

The UK, the UP and the UPC

- Brits are in favour of the UP and UPC
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The UK, the UP and the UPC

- The Brits want:
 - Uniformity;
 - Accessibility;
 - Rapidity;
 - Fairness; and
 - Affordability
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The UK, the UP and the UPC

- Uniformity
 - Bifurcation or not?
 - Differences between 1st Instance Divisions?
 - Languages?
 - Preserving evidence?
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- Rapidity

- Can 1st Instance courts meet the 1 year limit?
- How long will appeals take?

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- Accessibility

- Will there be a local/regional division near you?
- Can you get to a central division easily?

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- Fairness

- Who will be the judges?
- (Not really a problem)

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- Affordability

- Will SMEs and smaller entities be able to afford the UPC?
- Many factors to consider?

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- Affordability

- UPC must be self-financing (Art 36(1) UPC)?
- Can be helped by Member State contributions
- Will the Member States pay?
- What will the Court fees be?

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- Court Fees

- Basic Court fee for an action
- Value-based Court fee
- Other revenue?

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- Court Costs

- Can this cover even three judges?
- Also needs to finance the Registries?
- Who pays for legal aid?
- Who pays for judges training?
- Who pays for Arbitration Centre?

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- Costs

- If you lose, you pay the costs
- How high will costs be?
- Some limitations in UPC and Rules
- How far does legal aid cover the costs?

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- Representation

- Lawyers (Art 48(1) UPC)

- Rules define “lawyer” using EU Directive

- If other side uses those lawyers who presently conduct patent litigation, what will be the cost?

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- Representation

- EPAs with Certificate or other qualification (Art 48 (2) UPC)
- Less expensive
- Better in conducting proceedings, especially revocations?

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- Representation by EPAs
 - Will there be any Certificate courses set up in time?
 - Draft transitional provisions open for consultation
 - UK, DE and FR are reasonably catered for, but ageist
 - Lobby now for EPA rights
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- Remedies

- If Patentee wins, will he gain sufficient compensation?
- Will “damages” be awarded on UK or DE or FR standards (Art 64 UPC)?
- Delivery up or destruction?

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- Remedies

- Injunction (Art 63 UPC)

- Non-compliance with injunction incurs a penalty

- ...

- ... but who collects?

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- Interim Remedies
 - Order to Produce Evidence (Art 59 UPC)
 - Order to Preserve Evidence (Art 60 UPC)
 - Order to Inspect premises (Art 60 UPC)
 - Freezing Orders (Art 61 UPC)
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- The Brits Worry About
 - Bifurcation – fundamentally unfair procedure
 - Language regime – The Tower of Babel did not work
 - Appeals
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- Appeals
 - Who gives leave to appeal?
 - If only 1st Instance, less opportunity for procedural uniformity
 - If 2nd Instance can, will it be swamped?
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- References

- How many references will there be to the CJEU?
- How long will they take?

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- Appeals from EPO
 - How long will it take to get to 2nd Instance?
 - Will you miss you opportunity to use bundle system?
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- Prior National Rights

- How is Court going to deal with prior national intervening applications?
- Not effective in EPO prosecution
- Could invalidate whole UP

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- Thank you for listening
- Any Questions
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