



The Court dismisses both of Spain's actions against the regulations implementing enhanced cooperation in the area of the creation of unitary patent protection

The current European patent protection system is governed by the European Patent Convention (EPC),¹ an international agreement which is not subject to EU law. That convention provides that, in each of the Contracting States for which it is granted, the European patent is to have the effect of and be subject to the same conditions as a national patent granted by that State.

Through the 'unitary patent package',² the EU legislature sought to confer unitary protection on the European patent and establish a unified court in this area. Under the EPC system, European patents provide, in each of the States which are party to that convention, protection the extent of which is defined by the national law of each State. By contrast, under the European patent with unitary effect (EPUE) system, the national law designated on the basis of Regulation No 1257/2012 will be applied in the territory of all the participating Member States in which that patent has unitary effect, which will guarantee the uniformity of the protection conferred by the patent. The translation arrangements for the EPUE, which are based on the current procedure in the European Patent Office, are designed to achieve the necessary balance between the interests of economic operators and the public interest in terms of the cost of proceedings and the availability of technical information. The official languages of the Office are English, French and German. The EU legislature also considered that it was essential to establish a court having jurisdiction to hear cases concerning the EPUE in order to ensure the proper functioning of that patent, consistency of case-law and hence legal certainty, and cost-effectiveness for patent proprietors.

Spain seeks the annulment of the two regulations forming part of that package, namely the regulation on the creation of unitary patent protection (Case C-146/13) and the regulation governing the applicable translation arrangements (Case C-147/13).

By its judgments delivered today, **the Court of Justice dismisses both of Spain's actions.**

Case C-146/13, Regulation (EU) No 1257/2012

Spain contests (*inter alia*) the legality, in the light of EU law, of the administrative procedure preceding the grant of a European patent. It argues that that procedure is not subject to judicial

¹ Convention on the Grant of European Patents, which was signed at Munich (Germany) on 5 October 1973 and entered into force on 7 October 1977. The European Patent Organisation is an intergovernmental organisation that was set up on the basis of that convention. The Organisation has two bodies; the European Patent Office, and the Administrative Council, which supervises the Office's activities. The European Patent Office is the executive body of the European Patent Organisation and its main task is to examine patent applications and grant European patents.

² That 'package' comprises Regulation (EU) No 1257/2012 of the European Parliament and of the Council of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection (OJ 2012 L 361, p. 1), Council Regulation (EU) No 1260/2012 of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements (OJ 2012 L 361, p. 89) and the Agreement on a Unified Patent Court, signed on 19 February 2013 (OJ 2013 C 175, p. 1).

review to ensure the correct and uniform application of EU law and the protection of fundamental rights, which undermines the principle of effective judicial protection.

The Court rejects Spain's argument by pointing out that the regulation is in no way intended to delimit, even partially, the conditions for granting European patents – which are exclusively governed by the EPC – and that it does not incorporate the procedure for granting European patents laid down by the EPC into EU law. Instead, that regulation merely (i) establishes the conditions under which a European patent previously granted by the European Patent Office pursuant to the provisions of the EPC may, at the request of the patent proprietor, benefit from unitary effect and (ii) provides a definition of that unitary effect.

Spain also submits that the first paragraph of Article 118 TFEU (Treaty on the Functioning of the European Union) concerning the uniform protection of intellectual property rights throughout the European Union is not an adequate legal basis for the regulation.

In that regard, the Court points out that **unitary patent protection is apt to prevent divergences in terms of patent protection in the participating Member States and, accordingly, provides uniform protection of intellectual property rights in the territory of those States.**

Spain also contests the assignment to the participating Member States acting in a select committee of the Administrative Council of the European Patent Organisation of the power to set the level of renewal fees and to determine the share of distribution of those fees.

The Court observes in that regard that, according to the TFEU, it is for the Member States to adopt all measures of national law necessary to implement legally binding Union acts. Moreover, **it inevitably falls to the participating Member States, and not to the Commission or the Council, to adopt all the measures necessary for the purposes of carrying out those tasks, given that the EU – unlike its Member States – is not a party to the EPC.** The Court adds that the EU legislature did not delegate any implementing powers which are exclusively its own under EU law to the participating Member States or the European Patent Office.

Case C-147/13, Regulation (EU) No 1260/2012

Concerning the applicable translation arrangements, Spain alleges (inter alia) infringement of the principle of non-discrimination on the ground of language since – in its opinion – the regulation establishes, with respect to the EPUE, a language arrangement which is prejudicial to individuals whose language is not one of the official languages of the European Patent Office. Spain submits that any exception to the principle that the official languages of the European Union have equal status ought to be justified by criteria which are other than purely economic.

The Court acknowledges that the regulation differentiates between the official languages of the EU. However, it emphasises that **the regulation has a legitimate objective, namely the creation of a uniform and simple translation regime for the EPUE so as to facilitate access to patent protection, particularly for small and medium-sized enterprises.** The complexity and particularly high costs of the current European patent protection system constitute an obstacle to patent protection within the EU and affect adversely the capacity to innovate and compete of European businesses, particularly small and medium-sized enterprises. The Court emphasises that **the language arrangements established by the regulation make access to the EPUE and the patent system as a whole easier, less costly and legally more secure. The regulation is also proportionate, as it maintains the necessary balance between the interests of applicants for EPUEs and the interests of other economic operators** in regard to access to translations of texts which confer rights, or proceedings involving more than one economic operator, by introducing a number of mechanisms (including a compensation scheme for the reimbursement of translation costs, a transitional period until a high quality machine translation system is available for all the official languages of the EU, and a full translation of the EPUE for operators suspected of infringement in the event of a dispute).

The Court also holds that the second paragraph of Article 118 TFEU constitutes the correct legal basis for the regulation, as that regulation establishes the language arrangements for a European intellectual property right (namely, the EPUE), defined by reference to the EPC.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the EU that are contrary to EU law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The full texts of the judgments ([C-146/13](#) and [C-147/13](#)) are published on the CURIA website on the day of delivery.

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