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Notice

Registering your European patent for unitary effect

This note provides important information that patent proprietors should be aware of before choosing to register a European patent to have unitary effect in order to obtain a Unitary Patent (UP).

Deadline to register for unitary effect

A request for unitary effect must be filed no later than one month after publication of the mention of grant of the European patent. This deadline is not extendable.

Translation requirement

During an initial transitional period of at least 7 years, a translation of the full European patent must be provided when requesting unitary effect. The translation should not be a machine translation. Where the language of the European patent is French or German, the translation must be English. Where the language of the European patent is English, the translation can be into any other official language of the European Union.

Territorial Scope of a Unitary Patent

A UP covers all Member States of the European Union (EU) that have ratified the Unified Patent Court Agreement (UPCA) at the date of registration of the request for unitary effect.

An up-to-date list of EU Member States that have ratified the UPCA can be found on the UPC website [here](#). The ratified states are those shown as “in force”.

The territorial scope of each UP is ‘frozen’ at the date of registering the request for unitary effect. EU Member States that ratify the UPCA at a later date will not be covered by an already registered UP.

Unitary character of a Unitary Patent

A UP is a single, indivisible patent right that may only be renewed, limited, transferred, revoked, or lapse, in respect of all the Member States covered by the UP.

Law applying to the Unitary Patent as an object of property

Where the relevant national law specifies limitations to the protection afforded by a national patent it is possible these may apply to the resulting Unitary Patent. When filing the request for unitary effect it is possible to make a voluntary indication that the original applicant had a place of business in one of the UPC participating Member States (the EU Member States excluding Spain and Croatia) at the date of filing the European patent application.

If the original applicant did not list their residence or principal place of business in a UPC participating Member State on the European Patent Register, and if no voluntary indication is made when filing the request for a Unitary Patent, German law will apply with regard to the UP as an object of property. Where the relevant national law specifies limitations to the protection afforded by a national patent it is possible these may apply to the resulting Unitary Patent.

Renewal Fees

A single renewal fee is payable each year to maintain a UP in force after grant. The renewal fees are payable to the EPO. Currently, the scale of the official fees starts at €35 for Year 2 and progresses up to €4,855 for Year 20. It is not possible to reduce the cost of renewal by limiting the territorial coverage of a UP.



The Unified Patent Court

The Unified Patent Court (UPC) has **exclusive** competence for hearing actions, such as infringement and revocation actions, relating to UPs. UPs cannot be enforced in national courts of EU Member States.

Therefore, choosing the option of a UP will bind a proprietor to use of the UPC.

The cost of litigating in the UPC is relatively high. For example, the official fee for a revocation action is €20,000 and the official fee for an infringement action will range from €11,000 to €325,000 dependent on the value of the claim.

The UPC has its own Rules of Procedure which differ from the rules of national patent courts. Please contact us if you require further information on the UPC.

Central Revocation

While the UP promises the advantage of a single court for enforcement in most of the EU, proprietors should note that a UP will remain vulnerable throughout its term to a central revocation attack in the UPC.

An absolute novelty standard is applied for UPs. The state of the art for a UP comprises:

- everything made available to the public by means of a written or oral description, by use, or in any other way, anywhere in the world, prior to the filing (or priority) date of the UP; and
- national patent applications in most, if not all, Member States covered by the UP that have an earlier priority or filing date and were published on or after the filing (or priority) date of the UP.

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