



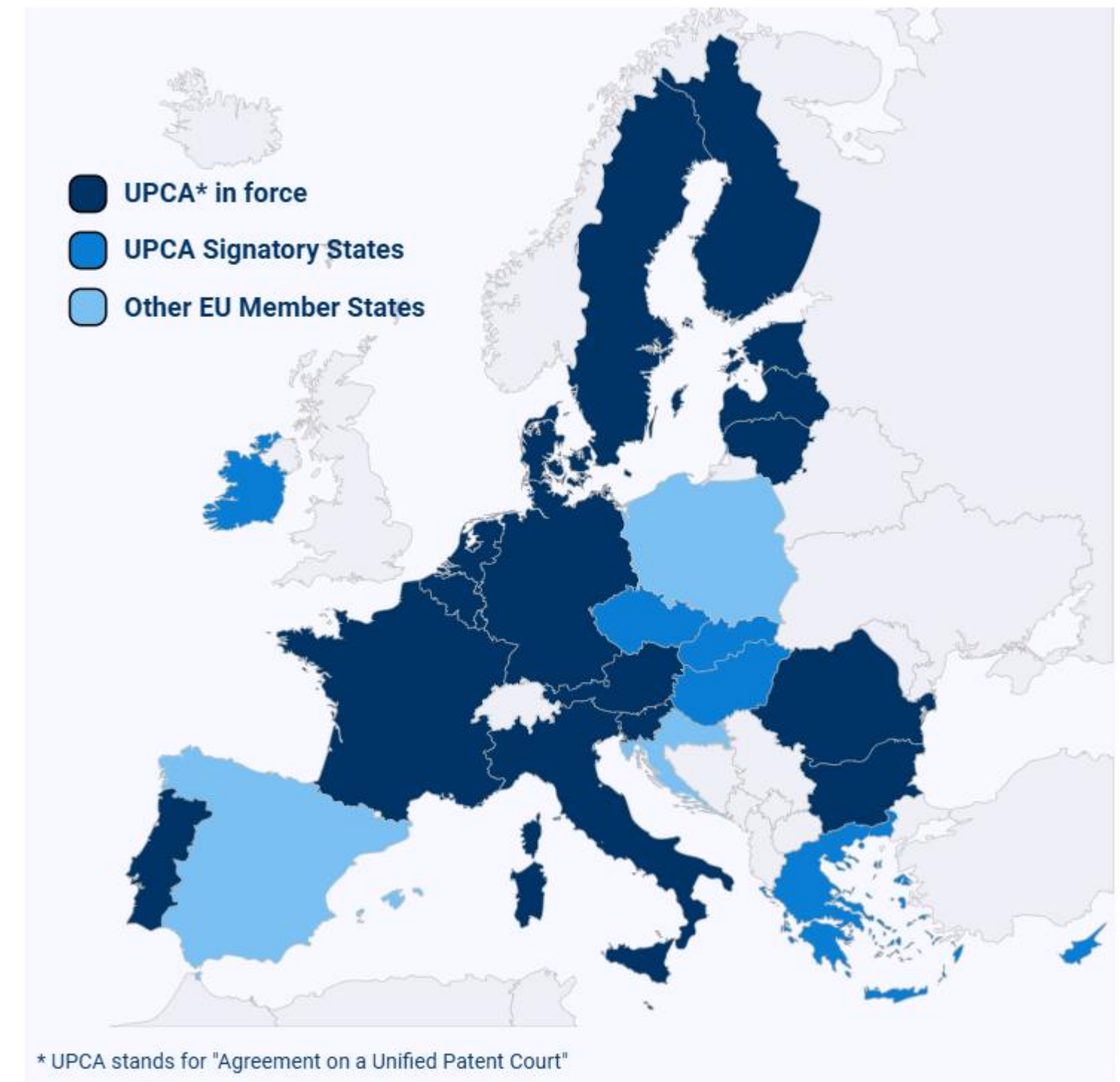
SHOOSMITHS

How the UPC has transformed European patent litigation

18 February 2025

UPC – jurisdiction

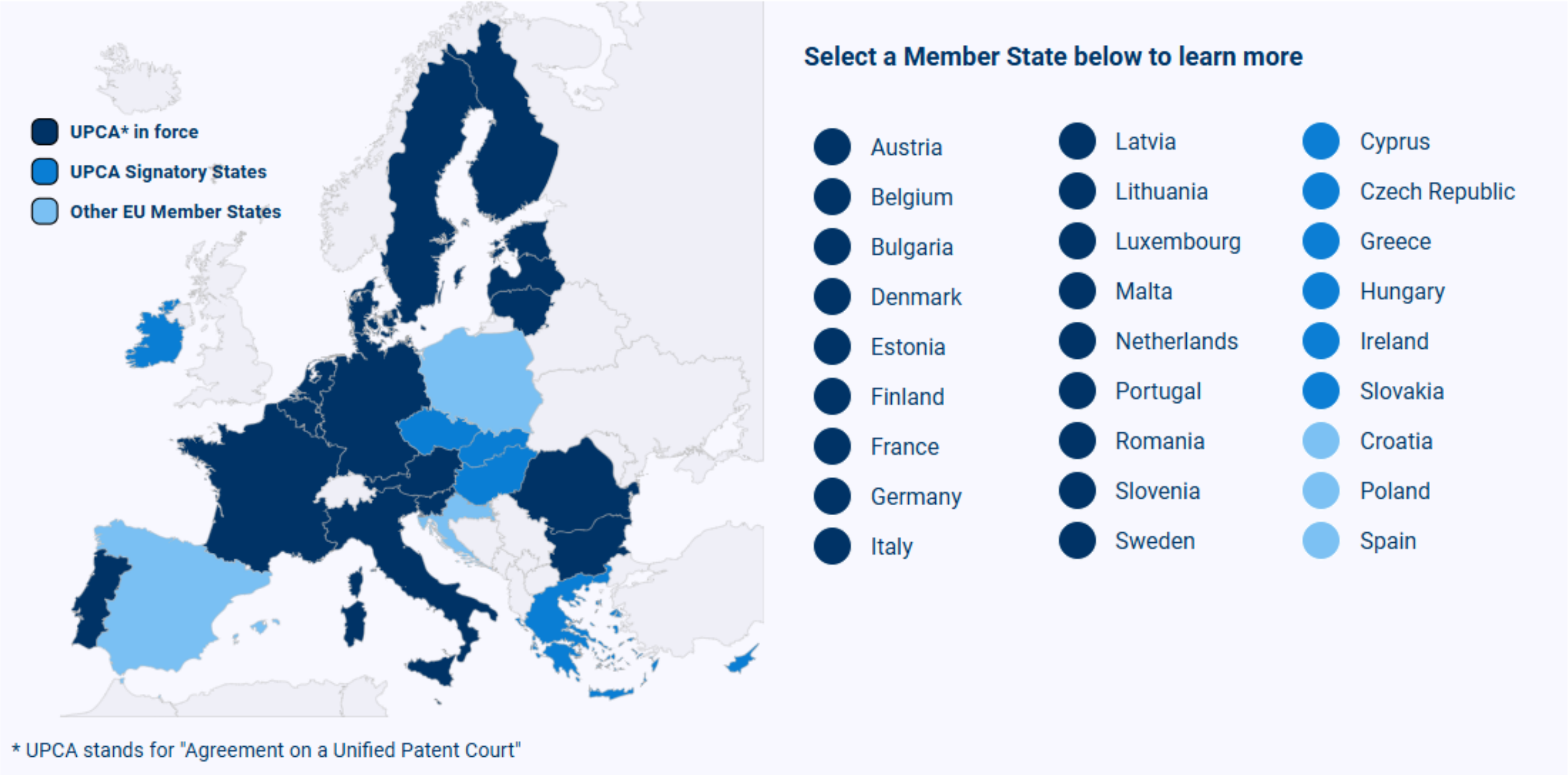
- All UPCA signatory states are EPC states
- Jurisdiction in respect of “classical” EPs and SPCs, subject to opt-outs
- Exclusive jurisdiction over unitary EPs
- Ultimately will have exclusive jurisdiction over all EPs in the participating member states



Source: UPC website

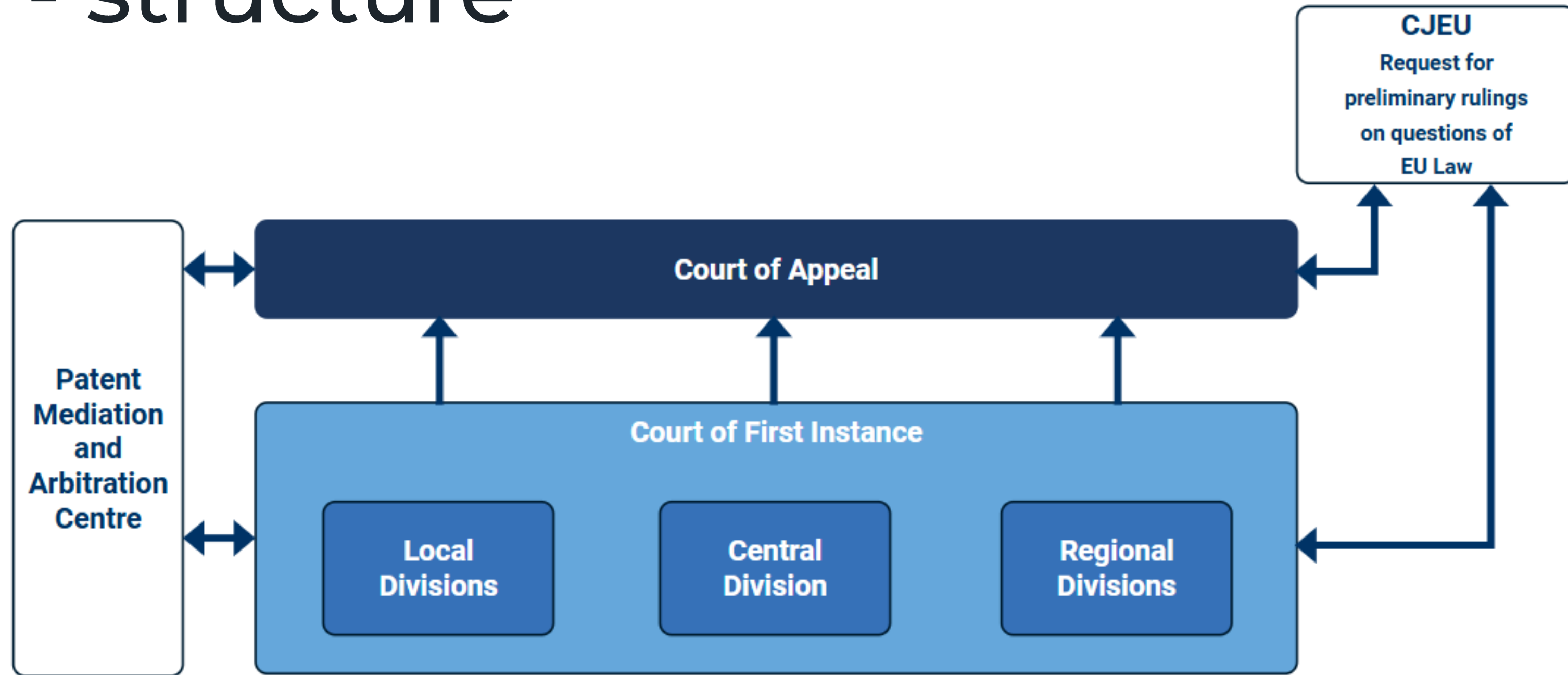
UPC

UPC Member States map



Source: UPC website

UPC - structure



Source: UPC website

UPC – Central Division case allocation

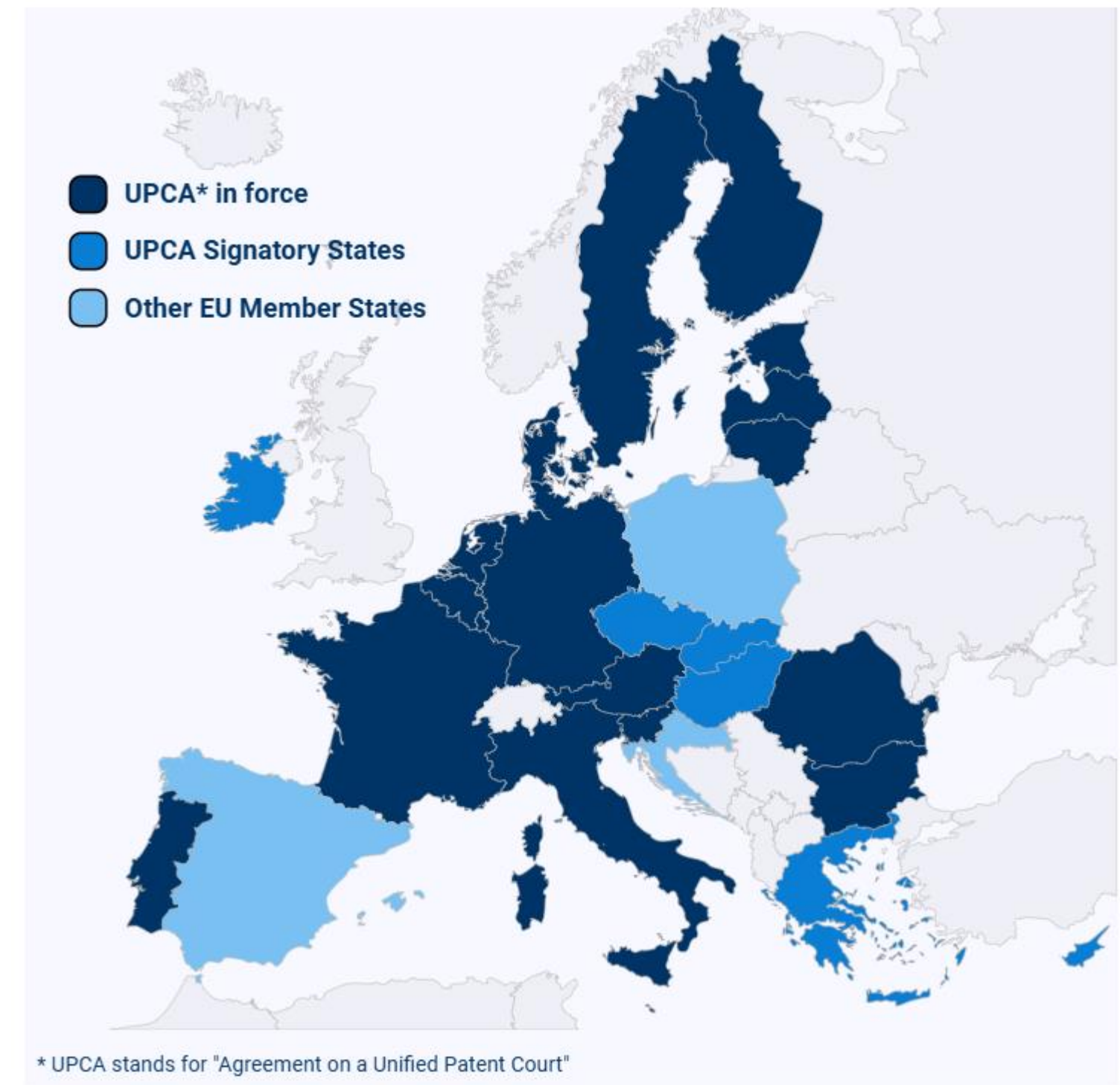
London <i>Milan Section</i>	Paris Seat	Munich Section
	President's Office	
(A) Human necessities, without Supplementary protection certificates	(B) Performing operations, transporting	(C) Chemistry, metallurgy, without Supplementary protection certificates
	(D) Textiles, paper	(F) Mechanical engineering, lighting, heating, weapons, blasting
	(E) Fixed constructions	
	(G) Physics	
	(H) Electricity	
	Supplementary protection certificates	

Source: UPC – decision of the Administrative Committee of 26 June 2023 amending the UPCA

UPC – representation

UPCA Article 48

- Lawyers authorised to practise before a court of a Contracting Member State
- European Patent Attorneys (i) entitled to act as professional representatives before the EPO, and (ii) who have appropriate qualifications such as a European Patent Litigation Certificate
- Representatives may be assisted by patent attorneys [practising in a Contracting Member State (RoP 292.1)]



Source: UPC website

Composition of the panels of the UPC

Court of First instance

- Multinational composition
- Local/Regional Divisions: three legally qualified judges (as a starting point) but a technical judge may be added and will be if the division hears validity counterclaim
- Central Division: two legally qualified judges; one technically qualified judge

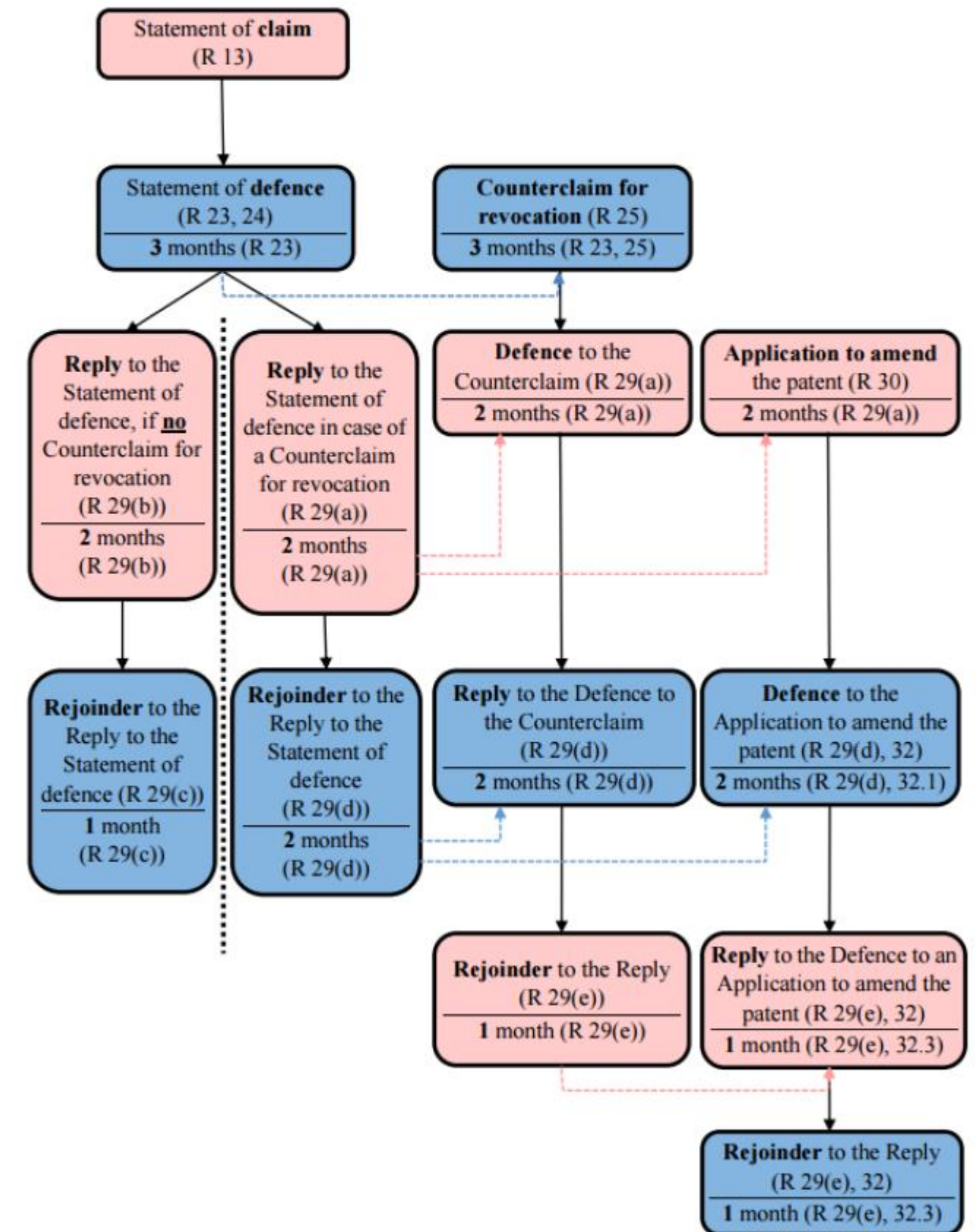
Court of Appeal

- Multinational composition of five judges
- Three legally qualified judges
- Two technically qualified judges with qualifications and experience in the field of technology concerned

UPC – Procedure

- Not the same as EPO oppositions
- But, like oppositions, largely written rather than oral
- More in line with continental legal systems than common law jurisdictions
- Legal teams: both “lawyer” litigators and patent attorneys
- Experts: very limited cross-examination (so far)
- Very tight deadlines: implications for legal team
- Language: English looks set to dominate

Table 1 – Infringement proceedings



Source: Managing IP

Interface of the UPC with EP prosecution

- Forum shopping on steroids
- In a perfect world, with unlimited budgets, patent portfolios could include national patents, “classical” EPs (opted in / opted out) and unitary patents
- Strategic use of divisionals



Interface of the UPC with EPO oppositions

- Expect parallel proceedings
- UPC fast and higher cost
- EPO potentially greater territorial scope
- Potential impact of filing opposition on opt-out status



Interface of the UPC with national courts

- Expect parallel proceedings
e.g. Edwards Lifesciences v Meril Life
- UPC relatively fast compared to most national courts
- UPC greater territorial scope
- UPC / UK parallel proceedings: likely to be frequent
- UPC / national litigation in other UPC states
- Parallel proceedings within the UPC
- Parties will use parallel proceedings for strategic and procedural advantage



UPC stats

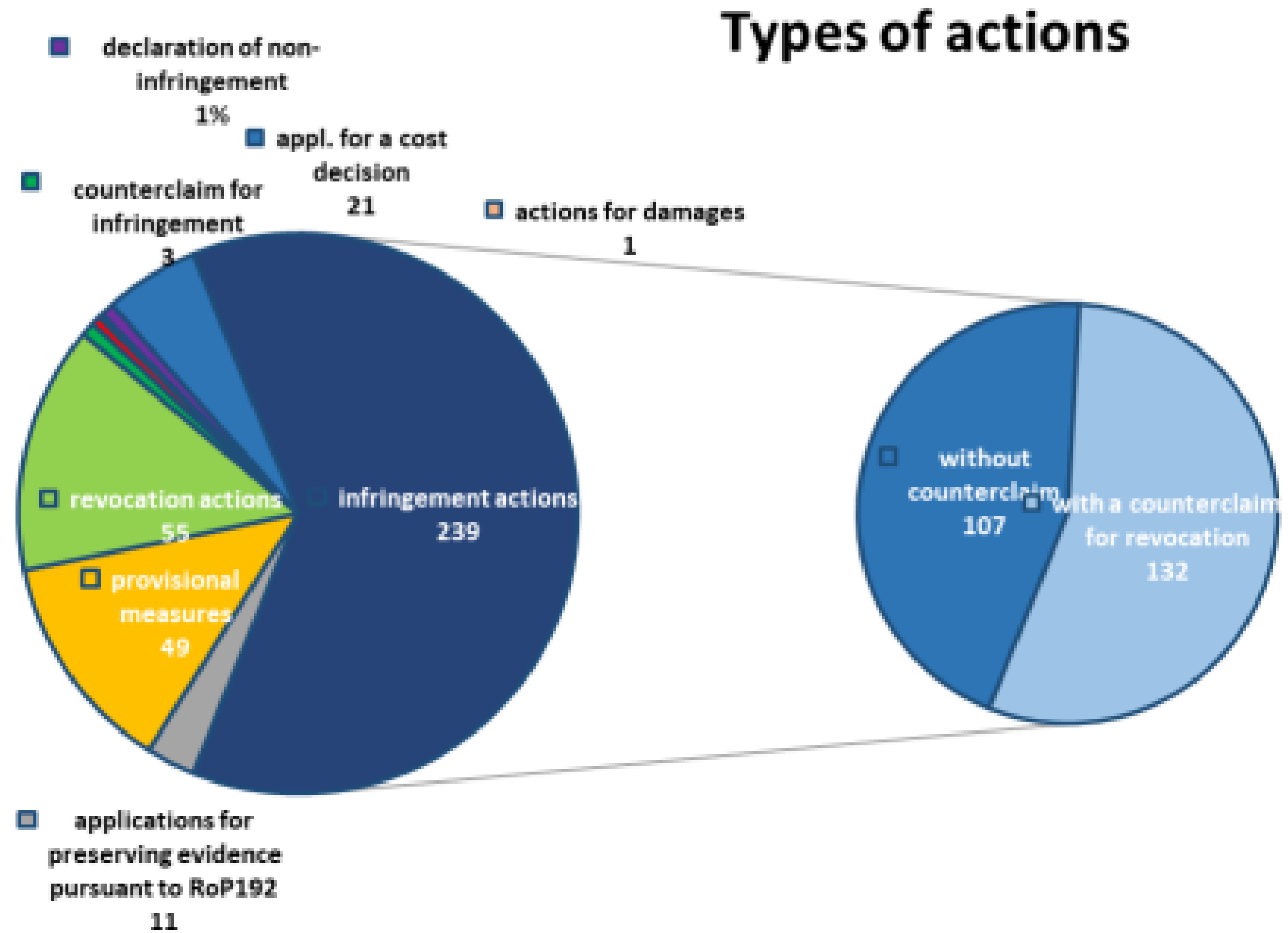
As at end January 2025:

- CFI received 700 cases
- 251 infringement actions (Munich LD 82; Dusseldorf 55; Mannheim 34; Hamburg 21; Paris LD 14; Milan LD 13; the Hague 14; Nordic Baltic RD 7; Copenhagen 3; others each 2 or less)
- 259 counterclaims for revocation in 140 individual infringement actions (N.B. multiple defendants counted separately)
- 69 applications for provisional measures
- 55 stand-alone revocation actions (Paris 40; Munich 8; Milan 7)



UPC stats

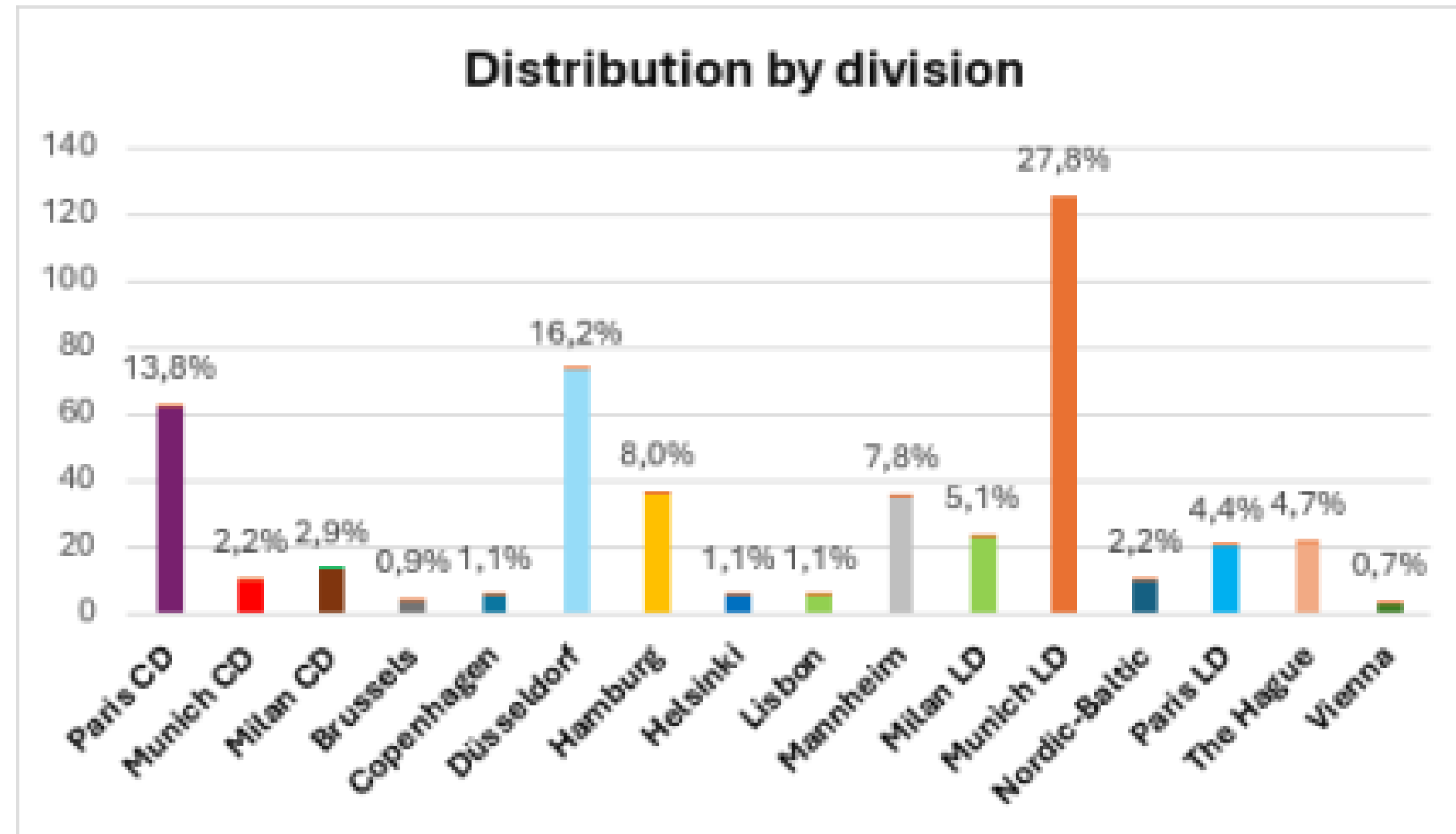
Source: UPC website
As at 1 January 2025



UPC stats

Source: UPC website

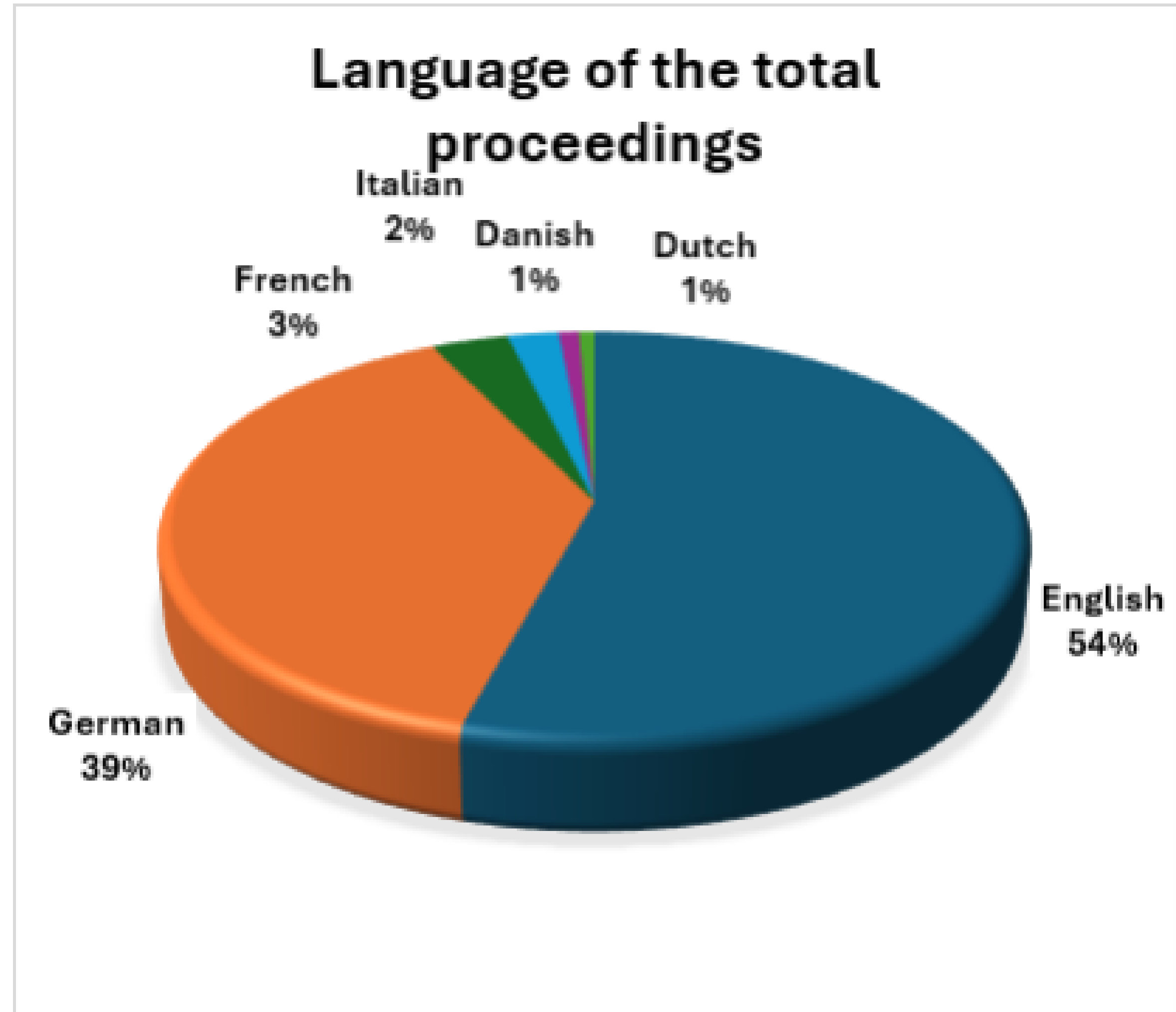
As at end January 2025



UPC stats

Source: UPC website

As at end January 2025

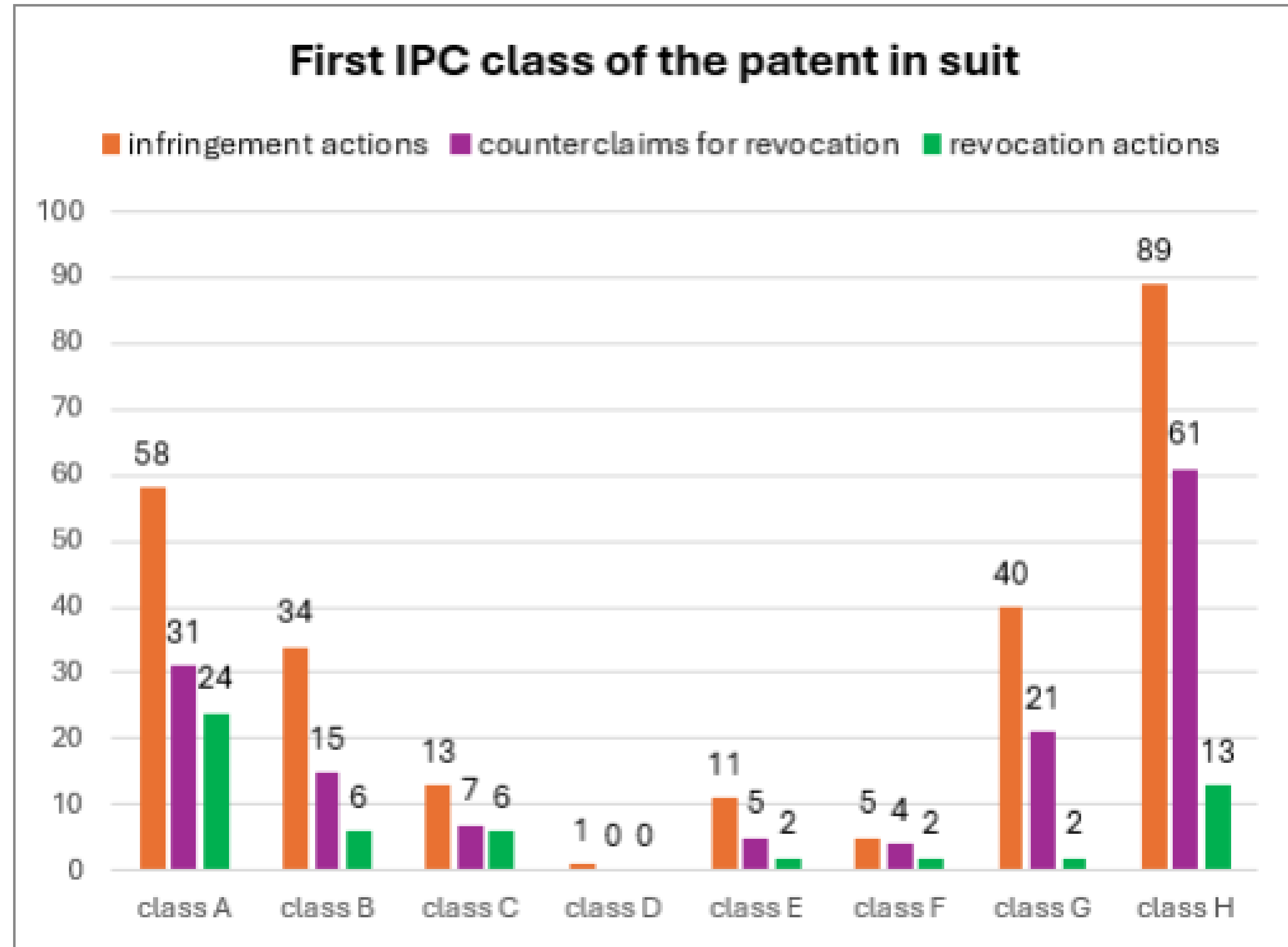


UPC stats

Source: UPC website

As at end January 2025

(<https://ipcpub.wipo.int/>)



UPC stats

As at 31 January 2025:

- Court of Appeal has received 145 appeals
- 42 under RoP 220.1(a) or (b) (final decisions/decisions terminating proceedings)
- 35 under RoP 220.1(c) (UPCA Arts. 49(5), 59, 60, 61, 62 or 67 – language, provisional/protective measures)
- 67 under RoP 220.2 (other orders)
- 1 under RoP 221 (cost decisions)



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