



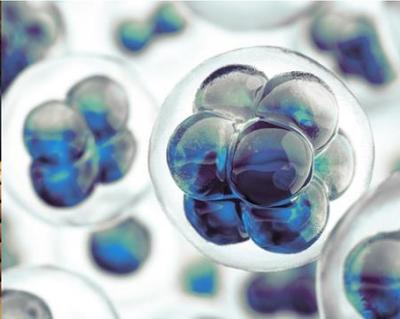
Europäisches
Patentamt

European
Patent Office

Office européen
des brevets

The Unitary Patent

An introduction to the new system



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, in particular for SMEs, universities and public research centres



Making Europe more attractive for innovation and investors



Boosting Europe's competitiveness

A simple one-step procedure after grant



- ! Based on a European patent, granted by the EPO under the EPC
- ! Same application and examination procedure
- ! High-quality product and service

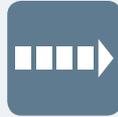
- ! Registered in one single step at the EPO
- ! Uniform protection in up to 25 Member States
- ! No need for multiple parallel national validations (administrative procedures, fees, translations)
- ! EPO acts as one-stop shop for all subsequent transactions

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

Costs for local attorneys



Unitary Patent

The EPO acts as a one-stop-shop 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

Reduced costs (1/2)

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



¹ Direct costs of the renewal fees + associated indirect costs arising from validating and maintaining a European patent in all countries.

Reduced costs (2/2)

- Business-friendly renewal fee level is set at the equivalent of the combined renewal fees payable in the four participating Member States where a European patent was most frequently validated at the time the renewal fee scale was adopted
- Compensation scheme for SMEs set at EUR 500
 - covers translation costs in the pre-grant phase
 - request to be filed with the request for unitary effect

Renewal fees

2nd year	€	35	11th year	€	1 460
3rd year	€	105	12th year	€	1 775
4th year	€	145	13th year	€	2 105
5th year	€	315	14th year	€	2 455
6th year	€	475	15th year	€	2 830
7th year	€	630	16th year	€	3 240
8th year	€	815	17th year	€	3 640
9th year	€	990	18th year	€	4 055
10th year	€	1 175	19th year	€	4 455
			20th year	€	4 855

Additional fee for late payment of a renewal fee = 50% of the belated renewal fee

Renewal fee reduction of 15% in case of a statement (offer) of licences of right

Co-existence with European and national patents

- **UP combined with EP:**

- UP for the 25 participating Member States, combined with
- a classic European Patent taking effect in one or more EPC Contracting States which do not participate in the scheme (e.g. Spain, Switzerland, UK etc.).

- **UP with national patent:**

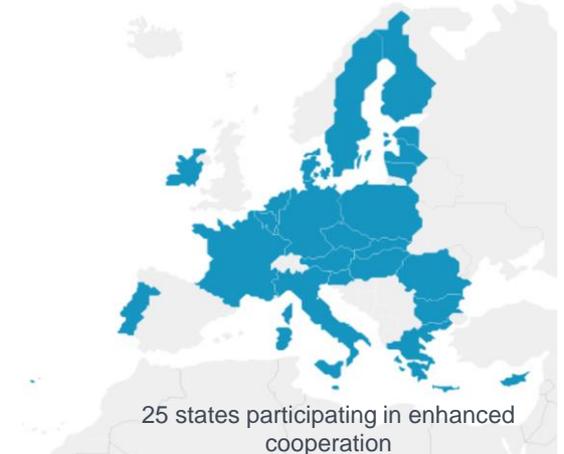
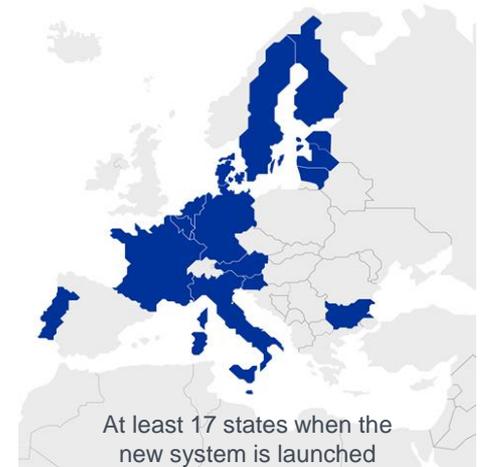
- a UP for the 25 participating Member States, combined with
- one or more national patent(s) in one or more EPC Contracting States, which either do not participate in the scheme or which allow simultaneous protection

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 different territorial coverage in the initial 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



Legal basis

EU Regulations

- EU Regulation No. 1257/2012 of 17 Dec 2012 creating the European Patent with unitary effect
- EU Regulation No. 1260/2012 of 17 Dec 2012 relating to the translation arrangements

Secondary legislation

- Rules relating to Unitary Patent Protection
- Rules relating to Fees
- Budgetary and Financial Rules
- Rules relating to the Distribution of Fees among the participating EU Member States

Unified Patent Court

- Agreement on a Unified Patent Court (UPCA)

All these texts are linked to each other: as soon as the UPCA enters into force, the Regulations and the secondary legislation will apply

How to obtain a Unitary Patent (1/3)

Substantive requirements

Unitary effect can be requested for European patents that were granted

- in respect of all 25 participating Member States, and
- with the same set of claims for all of them.

Formal requirements

Filing of the request by the patent owner

- in writing, in the language of the proceedings, and
- no later than one month after the mention of the grant is published.

How to obtain a Unitary Patent (2/3)

Translation

- Request for unitary effect to be filed together with translation
 - if European patent granted in FR or DE, full EN translation of the specification
 - if European patent granted in EN, full translation of the specification into any language other official language of the EU
 - EPO to publish these translations
- No legal effect: text is for information purposes only
- Translation to be filed during a transitional period (6 to 12) until high quality machine translation becomes available



How to obtain a Unitary Patent (3/3)

Examination of the request for unitary effect

All requirements met

- Registration of unitary effect
- Communication of date of registration to the requester

Substantive requirements not met

- Rejection of the request

Request filed after expiry of one-month period

- Rejection of the request
- If substantive requirements met, possibility to request re-establishment of rights within two months of expiry of the one-month period for filing the request

Request filed in due time, substantive requirements met but formal ones not

- EPO invites requester to correct deficiencies within non-extendable period of one month

Legal remedies against EPO decisions



- Actions against decisions of the EPO in carrying out the administrative tasks relating to Unitary Patents that are entrusted to it under Art. 9 Regulation (EU) No 1257/2012 must be filed with the Registry of the Unified Patent Court (see Art. 32(1)(i) UPCA) within two months of service of the decision
 - Interlocutory revision by the EPO possible
- Expedited action against a decision of the EPO where EPO rejects request for unitary effect
 - Any application to reverse this decision must be lodged with the UPC Registry within three weeks of service of the decision
 - This procedure does not include the possibility of interlocutory revision by the EPO

Transitional measures (1/2)

EPO will provide two **transitional measures** to support users in an early uptake of the Unitary Patent

- **Early request for unitary effect**
 - 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**
 - 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.

Transitional measures (2/2)

- The two transitional measures will be available as of the date of deposit of Germany's instrument of ratification of the UPCA i.e. **3-4 months before the start of the Unitary Patent system**
 - Date to be communicated on the EPO's website
- Transitional measures will end once the Unitary Patent system starts
- Further information:
 - Early request for unitary effect: Notice from the EPO (OJ EPO 2022, A6)
 - Request for delay: Decision of the President and Notice from the EPO (OJ EPO 2022, A4, A5)
 - Very detailed explanations of the system including some examples at:
<https://www.epo.org/law-practice/unitary/unitary-patent/transitional-arrangements-for-early-uptake.html>

Greater legal certainty with the Unified Patent Court



- Establishes an effective forum for enforcing or challenging patents in Europe
- Leads to a decrease in parallel national court proceedings
- Enhances legal certainty through harmonised case law on patent infringement and validity
- Provides simpler, quicker and more efficient judicial procedures
- Applies uniform substantive patent law on the scope of the rights conferred and their limits, as well as standard remedies in cases of infringement

When will the new system start?

19 January 2022

Provisional application phase starts



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**

2nd half of 2022

Simultaneous start of

- Unified Patent Court
- Unitary Patent



Provisional application phase

Unitary Patent Guide

- Second, updated edition published end of April
- Provides companies, inventors and their representatives with an outline of the procedure involved in obtaining a Unitary Patent.
- Deals with the accessory procedures relating to Unitary Patents (e.g. compensation scheme for translation costs, registering a statement on licences of right) and gives an overview of the rules on paying renewal fees for Unitary Patents.
- Available at:
epo.org/law-practice/unitary/unitary-patent/unitary-patent-guide.html



Unitary Patent Guide

Obtaining, maintaining and managing Unitary Patents

2nd edition
April 2022

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