

## Introduction and Update

I welcome you from the Chair and open the material part of our conference celebrating not only the partnership between the Journal of Intellectual Property Law & Practice (JIPLP) and the journal *Gerwerblicher Rechtsschutz und Urheberrecht Internationaler Teil* but also the break-through for the Unitary Patent and the Unified Patent Court. I will give a short introduction on the state of play of that European Patent Package

You know what that Package contains. Two Regulations: the Unitary Patent Regulation and the Translation Regulation, both of December 17. They have been published in the Official Journal on December 31, 2012, pages 1 and 89. They are binding for 25 EU Member States, not for Italy and Spain.

The third part of the Package is the Agreement on a Unified Patent Court (UPC) including a Statute for that Court signed on February 19 this year by 24 EU Member States including Italy, not by Poland and Spain, and, for formal reasons, not yet by Bulgaria. Yesterday I was informed that Bulgaria has ratified bringing the signatory states to 25. The Agreement will enter into force if 13 States have ratified it, including France, Germany and the United Kingdom. At that time also the two Regulations will become operative provided that a small change in the Brussels-I-Regulation has been implemented before accepting the Unified Patent Court as an EU Member State Court.

The fourth part of the Package consists of the draft UPC Rules of Procedure. The latest draft will be distributed soon. The first meeting of the Preparatory Committee will take place on March 26. The formal public consultation on the Rules will start thereafter

The European Court of Justice has not yet decided on the complaints by Italy and Spain against the Enhanced Cooperation creating the two Regulations. Advocate General *Bot*, on December 11, 2012, advised the Court to reject both claims. The Court's decision will be given in the next months.

There have been rumors that Spain may raise another complaint with the ECJ, this time arguing mainly with discrimination and that the Patent Regulation lacks support by Art. 118 (1) of the TFEU, because Art. 5 of the Regulation allegedly is not providing for a "uniform protection" within the meaning of Article 118.

Such a new complaint would not stop the ratification process for the UPC Agreement. However, this process will need time. An entry into force of the Package as a whole is to be expected late in 2014, the Commission is more optimistic.

Time is needed also for the preparatory works. That includes establishing the local and regional divisions and the central division parts in Paris, London and Munich, the establishment of the Appeal Court in Luxemburg and the network for electronic filing as well as the selection and appointment of the legal and technical judges and the Registrar.

Today, we will have, first, a speech on the future patent litigation strategy for the claimant and the defendant. Then we will have an overall appraisal of the European patent reform.

Our first speaker will be Frank-Erich Hufnagel from Freshfields Düsseldorf. Dr. Hufnagel is a widely known patent litigator well suited to speak on our first subject,

the future litigation strategies. He is Vice Chairman of the GRUR Special Committee and Utility Model Law which has closely followed the work on the Unitary Patent and the UPC.

Our second speaker is Prof. Jeremy Phillips from Oxford. He is many things: a Law Professor in Oxford, the Editor-in-Chief of JILP, a consultant to Olswang, a Professional Fellow of the Queen Mary IP Research Institute. But to most of us he is best known as the mastermind and Blog-master of the IPKatBlog which has accompanied the birth of the Patent Package with its sharp-witted humor. The headline of his speech today refers to the Trojan horse and to the box of Pandora. We may expect a fascinating critical review on the mythology of the European patent reform.

There will be a coffee-break from 4.15 to 4.45 followed by a panel discussion with the two speakers and two other panelist, Judge Dr. Tochtermann and Prof. Ullrich from the Munich Max-Planck-Institute whom I will present to you later. Questions and comments from the Audience are welcome in the second half of our time allotted to that discussion.

Enough for an introduction. Dr. Hufnagel, you have the floor.