

Study on the Unitary Patent Protection in the EU from a Viewpoint of Private International Law (*)

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In order to establish unitary patent protection in Europe, preparations are presently in progress to establish a European patent with unitary effect (UP) and a Unified Patent Court (UPC) based on the so-called “patent package,” which was adopted in December 2012. These are available to Japanese companies and individuals and their use is related to private international laws in Europe as well as in Japan. However, the contents of private international law which the UPC shall apply are not adequately known in Japan, and also it is unclear how claims relating to UPs and UPC judgments should be dealt with under Japanese private international law. For this reason, this research examines some rules in the field of private international law under the forthcoming unitary patent protection: specifically, rules for international jurisdiction and competence of the UPC; laws applicable before the UPC; and Japanese private international law issues from a viewpoint of the UPs and the UPC, such as Japanese international jurisdiction over claims relating to the UPs, laws applicable to the claims, and recognition and enforcement of the UPC judgments in Japan.

I Introduction

The European Union (EU) adopted the so-called “patent package” in December 2012. The patent package consists of two EU Regulations to implement enhanced cooperation in the area of the creation of unitary patent protection and one international agreement: 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 protection¹ (UP Regulation); 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 arrangements² (Translation Regulation); and Agreement on a Unified Patent Court³ (UPC Agreement). Based on these legal instruments, preparations are presently in progress to establish a “European patent with unitary effect” (UP) and a “Unified Patent Court (UPC)”.

A UP means a European patent (EP) which benefits from unitary effect in participating Member States by virtue of the UP Regulation⁴. The UPC for the settlement of disputes relating to the EPs and the UPs is established by the UPC Agreement, and the Court shall be a court common to Contracting Member States⁵ (CMS)⁶.

The UPs and the UPC are available to Japanese companies and individuals. Their use is always related to private international law in Europe as well as in Japan. However, the contents of private international laws which

the UPC shall apply are not adequately known in Japan, and also it is unclear how claims relating to the UPs and UPC judgments should be dealt with under Japanese private international law. For this reason, this research examines some rules in the field of private international law under unitary patent protection: specifically, international jurisdiction and competence of the UPC as well as national courts of CMSs during a transitional period (Chapter II); laws applicable before the UPC, particularly choice of law rules for UP issues (Chapter III); and Japanese private international law issues from a viewpoint of the UPs and the UPC, such as international jurisdiction over claims relating to the UPs which are brought in Japanese courts, choice of law rules for the claims, and recognition and enforcement of the UPC judgments in Japan (Chapter IV).

II International Jurisdiction and Competence of the Unified Patent Court (UPC) and Courts of Contracting Member States (CMSs) during a Transitional Period

This chapter deals with international jurisdiction and competence of the UPC and courts of CMSs.

1 Allocation of Competence between the UPC and Courts of CMSs

The UPC shall have international jurisdiction where, under “Regulation (EU) No 1215/2012 of the European

(*) This is a summary of the report published under the 2014FY Industrial Property Research Promotion Project (2014FY-2016FY) Entrusted by the Japan Patent Office.

(**) Over a period of approximately 11 months from April 14, 2015 through March 11, 2016, as Overseas Researcher under the Program for the Fiscal Year 2015.

Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast)”⁷ (Brussels I Regulation), courts of a CMS would have international jurisdiction in a matter governed by the UPC Agreement⁸. The UPC shall have exclusive competence in respect of actions relating to UPs, EPs and supplementary protection certificates (SPCs) in Article 32(1) of the UPC Agreement.

Courts of CMSs also shall be competent for actions which do not come within the exclusive competence of

the UPC⁹, on the premise that the courts have international jurisdiction over the actions¹⁰. Besides the above-mentioned Article 32 on exclusive competence of the UPC, the following provisions are also concerned with the competence of the courts of CMSs: Article 83(1) on shared competence with the UPC and the courts of CMSs during a transitional period, and Article 83(3) on opt-out from exclusive competence of the UPC. Considering these provisions, the allocation of competence between the UPC and national courts of CMSs would be as follows¹¹:

Actions in Article 32(1) of the UPC Agreement 【Table 1】

	UP	EP and SPC	
		Opt-in	Opt-out
During a transitional period	UPC	※ Broad interpretation of Article 83(1) UPC and CMS	CMS
		※ Strict interpretation of Article 83(1) Article 32(1)(a)(d) → UPC and CMS Others → UPC	
After a transitional period	UPC	UPC	CMS (for the whole life of that patent)

Actions which do not fall under Article 32(1) of the UPC Agreement 【Table 2】

	UP	EP and SPC	
		Opt-in	Opt-out
During and after a transitional period	CMS	CMS (= a national court of a Contracting Member State)	

2 Parallel Proceedings Brought in the UPC and in Courts of CMSs : Lis Pendens

Regarding actions relating to opt-in EPs and SPCs during a transitional period, as ※ in the Table 1 showed, parallel proceedings will happen between the UPC and courts of CMSs. In the interests of the harmonious administration of justice, however, it is necessary to minimize the possibility of concurrent proceedings and to ensure that irreconcilable judgments will not be given in different Member States¹². For this reason, the Brussels I Regulation has some rules for *lis pendens* and related actions in Articles 29 *et seq* in order to resolve such parallel proceedings in different EU Member States. Articles 29 to 32 shall also apply where, during the transitional period, proceedings are brought in the UPC and in a court of a CMS, according to Article 71c(2) of the Regulation.

Article 29 provides that where proceedings involving the same cause of action and between the same parties are brought in the courts of different EU Member States, namely in case of *lis pendens*, any court other than the court first seized shall of its own motion stay its proceedings or shall decline its jurisdiction until such

time as the jurisdiction of the court first seized is established. Where related actions are pending in the courts of different EU Member States, on the other hand, all Member States’ courts other than the first seized court may stay their proceedings or, in certain circumstances, may decline their jurisdiction under Article 30.

Then, what kind of parallel proceedings between the UPC and courts of CMSs would be recognized as *lis pendens* or related actions? The following consideration focuses on interpretation of the *lis pendens* of Article 29.

Requirements for application of Article 29 are that the parallel proceedings involve ① the same parties, ② the same end in view, and ③ the same cause of action¹³ (“the same cause of action” of Article 29(1) consists of ② and ③). It is necessary to consider how these requirements, especially “the same cause of action” should be interpreted from a new viewpoint, namely a viewpoint of parallel proceedings between the UPC and courts of CMSs. Regarding this interpretation, it seems that the both courts would have “the same cause of action” where the following elements, at least, are met: (A) the subject matter of both actions, which are brought in the UPC and in a court of a CMS, should be the same opt-in

EP and also the same part of the EP; (B) both actions should be one of the actions in Article 32(1) of the UPC

Agreement; and (C) the types of both actions should be either (a) the same or (b) the following combination:

		UPC	National Courts
(I)	(i)	Action for declaration of non-infringement of EP	Action for infringement of EP
	(ii)	Action for infringement of EP	Action for declaration of non-infringement of EP
(II)	(iii)	Counterclaim for revocation of EP	Action for revocation of EP
	(iv)	Action for revocation of EP	Counterclaim for revocation of EP

* The above-mentioned elements and this table deal with only EPs, excluding SPCs.

* Combinations of (ii) and (iv) within the table are available to the extent that “an action for infringement or for revocation of a European patent” in Article 83(1) of the UPC Agreement is interpreted as all EP actions of Article 32(1), not only actions of Article 31(1)(a)(d): this is broad interpretation of Article 83(1) (see the Table 1).

As to (A), it is said that in situations where parallel proceedings concern the protection of different national intellectual property rights, it is obvious that these proceedings do not have the same cause of action¹⁴. As once granted, an EP becomes a bundle of national patents, such national patents are understood as different¹⁵. Therefore, if the subject matter of both actions are the same EP but not the same part of the EP, these actions would not have the same cause of action¹⁶. For this reason, this element should be essential.

Regarding (B), *lis pendens* will not happen between the UPC and courts of CMSs where either or both actions do not fall under actions of Article 32(1), as the UPC is unlikely to deal with such actions. Accordingly, this element should also be necessary.

Obviously, the same type of actions have the same cause of action ((C)(a)). Even if the types of both actions are different from each other ((C)(b)), (I) an action for infringement of an EP and an action for declaration of non-infringement of an EP would have the same cause of action according to a certain ECJ decision^{17,18}. Also, (II) an action for revocation of an EP and a counterclaim for revocation of an EP would share the same end in view in terms of revocation of the EP: accordingly, both actions would have the same cause of action¹⁹. Thus, (I) and (II) would be considered as appropriate combinations²⁰.

These elements are one possible interpretation of “the same cause of action” in Article 29 of the Brussels I Regulation from the viewpoint of parallel proceedings between the UPC and courts of CMSs. Again, in the case where parallel proceedings correspond with either *lis pendens* (Article 29) or related actions (Article 30), there is a possibility that any court other than the court first seized may stay its proceedings or decline its jurisdiction. This means that forum shopping and “torpedo actions” will happen between the UPC and courts of CMSs as well. Therefore, litigation strategy would be more important for opt-in EPs and SPCs during the transitional period.

III Laws Applicable before the UPC: Choice of Law Rules for European Patent with Unitary Effect (UP) Issues

This chapter examines laws applicable before the UPC, especially choice of law rules for UP issues.

The UPC shall apply Union law in its entirety and shall respect its primacy (Article 20 of the UPC Agreement). In full compliance with this, when hearing a case brought before the UPC under this Agreement, the Court shall apply (a) EU law, (b) the UPC Agreement, (c) the European Patent Convention (EPC), (d) other international agreements applicable to patents and binding on all CMSs, and (e) national law (Article 24(1)). It is said that this enumeration of sources of laws is widely perceived as a hierarchy, whereby a source of law only applies to the extent that the higher ranking source of law provides no answer²¹. The last (e) national law shall be determined in accordance with Article 24(2): this provision enumerates some private international laws to be referred to in determining the national law. The following sections examine the private international law, especially Article 5(3) and Article 7 of the UP Regulation as well as Article 8 of the “Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations”²² (Rome II Regulation), as these provisions are required to be considered from a new viewpoint, namely a viewpoint of UPs.

1 Laws Applicable to Matters Pertaining to UP Itself

Article 5(3) of the UP Regulation is a choice of law rule for acts against which the UP provides protection referred to in Article 5(1) and applicable limitations (“acts and limitations”). A law applicable to this issue of Article 5(3) is determined by referring to Article 7. Here, there are two important things: One is that the applicable law is

always the law of the participating EU Member State in which the UP has unitary effect at the date of registration of unitary effect²³. The other is that substantive laws on the “acts and limitations” exist in Articles 25 *et seq* of the UPC Agreement. Therefore, although the applicable law under 5(3) of the UP Regulation is determined by referring to Article 7, this issue shall be governed by the substantive laws of the Agreement, which is in effect in the applicable national law’s country²⁴.

Secondly, Article 7 of the UP Regulation is understood as a choice of law rule for the UP as an object of property²⁵. What is “the UP as an object property”? As provisions, which are titled “the Community patent as an object property” can be found in a so-called Proposal for a Council Regulation on the Community patent²⁶, this proposal can be used as reference to interpret “the UP as an object property.” According to this, “the UP as an object property” seems to mean at least the following issues: transfer; rights *in rem*; levy of execution; contractual licensing; licenses of right; and effects vis-à-vis third parties. The UP Regulation and others contain some substantive laws on these matters²⁷: however, the laws are not always comprehensive. For example, notwithstanding that Article 3(2) of the UP Regulation prescribes transferability of the UP, the provision does not mention whether the transfer of the right shall be made in writing. Therefore, the latter issue would be governed by an applicable law under Article 7 of the UP Regulation.

2 Laws Applicable to Non-Contractual Obligations Arising of UP Infringement

Rome II Regulation establishes choice of law rules for non-contractual obligations arising out of an infringement of an intellectual property right. The Rome II Regulation preserves the universally acknowledged principle of “*lex loci protectionis*,”²⁸ and Article 8(1) states that the law applicable to a non-contractual obligation arising from an infringement of an intellectual property right shall be “the law of the country for which protection is claimed.” However, if the intellectual property right at stake is “a unitary Community intellectual property right,” “the law of the country in which the act of infringement was committed” of Article 8(2) shall be applied.

Can a UP be recognized as “a unitary Community intellectual property right”? It seems to be possible, as although an EP, namely a foundation of a UP, is granted by the EPC, unitary effect is granted by the UP Regulation, namely EU Regulation. Accordingly, Article 8(2) may be applied to non-contractual obligations arising from UP infringement.

However, Article 8(2) shall not be applied to issues governed by “the relevant Community instrument”: in case of the UP, the instrument means the UP Regulation

and Translation Regulation. In other words, the existence of UP infringement and the above-mentioned “acts and limitations” are two sides of the same coin, and the “acts and limitations” are governed by Article 5(3) of the UP Regulation. As a result, the existence of UP infringement is likely to be governed not by the Rome II Regulation but by the UP Regulation (specifically Article 5(3))²⁹. Incidentally, although the UPC Agreement does not correspond with “the Community instrument,” the Agreement seems to precede an applicable law under Article 8(2) of the Rome II Regulation according to Article 24(1) of the Agreement³⁰.

As a result, it is concluded that the applicable law under Article 8(2) of the Rome II Regulation will be applicable³¹ to the extent that laws of Articles 24(1)(a)-(d) of the UPC Agreement have no rule to be relied on and also Article 5(3) and 7 of the UP Regulation are not applied.

IV Examination: From the Viewpoint of Japanese Private International Law

This chapter considers international jurisdiction over claims relating to UPs which are brought in Japanese courts, laws applicable to the claims, and recognition and enforcement of UPC judgments in Japan.

1 International Jurisdiction

Article 3-2 *et seq* of the Code of Civil Procedure (CCP) regulates international jurisdiction rules. A UP can be recognized as an intellectual property right which is established upon registration of establishment in a foreign country (a foreign registered intellectual property right). Accordingly, existence or absence of Japanese international jurisdiction over a claim relating to the UP would be judged in the same way as a claim relating to a conventional foreign registered intellectual property right. This means that on the one hand, a Japanese court will not have international jurisdiction over a claim to a registration, existence or absence or effect of the UP: on the other hand, there is a possibility that the court will have international jurisdiction over other claims such as a claim pertaining to UP infringement as well as a claim for enforcement of UP license agreements under Articles 3-2 *et seq* of the CCP.

2 Applicable Laws

This section deals with laws applicable to assignment and licensing contracts of UPs as well as UP infringement. The Act on General Rules for Application of Laws (the Act on General Rules), which is the main source of Japanese private international law, has no specific choice of law rule for intellectual property rights.

Firstly, regarding assignments and licensing contracts of patents, it is common that contractual

obligations of parties to the contracts should be governed by an applicable law under Articles 7 *et seq* of the Act on General Rules, while matters pertaining to patent itself should be subject to *lex loci protectionis*, namely the law of the country where the patent is registered. Applying this common theory to assignments and licensing contracts of UPs, laws applicable to the former matter would be determined in the same way as conventional patents. However, regarding the latter matter, it is necessary to discuss which country should be identified as the country where the UP at stake is registered (registered country of a UP). The following are possible answers to this question: One is that the registered country of a UP is deemed to be Germany, as the European Patent Office administers the related tasks to registration of unitary effect of UPs³² and the Office is located in Germany (Munich). The other is that putting emphasis on international harmonization of judgments, the registered country of a UP is construed as the country which is determined by reference to Article 5(3) and 7 of the UP Regulation, as these provisions seem to be applied to the matters pertaining to UP itself before the UPC as well.

Secondly, regarding patent infringement, the Supreme Court of Japan decided on laws applicable to claims for an injunction and compensatory damages based on the infringement in the so-called *Card Reader* case³³. Following this decision, a claim for an injunction based on UP infringement would be classified as an effect issue of the UP, and a law applicable to this issue would be the law of the country where the UP is registered, according to the general principle of *jori* (fairness, reasonableness). The law of the registered country of the UP would always be a foreign law. This means that the claim for the injunction based on the UP infringement would never be approved in Japan, as according to the Supreme Court decision, application of the foreign law would run counter to the public policy of Japan under Article 42 of the Act on General Rules: Japan adopts the principle of territoriality of intellectual property rights.

On the other hand, a claim for compensatory damages based on UP infringement would be classified as a tort, and a law applicable to the claim would be determined by Articles 17 to 22 of the Act on General Rules. Article 17 provides that the applicable law is in principle “the law of the place where the result of the wrongful act occurred”: provided however that if the occurrence of the result at said place was ordinarily unforeseeable, “the law of the place where the wrongful act was committed” shall govern.

In case of a wrongful act against a registered intellectual property right such as a traditional patent, the place where the result of the wrongful act occurred has been understood as the country where the right is registered³⁴. Accordingly, the law of the place where the

result of the wrongful act against a UP occurred would be construed as the law of the registered country of the UP. If the registered country of the UP is determined by referring to Article 5(3) of the UP Regulation, for example, the applicable law under Article 17 of the Act on General Rules would correspond with a law which the UPC would apply to the existence of the UP infringement. This means that this applicable law would be appropriate in terms of international harmonization of judgments³⁵.

In contrast, this interpretation can also be considered inappropriate. As unitary effect of the UP extends to a number of Contracting Member State, the wrongful act against the UP can happen not only in the registered country of the UP but also in other Contracting Member States. Accordingly, the following interpretation may also be available: as the place where the result of the wrongful act occurred cannot be identified, the law of the place where the wrongful act was committed may be applicable in accordance with the proviso of Article 17.

According to the Supreme Court decision in the *Card Reader* case, Article 20 (exception for cases where another place is obviously more closely connected) and Article 21 (change of governing law by the parties) of the Act on General Rules will be also applied to the claim for compensatory damages based on UP infringement to the extent that the claim will be classified as a tort. Additionally, in the case where the tort shall be governed by a foreign law, Japanese law will be applied cumulatively in accordance with Article 22.

3 Recognition and Enforcement of Judgments

Recognition and enforcement of foreign judgments in Japan are provided for in Article 118 of the CCP and Article 24 of the Civil Execution Act, and these provisions are likely to be applied to the recognition and enforcement of UPC judgments as well. In other words, the UPC judgments will be required to meet the following five requirements of Article 118 of the CCP: a final and binding judgment rendered by a foreign court, indirect jurisdiction, service, public policy, and mutual guarantee. As fulfillment of the requirements are assessed on a judgment-by-judgment base, it is natural that some judgments are recognized and enforced in Japan and others are not. In case of UPC judgments, however, it is necessary to pay attention to a requirement of “mutual guarantee” in particular, as how to interpret a rendering country of a UPC (namely, a common court to 25 states) judgment would affect not only the satisfaction of this requirement but also the possibility of recognition and enforcement of the whole UPC judgments in Japan.

A mutual guarantee exists between a rendering country and Japan, if there is reciprocity between the rendering country and Japan in terms of the recognition and enforcement system of foreign judgments. In other words, the existence of mutual guarantee is out of

litigants' hands, and it can also be said that this requirement lacks rationality in the context of procedural laws³⁶. Accordingly, it seems to be desirable that the requirement of mutual guarantee should be interpreted in a way that the requirement would be met as much as possible. This viewpoint brings the following interpretation: a rendering country of a UPC judgment is considered as the country where a Court of First Instance which actually rendered the judgment is located. According to this interpretation, although some judgments will not satisfy the requirement of mutual guarantee³⁷, it will never happen that the whole UPC judgment will not meet this requirement. Following this interpretation, therefore, there is a possibility that the UPC judgments will be recognized and enforced in Japan as long as the judgments meet the other requirements as well.

V Conclusion

Based on all of the above-mentioned examination, this chapter concludes this research by considering the following question: in which court should claims relating to UPs and CMS's EPs be brought?

Firstly, a claim for registration or validity of a UP and a CMS's EP should be brought before the UPC or a court of a CMS (UPC and others)³⁸, as Japanese courts will not have international jurisdiction over such a claim.

Secondly, although Japanese courts may have international jurisdiction over a claim for an injunction based on UP and CMS's EP infringement, the claim will be refused at the stage of application of an applicable law (a law of the country where the patent is registered, namely always a foreign law in this case) according to the Supreme Court decision in the *Card Reader* case. Therefore, this claim should also be brought before the UPC and others³⁹.

Regarding a claim for compensatory damages based on UP and CMS's EP infringement, it seems to be better that, considering a possibility of enforcement of judgments, the claim should be brought before the UPC and others in accordance with their own international jurisdiction rules⁴⁰, if an alleged infringer does not have sufficient property in Japan but in EU Member States. In contrast, if the property of the alleged infringer is located in Japan, just in case, the claim should be brought before a Japanese court in accordance with CCP, as some UPC judgments would be recognized and enforced in Japan and others would be not. Regarding a law applicable to this claim, Article 17 *et seq* of the Act on General Rules would be applied according to the Supreme Court decision.

Lastly, the UPC shall not have any competence over a claim for contract issues relating either to UP or EP⁴¹. For this reason, the claim should be brought before courts

of CMSs as well as other States including Japan in accordance with their own international jurisdiction rules.

The above is the outcome of examinations of rules in the field of private international law under unitary patent protection as well as observations on the rules from the viewpoint of Japanese private international law.

¹ OJ L 361, 31.12.2012, p. 1.

² OJ L 361, 31.12.2012, p. 89.

³ OJ C 175, 20.6.2013, p. 1.

⁴ Article 2(c) of the UP Regulation. Regarding "participating Member States," see Article 2(a) of the Regulation.

⁵ Article 1 of the UPC Agreement.

⁶ Regarding "Contracting Member States," see Article 2(c) of the UPC Agreement.

⁷ OJ L 351, 20.12.2012, p. 1.

⁸ See Article 31 of the UPC Agreement and Article 71b of the Brussels I Regulation.

⁹ Article 32 (2) of the UPC Agreement.

¹⁰ International jurisdiction of national courts of EU Member States shall be regulated by either Brussels I Regulation or their own national laws (see Article 6(1) of the Regulation).

¹¹ Answers to FAQ on the UPC's homepage, which have no binding effect, are used as reference in order to interpret Article 83(1) and (3) of the UPC Agreement. Available at <https://www.unified-patent-court.org/faq/opt-out> (accessed 2 March 2016).

¹² Recital 21 of the Brussels I Regulation.

¹³ Andrew Dickinson and Eva Lein eds., *The Brussels I Regulation Recast*, (Oxford University Press, 2015), p. 326.

¹⁴ Toshiyuki Kono ed., *Intellectual Property and Private International Law: Comparative Perspectives*, (Hart Publishing, 2012), p. 101 [Toshiyuki Kono and Paulius Jurčy].

¹⁵ See the Opinion of AG Léger in Case C-539/03 Roche Nederland BV and Others v Frederick Primus and Milton Goldenberg, para 23. See also James J. Fawcett and Paul Torremans eds, *Intellectual Property and Private International Law*, (Oxford University Press, 2nd ed., 2011), p. 194.

¹⁶ Regarding another view, see Justine Pila and Christopher Wadlow eds, *The Unitary EU Patent System*, (Hart Publishing, 2015), p. 176 [Paul LC Torremans].

¹⁷ Case C-406/92, Taty v. Maciej Rataj [1994] ECR I-5439 para. 45. See Fawcett and Torremans, *supra* note 15, p. 196; Torremans, *supra* note 16, p. 176.

¹⁸ Torremans, *supra* note 16, pp. 176-177. See also, Stefan Luginbuehl and Dieter Stauder, "Application of Revised Rules on Jurisdiction under Brussels I Regulation to patent lawsuits," *JIPLP*, 2015, Vol. 10, No. 2, p. 143.

¹⁹ "[I]f they [two actions] have the same object, their basis [factual and legal basis] will be the same." See Ulrich Magnus and Peter Mankowski eds., *European Commentaries on Private International Law: Brussels Ibis Regulation*, (ottoschmidt, 2016), p. 732 [Richard Fentiman].

²⁰ A combination of an action for EP infringement and an action for revocation of an EP might be governed by Article 30 of the Regulation.

²¹ Hoffmann Eitle, *The EU Patent Package Handbook: A Practitioner's Guide*, (CreateSpace Independent Publishing Platform, 2014), p. 117 [Niels Hölder].

²² OJ L 199, 31.7.2007, p. 40.

²³ Article 2(a), 7 and 18(2) of the UP Regulation.

²⁴ See Winfried Tilmann, "The compromise on the uniform

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- protection for EU patents,” *JIPLP*, 2013, Vol. 8, No.1, pp. 80-81; 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. 29; Niels Hölder, *supra* note 21, p. 120.
- ²⁵ Hölder, *supra* note 21, pp. 119-120; Callens and Granata, *supra* note 24, pp. 31-33; Tilman Müller-Stoy and Florian Paschold, “European patent with unitary effect as a property right,” *JIPLP*, 2014, Vol. 9, No. 10, pp. 850-851.
- ²⁶ Proposal for a Council Regulation on the Community patent, OJ C 337 E, 28.11.2000, p.278.
- ²⁷ For example, Article 3(2) of the UP Regulation (transfer and contractual licensing); Article 8 (licenses of right); Recital 10 (grant of compulsory licenses); and Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings, OJ L 141, 5.6.2015, p. 19 (bankruptcy or like proceedings).
- ²⁸ Recital 26 of the Rome II Regulation.
- ²⁹ See Case C-146/13, *Spain v Parliament and Council*, para 47.
- ³⁰ See fn. 21 above.
- ³¹ See also, Article 15 of the Rome II Regulation.
- ³² Article 9 of the UP Regulation.
- ³³ *Fujimoto v Neuron Corporation* (‘Card Reader Case’), 56 *Minshū* 1551.
- ³⁴ See Hiroshi Matsuoka, *Kokusai Kankei Shihō Nyūmon* (Introduction to International Private Law [3rd ed]), (Yuhikaku, 2012), p. 123 [Naoshi Takasugi]; Shoichi Kidana, *Kokusai chitekizaisanō* (International intellectual property law), (Nihon Hyoronsha, 2009), pp. 251 and 328.
- ³⁵ However, it is necessary to pay attention to scope of this applicable law.
- ³⁶ See Yasuhei Taniguchi, et. al, eds, *Shin hanrei commentary minji soshōhō 3 saiban* (New case commentary on code of civil procedure 3, trials), (Sanseidō, 1994), p. 244.
- ³⁷ Judgments given by Nordic Baltic regional division (Stockholm) could not be met with the requirement, because there is no mutual guarantee between Sweden and Japan.
- ³⁸ Regarding international jurisdiction of the UPC and courts of CMSs as well as allocation of competence between both courts, see Chapter II 1.
- ³⁹ *Ibid.*
- ⁴⁰ *Ibid.*
- ⁴¹ See also, Article 32(1)(a) of the UPC Agreement.