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## The Unified Patent Court

Four months after the opening (1 July 2024) of the Central Division of the Unified Patent Court (UPC) in Milan, we would like to make some reflections on the matter, drawing on the latest data update, published on the UPC website at the beginning of November.<sup>1</sup>

### Preamble on the UPC

The Unified Patent Court system started at the European level on 1 June 2023.

It constitutes a particularly advantageous system in relation to new European patents with unitary effect or traditional European patents which have not chosen the *opt-out* option, that allows their holders to bring proceedings before one single court to obtain a decision with effect in all participating Member States of the UPC system; likewise, the system allows patent infringers to bring all their defenses before one single court since they will be able to obtain a decision with effect in all participating Member States with one counterclaim or invalidity action.

Previously, on the contrary, the only mechanism for unitary revocation of a European patent was through an administrative opposition before the European Patent Office (EPO) within nine months of grant. After the opposition period had expired, individual invalidity actions had to be brought before the courts of each country where the patent had been extended and validated.

UPC consists of the Central Division (with three locations in Paris, Munich and Milan) and Local Divisions, which cover the various geographical areas of the individual contracting states, as well as Regional Divisions, which cover two or more contracting states. In addition, the seat of the Court of Appeal of the UPC is in Luxembourg. Eighteen European states are currently members of the UPC system; in addition, six other states have signed the relevant agreement, but have not yet ratified it; Spain, Poland and Croatia have not even signed the agreement and are outside the UPC system. Likewise, countries outside the EU, such as the UK, Turkey or Switzerland, are not part of it. However, it is important to clarify that even an entity from these states that do not belong to the system can still be sued before the UPC on the basis of the place of infringement or, in any case, with regard to questions of validity of a European patent.

Infringement cases are examined at the Local or Regional Division where the infringement occurred, or the Local or Regional Division where the defendant (or one of them) is resident, or the Central Division if the defendant is domiciled outside the EU.

For revocation (invalidity) proceedings or declarations of non-infringement, on the other hand, the competence lies with the Central Division, or with the Local or Regional Division where infringement proceedings are already pending for the patent whose validity is to be discussed.

The UPC follows the same procedure in all its locations, at Central, Regional or Local Division level, as well as before the Court of Appeal. The procedure is mainly written, with only one hearing, and should be concluded in a reasonably short time, i.e. in about 12 months from the start of the proceedings.

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<sup>1</sup> [Case load of the Court\\_end October.pdf](#)

## The UPC in Italy

In Italy, there is a Local Division in Milan since the launch of the UPC system; in addition, as of 1 July 2024, there is also a Central Division in Milan.

The competence of the Central Division in Milan is on patents belonging to Section A of the International Patent Classification, 'Human Necessities', excluding, however, supplementary protection certificates. Section A includes the pharmaceutical, agri-food and phytosanitary sectors, as well as the fashion system (clothing, footwear), as well as tobacco, sports, furniture.

## UPC data

Until 31 October 2024, there were 538 first instance proceedings before the UPC, taking into account all Central, Regional and Local Divisions.

Of these, 206 are patent infringement actions, of which seven were brought before the Milan Local Division and one before the Milan Central Division.

In addition, 224 counterclaims for patent invalidity were filed (of which 2 in Milan) and 52 requests for provisional measures, preservation of evidence and inspection, of which 5 were filed before the Local Division in Milan and 1 before the Central Division in Milan. With regard to counterclaims, the very high number is conditioned by the fact that in a first phase, the UPC required that each defendant in an infringement case had to file its own counterclaim for revocation, whereas since April 2024, the possibility of filing a single counterclaim for revocation on behalf of several defendants involved in the same case has been allowed.

Finally, 50 patent invalidity actions were filed, of which 6 before the Central Division in Milan.

With regard to the type of patents involved in the cases, these are mainly Section H patents (electricity), followed immediately by Section A patents, for which the Milan Central Division is competent. The case distribution scenario should therefore in perspective reserve an increasing role for the Italian seat.

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