EPLAW
European Patent Lawyers Association

By mail: [redacted]

Advisory Committee Unified Patent Court
Attn. [redacted], Chairman

Date: 3 April 2026
Re: Call for input regarding distribution of UPC cases

Dear Mr. Chairman,

We refer to your request dated 2 March 2026 regarding the reasons for the current distribution of UPC cases between the different Divisions of the Court of First Instance.

In order to obtain broad input from our members all over Europe and the UK, we have asked our EPLAW members with the attached email regarding their views on this. Their feedback reflects a wide range of jurisdictions and professional perspectives.

In providing this feedback EPLAW as an organisation wishes to neutrally represent the views expressed by our members across the breadth of the organisation.This has not proved to be an easy exercise because the feedback has shown that there are strong feelings on the issue of case distribution which, perhaps unfortunately, divide almost exclusively into two quite polarised viewpoints. In several respects, differences emerge between respondents based in Germany and those based elsewhere. While there is broad agreement on factors contributing to the current distribution of cases, views diverge as to whether this distribution is problematic and what, if anything, should be done about it.

Below is a summary of the replies. Section I. deals with the reasons for the current distribution of cases as perceived by our members. Section II. addresses whether there should be any changes to the current system according to our members, and Section III. summarizes suggestions by our members if changes are considered desirable or necessary.

We thank the Advisory Committee for the opportunity to provide the views of our members regarding this issue. As an organization whose aim is the promotion of equitable and efficacious handling of patent disputes in Europe and harmonization of the European patent litigation system, we are very happy with the enormous success the UPC has already become from the moment it opened

its doors in June 2023. EPLAW stays fully committed to contribute wherever we can to the continuation and further expansion of the success and international acceptance of the entire UPC system; not only for now, but also for the long-term future.

Please do not hesitate to let us know in case your Committee has any follow-up questions. We are happy to discuss, as always!

Yours sincerely,

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Section I
What are the reasons for the current distribution of cases between the different Divisions of the CFI?

1. Historical concentration of patent litigation

- Historically, there was a higher concentration of (infringement) cases in Germany than in other European countries. Some German respondents have mentioned that on the basis of the German national allocation of case numbers, the German share of European patent cases was already high pre-UPC. This means that many patentees are familiar with the German system, its caselaw and its national practices.
- Also, this means there are many strong client ties between patentees from various countries and German law firms. Our members from German firms have indicated that in principle, they prefer recommending their clients to file infringement cases in German LDs of the UPC, because i.a.:
    - they know the German judges (two out of the three or four of the German LDs) and how they think and operate based on previous national experiences and traditions,
    - they can file their cases in their native German language, although often (depending on representation by the Defendants) the official language of the case may subsequently be changed to English, and
    - logistically, the German LDs are easier to travel to for them than LDs in other countries, which saves time and costs.
- In view of the above, various respondents from a range of countries perceive the current UPC distribution partly to be a consequence of the continuation of pre-UPC national litigation practices[1].

2. Perceived predictability, experience and quality of divisions chosen

- German LDs are noted by many respondents from all countries as offering experienced judges and predictable procedural outcomes for plaintiffs.

[1] We do not know the amount of patent cases in Germany compared to the amount of patent cases in other European countries before June 2023, and how this compares with the current division of patent cases in Europe. Official data does not seem easily accessible. If the Advisory Committee finds that such historic data would be important for the question of the aims of the distribution of UPC cases going forward we advise the Administrative Committee to collect and report on the relevant underlying data, so that assumptions and conclusions can be based on facts instead of perceptions. We would be glad to assist the Advisory Committee with that, to the extent we can.

Some respondents emphasize active case management and structured hearings with preliminary opinions from the court.

- Some respondents refer to the recent increase of cases before the Dutch LD in this respect. The Dutch LD like the German LDs has two experienced national judges, applies active case management, and has structured hearings (with a summary of the case and arguments / questions by the Court at the start, somewhat comparable to the German preliminary opinion but more open / less 'conclusive')

- The vast majority of respondents from non-German countries mention that for their clients, rightly or wrongly, German judges have a reputation of being more patentee-friendly than non-German judges[2].
    - One reason for this perception is historical: the national bifurcated German system has always been generally perceived to be favourable to patentees.
- Another reason for this mentioned by the respondents is the large extent of favourable experiences of patentees in SEP-cases before German national courts, which may explain why many SEP-related cases are being filed in German LDs.
- Various German respondents on the other hand mentioned that according to their statistics, in practice the German LDs do not stand out compared to other LDs in the overall percentage of wins for patentees.
- Some respondents noted that a number of the German LD judges had been particularly effective/successful in their efforts leading up to the launch of the new system in re-assuring the global litigation community as to the continuity of approach that might be adopted in their UPC local divisions.
- Various respondents mentioned that in particular in a nascent court system with still evolving Court of Appeal jurisprudence/guidance, parties gravitate to venues perceived as staffed by highly experienced judges. Some members described this as a natural "confidence-building" phase that may diminish as UPC case law develops and practices converge.
- Many respondents, particularly from Germany, consider predictability of panel composition an important and even decisive factor in forum choice.

[2] We assume that the UPC may have statistics showing whether there is actually any substantial and statistically relevant difference in outcomes between the various LDs.

- Other respondents do not support this while mentioning that in many other European jurisdictions claimants cannot essentially choose a judge. In their perception, this may undermine the appearance of judicial independence and impartiality.

3. Validation strategies and jurisdictional constraints

- European patents are often validated in only a small number of UPC states but usually including Germany.
- The defendants' domicile / place of infringement may anchor jurisdiction in Germany, although defendants often are or also include companies domiciled in other countries, and/or active in more countries besides Germany.
- This effect may diminish as Unitary Patent uptake increases.

4. Other reasons

- Some respondents have mentioned they prefer to litigate in German language, this only being available in German and Austrian LDs.

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Section II
Should there be any changes to the current system to promote a more even distribution of cases?

The responses from our members were almost 50/50 divided on this. The responses show that their perspectives really depend on their nationality, particularly respondents from Germany on the one hand, who provided around 50% of the overall responses, and respondents from other countries on the other hand, who provided the other around 50% of the overall responses:

Respondents from Germany: "Satisfactory / too early to intervene"

- Particularly EPLAW members from Germany mention that they do not see the current uneven distribution of cases before the divisions of the UPC as a problem or concern. They emphasize that apparently the majority of claimants want to file their cases before a German LD (for reasons set out above), in line with pre-UPC numbers/percentages. They are concerned that limiting those claimants' ability to do so may be harmful for the success of the UPC system.
- They state that claimant forum choice is a key feature of the UPC design and a driver of early system uptake. They emphasize that the UPC still competes with national courts, particularly the German Landgerichte, and also with non-European fora. They mention that reducing forum choice - e.g. through mandatory redistribution or less foreseeable panel composition - leads to reduced predictability which could materially increase litigation risk and therefore reduce attractiveness. They mention that this may prompt users / cause them to revert to national and/or non-European litigation strategies.
- Several members urged that any evaluation be data-driven and aligned with the UPCA's built-in review timelines.
- The German respondents believe it is in any event too early to intervene in the current uneven distribution of cases. They believe that distribution may become less uneven over time and are worried that interventions during the transitional period may increase attractiveness of competing national courts.

Respondents from other countries: "Concerned / not too early to intervene"

- The majority of responses from EPLAW members from all countries acknowledge the attractiveness of forum choice for claimants, and also that the success of the UPC in terms of case numbers is demonstrated in the large number of cases, the vast majority of which has been filed before the German LDs (for the reasons set out above).

- Some responses mentioned that the choice should not only be given to patentees but also to non-patentees in relation to DNI actions.
- The non-German respondents are concerned however that in the medium and long term, leaving the current uneven distribution as is or a possible further increase thereof may risk:
    - undermining the UPC's pan-European character;
    - limiting judicial diversity at first instance;
    - slowing capability-building in under-used divisions; and
    - weakening political support among UPC Member States and potential future joiners. Some members considered that additional capacity expansions in already dominant venues may exacerbate these concerns and intensify "German court" perceptions.
- Some non-German respondents also indicate that a court's function is not to be 'attractive' (i.e., attract work in competition with other competent courts, which they believe may give rise to an incentive to be more patentee-friendly than the other competent court), and they challenge the position that courts should be competing with each other.
- Our German members on the other hand have a tradition of and are used to nationally competing courts, and do not believe that this competition has been or will be harmful or create improper incentives. They believe competition will push quality and speed. Some argue that an element of competition between local divisions, particularly in respect of procedural process and transparency, may lead to an attractive overall court system.

Section III
Suggestions for potential changes

The following suggestions we have received seem possible without having to amend the UPCA, and could be implemented (or continued) in the short term:

1. Transparency and information tools

Publish regularly updated division-level workload metrics, average time-to-interim decisions and time-to-hearing / decision, to enable informed claimant choice and reduce information asymmetry.

2. Voluntary transfer mechanisms

Offer transfers to another competent division where the seized division is unlikely to meet target timelines, e.g. in response to filing the Statement of Claim, typically on a voluntary basis (many members favour requiring claimant consent; some support court-managed transfer processes with party input, which may not be possible within the current legal framework).

3. Non-local judges as Judge Rapporteurs in more cases

Under Art. 18(3) UPCA, the President of the Court of First Instance has the power to allocate judges. This power could be used to appoint a non-local judge as Judge-Rapporteur in more cases to give them more exposure and add to their experience. We understand this is already tested in some LDs.

4. Presiding judge can be any judge on the panel

Some suggested that the presiding judge could be appointed on a case-by-case basis. This could sometimes be the third, non-national judge in panels comprising two LQJ's from the same country. This could give the non-national judge more exposure and add to her/his experience.

5. Practice convergence ("make more divisions equally attractive")

Encourage all divisions to adopt practices viewed as increasing predictability and efficiency (e.g., early guidance on issues for the hearing, robust case management, consistent approaches to evidence/confidentiality/security for costs, and broad practical availability of proceedings in English).

6. Judicial allocation and secondments (non-legislative)

Increase cross-division allocation of judges to build user confidence in under-used divisions while maintaining predictability (e.g., fixed-term assignments of certain pool judges to particular divisions; more frequent appointment of non-local judges as Judge-Rapporteur in suitable cases; and structured judicial

secondments – we understand some of these suggestions are already put in practice by some LDs).

7. Capacity decisions and signaling

Some members suggested pausing or reconsidering further expansion of panels in already dominant divisions as a policy signal, at least until better data is available. Others cautioned that limiting capacity could slow proceedings in those LDs and may reduce UPC attractiveness in general, potentially shifting cases back to (German) national courts.

The following suggestions from our members will require amendments to the UPCA:

8. Declarations of non-infringement (DNI) competence reform

Enable stand-alone DNIs to be filed in Local/Regional Divisions (rather than only Central Divisions), and/or prevent tactical neutralisation by subsequent infringement filings. Some members argued this would improve equality of arms and could indirectly diversify forum use. If the perception, right or wrong, of some patentees is that the German LDs are the most favourable divisions for patentees, companies who want to get clarity about non-infringement may want to choose other Local or Regional Divisions for their DNI's to 'clear the way'.

9. Panel-composition reforms to reduce "home-court" effects

Limit the number of local-national legally qualified judges on a panel; prevent any single nationality from forming a majority; or revisit the "local judge" concept. Proponents argue this would reduce judge-selection incentives and reinforce a visibly international judiciary. Opponents warn it would reduce predictability and may create practical staffing and cost challenges.

10. Language regime changes

Make English the default or sole language of proceedings to facilitate broader judge mobility and reduce language-driven venue advantages. Others emphasised that language options were a politically important element of UPCA acceptance and remain relevant for certain litigants.

11. Opt-out regime adjustments

Retain the opt-out as a permanent feature even after the transitional period, to preserve user choice and address concerns about cost and venue concentration.

12. Centralised docketing / registry allocation models

File actions centrally (to the Registry) with allocation among territorially competent divisions based on caseload and objective criteria, with appeal or review safeguards. Some versions include random assignment within the set of competent divisions; others contemplate managed assignment to achieve timeliness and balance. This was not a very popular solution amongst the respondents.

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