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Update on patent reform in the EU
Is the finishing post in sight?

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29 September 2011



Three hot topics


- Unitary patent in EU
- Unified pan-EU Patents Court
- UK Patents County Court



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Unitary Patent

Plus ça change, plus c'est la meme chose?



The context...


- Cost of patenting in Europe
 - London Agreement
- Impact on R&D and employment
 - anecdotal?
- Financial crisis post-2008
 - increase in political interest in reform
 - Europe 2020 strategy (“flagship initiative”)
 - Single Market Act 2011
 - Target date: 2013



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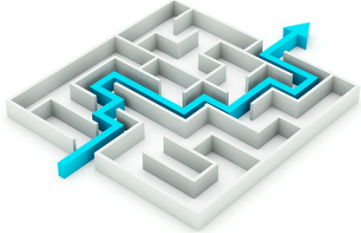
A rollercoaster ride

- "EU achieves political breakthrough on an enhanced patent system": December 2009
- "Things are clear now: there will never be unanimity on an EU patent": December 2010



Enhanced co-operation

- How to overcome lack of unanimity?
- Enhanced co-operation procedure
 - allows smaller group of MS to go further
 - rarely used
- Implemented at top speed
 - Council Decision
 - Two draft regulations



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Implications of new procedure

2009 Proposal	Enhanced Co-operation
EU Patent	European Patent with Unitary Effect
Regulation on EU Patent – qualified majority of EU-27 and approval of European Parliament	Regulation on EPUE – qualified majority of EU-25 and approval of European Parliament
Regulation on language regime – unanimity of EU-27	Regulation on language regime – unanimity of EU-25, consulting European Parliament
Accession of EU to EPC	No Accession; Special Agreement (Article 142 EPC)



Key features of the unitary patent

- Provides uniform protection and equal effect in all participating MS;
- May only lapse or be limited, transferred or revoked in respect of all MS;
- Can be licensed in respect of whole or part of territories of participating MS;
- Infringement (direct, indirect) and defences harmonized
- No compulsory licensing
- Renewed centrally



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New language regime

- Basic rule: 3-language regime of EPO
- EU applicants from MS with other languages
 - additional reimbursements
- Translation(s) in event of proceedings
 - less than 1% of patents
 - impact on damages
- 12-year transitional period
- Machine translations



Cost savings

	European patent 3 MS (DE, FR, UK)	European patent 5 MS (DE, FR, UK, IT, ES)	European patent 13 MS	European patent 27 MS	Enhanced cooperation 25 MS + 2 other MS
Translation €	680	3,910	8,800	23,375	5,610
Publication €	0	308	1,500	2,987	308
Representation €	0	500	2,200	5,750	500
Total €	680	4,718	12,500	32,112	6,418



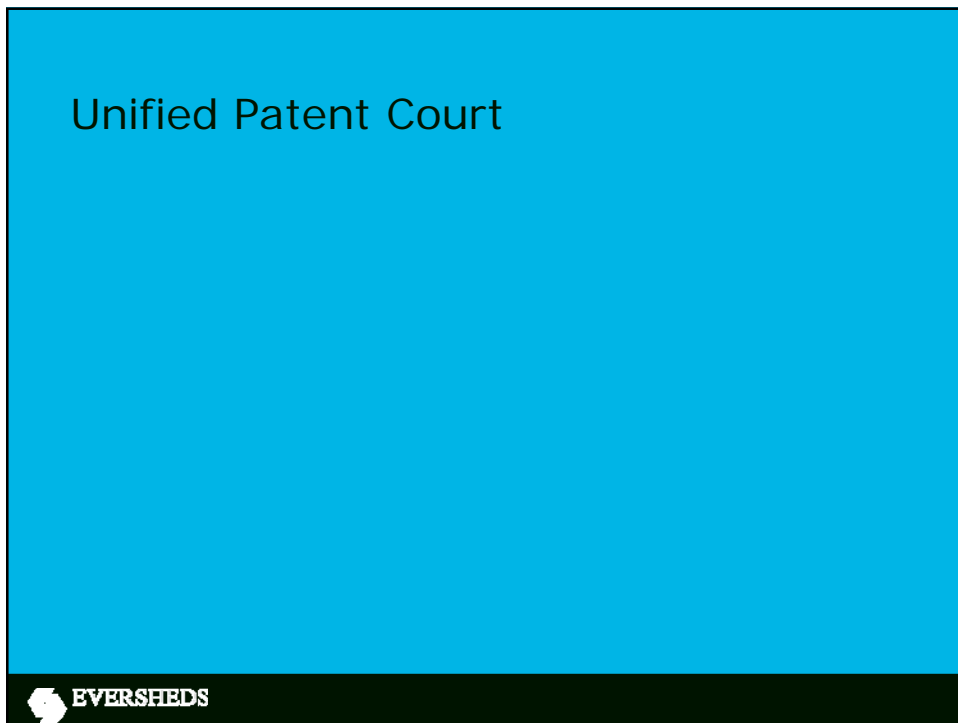
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One final hurdle?

- "We cannot understand why Spanish and other languages cannot have the same status of French, English and German": **Spain's EU affairs minister Diego Lopez Garrido**
- Annulment actions by Italy and Spain against Enhanced Co-operation



Unified Patent Court



Enforcement of unitary patent

- Other half of reform package
- Two main goals
 - both unitary patents and European patents
 - low cost
- Beware acronyms: ECPC; EPLA; UPLS; EEUPC
- Opinion 1/09 of the CJEU
 - reaction



The new proposal

- A new draft treaty
- “Unified Patent Court”
- Only EU member states
 - not EU itself
 - but not just EU-25
- Contracting states accept liability for acts of Court
 - private claims (damages)
 - public law (failure to act)



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The basic features

- Exclusive jurisdiction
 - validity and infringement
 - unitary patents, European patents, SPCs
- 1st instance: local, regional and central divisions
- 2nd instance: central Court of Appeal
- Opt-out for existing European patents
- 5-year transitional period
- Language rule



The devil is in the detail...

- Budget/funding
 - Court fees?
- Location
- Bifurcation
- Rules of procedure
 - unique
- Service
- Privilege
- Many other issues still unresolved



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Proposed timing

- End of 2011 for enhanced co-operation Regulations (unitary patent and language regime) by end of 2011
- Mid-2012 for Agreement on Unitary Patents Court
 - ratification
- 2013 for first unitary patents



English Patents County Court



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Turning over a new leaf

- Reform inspired by DE/FR/NDL
- Misleading name
- Radical simplification of procedure
 - no disclosure (discovery), witness statements, expert reports, experiments or cross-exam
 - no more than 2 day trial
- Limit on recoverability of cost
 - £50k
- Limit on value of claims
 - £500k



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