



The Unitary Patent and Unified Patent Court - Another Hurdle Cleared

On 5 May 2015, the Court of Justice of the European Union (CJEU) issued two separate judgments (C-146/13 and C-147/13) ruling that both regulations on the administration of the unitary patent system are valid (Regulations 1257/2012 and 1260/2012 of the Official Journal of the European Union). The judgments were in response to arguments from Spain to the effect that the regulations were invalid.

How the EU works

To understand a bit more about the challenges from Spain, it is necessary to understand a bit more about the European Union and its main institutions.

The European Union is a group of 28 European countries, known as the Member States.

The European Council is formed from the heads of government of each of the Member States. The European Council sets the political direction of the European Union, although do not themselves pass laws.

The European Commission is a separate institution of the European Union, and is formed from a Commissioner from each Member State. The Commission is able to propose new laws.

The European Parliament, whose members are directly elected by EU voters, debate on and pass the new laws proposed by the Commission.

The Court of Justice of the European Union is a central court whose main purpose is to interpret EU law to ensure that this is applied uniformly in all Member States. The Court of Justice is also able to hear cases relating to the proper use and application of powers by the institutions of the European Union.



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In simple terms, the European Council agrees on the way forward for the European Union. The Commission then proposes laws that would put this into effect. The Parliament then passes those laws, and the Court of Justice makes sure that the process is applied correctly and that the resulting laws are applied consistently across Europe.

The background on the Unitary Patent and Unified Court

Discussions on the Unitary Patent and Unified Patent Court have been going on for many decades. However, there has never been full agreement by all Member States. Therefore, in 2010, when it was clear that it would take a very long time to reach a unanimous agreement, a proposal was made by the European Commission to use “enhanced cooperation”, meaning that the Member States that did not want to be part of the resulting system could effectively opt out. The European Parliament agreed to this approach in early 2011, after which two Regulations were adopted (one creating the Unitary Patent and the other dealing with language requirements), together with an Agreement on the Unified Patent Court in December 2012.

The two Regulations came into force in January 2013, with the Agreement on the Unified Patent Court being signed by 25 Member States in February 2013. The Unified Patent Court Agreement needs to be ratified by Member States for this to be effective. Once 13 Member States (including UK, France and Germany) have ratified the Agreement, this will come into effect – setting up the Unified Patent Court – and then the first Unitary Patents can be granted. These Unitary Patents will have effect in each Member State that has ratified the Agreement. As of today, Austria, Belgium, Denmark, France, Malta and Sweden have ratified the Agreement.

Spanish challenges

Back in 2011, Italy and Spain asked the Court of Justice to annul the decision to allow enhanced cooperation. If successful, this would have meant that the only way to proceed with the Unitary Patent, and therefore with the Unified Patent Court, would be with the agreement of all Member States. This application was rejected in April 2013.

Not deterred, Spain’s next attack in March 2013 was to challenge the legality of the two Regulations relating to the Unitary Patent and the language requirements.



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With regard to the Unitary Patent Regulation, Spain challenged on the basis that the procedure applied by the EPO when granting a European Patent was not subject to judicial review, that there was not adequate legal basis for the Regulation, and that it was wrong to let the Administrative Council of the EPO set renewal fee levels and the apportionment of renewal fees between Member States. With regard to the Regulation on language requirements, Spain argued that the language requirements, which would mean that there would be no requirement for a Unitary Patent to be translated into Spanish, constituted discrimination on the grounds of language.

The court's decision and what this means for implementation

In brief, the Court of Justice rejected these arguments, and rejected Spain's challenges.

This means that there are no longer any pending judicial hurdles to the introduction of the Unified Patent Court, and therefore to the Unitary Patent. It seems that Europe can press ahead with the final implementation.

The EPO now needs to set the level of the fees. These include the "opt out" fee for those with existing European patents and patent applications to opt out of the jurisdiction of the Unified Patent Court. They also need to set the grant fee and the renewal fees for Unitary Patents. These are likely to have a big influence on how many applicants opt for a Unitary Patent rather than the current bundle of national patents that can result from the grant of a patent by the EPO.

It is then necessary for the systems to be set up for the Unified Patent Court – the computer systems, the premises for the courts etc. Seven more Member States – including UK and Germany – need to ratify the Agreement on the Unified Patent Court.

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If you would like more information about the Unitary Patent system and its likely implications for your business, please contact [Steve Howe](#).

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