Unitary Patent System - legal perspective

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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
Cost benefits

- No fees are charged by the EPO for the purpose of obtaining a Unitary Patent

- Attractive fee level: renewal fees for Unitary Patent for first ten years (= average term of protection of a European patent) below EUR 5 000

- Costs for Unitary Patent lower than for a European patent validated and maintained in four countries

- Reduction of the annual fees by 15% in case of statement on licenses of right

- Compensation scheme concerning translation costs for SMEs
### Unitary Patent: Cost efficiency thanks to simplification

<table>
<thead>
<tr>
<th>National patent offices</th>
<th>Unitary Patent</th>
</tr>
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<tbody>
<tr>
<td>Multiple national post-grant administration procedures</td>
<td>One-stop-shop at the EPO for all post-grant administration</td>
</tr>
</tbody>
</table>

**National patent offices**
- Translation requirements
- National validation fees
- Procedures
- Renewal fees
- Currencies

Requiring your own local attorney

**Unitary Patent**
- 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 traditional European patents

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

- No double protection by a unitary patent and a classical European patent on the territory of the 25 participating states

- Double protection by unitary patent and national patent to be determined at national level (Art. 139(3) EPC): Will be foreseen in several states, incl. DE and FR

- 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
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 EU Member States, and
- with the same set of claims for all of them
### Requirements for the registration of unitary effect (2)

<table>
<thead>
<tr>
<th>Main procedural requirements</th>
<th>Filing of the request by the patent owner</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>in writing in the language of the proceedings</td>
</tr>
<tr>
<td></td>
<td>no later than one month after the mention of the grant is published in European Patent Bulletin</td>
</tr>
<tr>
<td></td>
<td>containing the following elements:</td>
</tr>
<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>
</tr>
<tr>
<td></td>
<td>- a full English translation if the patent is granted in French or German, or</td>
</tr>
<tr>
<td></td>
<td>- a full translation into any language of the EU if the patent has been granted in English</td>
</tr>
</tbody>
</table>
Filing the request for 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>Action</th>
</tr>
</thead>
<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

- 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.

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

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

When will the new system start?

19 January 2022
Start Provisional Application Phase

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

2H2022
Simultaneous start of
• Unified Patent Court
• Unitary Patent

Provisional Application Phase
Need more information?

Visit us
www.epo.org/unitary

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Thank you for your attention!

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