



Unified Patent Court
Einheitliches Patentgericht
Jurisdiction unifiée du brevet

UNIFIED PATENT COURT

ANNUAL REPORT





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FOREWORD BY THE PRESIDENT OF THE COURT OF APPEAL

Dear Reader,

You have in your hands the first annual report of the Unified Patent Court (UPC), the first court in civil and commercial matters common to a multitude of EU Member States, in which individuals can bring actions.

The start of the UPC and the introduction of the European patent with unitary effect (Unitary patent), both on 1 June 2023, is not only a historic piece of European integration but also a key milestone of an endeavour that began more than 60 years ago.

Efforts to set up a European patent system go back to the 1950s. A first decisive breakthrough was achieved with the signing of the European Patent Convention (EPC) in 1973 and the opening of the European Patent Office in 1977.

The setting up of the Office made it possible to obtain a European patent through a centralized granting procedure with protective effect in all EPC States, on equal terms with a national patent in the respective state.

However, enforcement of a European patent still had to be done in the national courts which, in practice, almost always meant that a European patent could be enforced only state by state. This involved often costly and time-consuming parallel national proceedings, and brought with it the inherent risk of irreconcilable judgements given by the respective national courts.

Almost 50 years after the signing of the EPC, it is the UPC that now makes it possible to

enforce a European patent across borders, in one court common to all those EU Member States that have ratified the Agreement on a Unified Patent Court (UPC Member States). In that regard, the UPC and the Unitary patent, which confers on its proprietor an exclusive right throughout the territories of the UPC Member States, complete the European patent system and bring to fruition many years of effort.

The UPC makes it possible to enforce, in one-stop-shop proceedings, a European patent or a Unitary patent in the currently 18 UPC Member States, which account for over 75% of the gross domestic product of the EU internal market. There is also the prospect that further EU Member States will join the UPC, as has been most prominently suggested by former ECB President Mario Draghi who, in his 2024 Report on the future of European competitiveness, invites Non-UPC Member States to join the UPC in order to allow a further reduction in patent application costs, to offer broader and uniform territorial protection for European patent proprietors and to limit uncertainty through the jurisdiction of the UPC.

As a truly European court, the panels of the UPC sit in multinational compositions in both instances. At the UPC Court of Appeal, the panels are composed of three legally qualified judges from different UPC Member States who are, in most of the cases, joined by two technically qualified judges.



*“Almost 50 years after the signing of the EPC, it is the **UPC that now makes it possible to enforce a European patent across borders, in one court common to all those EU Member States that have ratified the Agreement on a Unified Patent Court (UPC Member States), completing the European patent system and bringing to fruition many years of effort.**”*

The UPC has been busy right from the start, a significant number of actions having been filed from the very first day of the Court being in existence. As of 31 December 2024 these were 633 actions in total. These actions have made it possible to build up an already comprehensive body of case law within the first one and a half years. This is the case not only for the Court of First Instance but also for the Court of Appeal which, inter alia, has already heard appeals from orders in preliminary measures cases and appeals from procedural orders, where the UPC Court of First Instance allowed such an appeal while the case on the merits was still pending in first instance. The ever more numerous orders and decisions of the Court of First Instance and the Court of Appeal are published on the UPC website. Accessibility of decisions and orders is important in order to build trust in the UPC and increase predictability and legal certainty for the parties. Continuing to work

on the development of a comprehensive case law will remain a key challenge for the UPC in the time to come.

The talent that the UPC has attracted since beginning operations gives cause for optimism that this will be achieved, as the UPC has been joined by many of the most experienced patent judges from the national jurisdictions of the UPC Member States. The Court has also succeeded in recruiting technically qualified judges who bring experience from a variety of roles such as patent attorneys, technically qualified judges or patent examiners from national courts or offices. Early experience shows that the combination of judicial and technical expertise on the bench meets the requirements of conducting and deciding patent litigation proceedings in the most efficient and satisfactory manner. This is all the more true as the judges are supported by highly qualified and committed clerks and other court staff in the Divisions of the Court of First Instance and the Court of Appeal.

Based on what has been achieved at the UPC so far, I am confident that the Court will establish itself as a central pillar of the European patent system, providing users of the system with a single place of litigation with effect for large parts of the European market.

Klaus Grabinski

FOREWORD BY THE PRESIDENT OF THE COURT OF FIRST INSTANCE

“It’s clear to everyone that this is a big ship leaving the harbour” were the concluding words of the Chair of the Administrative Committee when it was decided, in November 2022, to postpone the start of the judicial activity of the Court by two months until 1 June 2023.

As is customary whenever such ships are launched, we held our moving ceremonies. I find this image particularly fitting as our involvement in this initial phase of the UPC represented both a challenge and a significant commitment, with no possibility of turning back. This commitment extends to the founders, who devoted their time and energy to building the new system; to the Contracting Member States, who chose to support the project and to provide the necessary resources; and to the users, especially those who lodged the first actions. Notably, 15 cases were brought before the new Court on 1 June 2023, amongst which 10 were concluded between July and December 2024.

Although operating within a new case management system and an innovative framework, the UPC was able to deliver prompt and high-quality decisions in line with the Agreement on a Unified Patent Court and the Court’s Rules of Procedure, which is a significant initial achievement.

An additional successful step has been the involvement of technically qualified judges (TQJs). Initially, concerns were raised that relying on the expertise of patent attorneys in the specific domain of a patent might lead to conflicts of interest. However, 65 of

the 75 currently appointed TQJs have been allocated to more than 150 cases without a single request for recusal. This technical expertise was utilized not only for actions on the merits but also in provisional measures, even though this was not expressly provided for in the Rules of Procedure. Two additional rounds of recruitment for technically qualified judges were planned and carried out in 2023 and 2024.

Within 18 months of the UPC beginning operations, the third section of the Central Division of the Court of First Instance was inaugurated in Milan and officially opened in July 2024. To facilitate this opening and to address its increasing caseload, the Court of First Instance welcomed 5 new legally qualified judges while simultaneously adapting its working capacity. The working hours of 12 judges were accordingly adjusted in 2024.

The international panels of the 14 Divisions have also begun to develop the Court’s case law and harmonize their positions on important procedural and case management questions such as service, confidentiality, public access to the proceedings, and bifurcation.

The first orders on applications for provisional measures were issued in September 2023 and the initial decisions on the merits, on both revocation and infringement actions, were rendered in July 2024. The first applications for cost decisions were lodged in October 2024.

This summary, reflecting 18 months of judicial activity, is the result of the tremendous



*“This summary, reflecting 18 months of judicial activity, is **the result of the tremendous efforts of all persons involved – judges, clerks, and all administrative departments in Luxembourg – who continue to work very hard to support the development and success of the new court.**”*

efforts of all persons involved – judges, clerks, and all administrative departments in Luxembourg – who continue to work very hard to support the development and success of the new court.

In October 2024, the seat of the Court of First Instance held a meeting of all local managers of the Contracting Member States that host a Division of the Court. This event provided an opportunity to reflect on the creation of the UPC, a supranational court that is also an integral part of each national judicial system, demonstrating a deep trust in Europe and a political determination that continues to evolve. The support provided locally represents a continuation of this political engagement without which the UPC could not exist. Therefore, the dialogue between the Court and the participating Member States – facilitated through communication and coordination by the registry – is essential.

We still have key areas of development to focus on, including implementing a new case

management system, enhancing communication on case law, optimising working time and support for the judges – in particular through language training and facilitation of travel planning. We are also considering establishing a system of internships to provide opportunities for young professionals to gain direct experience of the work that we do. Another focus is the harmonisation of caseloads across the divisions. This annual report aims to provide an overview of the work done by the Court and its dedicated team, both on the front lines and behind the scenes. As it will further address trends and numbers in more detail, I would like to end on a personal note. In the early days and of my tenure as President of the Court of First Instance of the UPC, I was deeply aware of my role and responsibilities. However, the collaborative efforts and shared goodwill of our team, combined with a pioneering spirit, have made the experience extremely stimulating and helpful.

I am honoured to be part of this starting phase and sincerely grateful for the supportive environment that has proved so valuable in carrying out my daily tasks.

Florence Butin

FOREWORD BY THE REGISTRAR

I have been personally engaged in the UPC project since 2008, first during the negotiation phase thereafter as the Chairman of both the Preparatory Committee and the Administrative Committee. Against this background it was indeed thrilling to step into the heart of the Court's administration and be part of the take-off and to see if the ship we had built was seaworthy.

The initial phase did not disappoint. From the perspective of the Registry, 2023 and 2024 have been eventful!

As the Registrar I have the privilege of leading the staff in their work to support the core business of the Court, which includes case-related support as well as the Court's corporate functions and its interface towards the users. The Court is an international organization but when we started one and a half years ago it was also a start-up in the true sense of the word, and all the processes and support structures needed to be established. At the same time there was no possibility to ramp up slowly: the Court needed to function from day one.

This challenge would have been impossible to meet without the dedication and commitment shown by the staff that serve in the Registry and the sub-registries of the Court. The clerks and the other administrative staff of the Court have all shown a remarkable pioneer and can-do spirit that has enabled us to find solutions to the many challenges we have encountered.

During the "sunrise period", that took place in the spring of 2023, in the three-month period before the entry into operation of the Court, the clerks were busy checking thousands of applications from attorneys wishing to be registered as a representative before the Court, while also familiarising themselves with the operation of the Court's Case Management System (the CMS). At the same time, the IT department worked hard to enable the CMS to cope with nearly half a million opt-outs, many of which were filed during the very last weeks of the sunrise period.

On 1 June 2023, cases started to be filed with the Court and the staff began its core business, supporting the judges in their judicial functions and enabling the cases to be processed in an appropriate way. As a fully digital Court, IT challenges were inevitable. Through dedication and hard work, solutions and workarounds were found in good cooperation with the representatives, thereby enabling the cases to proceed and the Court to get off to a good start!

Although the staff of the Registry have continued to work hard to develop the CMS to meet the Court's needs, it became apparent that the current CMS is not a long-term solution for the Court. Instead, it was decided to enter into an enhanced partnership with the European Patent Office to jointly build a new system that can cater to the Court's needs, drawing from the experience from both organizations in charge of the enhanced European



"The clerks and the other administrative staff of the Court have all shown a remarkable pioneer and can-do spirit that has enabled us to find solutions to the many challenges we have encountered."

patent system. The Registry is now focusing its resources on this project for a fast-track entry into operation by mid-2025.

The success of the Court however mainly hinges on the human factor and the staff is by far the most central asset of the Registry. This has been particularly true for the early phases of the Court's life, when plans came up against reality and innovative solutions needed to be found. During the initial transition period of seven years, staff are provided by the hosting Member State. Hence, the Registry relies on an agile cooperation with the various Member States hosting Divisions of the Court. Having said that, the Registry is keen to invest in its staff towards a long-term goal that extends far beyond the end of the seven-year transitional period.

The Registry's focus for 2025 will be on launching the new CMS, thereby stabilizing the practical operation of the Court. In addition, improvements will be made as regards the transparency of the Registry and, last but not least, a substantial effort will be made to support the establishment of the Patent Mediation and Arbitration Centre.

Alexander Ramsay

THE ROLE OF THE PRESIDIUM

The Presidium is responsible for the **management of the Court**.

The first Presidium of the Unified Patent Court is composed of the **President of the Court of Appeal**, Klaus Grabinski (DE), who is also the chairperson; **the President of the Court of First Instance**, Florence Butin (FR); **two judges of the Court of Appeal**, Rian Kalden (NL) and Ingeborg Simonsson (SE); **three judges of the Court of First Instance**, Camille Lignières (FR), Ronny Thomas (DE) and Peter Tochtermann (DE); and the **Registrar** Alexander Ramsay (SE) as a non-voting member.

The composition of the Presidium follows directly from the Statute of the Unified Patent Court. The President of the Court of Appeal is elected by all judges of the Court of Appeal, whereas the President of the Court of First Instance is elected by all judges of the Court of First Instance who are full-time judges. The President of the Court of Appeal, the President of the Court of First Instance and the Registrar are automatically Presidium members, while the two judges of the Court of Appeal are elected to that role from among the appeal judges. Similarly, the three judges of the Court of First Instance are elected among the full-time judges of the Court.

The Presidium took up work in **early November 2022**, to prepare the ground for the entry into force of the Agreement on a Unified Patent Court on 1 June 2023. Before that, the management of the Court-to-be was in the hands of the **Preparatory Committee**. The legal basis for this was the Protocol on pro-

visional application. From the start, the Presidium has held the majority of its meetings online. This has been in the interests of cost- and time-saving, and to reduce the need for travel. In-person meetings have been held regularly too, but as often as possible in the context of UPC training events when the members of the Presidium are gathered, or at UPC sites.

The initial work of the Presidium included the **recruitment of the Registrar and the Deputy-Registrar**. There, Alexander Ramsay and Axel Jacobi were chosen, following a recruitment process with many highly qualified candidates. **Alexander Ramsay and Axel Jacobi took up their positions in early 2023**.

One of the primary responsibilities of the Presidium is to prepare the **annual budget**, the **annual accounts** and the **annual report of the Court** and submit them to the Budget Committee. During the first weeks of operation, the Presidium thus worked with the initial Annual Budget to be submitted to the Budget Committee.

In parallel, and at the top of the agenda, was the **development and adoption of various legal documents** for the management of the Presidium's and the Court's activities. The Rules of Procedure of the Presidium were decided in late November 2022, and were followed in the subsequent months by GDPR Guidelines for the UPC, Registry Rules, a case-by-case judges' remuneration scheme and a Dress Code applicable to judges and representatives.



Klaus GRABINSKI

President of the Court of Appeal (Chairperson)



Florence BUTIN

President of the Court of First Instance



Rian KALDEN

Judge at the Court of Appeal



Ingeborg SIMONSSON

Judge at the Court of Appeal



Camille LIGNIÈRES

Judge at the Court of First Instance



Peter TOCHTERMANN

Judge at the Court of First Instance



Ronny THOMAS

Judge at the Court of First Instance



Alexander RAMSAY

Registrar (non-voting member)

In the months thereafter, the Presidium members devoted much time to the **planning and carrying out of tests and training sessions on the Case Management System (CMS)**, and to the development of templates/guidelines for decisions and orders. With regard to the latter, the Presidium could build on the preparatory work of a working group that was active before November 2022. The issues identified in relation to the CMS were a constant source of work throughout the whole period. For that reason, the Presidium designated Rian Kalden as the primary point of contact with the supplier of the system. The problems identified, how to prioritise and approach them, and how to disseminate information to the users, were addressed and managed at the Presidium meetings, and constantly followed up outside the meetings in working groups.

“The Presidium has experienced great acknowledgement from the legal community for the work carried out by judges and clerks alike, and wishes to express heartfelt thanks to all involved for their continuous hard work and dedication.”

Training of judges is one of the foremost responsibilities of the Presidium. While the Statute sets out that the Presidium shall in particular establish guidelines for the training programme for judges and supervise the implementation thereof, this presupposes facilities for a training framework pursuant to Article 19(1) of the Agreement on a Unified Patent Court, facilities which however have not been created so far. The absence of facilities would not stand in the way of the Presidium organising training activities. A weeklong advanced preparatory training session for UPC appointed judges was held in January 2023, in co-operation with the Hungarian Intellectual Property Office and the EPO Academy, focusing on the UPC Rules of Procedure. Other topics were jurisdictional issues, discussions on the common approach of the Court, cooperation among judges, and a presentation of the CMS. The January training session was followed by three weeks of training on the CMS in March 2023, also in Budapest. The CMS training was organized so that every judge (legally or technically qualified) and UPC clerk received one week’s training.

On the topic of know-how, it must furthermore be mentioned first, that the Presidium worked to ensure that the judges would have **access to legal databases** as from 1 June 2023, and second, that several judges have been able to take part in **language training** in their capacity as UPC judges.

Yet another priority in the initial phase was the development of a draft **Code of Conduct of Judges of the UPC**, to be sent to the Advisory Committee. The Code of Conduct was adopted by the Administrative Committee in April 2023. The Code of Conduct is an important instrument to ensure the integrity of judges and, ultimately, the Court.

Among the tasks of the Presidium prior to the entry into force of the Agreement on a Unified Patent Court was **appointment of the presiding judges** of the Divisions, appointment of the presiding judges of the panels and the designation of Alexander Ramsay as Data Protection Officer.

The UPC’s corporate identity was addressed during the first half year as well, encompassing the **official attire of judges and representatives**, and, not least, the **logo of the UPC**.

An important part of the transitional regime of the UPC is the ability for patent proprietors to opt out their patents. The opt-outs are lodged in the UPC’s CMS. The development of opt-outs was closely monitored during the three months prior to the entry into force on 1 June 2023, when European patents and disclosed European patent applications were already eligible to be opted out from the jurisdiction of the UPC (the so-called “sunrise period”). In the event, large numbers of opt-out applications were lodged shortly before 1 June 2023, and this called for technical measures and an information campaign directed towards the legal community in order to relieve the pressure on the system and ensure continuous operation. Here, the **website of the UPC** proved to be an important communication channel.

As the entry into force of the Agreement on a Unified Patent Court grew nearer, the interest within the legal community in the UPC’s activities peaked, and many wanted to discuss their expectations of the Court. As a result, the Presidium members were invited to **conferences and seminars** even prior to the start of the Court’s activities, to provide information on the legal framework of the



Presidium of the UPC

Court. This interest has remained stable, and the Presidium members have represented the Court and acted as ambassadors for the UPC on several occasions since 2022, in Europe and beyond. While this does not strictly form part of the duties of the Presidium, such dialogue and information dissemination has nevertheless been an integral aspect of the initial phase of the Court’s operations. The great interest in the UPC was also reflected by **visits from foreign guests** who wanted to find out about the new European patent court on-site, such as visitors from the US Congress, the Korean Supreme Court and Japanese Courts.

The entry into force on 1 June 2023 was preceded by an **inauguration ceremony** in Luxembourg on 30 May 2023, organized together with the Luxembourg government. This was followed a few days later by an **official oath-taking of all judges**. For the judges of the Court of First Instance, the oath-taking was organized in Paris, together with a half-day training session.

During the months following the opening of the Court, the Presidium’s activities were focused on, among other matters, an **estimation of the UPC 2024 Budget** to be shared with the Contracting Member States, planning and carrying out of **training for legally qualified judges and clerks** in Milan in November 2024 in co-operation with the Italian judiciary and the EPO Academy, and recruitment of legal assistants to the Presidents. Moreover, the Presidium worked on a proposal to the Administrative Committee on legal aid, a matter of importance for inventors who are natural persons.

There has been continuous work with the information on the website. The legal community is particularly interested in being able to find **decisions and orders** of the Court, and those are published under the heading Decisions and Orders. Another topic of great interest for users is the **development of the case load** of the Court since the start of operations.

As cases arrived in the Divisions of the Court of First Instance from June 2023, the increase in working time of judges became one of the regular topics on the Presidium’s agenda. The reason for this is that most of the judges were initially appointed on a part-time basis (normally 20 percent), with their existing duties in the national courts occupying the remainder of their time. The increase in working time has often required coordination with the national judiciary to enable a smoother transition for the judges concerned. It also requires a key for assessing the workload of Divisions and individual judges, for monitoring the inflow of cases and keeping track of the languages of proceedings.

At the beginning of 2024, attention was on the planning of a training event in Vienna for all judges (legally and technically qualified) and UPC clerks. This training was carried out in September 2024, in co-operation with the Austrian Patent Office and the EPO Academy.

Further work in the spring and summer of 2024 included the **UPC Annual Accounts**, a **draft UPC Budget for 2025** and continuous work with **trademark protection** of the UPC logo.

In the summer of 2024, the work of providing a CMS that could sustain the needs of the Court for the future intensified. A **co-operation with the EPO**, already established in November 2022, was further formalized and the work for a new CMS began.

In the autumn of 2024, there was further work related to the UPC Budget for 2025, and the audit of 2023. The co-operation with the EPO on a new CMS continued, and the planning for the 2025 training began to take shape.

In summary, the Presidium looks back on **two eventful years**, the highlight of which has been the successful launch of the Court. The Court is still in a start-up phase, but is gradually beginning to experience the challenges of an **established institution**. The Presidium has experienced great acknowledgement from the legal community for the work carried out by judges and clerks alike, and wishes to express heartfelt thanks to all involved for their continuous hard work and dedication.

HISTORY OF THE UPC

The start of the Unified Patent Court is nothing short of a monumental achievement. With the opening of its doors on 1 June 2023, decades of vision, dedication and perseverance have culminated in the form of a new European Court, with jurisdiction covering civil litigation related to infringement and validity of both “classical” European patents and Unitary Patents.

The story of the founding of the UPC looks back at a long list of attempts, with an initial vision as early as 1949. Early proposals of a European patent court in the framework of a Community patent convention date back to the early 60’s. A variation of these proposals formed the basis for the 1975 Community Patent Convention (CPC). This Convention was then followed by the Agreement relating to Community Patents of 1989 and its Protocol on Litigation. Both the 1975 CPC and the so-called Luxembourg Agreement of 1989 proved unsuccessful, since they did not attain the necessary ratification requirements for an entry into force.

Some years later, at the 1998 European Patent Judges’ Madrid Symposium, the “Madrid Group” was formed with the idea of creating a European Patent Court. Shortly thereafter, industry also set about formulating a proposal for what it called the European Patent Lit-

igation Agreement. The European Commission then took up the running. In the early 2000’s it put forward a proposal for a Community patent combined with a proposal to convey jurisdiction to newly to-be-created specialised judicial chambers at the First Instance Court of the European Court of Justice (now renamed the General Court). This proposal was made in parallel to the proposal for a European Patent Litigation Agreement. The latter had a wider scope: to establish, as an independent international organization: a European Patent Judiciary open to all of the European Patent Convention’s Contracting Member States. Following a certain hiatus over these different views on the setting of a Community-wide patent and litigation system, a renewed impetus provided in 2007 by the EU Commission, resulted in the draft Agreement on a European and Community Patent Court.

Enthusiasm over this initiative was momentarily dimmed however, when, in 2011, the European Court of Justice delivered its Opinion 1/09, which held that the agreement on the proposed patent court would be incompatible with the EU Treaties, since it would not provide sufficient guaranties regarding the primacy of EU law and the respect of the role of the CJEU as its ultimate interpreter.

To this effect, under the Hungarian EU Presidency, the proposed Agreement was revised to address the CJEU’s concerns by designing the new court as a common court of EU Member States with the same obligations concerning the primacy of EU law and the role of the CJEU, as any national court.

This cleared the path for a signature of the Agreement on a Unified Patent Court which took place on 19 February 2013. The ratification and eventual entry into force of the UPC Agreement would also trigger the entry into effect of the two Regulations creating the Unitary Patent – a single title to cover up to 25 Member States, which was adopted in December 2012.

With the requirement of ratification by 13 signatory Member States, including three Member States with the highest number of European patents in effect, the road to the entry into force of the UPC Agreement proved arduous. Of note, the withdrawal of the United Kingdom from the European Union was a difficult setback for the project, with a withdrawal of the UK’s ratification instrument in July 2020. In addition, constitutional complaints in Germany triggered further delays, with the decisive deposit of Germany’s instrument of ratification taking place in February 2023, 10 years after the

signature of the Agreement, after the last complaints had been rejected by the German Constitutional Court.

Notwithstanding these delays and though planning for the start of operations of the Court had become increasingly challenging, a Preparatory Committee set up in 2013 and chiefly composed of representatives of Member States and civil servants, proceeded with tenacity to lay the bricks for the operational start of the Court. Those bricks included the preparation of draft secondary legislations of the Court, preparation for the recruitment procedure and training of judges, and setting up an IT and facilities’ structure for the Court. The Preparatory Committee also integrated the key task of the drafting of the UPC’s Rules of Procedure – a major endeavor and a crucial building block of the future system, the initial ideation to which can be traced to the 2006 “Second Venice Resolution”, drafted by and under the impetus of Europe’s most eminent IP judges and lawyers. The spirit of the Second Venice Resolution, largely preserved by the so-called “Drafting Committee” of the Rules of Procedure, is very much present in the Rules as adopted by the UPC Administrative Committee in 2022, following the start of the UPC Agreement’s Period of Provisional Application.

Preliminary exchanges amongst UPC judges on the legal and operational framework of the Court, not least said Rules of Procedure, took place at the start of 2023, during the first formal UPC training events. By then, the mood was truly optimistic, with the first UPC judges having been appointed, following an extensive selection procedure led by the Advisory Committee which, during the spring of 2022, had conducted a total of over 150 interviews in three different locations, in order to prepare a list of most suitable candidates for adoption by the Administrative Committee.

This major milestone – the appointment of the UPC judges – can be seen, together with the setting up of the different divisions with their Registry staff, who play a central role for the Court, as the culmination of the long history of the building of the UPC – from an idea, into a fully operational Court and international organisation.

The setting up of the Unified Patent Court is the result of the labor and input of countless individuals.

To highlight this input, we have gathered in this report, quotes from 3 central figures in the building of the UPC:



Former official in charge of IP at the European Commission and subsequently of legal affairs at the European Patent Office

Ms Margot FRÖHLINGER

“It always seems impossible, until it is done” (N. Mandela). When we relaunched the UPC/UP project in 2007, it seemed impossible. But we gave it another try, building on previous attempts and learning from the failures. It became a major challenge for our perseverance, a real obstacle race. But the only use of obstacles – be they political or legal – is to be overcome. And so they were one by one. This was possible only thanks to the invaluable input and the unwavering support of an entire community of judges, lawyers and other professionals, industry representatives and civil servants, united around the project. It became the key factor for success and for me personally a permanent source of inspiration and encouragement.



Chair of Business Europe's Patent Working Group

Mr Thierry SUEUR

In my experience the breakthrough in the creation of the UPC, after so many failed attempts, was made when the European Commission had the courage to move ahead with enhanced cooperation on the Unitary Patent. Without the enhanced cooperation there would be no UP, and without the UP there would be no UPC.

I believe it is important to recall this, since more recently the Commission seems to have lost that courage. In a meeting with users at the end of last year on some pending proposals, the Commission stated that the use of the enhanced cooperation for the UP was a mistake and that there would be no enhanced cooperation in the future. For me this is somewhat surprising and frustrating since it could result in pending proposals to be blocked indefinitely in the Council.



Sir Hugh Laddie Chair of Intellectual Property Law, University College London

Sir Robin JACOB

I was fortunate to be with this project from 1998 onwards so through its ups and its downs. When the Commission put Margot Fröhlinger in charge she came, power-dressed in red, to see me in the Royal Courts of Justice. The project became rocket powered. My last involvement was as Chair of the Committee which chose the first batch of Judges. The people we selected were all top class. I am so so sorry that there are no British Judges – maybe they can come later.

GOVERNING BODIES

The Unified Patent Court, as an independent international organisation, established under the Agreement on a Unified Patent Court is mainly managed by two governing bodies: the Administrative Committee and the Budget Committee. These governing bodies meet at regular intervals, under the initiative of their respective Chairmen.

Both Committees are composed of representatives of the – currently – 18 Contracting Member States of the UPC Agreement as voting members.

Representatives of EU Member States, not party to the implementation of the Agreement, as well as key actors in the EU Patent framework i.e. the EU Commission and the European Patent Office, are observers in both committees.

In view of an effective start of the Court on 1 June 2023, the governing bodies of the UPC began their operations in February 2022, fol-

lowing the start of the Period of Provisional Application of the Agreement in late January 2022. Under the Protocol on Provisional Application, the institutional, organisational and financial provisions of the UPC Agreement and Statute had entered into force, allowing therefore for the necessary steps to take place for a start of operations of the Court, as of day 1.

Particularly crucial was the adoption of secondary legislations by the Administrative Committee, the adoption of a first Budget by the Budget Committee, as well as an extensive judicial selection procedure by the Advisory Committee, to allow for the appointment of the first legally, and technically qualified judges of the UPC. The appointment of judges then paved the way for the constitution of the Presidium in November 2022, and was followed by the appointment of the Registrar and Deputy-Registrar, who oversee the administrative operations of the Court.

Administrative Committee

Chairman:

Mr Johannes KARCHER
(DE)

Deputy-Chairman :

Mr Paul VAN BEUKERING
(NL)

To date the Committee has held 14 meetings. In the course of these meetings, a large number of instruments of secondary legislation have been adopted which ensure the proper functioning of the Court, in accordance with the statutory framework laid down in the UPC Agreement and its Statute.

In particular, the Administrative Committee adopted the Rules of Procedure of the Court, including the table of Court fees which constitute the first European Code of Civil Procedure. Also, the Financial Regulations, the Service and Staff Regulations of the Court, the Rules on Legal Aid, and Rules on the European Patent Litigation Certificate amongst others, have been adopted by the Administrative Committee. Importantly, the Administrative Committee is the appointing authority for the judges of the Court. It also holds a reserve list of appointable legally qualified judge candidates under the Service Regulations. As such, it ensures the capacity of judicial workforce for the Court to render high quality and timely decisions. The Administrative Committee has also competences with regard to the Patent Mediation and Arbitration Centre (PMAC). It has adopted the Rules on its organization and appointed its first Director as well as the members of the PMAC Expert Committee.

The Administrative Committee also comprises user observer organisations. Four user organisations have been admitted: Business Europe, the Institute of Professional Representatives before the European Patent Office (epi); the European Patent Lawyers Association (EPLAW); the European Patent Litigators Association (EPLIT).

The Administrative Committee is supported in various aspects of its work by the Advisory Committee (see *infra*).



Chairman

Johannes KARCHER

The Unified Patent Court has been a long standing and comprehensive endeavor to which many have contributed. In the Administrative Committee, Member States are committed to provide the legal framework for the Court to operate and work together constructively to that end. It is a pleasure to see judges from the Member States of the European Union take the bench together and make decisions in an important area of civil litigation according to one uniform set of procedural and substantive norms providing legal certainty for the parties. With the new Court, Europe sets an example for first rate jurisprudence strengthening the rule-based international legal order.

Berlin, January 2025

Budget Committee

Chairman:
Mr Bruno LÉBOULLENGER (FR)

Deputy-Chairman:
Mr Theis BØDKER JENSEN (DK)

The focus of the Budget Committee is the financial and budgetary supervision of the Court, in particular the adoption of the UPC’s annual Budget, forecast for future budgetary exercises of the Court, as well as the survey of the financial accountability and sustainability, illustrated by the survey of the Audit duties and the approval of annual accounts of the Court, as prepared by the Presidium.

The Budget Committee also supervises the implementation of the Court’s Budget and provides financial assessment to the Administrative Committee regarding the decisions to be taken in human resources management such as salary policy.

The Budget Committee also provides central input for any amendments to the Financial Regulations, as adopted by the Administrative Committee.

Last but not least, the Budget Committee has adopted the contribution key for the initial transition period, pursuant to the calculation rules laid down by the Agreement with the purpose to set up a fair and proportional contribution of Contracting Member States to the UPC’s Budget.

2024 will remain a decisive year for the Budget Committee in its mission as guarantor of the budgetary means of the Unified Patent Court and its financial sustainability. Embodying the collective of the contracting Member States in their capacity as subsidiers of the Court for the duration of the transition period provided for by the approval, the Budget Committee based its discussions, opinions and decisions on the principles of pragmatic voluntarism and solidarity which are at the heart of the “UPC project”.



Chairman

Bruno LÉBOULLENGER

In a constrained economic context and fraught with uncertainty for the entire EU, the UPC has a budget, financial reserves, and accounts duly validated by its audit committee. The sustainability of the UPC is thus ensured and its trajectory towards the objective of financial autonomy in the long term is strengthened. It will be up to the committee to continue in 2025 its mission of providing the UPC with the right means for its development, enabling it to confirm over time the success of the first institution resulting from the mechanism of enhanced cooperation.

Paris, January 2025

Advisory Committee

Chairman:
Mr Willem A. HOYNG

Deputy-Chairman:
Ms Sylvie MANDEL

The Advisory Committee is composed of patent judges and practitioners of highest competence. This committee advises the Administrative Committee i.a. on the appointment of both legally and technically qualified judge of the Court and in constituting the reserve list of appointable legally qualified judge candidates. The members are appointed by the Administrative Committee and are completely independent in their performance of their duties and are not bound by any instructions.

The main task of the Advisory Committee consists in the selection and interviewing of UPC candidate judges, both LQs and TQs. The Committee also provides advice to the Administrative Committee regarding placing of candidate LQs on the reserve list under Article 22 of the UPC Service Regulations

The committee, in cooperation with the Presidium, also contributed to the adoption of the Code of Conduct for the Judges of the UPC by the Administrative Committee.

It also provides advice to the Administrative Committee on requests for EPLC accreditation by universities or educational bodies, under the criteria of the Rules on a European Patent Litigation Certificate.



Chairman

Willem HOYNG

As of the start of the functioning of the Advisory Committee in February 2022 all members of the committee realized that the success of the UPC would very much depend on the quality of the judges. The members on a voluntary basis without remuneration spent countless hours on a very intensive selection process. Now in 2025 it gives us a lot of satisfaction that in the short period of its existence the Court has built a solid reputation for high quality and a solid commitment to render decisions within the timeframe aimed for in the Rules of Procedure. As a chairperson of the Advisory Committee it is a privilege to work with an international group of outstanding experts in patent law litigation who are all very committed to the success of the court working together in a very collegial way.

Paris, January 2025

LOCATION MAP OF THE UNIFIED PATENT COURT

UPCA in force

- Austria
- Belgium
- Bulgaria
- Denmark
- Estonia
- Finland
- France
- Germany
- Italy
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Portugal
- Romania
- Slovenia
- Sweden

UPCA Signatory States

- Cyprus
- Czech Republic
- Greece
- Hungary
- Ireland
- Slovakia

Other EU Member States

- Croatia
- Poland
- Spain

COURT OF APPEAL AND REGISTRY

- Luxembourg

COURT OF FIRST INSTANCE

● CENTRAL DIVISION

- Paris, FR
- Munich, DE
- Milan, IT

● REGIONAL DIVISION

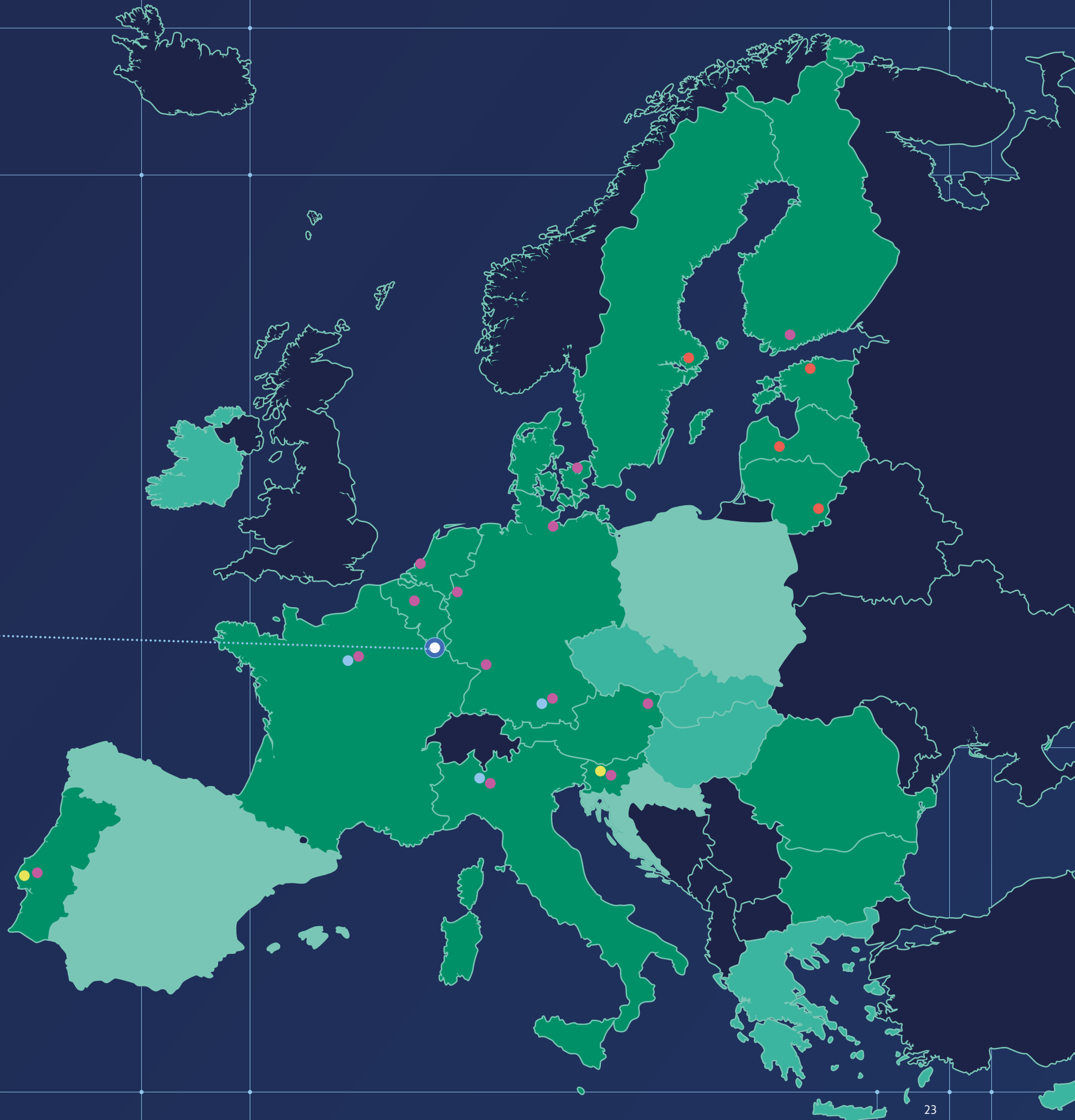
- Stockholm, SE
- Riga, LV
- Tallinn, EE
- Vilnius, LT

● LOCAL DIVISION

- Brussels, BE
- Copenhagen, DK
- Düsseldorf, DE
- Hamburg, DE
- Helsinki, FI
- Lisbon, PT
- Ljubljana, SI
- Mannheim, DE
- Milan, IT
- Munich, DE
- Paris, FR
- The Hague, NL
- Vienna, AT

PATENT MEDIATION AND ARBITRATION CENTRE

- Lisbon, PT
- Ljubljana, SI



"One of the most gratifying achievements of these last months, which I can personally attest to, is that we are not only functioning as a unified court but also truly recognized as one."

Florence Butin

COURT OF FIRST INSTANCE

Structure of the CFI

The Court of First Instance takes up the challenge of reconciling two seemingly incompatible features: operating as a truly unified court, irrespective of the nationality of its judges and the locations where its decisions are delivered, and reflecting its territorial scope through a structure that includes a Central Division – itself divided into three sections – thirteen Local Divisions and a Regional Division, situated all across Europe.

A major challenge: establishing real communication despite physical distance

The UPC may be the first court designed from the outset to be entirely digital and remote.

One of the main challenges is therefore to establish, maintain and improve fluid and consistent communication between judges and clerks located in different Member States – especially considering the 4,375.6 kms between Helsinki and Lisbon – and working mainly on a remote basis. Indeed, ensuring effective exchanges and meaningful discussions on procedural issues and substantive law matters within this entirely new framework is crucial. Given that the Rules of Procedure still require interpretation, such communication is essential for the development of an autonomous and harmonised body of UPC case law, whatever the composition or location of the panel issuing a decision.

To this end, the UPC organises regular online meetings as well as on-the-spot training sessions, bringing together all legally and technically qualified judges and clerks.



CFI - Central Division
Munich, Germany



CFI - Central Division Seat
Paris, France



CFI - Central Division
Milan, Italy





Composition of the panels

The panels of the **Local and Regional Divisions** sit in a multinational composition of **three legally qualified judges**, as provided for in Article 8 of the UPCA. These panels include one or two judges who are nationals of the Member State hosting the Division in question and one or two judges of another nationality, appointed from the Pool of Judges comprising all CFI judges.

In accordance with Article 8(5) UPCA, **an additional technically qualified judge** with qualifications and experience in the relevant field of technology is allocated to any panel of a Local or Regional Division, either because the validity of the patent at issue is challenged, in the case of a counterclaim for revocation, or at the request of the parties or the initiative of the panel.

Panels of the **Central Division** sit in a multinational composition of **two legally qualified judges and one technically qualified judge** with qualifications and experience in the relevant field of technology, as provided for in Article 8(6) UPCA.

They sit in a specific composition of three legally qualified judges when deciding on actions concerning decisions of the European Patent Office in carrying out tasks relating to Unitary Patents.

All panels of the Court of First Instance are chaired by a legally qualified judge.



About the judges

All UPC judges, both legally and technically qualified, are experienced patent practitioners carefully selected by an independent Advisory Committee, which is itself composed of experts in patent law and litigation with the highest recognised competence.

From the list drawn up by the Advisory Committee, the judges of the UPC are appointed for **a term of six years** by the Administrative Committee of the UPC, which is made up of representatives from each Contracting Member State.

Each legally qualified judge is appointed to a Local or Regional Division – or a Central Division section – on a part-time or full-time basis, while simultaneously being a member of the pool of judges.

The **75 technically qualified judges** are members of a pool composed of patent attorneys and technical patent judges or examiners from national courts or patent offices. While appointed to main categories such as Mechanical Engineering, Biotechnology, Chemistry and Pharmaceuticals, Physics, and Electricity, they are allocated on a case-by-case basis according to the technical field of the patent at issue. Their impartiality is ensured through a thorough and careful conflict check of their previous or parallel private practice before being assigned to the panel.



LEGALLY QUALIFIED JUDGES



President

Florence BUTIN



Peter Juul AGERGAARD



Mélanie BESSAUD



Dirk BÖTTCHER



Edger BRINKMAN



Paolo CATALLOZZI



Carine GILLET



Samuel GRANATA



Maximilian HAEDICKE



Kai HÄRMAND



Stefan JOHANSSON



Holger KIRCHER



Anna-Lena KLEIN



Sabine KLEPSCH



Marije KNIJFF



Margot KOKKE



Andras KUPECZ



Camille LIGNIÈRES



Rute LOPES



Mojca MLAKAR



Pierluigi PERROTTI



Tobias PICHLMAIER



Andrea POSTIGLIONE



Petri RINKINEN



Stefan SCHILLING



Walter SCHOBER



Bérénice THOM



François THOMAS



Ronny THOMAS



Peter TOCHTERMANN



Daniel Voß



Ulrike Voß



Alima ZANA



Tatyana ZHILOVA



Matthias ZIGANN



Mojca MLAKAR

PORTRAIT OF A “TRAVELLING” JUDGE

As a member of a general pool of European judges, any UPC legally qualified judge may be assigned to a Division other than the Division to which he/she was originally appointed to complete the panel as a non-national member.

Although the UPC was conceived as a digital court that would operate entirely remotely, oral hearings will still, in principle, take place in person. The judges are therefore expected to travel at least 2-5 days per month. **Working in a language that is rarely their mother tongue and in daily contact with colleagues from other Member States and foreign litigants, UPC judges are truly European.**

Mojca Mlakar, Presiding Judge of the Ljubljana Local Division, is one such judge who frequently travels to sit on panels as an international judge:

How would you distinguish your activity at the UPC from your national work?

Since you have already framed the question by mentioning travel, I can confirm that in this respect the distinction is indeed obvious. In addition to its various locations, the UPC introduces diversity with its unique rules of procedure, multinational panels, the pursuit of a common substantive law and a rainbow of languages. As my national work primarily involves cases within the national jurisdiction in my mother tongue and is therefore a familiar environment, the UPC is novel and challenging. I really enjoy working for the UPC.

How would you sum up your first year as a UPC “travelling” judge?

In a word: exciting. I don’t want to sound presumptuous, but being part of a new court – the first European jurisdiction at first instance – is a truly unbelievable experience. Many challenges have already been overcome in the first twelve months and many more lie ahead. What I have learnt is that the UPC is made up of incredible people who work hard: from the clerks, to IT, to all the staff in HR and the Registrar, and the judges. This results in judgments that shape the patent world. All I can add is that I am honoured to be part of this team.



TECHNICALLY QUALIFIED JUDGES



Michel ABELLO



Gabriele ALT



Michael ALT



Graham ASHLEY



Pascal ATTALI



Eric AUGARDE



Uwe AUSFELDER



Arwed Andreas BURRICHTER



Koen CALLEWAERT



Giorgio CHECCACCI



Bertrand COCHET



Paolo Ernesto CRIPPA



Xavier DORLAND-GALLIOT



Thorsten DUHME



Alain DUMONT



Claus ELMEROS



Eric ENDERLIN



Guillaume FAGET



Michael FLEUCHAUS



Rainer FRIEDRICH



Renaud FULCONIS



Frédéric GAILLARDE



Nicolai GEIER



Paolo GERLI



Rudi GOEDEWEECK



Andreas GUSTAFSSON



Anders Max HANSSON



Anna HEDBERG



Merja Annikki HEIKKINEN-KEINÄNEN



Hergen KAPELS



Krister KARLSSON



Christian KELLER



Ulrike KELTSCH



Steven Richard KITCHEN



Dennis KRETSCHMANN



Bernard Christiaan LEDEBOER



Klaus LOIBNER



Udo MATTER



Jeroen MEEWISSE



Johannes MESA PASCASIO



TECHNICALLY QUALIFIED JUDGES



Gérard MYON



Christoph NORRENBROCK



Dörte OTTEN-DÜNNWEBER



Elisabetta PAPA



Stefanie PARCMANN



Andrea PERRONACE



John Meidahl PETERSEN



Stefanie PHILIPPS



Michael QUITTKAT



Kerstin ROSELINGER



Patrik RYDMAN



Wiem SAMOUD



Alessandro SANCHINI



Alessandra SANI



Laure SARLIN



Beate SCHENK



Martin SCHMIDT



Christoph Dominik SCHOBER



Cornelis SCHÜLLER



Uwe SCHWENGELBECK



Andrea SCILLETTA



Anthony SOLEDADE



Casper STRUVE



Jochen THOMAS



Max TILMANN



Marc VAN DER BURG



Marie-Paule VANDEBERG



Patrice VIDON



Steen WADSKOV-HANSEN



Carola WAGNER



Simon WALKER



Pascal Lucien Pierre WEBER



Oliver WERNER



Stefan WILHELM



Erwin WISMETH



Eric AUGARDE

TESTIMONY OF A TQJ

Eric Augarde has served as a Technically Qualified Judge at the UPC since its launch. He agreed to give an insight into his role and his initial experiences.

How do you see your role as a TQJ?

The role of a TQJ is unique compared to most national courts in the Contracting Member States. The primary responsibility is to identify and facilitate the understanding of the technical issues within the panel, ensuring that they are integrated into the legal framework of the panel's deliberations. In this sense, the TQJ serves as a natural counterpart to the patent attorneys representing the litigants. However, once assigned to a case, a TQJ becomes a fully-fledged judge entrusted with dealing with all aspects of the dispute and adjudicating both legal and technical matters.

How would you sum up your first year at the UPC?

As one of the first TQJs, I felt deeply honoured to contribute, albeit modestly, to the UPC's inaugural decisions, all the more so since I was fortunate to handle cases at both first instance and on appeal. The international and collegial atmosphere, the benevolent support of the clerks and the Registry, the pioneering spirit and the shared sense of responsibility to deliver well-founded and reliable decisions – especially in the early days of the Court – made this first year a unique experience and filled me with pride at being European.



The language of proceedings



English



German



French



Italian



Dutch



Danish

Proportion of currently used languages of proceedings. For a detailed view please see graph 2.2.6. page 78.

The language of proceedings is an important topic for both the Court and its users. Under the UPC legal framework, the language of proceedings before the Central Division is normally the language in which the patent in suit was granted (English, German or French). Member States hosting a Local or Regional Division have the possibility to opt for its official language(s) as well as one of the three official language of the European Patent Office.

During proceedings, the language initially chosen by the claimant may be changed, subject to agreement of the parties involved or upon request, or ultimately by a decision of the President of the Court of First Instance.

Judges, who work predominantly in English in addition to their native language, may be allocated to panels in proceedings in a language they do not master. In such cases, the judges can rely on interpretation and translation services provided by the court if need be.



Samuel GRANATA

HOW TO HANDLE PROCEEDINGS IN VARIOUS LANGUAGES?

Samuel Granata is a part-time judge at the UPC and Presiding judge of the Brussels Local Division. As a national judge in Belgium, he is already used to juggling three different official languages.

As a (Belgian) judge originating from a country with three official languages but also as a (part-time) judge at the Benelux Court of Justice, I was used to using different procedural languages and sitting in a multi-lingual panel. I was happy to be able to put this linguistic knowledge and experience even more into practice as a legally qualified judge at the Court of First Instance of the UPC. I am excited to be part of the UPC which, with its linguistic and legal sound decisions, proves to be an asset in the (European) harmonization of patent law but also truly adds to a European identity where linguistic borders seem to be non-existent.

Writing a decision in a language other than one's native language is a challenge because any legal decision of the UPC should be of the same "perfect" (linguistic and legal) quality. The proofreading of all decisions shall concurrently focus on these two aspects. While the Court is growing, in addition to translation and interpretation means, it will necessarily develop individual language training programs to enhance the collaboration within the panel in the language of the proceedings.

CASE LAW

To date, **more than 633 orders and decisions, both procedural and substantive, have been issued at first instance**, of which some of the most insightful ones are reported below.

This selection reflects that, even though the Court of First Instance is made up of several Divisions, themselves composed of nationals of different Member States, the judges regularly refer in their own judgments to decisions and orders already issued by other panels, showing the common aim of developing a coherent, harmonized and autonomous emerging case-law which may differ from each national one.

Careful consideration of the interests of the parties involved on both sides is also illustrated in the great care taken to ensure fair competition through a balanced approach, in particular when considering applications for interim measures or for a change of the language of the proceedings.



Stay and EPO opposition proceedings

UPC_CFI_80/2023, 20 November 2023, *Astellas Institute for Regenerative Medicine v. Healius K.K and Osaka University* [↗](#)

The Court has discretion to stay proceedings awaiting any relevant decision from the EPO, provided such decision is expected rapidly. There should be a concrete expectation (i.e., a known date in time) for a decision which date should be in the near future such that it is clearly expected to be delivered before an expected decision by the UPC. In exercising Court’s discretionary power on the basis of Article 33(10) UPCA in connection with Rule 295 sub a RoP, the Court has to assess the relevant facts and circumstances and has to take into account the interests of both parties. Where the interests of the parties do not align, the Court has to weigh up the interests upon deciding a request to stay proceedings.

UPC_CFI_380/2023, 20 August 2024, *Meril v. Edwards Lifesciences Corporation* [↗](#)

During the written procedure, Article 33(10) UPCA and Rule 295(a) RoP give the Court a possibility to stay proceedings relating to a patent which is also the subject of opposition proceedings before the EPO, if a rapid decision may be expected from the EPO. Rule 118.2(b) RoP, which includes an obligation to stay proceedings in certain situations, only apply during the oral procedure. This follows from the title of Rule 118 (“Decision on the merits”) and the fact that it is placed in the Chapter of the RoP governing the oral procedure.

An application to stay proceedings based on Article 33(3) (b) UPCA, may be dismissed if submitted before the local or regional division when no one has proposed bifurcation.



Grounds for extension of time limit

UPC_CFI_169/2024, 25 July 2024, *Xiaomi Technology v. Daedalus Prime LLC* [↗](#)

The fact that coordination with suppliers based outside Europe, whose components are at the heart of the infringement allegation, is necessary, regularly does not constitute a convincing reason for an exceptional extension of a time limit.

Restrictive confidentiality obligations, which are imposed on a defendant, do typically not justify an extension as the RoP do provide especially for that purpose a possibility for the protection of confidential information in R. 262A RoP.



Change of the language of proceedings

UPC_CFI_88/2024, 25 July 2024, *Tandem Diabetes Care Inc. & VitalAire GmbH v. Roche Diabetes Care GmbH* [↗](#)

When deciding on a request to change the language of the proceedings to the language in which the patent was granted, all relevant circumstances relating to the case and to the position of the parties shall be taken into account. If the outcome of balancing of interests is equal – here both parties being international companies operating worldwide – the position of the defendant is the decisive factor.

UPC_CFI_525/2024, 22 October 2024, *Easee B.V. and others v. Visibly Inc.* [↗](#)

In the context of an agreement on changing the language of the proceedings and subsequent request for translation of existing documents, the Court shall consider the interest of all parties involved in the case being handled speedily as a whole in the language in which the patent was granted, and that the discussions be based on the written submissions and exhibits provided in English by the originally submitting party.



Alternative service

UPC_CFI_495/2023, 28 February 2024, *ICPillar v. ARM*

As United Kingdom is a non-EU country, service was carried out by the Court in accordance with the Hague Service Convention under R. 274 RoP. It is justified, under R. 275.2 RoP, when service has not been completed yet, to accept the alternative method proposed by the Claimant when he justified having performed service by his own means by sending a letter via FEDEX and DHL and provided a bailiff’s report on the content of the letter sent, the sending and the receipt of this letter.



Security costs

UPC_CFI_54/2024, 2 October 2024, *Headwater Research LLC v. Samsung Electronics*

The Court, when exercising its discretion under Art. 69(4) UPCA and R.158 RoP, must determine, in the light of the facts and arguments brought forward by the parties, whether the financial position of the claimant gives rise to a legitimate and real concern that a possible order for costs may not be recoverable and/or the likelihood that a possible order for costs by the Court may not, or in an unduly burdensome way, be enforceable.

The burden of substantiation and proof why an order for security for costs is appropriate in a particular case is on the defendant making such a request. Once the reasons and facts in the request have been presented in a credible manner, it is up to the claimant to challenge these reasons and facts in a substantiated manner, especially since that party will normally have knowledge and evidence of its financial situation. It is for the claimant to argue that and why a security order would unduly interfere with its right to an effective remedy.

The relative financial position of the claimant as compared to that of the defendant is not as such a criterion under R.158 RoP, especially where the (limited) level of funding provided to a special purpose patent enforcement entity is a deliberate business decision.



Order for preserving evidence

UPC_CFI_397/2023, 14 November 2023, *C-Kore Systems Limited v. Novawell*

According to art 60 UPCA, the Applicant have to provide reasonably available evidence of the alleged infringement in support of the request (and at the time of the application) for preserving evidence.

If the Applicant took less than three months to file the application for preserving evidence before the UPC, it can be considered as a reasonable delay in the context of a “standard procedure” and not an “urgent procedure” according to R. 194.2 RoP.

Pursuant to R. 196.4 RoP, the authorised measures have to be carried out in accordance with the national law of the place where it is implemented (in the present case, French law – by one expert, appointed by the Court and namely mentioned in the operative part, assisted by a bailiff).

In accordance with Art. 58 UPCA and R. 196.1 (d) RoP, the Court can order that the access to any information and document gathered by the expert in charge of carrying out the measure is limited to the representatives of the parties and that a confidentiality club is settled in order to identify the relevant information for the case as well as the information considered to be “trade secret” (as defined by EU Directive n. 943/2016 on the protection of trade secrets) to be kept confidential.



Provisional measures

Product claim; composition; burden of pleading and proof; risk of first infringement; cease-and-desist declaration; number of arguments as to validity

UPC_CFI_201/2024, 27 August 2024, *Syngenta Limited v. Sumi Agro* [↗](#)

In case of a product claim directed to a composition it is sufficient for the applicant to allege and prove that at the time of any act of use under Art. 25 UPCA by the respondent, the attacked composition had all the features of the patent claim or that there is an imminent danger that such an act of use directed to such a composition will be carried out by the respondent in the future. It is not on the applicant to plead and prove why the composition had all features of the patent claim.

Distributing a patent infringing composition outside the Contracting States and advertising a composition under the same name within the Contracting States, can create a risk of first infringement that patent-infringing compositions will be manufactured, advertised and distributed in the territory of the Contracting States in the future.

In the circumstances of this case, in order to eliminate the risk of first infringement, the respondents should have offered a cease-and-desist declaration with a penalty clause. An ‘actus contrarius’ is not sufficient.

In proceedings for the grant of provisional measures, a full examination of all the arguments raised against the validity of the patent-in-suit, which may be numerous as in nullity proceedings, is not possible. Rather, the number of arguments raised against the validity of the patent must generally be reduced to the best three from the respondent’s point of view (UPC_CFI_443/2023 ACT_589207/2023 (LD Munich), order of 21 May 2024, 3rd LS). The background to this is that while a summary assessment of factual issues is conceivable, a summary examination of legal issues is not. The court can either examine a legal issue or not. If the court decides to examine the issue, it will do so comprehensively. The only way to take account of the summary nature of the procedure is therefore to reduce the number of legal issues to be fully examined in this way. This is made clear by the requirement to limit the number of arguments to three. Since it is the respondent’s responsibility to challenge the presumption of validity, it is primarily the respondent’s responsibility to select the three arguments to be examined in detail by the panel in summary proceedings.

Imminent infringement

UPC_CFI_165/2024, 6 September 2024, *Novartis AG v. Celltrion* [↗](#)

A situation of imminent infringement may be characterised by certain circumstances which suggest that the infringement has not yet occurred, but that the potential infringer has already set the stage for it to occur. The infringement is only a matter of starting the action. The preparations for it have been fully completed. These circumstances must be assessed on a case-by-case basis.

Lack of urgency

UPC_CFI_317/2024, 15 October 2024, *Telefonaktiebolaget LM Ericsson v. Asustek Computer Inc. and Arvato Netherlands B.V. and Digital River Ireland LTD* [↗](#)

In provisional measures, the Court must be able to objectively conclude from the application that there is urgency and therefore a need to anticipate the protection of the applicant’s rights. It is the applicant who must convince the court, in light of the particular facts of the case, that it has not delayed proceedings unnecessarily. To that extent, the applicant must provide the court with the information of the moment when it became aware of the infringement. When the applicant is silent about that date and the court has no way of ascertaining it, the court may solely rely on the date of the alleged infringement, for the assessment of unreasonable delay.

Entitlement; rebuttable presumption; good faith; weighing of interests; urgency

UPC_CFI_368/2024, 31 October 2024, *Valeo Electrification v. Magna* [↗](#)

In case of European Patents, the material proprietor is deemed to be the patent proprietor for the purposes of proceedings before the UPC. However, if the patent proprietor is registered in the European Patent Register or in the national register(s), it may initially rely on a rebuttable presumption (R. 8.5 (c) RoP). This rebuttable presumption attached to the registered patent is a strong presumption which can only be rebutted in PI proceedings if the title is manifestly erroneous.


If the defendant claims that the applicant is not acting in good faith because the applicant has unlawfully appropriated the patent in suit to its detriment, this cannot be taken into account in favour of the defendant in the weighing of interests if the defendant has failed to bring a vindication action in due time before the national courts.

In answering the question of whether the patent in suit is more likely to be invalid than not, no conclusions can be drawn from the general revocation rates of patents. Only relevant is the patent in suit.



Parallel proceedings

Same party

UPC_CFI_255/2023, 13 November 2023, *Edwards Lifesciences Corporation v. Meril Italy srl* 


The UPC framework does not exclude that a patent may be attacked by different subjects, even if linked by organizational ties or commercial relationships, and by the means of different claims, even if structured in the same grounds of invalidity. A wholly-owned subsidiary may bring a separate revocation action before a central division, even if an infringement and invalidity case involving its parent company is already pending before another division of the UPC.

Connection joinder (R. 340 RoP)

UPC_CFI_380/2024, 24 September 2024, *Eoflow Co., Ltd. v. Insulet Corporation* 

The parallel handling of the two cases, alongside with the appointment of two judges in both proceedings, were sufficient measures to prevent the issuance of contradictory decisions.

Bifurcation

UPC_CFI_201/2023, 19 December 2023, *N.V. Nutricia v. Nestlé Health Science* 

Even if the panel is to decide by order on the procedure under Art. 33(3) UPCA as soon as possible after the conclusion of the written procedure pursuant to Rule 37.1 RoP, the panel may take an earlier decision pursuant to Rule 37.2 RoP if it takes into account the parties' submissions and grants them the right to be heard.

The joint hearing of infringement actions and counterclaims for revocation may be appropriate for reasons of efficiency alone. It is also advantageous from a substantive point of view, since it allows a decision on both the validity and the question of infringement based on a uniform interpretation of the patent in suit by the same panel in the same composition.

Although validity and infringement issues in the chemical/pharmaceutical field can be demanding, the panel is composed of judges who are very experienced in patent law and familiar with difficult issues in this context. The assignment of the TQJ, who is experienced in the technical field in question, ensures that the Local Division is undoubtedly capable of deciding both matters.



Confidentiality and public access

Confidentiality guidelines

UPC_CFI_355/2023, 27 March 2024, *Fujifilm Corporation v. Kodak GmbH* 

When deciding an application to grant protection for the allegedly confidential information, the court has to weigh the right of a party to have unlimited access to the documents contained in the file, which guarantees its fundamental right to be heard, against the interest of the opposing party to have its confidential information protected.

A party seeking protection for confidential information has – in a first step – to put forward sufficiently substantiated arguments, why it believes the information concerned is to be protected. It is therefore not enough to have resort to general circumstances such as there being competition between the parties to the dispute. The Court has to be put in a position to understand, why the applicant believes that the concrete information to be protected is vulnerable and confidential. It is therefore necessary to substantiate with regard to each redacted part of the written submissions, why this explicit part of the submission amounts to confidential information.

Once adequate explanation in that regard has been received, it is then for the court to decide, which extent of certainty has to be reached for the court to believe that the applicant's allegations are true. The necessary level of persuasion that the information is confidential in nature may differ having due regard to the substance matter of the dispute.

In a further step, the Court has to strike a balance between the adequate level of protection of said confidential information and the right of the claimant to have sufficient access to the information in order to exercise its right to be heard. In this context, R. 262A.6 RoP establishes with all desirable clarity as a ground rule of paramount importance that at least one natural person from each party and the respective lawyers or other representatives are to be granted access in order to ensure a fair trial. When deciding upon the level of restriction, again the circumstances of the case are to be taken into consideration. Whereas in some cases a restriction may be more important to safeguard the confidential information concerned, in other cases the right to full access to the files of a party trumps the interest of protection.

Public access to the Registry

UPC_CFI_131/2024, 29 July 2024, *Powell Gilbert LLP v. Abbott, Sibio & Umedwings* 

Enabling better understanding and scrutiny of decisions is a legitimate reason to request access (CoA jurisprudence).

In case of an appeal, withholding access to the documents in first instance no longer serves the purpose of protection of integrity of proceedings

A term of 15 days before access granted is to be observed (and unless no appeal is filed within that period).



Confidentiality and public access

UPC_CFI_75/2023, 22 August 2024, Astellas v. Helios Riken Osaka University

In weighing the interests of the applicant against the interests mentioned in Art. 45 UPCA, once the proceedings have come to an end, as in the present case by way of settlement, the integrity of proceedings is no longer at stake and the balance of interests will normally be in favor of granting access to written pleadings and evidence pursuant to Rule 262.1(b) RoP, subject to the redaction of personal data and the redaction of confidential information pursuant to Rule 262.2 RoP.

UPC_CFI_75/2023, 4 November 2024, Astellas v. Helios Riken Osaka University

Rule 262.3 RoP. Application requesting that information excluded from public access pursuant to Rule 262.2 RoP may be made available to the applicant granted in the absence of legitimate reasons to withhold access.

Confidentiality club
UPC_CFI_230/2023, 19 December 2023, Abbott v. Dexcom

Pursuant to Article 9.3 of the EU Directive on Trade Secrets, the Court, when deciding on the measures to protect confidential information, shall take into account the need to ensure a fair trial and any potential harm for either of the parties resulting from the granting or refusal of such measures.

While it is necessary and appropriate to extend access to parallel pending proceedings within the UPC, allowing the extension of access to the Respondent’s law firm involved in national proceedings in Europe and in the US would weaken the efficiency of the confidentiality measure.

UPC_CFI_457/2023, 22 July 2024, Dolby and Access Advance v. HP (Decision translated from German to English)

Unless the court orders otherwise, the intervener will be treated as a party in accordance with R. 315.4 RP. R. 262A.6 RP is therefore also applicable to him. He is therefore entitled to have at least one natural person, in addition to his legal representatives, among those entitled to have access to information classified as confidential.



Scope of protection

Claim interpretation
UPC_CFI_1/2023, 16 July 2024, Sanofi v. Amgen

When interpreting a patent claim, the person skilled in the art does not apply a philological understanding, but determines the technical meaning of the terms used with the aid of the description and the drawings. From the function of the individual features in the context of the patent claim as a whole, it must be deduced which technical function these features actually have individually and as a whole. The patent description may represent a patent’s own lexicon.

A claimed invention is to be considered the “same invention” as meant in Article 87 EPC (priority right) if the skilled person can derive the subject-matter of the claim directly and unambiguously, using common general knowledge, from the previous application as a whole.

The assessment of inventive step starts from a realistic starting point in the prior art. There can be several realistic starting points. It is not necessary to identify the “most promising” starting point.

In general, a claimed solution is obvious if the skilled person would be motivated to consider the claimed solution and would implement it as a next step in developing the prior art. It may be relevant whether the skilled person would have expected any particular difficulties in taking any next step(s). The absence of a reasonable expectation of success (or more in general: non-obviousness) does not follow from the mere fact that other ways of solving the underlying problem are also suggested in the prior art and/or (would) have been pursued by others. The decisive question that has to be answered is whether the claimed solution is non-obvious.

For assessing inventive step it is not the question whether the skilled person would inevitably arrive at the same result (falling within the scope of the claim or not). Rather, it is sufficient (but also necessary) for denying inventive step that the skilled person would without inventive contribution arrive at a result which is covered by a claim.

A technical effect or advantage achieved by the claimed subject matter compared to the prior art may be an indication for inventive step. A feature that is selected in an arbitrary way out of several possibilities cannot generally contribute to inventive step.



Scope of protection

UPC_CFI_373/2023, 31 October 2024,
Sodastream Industries Ltd v. Aarke AB



The claim must not be limited to the scope of preferred embodiments. The scope of a claim extends to subject-matter that the skilled person understands as the patentee’s claim after interpretation using the description and drawings. A claim interpretation which is supported by the description and drawings as a whole is generally not limited by a drawing showing only a specific shape of a component. Pursuant to Art. 69(1) S. 1 EPC, the extent of the protection conferred by a European Patent shall be determined by the claims. It is therefore the claim that defines the outer limit of the scope of protection. Nevertheless, the description and the drawings shall be used to interpret the claims. Prior art is not mentioned there. The limitation to the description and the drawings as interpretation material serves the purpose of legal certainty, since the scope of protection can be conclusively determined from the patent itself. This does not mean that prior art is irrelevant to the definition of the scope of the patent and thus to claim construction. If this prior art is discussed in the description of the patent in suit, the relevant considerations must be taken into account. If the patent distinguishes itself from the prior art in a particular way, an interpretation that negates that distinction must be avoided.

The right of publication includes a further element of punishment. Publication should therefore only be granted if the protection of the Claimant is not provided effectively and sufficiently ensured by other measures ordered.

UPC_CFI_309/2023, 5 November 2024,
NJOY v. Juul Labs International



Independent of an application to amend the patent as may be filed by the patent proprietor (R 50 (2) RoP) the Court, according to Art. 65 (3) UPCA, limits the patent by a corresponding amendment of the claims and revokes it (only) in part

According to the dispositive principle (procedural maxim) a dispute before the Court generally is controlled by the parties; Art. 76 (1) UPCA rules that the Court shall decide in accordance with the requests submitted by the parties. By the sequence of its requests a patent owner as Defendant to a revocation action may indicate that it requests the Court to consider its application(s) to amend the patent prior to the evaluation, if the patent as granted shall be revoked in part and limited by a corresponding amendment of the claims.

Art. 65.3 UPCA only pertains to the granted patent. Art. 65.3 UPCA contains no obligation to the Court to evaluate, if an application to amend the patent filed by the patent owner can be allowed in part. Within an application to amend the patent a certain claim set is either allowable (as such; the complete claim set proposed) or not.

The claim interpretation to be performed by the court is a question of law for the Court. The Court performs it at any stage of the proceedings.

Carve out

UPC_CFI_230/2023, 4 July 2024,
Abbott v. Dexcom



The scope of the dispute brought before the Court is incontestably governed by the principle that the parties define the subject-matter of the dispute, a general principle of law which is reiterated in Art. 76(1) of the UPC Agreement and which, moreover, allows the claimant in the main action to exclude certain acts of infringement in order to avoid the inconvenience of parallel jurisdictions between the UPC and national courts during the transitional period provided for in Art. 83 of the Agreement (“carve out”). However, this principle cannot restrict a defendant in its challenge to the validity of the European patent which is being asserted against it since no legal text that is binding upon UPC law expressly states such a restriction. It is not necessary to apply Art. 71c for the UPC to be governed by the Brussels Ibis. Art. 29 to 30 of the Brussels Ibis are directly applicable to the UPC. Moreover, Art. 31 of the UPC Agreement governing its international jurisdiction clearly states: “The international jurisdiction of the Court shall be established in accordance with Regulation (EU) No 1215/2012”.

"The UPC is a milestone of the European integration process and a key component to foster European competitiveness in a global world."

Klaus Grabinski

COURT OF APPEAL

The Unified Patent Court comprises a Court of Appeal (CoA), whose seat is in Luxembourg. The purpose of the CoA is to review orders and decisions of the Court of First Instance (CFI) and to ensure a uniform interpretation of the law.

When the CoA began its work on 1 June 2023 it had seven judges who, except for the CoA President, served in a part-time capacity, for a small proportion of their time alongside their office as a judge at the national level. This has gradually changed over time, as more and more appeals (in particular, appeals from orders on provisional and protective measures, Art. 62, 73(3) UPCA, and so-called procedural appeals, Art. 73(2)(b)(ii) UPCA) have been lodged that needed to be processed and decided by judges with appropriate time capacities.

As provided for in the UPC Agreement, the Registry is based at the seat of the CoA in Luxembourg. The Registry encompasses all central functions of the Court, such as the Secretariat and the HR, Finance, Translation, and IT departments which support the Registrar in the performance of his duties vis-à-vis the Court, the Presidents of the CoA and the CFI and the judges. The Registry also provides the Committees of the Court (Administrative Committee, Budget Committee and Advisory Committee) with secretarial services to per-

form their duties under the UPC Agreement. Over time, the personnel capacities of the staff, which initially consisted of only a few people, has also had to be expanded as more and more appeals were filed.

It is worth mentioning that, in accordance with the UPC Agreement, the facilities and almost all of the administrative support staff of the Court of Appeal and the Registry are provided by Luxembourg as the hosting Contracting Member State.

As stated, it is the function of the CoA to review orders and decisions of the CFI and to ensure a uniform interpretation of the law. This is particularly important in the context of a new court (like the UPC) and with regard to interpreting a law that has only recently entered into force (like the UPCA and the UPC Rules of Procedure) as there is then a particularly strong need for legal certainty and predictability of the application of the law.

It is the Court's and in particular also the CoA's responsibility to develop a body of case law that will meet this legitimate need for legal certainty.

That this process is already underway is evidenced by the already-published orders and decisions of the CoA. Hereinafter you will find a selection of important decisions handed down by the CoA since it began operation.



President

Klaus GRABINSKI

Judge Panel 1



Peter BLOK

Judge Panel 1



Emanuela GERMANO

Judge Panel 1



Emmanuel GOUGÉ

Judge Panel 1



Rian KALDEN

Presiding judge Panel 2



Ingeborg SIMONSSON

Judge Panel 2



Patricia ROMBACH


Judge Panel 2


Françoise BARUTEL served as a judge until 8 September 2024 when she was replaced by Emmanuel GOUGÉ.



CASE LAW

**I. Claim construction,
provisional measures**

a. *UPC_CoA_335/2023, Orders of 26 February 2023 and 11 March 2024, NanoString Technologies v. 10x Genomics (Decision translated from German to English)* 


The decision dated 26 February 2024 was rectified by the decision of 11 March 2024: 

1. Compliance with the requirements set out in R. 206.2(b) to (e) RoP concerns the merits of the application for provisional measures, the examination of which is the responsibility of the judge and must be considered by the judge when making orders under Rules 209, 211 and 212 RoP.
2. The patent claim is not only the starting point, but the decisive basis for determining the protective scope of a European patent under Art. 69 EPC in conjunction with the Protocol on the Interpretation of Art. 69 EPC. The interpretation of a patent claim does not depend solely on the strict, literal meaning of the wording used. Rather, the description and the drawings must always be used as explanatory aids for the interpretation of the patent claim and not only to resolve any ambiguities in the patent claim. However, this does not mean that the patent claim merely serves as a guideline and that its subject-matter also extends to what, after examination of the description and drawings, appears to be the subject-matter for which the patent proprietor seeks protection. The patent claim is to be interpreted from the point of view of a person skilled in the art. In applying these principles, the aim is to combine adequate protection for the patent proprietor with sufficient legal certainty for third parties. These principles for the interpretation of a patent claim apply equally to the assessment of the infringement and the validity of a European patent.
3. A sufficient degree of certainty pursuant to R. 211.2 RoP, in conjunction with Art. 62(4) UPCA (see also Art. 9(3) Directive 2004/48/EC) requires that the court considers it on the balance of probabilities at least more likely than not that the Applicant is entitled to initiate proceedings and that the patent is infringed. A sufficient degree of certainty is lacking if the court considers it on the balance of probabilities to be more likely than not that the patent is not valid. The burden of presentation and proof for facts allegedly establishing the entitlement to initiate proceedings and the infringement or imminent infringement of the patent, as well as for all other circumstances allegedly supporting the Applicant's request, lies with the Applicant, whereas, unless the subject-matter of the decision is the ordering of measures without hearing the defendant pursuant to Art. 60(5) in conjunction with Art. 62(5) UPCA, the burden of presentation and proof for facts concerning the lack of validity of the patent and other circumstances allegedly supporting the Defendant's position lies with the Defendant.

b. *UPC_CoA_1/2024, Order of 13 May 2024, VusionGroup v. Hanshow Technology* 

- Claim features must always be interpreted in the light of the claim as a whole.


**II. Substantiation,
Statement of Claim**

UPC_CoA_265/2024, UPC_CoA_267/2024, UPC_CoA_270/2024, UPC_CoA_275/2024, UPC_CoA_277/2024 and UPC_CoA_279/2024, Order of 18 September 2024, Volkswagen v. Network System Technologies 

- Proceedings under R.361 RoP should not result in a full exchange of arguments and evidence, but – as is clear from the use of the word 'manifestly' – must be reserved for clear-cut cases.
- Even though the UPC procedure is a front-loaded system, it is not required that the claimant envisages every possible line of defence and includes all arguments, facts and evidence in and submits it with the Statement of claim and that nothing could ever be added thereafter. This may in particular be the case when the claimant, after having made an argument in its Statement of claim, further substantiates this argument in its Statement under R.29(a) or (b) RoP, in reply to a defence to the initial argument brought forward by the defendant in its Statement of defence.
- The question of whether any claim has been sufficiently argued and substantiated in the Statement of claim is not a matter to decide under R.361 RoP. Whether claims have been sufficiently stated, substantiated and if required proven is for the Court of First Instance to decide in the main proceedings after full consideration of all (further) submissions and evidence.
- A Statement of claim that sets out in detail why one infringing embodiment, that is taken as an example, infringes the patent and that includes a list setting out further embodiments with a similar structure that are infringing for (essentially) the same reasons, does not with respect to the embodiments included in that list result in an action that is manifestly lacking any foundation in law as meant in R.361 RoP.



III. Application for preliminary measures

UPC_CoA_182/2024, Order of 25 September 2024, Mammut Sports Group v. Ortovox Sportartikel (Decision translated from German to English) 

1. The Court of Appeal shall decide at its discretion, taking into account all circumstances, whether to take into account in the appeal proceedings any submission that was rightly not admitted by the Court of First Instance.
2. The subject matter of the appeal proceedings in proceedings for the review of provisional measures is in principle limited to the submissions in the proceedings for the ordering of provisional measures.
3. In order to ensure legal certainty and the proper administration of justice, the Statement of grounds of appeal must be sufficiently clear and precise to enable the Respondent to prepare a defence of the judgment at first instance and the Court of Appeal to decide the appeal. The Court is not obliged to seek and identify in the annexes the grounds on which the appeal may be based. The same applies to pleadings from another procedure.
4. Pleadings that are submitted only after the conclusion of the oral hearing on which the decision is based may no longer be taken into account by the court in its decision.
5. A delay within the meaning of R. 211.4 RoP shall be counted from the day on which the Applicant is aware, or should have been aware, of the infringement of rights that would enable him to file a promising application for provisional measures in accordance with R. 206.2 RoP. Consequently, the decisive point in time is when the Applicant has the necessary facts and evidence within the meaning of R. 206.2d RoP or, having exercised due care, should have had them.
6. Whether there has been an unreasonable delay within the meaning of R. 211.4 RoP depends on the circumstances of the individual case.
7. Irreparable damage is not a necessary condition for the ordering of provisional measures.
8. R. 263 RoP also applies to applications for the issuing of provisional orders.



IV. Application to preserve evidence

UPC_CoA_177/2024, Order of 23 July 2024, Progress Maschinen & Automation v. AWM 

1. An application for the preservation of evidence or inspection of premises within the meaning of Article 60 UPCA and Rules 192 et seq. RoP implies a request to disclose to the applicant the outcome of the measures, including the report written by the person who carried out the measures. This follows from the fact that the legitimate purpose of the measures is the use of the evidence in proceedings on the merits of the case (Rules 196.2 and 199.2 RoP), which includes the use of the evidence to decide whether to initiate proceedings on the merits and to determine whether and to what extent the evidence will be submitted in these proceedings. Disclosure of the evidence to the applicant or to certain persons acting on behalf of the applicant is indispensable for that purpose. Moreover, Rules 196.1 and 199.1 RoP provide that the Court may decide in its order that the evidence shall be disclosed to certain named persons and shall be subject to appropriate terms of non-disclosure. This confirms that the procedure initiated by an application under Article 60 UPCA aims at not merely the preservation of evidence and the inspection of premises as such, but also at the disclosure of the evidence to the applicant.
2. However, the granting of an application for preservation of evidence or inspection of premises does not imply an unconditional order to disclose the evidence to the applicant. Pursuant to Article 60(1) UPCA the order must be subject to the protection of confidential information (see also Article 7(1) of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, hereinafter: Directive 2004/48/EC). Where the evidence may contain confidential information, this entails that the Court must hear the other party before deciding whether and to what extent to disclose the evidence to the applicant. In this context, the Court must give the other party access to the evidence and must provide that party with the opportunity to request the Court to keep certain information confidential and to provide reasons for such confidentiality. If the other party makes such a confidentiality request, the Court must provide the applicant with the opportunity to respond in a manner that respects the potential confidentiality interests of the other party. The Court may do this, for example, by granting access only to the representatives of the applicant whom the Court, pursuant to Rule 196.3(a) RoP, has authorised to be present during the execution of the measures and subject to appropriate terms of non-disclosure.

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3. The opportunity for the other party to make a confidentiality request must be distinguished from the remedies available against the order for the preservation of evidence or the inspection of premises, such as the review of an order for preservation of evidence without hearing the defendant pursuant to Rule 197.3 RoP. Therefore, the Court must hear the other party on the request for disclosure even if this party has decided not to file a remedy against the order to preserve evidence or inspect premises. For the same reasons, the failure to apply for a review of an order for the preservation of evidence or for the inspection of premises, cannot not be considered as a tacit approval of the disclosure of evidence.
4. Pursuant to Article 60(8) UPCA the Court shall ensure that measures to preserve evidence or to inspect premises are revoked or otherwise cease to have effect, at the defendant's request, if the applicant does not bring, within a period not exceeding 31 calendar days or 20 working days, whichever is longer, action leading to a decision on the merits of the case before the Court (see also Article 7(3) of Directive 2004/48/EC and Article 50(6) of the Agreement on Trade-Related Aspects of Intellectual Property Rights). Rules 198.1 and 199.2 RoP specify that the time period runs from the date specified in the Court's order, taking into account the date when the report referred to in Rule 196.4 RoP is to be presented. These rules must be interpreted in the light of the purpose of the measures for the preservation of evidence or inspection of premises, which is to use the outcome of these measures in the proceedings on the merits of the case (Rules 196.2 and 199.2 RoP). In view of this, the Court must, as a general principle, specify in its order a time period that starts to run from the date of disclosure of the evidence to the applicant or from the date on which the Court has made a final decision not to grant the applicant access to the evidence.



V. Need for Technically Qualified Judges, Access to the Register

a. *UPC_CoA_472/2023, Order of 18 December 2023, Guangdong Oppo Mobile Telecommunications v. Panasonic Holdings*



- In proceedings before the Court of Appeal, which do not involve technical issues, the Court of Appeal can decide without technically qualified judges.
- In an appeal against an order pursuant to R.323 RoP (language of the proceedings) a request by the Appellant applied for on the last day of the time periods under R. 224.1(b) and R.224.2(b) RoP for shortening of a time period pursuant to R.9.3 (b) RoP for lodging the Statement of response has been dismissed in view of the interests of the respondent and principles of due process, even though this means that in the proceedings before the Court of First Instance the Statement of defence has to be lodged in the contested language of proceedings.

b. *UPC_CoA_404/2023, Decision of 10 April 2024, Ocado v. Autostore*



- Art. 9(1) UPCA must be interpreted such that if the subject matter of the appeal proceedings is of a non-technical nature only, and there are no technical issues at stake, the Court of Appeal may decide the matter without the need to assign two technically qualified judges to its panel of three legally qualified judges. This is without prejudice to the fact that once technically qualified judges have been assigned, they will, as judges, have to deal with the entire dispute, including the non-technical aspects thereof.
- When a request to make written pleadings and evidence available to a member of the public is made pursuant to R.262.1(b) RoP, the interests of a member of the public of getting access to the written pleadings and evidence must be weighed against the interests mentioned in Art. 45 UPCA. These interests include the protection of confidential information and personal data ('the interest of one of the parties or other affected persons') but are not limited thereto. The general interest of justice and public order also have to be taken into account. The general interest of justice includes the protection of the integrity of proceedings.
- A reasoned request under R.262.1(b) RoP is not the same, and has to be distinguished from, an application under R.262.3 RoP.



VI. Change of Language

a. **UPC_CoA_101/2024**, Order of 17 April 2024, *Curio Bioscience v. 10x Genomics* 

- When deciding on a request to change the language of proceedings into the language of the patent on grounds of fairness, all relevant circumstances shall be taken into account. Relevant circumstances should primarily be related to the specific case and the position of the parties, in particular the position of the defendant. If the outcome of balancing of interests is equal, the position of the defendant is the decisive factor.

b. **UPC_CoA_207/2024**, Order of 5 September 2024, *Advanced Bionics v. MED-EL Elektromedizinische Geräte* 


1. The fact that the parties are domiciled in countries where the language of the proceedings chosen by the claimant is an official language is an important factor in the decision on an application to use the language of the patent as the language of the proceedings.
2. Art. 49(5) UPCA does not require the application for a language change to be included in the Statement of defence. Against this background, R. 323.3 must be interpreted in such a manner that it does not preclude the lodging of the application before the Statement of defence. Lodging the application before the Statement of defence is generally even more expedient, since it ensures that, if the application is successful, the language change can be implemented at an early stage of the proceedings.

c. **UPC_CoA_349/2024**, Order of 18 September 2024, *Google Commerce v. Ona Patents* 

- In addition to the circumstances stated by the Court of Appeal in its order of 17 April 2024 (APL_12116/2024, UPC_CoA_101/2024), when deciding on a request to change the language of proceedings into the language of the patent on grounds of fairness:
- the internal working language of the parties, the possibility of internal coordination and of support on technical issues are relevant circumstances;
- the fact that other proceedings between the parties are pending before a national court does not relate to the dispute, nor to the parties, and is as such of less relevance.



VII. Security for Costs

UPC_CoA_218/2024, UPC_CoA_220/2024 and UPC_CoA_222/2024, Order of 17 September 2024, *Volkswagen v. Network System Technologies* 

- The Court, when exercising its discretion under Art. 69(4) UPCA and R.158 RoP, must determine, in the light of the facts and arguments brought forward by the parties, whether the financial position of the claimant gives rise to a legitimate and real concern that a possible order for costs may not be recoverable and/or the likelihood that a possible order for costs by the Court may not, or in an unduly burdensome way, be enforceable.
- The burden of substantiation and proof why an order for security for costs is appropriate in a particular case is on the defendant making such a request. Once the reasons and facts in the request have been presented in a credible manner, it is up to the claimant to challenge these reasons and facts in a substantiated manner, especially since that party will normally have knowledge and evidence of its financial situation. It is for the claimant to argue that and why a security order would unduly interfere with its right to an effective remedy.
- The relative financial position of the claimant as compared to that of the defendant is not as such a criterion under R.158 RoP, especially where the (limited) level of funding provided to a special purpose patent enforcement entity is a deliberate business decision.

REGISTRY OF THE UNIFIED PATENT COURT



Registrar

Alexander RAMSAY



Deputy-Registrar

Alex JACOBI

Pursuant to Article 6 of the Agreement on a Unified Patent Court (UPCA), the Court comprises a Court of First Instance, a Court of Appeal and a Registry. From Article 10 it follows that the Registry is established at the seat of the Court of Appeal and that sub-registries are set up at all Divisions of the Court.

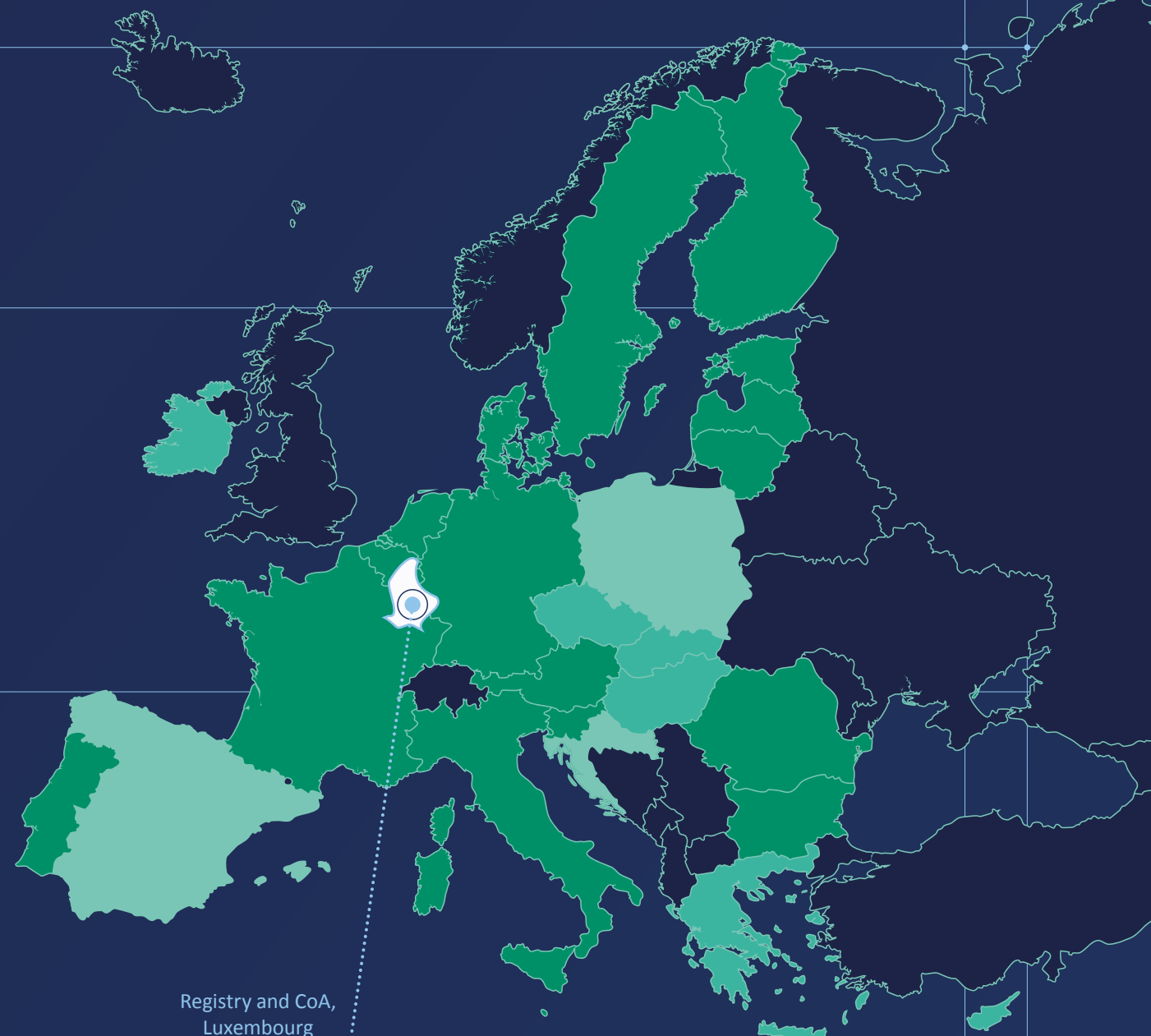
Furthermore, it follows that the Registry shall keep records of all cases before the Court and that the register kept by the Registry shall be public. From Articles 15 and 24 of the Statute of the Unified Patent Court (Statute), it follows that detailed rules for keeping the register shall be established by the Presidium in the Rules governing the Registry.

Pursuant to Articles 22 and 23 of the Statute, the Registrar is appointed by the Presidium and is responsible for the organization and activities of the Registry under the authority of the President of the Court of Appeal. The current Registrar, Mr Alexander Ramsay, has been in office since January 2023.

The Presidium also appoints a Deputy-Registrar with the main responsibility of organizing the activities of sub-registries and to provide administrative and secretarial assistance to the Court of First Instance. It follows from Article 25 of the Statute that the duties of the Deputy-Registrar are performed under the authority of the Registrar and the President of the Court of First Instance. The current Deputy-Registrar, Mr Axel Jacobi, has been in office since January 2023.



Rules governing
the Registry



Registry and CoA,
Luxembourg



ORGANIZATION OF THE REGISTRY AT THE COURT OF APPEAL IN LUXEMBOURG

Although the Registry is located at the premises of the Court of Appeal in Luxembourg, it serves the whole of the Court. The Registry also supports the Court's governing bodies, the Presidium, the Administrative Committee, the Budget Committee, and the Advisory Committee.

One of the challenges during the first year of operation has been to nurture the growth of the Registry, allowing it to handle the various teething problems and challenges inherent in a new organization.

The Registry is organized into different departments working under the authority of the Registrar.

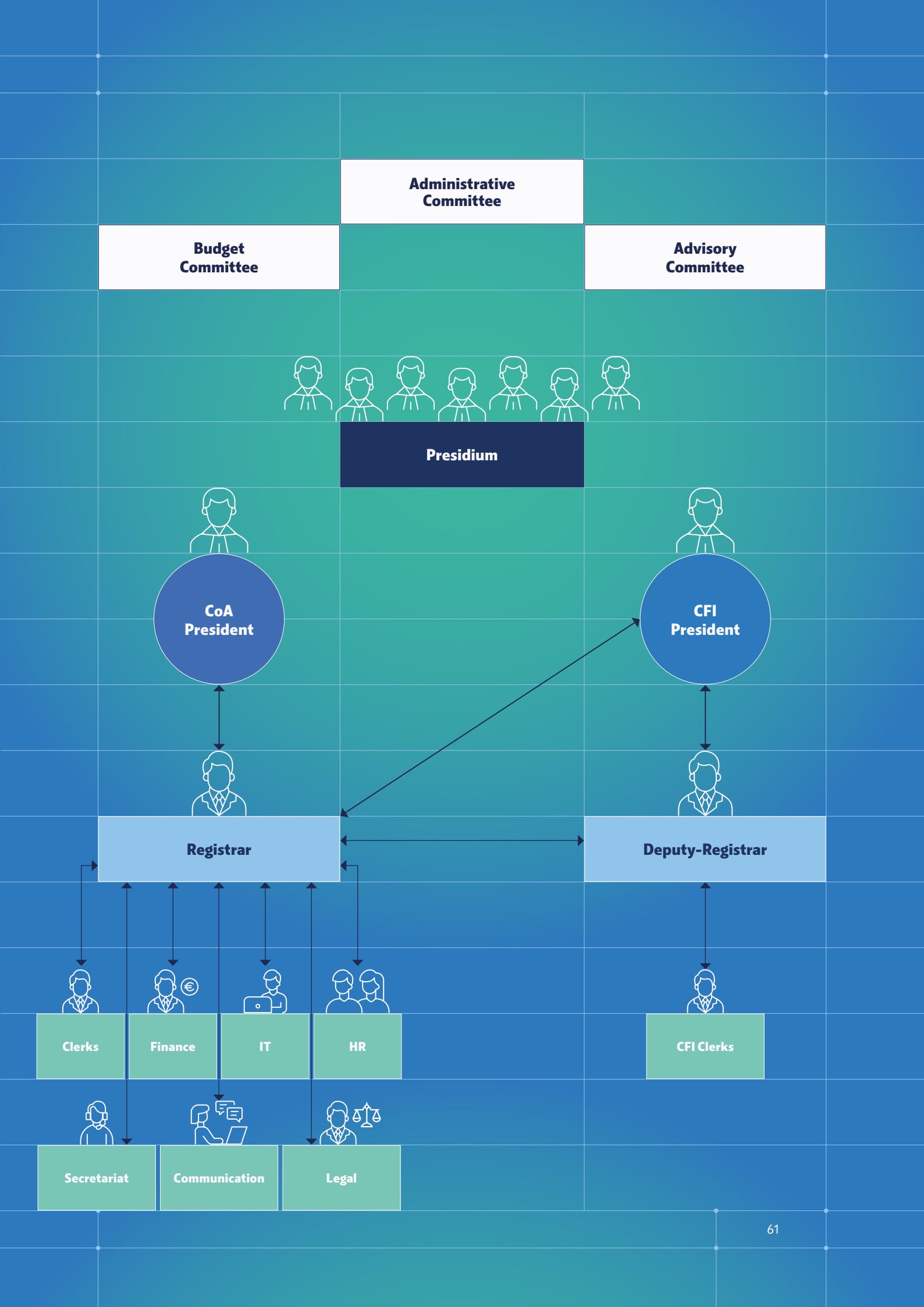


Finance department

The Finance department supports the Court in the **preparation and management of the budget** and the follow-up on the budget implementation. This has included the preparation of the budgets for the provisional application period, the first accounting period and the year 2024. The financial statements of 2022 and 2023 have been prepared and audited under the International Public Sector Accounting Standards ("IPSAS").

During 2024, the Finance department has streamlined the financial processes, including the **implementation and development of APIs** to enhance automatized exchange of financial information between the Payroll and Case Management Systems in order to enhance reporting accuracy and reduce manual effort.

The Finance department has assisted the Court to ensure full compliance with the **Court's Financial Regulations**, including strengthened internal controls via the introduction of guidelines and procedures for budget implementation.





Information Technology department

The UPC is a digital court, which means that communications to and from the Court such as written pleadings, applications and orders and decisions shall be filed or issued electronically. In this respect, the Court's electronic Case Management System (CMS) is central and of key importance. Since the start of operation, the CMS has been afflicted with several problems. The Information Technology Department (IT department) has devoted substantial resources to overcome these problems and develop the CMS to meet business needs. In mid-2024 it was decided that the current CMS is not a viable long-term solution for the Court and that a new system needs to be developed. To that end the Court entered into an **enhanced cooperation with the European Patent Office**, with the primary objective of developing a completely new Case Management System. The development work has been fast-tracked, with the objective of the new system becoming operational in mid-2025.

The IT department has during the past year, in cooperation with the Communication department, developed the Court's website to **improve the users' experience**. This has entailed improved performance for searching and dissemination of information as well as enrichment of the information available. Further development is planned.

Resources have also been devoted to upgrading existing IT solutions in order to support the **corporate functions** of the Court. This comprises installation and improvement of the financial software solution, in particular by integrating the management of accounting events linked to information from the CMS and improvements and maintenance of key modules in the Human Resource solution considering the workflows, concerning the management of remuneration, duty travel and parental leave. Furthermore, reporting tools for ad hoc internal and external queries have been implemented as well as IT tools for document anonymization, translation and editing.

The Court's email and filesharing system has been migrated to a new system to address performance and stability issues and the Court's Data Centre has been upgraded regarding operational conditions to meet the needs for adaptability and to guarantee the necessary **level of security**.

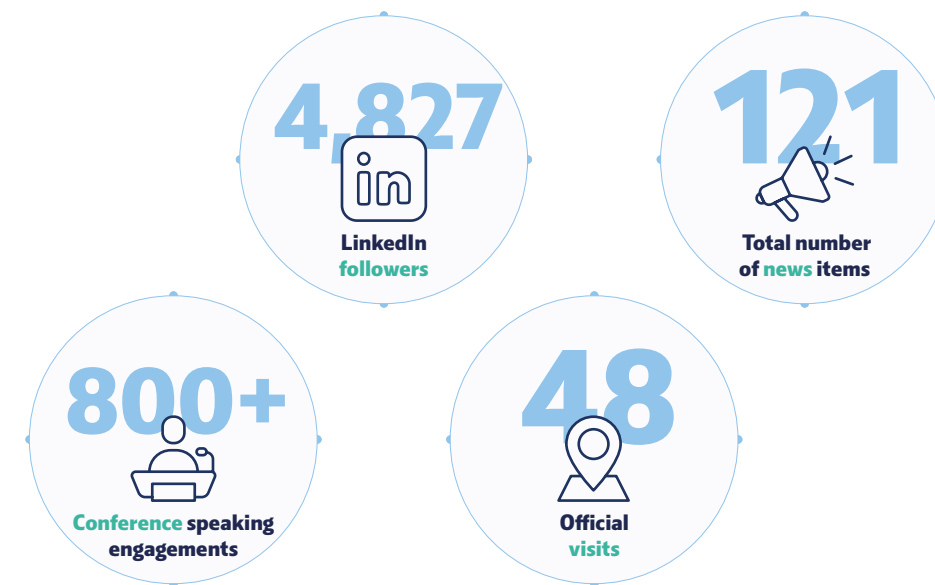
The Service Desk is incorporated into the IT department and works in close cooperation with the other departments. The Service Desk handles all inquiries from external as well as from internal users. During 2024, the Service Desk has handled **4,944 requests**.



Communication department

During 2024, the Court recruited a communication officer to be in charge of the Court's **internal and external communication**, such as press releases and news items. The Court's **website** remains its main channel of communication, and has gone through considerable improvements as regards both appearance and content. Since June 2024, the Court also has a **presence on LinkedIn** which facilitates a more agile communication.

The introduction of the Court has attracted considerable attention and several prominent delegations have visited the Court in the past year, such as delegations from the US Congress, the Supreme Court of Korea, ministers of Justice (Sweden and Costa Rica) or national member states courts.



Human Resources department

The human resource is **the most valuable asset** of the Court, and the Human Resources department is in charge of supporting the judges and staff with key components necessary for them to carry out their functions such as onboarding, remuneration, social security, pension and duty travel as well as training and team cohesion.

As part of the continuous improvement efforts, the Human Resources department is implementing a **digitalized HR system** to streamline various activities. This system has significantly enhanced the capacity to manage personnel data and facilitate HR processes with greater efficiency and accuracy.



Human Resources department

Judges and staff employed by the UPC

UPC judges are employed by the Court, with the Administrative Committee as appointing authority.

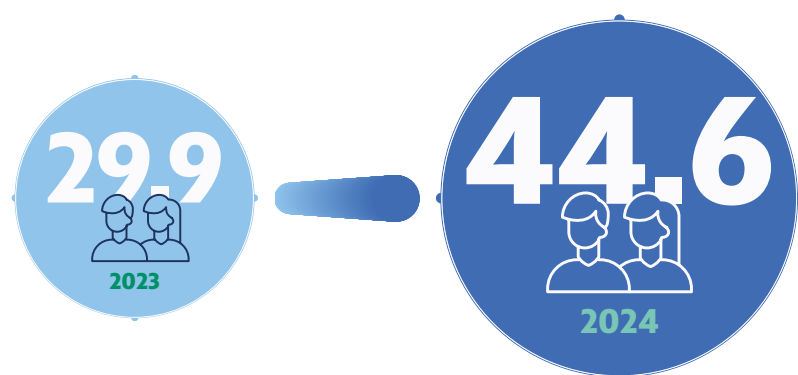
Most legally qualified judges have been employed on a part-time percentage basis which can be increased based on the needs of the Court, not least in view of its caseload.

Technically qualified judges are generally employed on a “case-by-case” basis and are allocated to relevant cases following a thorough conflict check in line with the judicial Code of Conduct of the UPC.

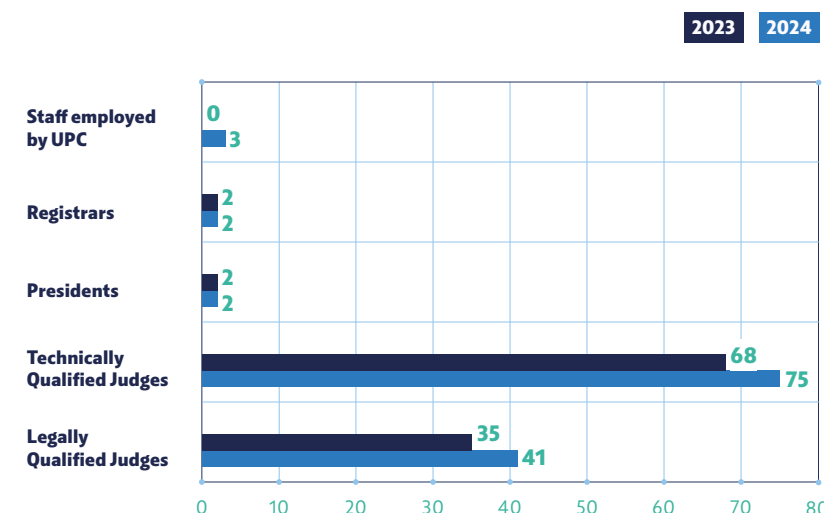
A limited number of Court officials, other than judges are employed by the UPC, namely the Registrar, the Deputy-Registrar and the Director of the Patent Mediation and Arbitration Centre (PMAC).

During the transitional period under Article 37 of the UPC Agreement, administrative support staff of the Court is provided by the Member State (see *infra*).

Between 2023 and 2024, the total FTE (full-time equivalent) increased from 29.9 to 44.6.



This difference is primarily due to an increase in the number of legally and technically qualified judges as well as increase of the percentage of working time of some legally qualified judges. Additionally, during 2024 officials hired by the Court have expanded to comprise a Legal Advisor to the President of the Court of Appeal and a Legal Advisor to the President of the Court of First Instance.



Administrative support staff

In accordance with the UPCA, administrative support staff are, during a transitional period of seven years, provided by the Member State hosting the relevant division or part of the Court. Currently, a grand total of **80 support staff** are provided by the Member States. Out of this number 55 are clerks, 4 at the Court of Appeal and 51 at the various sub-registries of the Court of First Instance. In the Registry at the Court of Appeal, the IT department consist of 15 persons, the Finance department of 3, the Human Resource department of 2, the Secretariat of 1, the Translation department of 3 and the Communication department of 1 person.

Furthermore, the Registrar has a Legal Advisor seconded from the European Patent Office and the Deputy-Registrar an assistant located at the Central Division of the Court of First Instance.



Human Resources department

Training

Significant resources have been allocated to the training of judges and clerks within the UPC. **Tailored online training sessions** have been conducted on various aspects, such as the CMS and the Rules of Procedure, to ensure a high level of competence. Furthermore, **on-site training** events took place, with a first extensive training in early 2023 in Budapest, with the support of the European Patent Academy and the Hungarian authorities. In 2023 and 2024, further onsite training took place in Milan and in Vienna, respectively organised in cooperation with the Italian and Austrian authorities. These events were structured to provide a platform for **knowledge** and experience sharing, fostering collaboration and a cohesive work environment and strengthen communication, contributing to the professional growth and effectiveness of the team members.



Training in Vienna



Translation department

The Translation department has a strong balance across languages and between experience in the technical, legal and financial fields. It provides **support** to the judges, the other departments of the Court and to the Administrative and Budget Committees. In more detail, the department's work consists of translation and proofreading of decisions, preparation of working documents to facilitate the work of the Committees and internal translations and language advice to aid internal cooperation within the Court. During 2024, the increase in activity has been noticeable. In particular, the inauguration of the Milan section of the Central Division of the Court of First Instance has brought an increase in Italian work.

The department will soon implement a **state-of-the-art translation management and translation memory system** that will allow it to further streamline translation requests and processing, and make it easier to reference previous translations and efficiently manage terminology. This will further ensure the linguistic quality of UPC judgments and contribute to the reputation of the UPC as providing high-quality case-law.



The Secretariat

The Secretariat provides secretarial support to the **Administrative Committee and the Budget Committee**, including formatting, distribution and management of documents, drafting the minutes of meetings and assisting the Chairs of the committees in preparing practical aspects of meetings.

Furthermore, the Secretariat provides secretarial support to the President of the Court of Appeal, the President of the Court of First Instance, the Divisions of the Court and the various departments of the Registry. Among other things, this entails sending and receiving communications, publishing information on the Court's website and keeping track of administrative files. The Secretariat also takes care of the facilities management of the Court of Appeal.



The Clerks of the Court of Appeal

The clerks are mainly tasked with supporting the **judicial activities** of the Court of Appeal as well as applications directly handled by the Registrar such as registrations of representatives, withdrawals of unauthorized opt-outs and requests for opt-out information. The clerks are also tasked with the **communication with the users** of the Court via the Court's ticketing system in support of the Court's Service Desk as regards questions referring to activities under their responsibility. The number of clerks has increased since the start of operation. In 2023 the staff consisted of two clerks. In January 2024 two more clerks were employed and the number is due to increase to a total number of six clerks in February 2025.

THE SUB-REGISTRIES

The Court of First Instance operates through **18 sub-registries**. Coordinated from the Deputy-Registrar's office in Paris, these sub-registries have seen notable growth. Starting with 49 clerks (amounting to 23 Full-Time Equivalents, or FTEs), the registry has expanded to 54 clerks (30 FTEs). This increase reflects the evolving demands of the Court and underscores the importance of maintaining a robust and adaptable support framework. The clerks are mainly tasked with supporting the judicial activities of the Court of First Instance, as well as supporting some tasks handled centrally by the Registrar such as registrations of representatives and formal checks of protective letters.

A distinctive feature of the UPC's setup during its transitional phase is the administrative support provided by Contracting Member States hosting a division. This ar-

rangement necessitates **close collaboration between these states' contact points and the Court**, requiring continuous adjustments to meet its changing needs. Many of the clerks in the Court of First Instance work part-time for the Court while fulfilling responsibilities within their national court administrations, further highlighting the complexity of their roles.

The sub-registries have faced challenges deriving from the facts that the legal framework governing the Court is novel, the teething problems of the Case Management System and the multilingual environment. Despite these challenges, the clerks have risen to the occasion. **Their flexibility, patience, and dedication** have been exemplary, with many going beyond the call of duty to ensure the Court's success.

THE ROAD AHEAD

During 2025 the Registry will continue to strive to improve the service to the Court and its users. In particular, substantial efforts will be made to deliver a **new state-of-the-art Case Management System** that will meet the high standards expected of an international patent court. In connection to the introduction of the new Case Management System, substantial improvements are foreseen as regards the presentation of the Registry in order to meet the requirement and demand for transparency.

Furthermore, the Registry will focus on facilitating and nurturing **the growth of the Court and its staff**. A substantial effort will be made to recruit and keep key personnel and provide the appropriate training and tools that will enable the team to further excel.

A substantial effort will be made to support the establishment of the **Patent Mediation and Arbitration Centre**, the PMAC, with the ambition of allowing it to begin operation during the year to come.

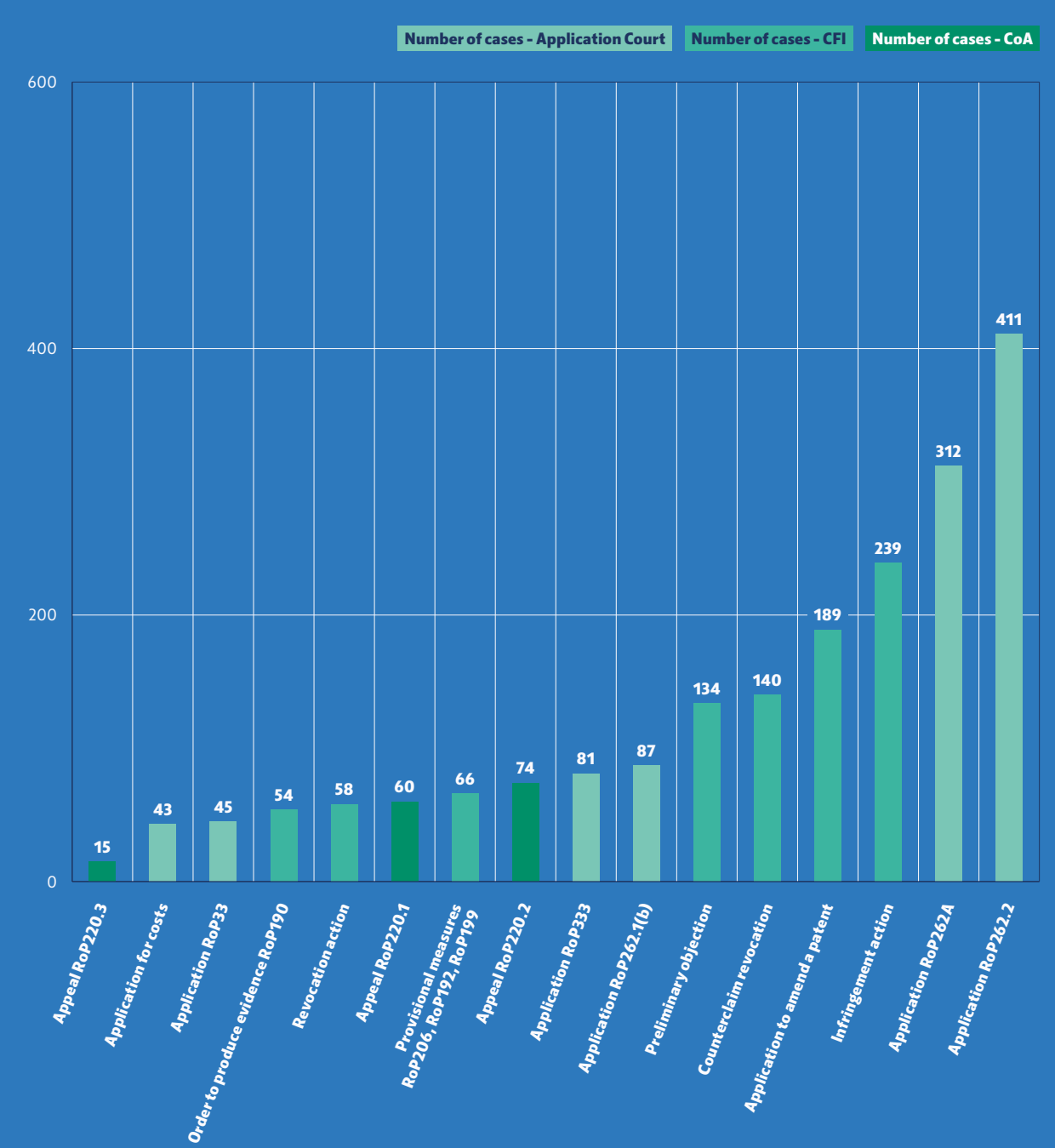


Training in Vienna

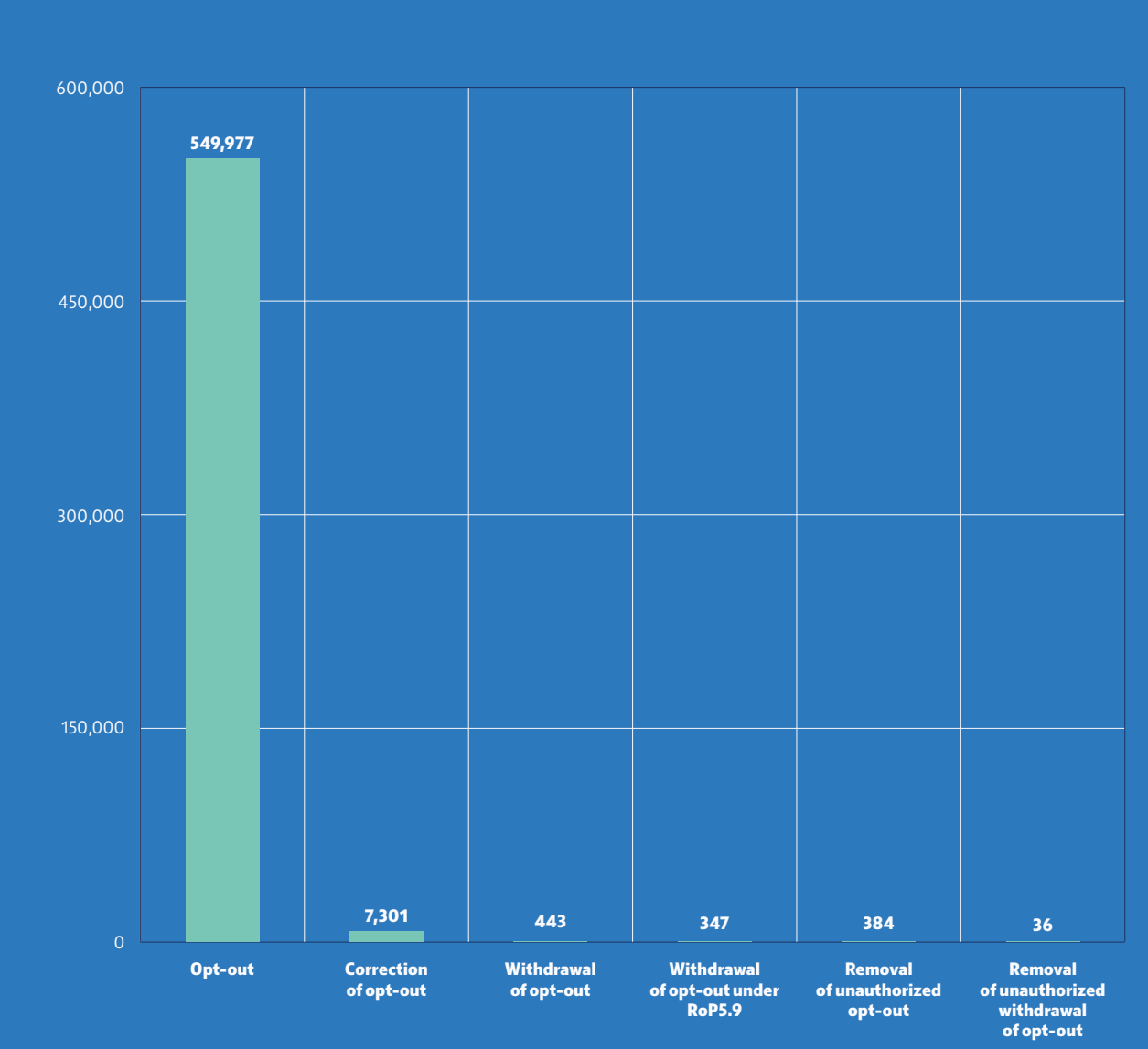
STATISTICS

1. GLOBAL OVERVIEW

1.1. Number of cases lodged from 01/06/2023 to 31/12/2024

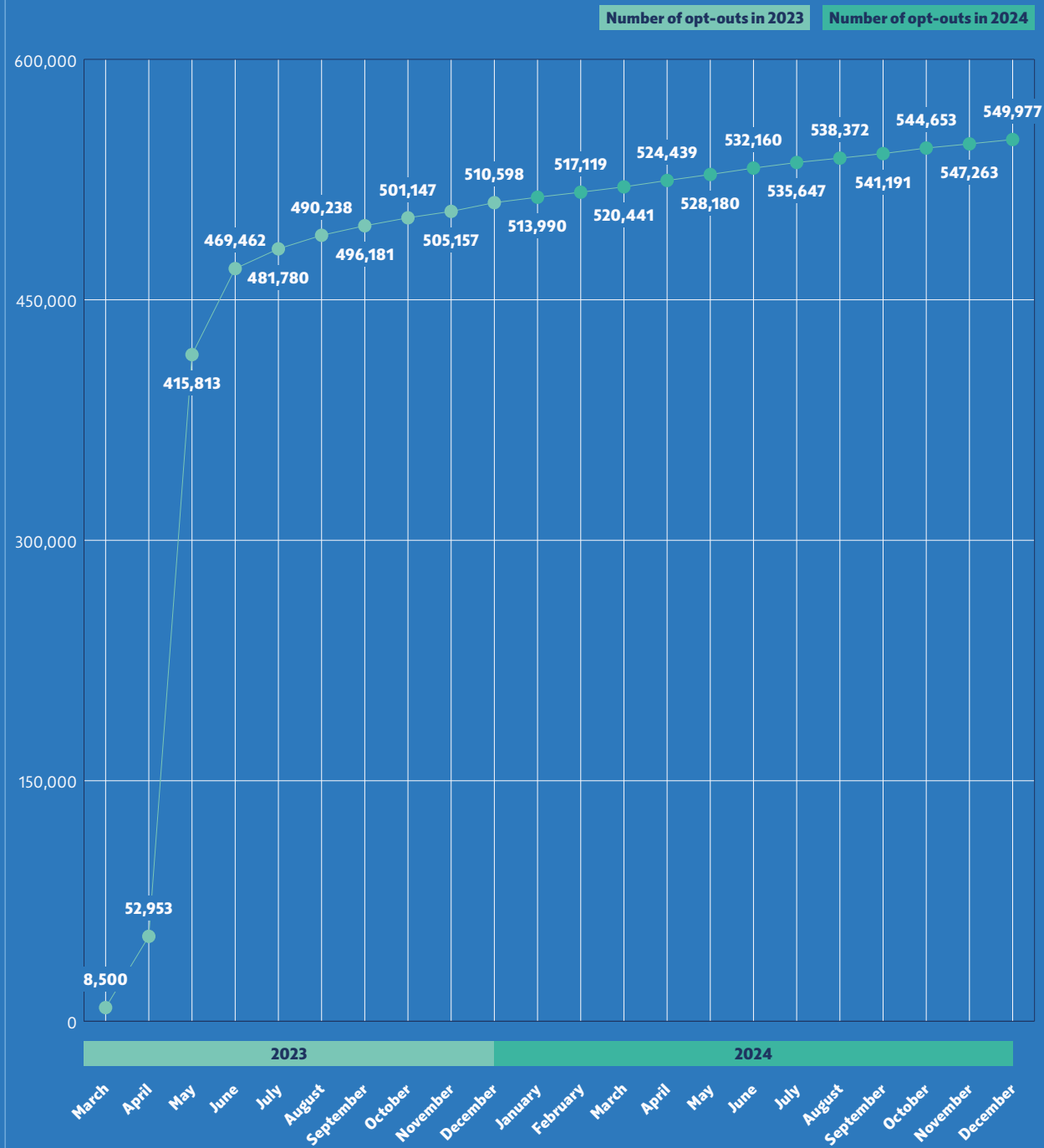


1.2.1. Number of opt-outs related applications received since 01/03/2023 (sunrise) to 31/12/2024



Source for all statistics: UPC's data - Value / figures as of 31/12/2024.

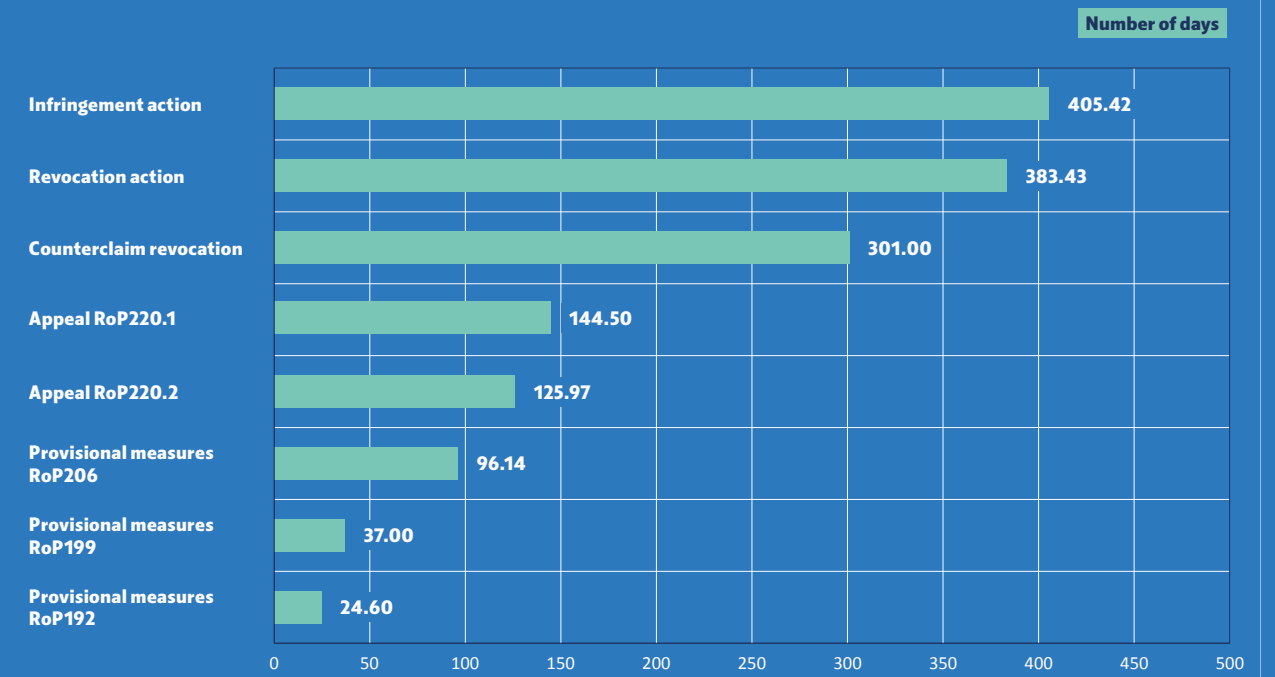
1.2.2. Evolution of opt-outs lodged from 01/03/2023 (sunrise) to 31/12/2024



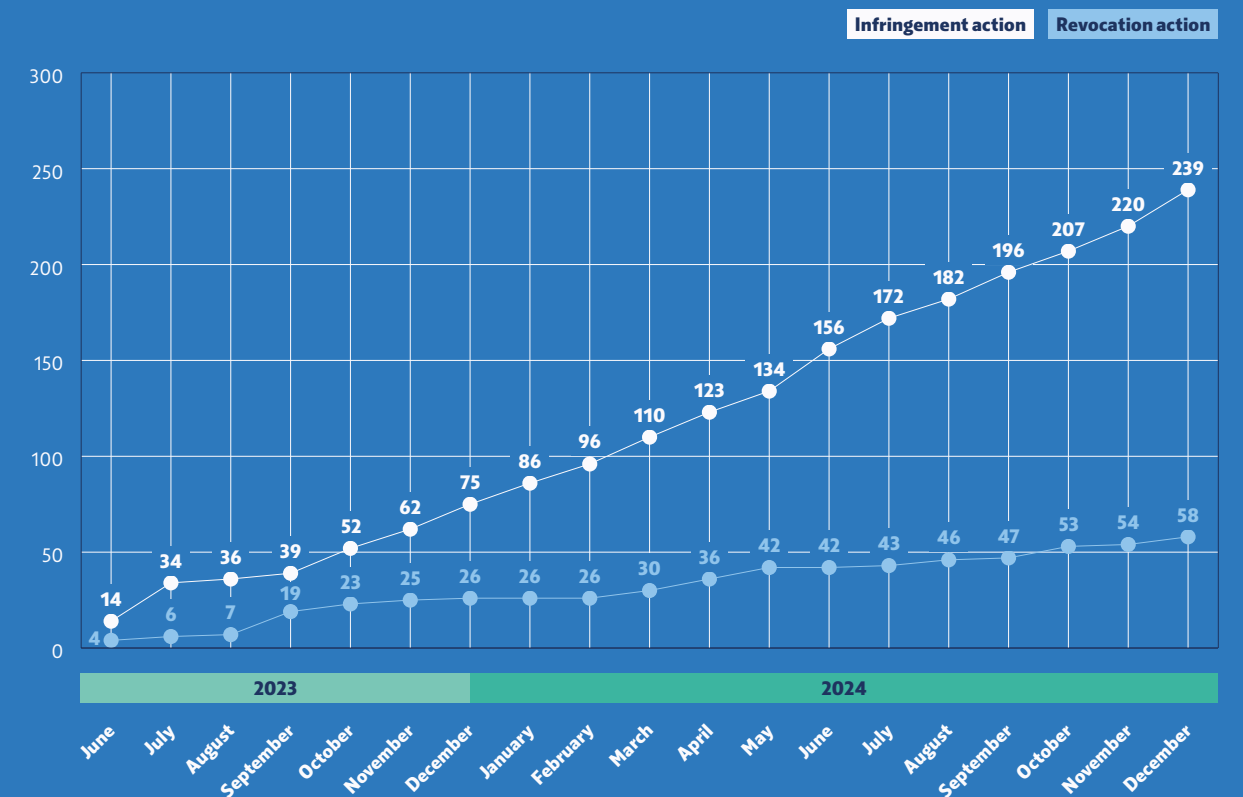
1.2.3. Number of representatives registered as of 31/12/2024

9,930

1.3. Average time to close cases per case type since 01/06/2023



1.4. Evolution of infringement and revocation actions from 01/06/2023 to 31/12/2024

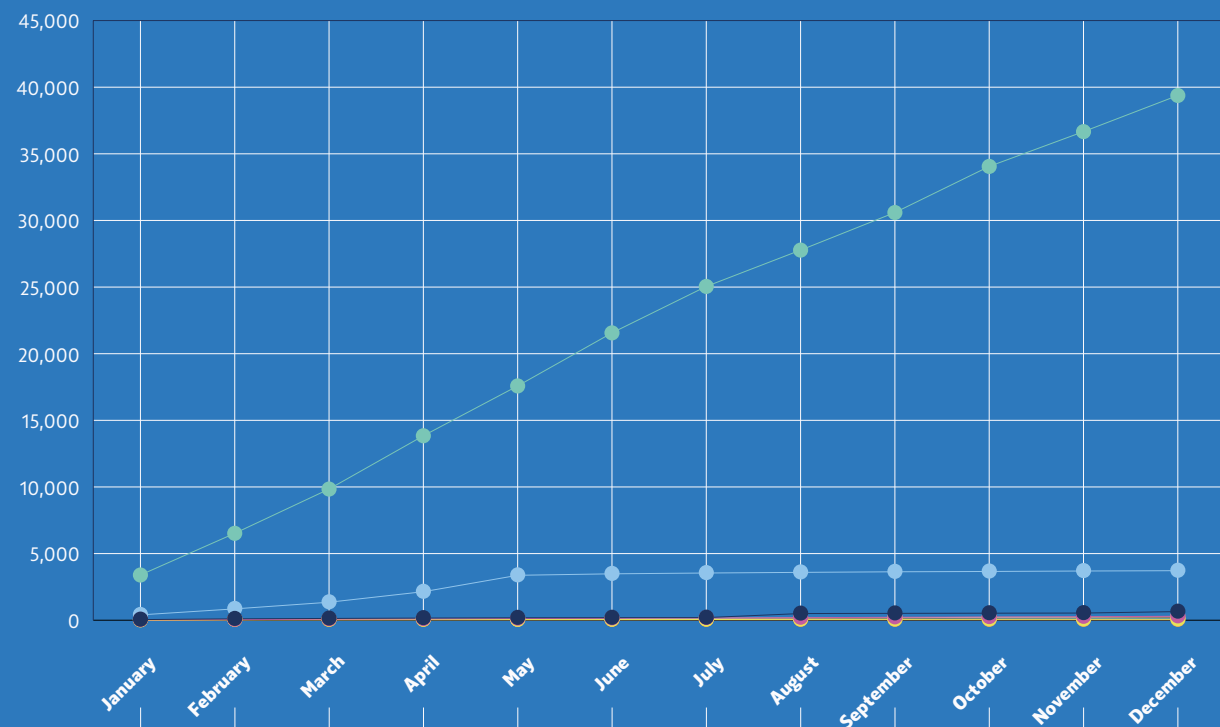


Source for all statistics: UPC's data - Value / figures as of 31/12/2024.

STATISTICS

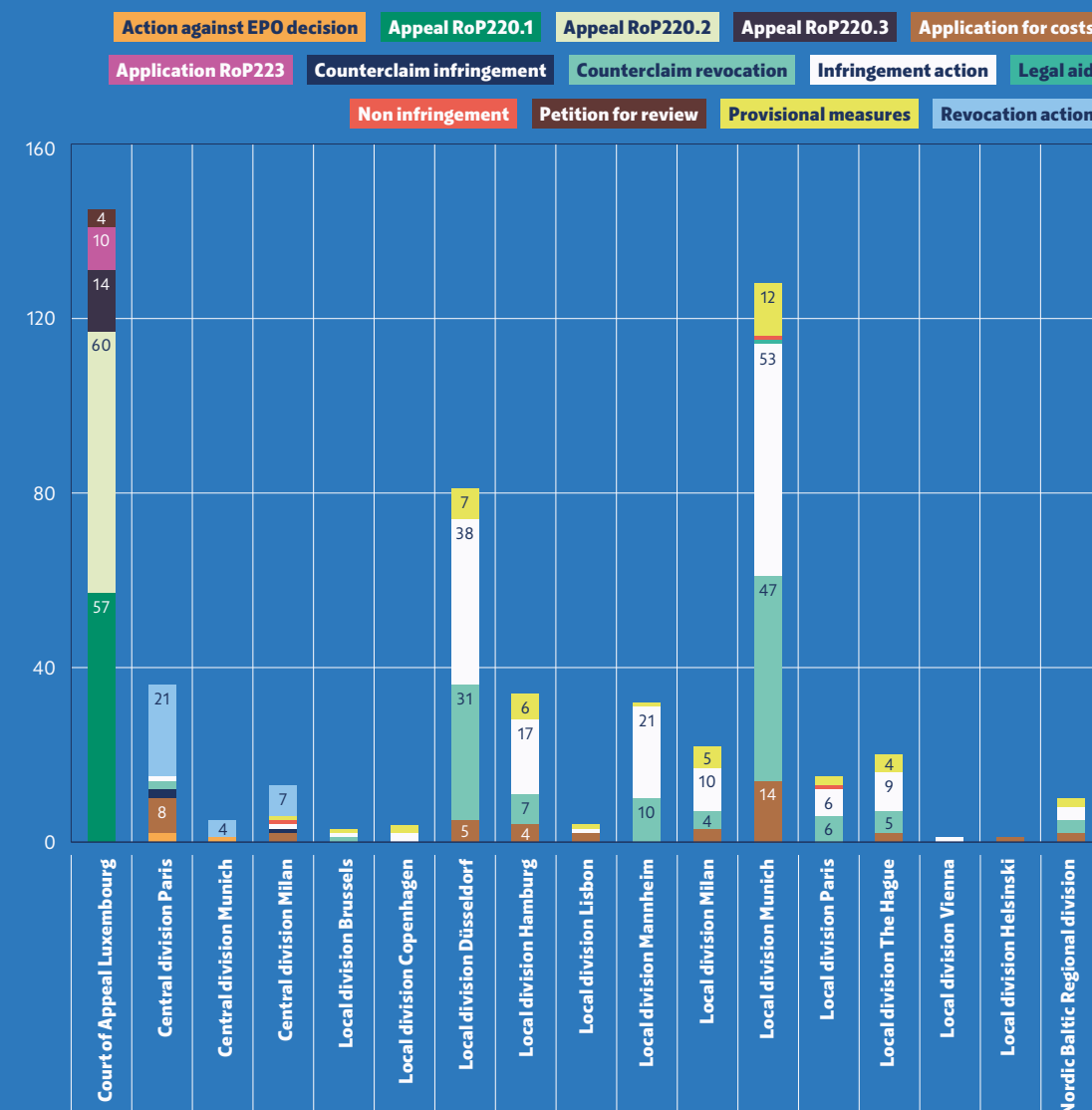
2.1. FOCUS ON 2024

2.1.1. Evolution of cases lodged from 01/01/2024 to 31/12/2024
(opt-out related applications, representatives and protective letters)



Correction of opt-out	46	103	133	160	182	189	197	500	514	527	537	647
Opt-out	3,392	6,521	9,843	13,841	17,582	21,562	25,049	27,774	30,593	34,055	36,665	39,379
Protective Letter	26	44	77	94	125	144	171	190	220	238	261	296
Registrations of representative	400	851	1,349	2,139	3,371	3,481	3,542	3,590	3,634	3,658	3,692	3,717
Removal of opt-out	1	38	39	43	46	47	52	66	71	78	79	79
Removal of withdrawal of opt-out	0	33	34	34	34	34	34	34	34	34	34	34
Withdrawal	25	42	70	86	100	122	152	171	188	218	233	253
Withdrawal under RoP5.9	22	41	41	54	74	92	115	137	156	178	198	213

2.1.2. Number of cases lodged per division per case types in 2024

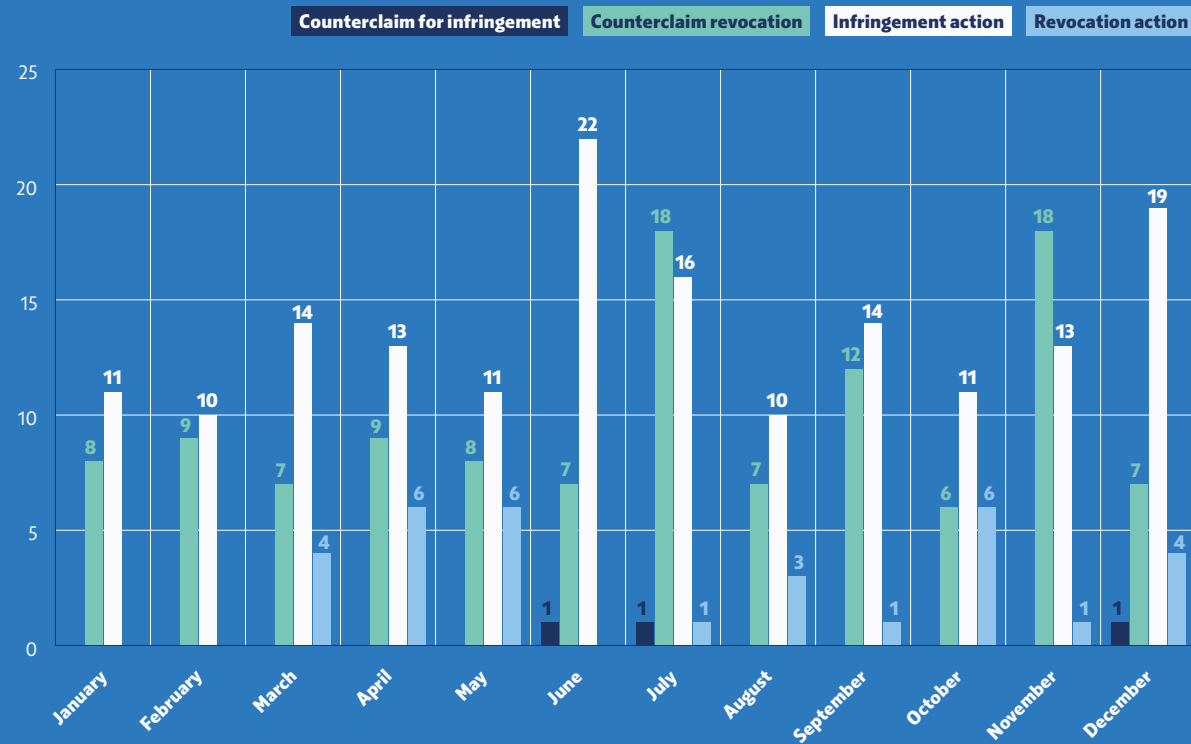


Revocation action	21	4	7	0	0	0	0	0	0	0	0	0	0	0
Provisional measures	0	0	1	1	2	7	6	1	1	5	12	2	4	2
Petition for review	4	0	0	0	0	0	0	0	0	0	0	0	0	0
Non infringement	0	0	1	0	0	0	0	0	0	0	1	1	0	0
Legal aid	0	0	0	0	0	0	0	0	0	1	0	0	0	0
Infringement action	1	0	1	1	2	38	17	1	21	10	53	6	9	1
Counterclaim revocation	2	0	0	1	0	31	7	0	10	4	47	6	5	3
Counterclaim infringement	2	0	1	0	0	0	0	0	0	0	0	0	0	0
Application RoP223	10	0	0	0	0	0	0	0	0	0	0	0	0	0
Application for costs	0	0	2	0	0	5	4	2	0	3	14	0	2	2
Appeal RoP220.3	14	8	0	0	0	0	0	0	0	0	0	0	0	0
Appeal RoP220.2	60	0	0	0	0	0	0	0	0	0	0	0	0	0
Appeal RoP220.1	57	0	0	0	0	0	0	0	0	0	0	0	0	0
Action against EPO decision	2	1	0	0	0	0	0	0	0	0	0	0	0	0

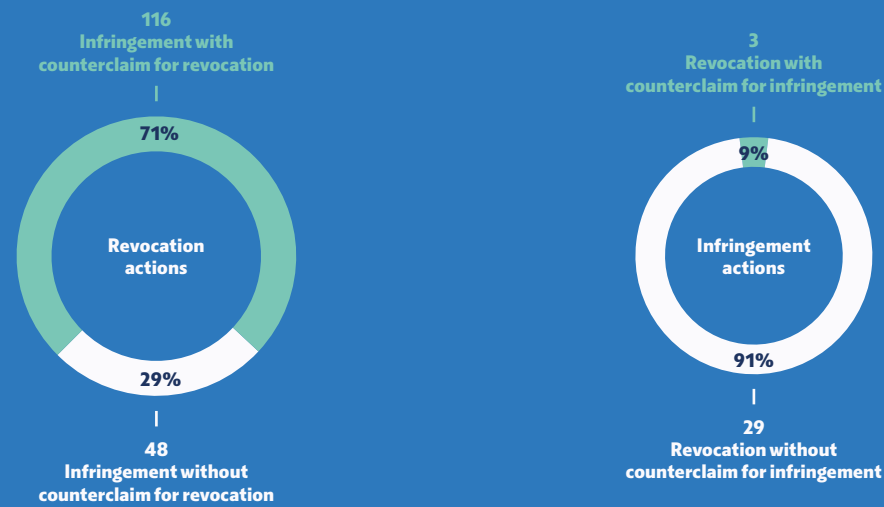
Source for all statistics: UPC's data - Value / figures as of 31/12/2024.

2.2. FOCUS ON 2024 FOR INFRINGEMENT AND REVOCATION ACTIONS

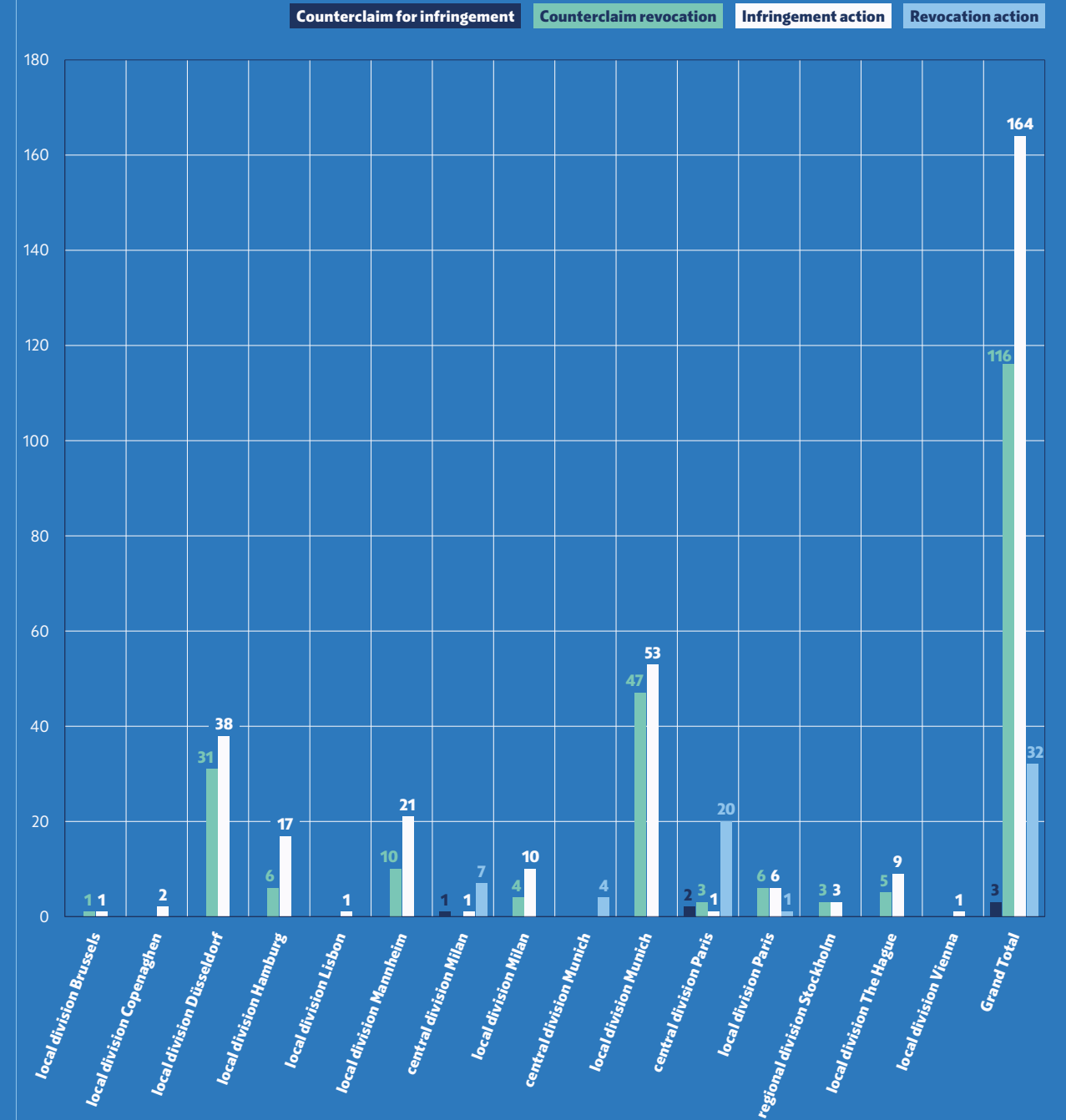
2.2.1. a. Number of cases and evolution per month



2.2.1. b. Number of infringement and revocation cases in 2024 (focus on their counterclaim)



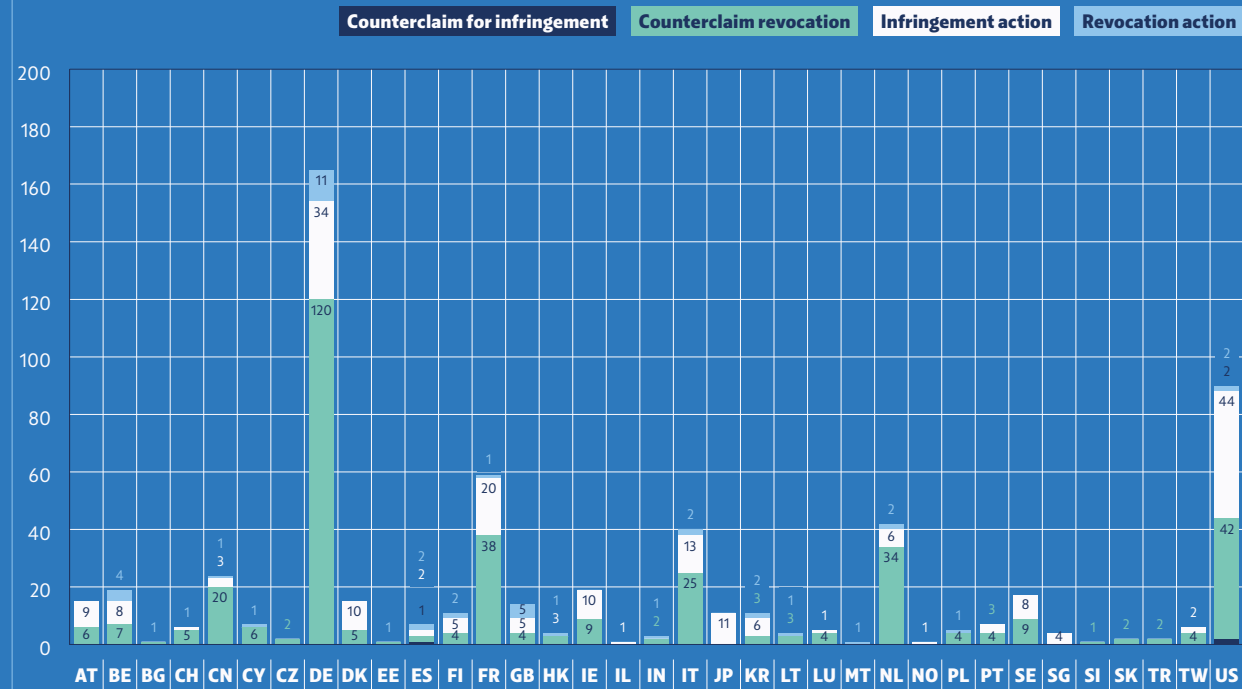
2.2.2. Number of infringement and revocation cases in 2024 per division



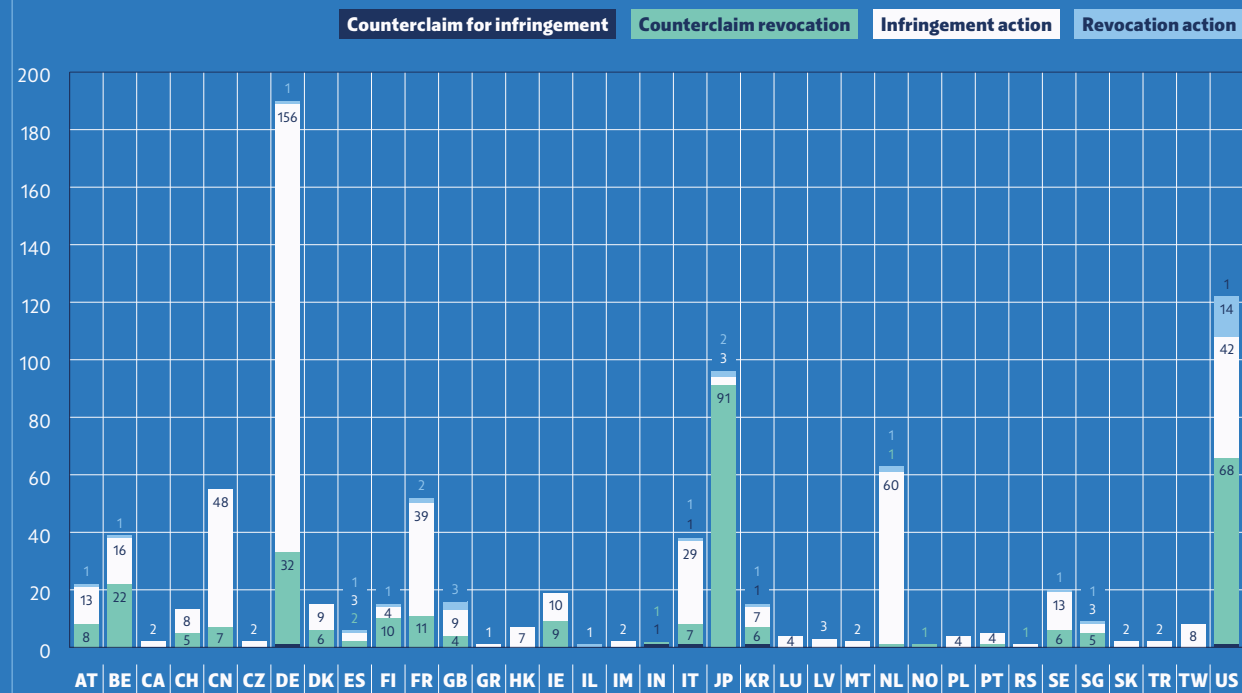
Source for all statistics: UPC's data - Value / figures as of 31/12/2024.

2.2.3. Number of infringement and revocation cases in 2024 per parties' nationality

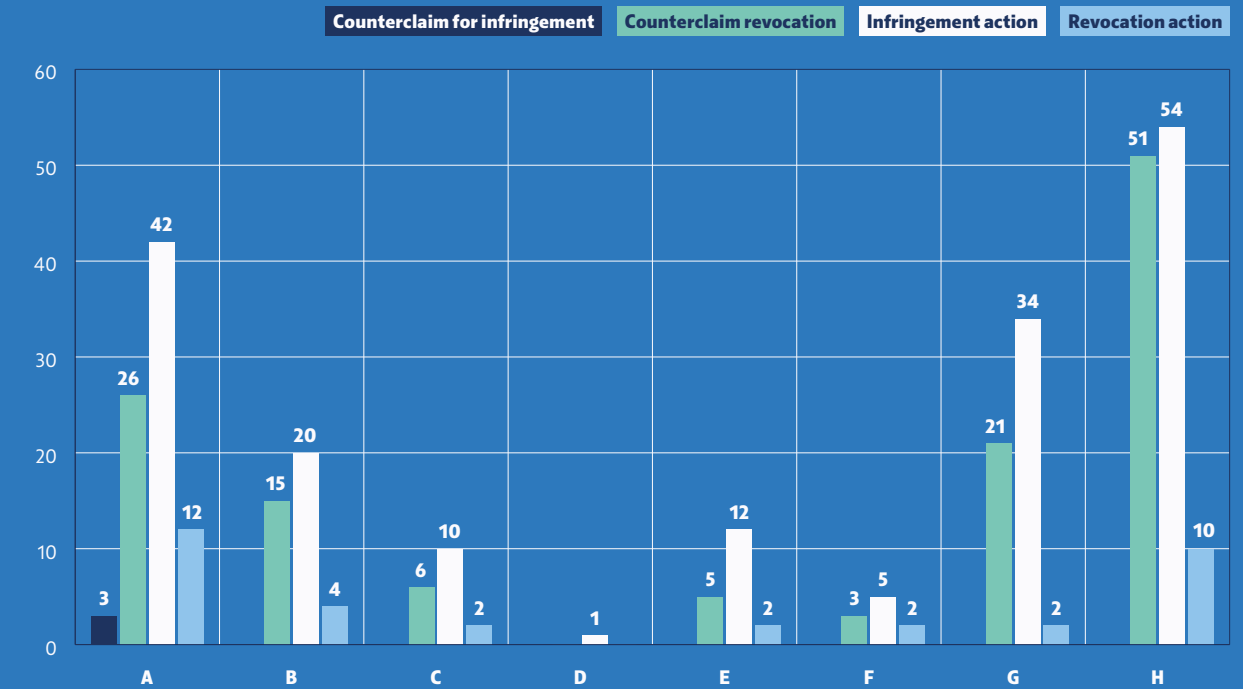
2.2.3. a. Nationality of claimant parties



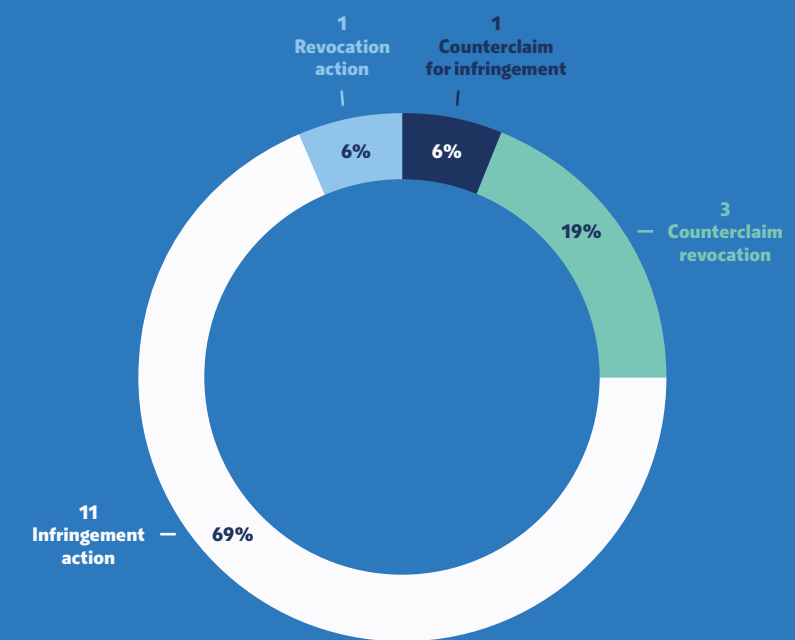
2.2.3. b. Nationality of defendant parties



2.2.4. Number of infringement and revocation cases in 2024 per patent classification (IPC)

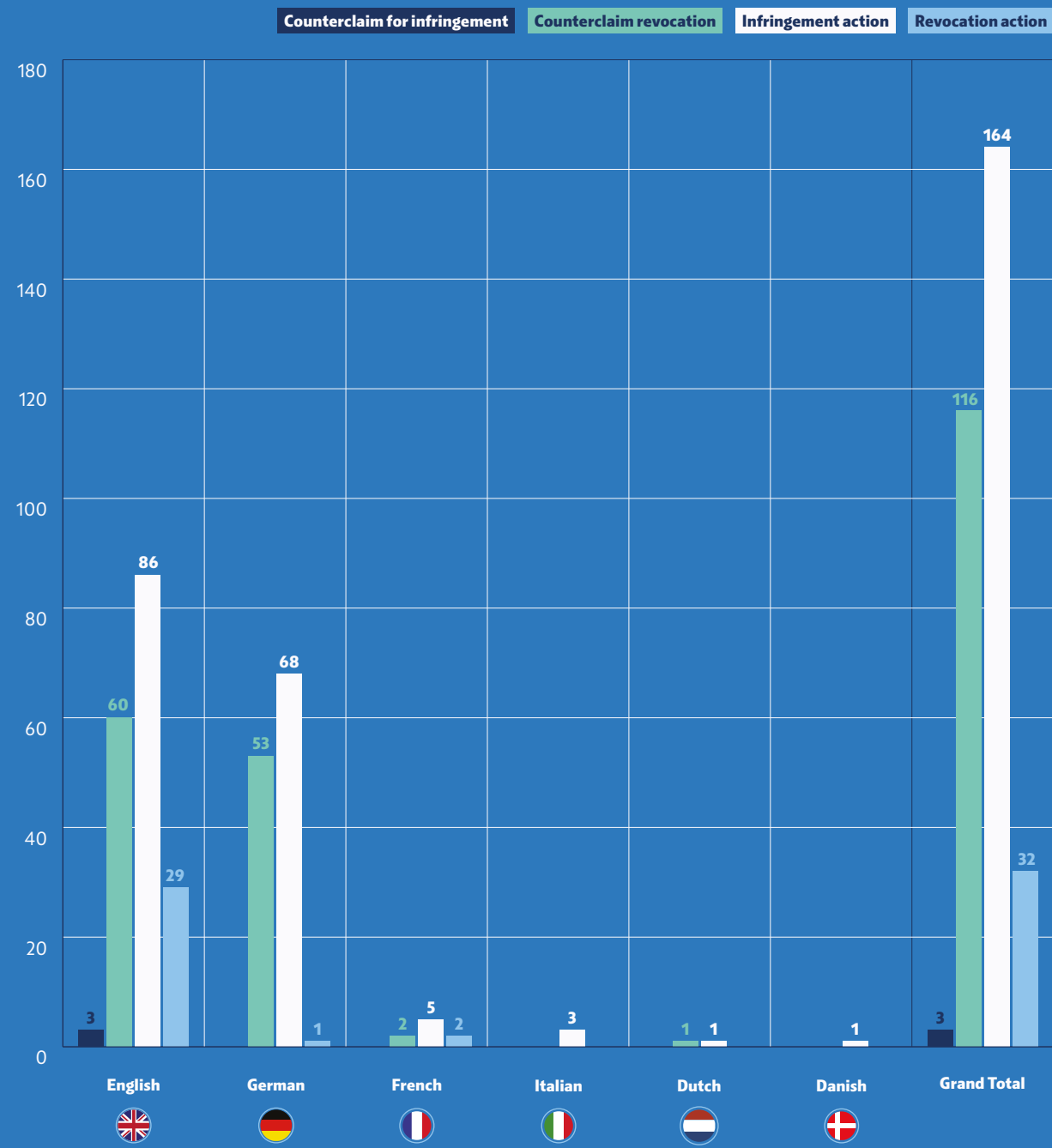


2.2.5. Repartition of cases with reduced fees per case type in 2024



Source for all statistics: UPC's data - Value / figures as of 31/12/2024.

2.2.6. Number of infringement and revocation cases in 2024
(per language of proceedings)



EVENTS



Oath taking of legally and technically qualified judges of the Court of First Instance



UPC opened its door

Judges and clerks training in Milan

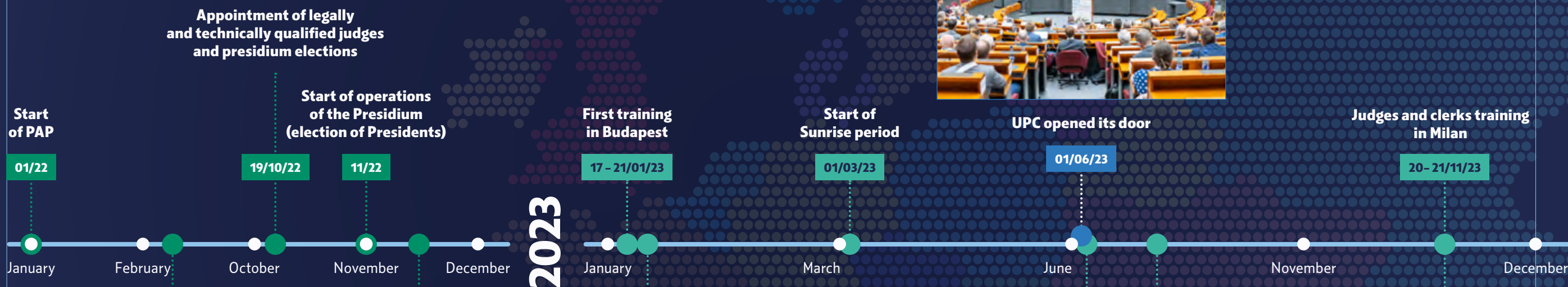


Oath taking of legally qualified judges of the Court of Appeal



2022

2023



Appointment of legally and technically qualified judges and presidium elections

Start of operations of the Presidium (election of Presidents)

First training in Budapest

Start of Sunrise period

UPC opened its door

Judges and clerks training in Milan

Inaugural meetings of the governing bodies

Data exchange agreement signature between UPC and EPO

Appointment of Registrar Alexander Ramsay and Deputy-Registrar Axel Jacobi

Appointment of 21 technically qualified judges



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