

EIP



The Unified Patent Court – first 12 weeks in review

The UPC opened for full operations on 1 June 2023. Now that the court has been in operation for 12 weeks, we have an opportunity to assess better what kinds of cases have been filed at UPC.

Reports of the number of cases filed on the first day varied, and it has not been possible to tally the reports with what became visible on the UPC Case Management System (partly because applications for provisional measures only did not appear on the visible case list). In any event cases filed do not become publicly visible until they have been checked by the Registry for formalities and fee paid. The most accurate early report was probably the UPC Communication on the 7th UPC Administrative Committee meeting on 26 June 2023 [1] which stated:

“So far the Court has 23 cases, consisting of 6 protective measures (more specifically, 4 applications for provisional measures; 2 applications to preserve evidence), 3 Revocation actions and 14 Infringement actions. The Court also received 236 protective letters.”

However, it seems that about 19 cases were filed immediately. Currently (21 August 2023) 43 infringement / revocation / provisional measures cases appear on the CMS.

Taking figures from cases visible on the CMS, by the end of June, 14 infringement actions and three revocation actions had been filed. Many of the parties involved in these initial infringement actions are pairings familiar from litigation already being fought in UK, Germany or US such as Edwards Life Sciences against Meril, Ocado against Autostore and Amgen against Sanofi / Regeneron. However, there was one smaller dispute between two German bathroom fitting companies valued at €500,000. These initial infringement filings were split between local / regional divisions in Munich, Hamburg, Dusseldorf, Milan and Nordic-Baltic as shown in Fig 1.

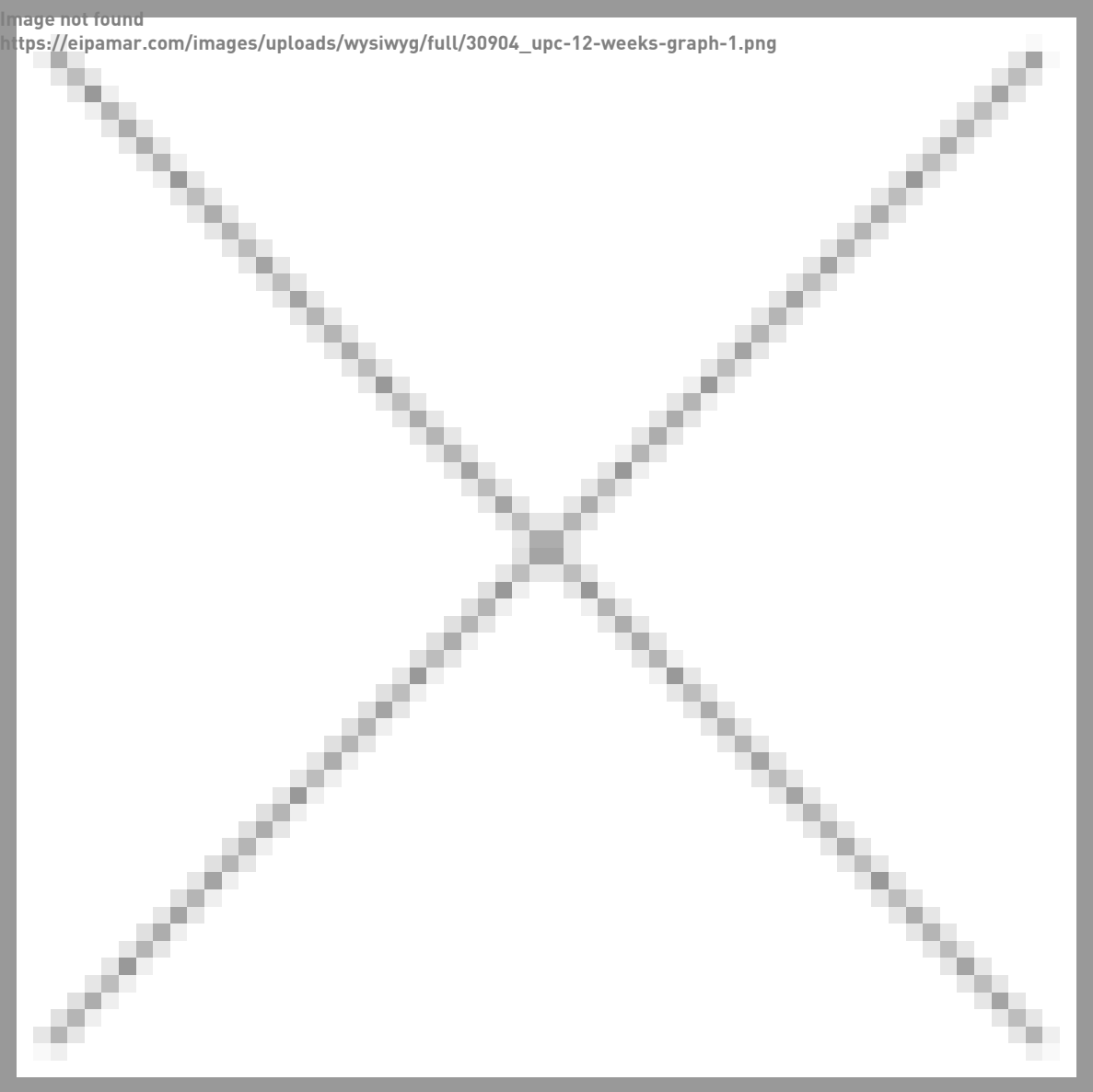
Divisions



As of today the number of cases visible on the CMS has risen to a total of 35 infringement and six revocation with a further two stated to be for provisional measures. Munich remains the most popular local division for filing infringement actions. However, Mannheim had a boost in work following the filing at the end of July of 12 separate SEP cases by Panasonic against Xiaomi (six cases) and Oppo (six cases), six of which were

filed in Mannheim with the remaining six in Munich. Other parties familiar from ongoing disputes elsewhere that have opened a new front in UPC include Aim Sport Vision v Supponor in the Helsinki local division and Dexcom v Abbott. The current split of work for infringement cases between local / regional divisions is in Fig 2.

Divisions



Of the 35 infringement actions, 25 were filed by only seven entities. The remaining ten submitted one claim each. The top seven claimants are shown in Fig 3.

Top 7 claimants



The UPC has already seen the first settlement of a major dispute following the announcement on 22 July that Ocado and Autostore had settled their global dispute. How much effect the recent escalation to UPC had in edging the parties towards settlement over and above the existing litigation in US, UK and Germany is something only the parties know.

Finally, we note the Register of opted out patents shows 553,398 European patents have been opted out of the jurisdiction of the UPC, with a further 377 having been opted out with the opt out subsequently being withdrawn (not including withdrawals where the opt-out is stated to have been unauthorised). It is notable that for a few of the more recent infringement cases, the patent concerned is shown to have been opted out and then opted back in. The number of opted out patents according to the Register is an overstatement of the true figure, because some patents shown as being opted out are evidently too old to be in force and therefore cannot be meaningfully opted out. It is likely that even among more recently filed opted out patents, some will not be in force having

lapsed for non-payment of renewal fees.

p5

Meanwhile, the European Patent Register shows that Unitary Effect has been registered for 6727 European patents.

Written by Joanne Welch, Alona Andrieieva, Darren Smyth

[1] <https://www.unified-patent-court.org/en/news/communication-7th-upc-administrative-committee-meeting-26-june-2023>