

BRISTOWS

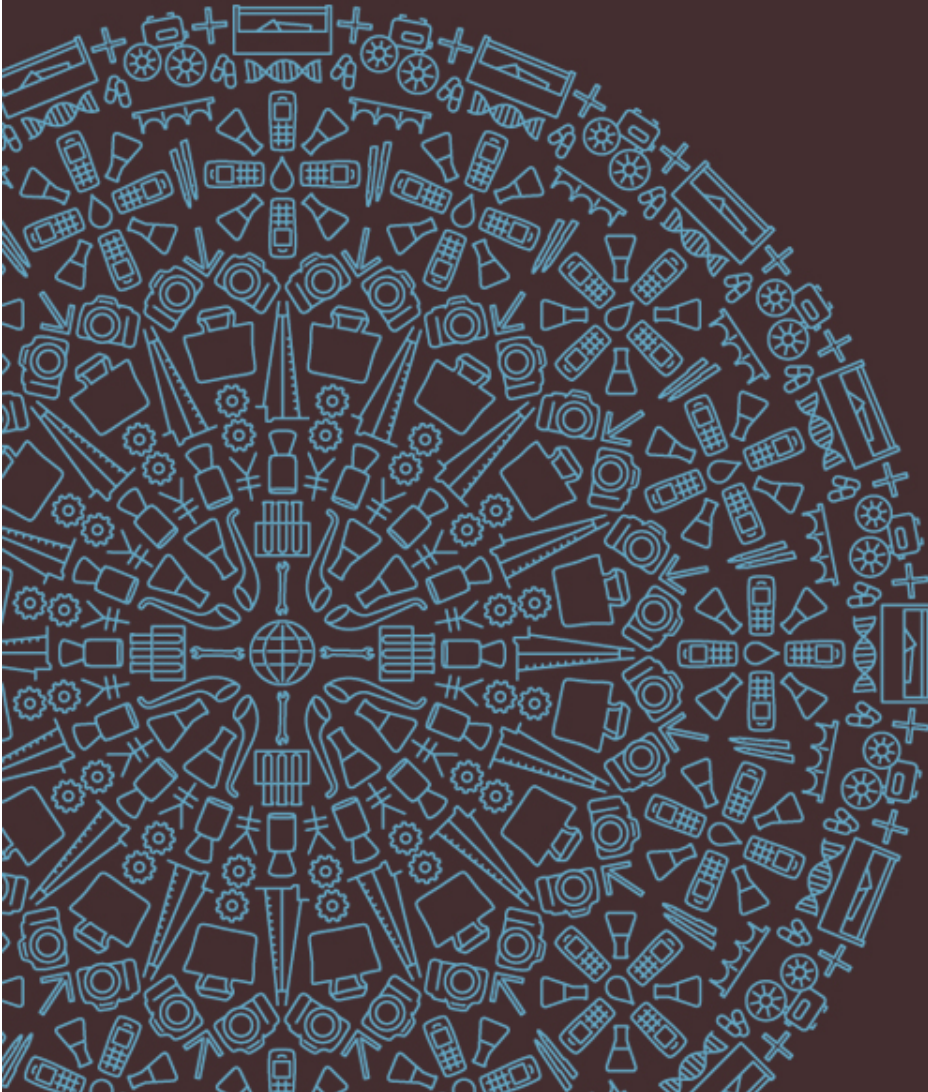
Fordham IP
Conference 2014

The UPC and PAEs

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Agenda

- Introduction
- Attractions of UPC for PAEs
- Controls / disadvantages
- Conclusions

Introduction

- Genesis of UPC - perceived problems with parallel European national proceedings
 - Slow
 - Complex
 - Expensive
 - Inconsistent
- 'Opaque' pan-European patchwork thought to be particular impediment to SMEs and so to European innovation and investment in R&D
- New UPC system to improve things for such patentees...

Is new system likely to attract PAEs?

- Aims of system: fast, cheap, pan-European
- To the extent that is pro-patentee, then also pro-PAE...
- Bifurcation
- Forum Shopping
- Uncertainty

Controls / Disadvantages

- Relief at discretion of Court
- Cost recovery / Security for Costs
- Harmonising central Court of Appeal
- Subject to EU law (CJEU?)
- Pan European claim also brings threat of pan-European revocation
- Low cost nature may benefit Defendants

Conclusions

- Whether new system will be pro or anti PAE, depends in part upon whether it will be pro or anti patentee
- No special rules for PAEs
- Court has wide discretion generally to deal with particular circumstances, so maybe all will be well...however...
- What is certain is that at the outset there will be great uncertainty for defendants...so
- PAEs are highly likely to be early adopters...



Thank you for your attention

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