

Patent Alert

Unitary Patent: Spain's actions

Advocate General's opinion

18 November 2014

Spain has lodged actions for annulment of the regulations concerning the creation of a unitary patent and the translation arrangements before the Court of Justice of the European Union.

If the Court were to decide such an annulment, the unitary patent would never enter into force, whereas it is currently planned to enter into force in 2017.

The Advocate General of the CJEU has just given his Opinion and is of the view that the actions should be dismissed.

Spain's arguments were principally as follows:

- breach of rule of law, in so far as the unitary patent regulation is based on a right granted by the EPO, whose acts are not subject to judicial review,
- lack of legal basis, in that the unitary patent regulation does not guarantee uniform protection and refers to non-EU law (national law and Agreement on the Unified Patent Court (UPC)),
- breach of the principle of autonomy in the application of the European Union law, as the entry into force of the regulations depends on the entry into force of the UPC,
- infringement of the principle of non-discrimination, the regulation on translation being detrimental to the persons whose mother tongue is not English, French or German, and the language arrangement being disproportionate to the objective pursued.

The arguments of the Advocate General are as follows:

The regulation only attributes to European patents an additional characteristic, namely unitary effect, without affecting the procedure regulated by the European Patent Convention.

Uniform protection is guaranteed. Each European patent will be subject to the national law of a single Member State and that legislation will apply throughout the territory of the Member States participating in the unitary patent system.

The UPC is essential to ensure the proper functioning of the unitary patent. Therefore, the UPC has to be established so that the regulations can attain their harmonization and uniform objectives.

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As regards the language arrangements, it is appropriate and proportionate.

It is appropriate since it ensures unitary protection whilst enabling a significant reduction in translation costs to be achieved.

It is proportionate. During a transitional period, all European patents with unitary effects will be available in English. A compensation scheme to reimburse translation costs up to a certain ceiling is planned for certain people.

Legal certainty is better safeguarded when one language is authentic.

Please note that the Advocate General's opinion is not binding on the Court of Justice. The judges of the Court are now beginning their deliberations in this case.

CASALONGA will keep you informed of any new development in this matter.

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