

## Spanish Challenge: Advocate General's Opinion

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The Advocate General has now provided his opinion on two challenges by Spain against the European Union Regulations passed to establish a unitary patent with effect across the majority of the European Union member states (i.e. the "Unitary Patent").

The opinion of the Advocate General is that the Spanish challenges should fail. The Court of Justice will decide on the challenges next year but are unlikely to come to a different conclusion.

The Advocate General concluded that:

- the lack of any scope for judicial review of the EPO's process for granting patents is not relevant to the Regulations because they do not stipulate the conditions for the grant of patents;
- the Regulation sets out a clear framework which is binding on all participating member states, therefore, the Commission does not need to supervise implementation to ensure uniformity;
- the Regulation does not directly delegate powers to the EPO and does not offend the principles requiring additional safeguards for the delegation of powers;
- the Agreement on a Unified Patents Court is not subject to judicial review by the Court of Justice;
- the Regulations being dependent on the Agreement on a Unified Patents Court coming into force is not an issue but a practical necessity; and
- the language regime is being implemented with the legitimate aim of reducing translation costs and so does not offend the principle of non-discrimination but is proportion to issue being addressed.

If the Court of Justice follows the Advocate General's opinion (as expected) these challenges from Spain are therefore likely to fail.

For further information, the press release from the Court of Justice of the European Union can be found [here](#).