

Legal Challenges to Europe's Unitary Patent System Nearing an End

The European Patent System is in the final stages of a significant change. On November 18, 2014, European Union Advocate General Yves Bot issued a [press release](#) affirming his opinion that the European Court of Justice should dismiss Spain's current legal challenge to the creation of the Unitary Patent System. Under the Unitary Patent System, the countries of the European Union would allow patent matters to be adjudicated by a single court that would have jurisdiction over most countries in Western Europe. A patent holder in this new system would be able to bring one action at this new court, the Unified Patent Court (UPC), and receive one judgment that would be effective within multiple European countries.

The Advocate General's opinion addresses Spain's second challenge to the Unitary Patent System, which was brought on modified legal grounds after Spain's first challenge, joined by Italy, was dismissed in April of 2013. As summarized in the press release, the Advocate General opines that the Unitary Patent agreement does not violate EU law, and that its language regime is reasonable in requiring all unitary patents to be in French, German or English.

Although non-binding, the opinion is welcomed as a positive sign that the Court of Justice will finally rule that the Unitary Patent System is legal. It is to be published soon in [Case C-146/13](#) and [Case C-147/13](#); the Court of Justice decision is expected before the end of 2014.

The press release also goes beyond addressing the Spanish challenge itself. The Advocate General reaffirms his view that the Court of Justice does not have jurisdiction to review the lawfulness of the Agreement on the UPC. As indicated, "the Agreement on a Unified Patent Court does not fall within any of the categories of acts the lawfulness of which is subject to judicial review by the Court." This rejects Spain's assertion that the unitary patent agreement improperly vests unilateral authority to the UPC, outside the reach of the Court of Justice. Assuming the Court of Justice concurs, as it most likely will, it further infers the independence of the UPC in administering substantive patent matters under the new system.

Perhaps surprisingly, the press release goes still further and calls on all the Member States in the EU to ratify and adopt the Agreement on the UPC. As indicated in the press release, "[t]he principle of sincere cooperation requires the participating Member States to take all appropriate measures to implement enhanced cooperation, including ratification of the Agreement on a Unified Patent Court, as such ratification is necessary for its implementation. By refraining from ratifying the Agreement on a Unified Patent Court, the participating Member States would infringe the principle of sincere cooperation in that they would be jeopardising the attainment of the Union's harmonisation and uniform protection objectives." Cooperation, uniformity, and harmonization across the EU are important priorities of the EU; failure to ratify would jeopardize those objectives. Thus, not only is this new system legal and proper, it is also desired and encouraged by the EU.

Stay tuned for the final word from the Court of Justice, and for more information on the developments of the UPC as it heads toward implementation. Other details on the Unitary Patent System can be found [here](#).