SPC Regulations, Paediatric Extension Regulation, Biotech Directive, Brussels I Regulation, Enforcement Directive, Anti-Piracy Regulation, Bolar provision, Doha Regulation, Evidence Regulation, Service Regulation
 - EU Treaty, competition law, Tech Transfer Regulation?

Types of claims – Patents and SPC's

- **Actions before the Unified Patent Court** [32]
 - Actual or threatened infringement
 - Declaration of non-infringement
 - Provisional and protective measures and injunctions
 - Revocation and declaration of invalidity
 - Damages and compensation for use prior to grant
 - Use prior to grant and rights based on prior use
 - Compensation for “FRAND” licenses ex article 8 UP Regulation
 - EPO administrative decisions under the UP Regulation
- **Actions before national courts**
 - Entitlement of Unitary Patents and traditional European patents
 - All other actions: declaration of non-essentiality?

Jurisdiction of the divisions of the CFI (1)

- Infringement, provisional relief, damages, license fee [33]
 - Local or regional division of infringement
 - Local or regional division of one of the defendants
 - Multiple defendants: commercial relationship, same infringement
 - Defendants outside territory: place of infringement or central
 - If no local or regional division available: before central division
- In case of pending action
 - Other actions against the same parties on same patent only before the same division
 - Otherwise declared inadmissible, not referred
 - Pending at regional division, infringement occurred in > 3 regional divisions: defendant can request transfer to central division
 - Unlikely to happen?

Jurisdiction of the divisions of the CFI (2)

- Counterclaim for revocation in infringement action
 - Division where infringement is pending
 - Local or regional division may do 3 things after written procedure:
 - Keep both sides, refer counterclaim to central division and suspend infringement, or refer whole case to central division if parties agree
 - Bifurcation highly unlikely – judges are against it
- Independent non-infringement, revocation, invalidity
 - Local or regional division where action on same patent is pending
 - Choices mentioned above apply
 - Otherwise: central division
 - In that case: consecutive infringement action between the same parties on the same patent may also be brought before central division
 - If infringement action already pending before local/regional division: central division suspends awaiting decision on referral (Rule 70.3)

Jurisdiction – miscellaneous & licensees

- Parties may agree to bring an action before any division
- Relation to oppositions
 - Revocation and invalidity are independent from opposition
 - Stay possible if rapid EPO decision is expected [unlikely]
- Position of licensees [47]
 - Exclusive licensee can bring action unless agreement provides otherwise
 - Non-exclusive licensee if agreement provides for it
 - Patentee may join the action
 - Validity can only be contested if patentee participates – but: registry serves counterclaim for revocation on patentee (Rule 25.3)
 - Patentee may be dragged into validity proceedings if licence agreement does not block licensee from bringing action

Rules of procedure – how the court works

- **Basic principles:** proportionality, fairness, case management, right to be heard, expeditious and high quality decisions, fair balance between interests of parties
- **But:** enough flexibility to allow for “couleur locale”
- **Divisions to some extent can continue the practice of the national courts in their country** (bifurcation, disclosure, cross-examination)
- **Court of Appeal should develop best practices**
- **Movement towards more uniformity in approach**
- **Multinational panels of judges – variety in experience**

Proceedings before the Unified Patent Court

- **Stages** [52]
 - Written procedure
 - Interim procedure (may include interim hearing; explore settlement)
 - Oral procedure
- **Evidence** [53 - 55]
 - Hearing the parties
 - Request for information by the panel
 - Production of documents (upon court order – no fishing) [59 - 61]
 - Hearing of witnesses
 - Opinions by experts (party or court experts) [57]
 - Inspection
 - Comparative tests or experiments
 - Sworn statements in writing (affidavits)

Orders & enforcement

- Preservation of evidence [60, 61]
- Provisional and protective measures [62]
 - Provisional injunction
 - Against infringer or third party
 - Balance of convenience
 - Penalties imposed or release against guarantee
 - Seizures
 - Infringing products
 - Assets for security
- Permanent injunctions [63, 82]
 - Penalties imposed (subject to security)
- Other suitable corrective measures [64, 67]
- Revocation or limitation of patent [65]
- Award damages [68]

Stage 1 – Written procedure (infringement)

- No warning letter required
 - Except for declaration of non-infringement R60.1(b)
- Front loaded written procedure
 - Statement of claim
 - Argumentation on infringement R13.1(n)
 - Submit all evidence with statement of claim R13.1(m) & 170.1
 - If fact likely contested, indicate further evidence R171
 - Indication of request for evidence orders R13.1(o) & 104(e)
 - Statement of defence
 - 3 months after service R23
 - Same requirements R24.1(e) - (h)
- Prepare well!
 - Defendant has only 3 months to prepare! R9.3(a)
 - For any division claimant may shop in

Preliminary objections

- File objections within 1 month R19
 - Jurisdiction and competence of the Court
 - Competence of the division
 - Language of the Statement of claim
 - Referral to Central Division ex Article 33(2)
 - Missing: admissibility (abuse, anticompetitive, statute of limitations)
- Response within 14 days
 - Or correct deficiency
- Hearing and decision ASAP
- Appeal R21, 220, 224
 - Objection granted: 2 months + 2 months for grounds
 - Refused: leave required, 15 day + 15 days for grounds
 - Proceedings in first instance may be stayed R21.2
 - Does an appeal slow down proceedings?

Stage 1 - Written procedure (1)

- **Infringement action**
 - Statement of claim – to be served on defendant by the Registry
 - Preliminary objection – jurisdiction, language (1 month)
 - Statement of defence / **counterclaim** (3 months after claim)
 - Statement of reply to defence / **defence to counterclaim** / application to amend patent (1 month, **2 months**)
 - Statement of rejoinder to the reply / **reply to counterclaim** / defence to amendment (1 month)
 - **Statement of rejoinder to counterclaim** / reply to amendment (1 month)
 - Statement of rejoinder to amendment (1 month)
 - Further written pleadings allowed by judge-rapporteur
 - Judge rapporteur takes all relevant decisions

Stage 1 - Written procedure (2)

- **Revocation action**
 - Statement for revocation
 - Statement of defence to revocation / **counterclaim for infringement** / application to amend patent (3 months after claim)
 - Statement of reply to defence / **defence to counterclaim** / defence to amendment (1 month)
 - Statement of rejoinder to the reply / **reply to counterclaim** / [amendment? – will be repaired] (1 month)
 - **Statement of rejoinder to counterclaim** / [amendment? – will be repaired] (1 month)
- **Declaration of non-infringement**
 - Same way
 - Counterclaim for infringement
 - No provisions on revocation or amendment (separate actions?)

Stage 2 – Interim procedure

- Judge rapporteur prepares case for oral hearing
 - In principle 3 months – including conference/hearings R101.3
 - Order parties to provide clarifications, answer questions, produce evidence, lodge specific documents, etc R103, 104
 - Hold interim conference (oral, telephone, video) R105
 - Establish a further schedule R104(c)
 - Hold preparatory discussions with witnesses and experts (parties need to be present) – **not a good idea** R104(f)
 - Order hearing of experts and witnesses R104(g)
 - This may be before the trial hearing in separate hearing!
 - Explore settlement / mediation / arbitration
 - Arbitration and Mediation Centre in Ljubljana & Lisbon
 - Annulment of award under Slovenian or Portuguese law
 - No arbitration rules yet – WIPO seems likely, ICC declined

Stage 3 – Oral hearing

- Two months' prior notice R108
 - Presiding judge takes over from judge-rapporteur R110(3)
- Duration: in principle one day R113
- Panel may provide preliminary introduction R112.3
- Hearing of
 - The parties' oral submissions
 - Speaking slots may be set in advance! R113.1
 - Witnesses and experts, if ordered during interim procedure (separate)
 - Judge rapporteur or presiding judge decides which issues R104, 113.2
 - Court may adjourn for further evidence - exceptional R114
- Open to the public R115
 - Unless parties' interests require confidentiality
 - Hearing shall be audio/video recorded
- Decision on the merits in writing preferably within 6 weeks R118.7

Procedure before Court of Appeal

- Term for appeal R224
 - 2 months for final decisions, 2 months to file grounds (judgments)
 - 15 days for procedural orders, 15 days to file grounds (leave needed)
- Scope of appeal R222
 - Facts as presented in first instance, application of the law
 - New facts if not available earlier or highly relevant R222.2
- Procedure
 - Judge rapporteur makes preliminary examination R233
 - Statement of response within 3 months of grounds, cross-appeal R235
 - Reply to cross-appeal within 2 months R238
 - Interim procedure as in first instance R239
 - Oral hearing as in first instance R240
 - Judgment – final decision, referral-back exceptional R242, 243

Conclusions

- English is the main language, but cannot always be achieved
- Procedure moves fast in well-defined stages
- Thorough case management by judge-rapporteur
- Take time to prepare well
 - But defendant normally has only 3 months
- Couleur locale at the start, best practices later on
 - Requires appeals lodged – and active use of the system
- There will be cross-examination
 - But probably in separate hearings before trial hearing
- Case is better prepared at start of trial hearing
 - Focus on presentations by parties – can be done in 1 day
- State of the art representatives with true focus needed

Some major issues

- Language regime R14.2
- Court fees
 - Value based fees R22, ...
- Position of licensees R25.3
- Bifurcation & stays R70
- Preliminary injunctions / provisional measures R211
 - Standard to be applied, balance of interests
- Seizure of evidence
 - Two step procedure – protection of trade secrets? R192
- Amicus Curiae Briefs R318*
 - To assist UPC in developing case law

A single patent court covering 25 countries

The preparatory committee

The Preparatory Committee is composed of all the Signatory States to the [Unified Patent Court Agreement \(16351/12\)](#) (see also Regulations 1257/2012 and 1260/2012). All these states undertook to establish the new court and the Preparatory Committee's function is to oversee the various work streams. There are five major work streams which will constitute the work which needs to be completed. These are:

- Legal framework
- Financial aspects
- IT
- Facilities and
- Human resources & Training

The Preparatory Committee will exist until the Court is established. Currently this is expected to last two years and during this time it will have its own [Rules by which it is governed](#). Its work programme is set out in a [Roadmap](#). Its [external communication plan](#) outlines how it will update users and stakeholders, by what means and the type of documents that will appear on this website.

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Thank you **& Bird & Bird**

wouter.pors@twobirds.com

+31 653 293896

www.twobirds.com

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