

# **UNITARY PATENT PROTECTION (UPP) PACKAGE**

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# Objectives & Issues

- Creation of      Unitary Patent (UP)  
                            Unitary Patent Court (UPC)
- A single harmonized European market
- Huge challenge
  - 28 EU Member States
  - 24 official national languages



source: [http://europa.eu/about-eu/countries/index\\_en.htm](http://europa.eu/about-eu/countries/index_en.htm)

# UPP ... What for ?

- Solve the problem of languages
  - A simple language system
  - Less costly
- Solve the problem of legal uncertainties of patent rights throughout Europe
  - Consistency of the case law in Europe
  - Improved enforcement of patent rights in Europe

# Legal Instruments so far...

- **Council Decision No. 2011/167/EU** (signed March 11, 2011)  
→ authorizes an enhanced co-operation between 25 EU Member States (less than 28 EU Member States)
- **EU Regulation No. 1257/2012** (ratified Dec 17, 2012)  
→ creates the new Unitary patent
- **EU Regulation No. 1260/2012** (ratified Dec 17, 2012)  
→ defines the applicable language for the new Unitary Patent (translation arrangement)
- **International Agreement No. 2013/C175/01** (signed Feb 19, 2013)  
→ creates a Unified Patent Court and the Statutes of the Court
- **Rules of proceedings of the UPC** (due end 2014)

# Territorial Scope & effective date of UPP

- UP Participating Member States = the 25 EU Member States:
  - Austria, Belgium, Bulgaria, Cyprus, Czech Rep, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Sweden, UK
  - Spain, Italy, and Croatia have opted out for now
- UPP will be effective once it is ratified by at least 13 Participating Members States – All Member States are actively preparing to ratify
- Status of Ratification  
[http://ec.europa.eu/internal\\_market/indprop/patent/ratification/index\\_en.htm](http://ec.europa.eu/internal_market/indprop/patent/ratification/index_en.htm)

# What is the Unitary Patent (UP) ?

- UP is an European patent with UNITARY EFFECT
- With an uniform protection across the UP participating Member States (25 Member States)
- A single patent right for whole EU (except for Spain, Italy, and Croatia )
- UP can be transferred/revoked or lapse for the territory
- But UP can be licensed for part of the territory
- Possible to have UP patent or EP patent or National patent BUT no duplications of patent right is allowed in the same country

# What are the differences between UP and EP patents ?

	EUROPEAN PATENT	UNITARY PATENT
FILING AND PRE-GRANT PROCEEDINGS	<ul style="list-style-type: none"> <li>• Filing before the EPO by ANY Applicants</li> <li>• in English or French or German</li> <li>• examined by the EPO in Munich - same standards of patentability</li> </ul>	
GRANT	Granted by the EPO in Munich	
1 month/Grant	Request unitary effect of the European patent	
POST-GRANT PROCEEDINGS	After grant, the EP patent becomes National patents and is validated in each Member States by filing translation of EP patent	No actions necessary The UP is automatically enforced in all 25 participating Member States as ONE SINGLE PATENT
OPPOSITION PROCEEDINGS	Filed 9 months after Grant before the EPO in Munich	
ANNUITIES	Paid to national patent offices	SINGLE FEE paid to EPO

# Unitary patent & EP patent & national patent

File a European patent application  
(designating 38 Member States)  
+ national patent application in Turkey



Grant of European patent  
Grant of Turkish patent



Request Unitary effect of the European  
patent



Unitary patent for the  
25 participating  
Member States

EP patent for the  
13 remaining  
states

Turkish patent (if  
Turkey is withdrawn  
from EP patent)

# Solution for languages

- UP may be filed in English or French or German
- Not necessary to provide translation of the patent after grant
- EPO is setting up high quality machine translations
- During **the transitional period** of maximum 12 years:
  - When the Unitary patent is in English → a translation of the patent in another official language is required, e.g., either German or French
  - When the Unitary patent is in German or French → a translation of the Unitary patent in English is required

# UNITARY PATENT COURT (UPC)

## A single Court system

- First supranational Court in Europe
- Common to the 25 Participating Member States
- Specialized patent jurisdiction
- With first instance and appeal
- Has exclusive jurisdiction concerning infringement and validity questions for Unitary patents
- Multinational panels of judges

# UPC – COMPOSITIONS

COURT of APPEAL  
(Luxembourg)



**NATIONAL DIVISIONS**  
Competent for all except for declarations of non infringement

**CENTRAL DIVISION** ( seat in Paris  
branches in London and Munich  
Competent for infringements,  
revocations, preliminary injunctions  
and declarations of non infringement

**REGIONAL DIVISIONS**  
Competent for all except for declarations of non infringement

**PARIS CENTRAL DIVISION** : ELECTRICITY, PHYSICS, TEXTILES, PAPER, CONSTRUCTIONS etc...

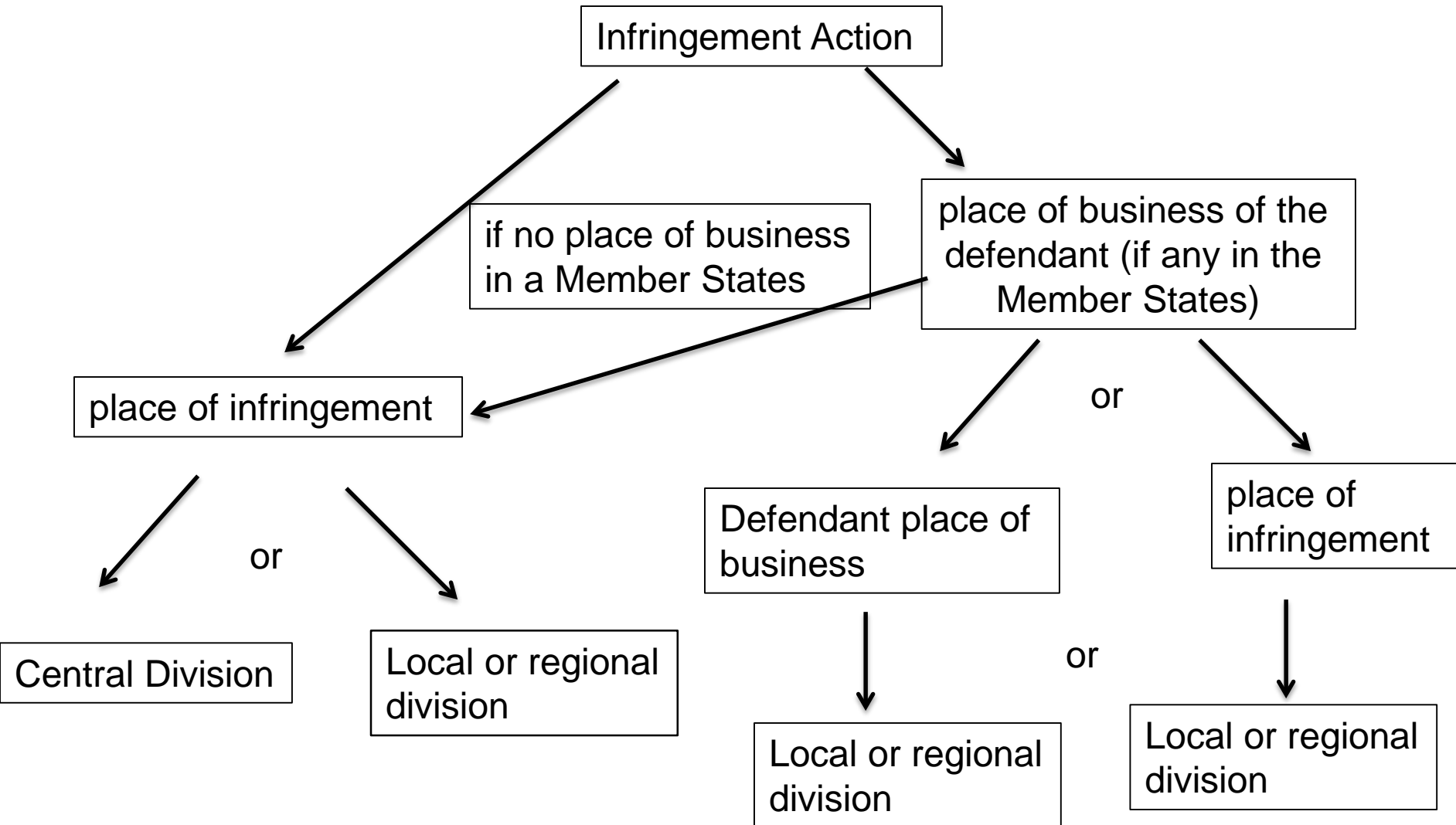
**LONDON BRANCH**: BIOTECH, PHARMA, CHEMISTRY, METALLURGY

**MUNICH BRANCH**: MECHANICAL ENGINEERING, HEATING, WEAPONS

# UPC – Right to OPT OUT

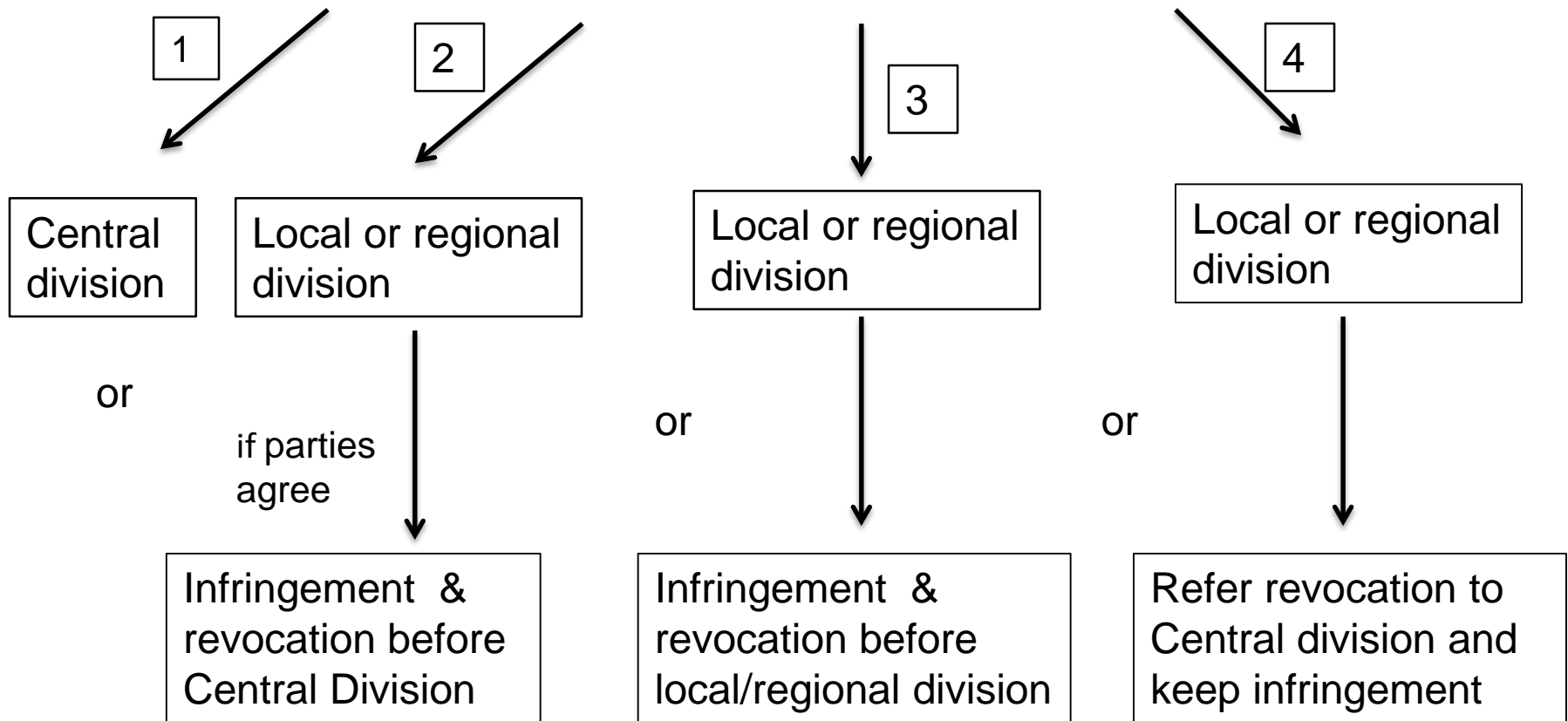
- Transitional provisions & period of 7 years
- Unless an action has already been filed before UPC, a patentee may OPT OUT from the exclusive jurisdiction of Unified Patent Court
- Patentee may OPT BACK IN at any time unless an action is pending before national court

# UPC – Forum shopping



# UPC – Forum shopping

INFRINGEMENT ACTION FOLLOWED BY REVOCATION COUNTERCLAIM



**TRANSFER  
THE WHOLE CASE**

**KEEP  
THE WHOLE CASE**

**BIFURCATION**

# UPC – Forum shopping

REVOCATION FOLLOWED BY INFRINGEMENT ACTION



Central  
division

Local or regional  
division

Local or regional  
division

Local or regional  
division

or

if parties  
agree

or

or

revocation &  
infringement  
before Central  
Division

revocation &  
infringement before  
local/regional division

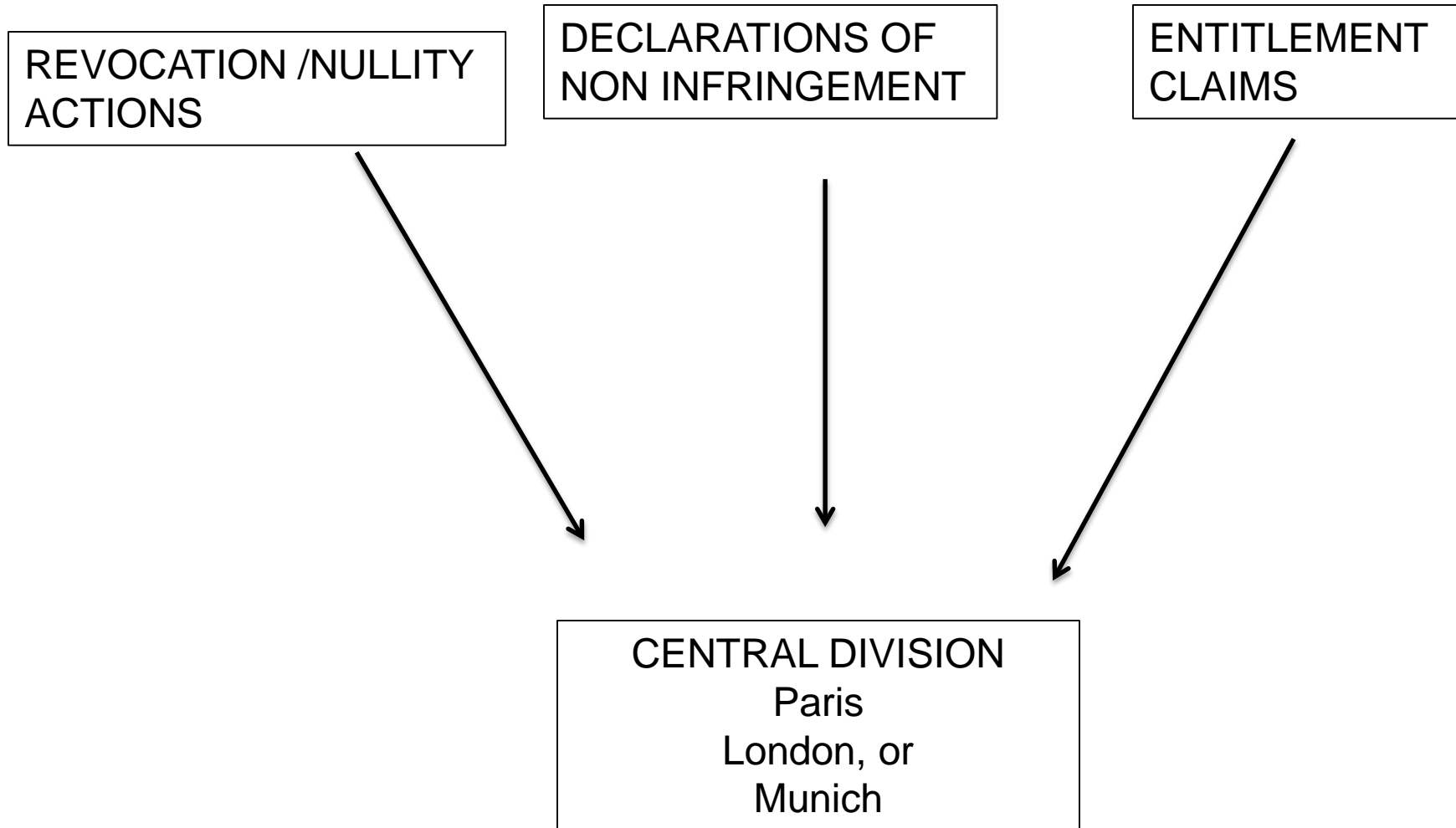
Refer revocation to  
Central division and  
keep infringement

**TRANSFER  
THE WHOLE CASE**

**KEEP  
THE WHOLE CASE**

**BIFURCATION**

# UPC – exclusive competencies of central division



# UPC – EXAMPLES

Example 1:  
Presumed infringer in UK  
Infringement in UK



Local division in UK  
or go to central division

Example 2:  
Presumed infringer in UK  
Infringement across EU



choose local division  
or go to central division

Example 3:  
Presumed infringer non-EU  
Infringement across EU



choose local division  
or go to central division

# UPC – BIFURCATION

WEAK PATENT ..... But.... STRONG CASE of INFRINGEMENT



LOCAL DIVISION : GERMANY

LOCAL DIVISION :UK



BIFURCATION

NO BIFURCATION



INJUNCTION on the  
Infringement

VALIDITY heard  
SEPARATELY

INFRINGEMENT  
AND VALIDITY  
CASES HEARD  
TOGETHER

Thank you for your attention!

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