

15 International Jurisdiction of the Unified Patent Court ^(*)

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The EU is now carrying forward preparation for the creation of a unitary patent protection (European patent with unitary effect and Unified Patent Court (UPC)) based on the “patent package.” According to the Agreement on the Unified Patent Court (UPCA; one of the pieces of the patent package), the UPC shall exclusively deal with actions concerning European patents with unitary effect and European patents, and Japanese companies and individuals will be also able to use the UPC. On that basis, this report first clarifies the rules for the international jurisdiction of the UPC which have yet to attract attention in Japan.

Next, this report considers the recognition and enforcement of judgments rendered by the UPC in Japan. For example, when the UPC renders a judgment ordering a Japanese company to pay compensation for damages based on infringement of a European patent with unitary effect and a court of Japan is requested to enforce the judgment, will the judgment be able to be enforced? In this regard, it is not clear at present how the requirements for the recognition and enforcement of a foreign judgment stipulated by Japanese law should be interpreted because a court of Japan has never been requested to enforce a judgment rendered by a court similar to the UPC. Therefore, the aforementioned point is considered.

I Introduction

This study is intended to consider how Japan is affected by the start of operations of “European patents with unitary effect” and the “Unified Patent Court (UPC),” for which the EU is now carrying forward preparation.

Preparation for the creation of European patents with unitary effect and the UPC is ongoing based on the “patent package” on which the EU reached agreement in 2012.¹ The patent package consists of two regulations, laying grounds for the creation of “unitary patent protection” in the EU (specifically, “Regulation (EU) No 1257/2012 of the European Parliament and of the Council of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection” (EU Unitary Patent Regulation)² and “Council Regulation (EU) No 1260/2012 of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements”³ (Regulation on Translation Arrangements)⁴ and one agreement (specifically, “Agreement on the Unified Patent Court”⁵ (UPCA)). These regulations and agreement are expected to become applicable within a couple of years. That is, it is considered essential to examine the content of a European patent system to be established in the near future and its effects

on Japan in order to ensure that discussion will be held on countermeasures thereon. Therefore, this study clarifies the rules for the international jurisdiction of the UPC which will be also available to Japanese companies and individuals and then considers the effects of this system with a special focus on the question of whether judgments rendered by the UPC (UPC judgments) will be able to be recognized and enforced in Japan. Before working on these issues, the next section creates an overview of European patents with unitary effect and the UPC, which are the premises of this study.

II European Patent with Unitary Effect and the Unified Patent Court

In the EU, it is now possible to obtain a domestic patent through the authority, such as a national patent office of an EU Member State or to obtain a European patent (EP) through the European Patent Office (EPO) that exists within the framework of the Convention on the Grant of European Patents (European Patent Convention; EPC).⁶ In addition to these two kinds of patents, a European patent with unitary effect becomes a new option.

European patent with unitary effect means an EP which benefits from unitary effect in the

(*) This is an English translation of the summary of the report published under the Industrial Property Research Promotion Project FY2014 entrusted by the Japan Patent Office. IIP is entirely responsible for any errors in expression or description of the translation. When any ambiguity is found in the English translation, the original Japanese text shall be prevailing.

Contracting Member States⁷ by virtue of the EU Unitary Patent Regulation.⁸ In order to obtain such a patent, the normal EPC procedure should be completed. After that, unitary effect is granted retroactively to the time of the grant of an EP if the patent proprietor submits the request for unitary effect up to one month after the publication of grant of the EP in the European Patent Bulletin⁹ and the unitary effect is indicated in the Register for unitary patent protection by the EPO.¹⁰

Unitary effect will occur only in EU Member States that participate in the enhanced cooperation, and where the UPCA has entered into force.¹¹ That is, unitary effect will not extend to states which have yet to ratify the UPCA, and even if such a state ratifies the UPCA afterward, unitary effect will not be extended retroactively.¹²

The UPC shall exclusively deal with actions concerning the aforementioned EPs, European patents with unitary effect, and supplementary protection certificates, and the UPC is established through the UPCA on behalf of EU Member States which have ratified it. This Agreement is an international agreement between the participating countries in the enhanced cooperation which are also Member States of the EU.¹³ Therefore, the UPC functions not as a court common to all EU Member States but as a court common to the 25 Contracting Member States, and it is positioned as part of the judicial system of these states.¹⁴

The UPC shall be subject to the same obligations under Union law as any national court of the Contracting Member States.¹⁵ That is, as the UPC is deemed to be a national court under Union law, the Court of Justice of the European Union (CJEU) is still guardian of the correct application and uniform interpretation of Union law.¹⁶ Therefore, regarding the issues of Union law, the UPC must rely on the case law of the CJEU, and must also request preliminary rulings in accordance with Article 267 of the Treaty on the Functioning of the European Union.¹⁷ Decisions of the CJEU shall be binding on the UPC.¹⁸

The UPC will comprise a Court of First Instance, a Court of Appeal, and a Registry.¹⁹ The Court of First Instance will comprise local divisions, regional divisions, and the central division. A local division will be set up upon request of a Contracting Member State, and a regional division will be set up upon request of two or more Contracting Member States.²⁰ The central division will have its seat in Paris, with

sections in London and Munich. The cases before the central division shall be distributed in accordance with a classification table that is based on the International Patent Classification managed by WIPO.²¹ The Court of Appeal will be set up in Luxembourg with the Registry.²²

In addition, a training centre intended to improve and increase judges' available patent litigation expertise is set up in Budapest, and a patent mediation and arbitration centre will be established in Ljubljana and Lisbon.²³

III International Jurisdiction and Competence of the Unified Patent Court

Next, this Chapter considers the rules for the international jurisdiction and competence of the UPC.

Article 31 of the UPCA provides that “[t]he international jurisdiction of the Court shall be established in accordance with Regulation (EU) No 1215/2012 or, where applicable, on the basis of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Lugano Convention).”²⁴ The “Regulation (EU) No 1215/2012” refers to “Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters” (Brussels I Regulation (recast)).²⁵ However, according to Article 89(1) of the UPCA, this Agreement can never enter into force before the amendment of the Brussels I Regulation (recast) regarding the Agreement enters into force. Therefore, “Regulation (EU) No 542/2014 of the European Parliament and of the Council of 15 May 2014 amending Regulation (EU) No 1215/2012 as regards the rules to be applied with respect to the Unified Patent Court and the Benelux Court of Justice” (amending Brussels I Regulation (recast)) was adopted as the amendment.²⁶ The latter regulation aims at ensuring compliance between the UPCA and Brussels I Regulation (recast), and second, at addressing the particular issue of jurisdiction rules vis-à-vis defendants in non-European Union States,²⁷ and it entered into force on May 30, 2014, and its application was started on January 10, 2015 together with the Brussels I Regulation (recast).²⁸

Article 1 of the amending Brussels I Regulation (recast) lists Articles 71a to 71d as rules to be inserted in Chapter VII of the

Brussels I Regulation (recast). The following puts a focus on Article 71b regarding the jurisdiction²⁹ of the UPC.³⁰

The Article 71b(1) establishes that the UPC shall have jurisdiction where, under the Brussels I Regulation (recast), the courts of a Member State party to the UPCA (that is, Contracting Member State) would have jurisdiction in a matter governed by that Agreement. Based on this rule, the UPC will have jurisdiction any time when a national court of one of the Contracting Member States would have jurisdiction based on the rules of the Brussels I Regulation. In Contrast the UPC will not have jurisdiction when no national court of a Contracting Member State has jurisdiction pursuant to the Brussels I Regulation.³¹ Incidentally, “a matter governed by that Agreement [the UPCA]” refers to types of actions listed in Article 32(1) of the Agreement on which the UPC has exclusive competence, including such as actions for infringements of patents and actions for revocation of patents.³²

The Article 71b(2) extends the jurisdiction rules of the Brussels I Regulation (recast) to disputes involving third State defendants domiciled in third States.³³ According to Article 6 of this Regulation, if the defendant is not domiciled in a Member State, in general, the jurisdiction of the courts of each Member State shall be determined by the law of that Member State. The first sentence of Article 71b(2) clearly specifies that for a matter governed by the UPCA, whether the UPC has international jurisdiction is determined by applying the jurisdiction rules of the Brussels I Regulation (recast) to such a defendant as well.³⁴

Furthermore, when determining whether the UPC has international jurisdiction, subsidiary jurisdiction under Article 71b(3) of the Brussels I Regulation (recast) is also applicable to defendants under Article 71b(2), in addition to the jurisdiction set forth in Chapter II of the Regulation. That is, where the UPC has jurisdiction over a defendant under Article 71b(2) in a dispute relating to an infringement of an EP giving rise to damage within the Union, that court may also exercise jurisdiction in relation to damage arising outside the Union from such an infringement. Such jurisdiction may only be established if property belonging to the defendant is located in any Member State party to the UPCA and the dispute has a sufficient connection with any such Member State.³⁵

Given the UPC has international jurisdiction, the Court of First Instance of a Contracting

Member State that has competence is then determined in accordance with Article 33 of the UPCA.³⁶ For example, Company X holds a European patent with unitary effect, and Company Y (German company) sells a product that infringes X’s patent in France and Estonia. In this case, Company X may bring an action for infringement of the patent against Company Y before a local or regional division located in France or Estonia where the infringement occurred pursuant to Article 33(1)(a) of the UPCA, or before a local or regional division in Germany where Company Y, the infringer, has domicile pursuant to Article 33(1)(b).³⁷ In addition, pursuant to Article 33(3), there is a rule that a counterclaim for revocation may be brought in the case of an action for infringement. The local or regional division concerned shall, after having heard the parties, have the discretion to decide whether or not to combine both the infringement action and the counterclaim. Incidentally, except for a certain action, for all other actions the parties can agree to bring them before the division of their choice, including the central division.³⁸

In this manner, the jurisdiction and competence of the UPC are decided, and a judgment is rendered after going through the proceedings. If enforcement of such a judgment is requested in Japan after the judgment becomes final and binding, is it admitted? The next Chapter considers the recognition and enforcement of UPC judgments in Japan which is an issue that has yet to be considered in Japan.

IV Consideration: Recognition and Enforcement of Judgments Rendered by the Unified Patent Court in Japan

In Japan, there is a system whereby when a judgment rendered by a foreign court satisfies certain requirements, the effect thereof is recognized in Japan and, based on the recognition, enforcement of the judgment is also admitted.³⁹

First of all, it is sufficient to satisfy five requirements stipulated in Article 118 of the Code of Civil Procedure in order to obtain recognition of a foreign judgment, and no special procedure is required. On the other hand, for admission of the enforcement of a foreign judgment, it is necessary that an action seeking an execution judgment for a judgment of a foreign court should be brought before a court of Japan and the execution judgment should be given by

the latter court. Moreover, pursuant to Article 24, paragraph 3 of the Civil Execution Act, the relevant judgment of a foreign court must have become final and binding and must also satisfy the requirements listed in the items of Article 118 of the Code of Civil Procedure. In examining the satisfaction of these requirements, it is prohibited to examine the finding of facts, etc. by questioning the content of the foreign judgment, pursuant to Article 24, paragraph 2 of the Civil Execution Act. It is considered that the same applies to the recognition of a judgment of a foreign court.⁴⁰

At present, there is no movement for conclusion of a convention concerning the recognition and enforcement of UPC judgments in Japan and the recognition and enforcement of judgments concerning EPs and European patents with unitary effect rendered by a court of Japan between Japan and Contracting Member States. Therefore, it can be said that whether a UPC judgment is recognized and enforced in Japan depends exclusively on the interpretation of the aforementioned requirements for the recognition and enforcement of a foreign judgment. On that basis, in what follows, those requirements are outlined and are considered from the perspective of UPC judgments.

1 Being a final and binding judgment rendered by a foreign court

The final and binding judgement rendered by a foreign court set forth in the main paragraph of Article 118 of the Code of Civil Procedure refers to a judgment rendered in the cases where a foreign organization that exercises jurisdiction, in general, an office called a court, judges a dispute between the parties over rights and obligations based on the court proceedings and consequently reaches a state where it is impossible to file an appeal by an ordinary method of filing an appeal.⁴¹

A special issue regarding this requirement is whether the UPC falls under a “foreign court” set forth in Article 118 of the Code of Civil Procedure. For example, the UPC is a court common to the 25 Contracting Member States. However, does a group of those 25 Contracting Member States fall under a “foreign country” as mentioned in the Article? In this regard, it is considered that the “foreign country” includes the communities of foreign countries,⁴² and from this standpoint, the UPC can be considered to fall under the “foreign country” as mentioned in Article 118. Moreover, the UPC seems not to fall under an “international court”⁴³ that is deemed not to fall under a foreign

court set forth in the Article, taking into account both the fact that the UPC is a judicial body which resolves civil disputes regarding EPs and European patents with unitary effect and the question of who has the capacity to be a party to the proceedings before the UPC.⁴⁴ Accordingly, the UPC is considered to fall under a “foreign court” set forth in Article 118 at least from the aforementioned perspective.

2 Indirect Jurisdiction

The indirect jurisdiction requirement stipulated in Article 118, item (i) of the Code of Civil Procedure requires that a foreign court that has rendered a judgment has had jurisdiction (indirect jurisdiction) over the relevant case.⁴⁵ It is generally thought that satisfaction of the indirect jurisdiction requirement is determined based on whether a rendering state is recognized to have international jurisdiction in light of Articles 3-2 to 3-9 of the Code of Civil Procedure, except for the cases where a court of Japan has exclusive jurisdiction (Article 3-10 of the Code of Civil Procedure).⁴⁶

Although whether a UPC judgment satisfies the indirect jurisdiction requirement would also be determined by the aforementioned method, there is a question about the subject of determination. That is, it is natural to consider that satisfaction of this requirement is determined based on whether a Contracting Member State where a ground of jurisdiction stipulated in the Brussels I Regulation (recast) is located had international jurisdiction from the perspective of the Japanese Code of Civil Procedure. However, in the case of the UPC, proceedings are not necessarily conducted in a state which has a ground of jurisdiction stipulated in the Brussels I Regulation (recast) (that is, by ordinary, a state which has international jurisdiction). In fact, proceedings are actually conducted under the UPCA in a state where the Court of First Instance that has competence is located. Therefore, the former state and the latter state may not be the same in some cases. In short, is it proper to make the former be subject to determination concerning satisfaction of the indirect jurisdiction requirement despite the existence of such cases? It seems to be necessary to consider this point in the future, as well as the possibility and appropriateness of making the latter be subject to such determination.

3 Service

The service requirement stipulated in

Article 118, item (ii) of the Code of Civil Procedure requires that a service of process was appropriately sent to the defendant who has lost the case in order to guarantee the right to request hearing and the right to participate in the proceedings as of the time of commencement of the proceedings.⁴⁷ The Supreme Court has indicated determination standards for satisfaction of the service requirement.⁴⁸ One of those standards is that if a convention on judicial assistance has been concluded between a rendering state and Japan and a service of documents necessary for the commencement of the court proceedings shall be sent by a method stipulated by that convention, the method stipulated by the convention must be observed. In this regard, Japan is a Contracting State of the 1965 “Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters” (Hague Service Convention). On the other hand, when the UPC sends a service to a defendant who has a domicile in Japan, the service will be sent by the method stipulated by the Convention pursuant to Rule 274.1(a)(ii) of the 17th draft of Rules of Procedure of the United Patent Court.⁴⁹ Therefore, in this case, according to the standards indicated by the Supreme Court in relation to determination concerning satisfaction of the service requirement, it would be checked whether a service is sent by a method that observes the Hague Service Convention. However, it can be said that whether a UPC judgment satisfies the service requirement set forth in Article 118, item (ii) of the Code of Civil Procedure depends on the UPC judgment itself, including the aforementioned determination result.

4 Public Policy

The points questioned in relation to the public policy requirement stipulated in Article 118, item (iii) of the Code of Civil Procedure are whether the content of a judgment is not contrary to public policy in Japan (substantive public policy) and whether the court proceedings are not contrary to public policy in Japan (procedural public policy).⁵⁰

Substantive public policy corresponds to public policy under private international law in a choice of law (Article 42 of the Act on General Rules for Application of Laws), and the determination standards therefor are also the same as those for public policy under private international law.⁵¹ An example foreign judgment that was deemed to be contrary to substantive

public policy is a punitive damages judgment rendered in California.⁵² However, the UPC will never render a punitive damages judgment, pursuant to the proviso to Article 68(2) of the UPCA.

Regarding the latter procedural public policy, there may be foreign judgments that become a problem from the procedural perspective other than those that become a problem in terms of the aforementioned indirect jurisdiction and service requirements. It is the procedural public policy requirement that deals with foreign judgments that avoided being subjected to procedural checks by the two requirements.⁵³ An example judgment that is contrary to procedural public policy is a judgment that is rendered with absence of the independence and neutrality of a judge. However, a UPC judgment seems not to violate the public policy requirement in this regard as long as the UPC has a constitution in accordance with Article 17(1) and (5) of the UPCA.

In the aforementioned points, UPC judgments seem to have a low likelihood of failing to satisfy the public policy requirement. However, the possibility of facing a UPC judgment that does not satisfy this requirement cannot be denied as long as satisfaction of the requirement is determined with respect to each individual judgment.

5 Mutual Guarantee

Regarding the “mutual guarantee” stipulated in Article 118, item (iv) of the Code of Civil Procedure, where there is reciprocity between the rendering state and Japan with regard to the recognition and enforcement system of foreign judgments, it means that a mutual guarantee exists between the rendering state and Japan.⁵⁴ The Supreme Court has indicated a determination standard for the existence of mutual guarantee,⁵⁵ and this standard is widely accepted.⁵⁶

In determining whether a UPC judgment satisfies this requirement, with what state is a mutual guarantee required to satisfy this requirement? As the UPC is a court common to the 25 EU Member States party to the UPCA, a “rendering state” subject to comparison and determination regarding satisfaction of the mutual guarantee requirement is not clear. For this reason, such a question will arise. Regarding interpretation of such “rendering state,” my current private views are as follows.

The first view is as follows: UPC judgments do not satisfy this requirement because the subject of determination concerning existence of

mutual guarantee is not clear as a rendering state should not be specified or should be specified but cannot be specified. According to this view, all UPC judgments do not satisfy this requirement, and can never be recognized and enforced in Japan.

Contrary to this, in the case of considering that a rendering state should be specified and can be specified, possible methods are (A) a method wherein the 25 states are considered to comprise one legal jurisdiction and (B) a method wherein one state is chosen from the 25 states (example methods of choosing one state are (a) a method wherein a state where the Court of First Instance that has actually rendered the judgment is located is considered to be a rendering state and (b) a method wherein a state that has international jurisdiction under the Brussels I Regulation (recast) is considered to be a rendering state).

Regarding Method (A), the propriety of recognition and enforcement of a judgment rendered by a court of Japan in EU Member States is determined in accordance with the domestic law of each EU Member State, irrespective of whether the judgment concerns a European patent with unitary effect. In other words, as each EU Member State sets the requirements for the recognition and enforcement of a foreign judgment, a mutual guarantee exists between Japan and some EU Member States such as Germany and the United Kingdom, while the mutual guarantee does not exist between Japan and another state such as Sweden, because the latter state requires existence of a convention to recognize the effect of a foreign judgment⁵⁷ Therefore, it seems to be impossible to consider the 25 EU Member States to comprise one legal jurisdiction and to conclude that a mutual guarantee “exists” or “does not exist” between Japan and the said legal jurisdiction.

Regarding the latter Method (B), a matter that can be pointed out in relation to both Methods (a) and (b) is the question of whether it is originally appropriate to see the existence of a mutual guarantee between a state specified by these methods and Japan. Moreover, existence of a mutual guarantee, and then, the propriety of recognition and enforcement, can be affected by the state which is specified as a rendering state. Even so, is it considered appropriate to specify a rendering state by such methods?

In this manner, interpretation of a “rendering state” significantly affects the question of whether a UPC judgment satisfies the mutual guarantee requirement, and consequently, it will

also affect the propriety of the recognition and enforcement of the UPC judgment. Therefore, it is necessary to hold active discussions in the future on such issues as whether Japan takes a stance of actively recognizing and enforcing UPC judgments.

V Conclusion

Regarding the European unitary patent protection of which operations will be started in the near future, this study first focused on the rules for the international jurisdiction of the UPC and clarified them. These rules have yet to attract attention in Japan, but it is considered useful to make clear the content thereof as long as Japanese companies and individuals can also use the UPC. Next, the effect of this patent protection was considered with a focus on whether judgments rendered by the UPC can be recognized and enforced in Japan. This is because, in the present situation, how to interpret the requirements for the recognition and enforcement of foreign judgments stipulated by Japanese law is not clear because Japan has never been requested to recognize and enforce a judgment rendered by a court like the UPC. At last, I want to briefly sum up considerations of these two points and express my private view.

First, regarding the former point, the rules for the international jurisdiction of the UPC, an unprecedented method for deciding international jurisdiction was adopted. Specifically, when any national court of the Contracting Member States has jurisdiction based on the Brussels I Regulation (recast), the UPC shall have (international) jurisdiction. Moreover, differing from the past, when determining whether the UPC has international jurisdiction, the Brussels I Regulation (recast) shall apply to a defendant who has no domicile in the EU Member States as well. Furthermore, a rule of subsidiary jurisdiction (Article 71b(3) of the Brussels I Regulation (recast)) that was newly set in the amending Brussels I Regulation (recast) is also applicable to such a defendant. It is pointed out in the EU that the jurisdiction stipulated by this rule falls under exorbitant jurisdiction.⁵⁸ It is worth paying attention to how this rule and other international jurisdiction rules which have been applied to the national courts of the EU Member States in the past, including theories formed through accumulation of judicial precedents, will be applied to determinations concerning whether the UPC has international jurisdiction.

Next, regarding considerations concerning the latter point, the propriety of the recognition and enforcement of UPC judgments in Japan, no foreign judgment can be recognized and enforced in Japan unless it satisfies all of the five requirements stipulated in Article 118 of the Code of Civil Procedure. Needless to say, given that whether a foreign judgment satisfies these requirements is determined with respect to each foreign judgment, there will naturally be judgements that can be recognized and enforced or otherwise. However, out of the five requirements, the requirements: being a “final and binding judgment rendered by a foreign court” and existence of a “mutual guarantee,” would affect the propriety of the recognition and enforcement of UPC judgments as a whole. This is because if the UPC does not fall under a “foreign court” set forth in Article 118 or if a “rendering state” of UPC judgments cannot be specified, all the UPC judgments do not satisfy these requirements and then cannot be recognized and enforced in Japan. In this regard, as considered in Chapter IV, the UPC is considered to be able to fall under a “foreign court” set forth in Article 118, but it is considered necessary to examine satisfaction of the mutual guarantee requirement again, pending future discussions. Therefore, my present private view is that there is both the possibility that UPC judgments as a whole will be recognized and enforced in Japan and the possibility that they will not. On this basis, it can be said that, at least when bringing an action for damages based on infringement of a European patent with unitary effect, it is important to decide before which court one brings the action, the UPC or a court of Japan, in anticipation of enforcement of a judgment rendered.

The above is the outcome of this study. I would like to further deepen this study by expanding the subject of consideration and conducting constant reexamination in hope that this outcome provides a material for future discussions.

¹ European Commission (http://ec.europa.eu/internal_market/indprop/patent/index_en.htm) (opened March 4, 2015).

² OJ L 361, 31.12.2012, p. 1.

³ OJ L 361, 31.12.2012, p. 89.

⁴ The “enhanced cooperation” mentioned in the titles of both of those regulations is one kind of differentiated integration, and it enables multiple EU Member States

to advance integration as a last resort in the cases where the EU cannot adopt a instrument (Yumiko Nakanishi, *Īihō* (EU law) (Shinseisha, 2012), p. 129). Incidentally, 25 EU Member States, except for Italy, Spain, and Croatia, participate in the enhanced cooperation in the area of the creation of unitary patent protection.

⁵ OJ C 175, 20.6.2013, p. 1. 25 EU Member States, except for Poland, Spain, and Croatia, signed this Agreement, and Austria, Belgium, Denmark, France, Malta, and Sweden ratified it (as of March 4, 2015). However, this Agreement has yet to enter into force at present as its entering into force requires its ratification by 13 Member States, including France, Germany, and the United Kingdom (Article 89(1) of the UPCA). The application of the aforementioned two regulations will start on the date on which this Agreement enters into force (Article 18(2) of the EU Unitary Patent Regulation and Article 7(2) of the Regulation on Translation Arrangements).

⁶ Convention on the Grant of European Patents (European Patent Convention) of 5 October 1973.

⁷ The Contracting Member States refer to EU Member States party to the UPCA (Article 2(c) of the UPCA).

⁸ Article 2(c) of the EU Unitary Patent Regulation.

⁹ See Article 9(1)(g) of the EU Unitary Patent Regulation and Article 14(1) and (3) of the EPC with regard to the language of the proceedings. Incidentally, a request for unitary effect may be filed after the start of application of the EU Unitary Patent Regulation (see Article 2(c) of the EU Unitary Patent Regulation).

¹⁰ See Article 9(1)(h) of the EU Unitary Patent Regulation. However, during the transitional period, it is necessary to also submit the translations required under Article 6 of the Regulation on Translation Arrangements (see Article 9(1)(h) of the EU Unitary Patent Regulation).

¹¹ See *supra* notes 4 and 5. Incidentally, there are different views about the time based on which the scope to which unitary effect extends is determined. See Pieter Callens and Sam Granata, *Introduction to the Unitary Patent and the Unified Patent Court: The (Draft) Rules of Procedure of the Unified Patent Court*, (Kluwer Law International, 2013), p. 25; Hoffmann Eitle, *The EU Patent Package Handbook: A Practitioner's Guide*, pp. 52-53 [Thorsten Bausch and Clemens Tobias Steins].

¹² See Bausch and Steins, *ibid.*

¹³ See Callens and Granata, *supra* note 11, p. 51.

¹⁴ Article 1, Article 21, and seventh paragraph of the preamble of the UPCA.

¹⁵ Article 1 of the UPCA.

¹⁶ Tenth paragraph of the preamble and Article 21 of the UPCA.

¹⁷ Tenth paragraph of the preamble and the first sentence of Article 21 of the UPCA.

¹⁸ Second sentence of Article 21 of the UPCA.

¹⁹ Article 6(1) of the UPCA.

²⁰ Article 7(3) of the UPCA and the first sentence of paragraph 5 of the said Article. Incidentally, in March 2014, Estonia, Latvia, Lithuania, and Sweden agreed to set up a regional division in Stockholm (European Commission - STATEMENT/14/46 04/03/2014).

²¹ Article 7(2) and Annex II of the UPCA.

- ²² Article 10(1) of the UPCA.
- ²³ Article 19 and Article 35(1) of the UPCA. Incidentally, a training centre for judges was officially opened on March 13, 2014 (EPO <<http://www.epo.org/news-issues/news/2014/20140313.html>>) (opened March 5, 2015)).
- ²⁴ JETRO <http://www.jetro.go.jp/world/europe/ip/pdf/20130219_2.pdf> (access date: March 5, 2015).
- ²⁵ OJ L 351, 20.12.2012, p. 1.
- ²⁶ OJ L 163, 29.5.2014, p. 1.
- ²⁷ See Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, COM (2013) 554 final, 26.7.2013, p. 2.
- ²⁸ Article 81 of the Brussels I Regulation (recast) and Article 2 of the amending Brussels I Regulation (recast).
- ²⁹ While the term “international jurisdiction” is used in the UPCA, the term “jurisdiction” is used in the amending Brussels I Regulation (recast). Hereinafter, the latter is used in the context of this Regulation.
- ³⁰ Article 71a is a rule for the positioning of the UPC in the Brussels I Regulation (recast), Article 71c is a rule for *lis pendens*, and Article 71d is a rule for the recognition and enforcement of judgments. For details, see the body text of this report.
- ³¹ See COM (2013) 554 final, 26.7.2013, p. 5.
- ³² The national courts of the Contracting Member States remain competent for actions that do not come within the exclusive competence of the UPC (Article 32(2) of the UPCA). However, during the transitional period stipulated in Article 83 of the UPCA, there are exceptions to the exclusive competence of the UPC (sharing of competence with national courts; opt-out) (see the said Article).
- ³³ See COM (2013) 554 final, 26.7.2013, p. 6. Also see Recital (6) of the amending Brussels I Regulation (recast).
- ³⁴ *Ibid.* In addition to this, the second sentence of Article 71b(2) provides that application may be made to the UPC for provisional, including protective, measures even if the courts of a third State have jurisdiction as to the substance of the matter.
- ³⁵ For details, also see Recital (7) of the amending Brussels I Regulation (recast).
- ³⁶ See Recital (5) of the amending Brussels I Regulation (recast).
- ³⁷ Hoffmann Eitle, *The EU Patent Package Handbook, A Practitioner's Guide*, p. 102 [Holger Stratmann].
- ³⁸ Article 33(7) of the UPCA.
- ³⁹ Hiroshi Matsuoka, ed., *Kokusaikankei shihōnyūmon* (Introduction to private international law [3rd ed.]) (Yuhikaku, 2012), p. 300 [Mari Nagata].
- ⁴⁰ *Ibid.*, p. 302.
- ⁴¹ Mikio Akiyama, et al, *Komentāru minjisoshōhō II* (Commentary on the Code of Civil Procedure II) (Nippon Hyoron Sha, 2002), p. 447.
- ⁴² Hajime Kaneko, *Jōkai minjisoshōhō* (Article-by-article explanation: Code of Civil Procedure) (Koubundou, 2nd ed., 2011), p. 624 [Morio Takeshita].
- ⁴³ Wakamizu Tsutsui, ed., *Kokusaihōjiten* (International law dictionary) (Yuhikaku, 1999), pp. 101-103 (see international trial and international court).
- ⁴⁴ Article 46 of the UPCA.
- ⁴⁵ Nagata, *supra* note 39, p. 304.
- ⁴⁶ Yasunori Honma, Shunichiro Nakano, and Hajime Sakai, *Kokusai minjitetsudukihō* (International civil proceeding law) (Yuhikaku, 2nd ed., 2012), p. 185 [Shunichiro Nakano].
- ⁴⁷ Nagata, *supra* note 39, p. 306.
- ⁴⁸ Judgment of the Supreme Court of April 28, 1998 (Minshu, Vol. 52, No. 3, at 853).
- ⁴⁹ The 17th draft of Rules of Procedure of the Unified Patent Court <http://www.unified-patent-court.org/images/documents/UPC_Rules_of_Procedure_17th_Draft.pdf> (opened March 6, 2015).
- ⁵⁰ Nagata, *supra* note 39, p. 308.
- ⁵¹ Yasushi Nakanishi, et. al, *Kokusai shihō* (Private international law) (Yuhikaku, 2014), p. 191. Nagata, *ibid.*, pp. 308-309.
- ⁵² Judgment of the Supreme Court of July 11, 1997 (Minshu, Vol. 51, No. 6, at 2573).
- ⁵³ Nakanishi, *supra* note 51, p. 190.
- ⁵⁴ See Takao Sawaki and Masato Dogauchi, *Kokusai shihō nyūmon* (Introduction to private international law) (Yuhikaku, 7th ed., 2012), p. 334.
- ⁵⁵ Judgment of the Supreme Court of June 7, 1983 (Minshu, Vol. 35, No. 5, at 611).
- ⁵⁶ Nagata, *supra* note 39, pp. 313-314.
- ⁵⁷ *Ibid.*, p. 314. See Michael Bogdan, *Private International Law in Sweden*, (Kluwer Law International, 2012), p. 127 at 312.
- ⁵⁸ Pedro Alberto de Miguel Asensio, “The Unified Patent Court Agreement and the Amendment to the Brussels I Regulation (recast),” in *Luci e ombre del nuovo sistema UE di tutela brevettuale*, (G. Giappichelli Editore, 2014), pp. 153-170.