Dehns

Guide to the Unitary Patent and Unified Patent Court

Updated October 2025

From left to right: Paul Harris (Dehns' Head of Litigation), Gregory Lees, Robert Jackson, Conor Wilman (three of Dehns' attorneys with hands-on experience of acting before the UPC)

Dehns attending an Oral Hearing at the Paris branch of the UPC Central Division in June 2024
(left to right: Gregory Lees (Dehns Partner), Fernando Rey (Senior IP Counsel, Carrier Corporation), Robert Jackson (Dehns Partner))

Update from Dehns

Dehns is at the forefront of the UPC and is already involved in a number of high-profile cases, including both revocation and infringement actions.

Unlike most other law firms, we have already attended UPC hearings at first instance and before the Court of Appeal.

Dehns currently has over 60 European Patent Attorneys able to represent parties in all proceedings before the UPC, and in whatever Division of the UPC the action is commenced.

Contact Dehns now if you need to enforce your rights, or formulate a defensive strategy.

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The new Unitary Patent provides a further option for obtaining patent protection in EU member states which coexists with the options of obtaining national patents and/or obtaining and validating European patents.

The new Unified Patent Court (UPC) has sole jurisdiction over Unitary Patents.

Executive Summary

The new Unitary Patent and Unified Patent Court came into force on 1st June 2023

Subject to certain transitional provisions, the UPC also has jurisdiction over existing and future classical European patents. It provides a forum for the enforcement of European patents in multiple EU member states in a single action, or for challenging the validity of European patents in multiple EU member states in a single action.

For a transitional period of at least seven years from opening of the UPC, existing granted European patents and European patents granted in the future, which are not used as basis to obtain a unitary patent, can be opted out of the jurisdiction of the UPC.

Dehns is a European law firm, and as such is uniquely placed with attorneys in the UK, Germany and elsewhere. We have the ability to obtain UK and DE national patents, as well as securing Unitary Patents via the EPO.

Our European Patent Attorneys can represent parties in all proceedings before the UPC. Combined with our highly regarded EPO opposition capabilities, this makes Dehns uniquely placed to assist clients in handling litigation strategies, and whether offensive or defensive.

We have supported clients in infringement and revocations before the UPC and are leveraging our experiences to provide expert informed advice.

Contents

Introduction

The biggest change to the European patent system in decades has now taken place. With the "Unitary Patent Package" now in force, it is possible to obtain a single patent covering multiple European Union (EU) countries. This is known as a European Patent with Unitary Effect, or informally a "Unitary Patent". The rights conferred by a Unitary Patent are enforceable through a new supranational court, the Unified Patent Court (UPC). The UPC can also hear challenges to the validity of certain European patents, enabling invalid patents to be revoked across much of Europe without the need for separate litigation in different countries.

The Unitary Patent system, and the UPC, falls under the EU jurisdiction umbrella and is subject to EU law. The new system seeks to harmonise patent law for the majority of EU Member States, and employs strict rules regarding where proceedings can be initiated.

Under the Unitary Patent system, patent applicants are able to obtain patent protection across a large part of Europe with only one patent. This is simpler, and potentially cheaper, than obtaining equivalent protection under the current system. Enforcing patent rights across Europe should also be simpler, as the UPC's judgments are enforceable in multiple countries. However, the UPC could also make European patents, which are not opted out of the Unitary Patent system, more vulnerable to validity challenges. The new system raises a host of new procedural and cost-related issues, including whether or not to opt out patents from the jurisdiction of the UPC where this option exists. It is therefore vital to be aware of the new opportunities, and new risks, which the new system might pose.

The Unitary Patent and UPC systems are complex. This guide provides a general overview of key aspects of these new systems, so it has been necessary to simplify certain features. Within these complicated and nascent legal systems there can be no "one-size-fits-all" approach when deciding whether to opt for a Unitary Patent or deciding how to make use of the UPC. This is where strategic considerations need to be made for each set of circumstances faced either by proprietors or prospective defendants.

Nevertheless, we hope that this guide provides an accessible overview of the most important points which need to be considered.

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Part I:
The Unitary Patent

What is it?

As the name suggests, a Unitary Patent is a single unified patent right, granted by the European Patent Office that applies to most countries of the EU. This is unlike the "classical" system, where a European patent provides a "bundle" of separate and independent national rights, in those States that have signed up to the European Patent Convention (which extends considerably beyond the EU).

What's changed?

Patent protection across Europe is obtained by filing a patent application with the European Patent Office (EPO). The EPO examines the patent application and, once the application is considered to be allowable, grants a European patent. Despite its name, the European patent provides a separate and independent right in each designated, individual EPC State where patent protection is needed. This procedure therefore gives rise to a "bundle" of separate national patent rights, one patent per country, which each takes on its own independent existence after validation. These are sometimes referred to as "bundle patents" or "classical European patents".

In contrast to classical European patents, the Unitary Patent is a single patent which provides protection in multiple countries. Since June 2023, this has been operating in parallel with the EPO system, so for some countries patent applicants now have a choice of opting for a Unitary Patent or instead following the classical route. Independent national patent systems also continue to operate.

Which countries are taking part?

The Unitary Patent was originally intended to provide a single patent covering the whole EU, similar to the existing systems for single EU trade mark and design registrations. However, at least to begin with, the system has come into force without the participation of all EU countries.

The legislation establishing the Unitary Patent system comprises three major parts, referred to as the "Unitary Patent Package". The Unitary Patent is only available in countries which have signed up to all three parts of the Package.

24 of the 27 EU countries have so far signed up to the complete Unitary Patent Package. Spain and Poland have remained outside the system for political reasons, whilst Croatia was not an EU member at the time that the legislation was agreed. However, all three of these countries have the option of joining at a later date.

This means that a Unitary Patent covers the whole EU apart from Spain, Poland and Croatia. However, at first the scope of the new system is more limited than this because not all countries that signed up have implemented the necessary legislation. More countries will be joining over time – see below for details.

The Unitary Patent does not apply to the numerous EPC states that are not in the EU. However, all European Patent Attorneys are able to obtain Unitary Patents for their clients and act as representatives before the Court (subject to qualification) regardless of nationality.

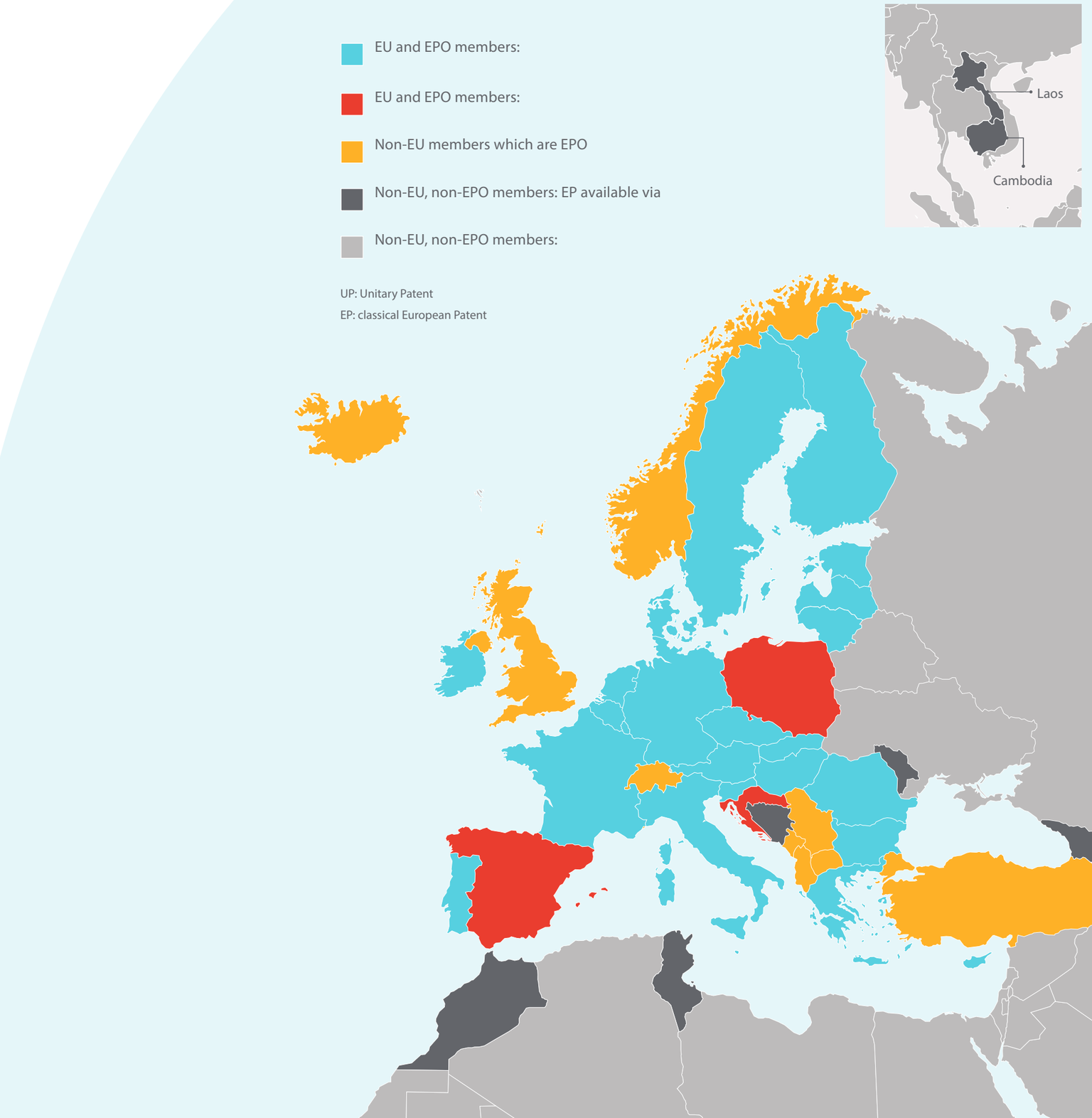
When and where is the Unitary Patent available?

The Unitary Patent is available now.

On 1 June 2023 the Unified Patent Court Agreement came into force.

However, the Unitary Patent is only available in countries which have ratified the UPC Agreement.

As of June 2024, the Unitary Patent covers 18 EU countries (Austria, Belgium, Bulgaria, Denmark, Estonia, Finland, France, Germany, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Romania, Slovenia and Sweden). More countries are expected to ratify the UPC Agreement over time. This means that Unitary Patents granted in the early years of the system have a different territorial scope to Unitary Patents granted in later years, creating so-called "generations" of Unitary Patents.



How can I obtain a Unitary Patent?

European Patent Attorneys who have been given official authorisation to do so, are able to obtain Unitary Patents for their clients. The application, search and examination procedures before the EPO are identical to the "classical" system. No additional application fees or formalities are required during the filing or examination process and no final decision needs to be taken on whether or not a Unitary Patent is desired until the EPO grants the European patent.

The Unitary Patent system runs in parallel to the classical system as an alternative, rather than replacing it altogether. For countries that are or will be participating in the Unitary Patent system, patent applicants will face a choice of converting their granted European patent into a Unitary Patent, or instead validating their European patent in separate countries in line with the classical procedure. There is no change to the system in relation to non-UPC states, where the classical validation process will continue.

The decision on whether to opt for a Unitary Patent or obtain protection via the classical route only needs to be taken when the EPO publishes a "mention of grant" in the European Patent Bulletin, which happens at the end of the EPO's application and examination procedure.

If a Unitary Patent is desired, a "request for Unitary Effect" must be filed at the EPO within one month of the publication of the mention of grant. At the same time, at least during the first six years of operation of the system, a translation of the whole patent must be provided (see below for details).

If a Unitary Patent is not desired, the one-month deadline can be ignored and the patent can be brought into force ("validated") in separate countries using the classical procedure instead. In some countries the patent will enter into force automatically. Other countries may require validation formalities such as the filing of further translations, the payment of fees and/or the appointment of a local attorney. Where validation formalities are required, most countries have a three-month validation deadline, starting from the publication of the mention of grant.

If the one-month deadline is missed, no extension is available and so a Unitary Patent cannot be granted, but the European patent could still be validated in individual countries using the classical procedure.

The option of obtaining a Unitary Patent is available in respect of any European patent granting on or after the date of entry into force of the Unitary Patent Package, i.e. any patent that grants on or after 1 June 2023.

The Unitary Patent system runs in parallel to the existing system, rather than replacing it altogether

What about non-EU countries?

European patents granted by the EPO can be validated in a number of non-EU countries such as the United Kingdom, Switzerland, Norway, Iceland and Turkey. Some other countries which are not formally EU or EPO members, such as Bosnia and Morocco, also have agreements in place which allow patents to be obtained via the EPO route. These countries are not covered by a Unitary Patent and so the classical procedure needs to be followed to obtain patent protection in any of these countries via the EPO.

Protection in EU member states which are not taking part in the Unitary Patent system (i.e. Spain, Poland and Croatia), and any EU countries which have not ratified the UPC Agreement at the time that a European patent grants, are available only via the classical procedure.

The map on page 5 shows the options available across Europe. These are also summarised in the Appendix.

What languages does the Unitary Patent system use?

The three official languages of the EPO are English, French and German, with the vast majority being filed in English. A patent application may be filed at the EPO in any language, but it will need to be translated into one of the three official languages shortly after filing. When the EPO is ready to grant a European patent, it issues a "Notification of Intention to Grant", which sets a four-month deadline for filing translations of the claims into the other two official languages. These language requirements remain unchanged under the Unitary Patent system.

After claims translations have been filed in response to the "Notification of Intention to Grant", and subject to certain other formalities, the EPO publishes the "mention of grant" which sets the deadlines for requesting Unitary Effect and/or beginning national validations. It is at this point that the language requirements for the classical procedure and the Unitary Patent procedure diverge.

Validation of a granted European patent under the classical procedure can give rise to a complex patchwork of additional translation requirements depending on which countries are chosen (see the Appendix, which summarises these requirements). A number of EPO countries are signatories to the London Agreement, which aims to simplify the translation requirements for classical validations. However, this has been implemented to a different extent in different countries, which means that some countries require no additional translations, some require a translation of the claims into their own official language, some require a translation of the description into English if the patent was granted in French or German, and some require a translation of the full patent specification into their own official language. If classical European patent protection is chosen in any country instead of a Unitary Patent, these requirements continue to be applicable.

The additional translation requirements for a Unitary Patent are simpler. At the same time as requesting "Unitary Effect", i.e. within one month of the publication of the mention of grant, a translation of the whole patent is required to be filed. If the patent has been examined and granted in French or German, the translation must be into English.

If the patent has been examined and granted in English, the translation can be into any official language of any EU member state. No further translations are needed for any of the countries covered by the Unitary Patent, even though some of those countries require extra translations if the classical procedure is followed instead.

Eventually the need for additional translations under the Unitary Patent system will be phased out in favour of machine translations. This is planned to take place after a transitional period of 6 to 12 years.

Under the classical procedure, translation costs can be a significant cost burden, depending on which countries are chosen for patent protection. The Unitary Patent therefore potentially offers significant cost savings in this respect, particularly when protection is required in many EU countries. Compensation for translation costs will also be available for EU-based SMEs, non-profit organisations, universities and public research organisations.

Patent owners who normally validate their European patents under the classical procedure only in countries requiring limited translations or no translations at all beyond the compulsory translation of the claims into English, French and German should bear in mind that the Unitary Patent will, until the requirement for translations is removed, actually incur increased translation fees due to the need to provide a translation where none is necessary under the "classical" system. This increased cost should be weighed against any predicted benefit which may arise from having patent protection in a wider range of countries.

How much does a Unitary Patent cost to maintain?

Just as under the existing system, renewal (maintenance) fees will be payable to the EPO on an annual basis while a patent application is pending. These start with the renewal fee for the third year, which is payable at the second anniversary of the filing date.

Under the classical system, renewal fees after the European patent has been granted are payable to the national patent offices of the countries where the European patent has been validated. This continues to be the case for any European patents validated using the classical route, even with the Unitary Patent system running in parallel.

Unitary Patents also incur annual renewal fees, but these are payable directly to the EPO after grant, instead of being payable to national patent offices. The schedule of fees follows the so-called "True Top 4" model, in which the renewal fees payable are similar to the cost of maintaining classical European patents in the UK, France, Germany and the Netherlands (the four most-frequently-chosen countries for EP patent validation at the time the fees were set).

Table 1 (see below) provides a summary of Unitary Patent renewal fees together with estimates of the combined renewal fees for a European patent which is instead brought into force as a classical European patent in various combinations of major EU countries. The current (from 1 April 2024) EPO renewal fees (payable while the patent application remains pending) are also shown.

A European patent application will typically remain pending at the EPO for at least four to five years from filing to grant. In an illustrative situation where the patent grants between the fourth and fifth anniversaries of the filing date, validating the patent as a Unitary Patent and maintaining it for its full 20-year term would incur a total renewal cost of €36,805 over its lifetime (at current rates). This represents an increase in cost of about €4,450 compared to bringing the same patent into force in only Netherlands, France and Germany and maintaining it for the same duration. On the other hand, the Unitary Patent would save about €8,350 in renewal fees over its lifetime compared to maintaining classical European patents for 20 years in Germany, France, the Netherlands, Italy and Sweden, and would save even more if further EU countries were also added to the classical validations. Small additional cost savings may be produced if the patent can be "fast-tracked" to grant prior to the third or fourth year.

A Unitary Patent may be an attractive option financially for anyone who desires patent protection in four or more EU countries, particularly if maintaining patent protection for a long term is desirable. If protection in only a handful of EU countries (for example, Germany, Netherlands and France) is required, a Unitary Patent may still be comparable to or cheaper than maintaining classical patents in those countries for up to about 10 years. During the second half of the patent term the Unitary Patent becomes more expensive than maintaining classical patents in only a few countries, and this cost difference increases significantly year-on-year.

The overall costs of a Unitary Patent compared to a bundle of classical European patents will therefore depend on a number of factors including the time taken for the EPO to grant the patent, the number of countries where patent protection is required, which countries are desirable, and how long the patent is maintained in any given country.

Table 1 provides information to calculate and compare cost estimates for some scenarios, but for detailed advice on any particular situation please contact us.

Renewal fees continue to be payable separately for countries where the classical route is used; so, for example, if opting for a Unitary Patent but protection is also needed for the same invention in Spain, it will be necessary to validate the European patent via the classical route in Spain and pay Spanish renewal fees on an annual basis on top of the Unitary Patent renewal fees.

A downside of opting for Unitary Effect is the loss of flexibility in the years after grant. Under the classical system, validated European patents can be abandoned on a country-by-country basis at different times after grant. Some patent owners take advantage of this system by validating their patent in a large number of countries at first and then shrinking their portfolio in later years as their business develops, to focus patent protection on their core markets or countries which are particularly important for strategic reasons. This may reduce the overall renewal fees payable over time. A Unitary Patent does not offer this flexibility: as the Unitary Patent is a single intellectual property right, it will lapse in all countries together if a renewal fee is not paid. The scope of the Unitary Patent cannot be trimmed over time to reduce renewal fees. In the long run, a Unitary Patent may therefore turn out to be more expensive.

Any cost implications for the Unitary Patent will therefore need to be assessed on a case-by-case basis. Dehns can advise on the implications for your own business.

Years from filing	Unitary Patent Fees per year (€)	Classical EP: DE, FR, NL Fees per year (€)	Classical EP: DE, FR, NL, IT Fees per year (€)	Classical EP: DE, FR, NL, IT, SE[2] Fees per year (€)	Application pending at the EPO Fees per year (€)[1]
2	35	38	38	38	0
3	105	108	108	246	690
4	145	148	148	294	845
5	315	238	298	462	1,000
6	475	386	476	658	1,155
7	630	526	646	846	1,310
8	815	696	866	1,103	1,465
9	990	870	1,070	1,334	1,620
10	1,175	1,050	1,280	1,572	1,775
11	1,460	1,300	1,610	1,938	1,775
12	1,775	1,580	1,990	2,355	1,775
13	2,105	1,880	2,410	2,820	1,775
14	2,455	2,180	2,780	3,227	1,775
15	2,830	2,490	3,140	3,623	1,775
16	3,240	2,830	3,480	3,999	1,775
17	3,640	3,170	3,820	4,376	1,775
18	4,055	3,520	4,170	4,762	1,775
19	4,455	3,870	4,520	5,149	1,775
20	4,855	4,230	4,880	5,545	1,775
Total	35,555	31,110	37,730	44,347	27,610

Note 1: EPO renewal fees from 1 April 2024

Note 2: SE renewal fees using October 2025 exchange rate

EP renewal fees are due whilst EP appliction is pending, UP or national renewal fees are only due after grant

Spain (ES) is the EU's fourth largest economy by GDP and Poland the sixth, but neither is participating in the UP and so cost estimates have been based on the remaining top 5 EU economies

Are post-grant Opposition, Limitation and Revocation at the EPO available for a Unitary Patent?

Once a European patent has been granted, third parties have a nine-month period in which they can file an Opposition at the EPO to seek revocation of the patent. Decisions arising from EPO Oppositions can also be appealed to the EPO's Boards of Appeal. If a patent is revoked or amended after a final decision in Opposition or Appeal proceedings, this takes effect in all countries where the European patent has been validated.

Decisions of the EPO's Opposition Division and Boards of Appeal also affect Unitary Patents. The EPO Opposition procedure can therefore be used to seek revocation of a Unitary Patent just as with any European patent which has been validated by the classical route.

Patent owners can also apply to the EPO at any time after grant to have their own patents revoked or to have the scope of the patent limited. Any such revocation or limitation takes effect in all EPO states. These procedures also extend to Unitary Patents.

If someone wishes to file a challenge against the validity of a European patent after the nine-month Opposition window has closed, it is necessary to do this through the national courts or IP offices of the countries where the patent has been validated. Unitary Patents now need to be challenged in the Unified Patent Court. This potentially makes Unitary Patents more vulnerable to challenges, since a successful challenge at the UPC will invalidate a Unitary Patent across all UPC states. For patent owners, this means that the danger of "one-shot" centralised revocation still largely persists even if the patent survives EPO Opposition proceedings. For more details, see Part II of this Guide or contact Dehns for advice specific to your own circumstances.

A third party concerned about the possibility of an infringement lawsuit should bear in mind that a Unitary Patent could allow the patent owner to obtain a single judgment, which is enforceable in multiple countries, rather than needing to pursue claims in separate countries. As a strategic measure, third parties may therefore wish to consider pre-emptively filing Oppositions at the EPO more commonly than at present. They may also wish to consider pre-emptively filing revocation actions at the UPC instead of, or in parallel to, EPO Oppositions. Although they will be more expensive than EPO Oppositions, UPC revocation actions should result in much faster decisions on average (with a target of 12-15 months between filing an action in the UPC and receiving a written decision). Care should be taken here, since a Unitary Patent owner may respond to a UPC revocation action with a counterclaim of infringement. Dehns can of course advise on the pros and cons in any particular case.

Do Unitary Patents affect Freedom to Operate?

Yes. The existence of Unitary Patents is likely to change the Freedom to Operate (FTO) landscape significantly. Patent proprietors will have potentially lower-cost access to patent protection across a wider range of countries than before. If carrying out potentially-infringing acts in a country where a competitor does not normally bother to validate their classical European patents, it needs to be considered that this state of affairs could change under the Unitary Patent system. FTO searches are always strongly advisable before bringing a product to market or entering a new market and the advent of the UPC could make this even more critical.

If a Unitary Patent poses a potential FTO obstacle, invalidating the patent can be sought through EPO Opposition and/or UPC revocation actions, as just described. The UPC also has the power to issue declarations of non-infringement which are valid throughout the participating countries. Successfully obtaining a revocation decision or a declaration of non-infringement from the UPC should help to clear the way to carry out business across Europe. As with other types of decision at the UPC, a declaration of non-infringement should be obtainable within 12-15 months from commencement of proceedings and should be quicker and cheaper than seeking several separate judgments in national courts.

Potential infringers wishing to avoid the risk of a pan-EU injunction being granted against them by the UPC also need to consider the possibility of preemptively launching a national revocation action in order to remove a European patent from, or keep a European patent outside, the jurisdiction of the UPC. For a European patent which has been opted out, an ongoing action in a national court prevents a patent proprietor from withdrawing the opt-out and returning the patent to the jurisdiction of the UPC. For European patents which have not been opted out, an ongoing national action locks the patent out of the UPC's jurisdiction.

How does this affect Supplementary Protection Certificates?

Applications for Supplementary Protection Certificates (SPCs) for medicinal products and plant protection products are at present applied for and granted nationally. Applications require a "basic patent" to be specified, and it is permissible to indicate a Unitary Patent as the "basic patent".

There are proposals under discussion for a "unitary SPC", to mirror unitary patents, but these discussions are at an early stage and it is likely to be some time before such unitary SPCs become available. Meanwhile, SPCs will be continue to be available only on a country-by-country basis under the existing system, even if a Unitary Patent is relied upon as the "basic patent".

Please contact Dehns if you need more information regarding SPCs.

Unitary Patents are likely to change the Freedom to Operate landscape significantly

Is a Unitary Patent suitable for the needs of my business?

Unitary Patents offer a number of advantages and new opportunities for patent proprietors compared to the classical European patent system, but there are also a number of potential disadvantages. Some of the most significant pros and cons of the Unitary Patent are identified in Table 2. Other advantages and disadvantages may exist in any individual set of circumstances, with the overall balance depending on the facts of any particular case.

Any decision on whether to opt for Unitary Patent protection in participating countries, or whether to use the established classical route instead, will need to take into account the specific needs of the business, budgetary constraints, and appetite for risk, bearing in mind the potential strengths and weaknesses which a Unitary Patent might offer compared to the classical system.

There is no "one size fits all" answer and in some cases the decision could be finely balanced. For detailed advice relating to your own particular circumstances, please contact any of the team here at Dehns, who will be able to support your decision making process.

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Potential advantages	Potential disadvantages
Protection in multiple countries with a single patent	Some large economies (e.g. UK, Spain, Norway and Switzerland) are not covered
Reduced renewal fees for protection across Europe	Potentially more expensive to maintain if only 2 or 3 countries required; loss of flexibility in reducing renewal fees over the lifetime of the patent
Fewer translations may be needed in some situations...	...but in others the Unitary Patent could lead to increased translation costs
Enforcement of patent rights in multiple countries through a single court procedure	Vulnerable to "one shot" revocation at the UPC, even if the patent survives EPO Opposition proceedings

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Part II :
The Unified Patent Court

What is it?

The Unified Patent Court is a new supranational court. It has exclusive right to issue judgments in lawsuits involving Unitary Patents, for example with regard to questions of infringement or validity. It is also able to issue judgments relating to classical European patents unless these are "opted out" of the UPC. The UPC can also issue judgments relating to SPCs granted on the basis of a Unitary Patent. Its judgments are enforceable throughout all of the countries which have signed the Unified Patent Court Agreement.

What's changed?

Under the classical system, any assertion of a European patent against an infringer must be made in the national court of at least one country. The countries whose courts must be used depend on both where the patent has been validated and where any infringement is taking place. Anyone wishing to challenge the validity of a classical European patent must also do so on a country-by-country basis through the national courts or IP offices unless the EPO's nine-month post-grant Opposition window is still open. Anyone seeking a declaration of non-infringement of a European patent must also do so at the national level.

Litigation at the national level can be costly and time-consuming, often requiring separate lawsuits in multiple countries. In addition, the outcome of a lawsuit can vary from one country to another, with some national courts upholding the patent and others revoking it, some courts finding it to be infringed and others finding it not infringed.

Under the new system, the UPC is able to rule on questions of infringement concerning Unitary Patents, with the power to issue orders which are enforceable against infringers throughout the territory covered by the Unitary Patent. The UPC is also able to hear challenges to the validity of a Unitary Patent at any point after grant, allowing a successful challenger to invalidate the patent across most of the EU, even if the EPO Opposition window has closed. The UPC has the power to issue declarations of non-infringement with legal effect across the territory covered by the Unitary Patent.

Litigation before the UPC should be a lower-cost option than carrying out litigation in multiple separate national courts. It should also be faster than many national systems, with a stated aim of issuing judgments within 12 to 15 months from the start of proceedings.

The Unitary Patent system should therefore make it easier, quicker and cheaper for a patent owner to take action against an infringer on a near pan-EU basis. For third parties, the availability of a declaration of non-infringement or revocation decision applicable to all UPC states within a short timescale and at a potentially lower cost may also be an attractive feature of the UPC.

The UPC's jurisdiction is not limited to Unitary Patents. It has the power to issue judgments in cases concerning the infringement or validity of classical European patents which are in force in at least one EU member state. The UPC therefore represents a significant change in the post-grant litigation landscape for European patents, whether they are granted with Unitary Effect or not. However, during a lengthy transitional period, it is possible to opt out classical European patents from the UPC's jurisdiction, meaning that any lawsuits concerning opted-out patents will remain the responsibility of national courts. The opt-out procedure is discussed in more detail later in this Guide. The UPC's jurisdiction can also be ousted if, in respect of a classical European patent, validity is challenged in a national court. This has the potential to give rise to new 'torpedo' actions by potential infringers wishing to avoid an almost EU wide injunction.

Where is the UPC located?

The Unified Patent Court consists of three basic parts:

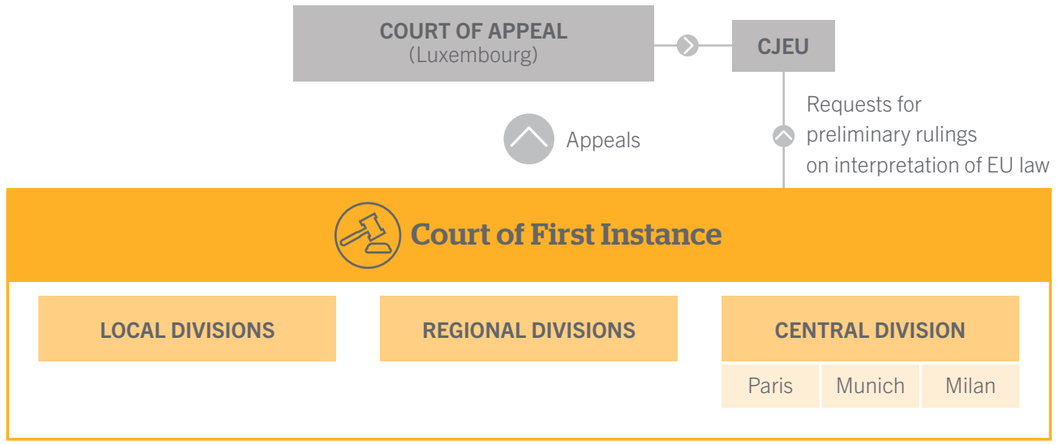
- The Court of First Instance, which has divisions across Europe;
- The Court of Appeal, which hears appeals from decisions of the Court of First Instance and which is based in Luxembourg;
- The Registry, which has a central office at the Court of Appeal in Luxembourg and sub-Registries with different divisions of the Court. The Registry performs administrative functions, including processing opt-out requests.

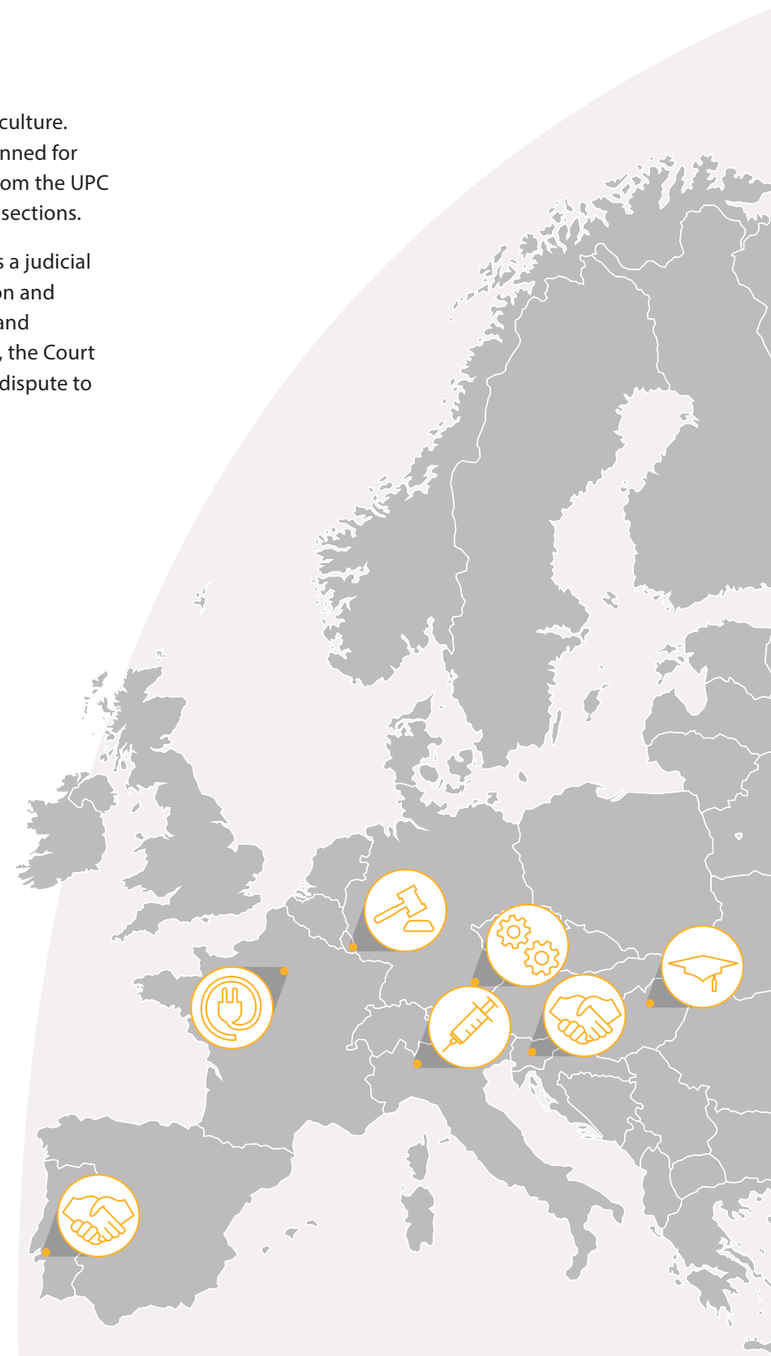
Any new action at the UPC needs to be brought before the Court of First Instance. The Court of First Instance consists of multiple divisions (a Central Division and multiple Local Divisions and Regional Divisions). The different parts of the Court of First Instance will normally have different competencies depending on the type of case, the technical subject matter of the patent, and/or the countries where parties to proceedings are based or where certain acts took place.

Any country participating in the Unitary Patent system can establish its own Local Division of the Court of First Instance, or can group together with other countries to establish a Regional Division. Most major EU countries are likely to host at least one Local Division. Germany has confirmed that it will host four Local Divisions (Düsseldorf, Hamburg, Mannheim and Munich). So far only one Regional Division has been confirmed, which is based in Stockholm and which is responsible for Sweden and the Baltic states of Latvia, Lithuania and Estonia. Further Local Divisions have been confirmed based in Vienna (Austria), Brussels (Belgium), Copenhagen (Denmark), Helsinki (Finland), Paris (France), Milan (Italy), the Hague (Netherlands), Lisbon (Portugal), and Ljubljana (Slovenia).

The Central Division has its seat in Paris, with specialist sections in Munich and Milan. The Paris seat handles any Central Division cases relating to patents in IPC classes B, D, E, G or H, including physics and electricity, while the Munich section handles cases relating to IPC classes C and F, including chemistry and mechanical engineering, and Milan handles IPC class A, including pharmaceuticals, medical devices, and agriculture. Cases for which a specialist section was planned for London (before the withdrawal of the UK from the UPC system) have been split between the three sections.

In addition, the UPC Agreement establishes a judicial training centre in Budapest, and a mediation and arbitration centre with locations in Lisbon and Ljubljana. At any point during proceedings, the Court can recommend that the parties take their dispute to mediation or arbitration.





Which part of the UPC is responsible for my case?

The competencies of the various divisions of the Court of First Instance overlap in a complex manner depending on the type of case as well as the locations where certain acts took place or where the defendant is located.

The following is therefore necessarily a simplification. For more detailed guidance and advice relating to any particular situation, please contact the Dehns team of qualified patent attorneys and litigators.

The Local Divisions and Regional Divisions are the default forum for infringement actions. The relevant Local or Regional Division depends on the country where the infringement took place or where the infringer has a residence or place of business. In cases where infringing acts took place in more than one country, and/or where the infringer is located in yet another country, there is therefore a choice of forums.

On the other hand, cases that begin as revocation actions or applications for declarations of non-infringement are brought before the relevant part of the Central Division.

Some smaller countries may not establish their own Local or Regional Divisions, so in these cases the Central Division is the default forum for actions relating to infringements in those countries.

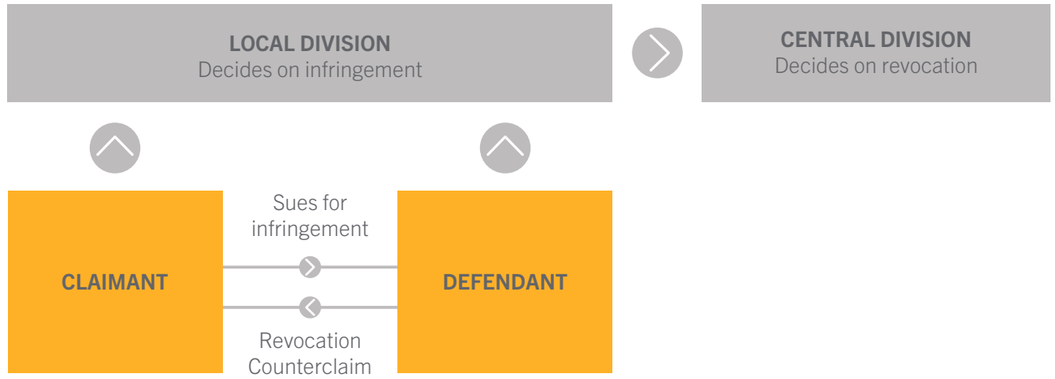
The Central Division is also available as an option in infringement actions where the alleged infringer does not have a residence or place of business in a UPC country, even if there is also a Local or Regional Division competent to hear the case.

Certain types of action can also be transferred from the Local or Regional Divisions to the Central Division. For example, if an infringement action is commenced in a Local or Regional Division and the infringer files a counterclaim for revocation in response, the Local or Regional Division has the option of referring the counterclaim to the Central Division while the infringement action continues in the Local or Regional Division. This is known as "bifurcation" (see Figure 5) and is discussed in more detail below. Alternatively, the Local or Regional Division can hear both parts of the case, or transfer both parts to the Central Division if the parties agree.

Regardless of all the above, parties to a dispute can alternatively agree to bring any type of dispute before the Central Division.

The Court of Appeal can hear appeals from any section of the Court of First Instance.

The normal responsibilities of the different sections of the UPC are summarised in Table 3, together with details of the language of proceedings in each section.



What language needs to be used?

In the Local Divisions, the language of proceedings may be the official language of the relevant country hosting the Division. In the case of a Regional Division, the participating countries may nominate one of their languages or several as co-official languages of the Division. However, both Local and Regional Divisions may also allow English, French or German to be used as an additional official language.

The language of proceedings before the Central Division will be the language in which the patent was granted and, if the parties and the Court agree, this may also be used in the Local or Regional Divisions.

The language of proceedings in any Appeal will be the language used before the Court of First Instance, or the language of the patent if all parties agree.

These possibilities are summarised in Table 3 on pages 22-23.

The vast majority of European patents granted by the EPO are in English and Local or Regional Divisions of the Court have thus far allowed English to be used as the language of proceedings. In fact, English has become the dominant language of proceedings, with over half of all proceedings being conducted in English.

Where the language of proceedings is unfamiliar to a party, simultaneous interpretation is permitted at the oral hearing and may be provided by the Court in some circumstances, or otherwise will be available at the party's own expense.

Type of Action	Section of the Court	Location	Language of proceedings
Actions for actual or threatened infringement, and related defences	Local or Regional Division*	The country where the actual or threatened infringement has occurred or may occur, or the country where the defendant has its residence or a place of business	An official language of the host country, or English, German or French if permitted by the Division
Actions for declarations of non-infringement	Central Division	Paris, Munich or Milan, depending on technical subject matter	The language in which the patent was granted
Actions for provisional and protective measures and injunctions	Local or Regional Division*	The country where the actual or threatened infringement has occurred or may occur, or the country where the defendant has its residence or a place of business	An official language of the host country, or English, German or French if permitted by the Division
Actions for revocation	Central Division	Paris, Munich or Milan, depending on technical subject matter	The language in which the patent was granted
Counterclaims for revocation	Local or Regional Division*	The same Local or Regional Division hearing the action for infringement The Local or Regional Division may refer the counterclaim, or the whole case, to the Central Division	An official language of the host country, or English, German or French if permitted by the Division
Actions for damages or compensation derived from provisional protection conferred by a published European Patent Application	Local or Regional Division*	The country where the actual or threatened infringement has occurred or may occur, or the country where the defendant has its residence or a place of business	An official language of the host country, or English, German or French if permitted by the Division
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	Local or Regional Division*	The country where the actual or threatened infringement has occurred or may occur, or the country where the defendant has its residence or a place of business	An official language of the host country, or English, German or French if permitted by the Division
Actions for compensation for licenses of right	Local or Regional Division*	The country where the defendant has its residence or a place of business	An official language of the host country, or English, German or French if permitted by the Division
Actions concerning decisions of the EPO in relation to administrative tasks (e.g. processing of requests for Unitary Effect)	Central Division	Paris, Munich or Milan, depending on technical subject matter	The language in which the patent was granted
Appeals against decisions of the Court of First Instance	Court of Appeal	Luxembourg	The language of proceedings before the Court of First Instance, or the language in which the patent was granted

Actions marked * may be brought before the Central Division if the defendant does not have a residence or place of business in a country participating in the UPC, if the relevant country does not host a Local Division or participate in a Regional Division, or if the parties agree.

What is bifurcation?

Defendants in infringement proceedings commonly file a counterclaim for revocation (i.e. seeking a ruling that the patent is invalid).

If infringement proceedings are in progress before a Local or Regional Division of the UPC, and the defendant files a counterclaim for revocation in response, this must be brought before the same Division which is hearing the action for infringement. However, that Division will then have the option, if it chooses, of referring the revocation action to the Central Division while the infringement action continues in the Local or Regional Division. This is known as bifurcation and is a model commonly encountered in the national legal system of Germany.

If bifurcation is employed, there is a possibility that a decision will be reached in the infringement action before a decision is reached in the revocation action. It is therefore possible that a patent will be found to be infringed, only later for the same patent to be found invalid (in which case no infringement actually happened, because the patent was never valid). This is known as the 'injunction gap'. Bifurcation may therefore be a cause of concern for some parties due to the potentially severe adverse consequences for the alleged infringer in such situations.

Bifurcation may also lead to an increase in litigation costs due to the need to fight two lawsuits in parallel, potentially in different countries, in different languages, and using different legal teams.

While bifurcation is permitted in proceedings before the UPC, it should be noted that its use is subject to the discretion of the Local/Regional Divisions. Judges at the UPC also have the power to decide on both parts of the case rather than bifurcating the proceedings. Where bifurcation is employed, the Rules of Procedure allow the Local/Regional Divisions discretion to stay any infringement proceedings (i.e. to put the infringement trial on hold) until a counterclaim for invalidity has been decided upon, and specifically oblige such a stay where there is a "high likelihood" of a finding of invalidity. If a stay has not been granted, the Rules oblige the Central Division to accelerate the revocation proceedings with the aim of holding the oral hearing for the revocation action before the hearing for the infringement action takes place. In practice this should act to reduce the impact of bifurcation in many cases.

Who judges cases at the UPC?

Cases before the Court of First Instance are to be normally heard by a multinational panel of at least three judges.

In the Local and Regional Divisions, cases are normally heard by a panel of three legally-qualified judges, with at least one being from the country that hosts the relevant Local Division (or from one of the countries participating in the Regional Division) and the remaining judge or judges being drawn from a multinational pool. In the Central Division the panel normally consist of two legally-qualified judges from different countries and one judge having an appropriate technical qualification in a relevant discipline.

Any of these panels may be enlarged with a further technically-qualified judge at the request of the parties. Alternatively, the parties may agree to have their case heard by a single legally-qualified judge.

In the Court of Appeal, when hearing technical matters, the panel consists of three legally-qualified judges from different countries and two technically-qualified judges drawn from the pool. When hearing non-technical matters, the panel may consist of three legally-qualified judges only.

Does the CJEU have a role?

As a Court common to member states of the EU, the UPC must act in accordance with EU law. This means that the UPC may request preliminary rulings from the Court of Justice of the EU (CJEU) in order to ensure uniform application of the law.

During preparation of the new system, there was concern that this would open the way for referrals to the CJEU on questions of substantive patent law (for example, novelty and inventive step), potentially casting doubt on established case law in such areas. The CJEU is not a specialist Intellectual Property court and its judgments in other areas of IP law (such as SPCs, trade marks and copyright) over the years have sometimes been heavily criticised as being unclear or showing an incomplete understanding of the relevant issues.

Figure 6: UPC procedure

How does the UPC procedure work?

Actions at the UPC have three parts:

i. a written procedure;
ii. an interim procedure;
iii. an oral hearing.

Actions before the UPC begin by the claimant lodging a Statement or Application (the terminology differs depending on the type of action) in writing with the relevant Division of the Court of First Instance, or with the Registry in the case of an Appeal. This can be done electronically, or in hard copy followed by an electronic copy.

The defendant then needs to reply with a written statement of defence, following which a further round of written submissions may optionally be made by the claimant with an opportunity for the defendant to reply once more.

The written submissions are reviewed by the Court, which then appoints one of the judges as a Rapporteur. The Rapporteur can order the parties to clarify specific points, answer questions, or produce evidence or other documents. The Rapporteur can also order an interim conference to be held, primarily to establish the main facts and issues in dispute and to clarify the positions of the parties, as well as to establish a schedule for further proceedings, to set a date for an oral hearing and to decide the value of the dispute. However, the Rapporteur also has wide-ranging powers to order the parties to take certain actions, for example to produce further evidence or experimental reports or to appoint expert witnesses.

Following the conclusion of the written procedure and any interim proceedings, a short oral hearing, known as an interim conference, is then appointed. This takes place before a panel of judges and involves hearing the parties' submissions together with any witnesses or experts who may have been appointed during the interim procedure. The judges may direct questions to the parties, their representatives, and any witnesses or experts.

Most of the procedure at the UPC are therefore carried out in writing, with similarities to Opposition and Appeal procedures before the EPO.

Overall, proceedings before the UPC should take about 12 to 15 months from start to finish. The periods allowed for reply during the written procedure are short (typically 1 to 3 months) and the oral hearings are normally scheduled to last only one day, though there may be also be a day earlier on for hearing witnesses. UPC proceedings should therefore be significantly faster than proceedings in many national courts and the EPO, providing faster justice and/or potential savings in litigation costs.

What interim measures can the UPC grant?

The UPC has the power to grant a range of interim measures prior to a full trial, including:

- Ordering a party to produce evidence;
- Ordering measures to be taken to preserve evidence of an alleged infringement, including staging raids on an alleged infringer's premises to seize evidence such as documents or goods. This is known as a saisie contrefaçon;
- Granting "freezing orders", preventing an alleged infringer from relocating assets to a country outside the UPC's jurisdiction;
- Granting preliminary injunctions against alleged infringers to prevent an imminent or repeated infringement;
- Ordering the seizure or delivery-up of infringing goods; and
- Ordering the seizure of assets or blocking of bank accounts of an alleged infringer where "circumstances likely to endanger the recovery of damages" can be demonstrated.

In exceptional cases, where a delay would cause "irreparable harm" to the patent proprietor or where there is a demonstrable risk of evidence being destroyed, these types of measures can be granted without the defendant being heard.

Some of these measures are more common in certain national courts than others at present. For example, the saisie is a common feature in infringement proceedings in the French courts, whereas its counterpart under English law is rarely employed. Provisional measures under the UPC therefore potentially offer new opportunities for patent owners to take tougher pre-trial actions against infringers than are currently available in some countries.

As a defence against such measures, any party can file a "Protective Letter" with the Court. Protective Letters are an aspect of UPC procedure which has been adopted from the German legal system. Such letters may be helpful where a party considers that there is a risk that they will be sued for infringement, and in particular where there is a risk that the claimant will seek an interim order such as a saisie. A Protective Letter allows a party to pre-emptively set out the reasons why an application for such measures should be refused, for example by setting out the reasons why a particular patent is not infringed or why the patent is invalid. Such a letter will "expire" after six months but can be renewed on a rolling six-monthly basis upon payment of fees. It does not, however, guarantee that the court will pay heed to it and the effect it seeks to have, will work.

Please ask a Dehns attorney if you would like to know more about interim measures and the opportunities or risks which they may pose for your business.

Who can represent parties in proceedings before the UPC?

Parties to proceedings before the UPC can be represented by a European Patent Attorney having appropriate qualifications, which are already held by many patent attorneys here at Dehns. The European Patent Attorney need not be a national of a country participating in the Unitary Patent system. Other lawyers (such as German Rechtsanwälte) may also be employed, though with the restriction that they must be qualified to act before the national courts of a Unitary Patent member state.

Due to the procedural similarity of the UPC proceedings to the established EPO Opposition and Appeal procedure, European Patent Attorneys are well-placed to conduct litigation there. The UPC also adopts features from the English Common Law tradition, which makes UK patent attorneys particularly well-suited to the UPC's hybrid Common Law/Civil Law system. The attorneys at Dehns are dual-qualified UK or German and European Patent Attorneys. Given the firm's strong track record of success in English and German litigation, as well as contentious EPO proceedings, Dehns attorneys are particularly well-equipped to act before the UPC.

As the UPC is a unified court common to multiple countries, any suitably-qualified representative is entitled to represent parties in front of any part of the Court. This means that Dehns attorneys are able to represent you in proceedings before any part of the UPC, regardless of the nationalities of the parties involved and no matter which Division of the Court is responsible for the case.

Our attorneys can therefore represent parties in front of the Central Division in Munich, Milan or Paris, in front of the Court of Appeal in Luxembourg, or in any Local or Regional Division anywhere in Europe, regardless of the nationalities of the parties involved in the dispute.

What are the costs involved? Are any costs recoverable?

Court fees for actions at the UPC are based on a collection of fixed charges for different types of action, supplemented in some cases by a "value-based" component based on the estimated value of the case. SMEs are entitled to a fee reduction of 40% in many cases.

The fixed fees for some common types of action at the Court of First Instance are as shown in Table 4 (below). Other, typically lower, fixed fees apply for various procedural actions. These are shown in the Appendix.

Value-based fees are also charged on top of the fixed fee for actions relating to a claim or counterclaim for infringement, a declaration of non-infringement, compensation for a license of right or an application to determine damages. These vary on a sliding scale depending on the value of the case as determined by the Court in accordance with its guidelines, and range from €0 in cases worth €500,000 or less up to €325,000 in cases worth over €50 million. Further details of the value-based fees are provided in the Appendix.

On top of the official Court fees you will also need to budget for your representatives' professional charges relating to the case.

The winning party in any dispute is able to recover costs within certain limits, depending on the value of the case. These also vary on a sliding scale with the cap on recoverable costs depending on the value of the case, and range from €38,000 in cases worth up to €250,000 to €2 million in cases worth over €50 million. Further details of the recoverable costs are provided in the Appendix. The Court has discretion to raise or lower the cost ceiling in certain circumstances.

The fees at the Court of Appeal are generally the same as or similar to the fees at the Court of First Instance.

For a more detailed summary of the fee structure of the UPC please contact a Dehns attorney.

How do I "opt out" of UPC jurisdiction?

During the transitional period which we are now in, and which will last until at least 1 June 2030, it is possible to opt classical European patents (but not Unitary Patents) out of the jurisdiction of the UPC. Any challenge to the validity of an opted-out patent after the end of the EPO Opposition period would therefore need to take place before national courts. Any attempt to assert an opted-out patent against an infringer will also need to take place in national courts.

An opt-out request must be filed at the UPC Registry. There will be no court fee associated with the opt-out request and no reasons need to be given for the opt-out.

An opt-out in relation to a classical European patent will also apply to any corresponding SPCs. SPCs granted on the basis of a Unitary Patent cannot be opted-out.

A request to opt out can be filed while the patent application is still pending or after it has been granted, provided that no action before the UPC has already begun.

A valid opt-out can only be requested by or on behalf of the owner or owners of the patent or application at the time, which may not be the proprietor or applicant listed on the relevant patent registers.

If there are co-applicant or co-proprietors, they must all agree to the opt-out. Similarly, if there are different proprietors in different states, for example because the national validations have been assigned to different parties post grant, they must all agree to the opt-out.

A licensee cannot file an opt-out but there may be provisions in the licence agreement which obligate the proprietor to consult with a licensee in relation to any litigation-related issues, which would potentially include opting out of the UPC jurisdiction.

Table 4: Fixed fees for common actions at the UPC

Action type	Fixed fee (€)
Infringement (action or counterclaim)	11,000
Declaration of non-infringement	11,000
Compensation for license of right	11,000
Application for provisional protective measures	11,000
Application to determine damages	3,000
Revocation (action)	20,000
Revocation (counterclaim)	11,000 to 20,000

Importantly, an opt-out for a patent can be withdrawn at any time, unless an action has been brought before a national court, placing the European patent back under the UPC's jurisdiction. Thus, a patent proprietor will potentially be able to 'shield' its patents from challenge before the UPC without losing the option of later using the UPC to enforce them. However, once the opt-out has been withdrawn, it will not be possible to opt the same patent out again. There is also a risk that a potential infringer may launch a 'torpedo' action before a national court whilst a patent is opted out in order to prevent a proprietor from opting the patent back into the UPC jurisdiction.

As with an opt-out, all current owners of the patent in question must agree to opting back in.

Should I opt out?

There is no single answer to this question. Any decision on whether or not to opt out will need to be taken on a case-by-case basis having regard to the specific set of circumstances. However, the following are some factors which need to be carefully considered.

The UPC is still very much in its infancy, so in the early stages it may be an option to take a "wait and see" approach and opt at least part of a patent portfolio out as a precaution until the UPC becomes more established.

If an opt-out is filed, this will (subject to any EPO Opposition proceedings) avoid the risk of a patent being invalidated across the UPC member states by a single finding of invalidity.

On the other hand, to assert an opted-out patent in multiple countries, it is necessary to pursue parallel litigation in separate national courts, which can be expensive and lead to different outcomes in different countries (although sometimes litigating in one or two major countries, such as the UK and Germany, can be sufficient to force an infringer to reach a pan-European settlement).

Opting in would allow a single outcome enforceable in multiple countries, potentially within a shorter timescale and at a lower cost overall. However, as noted above, an opt-out can be withdrawn at any time if enforcement through the UPC becomes desirable, as long as no action has been brought before a national court in the meantime.

Patentees may wish to consider opting only some patents out (for example, the most valuable patents, to protect them from single-shot revocation across UPC countries).

Separate decisions on whether to opt out can be taken for parent applications/patents and divisional applications/patents. Thus, if a patentee has a parent patent and a divisional patent relating to the same invention, they could choose to opt the parent out of the UPC's jurisdiction and leave the divisional in the UPC system, or vice versa. Subject to the appropriate time limits, the patentee could also choose to convert the parent into a Unitary Patent and validate the divisional via the classical European patent route, or vice versa.

The UPC has the power to grant provisional remedies such as French-style saisies (seizures of evidence prior to a full hearing), which are not available under national law in every country. If such remedies are attractive as a tool for dealing with infringers, opting in should be carefully considered.

For more advice on the pros and cons of "opting out" of the UPC system, please contact any of the team here at Dehns to help you decide whether an opt-out suits your own particular needs.

Contact Dehns for guidance and support

Patent owners need to take important and far-reaching decisions about how their patent application and enforcement strategies might be affected by the arrival of the Unitary Patent and Unified Patent Court.

Dehns has over 60 attorneys authorised to act in front of the Unified Patent Court.

Dehns is therefore ideally placed to assist clients in obtaining Unitary Patents, to handle opt-outs from the UPC and to represent clients before the UPC.

For high-quality, commercially-minded advice tailored to lead your business, please get in touch.

Key UPC contacts:

Paul Harris

Paul has been actively involved in various UPC matters, including defending an infringement action on behalf of a Fortune 500 company.

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Robert Jackson

Robert has been actively involved in a number of UPC cases, and has already appeared in a substantive oral hearing and before the UPC's Court of Appeal.

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Appendix

Table A1: EPO countries and Unitary Patent countries

Code	Country	Eligible for Unitary Patent system?
AL	Albania	No
AT	Austria	Yes
BE	Belgium	Yes
BG	Bulgaria	Yes
CH	Switzerland	No
CY	Cyprus	Yes
CZ	Czech Republic	Yes
DE	Germany	Yes
DK	Denmark	Yes
EE	Estonia	Yes
ES	Spain	Yes, but not participating
FI	Finland	Yes
FR	France	Yes
GB	United Kingdom	No
GR	Greece	Yes
HR	Croatia	Yes, but not participating
HU	Hungary	Yes
IE	Ireland	Yes
IS	Iceland	No
IT	Italy	Yes
LI	Liechtenstein	No
LT	Lithuania	Yes
LU	Luxembourg	Yes
LV	Latvia	Yes
MC	Monaco	No
ME	Montenegro	No
MK	Macedonia	No
MT	Malta	Yes
NL	Netherlands	Yes
NO	Norway	No
PL	Poland	Yes, but not participating
PT	Portugal	Yes
RO	Romania	Yes
RS	Serbia	No
SE	Sweden	Yes
SI	Slovenia	Yes
SK	Slovakia	Yes
SM	San Marino	No
TR	Turkey	No

Table A2: Translation requirements for validation using the classical route

Code	Country	Further translation of claims needed?	Translation of description needed?
AL	Albania	Albanian	English
AT	Austria	No	German
BE	Belgium	No	No
BG	Bulgaria	Bulgarian	Bulgarian
CH	Switzerland	No	No
CY	Cyprus	Greek	Greek
CZ	Czech Republic	Czech	Czech
DE	Germany	No	No
DK	Denmark	Danish	English or Danish
EE	Estonia	Estonian	Estonian
ES	Spain	Spanish	Spanish
FI	Finland	Finnish	English or Finnish
FR	France	No	No
GB	United Kingdom	No	No
GR	Greece	Greek	Greek
HR	Croatia	Croatian	English
HU	Hungary	Hungarian	English or Hungarian
IE	Ireland	No	No
IS	Iceland	Icelandic	English or Icelandic
IT	Italy	Italian	Italian
LI	Liechtenstein	No	No
LT	Lithuania	Lithuanian	No
LU	Luxembourg	No	No
LV	Latvia	Latvian	No
MC	Monaco	No	No
ME	Montenegro	Montenegrin	No

Code	Country	Further translation of claims needed?	Translation of description needed?
MT	Malta	No	English
NL	Netherlands	Dutch	English or Dutch
NMK	North Macedonia	North Macedonian	No
NO	Norway	Norwegian	English or Norwegian
PL	Poland	Polish	Polish
PT	Portugal	Portuguese	Portuguese
RO	Romania	Romanian	Romanian
RS	Serbia	Serbian	Serbian
SE	Sweden	Swedish	English or Swedish
SI	Slovenia	Slovene	No
SK	Slovakia	Slovak	Slovak
SM	San Marino	Italian	Italian
TR	Turkey	Turkish	Turkish

Table A3: Fixed fees at the Court of First Instance

Procedure/Action type	Fixed fee (€)
Infringement (action or counterclaim)	11,000
Declaration of non-infringement	11,000
Compensation for license of right	11,000
Application for provisional protective measures	11,000
Application to determine damages	3,000
Revocation (action)	20,000
Revocation (counterclaim)	Same fee as the infringement action (fixed fee plus value-based fee) subject to a limit of 20,000
Action against a decision of the EPO	1,000
Application to preserve evidence	350
Application for an order for inspection	350
Application for an order to freeze assets	1,000
Filing a protective letter	200
Application to prolong the period of a protective letter kept on the Register	100
Application to review a case management order	300
Application to set aside decision by default	1,000

Table A4: Value-based fees for UPC actions (Court of First Instance and Court of Appeal)

Value of case (€)	Value-based fee (€)
Up to and including 500k	0
Up to and including 750k	2,500
Up to and including 1 million	4,000
Up to and including 1.5 million	8,000
Up to and including 2 million	13,000
Up to and including 3 million	20,000
Up to and including 4 million	26,000
Up to and including 5 million	32,000
Up to and including 6 million	39,000
Up to and including 7 million	46,000
Up to and including 8 million	52,000
Up to and including 9 million	58,000
Up to and including 10 million	65,000
Up to and including 15 million	75,000
Up to and including 20 million	100,000
Up to and including 25 million	125,000
Up to and including 30 million	150,000
Up to and including 50 million	250,000
Over 50 million	325,000

Table A5: Recoverable costs for UPC actions (Court of First Instance and Court of Appeal)

Value of case (€)	Ceiling for recoverable costs (€)
Up to and including 250k	38,000
Up to and including 500k	56,000
Up to and including 1 million	112,000
Up to and including 2 million	200,000
Up to and including 4 million	400,000
Up to and including 8 million	600,000

Glossary of terms

Action
In the context of court proceedings, such as at the UPC, an "action" is the pursuit of a decision (often accompanied by a remedy such as an injunction or damages) from the Court. Thus an infringement action relates to the pursuit of a decision against an infringer, a revocation action relates to the pursuit of a decision revoking a patent, and so on.

Bifurcation
When proceedings relating to an alleged infringement of a patent and a counterclaim for revocation of the same patent are treated as separate court cases, the proceedings are said to be bifurcated. This procedure is not followed by British courts but it is a common feature of German legal proceedings and is a feature of the UPC.

Boards of Appeal
The department of the EPO which hears appeals against decisions of the Opposition Division and can uphold or overturn such decisions.

Bundle Patent
Another name for the Classical European patent.

Central Division
A section of the Court of First Instance. The default forum for cases relating to countries which do not have a Local Division or Regional Division. Any type of proceedings at the UPC can be brought before the Central Division instead of the Local or Regional Divisions. Some types of proceedings must be brought before the Central Division instead of the Local or Regional Divisions.

CJEU
The Court of Justice of the European Union. The highest court in matters of EU law.

Classical European Patent
A patent granted by the EPO can be validated in individual countries to provide protection there. Although referred to as a European patent, this is really a "bundle" of individual national patents.

Court of Appeal
A section of the UPC which hears Appeals from decisions of the Court of First Instance.

Court of First Instance
The collective name for the Central Division, Local Divisions and Regional Divisions of the UPC.

EPC
The European Patent Convention. This is the law which governs the examination and grant of patents by the EPO.

EPO
The European Patent Office. The EPO examines patent applications and grants patents for most European countries. It is not part of the EU and grants patents for some non-EU countries as well. Administration of the Unitary Patent system has been delegated to the EPO even though it is not an EU institution.

European Patent
A patent granted by the EPO. Once the Unitary Patent system comes into force this will encompass both Unitary Patents and classical European patents.

European Patent Application
A patent application filed with the EPO. The application is examined centrally at the EPO and when it is granted, validation of the patent turns it into separate national patents in different countries.

Invalidation
See revocation.

Local Division
A section of the Court of First Instance dealing with certain types of case connected with the country hosting the particular Local Division. The default forum for most types of proceedings at the UPC.

London Agreement
An agreement between European countries aiming to simplify the translation requirements for classical European patents.

Maintenance fee
An annual fee which must be paid to keep a European patent application pending or to keep a granted patent in force.

Mention of Grant
Official notification to the public that a European patent has been granted. Published online in the European Patent Bulletin.

Notification of Intention to Grant
A Communication under Rule 71(3) of the European Patent Convention. It notifies the patent applicant that the EPO is willing to grant a European patent and encloses the patent text which it proposes to grant. The patent applicant must approve the text, pay certain fees, and supply translations of the claims into the remaining EPO official languages. When this has been done the Mention of Grant will be published.

Opposition
An EPO procedure allowing third parties to request revocation of a European patent. Opposition proceedings must commence within nine months of the publication of Mention of Grant.

Opposition Division
The department of the EPO responsible for assessing requests for revocation filed under the Opposition procedure.

Opt-out
A request for a classical European patent to be exempted from the jurisdiction of the UPC.

Rapporteur
A judge appointed to carry out investigations and prepare reports during the interim portion of cases at the UPC.

Ratification
Parliamentary approval of a treaty.

Regional Division
A section of the Court of First Instance with similar responsibilities to a Local Division, but with jurisdiction over cases relating to any one of a group of countries.

Registry
The section of the UPC which deals with formalities including opt-out requests.

Renewal fee
Another name for Maintenance Fee.

Request for Unitary Effect
A request for grant of a Unitary Patent. Must be filed within one month of publication of the Mention of Grant.

Revocation
The act of annulling the grant of a European patent. If a patent is deemed invalid it is revoked and is treated as though it never existed.

Saisie
Formally an "order to preserve evidence". If granted by the court, a saisie permits the inspection of a suspected infringer's premises and the seizure of products, materials and documentation relating to the alleged infringement, even before the full proceedings on the merits of the case have begun.

SPC
A Supplementary Protection Certificate. These can be granted for certain types of medicinal products and plant protection products (e.g. herbicides) which are subject to regulatory approval. An SPC temporarily extends the duration of certain rights associated with a patent covering the product, even after the patent expires.

Unified Patent Court
See UPC.

Unified Patent Court Agreement
Formally the "Agreement on a Unified Patent Court". An agreement between 25 EU states which establishes the Unified Patent Court. Part of the Unitary Patent Package. The Unitary Patent and UPC entered into force on 1 June 2023.

Unitary Patent
Formally a "European Patent with Unitary Effect". A single patent which provides protection in multiple countries at once. Granted by the EPO and enforceable through the UPC.

Unitary Patent Package
The legislation establishing the Unitary Patent and Unified Patent Court systems. It has three main parts:

- Regulation (EU) No. 1257/2012 (the "Unitary Patent Regulation"), which establishes the Unitary Patent;
- Regulation (EU) No. 1260/2012 (the "Translation Regulation"), which governs the language requirements of the Unitary Patent system;
- The "Agreement on a Unified Patent Court" (the "UPC Agreement"), which establishes the new court tasked with overseeing patent litigation; and

Countries must sign up to all three parts of the Unitary Patent Package and ratify the UPC Agreement in order for the system to take effect in those countries.

UPC
The Unified Patent Court. A supranational court created by agreement between 25 EU member states. It has exclusive jurisdiction in lawsuits concerning Unitary Patents, Supplementary Protection Certificates based on Unitary Patents, and classical European Patents unless they are opted-out.

UPC Agreement
See Unified Patent Court Agreement.

Validation
The act of bringing a classical European patent into force in individual countries. May involve filing a translation of at least part of the patent, and/or payment of a fee.

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