



One year later in the UPC: First insights from Darts-ip

Introduction

On June 1, 2024, the Unified Patent Court (UPC) celebrated its one-year anniversary. This milestone marks an opportunity to draw insights on the activity of this unique international court.

Within this report, Clarivate™ provides an in-depth analysis of the litigation activity presented before UPC Divisions and considers the Courts' future direction and role alongside the European national courts and other major global patent jurisdictions.

These insights were obtained using Darts-ip™ patent case database, which turns legal and patent case documents into accessible, searchable and minable data, enabling Clarivate to extract a unique and comprehensive trend analysis on the UPC.

Executive summary

Relying on the Darts-ip IP case law database, Clarivate provides an in-depth analysis of the litigation activity before the Central and Local/Regional UPC Divisions.

Based on data collected from June 1, 2023, to May 31, 2024, this report covers the first year of the UPC, including the Court's activity, case analysis by industry and technology, activeness of the parties and representatives, languages and decisions.



Activity overview

- Infringement cases were consistent for the UPC's first year, averaging 10 filings per month.
- Revocation filings were less frequent, with an average of two cases per month.
- The number of decisions published by the UPC slightly increased every month: the number of decisions given in the second six months had an increase of 155% compared to the first six months of the Court.



Local vs. Central Division insights

- German Local Division accounted for nearly 80% of infringement cases, with Munich leading at 37.7% of all infringement cases filed before the UPC.
- The Paris Local Division was the only non-German court in the top five most active Divisions.
 - The Paris Central Division dominated revocation cases, receiving 26 filings compared with 2 in the Munich Central Division.



Case analysis by industries

- Electrical engineering was the most impacted technical field, constituting 39.8% of all infringement cases, followed by instruments at 22.6%, mechanical engineering at 16% and chemistry at 13%.
- Information and communication technologies (ICT) counted for 38.5% of all patents asserted before the UPC.
- The pharmaceutical sector represented only 3.4% of all UPC infringement cases.
- A different pattern was observed for revocation cases at the UPC. Electrical engineering was not the most impacted technical field, as it counted for only 28% of all industries. In contrast to infringement proceedings, instruments took the lead with 36%. Additionally, mechanical engineering and chemistry only counted for 8% each.



Party and representative dynamics

- The majority of the top 10 plaintiffs were all United States-based, except Panasonic Holdings, which is based in Japan, NJOY which is based in the Netherlands, Nokia Technologies which is based in Finland and Avago Technologies International Sales which is based in Singapore.
- The nationality of the top 10 main defendants was more evenly distributed (but still with five United States-based entities).
- The top 10 most active representative firms dealt with two-thirds (71.3%) of the total number of cases filed before the UPC.
- Non-Practicing Entities (NPEs) saw a notable increase in activity, comprising 11% of total infringement cases before the UPC.



Language distribution and use

- English and German were the predominant languages in decisions, at 49.8% and 43.5%, respectively.
- French, Dutch and Italian represented less than 7% of the languages used (respectively 2.9%, 1.9% and 1.9%).



Legal analysis

- Within its first year, the UPC addressed significant and frequent procedural and preliminary legal issues, including those relating to the balance of interest, proportionality, the admissibility of an action and subject matter jurisdiction.

By analyzing litigation data from the Court's inaugural year, we shed insight on the future direction of the UPC and its continued role alongside the European national courts and other major global patent jurisdictions.

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Overall insights into UPC activity

Evolution per action type over time

Figure 1 indicates that the total number of actions initiated monthly did not follow a regular trend in the sense that there was no routine increase or decrease. However, the UPC was most active in receiving actions from November 2023 to January 2024. Almost half of the total number of actions received in the Court’s first year occurred during this three-month period.¹

It is evident that all actions of counterclaims for revocation were initiated during an infringement proceeding.

The data shows that the UPC recorded counterclaims initiated by each defendant of the infringement case as a different action. This resulted in an overestimation of the number of counterclaims for revocation, indicating higher numbers than infringement case filings. What is more interesting to observe is that the number of counterclaims for revocation per infringement action was 62, showing that in less than half of the infringement actions there was at least one counterclaim for revocation.²

The UPC followed the same approach for applications. It counted applications for preserving evidence, provisional measures and orders for inspection as different applications.

All these applications were part of preliminary proceedings where the judge did not decide on whether the patent was infringed, unlike in an infringement action brought as a main proceeding. Within the first year, the most frequent action was the application for provisional measures. This number was three times higher than the sum of other applications shown in the figure.

Figure 1: Number of actions filed before the UPC

This table shows the number of different actions filed before the UPC per month. These actions are categorized according to the UPC where each action, whether of a preliminary, counterclaim or a main nature, is shown as separate type of proceeding.

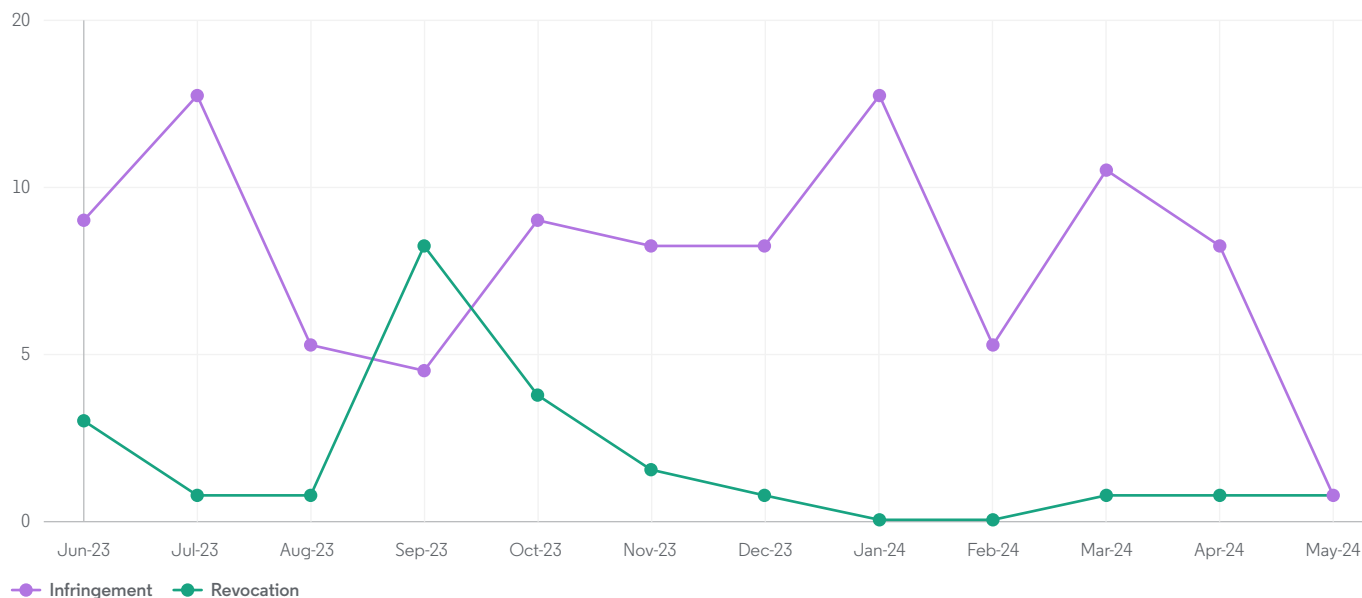
First action type	Jun 2023	Jul 2023	Aug 2023	Sep 2023	Oct 2023	Nov 2023	Dec 2023	Jan 2024	Feb 2024	Mar 2024	Apr 2024	May 2024	Grand Total
Application for an Order for inspection pursuant to RoP199			1										1
Application for preserving evidence	2		1	1		1					1		6
Application for provisional measures	4	2		1	2	1	3		1	6	3	1	24
Counterclaim for revocation				1	7	36	28	44	19	13	11	8	167
Declaration of Non-Infringement						1					1		2
Infringement	12	18	7	4	12	11	10	16	7	15	11	2	125
Revocation	4	1	1	11	5	2	1			1	1	1	28
Grand Total	22	21	10	18	26	52	42	60	27	35	28	12	353

¹ This peak is mostly explained by the activity of two cases filed during the summer of 2023 involving a high number of parties. Combined, these two cases brought 80 actions between November 2023 and January 2024.

² This relatively low percentage should be put into perspective with the very short three months deadline for the Statement of defence and Counterclaim for revocation (including the search for prior art) that is challenging for the defendant, especially if surprised by the statement of claim. This percentage can be compared to the percentage in national courts of European unified countries in the past five years, like France and The Netherlands, where the percentage of counterclaims for revocation are close to 100% (84% for France and 98% for The Netherlands).

Figure 2: Number of infringement and revocation case filings per month

Number of infringement and revocation cases brought before the UPC per month. The line charts are based on the numbers of cases in Darts-ip. Preliminary proceedings such as application to preserve evidence, application for provisional measures and Order for inspection are not included. Counterclaims for revocation are excluded from the revocation proceedings count. The data was extracted on May 31, 2024. The number of cases in May could be subject to change due to the delays in the publication of filing information by the UPC.



It is evident from Figure 2 that the number of infringement cases filed each month did not show an increasing trend. While some months revealed peaks with 18 and 16 cases (July 2023, January 2024) only one month reflected a low point of four cases (Sept 2023). Overall, the number of infringement cases appeared relatively consistent at an average of 10 infringement filings per month.

Looking at the revocation cases filed each month (two cases on average), the numbers were lower when compared with infringement cases. In some months there were no revocation cases filed, while apparent 'peaks' in filings, for instance 11 in September 2023, can be attributed to a majority of filings being brought by just one party, NJOY Netherlands.

Compared to infringement proceedings, the lower number of revocations cases may reflect extraneous factors including cost advantages of instigating opposition proceedings at the European Patent Office (EPO). Presently, the official fee before the EPO is €880 and the appeal fee is €2,925, whereas the official fee and the appeal before the UPC is €20,000. More importantly, the pace at which the UPC operates can be very costly in terms of human resources, as the Court works with very strict deadlines. In addition, when the patent is revoked during opposition proceedings at the EPO, it is revoked in all 39 EPC member states, compared to the UPC's 17.

However, there remain advantages to choosing the UPC over the EPO. For example, time to initiate revocation action at the UPC is not limited to the

nine-month period after the grant. Additionally, the short period of 12 months to provide on merits decisions can be a major factor in some situations between two competitors. Although UPC fees are initially high, they can be reimbursed to some extent if the patent is revoked. Finally, it is interesting to note that among the 27 revocation cases filed before the UPC, 44% (12) show a parallel EPO opposition case on the same EP patent, showing that frequently there was no choice between EPO and UPC.

As we look towards the future of the UPC, there will be much discussion about its advantages and disadvantages over the EPO with many organizations hesitant to take the side of the UPC without more comprehensive case law to review.

Activity among UPC Local Divisions

Munich Local Division took the lead in almost all types of actions including infringement, counterclaim for revocation, and applications for preserving evidence and provisional measures. In fact, the sum of all the actions initiated before the Munich Local Division comprised 41.7% of all actions initiated across all Local/Regional Divisions.

According to data provided by Darts-ip, the Munich Local Division had 134 actions (as counted by the UPC), compared to the following other Local Divisions:

- 49 in Düsseldorf
- 48 in Mannheim
- 28 in Paris, and
- 22 in Hamburg

The data shows that the German Local Divisions accounted for nearly 80% of all actions filed before the UPC Local/Regional Divisions. The Paris Local Division was the only non-German court in the top 5 most active Divisions.

Taking a closer look at infringement cases, a similar picture is seen. The Munich Local Division had 46 infringement cases, followed by:

- 26 in Düsseldorf
- 16 in Mannheim
- 11 in Paris, and;
- 7 in Hamburg.

Again, German Local Divisions represented almost 80% of all infringement cases filed before UPC Local Divisions (with Munich leading

at 37.7% of all infringement cases filed before the UPC), whereas Paris Local Division was the only non-German court in the top 5 most active Divisions.

It is important to note that forum shopping between the different Local and Regional Divisions of the UPC is possible to a certain extent: pursuant to article 33 UPCA (Unified Patent Court Agreement), the plaintiff of an infringement action can choose between the Local and Regional Divisions where the act of infringement occurs or where one of the defendants has its residence or place of business. If both parties agree, they can freely choose a Division (Article 33(7) UPCA).

Figure 3: Number of proceedings per Central and Local Divisions

Number of proceedings per Central and Local Divisions categorized by action types.

Type of action	Revocation	Infringement	Declaration of non-infringement	Grand Total
Munich Central	2	0	0	2
Paris Central	26	2	1	29
Grand Total	28	2	1	31

Type of action	Infringement	Counter claim for revocation	Application for provisional measures	Application for preserving evidence	Application for order for inspection	Declaration of non-infringement	Grand total
Munich Local	46	75	10	2	0	1	134
Dusseldorf local	26	17	6	0	0	0	49
Mannheim local	16	32	0	0	0	0	48
Paris local	11	16	0	1	0	0	28
Hamburg local	7	12	3	0	0	0	22
Nordic-Baltic local	6	11	0	0	0	0	17
Milan local	4	1	1	2	1	0	9
The Hague local	2	3	2	0	0	0	7
Vienna local	2	0	1	0	0	0	3
Brussels local	1	0	0	1	0	0	2
Helsinki local	1	0	1	0	0	0	2
Grand total	122	167	24	6	1	1	321

Figure 4: Number of infringement cases filed in national cases

Number of patent infringement cases filed during the respective period of 2020 to 2023 in the following Courts: Düsseldorf Landgericht, Munich Landgericht and Tribunal Judiciaire de Paris. The data is provided directly by the Courts.

Number of cases filing	Düsseldorf Landgericht	Munich Landgericht	TJ of Paris
2020	301	202	145
2021	286	262	174
2022	278	216	180
2023	237	215	186

Considering the activity on infringement case filings before the Düsseldorf Landgericht (the most active German national court in the 10 years before the launch of the UPC, determining 50% of all infringement cases filed in Germany), it is noteworthy to add that the number of infringement cases has declined since 2021. The number of infringement

cases filed before Düsseldorf Landgericht decreased by 5% between 2020 and 2021, then by 2% between 2021 and 2022, before decreasing further by 17% between 2022 and 2023. Meanwhile, the number of infringement cases initiated before the German UPC Local Divisions has been relatively healthy since

June 2023, standing at 95 cases. This suggests a possible partial shift to the UPC (especially to German Local Divisions) for infringement actions filed before German national courts. This shift might be more visible in the future, as two Dusseldorf judges were recently appointed to the second panel of Munich Local Division, as announced by the UPC.

Activity among UPC Central Divisions

Looking at the activity in the Central Divisions, there was a clear predominance of the Paris Central Division. 26 revocation cases were filed here compared to two at the Munich Central Division (only in charge of IPC classes C and F). More than 90% of the activity in central Divisions were seen in Paris Central Court. Yet, this distribution may evolve because of changes to the Central Divisions which occurred on June 27, 2024:

- the Milan Central Division hears the cases on patents belonging to IPC classes related to “Human necessities” (A, excluding Supplementary Protection certificate cases) which was under Paris Central Division until June 26, 2024.
 - Paris Central Division keeps cases pertaining to “performing operations, transporting” (B), “Textiles, paper” (D), “Fixed constructions” (E), “Physics” (G), “electricity” (H) and adds Supplementary Protection certificate related cases.
 - Munich Central Division remains in charge of “mechanical engineering” (F) and “chemistry, metallurgy” (C).
- 90%
of the activity in Central Divisions were seen in Paris Central Court.

Technology trends in UPC infringement and revocation cases

Figure 5A: Technology trends in infringement proceedings

Technologies reflect IPC classification of patents and not necessarily the industries where that patent is applied. Multiple IPC classifications can be assigned to the same patent, and multiple patents can be involved in one case which means multiple technologies will be counted for each technology field (total number for main industries above = 168; total number for subindustries below = 205).

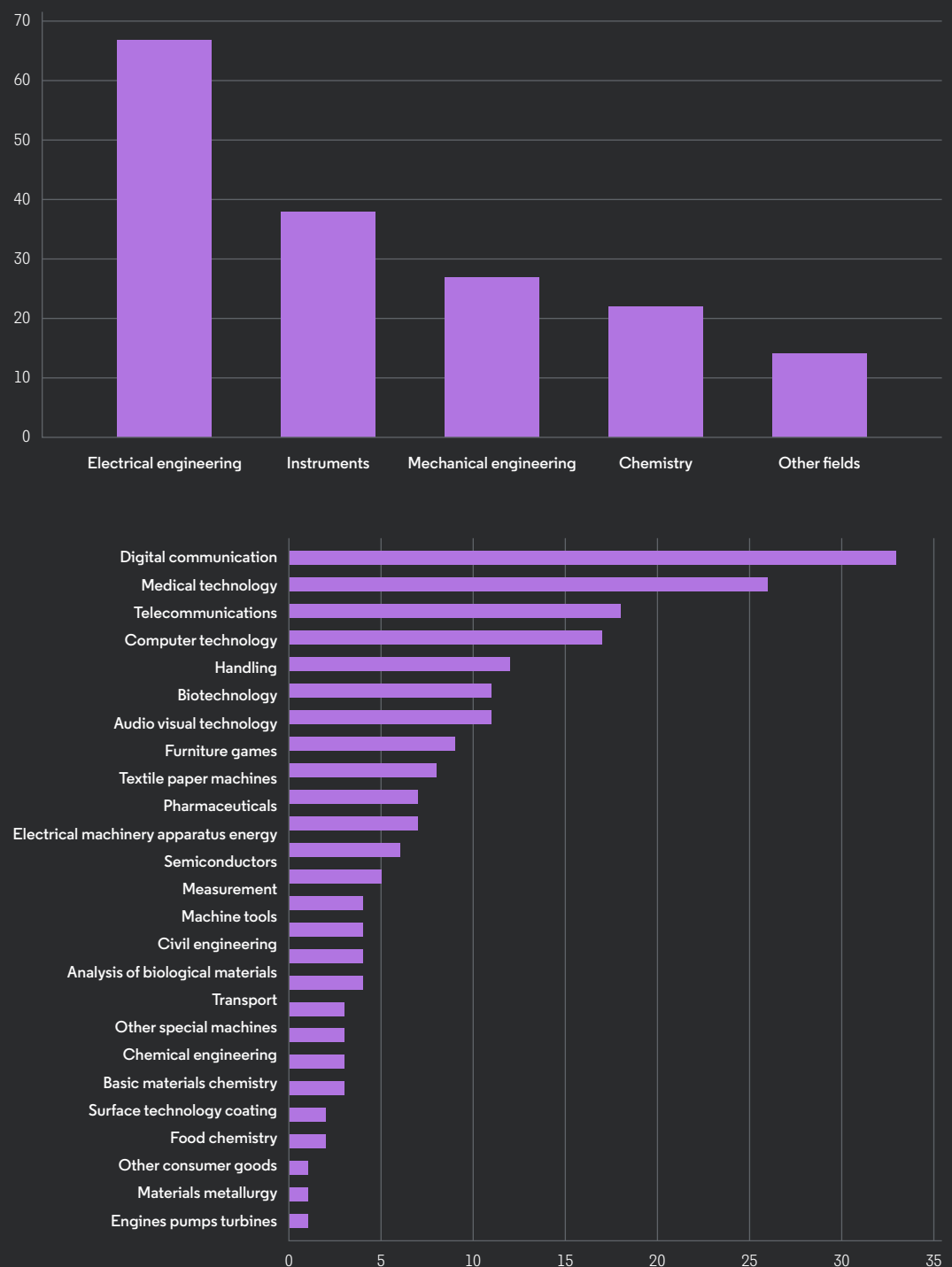


Figure 5B: Technology trends in revocation proceedings

Technologies reflect IPC classification of patents and not necessarily the industries where that patent is applied. Multiple IPC classifications can be assigned to the same patent, and multiple patents can be involved in one case which means multiple technologies will be counted for each technology field (total number for main industries above = 50 total number for sub-industries below = 56).

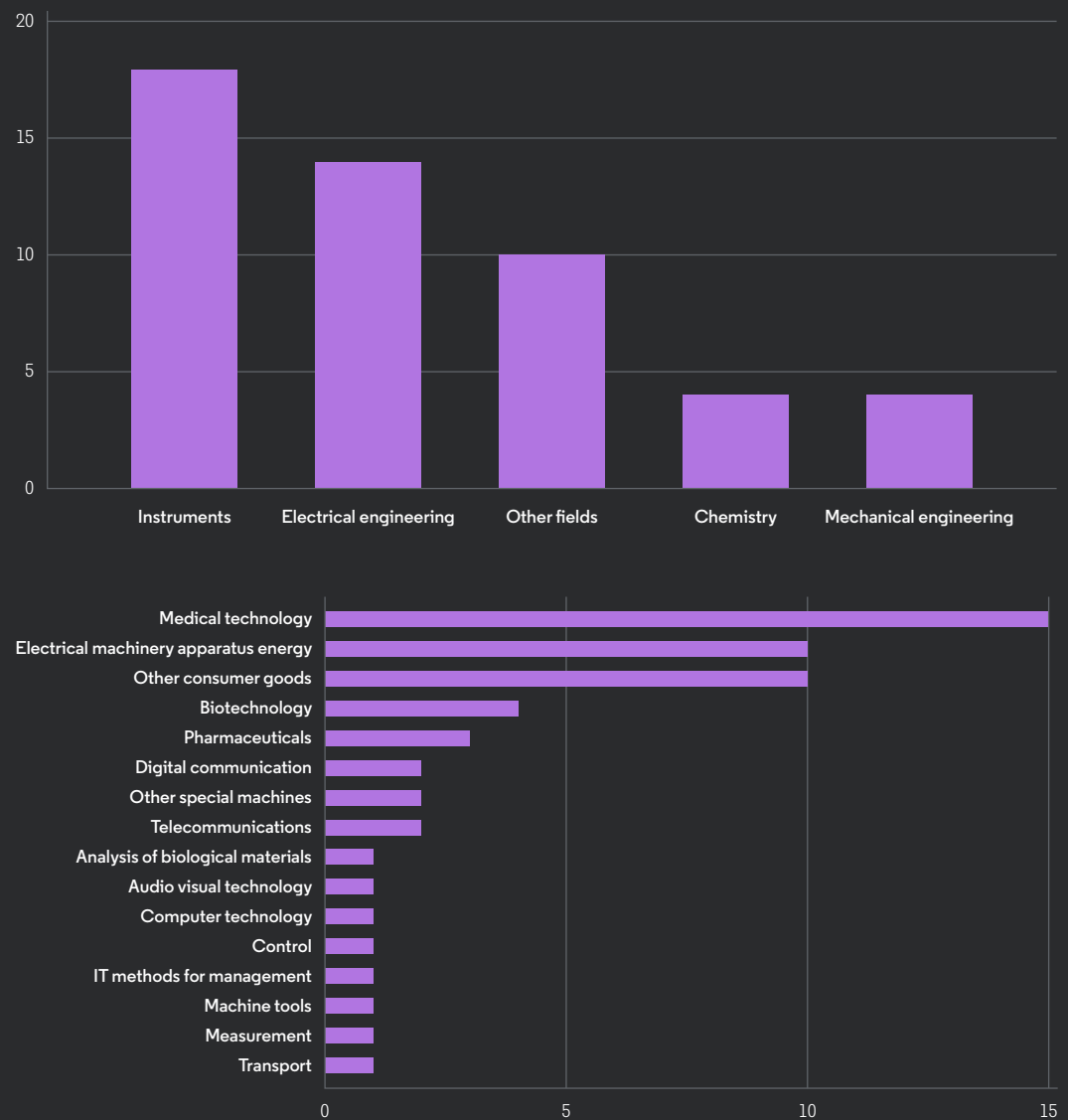


Figure 5A outlines the areas of technology where patent holders were most active in infringement cases before the UPC. Technologies were based on the International Patent Classification (IPC) Codes assigned by the respective patent offices when the patent application was received.

The IPC is a hierarchical system for classifying patents based on the areas of technology to which they belong. Darts-ip identifies the patents and the respective IPCs involved in the case.

- Electrical engineering was the most impacted technical field when it came to infringement cases before the UPC at 39.8%, followed by instruments at 22.6%, mechanical engineering at 16% and chemistry at 13%.
- Within electrical engineering, ICT (comprising digital communication, telecommunications, computer and audio-visual technology) counted for 38.5% of the patents asserted before the UPC as identified and catalogued by Darts-ip.

- The data seems to indicate that the pharmaceutical industry has been hesitant to use the UPC, at only 3.4% of patents asserted. Interestingly, the percentage of opt-out of European Patent (EP) in life sciences was lower than in other technical fields: 43.7% for life sciences, 50.6% for ICT, 50.7% for instruments and 55.2% for mechanical engineering.³

When comparing technology trends in revocation cases before the UPC (Figure 5B), electrical engineering was not the most impacted technical field, as represented only 28% of cases across the industries studied. In contrast to infringement proceedings, instruments took the lead with 36%. Additionally, mechanical engineering and chemistry only counted for 8% each.

Looking at the subindustries for revocation cases, ICT only accounted for 10.7% and pharmaceutical for 5.3% of the patent validity challenges before the UPC.

To assess whether a shift occurred for infringement cases in these main industries away from the national courts to the UPC, we examined the variations and compared German national courts with the UPC German Divisions, as almost 80% of infringement actions in UPC were initiated before the German Divisions.

38.5%
of the patents asserted
before the UPC were
classified under the ICT.

³ As of February 26, 2024, Clarivate data sourced from Innography™



Figure 6A: Technology trends in the UPC German Divisions in infringement cases

Technologies reflect IPC classification of patents and not necessarily the industries where that patent is applied. The figure shows the technology trends in infringement cases seen in the following UPC Local Divisions: Düsseldorf, Hamburg, Mannheim and Munich.

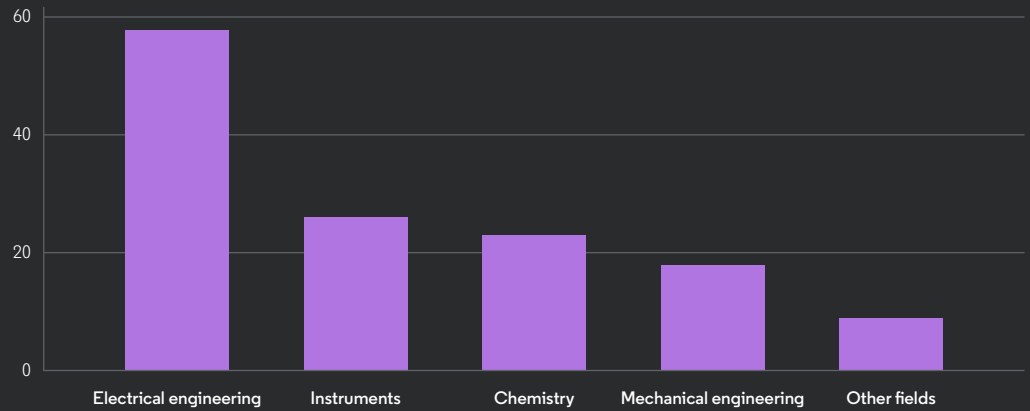
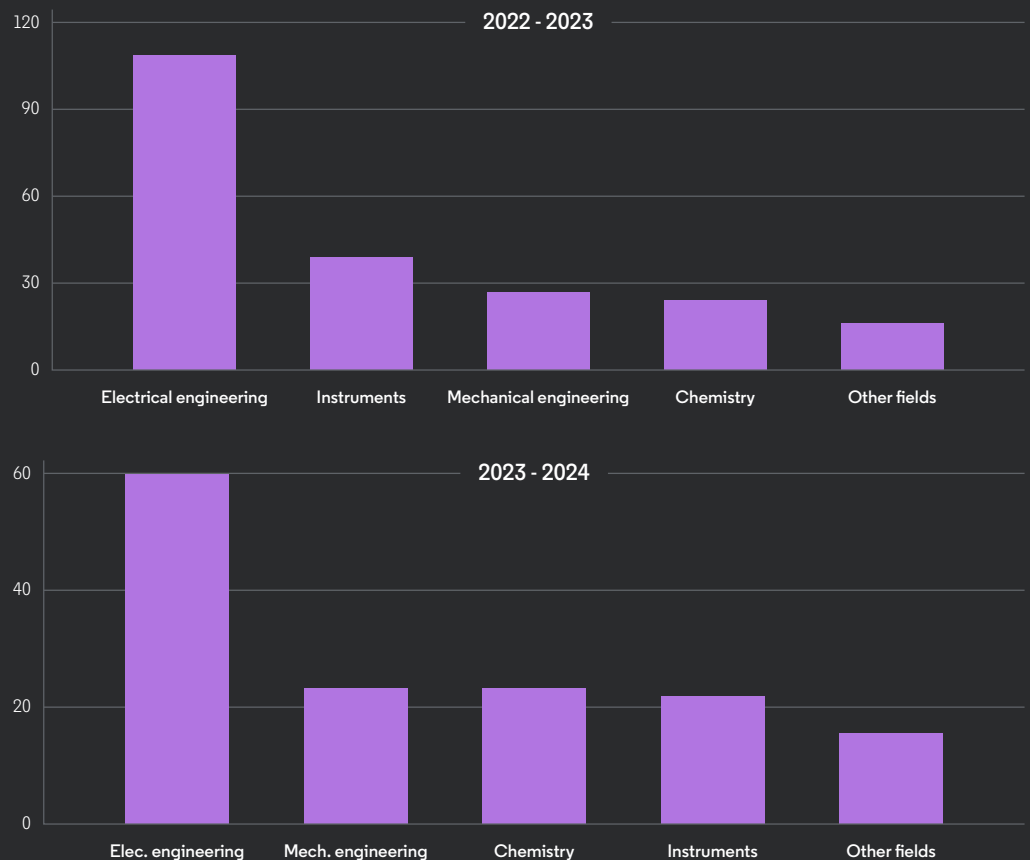


Figure 6B: Technology trends in the national German courts in infringement cases, respectively for 2022-2023 June and 2023 June – May 2024

Technologies reflect IPC classification of patents and not necessarily the industries where that patent is applied. The figures show the technology trends in infringement cases seen in the following courts that also have UPC Local Divisions: Düsseldorf Landgericht, Hamburg Landgericht, Mannheim Landgericht and Munich Landgericht.



Figures 6A and 6B outline the areas of technology where patent holders were most active in infringement cases before German UPC Divisions and German national courts from June 2022 to 2023 June and June 2023 to June 2024.

Comparing Figures 6A and 6B, we see that electrical engineering was at the top for both time periods, indicating that the launch of the UPC did not affect the fact that it remains the most preferred technology trend in litigation in German national courts. However, the number of cases for electrical engineering decreased by 82% (109 to 60 cases) after the UPC was launched. This significant decrease in the German national courts appears to be aligned with the strong activity of UPC Local Divisions in this technical area (see Figure 5A).

Instruments was in second position in the German national courts before the launch of the UPC and after a 130% decrease, went down to the 4th position

behind mechanical engineering and chemistry. That is contrasted by data from the UPC that shows instruments to be the second most litigated industry in the UPC. It is therefore possible to draw an inference that there has been a shift, at least in this classification, away from the national courts in favor of the UPC.

In other areas, such as mechanical engineering, the inference is more difficult to draw. Mechanical engineering was only in third place in the UPC German Local Divisions and saw a less significant decrease of only 50% in national German courts following the launch of the UPC (see Figure 5A).

Finally, chemistry was in fourth and last position among the main industries in UPC German Local Divisions. This technical field was also in the same position in the German national courts before June 2023 and became the second most active industry with mechanical engineering thanks to a smaller decrease compared to the industries cited above (with only a 33%

decrease). It is possible to infer that parties involved in chemistry have not materially shifted focus from German national jurisdiction in favor of the UPC.

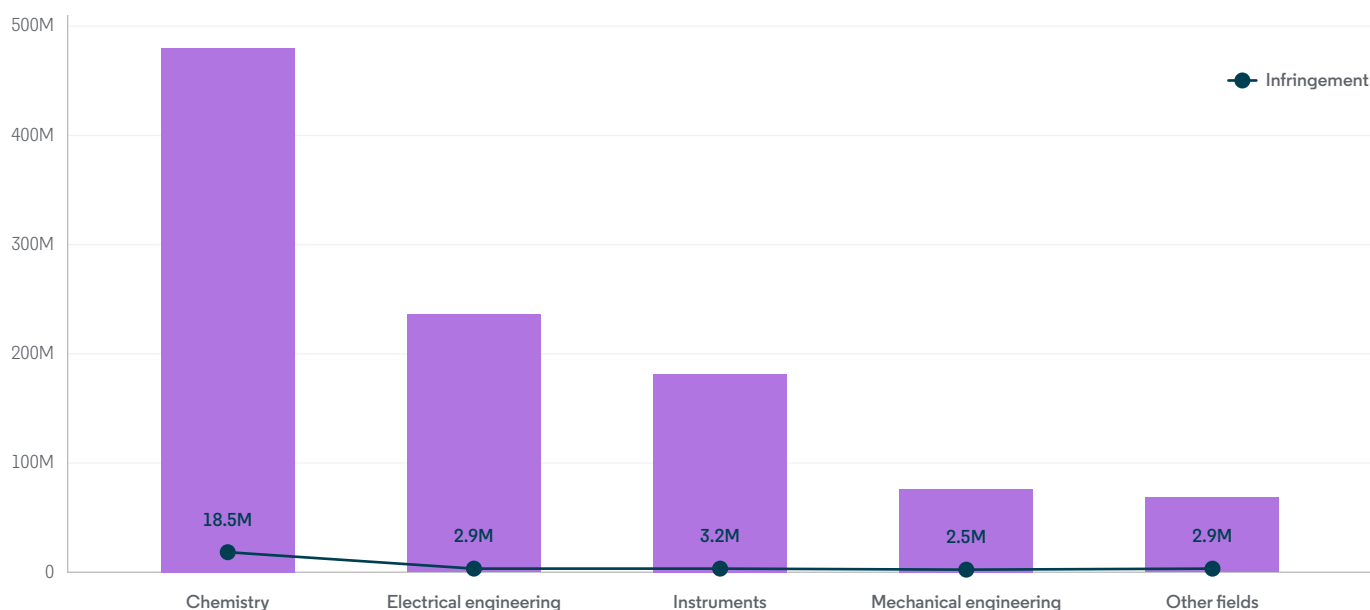
However, even if the activity before the UPC in respect of chemistry was very low (in terms of volume of cases) it was by far in first position before the UPC when it came to case value.

Looking at the sum of the case values of different action types per industry, chemistry took the lead — accounting for 46% of total case value at the UPC. Moreover, chemistry also led the way on average case value, more than six times the value of cases in other industries (although, those figures were tempered by the fact that they included four proceedings filed with a case value of €100million.)

While chemistry might not be the most preferred industry in the UPC (based on the number of cases), the case value was significantly higher than any other industry.

Figure 7: Sum and average graph per industry and case value

Case value per industry in the action types categorized by the UPC. Bar charts show the sum of case value of each action type per industry and blue line chart indicates the average of the case value of the different action types in the same industry.



Most active plaintiffs in UPC infringement cases

The top 10 plaintiffs on the left side of Figure 8 were ranked by the number of patent infringement actions filed before UPC Divisions. All were based in the United States, except Panasonic Holdings, which is based in Japan, NJOY which is based in the Netherlands, Nokia Technologies which is based in Finland and Avago Technologies International Sales which is based in Singapore. Moreover, among the 143 infringement cases filed before UPC, one third shows at least one plaintiff based in the United States

A similar observation can be made for the top 10 defendants on the right side of Figure 8 which were ranked by the number of patent infringement actions filed against them before UPC Divisions. All were based in the United States, except for the Guangdong Oppo and Xiaomi in China, Meril Life Sciences in India and Expert E-commerce in Germany.

Focusing on the type of parties, there were no infringement cases filed by a NPE in the first five months following

the launch of the UPC (first case in November and second in December), however, the activity of NPEs significantly increased after January 2024 with 14 infringement cases, as of May 31, 2024, 11% of total number of infringement cases before the UPC.

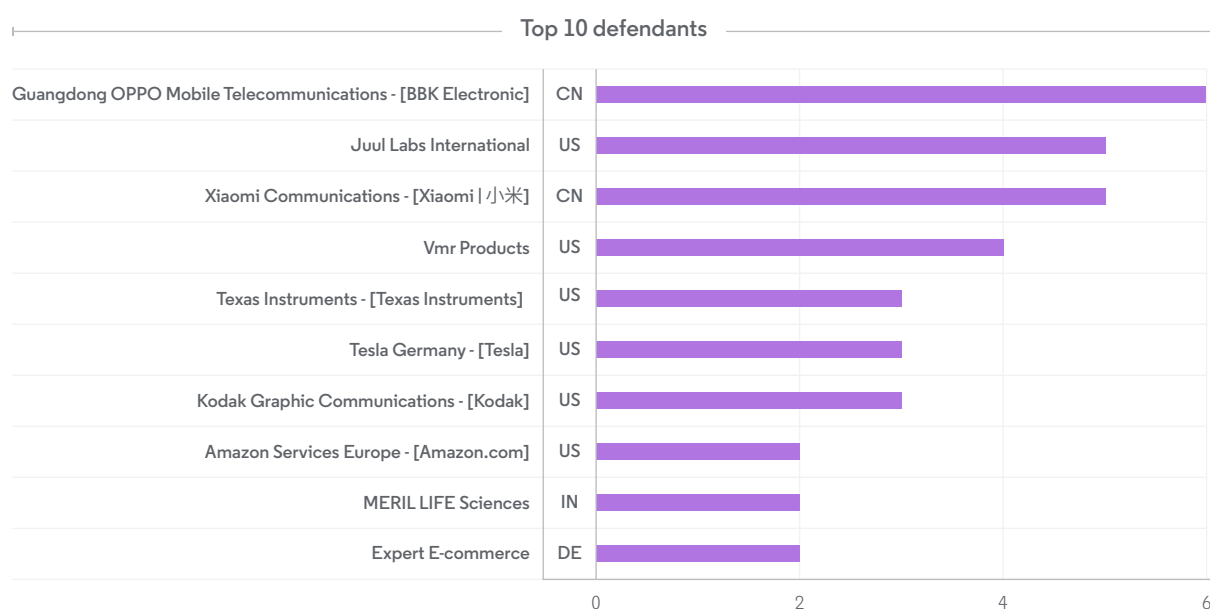
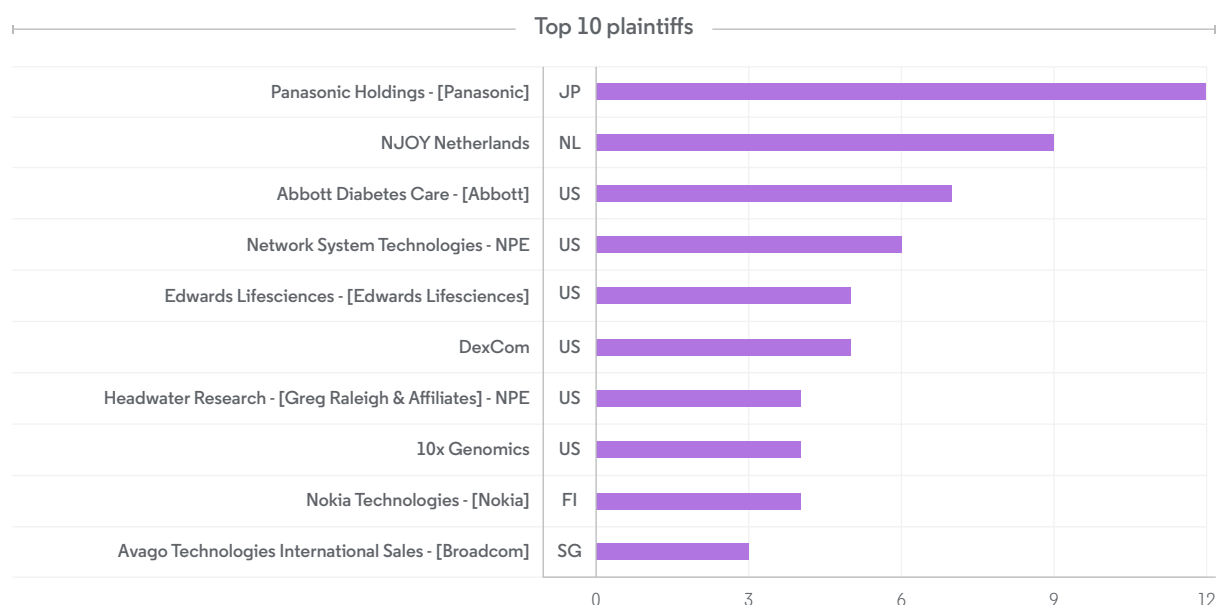
Moreover, in terms of academic institutions, Harvard University was the only university who filed (4) infringement cases before the UPC (exclusively before German Local Divisions), Harvard also counted one revocation case as a defendant while Osaka University counted two.

1/3

**of infringement cases
filed shows at least
one plaintiff based in
the United States.**

Figure 8: Most active parties in infringement cases filed before UPC Courts

The bar chart above reflects the respective number of infringement cases filed before the UPC by the top 10 most active plaintiffs. The bar chart below shows the top 10 most frequent defendants involved in infringement cases filed before the UPC. The data includes the application for preserving evidence, application for provisional measures and application for an Order for inspection unlike Figure 2 where these actions are excluded. The data is based on the case level information in Darts-ip meaning that if there is an application followed by an infringement action, it is counted under the same infringement case. The information of the country is based on the location of the main entity of each company. e.g. Tesla Germany is a subsidiary of the main entity Tesla which is based in the United States.



Was there a shift - Comparison of the activity of those plaintiffs before and after the UPC?

The UPC provides, for the first time, a means to enforce patents across 17 European states, creating an environment capable of rivalling that of other major global patent jurisdictions. The UPC also has the ambition to deliver highly effective relief to plaintiffs and should be far more cost-effective than other jurisdictions – for example, the United States and the United Kingdom.

Focusing on the infringement cases filed by Panasonic Holdings (Panasonic), which was the most active plaintiff in infringement cases before the UPC to date, we observed a significant difference in the geographical distribution of its infringement cases between the periods of June 1, 2020 to May 31, 2023 and June 1, 2023 to May 31, 2024, notably after the launch of UPC. During the first period, Panasonic filed 13 total cases over three years: one in Europe (Germany), seven in the United States, three in Mainland China and two in Japan. In comparison, since June 1, 2023, the UPC counts 12 infringement cases brought by Panasonic and one in Japan (13 cases in total).

Abbott Diabetes Care Inc., based in the United States, also showed a significant difference in the geographical distribution of its infringement cases between June 1, 2020 to May 31, 2023 and June 1, 2023 to May 31 2024. During the three years prior to the launch of the UPC, Abbott Diabetes Care Inc. brought two cases in the United States, one in the United Kingdom, and two in Germany (five cases in total). After the launch of the UPC, there were seven cases before the UPC in addition to three cases in Germany and one in the United Kingdom (11 cases in total).

For the two most active infringement plaintiffs before the UPC, there was a clear trend to concentrate activity within the UPC. This was true despite these plaintiffs previously favoring major jurisdictions outside Europe, such as the United States, Mainland China, Japan and the United Kingdom, during the prior three-year period.

Globally, it was also interesting to note that among the 78 patents asserted before the UPC in 2023, within infringement cases, 45% were not asserted in another jurisdiction worldwide. And, of those patents that were asserted in other courts additionally to the UPC, two thirds were at issue before a national German Court and one third before a United States Court (source: Darts-ip database).

**Among the 78 patents asserted before
the UPC in 2023, within infringement
cases, 45% were not asserted in
another jurisdiction worldwide.**

Most active representative law firms in infringement cases

In Figure 9, the most active representatives were ranked by the number of infringement cases filed at the UPC within the period of June 1, 2023 to May 31, 2024. This figure also reflects the respective percentage of infringement actions filed by each of

the most active representatives out of the total of infringement cases filed.

The top 10 most active representative firms dealt with 102 cases, more than two thirds (71.3%) of the total number of cases filed before the UPC.

Figure 9: Most active representative firms in infringement cases before the UPC

This figure also reflects the respective percentage of infringement actions filed by each most active representatives out of the total of infringement cases filed. Applications for preserving evidence, provisional measure and Order for inspection are included under infringement cases, as they are generally part of the preliminary proceedings of a main infringement action. (143 cases as of May 31, 2024).

Plaintiff representatives	Number of cases	% out of the total number of infringement cases filed before the UPC
Bardehle Pagenberg	19	13.3%
Kather Augenstein	18	12.6%
Taylor Wessing	13	9.1%
Simmons&Simmons	10	7%
Mcdermott Will & Emery	10	7%
Hoyng Rokh Monegier	9	6.3%
Bird&Bird	8	5.6%
Arnold Ruess Rechtsanwälte	5	3.5%
Linklaters	5	3.5%
Freshfields Bruckhaus Deringer	5	3.5%

Most used languages by UPC Divisions

As expected, the distribution of the language used in First Instance before UPC Divisions was not evenly distributed: English represented 49.8% of all decisions while German represented 43.5%. French, Dutch and Italian represented less than 7% of the languages used (respectively 2.9%, 1.9% and 1.9%).

Focusing on the languages used by UPC German courts, German made up almost two thirds (61.7%) and English just over one third (38.3%).

It is interesting to note that, on the contrary, UPC French Divisions used English in 80% of their decisions, while French and German were used respectively in 15% and 5% of their decisions.

80%

of UPC French Division decisions used English.



Figure 10: Languages distribution in First Instance UPC Divisions

Languages distribution in First instance UPC Divisions. The percentage represented by each language is calculated by counting the language used at the case level as defined by the UPC (a case is characterized by a CFI number).

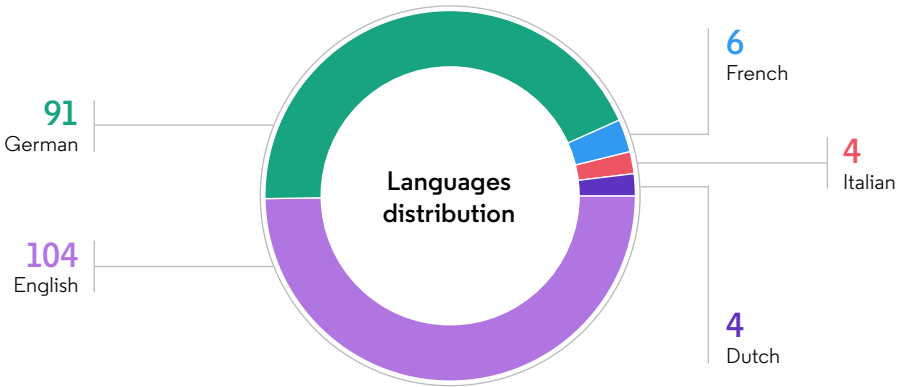
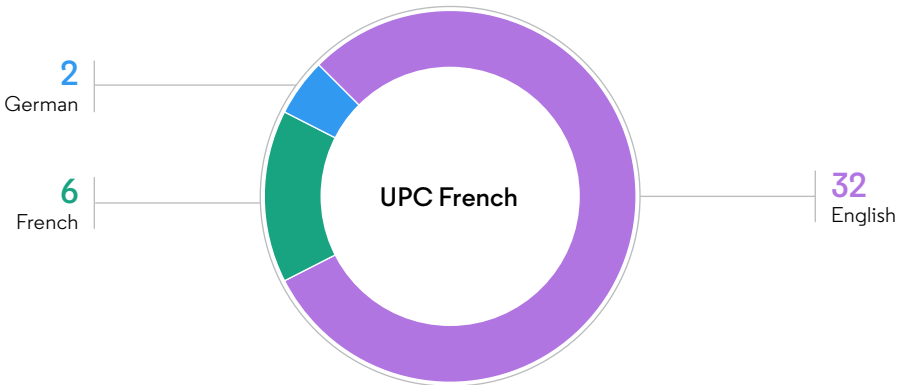
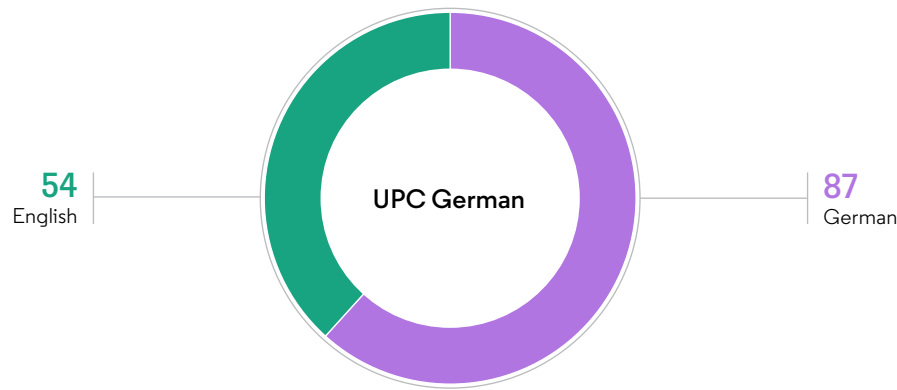


Figure 11: Languages distribution in First Instance UPC German (Figure 6a) and French (Figure 6b) Divisions

Languages distribution in First instance UPC German and French (Local and Central) Divisions. The percentage represented by each language is calculated by counting the language used at the case level as defined by the UPC (a case is characterized by a CFI number).



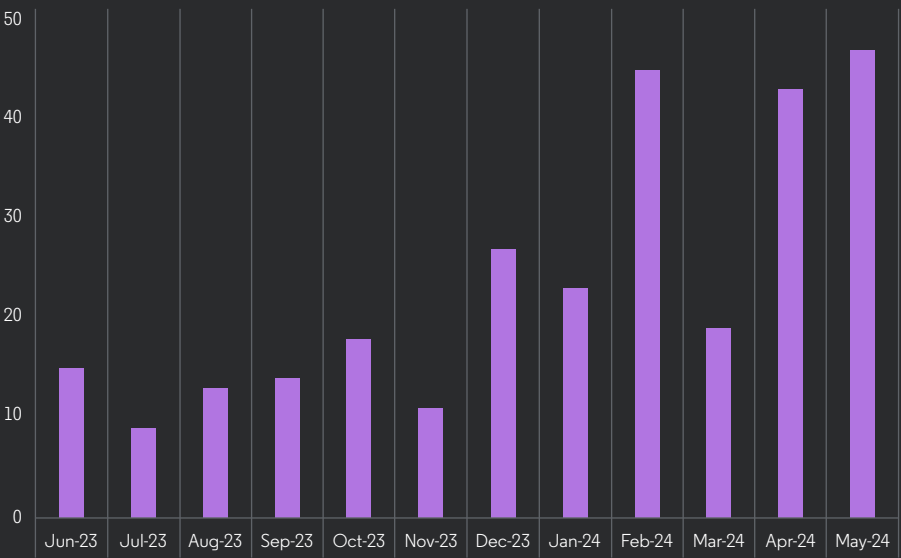
Trends on the decisions from UPC Divisions

Overview on the number of decisions

The number of decisions published by the UPC slightly increased every month (with notable peaks in February, April and May 2024 and a slight decrease in July and November 2023 and March 2024). The number of decisions given in the second six months had an increase of 155% compared to the first six months of the Court.

Figure 12: Number of decisions given by the UPC

The bar chart represents the number of decisions given monthly by the UPC. The graph does not consider the procedural information that is given by the Court such as only giving notifications regarding when the hearing will be held and the documents to be submitted to the Court before a certain date.



Content of the decisions from UPC Divisions - main legal discussions

While awaiting the UPC's first merits decisions, the Divisions of the UPC have already addressed interesting points of law of a procedural and preliminary nature.

Among the most frequent and interesting legal discussions found in the "Dixit Curia – UPC" tool of Darts-ip,⁴ were decisions relating to legal principles such as balance of interest and proportionality (found in 60 decisions), admissibility of an action (in 31 decisions) and subject matter jurisdiction (in 27 decisions).

Those decisions were selected among decisions which were the subject of a headnote by the UPC judges showing a certain level of interest in the legal discussion.

Out of the 60 decisions mentioning balance of interest or proportionality, the Düsseldorf Local Division applied the principle of weighing up interests to conclude:

"...when deciding an application to grant protection for the allegedly confidential information, the court must 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."

Düsseldorf Local Division, Fujifilm vs. Kodak, upc-ord_7096-2024, CFI_355/2023, 2024/03/27

Moreover, in the context of the protection of business secrets and the restriction of access to information to certain persons, the Düsseldorf Local Division, having the opportunity to apply the principle of proportionality, held that, according to R. 262A.6 Rules of Procedure (RoP):

"...the number of persons granted access to confidential information must not be greater than is necessary to comply with the parties' right to an effective remedy and a fair trial, and the circle of those authorized to access must include at least one natural person from each party and their respective lawyers or representatives.

Since the group of people having access to the (supposedly) confidential information must not exceed the number necessary to comply with the parties' right to an effective remedy and a fair trial, the circle of those authorized to access must always be examined on a case-by-case basis and, if necessary and appropriate, adapted to the requirements of the respective procedure."

Düsseldorf Local Division, 10x Genomics vs. Curio Bioscience, ord_8550-2024, CFI_463/2023, 2024/03/11

⁴ Dixit Curia – UPC is a tool of Darts-ip providing direct access to UPC discussions, paragraph overview and analytics categorized by the legal topics.

In 31 decisions, the UPC Divisions addressed the question of the admissibility of an action. The UPC Court of Appeal notably held that:

“...there is an ambiguity arising when reading Article 62 UPCA (UPC Agreement) and Rules 220.1(c) and 224.1(b) RoP together, in combination with incorrect, or at least incomplete, information provided by the Court of First Instance, has led the appellant to believe that a two months’ time period applied for an appeal of an order.

The principle of the protection of legitimate expectations requires that the appellant under the exceptional circumstances of this case is allowed to rely on the information provided by the Court of First Instance that the applicable time period for lodging the Statement of appeal was two months, when in fact it was 15 days”

UPC Court of Appeal, Aim Sport vs. Supponor, ord_23089-2024, CoA_500/2023, 2024/04/26

In another decision, the Munich Local Division debated the admissibility of extending the action to include claims from another patent in suit after the conclusion of limitation proceedings. The Court concluded that:

“it was unreasonable for the plaintiff to assert the limited claims earlier, before the conclusion of the limitation proceedings, due to the risk of a further counterclaim for the revocation of the second patent.

As a separate means of attack, the counterclaim is not limited to a version of the claim that may have been asserted in a limited manner in the infringement proceedings. (...)

The patent holder did not have to take such a risk. It could wait for the outcome of the limitation proceedings.”

Munich Local Division, Huawei vs. Netgear, app_595631-2023, CFI_9/2023, 2024/01/18

In relation to subject matter jurisdiction, the Düsseldorf Local Division held that:

“if the panel has already dealt with both infringement and validity issues in a previous expedited procedure, a joint hearing of the infringement and invalidity counterclaims appears to be sensible and necessary for reasons of efficiency alone. (...)

It is also advantageous in terms of content, as it allows the same panel with the same composition to decide on both the validity and the infringement issue on the basis of a uniform interpretation. Such a uniform approach is all the more justified if the complexity of the technology in dispute - as here - is rather moderate in the known spectrum of patent disputes and the number of challenges to validity is also manageable.”

Düsseldorf Local Division, Ortovox Sportartikel vs. Mammut Sports group, ord_18121-2024, CFI_16/2024, 2024/04/15

In another decision discussing subject matter jurisdiction, the Hamburg Local Division stated that:

“the UPC has no jurisdiction to hear actions for damages brought on the basis of patent infringement proceedings which have become final and binding before a national court.

Article 32(a) UPCA confers jurisdiction on the UPC to determine damages only after a previous action for patent infringement has been brought before a chamber of the UPC. Article 32(f) UPCA confers jurisdiction only for actions for damages or compensation based on the provisional protection afforded by a published European patent application”

Hamburg Local Division, Fives ECL vs J.R. S.P. C.S. , act_559935-2023, CFI_274/2023, 2023/11/17

The Vienna Local Division concluded that the blocking mechanism means that the jurisdiction of the UPC can no longer be withdrawn by stating that:

“an application for interim measures - like an action - renders the utilisation of the exception rule in accordance with Rule 5 of the Rules of Procedure (“opt-out”) ineffective”.

Vienna Local Division, Cup&Cino Kaffesystem-Vertrieb vs. Alpina Coffee System, act-528738-2023, CFI_182/2023, 2023/09/13

Finally, it is important to mention two major concerns raised by practitioners before the launch of the UPC. The UPC:

- would separate the issues of infringement and validity.
- might unhesitatingly grant ex-parte preliminary injunctions.

Over the first year of the UPC, there are only a few decisions that addressed those concerns. However, in relation to the former concern, the judges of the UPC appeared to agree that infringement and validity should be addressed simultaneously, therefore there was no current indication that bifurcation would commonly occur.

(Düsseldorf Local Division, upc-ord_18121-2024, CFI_16/2024, 2024/04/15 ; Mannheim Local Division, upc-ord_7585-2024, CFI_223/2023, 2024/02/22 ; Mannheim Local Division, upc-ord_7586-2024, CFI_218/2023, 2024/02/22 ; Mannheim Local Division, upc-ord_7587-2024, CFI_216/2023, 2024/02/22 ; Mannheim Local Division, upc-ord_7453-2024, CFI_219/2023, 2024/02/22 ; Mannheim Local Division, upc-ord_7452-2024, CFI_210/2023, 2024/02/22 ; Mannheim Local Division, upc-ord_7584-2024, CFI_222/2023, 2024/02/22 ; The Hague Local Division, upc-ord_8243-2024, CFI_239/2023, 2024/02/15 ; Düsseldorf Local Division, upc-ord_589338-2023, CFI_201/2023, 2023/12/19).

In relation to the latter concern, although the decision has been based on specific circumstances (e.g. the occurrence of trade fairs), the UPC issued preliminary injunctions on an ex-parte basis notably because *“the opposing party has not been able to present the relevant prior art either in pre-litigation correspondence or in a protective letter filed by it”*, see the decision in **Düsseldorf Local Division, Ortovox Sportartikel vs. Mammut Sports group, upc-ord_592936-2023, CFI_452/2023, 2023/12/11.**

Conclusion

The launch of the UPC represents a significant development in the global patent landscape. The wealth of data from its first year of operation helps to contextualize valuable trends in global litigation and validate a strategic view of the UPC's role among and alongside the major global patent jurisdictions.

The data and analyses allow us to conclude that the UPC is becoming a preferential substitute for European national courts. This conclusion is based on the percentage of patents being asserted before the UPC that are not also being asserted in another jurisdiction worldwide and the important increase in the number of cases related to ICT and instrument industries in the UPC and simultaneous significant decrease in the European national courts. Moreover, the addition of new panels (like the one already created in the Munich Local Division) and the UPC's first merits-based decisions will only continue to generate global attention.

Furthermore, it was also interesting to note that among the patents asserted before the UPC in 2023, within infringement cases, 45% were not asserted in another jurisdiction worldwide.

As the UPC's jurisdiction continues to develop, the importance of using data to draw valuable conclusions about the global patent and litigation landscape cannot be overstated. Whether data-validated analyses are used to inform strategy or to predict important industry, technological and legal trends, data should be at the heart of every business decision.

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