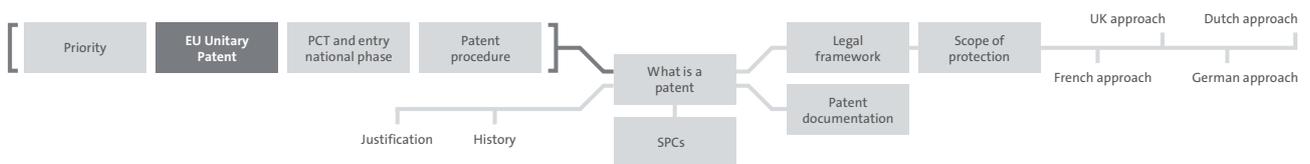


# EU Unitary Patent

## Essentials: The unitary patent



## Introduction

The creation of unitary patent protection for the territory of the European Community/Union has been under discussion since the end of the 1950s. In the 1970s, the plan was that the Community Patent Convention (CPC) and, at a later stage, its Litigation Protocol would complement the EPC and provide a unitary patent for the whole European Community, together with a common court of appeal. However, despite various attempts, the CPC never entered into force, because it neither simplified nor improved on the European patent system.

In 2000, the European Commission reacted to this unsatisfactory situation by presenting a draft proposal for a Regulation on the Community Patent centred on the idea that the EU could accede to the EPC and could thus be designated, as a whole, for the grant of a European patent. Following criticism of the complicated and expensive nature of the previous proposed litigation system and language regime, the Commission this time favoured the three-language regime of the EPC.

In the course of subsequent discussions, it became clear that the problems relating to the language regime and litigation system could not be settled. This caused the Council to state, at the end of 2010, that “insurmountable obstacles to unanimity will persist for the foreseeable future”.

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## The way forward from 2011: enhanced co-operation

The issue of the language regime proved to be a major turning point for the unitary patent, because it prompted a group of EU member states to formally address to the Commission a request for “enhanced co-operation” according to **Article 20 TEU** and Articles 326-334 TFEU.

Article 20 TEU  
→ see below

Enhanced co-operation allows those EU member states participating in it to make use of the EU’s institutions and to adopt legislation in a specific area, with others able to opt in at a later stage.

Only a few months later, by decision of 10 March 2011, the Council granted authorisation to proceed with enhanced co-operation. Out of the 28 EU member states, only Spain and Croatia have not yet joined the scheme. Italy, which initially decided not to participate, joined in autumn 2015.

Acts adopted within the framework of enhanced co-operation are binding on participating member states only, so the unitary patent will take effect in the territories of these states only.

### Article 20 TEU

(1) Member States which wish to establish enhanced cooperation between themselves within the framework of the Union’s non-exclusive competences may make use of its institutions and exercise those competences by applying the relevant provisions of the Treaties, subject to the limits and in accordance with the detailed arrangements laid down in this Article and in Articles 326 to 334 of the Treaty on the Functioning of the European Union.

Enhanced cooperation shall aim to further the objectives of the Union, protect its interests and reinforce its integration process. Such cooperation shall be open at any time to all Member States, in accordance with Article 328 of the Treaty on the Functioning of the European Union.

(2) The decision authorising enhanced cooperation shall be adopted by the Council as a last resort, when it has established that the objectives of such cooperation cannot be attained within a reasonable period by the Union as a whole, and provided that at least nine Member States participate in it. [...]

(3) All members of the Council may participate in its deliberations, but only members of the Council representing the Member States participating in enhanced cooperation shall take part in the vote. [...]

(4) Acts adopted in the framework of enhanced cooperation shall bind only participating Member States. They shall not be regarded as part of the *acquis* which has to be accepted by candidate States for accession to the Union.

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## The tripartite “Unitary patent package”

In April 2011, the EU Commission proposed two draft regulations for implementing enhanced co-operation in the area of the creation of unitary patent protection, one of them creating unitary patent protection (**Regulation (EU) No. 1257/2012**) and the other specifying the applicable translation arrangements (**Regulation (EU) No. 1260/2012**). Both regulations entered into force on 20 January 2013.

At the same time, an international treaty entitled the Agreement on a Unified Patent Court (UPC Agreement) was negotiated between the EU member states in order to set up a common European patent court.

The UPC Agreement is open to signature by all the EU member states, not just those participating in enhanced co-operation. On 19 February 2013 it was signed by all the member states participating in enhanced co-operation apart from Poland. Those contracting states to the EPC which are not members of the EU thus cannot accede to the Agreement.

In order for the Agreement to enter into force, it must be ratified by at least 13 contracting states, including France, Germany and the UK. A total of 16 states, including France, have ratified it to date, and the national ratification procedure is progressing rapidly in the other states.

As Regulations (EU) No. 1257/2012 and (EU) No. 1260/2012 and the UPC Agreement complement each other, they will enter into force once the UPC Agreement is ratified.

### **Regulation (EU) No 1257/2012, Recital 23**

This Regulation is complemented by Regulation (EU) No. 1260/2012, adopted by the Council in accordance with the second paragraph of Article 118 TFEU.

### **Recital 24**

Jurisdiction in respect of European patents with unitary effect should be established and governed by an instrument setting up a unified patent litigation system for European patents and European patents with unitary effect.

### **Recital 25**

Establishing a Unified Patent Court to hear cases concerning the European patent with unitary effect is essential in order to ensure the proper functioning of that patent, consistency of case-law and hence legal certainty, and cost-effectiveness for patent proprietors. It is therefore of paramount importance that the participating Member States ratify the Agreement on a Unified Patent Court in accordance with their national constitutional and parliamentary procedures and take the necessary steps for that Court to become operational as soon as possible.

### **Regulation (EU) No 1260/2012, Recital 14**

Since the substantive provisions applicable to a European patent with unitary effect are governed by Regulation (EU) No. 1257/2012 and are completed by the translation arrangements provided for in this Regulation, this Regulation should apply from the same date as Regulation (EU) No. 1257/2012.

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## Conditions for the registration of unitary effect

The unitary patent is a European patent to which, at the request of its proprietor, unitary effect is given. For unitary effect to be registered, therefore, a European patent has to have been applied for and granted under the rules of the EPC.

This approach means that applicants wanting unitary protection in the states participating in enhanced co-operation will first have to file a European or international application and get a patent granted by the EPO. They do not have to decide whether they want unitary effect for their European patent until such time as their patent is granted.

In order to register unitary effect, the patent proprietor must file a request for unitary effect in writing in the language of proceedings within one month of the date of publication of the mention of the grant of the European patent in the European Patent Bulletin. However, unitary effect can only be registered for the patent if it was granted with the same set of claims in all 26 participating states. If this is not the case, the EPO must reject the request for unitary effect.

The details of the procedure for registering unitary effect are set out in the Rules relating to Unitary Patent Protection, which were adopted as part of the secondary legislation.

They are available at  
[www.epo.org/law-practice/unitary/unitary-patent.html](http://www.epo.org/law-practice/unitary/unitary-patent.html)

### Article 3 Regulation (EU) No. 1257/2012 European patent with unitary effect

(1) A European patent granted with the same set of claims in respect of all the participating Member States shall benefit from unitary effect in the participating Member States provided that its unitary effect has been registered in the Register for unitary patent protection.

A European patent granted with different sets of claims for different participating Member States shall not benefit from unitary effect.

(2) A European patent with unitary effect shall have a unitary character. It shall provide uniform protection and shall have equal effect in all the participating Member States.

It may only be limited, transferred or revoked, or lapse, in respect of all the participating Member States. It may be licensed in respect of the whole or part of the territories of the participating Member States.

(3) The unitary effect of a European patent shall be deemed not to have arisen to the extent that the European patent has been revoked or limited.

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## Translation arrangements

As regards the translation arrangements for the unitary patent, it was decided that no additional translations will be required, meaning that once the EPO grants a European patent in one of its official languages (English, French or German), the proprietor can get unitary protection without having to file any more translations. Instead, high-quality machine translations will be made available free of charge. The EPO, working with Google, has already launched a translation engine which provides translations from and into English, French and German for a total of 29 different languages.

The European legislator also provided for a transitional period of at least six but no more than twelve years, starting on the day of application of the EU unitary patent regulations. During this period, and until such time as high-quality machine translations are available, requests for registration of a unitary patent must be filed together with

- an English translation of the patent specification, if the patent was granted in French or German, or
- a translation into any other official EU language of the proprietor's choice, if the EPO granted the patent in English.

In the event of a dispute relating to a unitary patent, the proprietor may have to provide a full translation of the patent at his own cost. More precisely, in cases of alleged infringement, the patent proprietor may be asked by the alleged infringer to provide a translation, at the alleged infringer's choice into an official language either of the participating member state where the infringement took place or of the member state in which the alleged infringer is domiciled. Moreover, in the case of any dispute relating to a unitary patent, the proprietor may be asked by the competent court to provide a translation into the language of proceedings of that court.

### Article 4 Translation in the event of a dispute

- (1) In the event of a dispute relating to an alleged infringement of a European patent with unitary effect, the patent proprietor shall provide at the request and the choice of an alleged infringer, a full translation of the European patent with unitary effect into an official language of either the participating Member State in which the alleged infringement took place or the Member State in which the alleged infringer is domiciled.
- (2) In the event of a dispute relating to a European patent with unitary effect, the patent proprietor shall provide in the course of legal proceedings, at the request of a court competent in the participating Member States for disputes concerning European patents with unitary effect, a full translation of the patent into the language used in the proceedings of that court.
- (3) The cost of the translations referred to in paragraphs 1 and 2 shall be borne by the patent proprietor.[...]

### Article 3 Regulation (EU) No. 1260/2012 Translation arrangements for the European patent with unitary effect

(1) Without prejudice to Articles 4 and 6 of this Regulation, where the specification of a European patent, which benefits from unitary effect has been published in accordance with Article 14(6) of the EPC, no further translations shall be required.

(2) A request for unitary effect as referred to in Article 9 of Regulation (EU) No. 1257/2012 shall be submitted in the language of the proceedings.

### Article 4 Translation in the event of a dispute → see below

### Article 5 Administration of a compensation scheme

(1) Given the fact that European patent applications may be filed in any language under Article 14(2) of the EPC, the participating Member States shall in accordance with Article 9 of Regulation (EU) No. 1257/2012, give, within the meaning of Article 143 of the EPC, the EPO the task of administering a compensation scheme for the reimbursement of all translation costs up to a ceiling, for applicants filing patent applications at the EPO in one of the official languages of the Union that is not an official language of the EPO.

(2) The compensation scheme referred to in paragraph 1 shall be funded through the fees referred to in Article 11 of Regulation (EU) No 1257/2012 and shall be available only for SMEs, natural persons, non-profit organisations, universities and public research organisations having their residence or principal place of business within a Member State.

### Article 6 Transitional measures

(1) During a transitional period starting on the date of application of this Regulation a request for unitary effect as referred to in Article 9 of Regulation (EU) No 1257/2012 shall be submitted together with the following:

(a) where the language of the proceedings is French or German, a full translation of the specification of the European patent into English; or

(b) where the language of the proceedings is English, a full translation of the specification of the European patent into any other official language of the Union.  
[...]

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## Effect of registering unitary effect

Unitary patents take effect retroactively from the date the EPO publishes the mention of the grant of the European patent in the European Patent Bulletin. Consequently, when a unitary patent is registered, the classical European patent is deemed not to have taken effect as a national patent on the territories of the participating member states to which the unitary effect extends.

As for their territorial scope of protection, unitary patents will cover the territories of the member states which, on the day of registration of unitary effect, are participating in enhanced co-operation *and* have ratified the UPC Agreement. As the latter Agreement will enter into force when 13 states, including France, Germany and the United Kingdom, have ratified it, there will be different “generations” of unitary patents covering the territories of those participating member states where the UPC Agreement takes effect at the time of registration of the unitary patent. Third parties will therefore have to consult the future Register for unitary patent protection, which will be incorporated into the European Patent Register, to find out which states a given unitary patent covers.

Regulation (EU) No. 1257/2012 stipulates that unitary patents will provide uniform protection and have equal effect in all the participating member states in which they take effect. Consequently, they may only be limited, transferred or revoked, or lapse, in respect of all the participating member states. The grounds for revocation remain those specified in the EPC, because the unitary patent is a European patent.

Unitary patents may be licensed for the whole or part of the territories of the member states. Furthermore, the EU regulations give proprietors the option of stating to the EPO that they will grant licences of right to any interested party in return for appropriate consideration. Where such a licence of right statement is provided by the patent proprietor, the renewal fees will be reduced by 15%.

### Article 5 Uniform protection

- (1) The European patent with unitary effect shall confer on its proprietor the right to prevent any third party from committing acts against which that patent provides protection throughout the territories of the participating Member States in which it has unitary effect, subject to applicable limitations.
- (2) The scope of that right and its limitations shall be uniform in all participating Member States in which the patent has unitary effect.
- (3) The acts against which the patent provides protection referred to in paragraph 1 and the applicable limitations shall be those defined by the law applied to European patents with unitary effect in the participating Member State whose national law is applicable to the European patent with unitary effect as an object of property in accordance with Article 7.[...]

### Article 4 Regulation (EU) 1257/2012

#### Date of effect

(1) A European patent with unitary effect shall take effect in the participating Member States on the date of publication by the EPO of the mention of the grant of the European patent in the European Patent Bulletin.

(2) The participating Member States shall take the necessary measures to ensure that, where the unitary effect of a European patent has been registered and extends to their territory, that European patent is deemed not to have taken effect as a national patent in their territory on the date of publication of the mention of the grant in the European Patent Bulletin.

### Article 5

#### Uniform protection

→ see below

### Article 7

#### Treating a European patent with unitary effect as a national patent

(1) A European patent with unitary effect as an object of property shall be treated in its entirety and in all the participating Member States as a national patent of the participating Member State in which that patent has unitary effect and in which, according to the European Patent Register:

(a) the applicant had his residence or principal place of business on the date of filing of the application for the European patent; or

(b) where point (a) does not apply, the applicant had a place of business on the date of filing of the application for the European patent.

[...]

(3) Where no applicant had his residence, principal place of business or place of business in a participating Member State in which that patent has unitary effect for the purposes of paragraphs 1 or 2, the European patent with unitary effect as an object of property shall be treated in its entirety and in all the participating Member States as a national patent of the State where the European Patent Organisation has its headquarters in accordance with Article 6(1) of the EPC.[...]

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## Unified payment of renewal fees

The renewal fees for the unitary patent were fixed at the so-called TOP 4 level, which provides for fee levels corresponding to the equivalent of the renewal fees which have to be paid for the four countries out of the 26 EU participating member states in which European patents were most often validated at the time the decision for enhanced co-operation was made (France, Germany, The Netherlands and the United Kingdom).

The renewal fees for the first ten years will be less than EUR 5 000, which is a business-friendly fee pattern.

While renewal fees for European patent *applications* are due at the EPO, those for granted classical European *patents* are due in each designated contracting state.

In contrast, the renewal fees for unitary patents will be collected and administered by the EPO, and will be due for the years following that in which the mention of the grant of the European patent with unitary effect is published in the European Patent Bulletin.

The EPO will keep 50% of renewal fee income and distribute the remaining 50%, after deducting the expenses incurred in carrying out its additional unitary patent tasks, to the participating member states in line with an agreed distribution key.

This secondary legislation was adopted by the Select Committee, which is a sub-body of the Administrative Council of the European Patent Organisation. It is composed of representatives of the 26 participating member states, and – as observers – of the EPC contracting states that do not participate in the unitary patent scheme, as well as user organisations.

**Article 9 Regulation (EU) No. 1257/2012**  
**Administrative tasks in the framework of**  
**the European Patent Organisation**  
→ see below

### **Article 11** **Renewal fees**

(1) Renewal fees for European patents with unitary effect and additional fees for their late payment shall be paid to the European Patent Organisation by the patent proprietor. Those fees shall be due in respect of the years following the year in which the mention of the grant of the European patent which benefits from unitary effect is published in the European Patent Bulletin.

(2) A European patent with unitary effect shall lapse if a renewal fee and, where applicable, any additional fee have not been paid in due time.

[...]

### **Article 9 Regulation (EU) No 1257/2012** **Administrative tasks in the framework of the European Patent Organisation**

(1) The participating Member States shall, within the meaning of Article 143 of the EPC, give the EPO the following tasks, to be carried out in accordance with the internal rules of the EPO: [...]

- (e) to collect and administer renewal fees for European patents with unitary effect, in respect of the years following the year in which the mention of the grant is published in the European Patent Bulletin; to collect and administer additional fees for late payment of renewal fees where such late payment is made within six months of the due date, as well as to distribute part of the collected renewal fees to the participating Member States; [...]

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## The Unified Patent Court: structure, location, composition

The UPC Agreement establishes a new international judiciary, namely a unified patent court (UPC) with legal personality for the EU member states which have ratified the Agreement, whether or not they participate in the enhanced co-operation creating the unitary patent system.

The UPC will comprise a Court of First Instance, a Court of Appeal and a Registry.

The Court of First Instance will be decentralised. It will have a central division and local and regional divisions in the contracting states at their request.

The Court of Appeal will be centralised and located in Luxembourg. The Registry will be set up at the Court of Appeal, with sub-registries at all divisions of the Court of First Instance.

Furthermore, a mediation and arbitration centre will be established with seats in Lisbon and Ljubljana, and there will be a training centre for judges in Budapest.

As for the composition of the panels of the Court of First Instance, they will be formed of three judges of at least two different nationalities. In the case of local and regional divisions, the three judges will be legally trained, unless the panel asks the President of the Court of First Instance to allocate a technically trained judge from the pool of judges. In the case of the central division, two of the judges will be legally trained and the third one technically trained, unless the appeal concerns decisions of the EPO related to its administrative tasks within the unitary patent system, in which case the panel will comprise three legally trained judges.

The panels of the Court of Appeal will be composed of three legally trained and two technically trained judges, unless the appeal concerns decisions of the EPO related to its administrative tasks within the unitary patent system, in which case three legally trained judges will hear the appeal.

All panels will be chaired by a legally trained judge.

### Article 1 UPC Agreement Unified Patent Court

A Unified Patent Court for the settlement of disputes relating to European patents and European patents with unitary effect is hereby established.  
[...]

### Article 4 Legal status

(1) The Court shall have legal personality in each Contracting Member State and shall enjoy the most extensive legal capacity accorded to legal persons under the national law of that State.

(2) The Court shall be represented by the President of the Court of Appeal who shall be elected in accordance with the Statute.

### Article 6 The Court

(1) The Court shall comprise a Court of First Instance, a Court of Appeal and a Registry.

(2) The Court shall perform the functions assigned to it by this Agreement.

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## Jurisdiction of the UPC

The UPC will have exclusive jurisdiction in the territory of the contracting states in respect of classical European patents, unitary patents and supplementary protection certificates (SPCs).

Thus, the UPC will have exclusive competence in respect of

- Actions for infringement or threatened infringement.
- Actions for declaration of non-infringement.
- Actions for provisional and protective measures and injunctions.
- Actions or counterclaims for revocation.
- Appeals against decisions taken by the EPO in carrying out its additional tasks relating to unitary patents. In such cases, the UPC will act as an administrative court. Such actions (ex post) will only be dealt with by the central division at first instance.

Cases before the Court of First Instance will in general be assigned to the local or regional divisions at the *forum rei* or the *forum delicti*; actions against defendants domiciled outside the territory of application of the UPC can be brought before the *forum delicti* or the central division.

In the case of counterclaims for revocation in infringement proceedings, the local or regional division dealing with the infringement could:

- proceed with both the infringement action and the counterclaim for revocation, for which it would need to ask the President of the Court of First Instance to allocate a technically trained judge qualified and experienced in the field of technology concerned, refer the counterclaim for decision to the central division and suspend or proceed with the infringement proceedings; or
- with the agreement of the parties, refer the whole case to the central division.

Thus, the court's local and regional divisions will have the choice to either accept a technical judge on their panel, or to split ("bifurcate") the infringement and revocation proceedings.

The competence of the central division is subdivided between its seat in Paris and sections in London and Munich, depending on the nature of the patented invention:

- Paris will host the Court of First Instance's President's Office and deal with disputes concerning patents relating to performing operations, transporting, textiles, paper, fixed constructions, physics and electricity.
- London will deal with disputes concerning patents relating to human necessities, chemistry and metallurgy.
- Munich will deal with disputes concerning patents relating to mechanical engineering, lighting, heating, weapons and blasting.

### Article 3 UPC Agreement

#### Scope of application

This Agreement shall apply to any:

- (a) European patent with unitary effect;
- (b) supplementary protection certificate issued for a product protected by a patent;
- (c) European patent which has not yet lapsed at the date of entry into force of this Agreement or was granted after that date, without prejudice to Article 83; and
- (d) European patent application which is pending at the date of entry into force of this Agreement or which is filed after that date, without prejudice to Article 83.

### Article 32

#### Competence of the Court

→ see below

### Article 33

#### Competence of the divisions of the Court of First Instance

→ see below

## Article 32

### Competence of the Court

The Court shall have exclusive competence in respect of:

- (a) actions for actual or threatened infringements of patents and supplementary protection certificates and related defences, including counterclaims concerning licences;
- (b) actions for declarations of non-infringement of patents and supplementary protection certificates;
- (c) actions for provisional and protective measures and injunctions;
- (d) actions for revocation of patents and for declaration of invalidity of supplementary protection certificates;
- (e) counterclaims for revocation of patents and for declaration of invalidity of supplementary protection certificates;
- (f) actions for damages or compensation derived from the provisional protection conferred by a published European patent application;
- (g) actions relating to the use of the invention prior to the granting of the patent or to the right based on prior use of the invention;
- (h) actions for compensation for licences on the basis of Article 8 of Regulation (EU) No 1257/2012; and
- (i) actions concerning decisions of the European Patent Office in carrying out the tasks referred to in Article 9 of Regulation (EU) No 1257/2012. [...]

## Article 33

### Competence of the divisions of the Court of First Instance

- (1) Without prejudice to paragraph 6 of this Article, actions referred to in Article 32(1)(a), (c), (f) and (g) shall be brought before:
  - (a) the local division hosted by the Contracting Member State where the actual or threatened infringement has occurred or may occur, or the regional division in which that Contracting Member State participates; or
  - (b) the local division hosted by the Contracting Member State where the defendant or, in the case of multiple defendants, one of the defendants has its residence, or principal place of business, or in the absence of residence or principal place of business, its place of business, or the regional division in which that Contracting Member State participates. [...].

Actions referred to in Article 32(1)(h) shall be brought before the local or regional division in accordance with point (b) of the first subparagraph.

Actions against defendants having their residence, or principal place of business or, in the absence of residence or principal place of business, their place of business, outside the territory of the Contracting Member States shall be brought before the local or regional division in accordance with point (a) of the first subparagraph or before the central division.

If the Contracting Member State concerned does not host a local division and does not participate in a regional division, actions shall be brought before the central division. [...]

- (3) A counterclaim for revocation as referred to in Article 32(1)(e) may be brought in the case of an action for infringement as referred to in Article 32(1)(a). The local or regional division concerned shall, after having heard the parties, have the discretion either to:
  - (a) proceed with both the action for infringement and with the counterclaim for revocation and request the President of the Court of First Instance to allocate from the Pool of Judges in accordance with Article 18(3) a technically qualified judge with qualifications and experience in the field of technology concerned.
  - (b) refer the counterclaim for revocation for decision to the central division and suspend or proceed with the action for infringement; or
  - (c) with the agreement of the parties, refer the case for decision to the central division.

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## Proceedings before the UPC

The UPC will work to its own rules of procedure, which are currently being drawn up by the UPC preparatory committee. They are based on the fundamental procedural rules set out in the Agreement itself.

These include:

- General procedural principles (proportionality and fairness, case management, public hearings).
- Entitlement to appear as a party before the court.
- The principle of a three-step procedure (written, interim and oral procedures).
- Means of evidence.
- Powers of the UPC.
- Language of proceedings.
- Representation.

The UPC will, *inter alia*, have the power to

- Order injunctions and other measures (e.g. forfeiture, indemnification of a party, right to information).
- Issue provisional and protective measures (e.g. seizure of the defendant's assets, inspection of the defendant's property).
- Award damages and compensation.

As for procedural remedies, any party which has been unsuccessful in its submissions, in whole or in part, before the Court of First Instance can appeal the latter's decision within two months before the Court of Appeal. The appeal can be based on points of law or matters of fact. It has no suspensive effect, unless it is directed against a decision on revocation or against a decision on a decision of the EPO, or unless the Court of Appeal decides otherwise at the "motivated request" of one of the parties.

As a further, extraordinary, remedy, a "rehearing" may exceptionally be granted by the Court of Appeal if, after the Court's final decision, the party requesting the rehearing either can demonstrate a fundamental procedural defect or has discovered a fact which is liable to be a decisive factor but was unknown to the party when the decision was handed down. The rehearing does not have suspensive effect, unless the Court of Appeal decides otherwise.

The UPC's fees combine fixed fees with a value-based component. They take into account the particular situation of SMEs, in that court fees are lower for disputes concerning smaller values.

### Article 41 UPC Agreement Rules of Procedure

(1) The Rules of Procedure shall lay down the details of the proceedings before the Court. They shall comply with this Agreement and the Statute.

### Article 48 Representation

(1) Parties shall be represented by lawyers authorised to practise before a court of a Contracting Member State.

(2) Parties may alternatively be represented by European Patent Attorneys who are entitled to act as professional representatives before the European Patent Office [...].

[...]

(4) Representatives of the parties may be assisted by patent attorneys [...].

### Article 56

#### The general powers of the Court

(1) The Court may impose such measures, procedures and remedies as are laid down in this Agreement and may make its orders subject to conditions, in accordance with the Rules of Procedure.[...]

### Article 69

#### Legal costs

(1) Reasonable and proportionate legal costs and other expenses incurred by the successful party shall, as a general rule, be borne by the unsuccessful party, unless equity requires otherwise, up to a ceiling set in accordance with the Rules of Procedure.[...]

### Article 73

#### Appeal

→ see below

### Article 74

#### Effect of an appeal

→ see below

### Article 81

#### Rehearing

→ see below

With the exception of proceedings related to appeals against decisions of the EPO, representation is mandatory. Parties can be represented by:

- Lawyers authorised to practise before a court of a contracting state to the UPC Agreement.
- Patent attorneys who are entitled to act as professional representatives before the EPO and who have appropriate qualifications in patent litigation, i.e. who have acquired the European Patent Litigation Certificate.

In addition, representatives of the parties may be assisted by patent attorneys, who will be allowed to speak at hearings of the court.

**Article 73**  
**Appeal**

- (1) An appeal against a decision of the Court of First Instance may be brought before the Court of Appeal by any party which has been unsuccessful, in whole or in part, in its submissions, within two months of the date of the notification of the decision.
- (2) An appeal against an order of the Court of First Instance may be brought before the Court of Appeal by any party which has been unsuccessful, in whole or in part, in its submissions [...].
- (3) The appeal against a decision or an order of the Court of First Instance may be based on points of law and matters of fact.[...]

**Article 74**  
**Effect of an appeal**

- (1) An appeal shall not have suspensive effect unless the Court of Appeal decides otherwise at the motivated request of one of the parties. The Rules of Procedure shall guarantee that such a decision is taken without delay.[...]

**Article 81**  
**Rehearing**

- (1) A request for rehearing after a final decision of the Court may exceptionally be granted by the Court of Appeal in the following circumstances:
  - (a) on discovery of a fact by the party requesting the rehearing, which is of such a nature as to be a decisive factor and which, when the decision was given, was unknown to the party requesting the rehearing; such request may only be granted on the basis of an act which was held, by a final decision of a national court, to constitute a criminal offence; or
  - (b) in the event of a fundamental procedural defect, in particular when a defendant who did not appear before the Court was not served with the document initiating the proceedings or an equivalent document in sufficient time and in such a way as to enable him to arrange for the defence.
- (2) A request for a rehearing shall be filed within 10 years of the date of the decision but not later than two months from the date of the discovery of the new fact or of the procedural defect. Such request shall not have suspensive effect unless the Court of Appeal decides otherwise.[...]

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## Language of proceedings

Before the local and regional divisions of the Court of First Instance, the language of proceedings will normally be the official language of the contracting state hosting the division. It can also be one of the official languages of the EPO designated by the member state hosting the local division or by the member states sharing a regional division.

Before the central division, the language of proceedings will be the language in which the patent concerned was granted.

Before the Court of Appeal, the language of proceedings will usually be the one used before the Court of First Instance, unless the parties agree on using the language in which the patent was granted or the Court of Appeal decides exceptionally on another language of proceedings.

**Article 49 UPC Agreement**  
**Language of proceedings at the Court of First Instance**  
→ see below

**Article 50**  
**Language of proceedings at the Court of Appeal**  
(1) The language of proceedings before the Court of Appeal shall be the language of proceedings before the Court of First Instance.[...]

**Article 51**  
**Other language arrangements**  
→ see below

### **Article 49** **Language of proceedings at the Court of First Instance**

- (1) The language of proceedings before any local or regional division shall be an official European Union language which is the official language or one of the official languages of the Contracting Member State hosting the relevant division, or the official language(s) designated by Contracting Member States sharing a regional division.[...]
- (3) The parties may agree on the use of the language in which the patent was granted as the language of proceedings[...].
- (4) With the agreement of the parties the competent panel may, on grounds of convenience and fairness, decide on the use of the language in which the patent was granted as the language of proceedings.
- (5) At the request of one of the parties and after having heard the other parties and the competent panel, the President of the Court of First Instance may [...] decide on the use of the language in which the patent was granted as language of proceedings. [...]
- (6) The language of proceedings at the central division shall be the language in which the patent concerned was granted.

### **Article 51** **Other language arrangements**

- (1) Any panel of the Court of First Instance and the Court of Appeal may, to the extent deemed appropriate, dispense with translation requirements.
- (2) At the request of one of the parties, and to the extent deemed appropriate, any division of the Court of First Instance and the Court of Appeal shall provide interpretation facilities to assist the parties concerned at oral proceedings.
- (3) Notwithstanding Article 49(6), in cases where an action for infringement is brought before the central division, a defendant having its residence, principal place of business or place of business in a Member State shall have the right to obtain, upon request, translations of relevant documents in the language of the Member State of residence, principal place of business or, in the absence of residence or principal place of business, place of business, in the following circumstances:[...].

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## Relationship between the UPC and the Court of Justice of the EU (CJEU)

The UPC will be a court common to the EU member states. Like every national court of the EU member states, it therefore has the duty under the EU Treaties to respect the primacy of and apply EU law in its rulings, and to refer questions on the interpretation of EU law to the CJEU and ask for preliminary rulings. The contracting states to the UPC Agreement recognise those duties and their liability in the event of violation of EU law by the UPC.

### Article 1 UPC Agreement Unified Patent Court [...]

(2) The Unified Patent Court shall be a court common to the Contracting Member States and thus subject to the same obligations under Union law as any national court of the Contracting Member States.

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## Remaining jurisdiction of national courts

The national courts will retain jurisdiction for all actions concerning classical European and unitary patents which do not come within the exclusive jurisdiction of the UPC. These include actions relating to the patent as an object of property.

In addition, the UPC Agreement provides for a transitional period of seven years after its entry into force, extendable by another seven years, during which infringement and revocation proceedings concerning classical European patents, but *not* unitary patents, may still be initiated before the national courts (or other competent authorities) of a contracting state having jurisdiction.

Furthermore, proprietors of classical European patents granted or applied for prior to the end of the transitional period, but *not* proprietors of unitary patents, will have the possibility to opt out from the scope of application of the UPC Agreement at the latest one month before expiry of the transitional period by notifying the Registry. This opt-out can be withdrawn at any moment, unless an action relating to the patent concerned has already been brought before a national court.

### Article 32 Competence of the Court [...]

(2) The national courts of the Contracting Member States shall remain competent for actions relating to patents and supplementary protection certificates which do not come within the exclusive competence of the Court.

### Article 83 Transitional regime → see below

#### Article 83 Transitional regime

- (1) During a transitional period of seven years after the date of entry into force of this Agreement, an action for infringement or for revocation of a European patent or an action for infringement or for declaration of invalidity of a supplementary protection certificate issued for a product protected by a European patent may still be brought before national courts or other competent national authorities.
- (2) An action pending before a national court at the end of the transitional period shall not be affected by the expiry of this period.
- (3) Unless an action has already been brought before the Court, a proprietor of or an applicant for a European patent granted or applied for prior to the end of the transitional period under paragraph 1 and, where applicable, paragraph 5, as well as a holder of a supplementary protection certificate issued for a product protected by a European patent, shall have the possibility to opt out from the exclusive competence of the Court. To this end they shall notify their opt-out to the Registry by the latest one month before expiry of the transitional period. The opt-out shall take effect upon its entry into the register.
- (4) Unless an action has already been brought before a national court, proprietors of or applicants for European patents or holders of supplementary protection certificates issued for a product protected by a European patent who made use of the opt-out in accordance with paragraph 3 shall be entitled to withdraw their opt-out at any moment. In this event they shall notify the Registry accordingly. The withdrawal of the opt-out shall take effect upon its entry into the register.[...]