

CJEU rejects Spanish unitary patent challenge

After a longer than expected gap, the CJEU has issued a [press release](#) which announces its judgments on Spain's most recent challenges to the legality of the unitary patent and Unified Patent Court system.

The judgments are available [here](#) and [here](#). The judgments address the legality of Regulations 1257/2012 and 1260/2012 and, as widely expected, have followed the same reasoning as the Advocate General (AG) in his Opinion of October 2014, thus removing one more impediment to the introduction of the unitary patent and Unified Patent Court.

Background and the AG's Opinion

In summary, Spain's challenges focused on the legal basis of the unitary patent and Unified Patent Court system, the proposed provisions concerning languages, the involvement of the EPO in the administration of the new system, and the creation of the unitary patent.

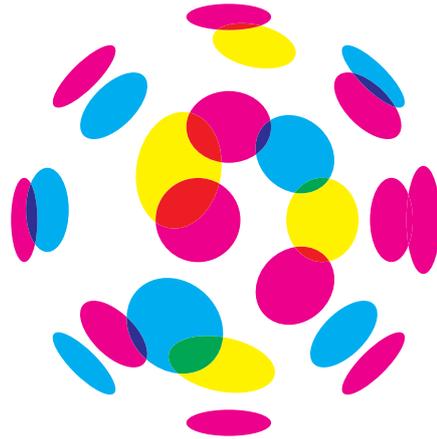
The AG's Opinion recommended that the challenge be dismissed, stating that the unitary protection conferred by the disputed Regulations provided a genuine benefit in terms of uniformity and

integration across the EU, and that the limited choice of languages considerably reduced translation costs and safeguards the principle of legal certainty by avoiding multiple authentic translations of a patent.

With regard to the involvement of the EPO, the AG found it to be essential to the unitary patent system and, therefore, also dismissed this part of the challenge. The AG's view was that the sole purpose of the contested Regulation was to allow for the universal recognition throughout Europe of a patent already granted under the existing provisions of the EPC, and therefore the legal basis for the Regulation was valid.

The decisions of the CJEU

As expected, the Court rejected Spain's arguments. In respect of the legality of Regulation 1257/2012, the Court pointed out that it did not incorporate the procedure for granting European patents into EU Law. The Regulation merely set out how the existing system, run by the



EPO and using the provisions of the EPC, could be used to grant a patent with unitary effect and provided a definition of what was that unitary effect.

The Court also dismissed Spain's arguments that the Regulation led to the delegation of powers contrary to the Meroni principle. In full agreement with the assessment of the AG, the Court pointed out that the EU legislature had not delegated any powers that were exclusively its own by allowing the EPO to set the level of renewal fees and to share the distribution of those fees between the Member States.

The Court also agreed with the AG that the language provisions of Regulation 1260/2012 were designed to maintain legal certainty, reduce costs and make the patent system easier and more accessible. The Court thought that the language provisions governing the unitary patent system presented a genuine improvement over the current European patent protection system, avoided the complexity and high cost associated with the large number of translations currently needed, and that limiting the number of authentic texts would also increase legal certainty. Overall, the Court said that the language provisions were proportionate and achieved a balance between the interests of applicants using the unitary patent system and other entities affected by the unitary patent system.

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