



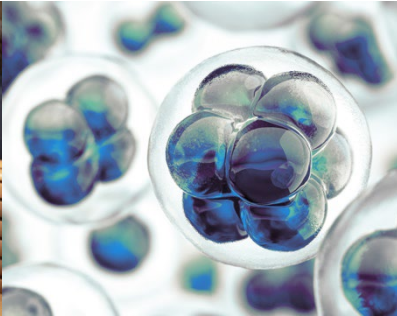
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# Latest developments regarding the Unitary Patent

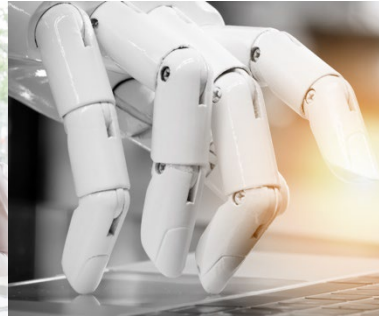
Unitary Patent IT Workshop, 7-8 April 2022



Mihály Ficsor

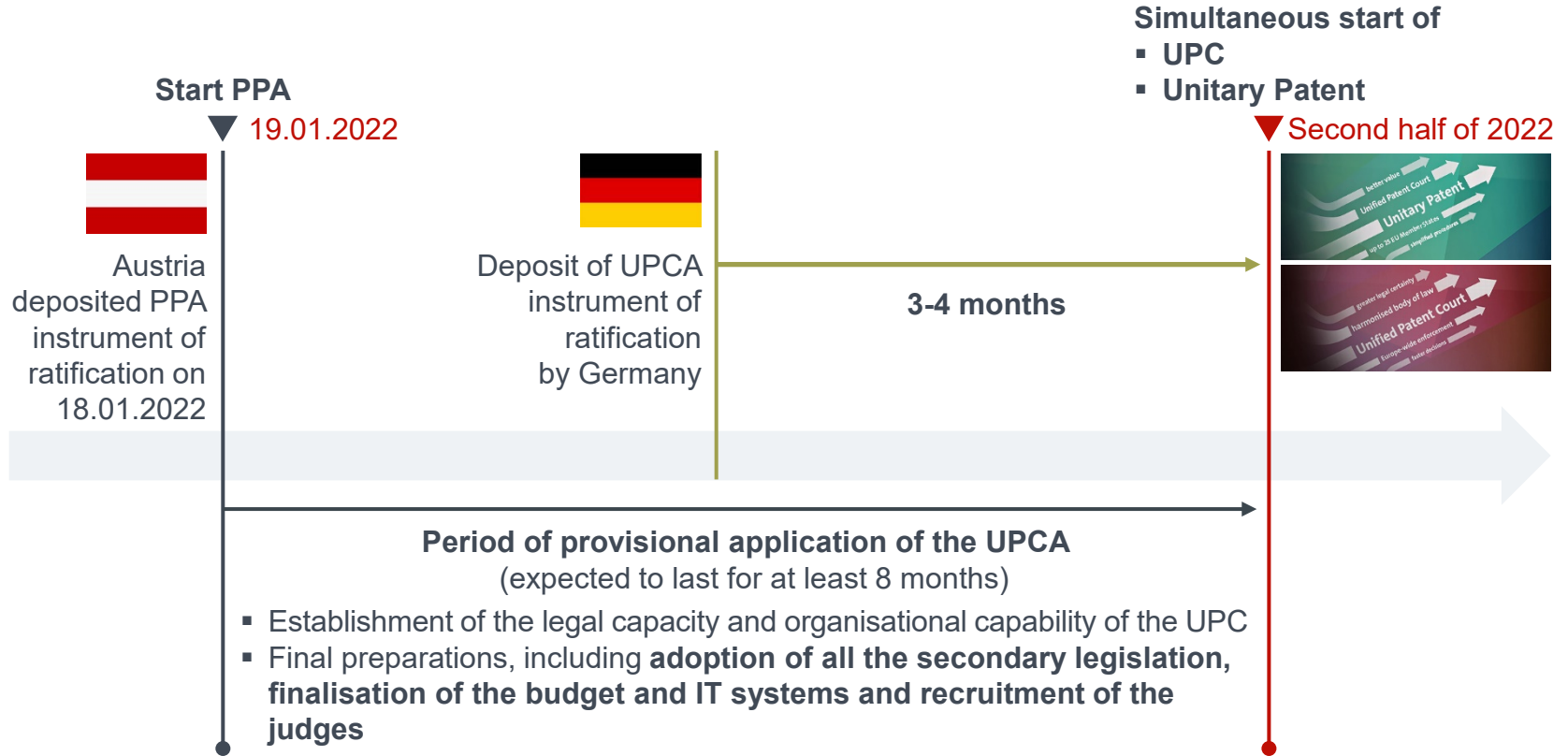


Principal Director | Legal Affairs



7-8 April 2022

# When will the new system start?



# Objectives of the Unitary Patent



**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

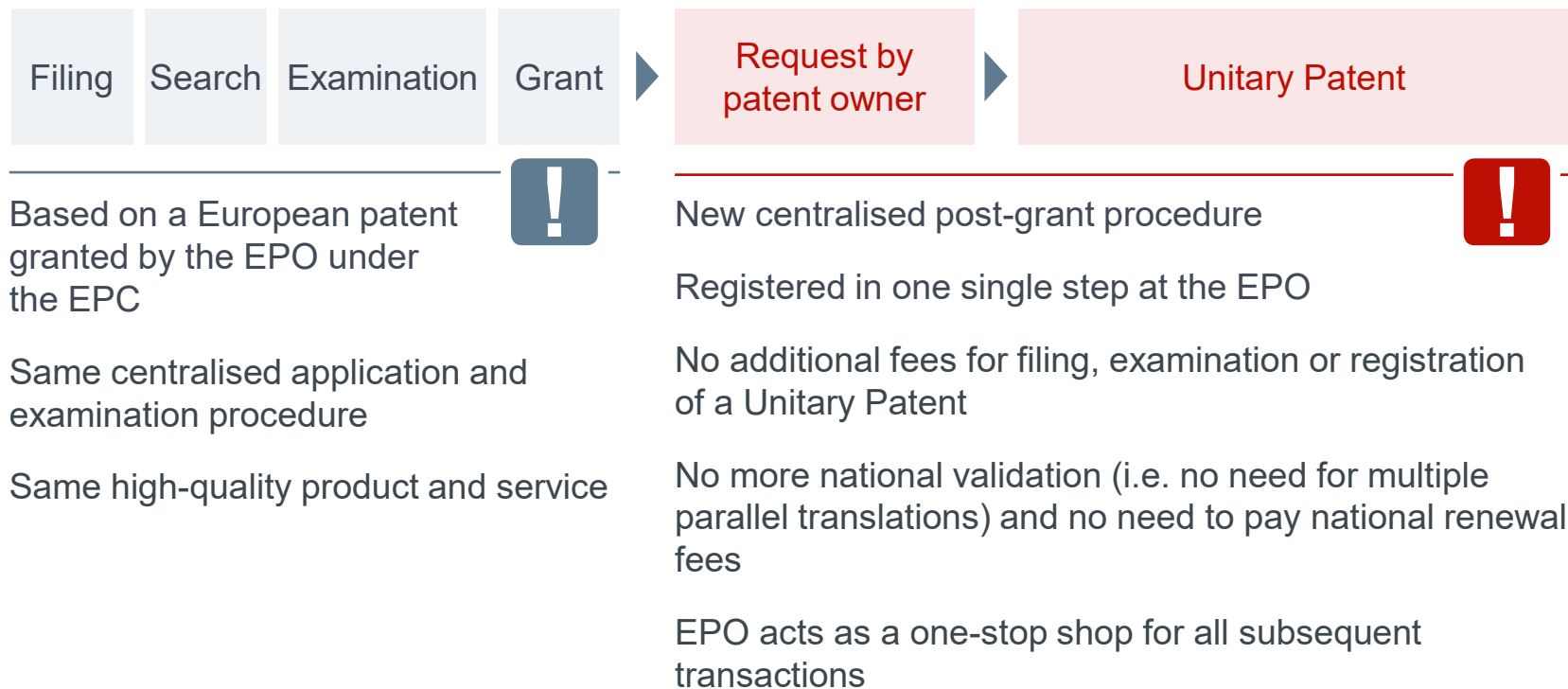


Making Europe more attractive for innovation and investors



Boosting Europe's competitiveness

# A simple procedure, requested after grant, in one step



# Requirements for the registration of unitary effect

## 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 member states and
- with the same set of claims for all of them

# Requirements for the registration of unitary effect

## Main procedural requirements

Request filed by the patent owner:

- in writing, in the language of the proceedings
- no later than one month after the mention of the grant is published in the European Patent Bulletin
- containing the following elements:
  - particulars of the requester (as provided for in R. 41(2)(c) EPC)
  - number of the European patent to which unitary effect is to be attributed
  - information regarding the representative (as provided for in R. 41(2)(d) EPC)
  - translation of the European patent (only during a transitional period)



# Examination of request for unitary effect

<b>Request by patent owner</b>	All requirements met	Unitary effect registered; date of registration communicated to requester
	Substantive requirements not met	Request rejected
	Request not filed within one month	Request rejected; possibility of re-establishment of rights
	Request filed in due time but other formal requirements not met	Invitation to correct deficiencies within one month; if not corrected in time: request rejected



# Transitional measures before the start of the Unitary Patent

- EPO will provide for 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 even before the start of the Unitary Patent system so that unitary effect can be registered immediately once the system is up and running
  - **Request for a delay in issuing the decision to grant** (OJ EPO 2022, A4/A5)
    - The EPO will allow requests for 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
- They will apply only for a **transitional period of 3-4 months** after the deposit of the UPCA ratification instrument by Germany. They will stop as of the entry into force of the UPC/UP.

# Early request for unitary effect

The request can be validly filed if:

- Germany has **deposited** its **ratification instrument** of the UPCA
  - a **communication** under R. 71(3) EPC (**intention to grant**) has been **despatched**
  - the **European patent is not granted** before the entry into operation of the Unitary Patent package
- 
- If the requirements for the registration of unitary effect are met, the EPO will **register** unitary effect **once** the **Unitary Patent package** has become **applicable**.
  - **The result** of the request for unitary effect will be communicated to the requester **after the start of the Unitary Patent system** and after the mention of the grant of the relevant European patent is published in the European Patent Bulletin.
  - The EPO will **inform** the requester of **formal deficiencies before the entry into force** of the Rules relating to Unitary Patent Protection.

# Request for a delay in issuing the decision to grant

- To be **eligible for unitary effect**, a **European patent must not be granted before the date of application** of Regulation (EU) No 1257/2012 (Article 18(6) of the Regulation).
- At an applicant's request, the EPO will **delay issuing its decision to grant** a European patent so that the mention of the grant is published in the European Patent Bulletin **on or immediately after the start date of the Unitary Patent system**.

The request can be validly filed if:

- Germany has **deposited its ratification instrument** of the UPCA
- a **communication** under R. 71(3) EPC (**intention to grant**) has been **despatched**
- the applicant has **not yet approved the text** intended **for grant**
- the request is **filed** on **Form 2025** provided by the EPO

<https://www.epo.org/law-practice/unitary/unitary-patent/transitional-arrangements-for-early-uptake.html>

# Need more information?

The Unitary Patent Guide provides companies, inventors and their representatives with an outline of the procedure for obtaining a Unitary Patent. It is available at:

[www.epo.org/law-practice/unitary/unitary-patent/unitary-patent-guide.html](http://www.epo.org/law-practice/unitary/unitary-patent/unitary-patent-guide.html)

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