The Unitary Patent package

An introduction to the new system and latest update
Objectives of the Unitary Patent package

Cost-effective option for broader patent protection and dispute settlement across Europe

- Providing better value with reduced complexity

- Facilitating access to patent protection for SMEs, universities and public research Centres

- Making Europe more attractive for innovation and investors

- Boosting Europe's competitiveness
Legal basis of Unitary Patent

- **20 January 2013**: Entry into force of the Regulations for the 25 participating Member States
  - Regulation (EU) No. 1257/2012 of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection
  - 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 arrangements

- Regulations apply as of the date of the entry into force of the Agreement on a Unified Patent Court (UPC Agreement)
Agreement on Unified Patent Court (UPC Agreement)

- **UPC Agreement** was signed on 19 February 2013 by 25 EU Member States (not by Croatia, Poland and Spain)

- It will **enter into force** after the deposit of the 13th instrument of ratification or accession, including France, Germany and Italy

The Unitary Patent: basic concept

The Unitary Patent is a "European patent with unitary effect"

- It has unitary character and shall provide uniform protection, and shall have equal effect in all the participating EU member states

- A European patent will benefit from unitary effect at the request of the proprietor: post-grant attribution of unitary effect

- Single EPC procedure for European and "Unitary Patents"

→ EPC proceedings, incl. opposition and appeal proceedings remains unchanged
Reduced costs

- No fees are charged by the EPO for the purpose of obtaining a Unitary Patent
- Attractive fee level with annual fees for maintaining a Unitary Patent for ten years – the current average lifetime of a European patent – amounting to less than EUR 5 000
- Based on a comparison of fees and all associated costs, a Unitary Patent will on average be significantly less expensive than a European patent validated and maintained in four countries.

The total costs\(^1\)
of a European Patent

- Direct costs of the renewal fees + associated indirect costs arising from validating and maintaining a European patent in all countries.

The total costs\(^1\)
of a Unitary Patent

- providing protection in up to 25 participating member states.

\(^1\) Value of a European Patent

\(^1\) Providing protection in up to 25 participating member states.
# Unitary Patent: Cost efficiency thanks to simplification

## Classic European patent
- Multiple national post-grant administration procedures
- National patent offices
  - Translation requirements
  - National validation fees
  - Procedures
  - Renewal fees
  - Currencies
- Requiring your own local attorney

## Unitary Patent
- One-stop-shop at the EPO for all post-grant administration
- One office
  - Simplified translation regime
  - No fee for obtaining a Unitary Patent
  - One procedure
  - One set of renewal fees
  - One currency (€)
  - One Register

Your European patent attorney
The Unitary Patent: basic concept

- The Unitary Patent will co-exist with national patents and classical European patents

- Various combinations of classical European patent and Unitary Patent:
  - a Unitary Patent for the participating EU member states, together with
  - a classical European patent taking effect in one or more EPC contracting states not covered by the unitary patent

- Effect: unitary patent takes effect retroactively in the participating EU member states as from the date of publication of the mention of grant of the European patent
Unitary Patent: Translation arrangements

- Builds on EPO language regime (Article 14(6) EPC).
- No further translations required after transitional period, unless a legal dispute arises.
- Reliance on high-quality machine translations
  - for applications and specifications
  - to be available for free in all EU official languages
  - for information only (no legal effect)
Requirements for the registration of unitary effect (1/2)

Substantive requirements

Unitary effect can be requested for European patents that were granted

- on or after the date of entry into operation of the Unitary Patent package
- in respect of all 25 participating EU Member States, and
- with the same set of claims for all of them
### Requirements for the registration of unitary effect (2/2)

<table>
<thead>
<tr>
<th>Main procedural requirements</th>
<th>Filing of the request by the patent owner</th>
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<tbody>
<tr>
<td></td>
<td>in writing in the language of the proceedings</td>
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<tr>
<td></td>
<td>no later than one month after the mention of the grant is published in European Patent Bulletin</td>
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<tr>
<td></td>
<td>containing the following elements:</td>
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<tr>
<td></td>
<td>– particulars of the requester, number of the European patent to which unitary effect shall be attributed, information regarding the representative and translation of the European Patent (only during a transitional period)</td>
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<tr>
<td></td>
<td>– a full <strong>English</strong> translation if the patent is <strong>granted in French</strong> or <strong>German</strong>, or</td>
</tr>
<tr>
<td></td>
<td>– a full translation into <strong>any language of the EU</strong> if the patent has been <strong>granted in English</strong></td>
</tr>
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</table>
Registration of unitary effect

- New forms will be available
  - Use of trilingual EPO FORM 7000 highly recommended (not mandatory) when filing request
  - Advisable to carefully read explanatory notes to Form 7000
- Online filing tools (OLF, OLF2.0 and web-form filing) available
## Examination of request for unitary effect

<table>
<thead>
<tr>
<th>Request by patent holder</th>
<th>Examination outcome</th>
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<tbody>
<tr>
<td>All requirements met</td>
<td>Unitary effect registered; date of registration communicated to requester</td>
</tr>
<tr>
<td>Substantive requirements not met</td>
<td>Request rejected</td>
</tr>
<tr>
<td>Request not filed within one month</td>
<td>Request rejected; Possibility for re-establishment of rights</td>
</tr>
<tr>
<td>Request filed in due time but other formal requirements not met</td>
<td>Invitation to correct deficiencies within one month. If not corrected in time: Request rejected</td>
</tr>
</tbody>
</table>
Transitional measures before the start of the Unitary Patent (1/2)

- EPO provides two **transitional measures** to support users in an early uptake of the Unitary Patent
  - **Early request for unitary effect** (OJ EPO 2022, A6)
    - The EPO will allow applicants to file requests for unitary effect already before the start of the Unitary Patent system, so that unitary effect can be registered immediately at the start of the system.
  - **Request for a delay in issuing the decision to grant** (OJ EPO 2022, A4/A5)
    - The EPO will provide the possibility to request a delay in issuing the decision to grant a European patent, so that users do not miss the opportunity to obtain a Unitary Patent.

- The two measures are interrelated but separate from each other from a procedural perspective.
Transitional measures before the start of the Unitary Patent (2/2)

- They will apply only for a **transitional period of 3-4 months**
  ("sunrise period") after the deposit of the UPC Agreement ratification instrument by DE. They will stop as of the entry into force of the UPC/UPP.

Unitary Patent: Territorial scope

Unitary effect is possible for all Member States participating in enhanced cooperation and for which the UPCA has entered into force at the date of registration of unitary effect.

*Expected 17 States: AT, BE, BG, DE, DK, EE, FI, FR, IT, LT, LV, LU, MT, NL, PT, SE, SI (UPCA not ratified: CY, CZ, GR, HU, IE, RO, SK)*

- Different generations of Unitary Patents with a different territorial coverage in the first years
- No extension of the territorial coverage to other participating Member States which ratify the UPCA after the registration of unitary effect
- Territorial coverage will be indicated in the Register for unitary patent protection
Unitary Patent Guide

- Provides companies, inventors and their representatives with an outline of the procedure involved in obtaining a Unitary Patent

- Deals also with the accessory procedures relating to Unitary Patents (e.g. compensation scheme for translation costs, registering a statement on licences of right) and gives overview of the rules on how to pay renewal fees for Unitary Patents

The Unified Patent Court (UPC) in a nutshell

- Newly created international court with jurisdiction for infringement and revocation actions relating to both Unitary Patents and classical European patents

- The UPC will employ specialised patent judges and will apply its own procedural law

- Decisions will be issued by internationally composed panels comprising both legally and technical qualified judges

- Designed to work in a highly efficient way with tight deadlines and judgments at first instance to be delivered one year after the start of the action
Structure of the UPC

<table>
<thead>
<tr>
<th>Court of Appeal</th>
<th>Luxembourg (Art. 9 UPCA)</th>
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<tbody>
<tr>
<td>Court of First Instance</td>
<td>Local Divisions¹ (Art. 7(3),(4) UPCA)</td>
</tr>
<tr>
<td></td>
<td>Regional Divisions² (Art. 7(5) UPCA)</td>
</tr>
<tr>
<td></td>
<td>Central Division³ (Art. 7(2) UPCA)</td>
</tr>
<tr>
<td>Mediation and Arbitration Centre</td>
<td>Ljubljana and Lisbon</td>
</tr>
</tbody>
</table>

¹ Local divisions: AT, BE, DE (4 divisions Dusseldorf, Mannheim, Munich, Hamburg), DK, FI, FR, IT, NL, PT, SI
² Regional division in Stockholm created by Estonia, Latvia, Lithuania and Sweden
³ Seat in Paris with a section in Munich. The UPC Agreement Contracting States will discuss and decide in due course whether and, if so, where to reassign the former London section of the Central Division
Jurisdiction of the UPC as regards the subject-matter (Art. 32 UPC Agreement) (1/2)

Exclusive jurisdiction *inter alia* in respect of actions for

- Actual or threatened *infringement* of classic European and unitary patents and Supplementary Protection Certificates (SPCs) and related defences, including counterclaims concerning licences,

- *Declarations of non-infringement* of classic European and unitary patents,

- *Revocation* of classic European and unitary patents
  - by direct attack
  - by counter-claim

- Declaration of invalidity of SPCs

- Injunctions
Jurisdiction of the UPC as regards the subject-matter (Art. 32 UPC Agreement) (2/2)

Exclusive jurisdiction *inter alia* in respect of actions

- for *provisional and protective measures*

- for *damages or compensation*

- relating to *prior use*

- related to the *decisions of the EPO* in carrying out the additional tasks concerning the Unitary Patent
Jurisdiction of national courts  
(Art. 32(2) and Art. 83 UPC Agreement)

National courts

- All actions relating to classical European patents and unitary patents which do not come within the exclusive jurisdiction of the UPC, such as
  - actions related to the right to a patent, or
  - actions related to the transfer of a patent right

- Parallel jurisdiction with UPC during transitional period with regard to European patent applications, classical European patents and SPCs, but not Unitary Patents

- Opt-out possibility with regard to European patent applications, classical European patents and SPCs, but not Unitary Patents
When will the new system start?

Start Provisional Application Phase

19 January 2022

18 January 2022: Austria ratified UPC Protocol on Provisional Application

Ratification of UPC Agreement by Germany

3-4 months "sunrise period"
Early requests for unitary effect
Requests for delay of grant

Simultaneous start of
- Unified Patent Court
- Unitary Patent

Provisional Application Phase

2H2022
Need more information?

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