



De toekomstige Europese octrooijurisdictie en de impact op de praktijk

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Regulation:

Unitary patent = European patent with designation

Union = EU minus I and ES

Court Agreement: Agreement between EU members re centralised jurisdiction for Union Patents and EP Patents (opt out)

Court Agreement

1. Court of Appeal Luxemburg
2. Court of First Instance consists of national (local) or regional divisions and central division

Court of Appeal 3 legal 2 technical judges

Local + Regional Divisions 3 legal (+1 technical)
Central 2 legal + 1 technical

Local Divisions 1 (2) own + 1 (2) pool judge(s)
depending on < or > 50 cases

Maximum local divisions 3 (in compromise 4)

Extra Division > 100 cases

Principles (until December 2011)

1. decentralisation
2. You can sue in court defendant or where you find infringement
3. Central division: invalidity or declaration of non infringement but may lose jurisdiction if infringement is started in local court
4. Languages
 - a) local: own (unless both parties agree)
 - b) central: language of the patent
5. Possibility but no obligation for bifurcation

December 2011

Compromise proposal: not official and not accepted

Training Centre: Budapest

Arbitration/Mediate Centre: Lisbon, Ljubljana

Central Court: London, Paris, Munich: no solution

NL has to give away The Hague as seat Central Court
for VNO-NCW wishlist

VNO/NCW clauses:

1. If you say as defendant you are going to infringe in more than three states you can refer case to Central Division
2. You can only be sued with other defendants if there is a commercial tie between defendants and infringement is the same ↔ art. 6 under 1.

f.i. I sue independant importers in various countries of same infringing product in one local division: possible under 6 under 1 EEX but not under VNO/NCW clause?

Conclusion **2** is superfluous and **1** may be wishful thinking: the central court is better than a local division

Languages

Language of the Division unless decided otherwise by country where Division resides.

New (compromise): at the request of one party Court may decide on language of patent

Transitory Periode: 7 years: for EP patent you can also go national
and (new compromise): thereafter opt out for the pending EP applications or patents

Entry in force

1-1-2014 but 3 (F, D, UK) + 10 have to ratify before entering in force

New: judge rapporteur

Phases of procedure

- (a) written
- (b) interim
- (c) oral procedure
- (d) a procedure for damages
- (e) procedure for costs

Written: three pleadings (in claim/counterclaim)
why not four?

- 1) Front loaded procedure
- 2) Examination by Registry for formalities as soon as practicable
This is vague and inefficient
- 3) Preliminary objections within a month (jurisdiction/language). Further as in NL
- 4) Statement of Defense / Counterclaim
- 5) For invalidity defense you must counterclaim
Gilette?

6) Again also by statement of defense formality check
Registry!
Superfluous!

7) Reply to defense and answer to counterclaim:
2 months

8) Reply to answer: 1 month

Total: 6 months+ delay registry

End of Written procedure

Decision on bifurcation

Interim procedure

Judge rapporteur:

1. may organise interim conference
2. ask clarification
3. ask to produce evidence
4. ask for documents
5. deal with demands by parties of specific orders
6. order inspection
7. order further written evidence
8. prepare witness/experts for hearing
9. decide subject of oral evidence
10. suggest separate date for hearing: witness/experts

Oral hearing

- a) Oral argument
- b) Optionally: hearing of witnesses and experts

Principle: within one day

Judgement and Appeal

UK vs Continent

Appeal: continental style but no new facts which you could have brought in first instance

No obligation to deal with all defenses (?)
(*Devolutieve werking*)

Separate (same) proceedings for damages and costs:
No obligation!

Conclusion:

Rules are so flexible that everybody can continue local practice.

UK: complicated, expensive

Germany: bifurcation and German language

This is the great opportunity for The Hague to become the favorite court in the Union.

We need to:

1. stick in principle to our present style of efficient, economic and high quality proceedings
2. Judge rapporteur can make it even more efficient as to hearing experts
3. Efficiency local Registry
4. English as (optional) language of procedure (with translation for Dutch)
5. Government should give this all its support: important to have high quality court in own country, it is an important economic impulse (lawyers, patent attorneys, translators, hotel and catering industry etc.) and confirms the Hague as legal capital of the world