

A satellite view of Europe at night, showing city lights in yellow and orange against the dark blue of the night sky. The image is partially obscured by a red curved shape in the top right corner.

The Unitary Patent and Unified Patent Court: Quick Guide

The Unitary Patent and Unified Patent Court represent the biggest change to the European patent system in 40 years. This Quick Guide summarises some key points – for detailed insights and advice please email upc@dehns.com or visit the Dehns UPC site.

A fundamental change to obtaining, enforcing and defending European patents

When a European Patent is granted by the European Patent Office (EPO) under the current system it becomes a “bundle” of separate national patent rights. These “classical” European Patents are subject to the jurisdiction of individual national courts.

The Unitary Patent offers a new option. Upon grant of a European Patent, “Unitary Effect” can be requested. This will result in a single patent (a Unitary Patent) covering all the participating countries. Unitary Patents will be subject to the jurisdiction of a single, international court: the Unified Patent Court (UPC).

Which countries are taking part?

38 countries are full members of the EPO system, but only 28 are members of the European Union (EU). The Unitary Patent is only available in EU states and at first the Unitary Patent will probably extend to only 13 EU countries, though these 13 will include the UK, Germany, France, and probably also the Netherlands and Italy. More countries are expected to join the system later.

A parallel system, not a replacement

For participating EU states, the Unitary Patent system will operate alongside the existing “classical” European Patent system and will use the same EPO application and examination process. When the EPO is ready to grant a patent, applicants will have a choice of opting for a Unitary Patent covering all participating states, or a “bundle” of separate national patents in some or all of those countries.

Patent protection in non-participating states will still be available through the “classical” European Patent system.

Potential cost savings

“Classical” European patents require payment of national maintenance fees to stay in force after grant. Unitary Patents will require payment of only a single renewal fee each year. This will be similar in cost to maintaining a bundle of “classical” European patents in four countries. The translation requirements for a Unitary Patent will also be simpler in some cases than for “classical” European Patents. A Unitary Patent therefore has the potential to offer cost reductions over its lifetime in some cases.

A single court for litigation

Unlike “classical” European Patents, it will not be possible to litigate Unitary Patents in the national courts of participating EU states. Instead, the Unified Patent Court (UPC) will have exclusive jurisdiction. This removes the need to conduct parallel litigation in different countries with differing legal systems and the possibility of inconsistent outcomes.

The UPC will have a complicated structure, with Divisions across Europe. Different Divisions will have different responsibilities and the responsible Division for any individual case will depend on a number of factors which there is not space to detail here. However, it should be noted that the Central Division of the UPC (with branches in London, Paris and Munich) will normally be available as an option and will be the default venue in some cases.

Broadly speaking, London will be responsible for cases involving pharmaceuticals and life sciences, Munich for mechanical engineering, and Paris for the remaining subject matter including physics and electronics.

Speedy trials

Actions at the UPC will be carried out mainly in writing, with normally only one day of oral hearings. From start to finish the procedure should take 12 to 15 months, with a final written judgment issuing within 6 weeks of the oral hearing. This is significantly faster than litigation in many national systems.

Representation at the UPC

European Patent Attorneys will be entitled to represent parties in proceedings before any part of the UPC without restrictions on nationality. This means that a European Patent Attorney who is a British citizen, for example, will be entitled to act in proceedings before any Local or Regional Division anywhere in the EU, and in proceedings before the Central Division in London, Paris or Munich.

In many cases the language of proceedings at the UPC will be English. The UPC also blends elements of the English Common Law and European Civil Law traditions. This means that patent attorneys at Dehns, who are dual-qualified as British and European Patent Attorneys, will be particularly well-suited to act in proceedings before the UPC.

Jurisdiction over Classical European Patents

The UPC will also have jurisdiction over classical European Patents, even those which have already been granted or which are currently pending. This means that central revocation of a classical European Patent will remain a possibility via the UPC even after the end of EPO Opposition proceedings.

During a transitional period of at least 7 years it will be possible to “opt out” of the UPC’s jurisdiction so that classical patents remain the responsibility of national courts. The opt-out can be withdrawn if a patent owner later decides to enforce their patent via the UPC. Opt-outs need to be registered with the Court and this can be done even while the patent application is pending. Unitary Patents cannot be opted-out, only classical European Patents.



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