Das EU-Patent und das Einheitliche Patentgericht aus Sicht der Unternehmenspraxis

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Clemens-August Heusch
Head of European Litigation
Nokia Corporation

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Nokia – Company Information

- Nokia was founded 150 years ago and has evolved from a riverside paper mill in south-western Finland to one of leading mobile producer
- Connects more people that any other company in the world: more than 1.5 billion produced mobile phones
- Annual production of 400 million phones in 8 factories in Brazil, Mexico, Hungary, China, South Korea, India and Vietnam
- 139.000 employees around the world

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Nokia's patent portfolio

- **Innovative**
  - Investment in R&D since the early 1990s: app. 45bn Euros
  - Nokia owns app. 10.000 patent families, app. 30.000 patents
  - About 1.000 new applications are filed every year
- **Complex technology products**
  - Many hundreds/thousands patents in every product
- **Interoperability:**
  - Implies use of technologies developed by others
  - Patents in standards are necessarily used by standard-compliant products => Essential patents
    - *Nokia holds 300 declared essential GSM patent (45 %)*
    - *370 declared essential UMTS patents (30 %)*
- **Exposure:**
  - De facto exposure to third party patents community-wide
  - Some of those patents may be weak
  - Not necessarily owned by actors/competitors *with own exposure* (→ "trolls")
    - Non-level playing field
- **Vulnerability to actual/ threatened infringement actions**
  - Perspective of alleged infringer - as well as patent owner

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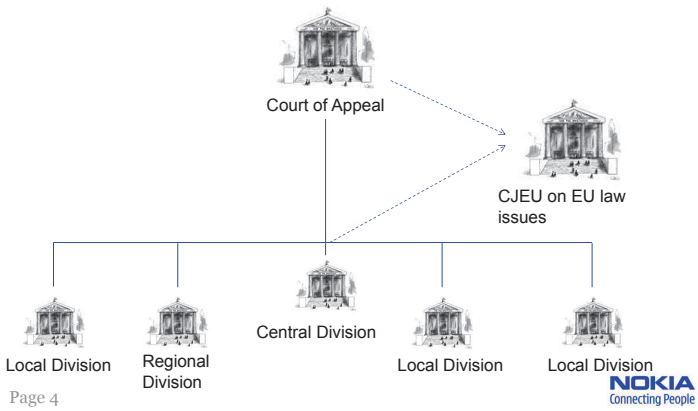
Structure of the UPC



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Lessons from the US

If the plaintiff has a pretty free choice of where to file…

1) Low value shakedown model

- File a claim in a place that is remote from defendant
- Too expensive to defend
- Accept settlement at "nuisance value"
- Effective against SMEs
- Can monetise bad patents

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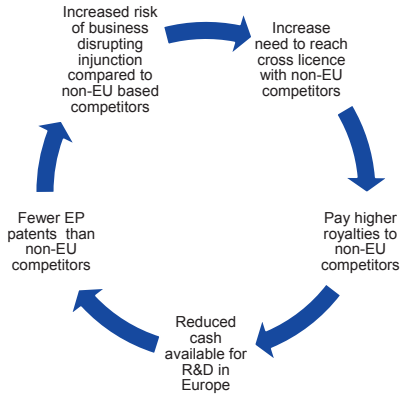
2. Emergence of an ED Tx

Pro-defendant

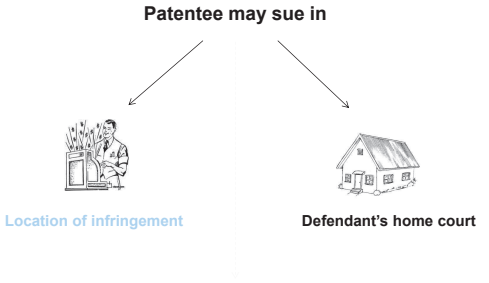
Balanced between patentees and defendants

Pro-patentee

The spiral of patentee friendly courts



Change Rules of Procedure



Rule 19bis **TRANSFER WHERE MORE THAN ONE DIVISION HAS COMPETENCE (NEW)**

Rule 19bis – Transfer and factors the rapporteur general should consider when determining whether a division is suitable to hear a case where other divisions are also competent to hear the case under Articles 33(1) to (6)

Where a party raises as a preliminary objection under Rule 19 that the division in which the case has been commenced is not the most suitable to hear the case and that another division is both competent under Articles 33(1) to (6) of the Agreement and more suitable, the judge rapporteur may decide under rule 20 to transfer the case to such other division.

The judge-rapporteur must have regard to the following factors when considering whether to make an order under rule 19bis.1.

(a) the financial value of the claim;

(b) whether it would be more convenient or fair for hearings to be held in some other division;

(c) the geographic location of the parties, and their representatives, witnesses or suitable experts;

(d) the availability of a judge familiar with the technology in question;

(e) the language of the patent, the prior art and any other documents likely to be relevant to the case;

(f) the languages spoken by the parties and their representatives;

(g) the facilities available to the division at which the claim is being dealt with, particularly in relation to –

(i) any disabilities of a party or potential witness;

(ii) any special measures needed for potential witnesses; or

(iii) security;

(h) a party's right under Article 6 of the European Convention on Human Rights

Effective Local Division

- Advantages of language and location
- Don't bifurcate
- Be fast to trial

Thank you very much!

Dr. Clemens-August Heusch, LL.M.

Rechtsanwalt, Fachanwalt für gewerblichen Rechtsschutz

Head of European Litigation

Nokia GmbH
Balcke-Dürr-Allee 2
40882 Ratingen
Germany

T +49 (0) 2102 8928-7124
F +49 (0) 2102 8928-4130
E clemens.heusch@nokia.com
W www.nokia.com