

New opportunities for the profession, and for women

Catherine Mateu
Armengaud & Guerlain
Paris

Much has been written about the consequences in patent litigation of the “Patent Package,” which will create harmonized patent protection in the European Union through a Unified Patent Court and unitary patent protection. But not much has been said regarding the impact of this development for the women who practice intellectual property litigation.

For a long time, this type of litigation was the domain of an old boys’ club. Even today, transnational or pan-European patent disputes are widely perceived to be “hard IP,” while trademark and designs are considered “soft IP.” The former is practiced mainly by men; the latter is reserved largely for women.

However, the presence of distinguished female experts in the preparation of the “Patent Package” shows that this is changing. And as the new system is put in place, requiring IP practitioners to adapt their skills and deepen their knowledge, it’s a great time for more women to step to the forefront of our practice.

Who are these women who have contributed their expertise to this pan-European project? There is Eileen Tottle, the head of the secretariat of the preparatory committee of the Unified Patent Court. Alice Pézard is part of the drafting committee for the Rules of Procedure of this Court. And of the 22 professionals who offered their comments on the Rules of Procedure, at least five, or nearly 20 percent, were women.

This “Patent Package” has also been energetically promoted by Margot Fröhlinger, principal director in patent law and international affairs at the European Patent Office.

These women will be among those participating in conferences to promote and publicize the new system, effectively becoming the faces of IP expertise in Europe. Hopefully, they will also be an example for other female lawyers, encouraging them to become the experts in their own firms and to share leadership roles with their male colleagues.

With the coming changes, men and women will be on equal footing when it comes to taking the new European reality on board. Beyond the questions of applicable law, the scope of jurisdiction of the Unified Patent Court will need to be studied, as will the new possibility of appealing decisions from the European Patent Office. There will also be strategic issues to consider regarding conflicts of jurisdiction.

The unified patent is subject to conflict of law rules as set in the Patent Package: Sometimes the applicable law will be that of the relevant member state, at other times the rules of the Convention of the Unitary Patent will apply.

On one hand, infringement is defined according to the law applicable to the Unitary patent, based on the main place of business of



the applicant (Article 5.3 of Regulation 1257/2012). On the other hand, there are limits to the scope of unitary patents, in Articles 25 to 30 of the Agreement on the Unified Patent Court. Therefore, for substantive rules that have not been harmonized by the agreement, applicants will have to carefully consider which law is most patent-friendly to their industry.

Furthermore, the Unified Patent Court will have jurisdiction not only for Unitary Patents but also for European Patents in general, as well as for supplementary protection certificates.

The new framework also allows, for the first time, the appeal of administrative decisions from the European Patent Office.

Lastly, the agreement contains several provisions for establishing which division of the new court has jurisdiction in a particular case. To be sure, we know how to determine which court has jurisdiction in specific cases. But now, with the creation of a new, pan-European jurisdiction, the legal landscape will have to be studied anew by all legal practitioners.

These are the main challenges facing our profession in the coming years, but others will surely arise as the Unified Patent Court begins to flex its muscles. And for women in particular, there will be plenty of opportunities to show that expertise in intellectual property isn’t the specialty of an old boys’ club.

FOR A LONG TIME,
THIS TYPE OF
LITIGATION WAS THE
DOMAIN OF AN OLD
BOYS’ CLUB