

UNIFIED PATENT COURT: THE UNITARY PATENT

A new Unified Patent Court (UPC) is scheduled to come into effect in Europe in 2023. The expected start date is currently 1 June 2023.

The new system will introduce a new Unitary Patent: a single patent having unitary effect across all participating countries. The Unitary Patent offers large geographical scope at relatively low cost. Note however that not all countries covered by a European patent are part of the Unitary Patent system.

A Unitary Patent can be obtained using the normal application procedure at the EPO. It is possible to request unitary effect for any European patent applications now reaching the grant stage.

For an initial transitional period of at least seven years, applicants who wish to have their patents validated in the participating countries will have a choice of whether to validate a granted European patent separately in each country, or to request a Unitary Patent effective in all participating countries.

The decision on whether to choose a Unitary Patent will depend on a number of factors and should be considered on a case-by-case basis. A number of relevant factors are discussed in this information sheet. If you would like to discuss the benefits of a Unitary Patent for any particular case, please contact us.

Under the new system, **existing European patents will also fall within the jurisdiction of the UPC by default**. However, owners of European patents will be able to 'opt-out' of the new system. Please see our separate information sheet entitled "Unified Patent Court: Opt-out Considerations" for more information.

Geographical Scope

The following 17 participating countries have signed up to and ratified the UPC agreement:

Austria	Denmark	France	Latvia	Malta	Slovenia
Belgium	Estonia	Germany	Lithuania	Netherlands	Sweden
Bulgaria	Finland	Italy	Luxembourg	Portugal	

A Unitary Patent will cover all of these countries, plus any others that have ratified at the time of requesting the Unitary Patent. The Unitary Patent will not cover any countries that ratify the UPC agreement after the Unitary Patent is requested.

Seven other EU countries have signed up to the agreement and are expected to ratify at a later stage: Cyprus, Czech Republic, Greece, Hungary, Ireland, Romania and Slovakia.

Other EU countries, including Spain, have not signed up to the agreement and are not expected to join. Non-EU countries will not participate. This includes Norway, Switzerland and the UK.

Please note that **the UPC is separate to the EPO**. European patents will still be obtained in the normal way and can have effect in all of the same countries, including those not participating in the UPC. All European Patent Attorneys, including those based in the UK, will have full rights to represent clients before the EPO and the UPC.

How do I obtain a Unitary Patent?

When granted, traditional European patents are effectively broken down into a number of national patents in one or more of the member states of the European Patent Organisation. This process is known as "validation". The European patent can only be enforced separately in each country in which it is validated.

With the new system, it will be possible to request a Unitary Patent as an alternative to validating the patent separately in the participating countries. The Unitary Patent will then have effect in all of the participating

countries listed above. Alternatively, the European patent can be validated separately in the desired countries in the traditional manner.

If protection is desired in any non-participating countries, such as Ireland, Norway, Spain, Switzerland or the UK, the European patent must still be validated separately in those countries.

What translations will I need?

As now, a translation of the claims in English, French and German will be required. It will also be necessary to obtain a full translation of the patent specification into one other language. The most appropriate way to obtain the necessary translations will depend on the original language of the specification and the countries in which the patent is being validated. We will be happy to advise you on the best and most cost-effective way of doing this.

How much will it cost?

The costs for obtaining a European patent through the EPO will not change. There is no official fee for requesting a Unitary Patent. The costs for requesting a Unitary Patent will vary from case-to-case, depending on the translation requirements, in particular. If protection in a number of the participating countries is desired, a Unitary Patent is likely to be cost-effective, taking into account translation costs and service charges for validating in the traditional way.

After grant, a Unitary Patent will need to be renewed with a single, annual fee payable to the EPO. The renewal fees for a Unitary Patent are intended to be roughly equivalent to the combined renewal fees for four major participating countries (France, Germany, Netherlands and Italy). Therefore, if protection is desired in several of the participating countries, the costs for renewing a Unitary Patent are likely to be cheaper than renewing separately in each country.

What are the advantages to a Unitary Patent?

- Wide geographical coverage: currently 17 countries including France, Germany, Italy, Netherlands, Sweden.
- If protection is required in several of the participating countries, a Unitary Patent is likely to be more cost-effective than validating in the traditional way.
- The renewal procedure will be simpler. If protection is required in several countries, renewals may also be cheaper.
- If an infringement occurs in two or more of the countries covered by the Unitary Patent, a Unitary Patent can be enforced across all of those countries in a single action at the UPC.

What are the disadvantages to a Unitary Patent?

- If protection is only desired in one or two participating countries, validation and renewal of a Unitary Patent is likely to be more expensive.
- The validity of a Unitary Patent can be challenged across multiple countries in a single procedure. Increased risk of revocation in multiple countries.
- A Unitary Patent will always be unitary. Once requested, it will not be possible to obtain a separate patent in any of the participating countries. It will also not be possible to allow the Unitary Patent to lapse in selected states. Additionally, a Unitary Patent cannot have different owners for different states: it can only be sold or transferred in its entirety.

What factors should I consider?

The decision on whether or not to a Unitary Patent will vary on a case-by-case basis. However, cost and geographical coverage are likely to be the main factors.

We would be happy to discuss the potential benefits of a Unitary Patent with you. Please contact us if you would like to discuss the Unitary Patent in more detail.