



Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

The Unified Patent Court (UPC)

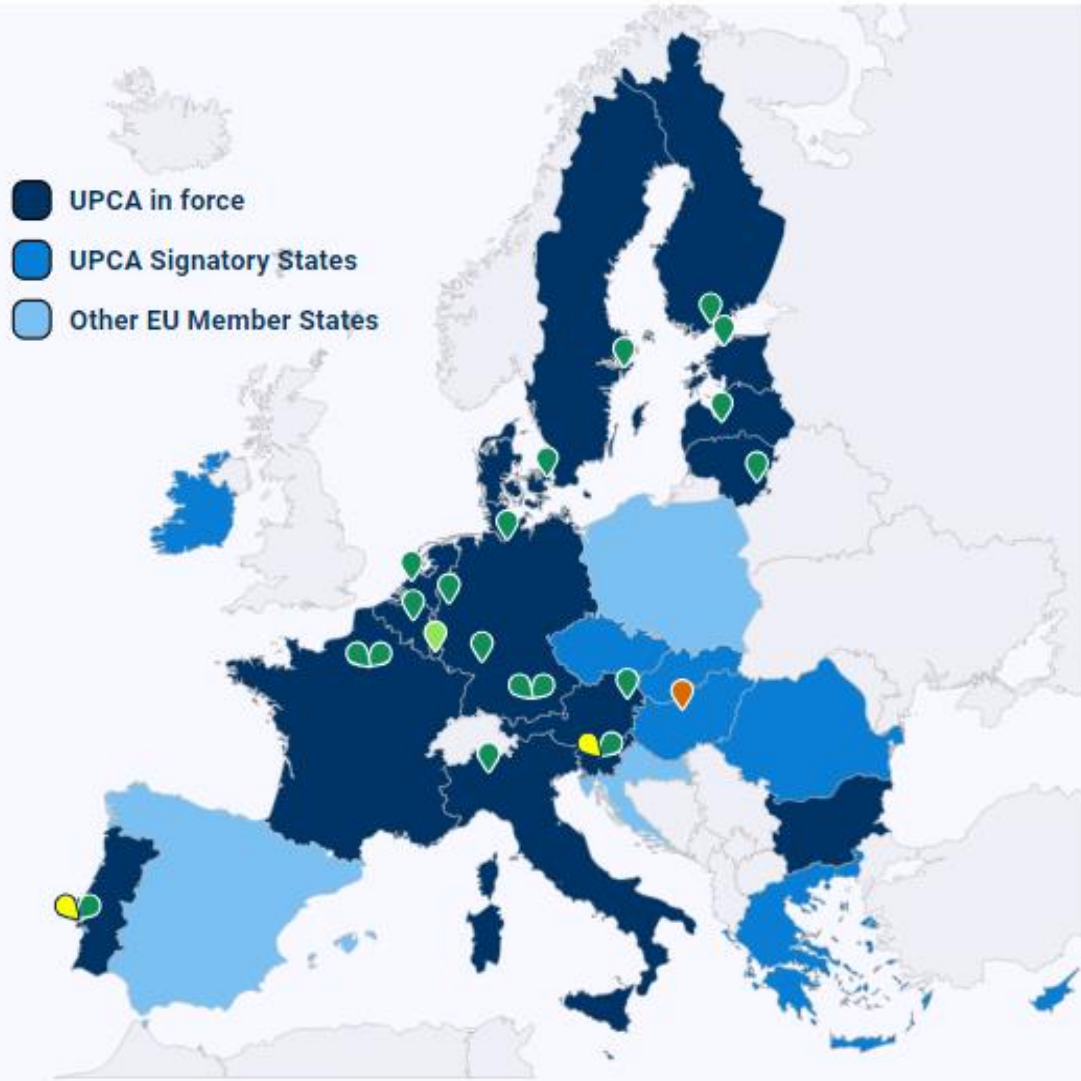
A supranational patent court

AIPPI – ZEIST 13.03.2024

Prof. Constant van Nispen

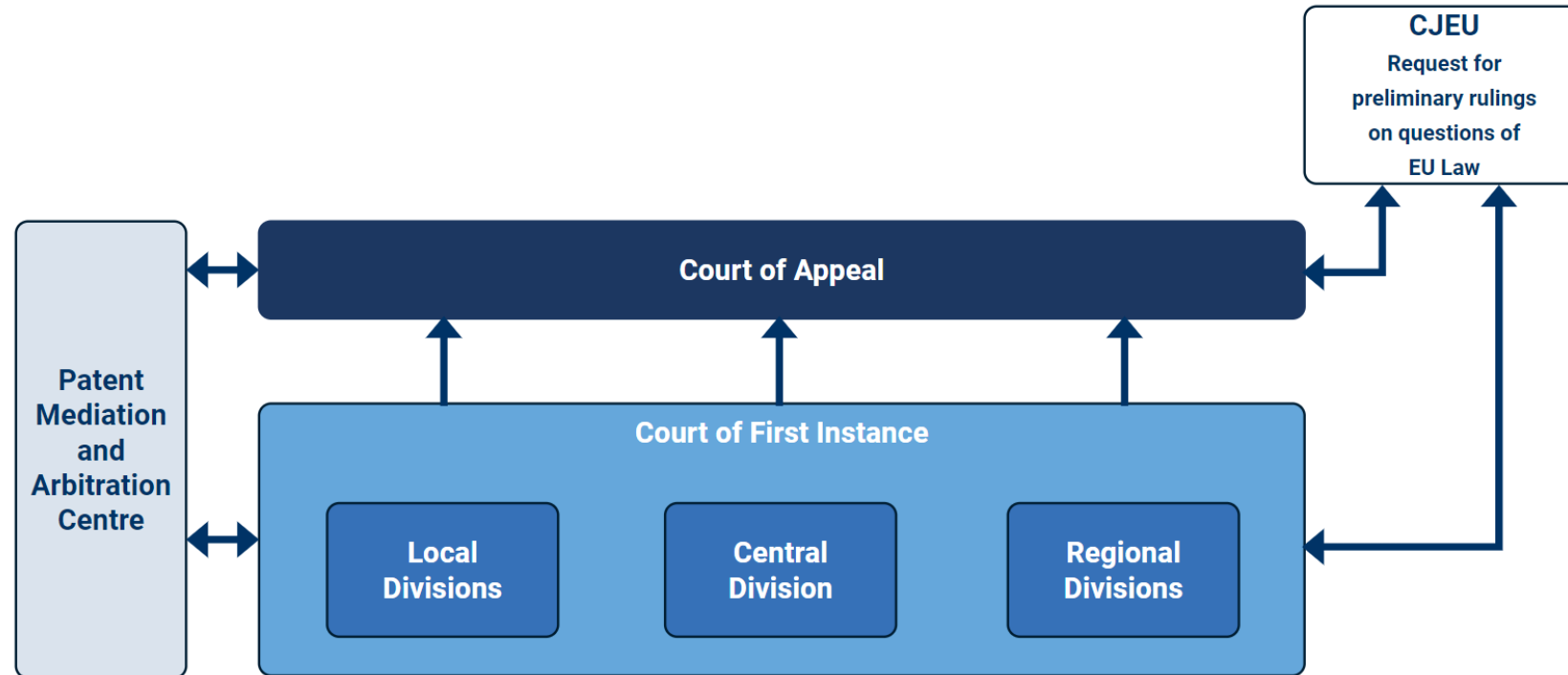
Judge Margot Kokke, Legally Qualified Judge UPC LD The Hague

Disclaimer Margot: all written and said is my personal view

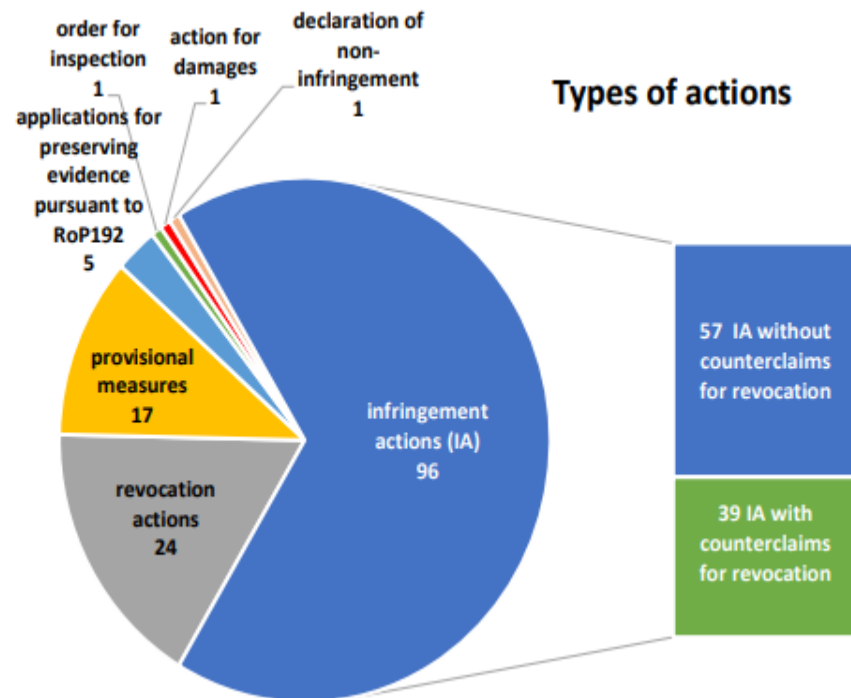


- 24 Contracting Member States (CMS)
- 17 ratified (UPCA in force)

www.unified-patent-court.org



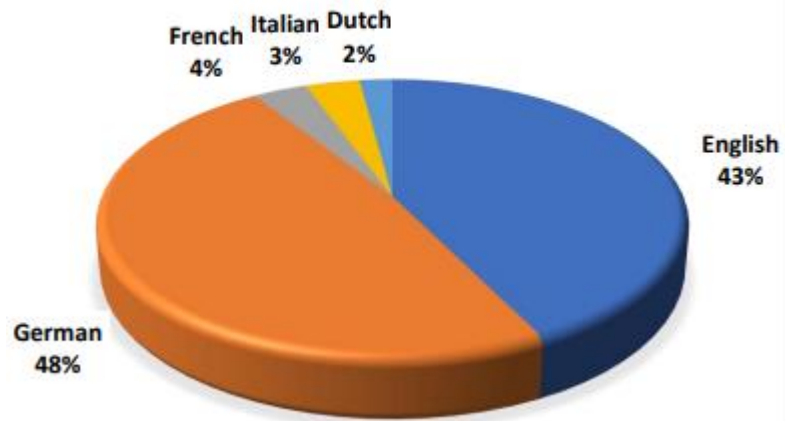
1 CoA - 1 CoFI with several divisions:
CD (2/3 locations) - 13 LD's - 1 RD (4 locations)



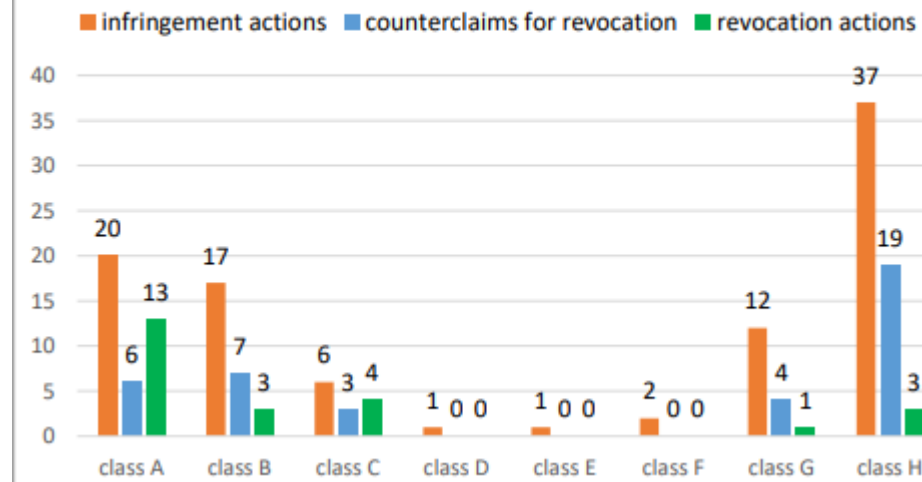
Division	Infringement	Revocation	Counterclaim for revocation	Appl for provisional measures	Appl for preserving evidence	Appl for Order for inspection	Damages	Declaration of non-infringement
<i>Paris CD</i>		20						1
<i>Paris LD</i>	9		12		1			
<i>Munich CD</i>		4	1*					
<i>Munich LD</i>	36		64	11				
<i>Düsseldorf</i>	20		9	3				
<i>Mannheim</i>	11		25					
<i>Hamburg</i>	5		12	1			1**	
<i>Nordic B RD</i>	5		4					
<i>Milan</i>	3		1		3	1		
<i>The Hague</i>	3		1					
<i>Brussels</i>	1				1			
<i>Helsinki</i>	1			1				
<i>Copenhagen</i>	1							
<i>Lisbon</i>								
<i>Ljubljana</i>								
<i>Vienna</i>	1			1				
Total	96	24	129	17	5	1	1	1

Gegevens van eind februari 2024

Language of the total proceedings



First IPC class of the patent in suit



A = Human necessities (oa farma en med hulpmiddelen)
 B = performing operations; transporting
 G= physics
 H = electricity

Gegevens van eind februari 2024

Eerste indrukken

- Start up
- CMS – alles digitaal
- Training; Judges' corner
- Standing judge
- Snelheid - strikte handhaving termijnen
- TQJ's
- Toga's

Rechtsbronnen (art. 24 UPCA)

a) Unierecht (primaat; art. 20 UPCA)

ihb procesrechtelijk, oa Brussel I bis, BetekeningsVo, HandhavingsRI
materieelrechtelijk bijv ABC-Vo, BiotechRI

a) UPCA

b) EPC

c) international agreements (ParisC; TRIPS)

e) national law (incl. IPR)

Art. 41 UPCA: **The Rules of Procedure (RoP)** shall lay down details of proceedings before the Court

UPCA en RoP – mixed DNA

e.g.

➤ GE bifurcation

In huidige praktijk ook uit GE: vaste presiding judge/PI met 3 rechters

➤ FR saisie

➤ UK interim conference

➤ NL PI (KG)

Daarnaast leest elke *'practioner'* en rechter de UPCA/RoP/Unierecht met zijn **eigen procesrechtelijke bril**

CoA: harmonisation

Service SoC (RoP 271-275)

271.1 The Registry shall serve the Statement of claim by electronic means if (...)

271.4 Where service by electronic means cannot be effected, the Registry shall serve the Statement of claim on the defendant by:

(a) any other method foreseen by the [Service Regulation(EU) 2020/1784], in particular by registered letter with acknowledgement of receipt or equivalent (...) or

(b) where service in accordance with paragraph 4(a) could not be effected any method permitted by the law of the MC (...) where service is to be effected or authorised by the Court under Rule 275.

275.1 (subsidiar) the Court may by way of order permit service by an alternative method or at an alternative place.

- Service door UPC
- Wat? Ook exhibits? (CoA)

Openbaarheid van processtukken RoP 262

262.1 [subject to anonymisation etc]

(a) decisions and orders made by the Court shall be published,

(b) written pleadings and evidence, lodged at the Court (...) shall be available to the public upon reasoned request to the Registry; the decision is taken by the judge-rapporteur after consulting the parties

- Verschillende beslissingen door LD's. Tgv verschillende procesrechtelijke brillen?
- CoA: by representative only
- CoA: yes or no? [pending]

Bescherming vertrouwelijke info RoP 262A/UPCA 58

1. (...) a party may make an Application to the Court for an order that certain information contained in its pleadings or the collection and use of evidence in proceedings may be restricted or prohibited or that access to such information or evidence be restricted to specific persons.

6. The number of persons referred to in paragraph 1 shall be no greater than necessary in order to ensure compliance with the right of the parties to the legal proceedings to an effective remedy and to a fair trial, and shall include, at least, one natural person from each party and the respective lawyers or other representatives of those parties to the legal proceedings. [≅ RI Bedrijfsgeheimen]

- RI bedrijfsgeheimen anders geïmplementeerd in Contracting MS
- Ruimte voor interpretatie? *Attorney's eyes only* confi-club mogelijk?

Zekerheidstelling bij toewijzing PI RoP 211.5

*5. The Court may order the applicant to provide adequate security for appropriate compensation for any injury likely to be caused to the defendant which the applicant may be liable to bear in the event that the Court revokes the order for provisional measures. The Court shall do so where interim measures are ordered without the defendant having been heard unless there are special circumstances not to do so.
(...)*

Discretionaire bevoegdheid bij PI m.u.v. ex parte

Cautio judicatum solvi RoP 158

1. (...) following a reasoned request by one party, the Court **may** order the other party to provide, (...) adequate security for the legal costs and other expenses incurred and/or to be incurred by the requesting party, which the other party may be liable to bear. (...)

Zekerheidstelling voor proceskosten: discretionaire bevoegdheid

Nationale brillen - verschillende uitkomsten?

NL: Rv 224 alleen voor 'vreemdelingen'

Elders iha: mag niet discrimineren ogv nationaliteit of woonplaats

Varia

Inrichten oral hearing

Taalwissel (RoP 322.1)

Hoger beroep geen *de novo* procedure (in principe geen nieuwe verzoeken, feiten, bewijs, RoP 222)

Varia - tbd

Beroep op file wrapper/verleningsdossier? [CoA]

Equivalentie?

Welke vorderingen mogelijk binnen de grenzen van art. 32 UPCA?

Creatieve advocaten gezocht!



QUESTIONS? ?
Thank you!