



# IP Law Update

*March 2013*

**Europe:**

EU Unitary Patent as of January 01, 2014 (rather 2015)

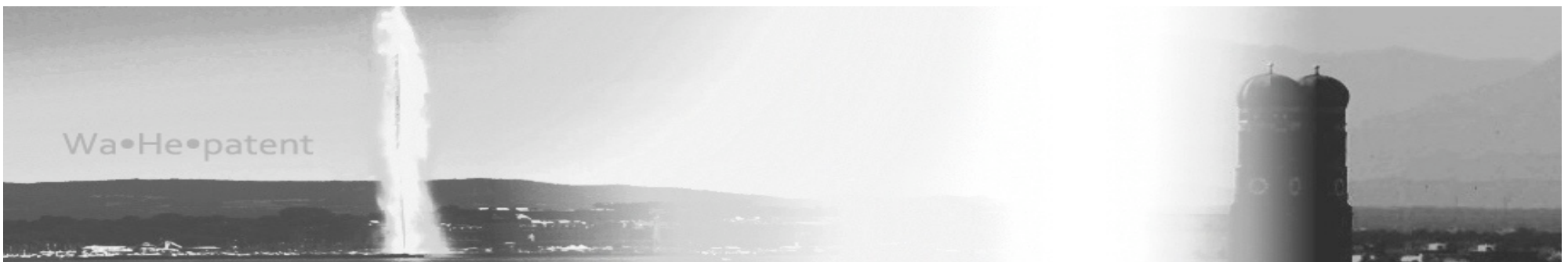
**Switzerland:**

Federal Litigation Court established

**WAGNER + HELBIG**

Patentanwälte  
Intellectual Property Counselors

München – Genève



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### ***EU Unitary Patent: Facts - Basics***

EU 1257/2012 of 17.12.2012 - EU 1260/2012 of 17.12.2012

Effective date: as of 01.01.2014 or rather 2015 upon ratification (13 states including DE, FR, UK)

States: EU (25 countries except IT and ES – may change)

EPO: responsible body for examination

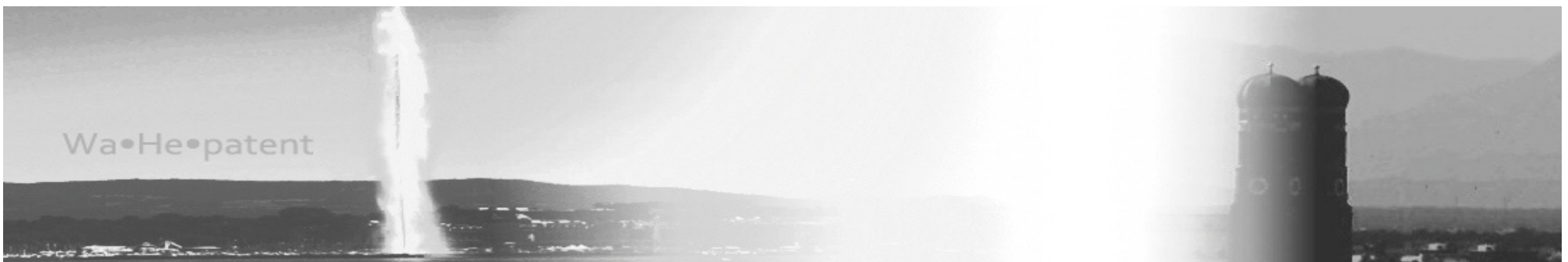
Languages: as so far with EPO

L. after grant: in case of dispute translation will have to be provided

Opposition: as so far with EPO

Annuities: one annuity fee/several fold of national fee  
(<-> EPO patent each national validated state)

EPO patent: EU/EPO patent will exist in parallel  
Applicant has choice



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### ***EU Unitary Patent: Facts I - Jurisdiction***

Prosecution: European Patent Office responsible body

Litigation: new courts will be established having jurisdiction over EPO and EU Unitary Patent (prerequisite for establishment of system)

1<sup>st</sup> instance: local chambers: (infringement/nullity action in reply to infringement action remains at local chambers-referral to central chamber possible)

1x Paris, 1x London, 1x NL,

4x DE (Dusseldorf, Mannheim, Hamburg, Munich)

regional chambers: may be formed by states wherein only few cases per year

one central chamber in Paris

(nullity action/infringement actions against foreigners possible)

w/ branches in Munich (engineering) and London (chemistry)

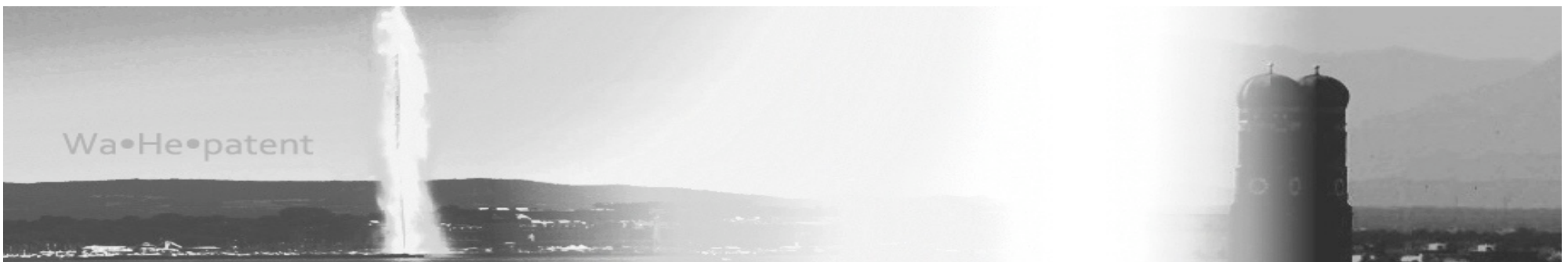


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### ***EU Unitary Patent: Facts II – Jurisdiction***

- 2<sup>nd</sup> instance: appeal court in Luxembourg
- 3<sup>rd</sup> instance: will not exist – CJEU involvement to be seen
- Nullity action: still on national level possible (effect only nationally)
- Bodies: 1<sup>st</sup> instance: three judges (mostly including technically qualified judge)  
2<sup>nd</sup> instance: three judges and two technical judges
- Languages: language of patent, or of court while courts may offer e.g. English
- Transition period: probably 7 years with option to choose national or EU Unitary Patent court
- Opt-out provision: request to avoid EU Unitary Patent court and opt for national courts / opt-in also possible (if no legal action is pending)

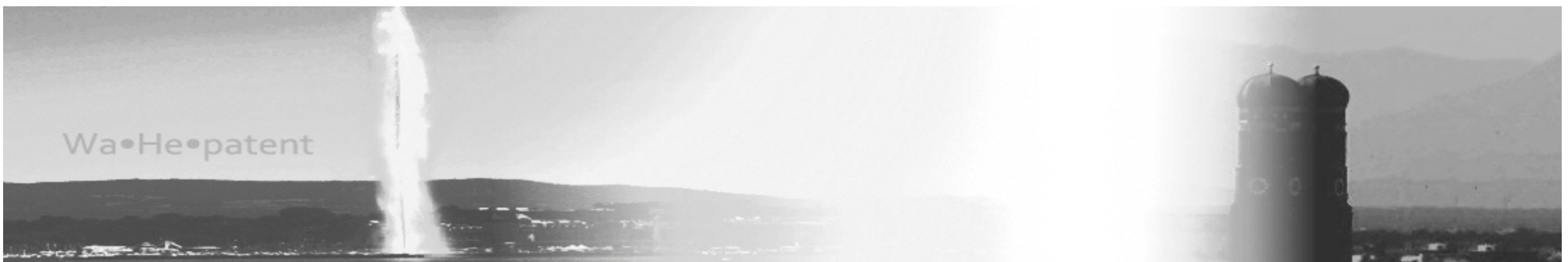


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### *EU Unitary patent: practical considerations*

- EP applications with “right” timing of grant can be extended as EU Unitary Patent – Applicants to consider timing of grants
- Litigation prone patent applications/patents should be considered for opt-out/opt-in depending on strength and relevant litigation countries
- Prosecution strategy to be planned with aim of EP or/and EU Unitary Patent depending on industry (pharmaceuticals, chemistry, automotive, engineering, etc.) and country scope/annuity cost planning
- EP and EU Unitary Patent will be needed in parallel to cover important non-EU countries like Switzerland



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### ***Swiss federal litigation court: facts***

Established 01.01.2012 in St. Gallen/Switzerland

Exclusive jurisdiction for infringement and nullity actions of patents CH or CH parts of EP patents

Applies also for SPCs (Supplementary Protection Certificates)

Applies also to ownership or contractual issues regarding patents

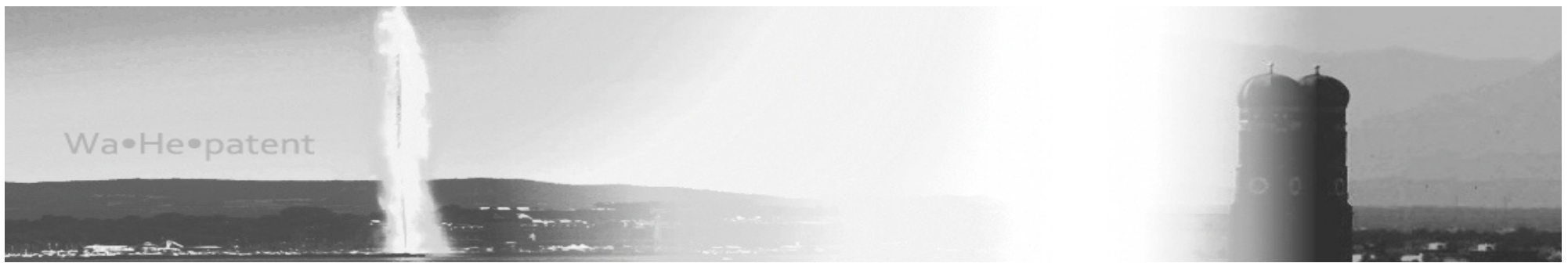
#### Judges:

One responsible judge supplemented by two (or four) judges from pool of technical judges who are called in depending on technology concerned (=> 3 or 5 judges per case)

Preliminary actions can be decided by president of court as single judge

#### Time of procedure:

Short deadlines/total about 12 – 16M 1<sup>st</sup> instance//18-24M two instances

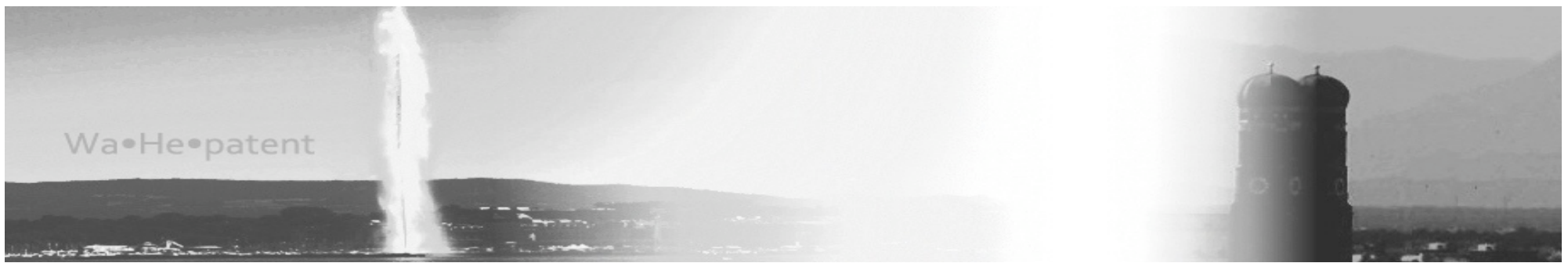


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### *Swiss federal litigation court: practical considerations*

- Central procedure in all patent related cases
- Legally and technically qualified judges guarantee good quality of verdicts
- Fast procedure provides fast answer to parties
- Cost effective proceedings
- Alternative for other European venues for litigation
- Alternative to arrive at a pan-European settlement



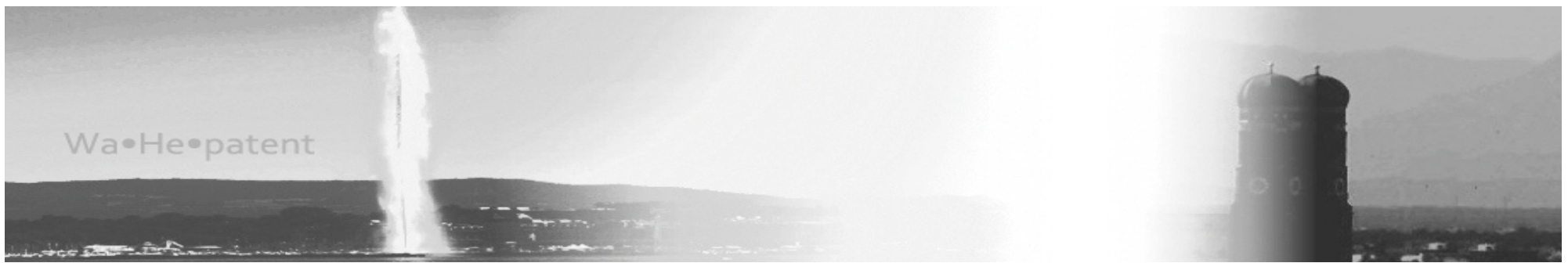
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