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Unitary Patents and the Unified Patent Court



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Introduction

A powerful system for patent protection and enforcement in Europe

The advent of the Unitary Patent (UP) and the Unified Patent Court (UPC) has provided users with powerful new options for patent litigation in Europe.

The Unitary Patent provides a single, unitary patent right covering multiple European states. Since its successful introduction in 2023, the UP has proven to be a popular choice for patent proprietors in Europe. One key reason for this has been the launch of the associated Unified Patent Court (UPC), that has quickly established itself as a leading forum for patent litigation on the continent.

Under the pre-existing European patent system a European Patent (EP) was granted centrally and then validated to produce

separate national patent rights in individual states. This resulted in multiple patents that were separately enforceable in individual countries before different national courts and using different rules of procedure.

The new UP does not replace the current EP. Rather, it provides proprietors with the additional option of having a UP that has unitary effect in a large number of the states of the European Union (EU). The resulting Unitary Patent is enforceable as a single patent in the UPC avoiding the costs of litigation in multiple European jurisdictions.

What is the unitary Patent?

The aim of the Unitary Patent (UP) is to provide a single patent right that covers all European Union (EU) Member States.

Currently, 18 EU Member States are active participants and it is expected that more will join in due course.

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

A UP is obtained by filing a “request for unitary effect” at the European Patent Office (EPO) during the grant stage of a European patent application.

The pre-grant stage of a European patent application is unaffected by this new system and it is only after grant that a patent proprietor will need to register their European patent for unitary effect to obtain a UP.

Participating Member States

The European Union (EU) Member States that are party to EU Regulations 1257/2012 and 1260/2012 establishing the Unitary Patent. As of February 2026 the Participating Member States are all EU Member States except Spain and Croatia.

Contracting Member States

The EU Member States that are party to, and have ratified, the Unified Patent Court Agreement (UPCA) establishing the Unified Patent Court (UPC).



Matthew Spencer, Partner

What is the Unified Patent Court?

The Unified Patent Court (UPC) is a single court for settlement of disputes relating to both UPs and EPs for the EU Member States taking part in the UPC.

While being legally a single court, the UPC has a mix of Central, Local and Regional Divisions hosted in different EU Member States that hear cases at first instance.

The UPC is separate from the national courts of the EU Member States. It has its own experienced patent judges and Rules of Procedure.

The UPC has exclusive jurisdiction for most matters relating to UPs.

Also, the default position is that the UPC has jurisdiction over nationally-validated EPs. However, there is presently a transitional period during which it is possible for patent proprietors to opt-out their EP nationally-validated patents from the jurisdiction of the UPC.

The UPC provides the advantage of a single court for enforcement of patent rights in most of the EU. Since opening in 2023, the UPC has shown itself to be efficient and willing to provide fast decisions. A typical case at first instance takes around 12-15 months to reach a final decision. The UPC has also sought a high degree of alignment with the case law of the EPO, providing welcome certainty for patent proprietors.

Which countries are covered by a Unitary Patent?

A UP can only cover Member States of the EU. As of February 2026, the following EU Member States have ratified the UPCA and are Contracting Member States of the UP and UPC system:

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

It is important to note that the geographical coverage of each UP is 'frozen' to the Contracting Member States that have ratified the UPCA, at the date when the request for unitary effect was registered for that UP.

EU Member States that have not ratified the UPCA as well as non-EU Member States that are part of the European Patent Convention (EPC), such as the UK and Switzerland, cannot be covered by a UP. However, these countries can still be covered by national validation of an EP as is currently the case.

Unified Patent Court Agreement

An international agreement to establish a single court for Unitary Patents. It was signed in 2013 and was brought into force on the 1st June, 2023.



Dr James Legg, Partner



Daryl Penny, Partner

What options do I have when my European patent grants?

After grant of a European patent the applicant has the following options for obtaining patent protection in the contracting member states of the European Patent Convention (EPC):

- obtain a UP only in the states that have at that time ratified the UPCA
- obtain a UP plus national validations of the EP in one or more states that are not within the UP system or who have not yet ratified the UPCA, or
- just obtain national validations of the EP.

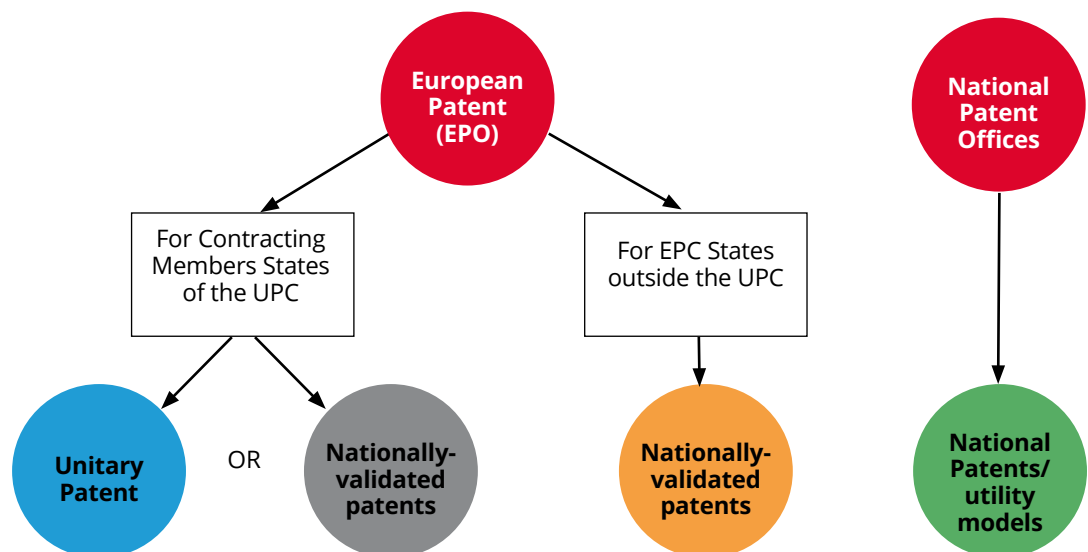
A European Patent (EP)



A European Patent that is granted by the European Patent Office and is then validated in individual states to produce separate patent rights, e.g. EP (UK) in the United Kingdom and EP (DE) in Germany.

A European Patent with unitary effect (UP)

A European Patent that is granted by the European Patent Office and is then registered to have unitary effect in the states that have ratified the Unified Patent Court Agreement. It is more commonly known as a Unitary Patent.

Options for obtaining patent protection in Europe





For example, an applicant seeking patent protection in Germany, France, UK, and Spain can:

- file a European patent application via the EPO and then after grant obtain a UP (providing coverage in Germany and France, amongst others) along with national validations of the EP in the UK (since it is not an EU Member State) and in Spain (since it is not contracted to the UP system),
- obtain separate national validations of the EP in Germany, France, UK and Spain after grant of the European patent, or
- file separate applications at the German, French, UK and Spanish patent offices and prosecute each through to grant.

With the last option the costs of filing and obtaining grant is significantly higher due to the duplication of examination effort and the need to provide full translations of the specification into German, French, English and Spanish on filing.

A big advantage of the Unitary Patent is that it provides a very broad geographical coverage, while maintaining the ability to administer the patent right centrally. Only a single renewal fee is payable per year.

Finally, it should also be noted that the UP system does not affect the process of using a European patent application to obtain patent protection in the Extension States and Validation States offered by the EPO.

How do I obtain a Unitary Patent?

A UP is obtained by first achieving grant of a European patent application and then making an application to the European Patent Office (EPO) to register the granted patent as having unitary effect.

A UP is only available if all of the following requirements are met:

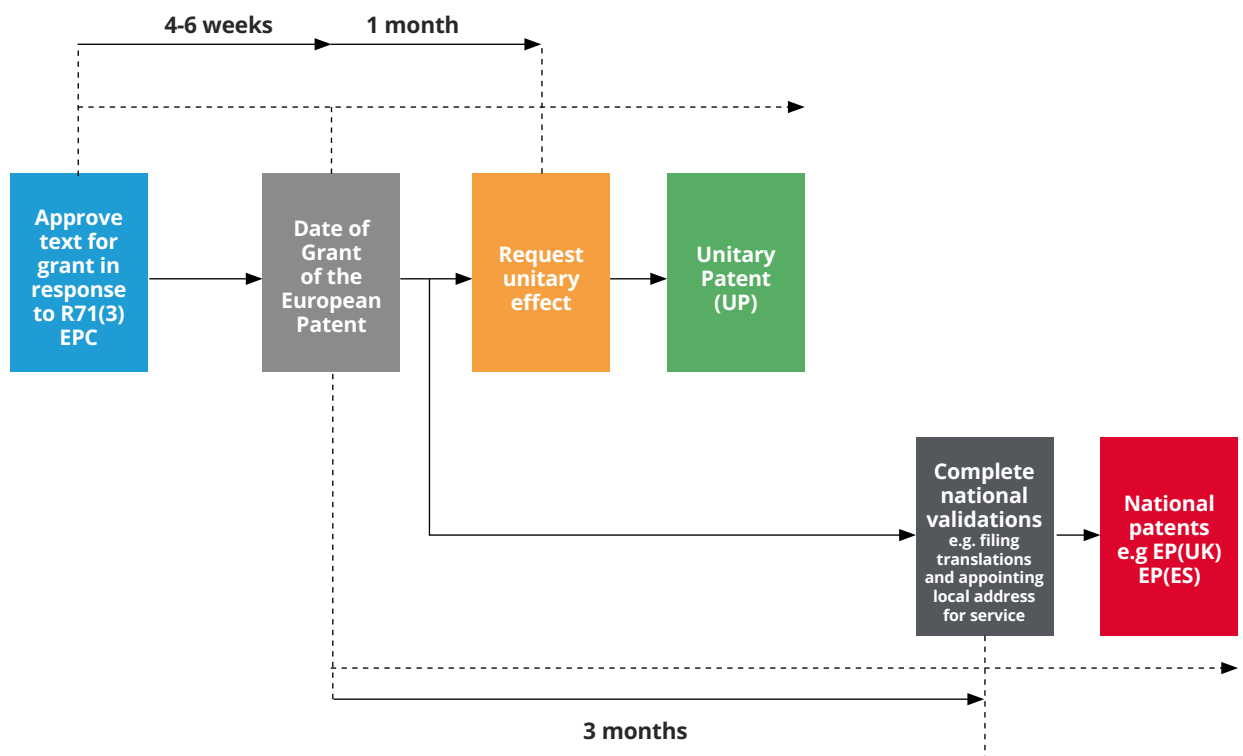
- the grant date of the European patent is after the UP system started
- the European patent designates all Participating Member States of the UP system,

and

- the granted claims are the same for all Participating Member States.

To register the European patent for unitary effect the patent proprietor must file a request within one month of the date of grant of the European patent. This compares to the current three month deadline for completing national validations.

Timeline of grant and validation of a European patent application





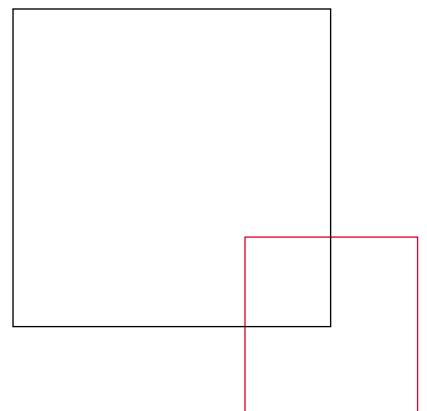
Dr Nina White, Partner

There is no official fee for filing the request for unitary effect. However, during the current transitional period the request needs to be accompanied by a full translation of the patent specification into either English (if the language of proceedings of the European patent application was not English) or into another language of an EU Member State (where the language of proceedings was English).

The one month deadline for requesting unitary effect is not extendible. Therefore, patent proprietors need to consider and decide whether a UP is required early enough in the grant stage to allow the necessary translation to be obtained.

Applicants wishing to benefit from a UP should:

- ensure that no designation of a Participating Member State is withdrawn, and
- ensure that the same claims are maintained for all Participating Member States.



What are the costs of a Unitary Patent?

Leaving aside the cost of filing and granting the European patent application itself, there is no official fee for registering unitary effect of a European patent.

During the current transitional period a translation of the full patent specification into either English (if the language of proceedings of the European patent application was not English) or into another language of an EU Member State (where the language of proceedings was English) must be filed.

Where a patent proprietor also wishes to validate their EP in one or more states not covered by the UP, the cost of producing this translation can be offset by using a translation that is required for a national validation. For example, a proprietor wishing to nationally validate their EP in Spain can use the same Spanish translation for the national validation in Spain and to register unitary effect of the UP.

Only a single renewal fee per year is payable to maintain a UP in force after grant. Conveniently, the renewal fees are payable to the EPO. As of February 2026, the published schedule of renewal fees (which may be subject to change) is:

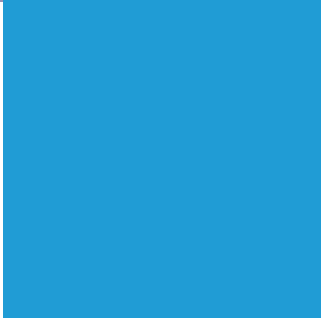
Unitary Patent (UP) renewal fees

Year	Renewal Fee (€)	Year	Renewal Fee (€)
-	-	11	1,460
2	35	12	1,775
3	105	13	2,105
4	145	14	2,455
5	315	15	2,830
6	475	16	3,240
7	630	17	3,640
8	815	18	4,055
9	990	19	4,455
10	1,175	20	4,855

The year of the renewal fee is measured from the filing date of the European patent application.



Dr Edward Ronan, Partner



What is the structure of the Unified Patent Court?

The Divisions

The UPC is a single court comprised of a Court of First Instance, a Court of Appeal and a Registry.

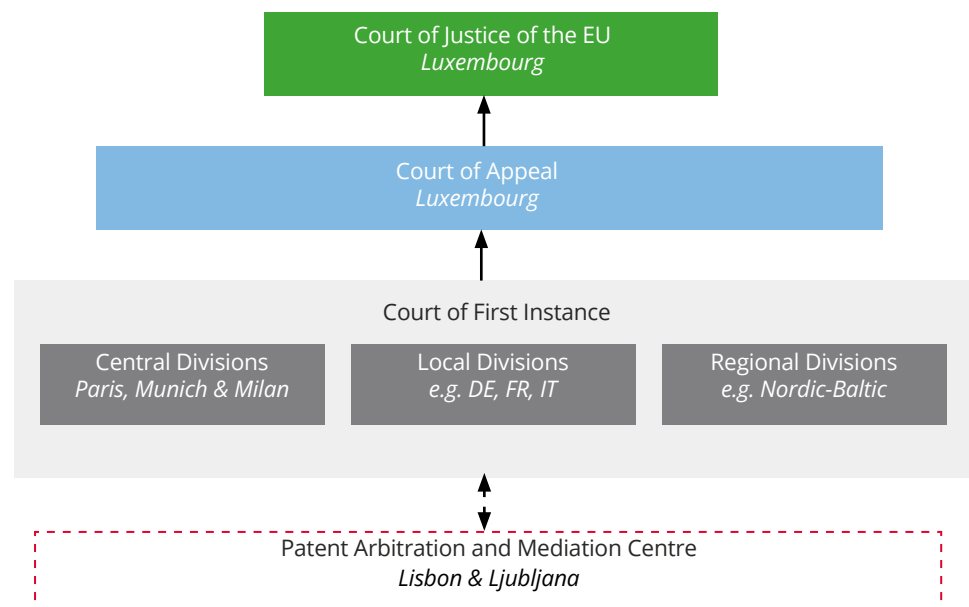
The Court of First Instance comprises a Central Division as well as Local and Regional Divisions.

The Central Division in turn is split into three parts - one in Paris, France and one in Munich, Germany and one in Milan, Italy.

The Court of Appeal is based in Luxembourg. An Arbitration and Mediation centre is based in Lisbon, Portugal and Ljubljana, Slovenia.

Preliminary rulings on matters of EU law can be referred from the UPC to the Court of Justice of the European Union (CJEU).

Structure of the Unified Patent Court (UPC)



Every Contracting Member State is entitled to host a Local Division. However, a number of Contracting Member States have combined resources to host a Regional Division.

For example, Sweden, Lithuania, Estonia and Latvia have grouped together to form the Nordic-Baltic Regional Division.

Actions before the UPC

The UPC has exclusive competence, within the Contracting Member States, to hear the following types of actions for both UPs and nationally-validated EPs:

- infringement actions
- actions for declarations of non-infringement
- actions for provisional and protective measures and injunctions
- revocation actions
- actions for damages or compensation derived from the provisional protection conferred by a published European patent application
- actions relating to rights based on prior use of an invention
- actions for compensation for licences of right.

The UPC also deals with counterclaims for revocation and other defences and hears actions against decisions which the EPO takes

when carrying out tasks related to Unitary Patent protection.

The UPC also deals with the infringement and validity of supplementary protection certificates (SPCs) issued for products protected by EPs or UPs.

The national courts of Contracting Member States remain competent for actions which do not come within the exclusive competence of the UPC, e.g. cases relating to compulsory licensing and entitlement. In addition, during the initial transitional period a proprietor is able to register to opt-out their EPs (but not any UPs) from the jurisdiction of the UPC.

For first instance proceedings, whether an action is heard in the Central Division (and if so in which section) or a particular Local or Regional Division varies depending on the nature of the action, the identity of the parties, the location of the cause of action, and the subject matter of the UP.

For example:

Local/Regional Division	Central Division
<ul style="list-style-type: none"> • Infringement actions (with the specific Division determined by where the infringement takes place or where the defendant is based) • Counter-claims for revocation 	<ul style="list-style-type: none"> • Revocation actions • Declarations of non-infringement • Counter-claims for infringement • Infringement actions (where the defendant is not domiciled/has no place of business within the Contracting Member States of the UPC)



Dr Rohan Setna, Senior Partner

Cases before the Central Division are allocated based on the subject matter of the UP.

As noted above, a Local or Regional Division can choose to hear a counter-claim for revocation where an infringement action is already pending before it. However, they also have the option of referring the whole action to the Central Division or referring only the counter-claim for revocation to the

Central Division (so-called 'bifurcation' of the action). In the case of bifurcation the Local/Regional Division can choose to carry on with the infringement action or stay the infringement claim pending the result of the revocation action in the Central Division.

In addition to the allocation scheme described above, the parties may mutually agree to bring an action before a Division of their choice.

What laws are applied by the Unified Patent Court?

The UPC applies European Union law and this takes primacy over other sources of law.

The UPC bases its decisions on the following sources of law:

- The UPCA
- The EPC
- Other international agreements applicable to patents and binding on all Contracting Member States
- National Law.

The National Law referred to may be either the national law of Contracting Member States or the national law of third party states that are not signatories of the UPCA (such as the UK).

What languages are used in the Unified Patent Court?

The language used in actions before the UPC varies from case to case:

- In the Central Division the language of proceedings is the language in which the UP was granted
- In the Local and Regional Divisions the language of proceedings is:
 - an official language of the Contracting Member State hosting the Division, or
 - one or more of English, French or German if the Division has designated this, or

- the language in which the UP was granted if this is agreed to by all parties (including the Division) or where the Division themselves decide that this is convenient and fair for all parties.

In practice, English and German are the dominant languages chosen - with English being used in around 55% of cases.



Rules of Procedure of the UPC

The same Rules of Procedure are used in all Divisions of the UPC. The Rules of Procedure emphasise the importance of the written procedure ahead of short oral hearings that are intended to be set down for one day only.

The first instance proceedings are intended to be completed within 12 months of the start of an action. The UPC has prioritised efficient processing of cases and has managed to keep pendency times at first instance down to around 12-15 months.

The Rules of Procedure require claimants to provide detailed and particularised initial pleadings, including details of facts, evidence and witnesses that will be relied upon throughout the action.

Do I need to be represented before the Unified Patent Court?

Users of the UPC must be represented.

UPC representatives need to be:

- Lawyers authorised to practise before a court of a Contracting Member State, or
- European Patent Attorneys who hold an appropriate qualification such as a European Patent Litigation Certificate.

At Boulton we have over 50 UPC Representatives qualified to act before the UPC.

What are the costs of the Unified Patent Court?

The official fee at first instance for a revocation action is fixed at €26,500.

The official fee at first instance for an infringement action or a counter-claim for infringement is made up of a fixed fee of €14,600 plus a value-based fee dependent on the value of the claim.

A key benefit of the UPC is avoiding the need to litigate a European patent in multiple Member States. Instead the UPC has the power to rule on - and enforce - a European patent across the EU.

The successful party in a claim before the UPC is able to apply for an award of costs from the other party in respect of representative fees. Awards of costs are based on a scale that increases with the value of the claim. For example, for actions having a value of €2 million the recoverable costs will be up to around €200,000, and for very high value claims having a value in excess of €50 million the recoverable costs will be up to around €2 million.

What are the powers of the Unified Patent Court?

The UPC has very wide powers including:

- ordering the inspection of premises to obtain and preserve relevant evidence
- freezing orders to retain assets within the jurisdiction of the UPC
- preliminary injunctions to prevent imminent infringement pending the outcome of an infringement action
- permanent injunctions at the conclusion of an infringement action or counter-claim for infringement
- giving awards of damages and legal costs
- ordering delivery up and/or destruction of infringing articles
- partially or fully revoking a UP or EP (in the

Contracting Member States) following a revocation action or counter-claim for revocation.

In terms of territorial scope, UPC decisions cover, in the case of UPs, all of the territory of the Contracting Member States for which the UP has unitary effect. In the case of an EP, UPC decisions cover all of the territory of the Contracting Member States for which the EP has effect.

The UPC can also exercise a 'long-arm' jurisdiction beyond the territories of the Contracting Member States when assessing damages. This has allowed patent proprietors to obtain damages from third party countries via the UPC.

Does the Unified Patent Court replace EPO oppositions?

No. The opposition procedures of the European Patent Office (EPO) remain available as alternative or parallel proceedings for contesting the validity of European patents.

EPO oppositions continue to offer a number of advantages compared to revocation actions before the UPC:

- Significantly lower official fees. The EPO opposition fee is €880 compared to the UPC revocation fee of €26,500
- Lower representative/attorney fees, and
- Revocation of an EP patent at an EPO opposition will revoke the patent in all EPC contracting member states.

However, revocation actions before the UPC have advantages not available in the EPO opposition system:

- A UPC revocation action can be started at any time after grant of the UP. By contrast, an EPO opposition must be filed within 9 months of grant
- The UPC has the full powers of a court. For example, the UPC may order the production of evidence, order inspections of premises and allow cross-examination of witnesses, none of which are powers available to the EPO.

In many cases litigation may involve both an EPO opposition and a UPC action.



Henning Erb, Partner

Should I choose a Unitary Patent or national validations of a European Patent?

The Unitary Patent system provides additional choice to patent proprietors. Ultimately, the decision whether to choose a UP or national validations of an EP (or a combination of both) will vary between patent proprietors. Even for a particular patent proprietor, the decision may differ on a case-by-case basis depending on the perceived value and importance of individual inventions.

Having said that, there are some factors that patent proprietors should be aware of when making their decision.

Some of the advantages of the UP are:

- A UP has a wide geographical coverage
- Choosing a UP may result in lower translation costs after grant compared to national validations
- Easier administration of renewal fees is possible since only a single renewal fee payment each year is required to the European Patent Office (EPO) for the states covered by the UP

- The UPC provides a single court system for settlement of disputes relating to UPs
- The UPC is empowered to grant relief (e.g. damages, injunctions, etc.) that cover all the Contracting Member States for which the UP has unitary effect
- Using the UPC for enforcement may avoid the need for parallel litigation in multiple European jurisdictions.
- It is not possible to reduce the renewal fee cost for a UP over time since only a single renewal fee is payable
- If protection is only needed in two or three states then the UP renewal fee may be higher
- A patent proprietor must use the UPC for settlement of disputes for a UP. However, so far the UPC has been seen to be efficient and user-friendly for patent proprietors



Neil Thomson, Partner



What is the jurisdiction of the Unified Patent Court?

The default position is that the UPC has exclusive competence over:

- Unitary Patents
- European Patents (assuming they designate any Contracting Member State – and virtually all do)
- Supplementary Protection Certificates (SPC) related to the above.

However, during the current transitional period actions relating to EPs can also be brought in national courts at the choice of the parties. In addition, during the initial transitional period a proprietor is able to register to opt out their EPs (but not any UPs) from the jurisdiction of the UPC.

As a result, for the Member States that have ratified the UPCA:

- UPs always have to be litigated in the UPC for most actions. This includes all infringement and revocation actions
- EPs that have not been opted out may be litigated in either the UPC or the national courts during the transitional period
- After the end of the transitional period, EPs that have not been opted out will have to be litigated in the UPC
- EPs that have been opted out have to be litigated in the national courts unless the opt-out is withdrawn.

Opt-outs

What is an opt-out?

An opt-out is a declaration that is filed by, or on behalf of, a patent proprietor stating that they do not want their EP to be under the jurisdiction of the UPC.

Opting out is an active step that a proprietor can take to remove an EP from the jurisdiction of the UPC. Once opted out, the EP will remain (as now) under the jurisdiction of

the national courts in the states where the EP was validated. This means that the UPC will have no jurisdiction over the opted out EP. Therefore, once opted out, invalidity and infringement proceedings relating to the EP will only be able to be brought in the national courts (unless the opt-out is withdrawn).

Pending (published) European patent applications can be opted out as well as granted EPs that are still in force.



James Short, Partner

Transitional period

An initial period of at least 7 years after the commencement of the UPC.

Can I opt out a Unitary Patent?

No. Importantly, only EPs can be opted out of the jurisdiction of the UPC. It is not possible to opt out a UP from the jurisdiction of the UPC – UPs always fall under the exclusive jurisdiction of the UPC by definition.

Can I withdraw an opt-out?

Yes. It is possible for a patent proprietor to withdraw an opt-out at any time should they wish to do so unless the EP has been the subject of previous national litigation in a Contracting Member State since June 2023.

What are the effects of opting out my patent?

An opted out EP will remain under the jurisdiction of each competent national court where it has been validated. The UPC will have no jurisdiction. Therefore, once opted out, invalidity and infringement proceedings relating to the EP can only be brought in the national courts (unless the opt-out is withdrawn).

What if there is a Supplementary Protection Certificate (SPC)?

The status of an SPC is linked to the EP or UP on which it is based. Therefore, it is not possible to just opt out an EP and not its associated SPC at the same time. Likewise, it is not possible to opt out just the SPC while leaving the EP under the jurisdiction of the UPC.

It is not possible to opt out any SPC that is based on a UP since the UP itself cannot be opted out.

When opting out an EP the details of any SPC based on that EP must be provided as part of the opt-out application.

What are the costs of opting out?

There is no official fee for opting out but the process requires patent proprietors and their representatives to carry out some administrative checks so there is some administrative overhead and costs involved.

How do I opt out an EP?

The UPC provides a Case Management System to allow opt-outs to be recorded online. The opt-out is registered by a UPC representative or another person duly authorised by the patent proprietor(s).

It is important to note that where an EP is owned by multiple proprietors, all of the patent proprietors need to consent to the opt-out (or subsequent withdrawal of an opt-out). Joint proprietors of EPs should therefore ensure that they come to an agreement as to whether their EPs are to be opted out or not.

In addition, it is very important to note that the patent proprietor(s) who can make an effective opt-out or withdrawal of an opt-out are the persons legally entitled to be registered as the proprietor(s) under the law of each Contracting Member State in which the EP has been granted. This is true whether or not such person(s) is/are in fact recorded in the register of patents maintained in such Contracting Member State.

This means that, when making an opt-out or a withdrawal of an opt-out, one will need to check very carefully the true ownership position in each and every state where the EP has been granted.

These checks will be particularly important for EPs where:

- there has been an assignment or partial assignment after grant (especially if not recorded on the registers)

- there has been an entitlement action after grant that has changed the ownership position
- the proprietor(s) have undergone a change of name.

As part of the opt-out process, it is necessary to provide the names and contact details of all of the true owners.

If an opt-out is later found out to be defective, for example because authorisation from an entitled proprietor of the EP was not obtained, then the UPC will retain jurisdiction over the EP.

Should I choose to opt out my EP?

If for some reason you do not want the UPC to have jurisdiction over your EPs, then you need to file an opt-out request.

For patent proprietors, the main perceived reason for wanting to opt out is not wanting your EPs to be vulnerable to a central revocation attack in a single court that could result in revocation of the EP in all ratified states of the UPC.

Are there advantages to not opting out?

If you are a patent proprietor wishing to enforce your EP in multiple jurisdictions covered by the UPC, then staying within the jurisdiction of the UPC can be very advantageous. The UPC has a very broad reach and to date has been regarded as a good forum for patent enforcement.



Dr Jo Pelly, Partner

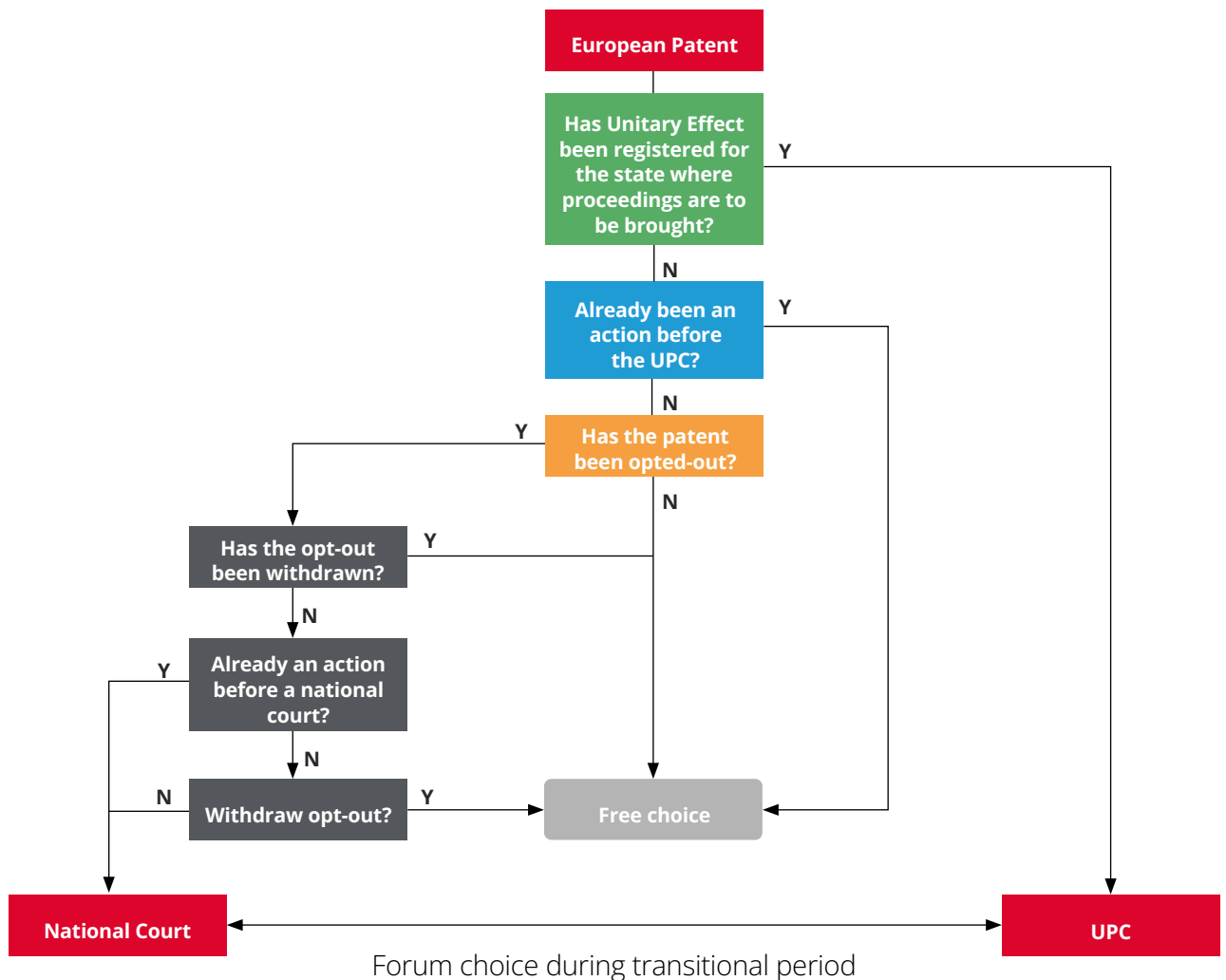
Forum choice during and after the transitional period

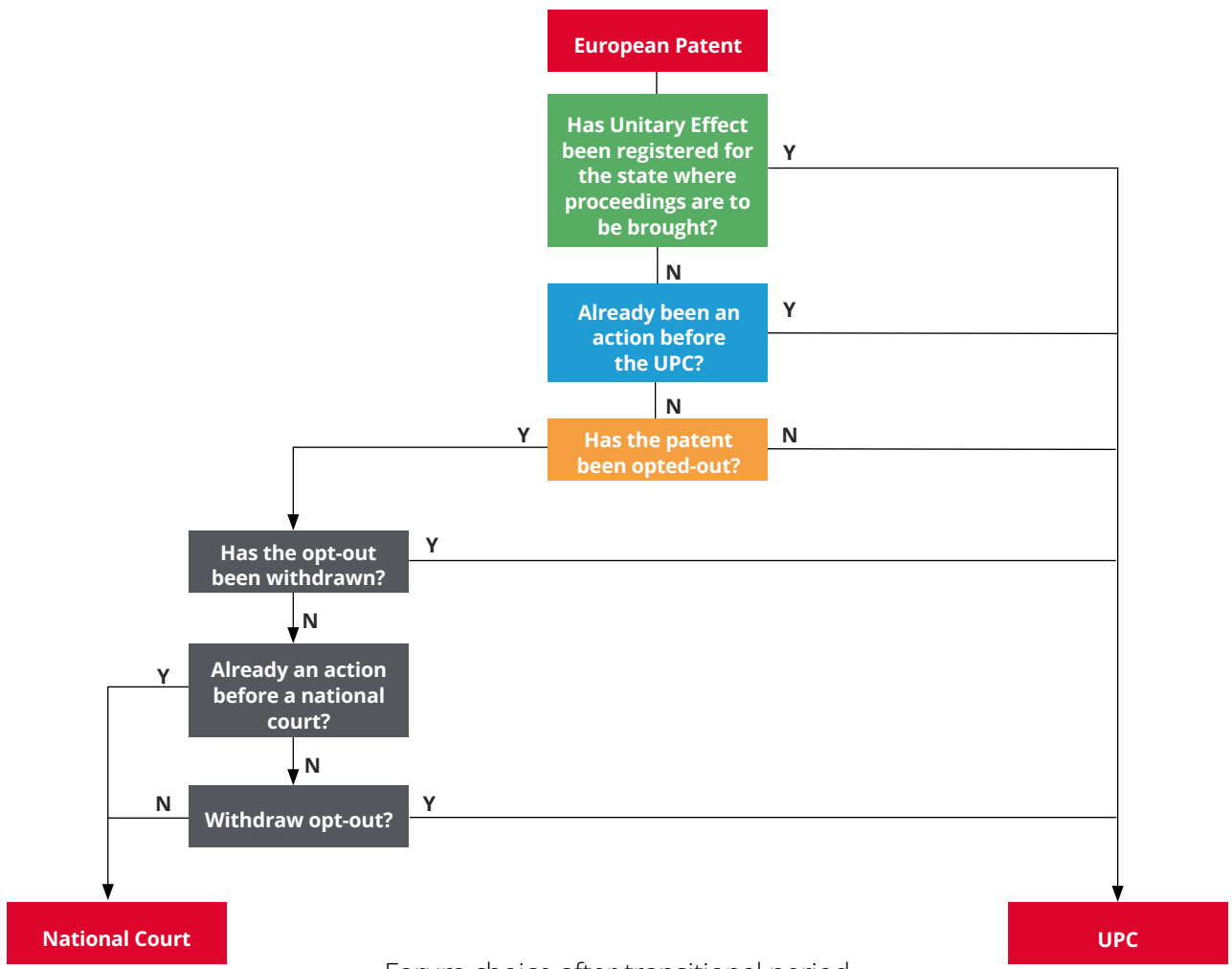
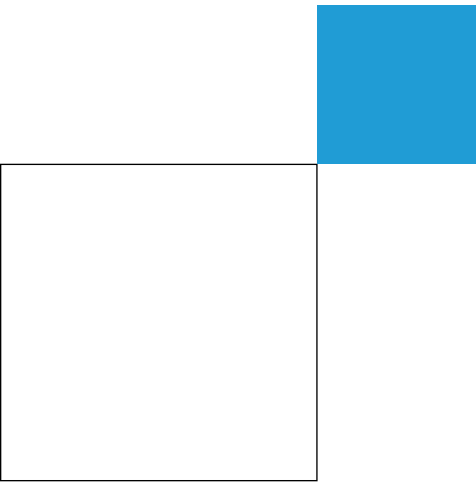
The choice of forum for an action depends on:

- Whether the patent is a UP or an EP
- If an EP, whether the EP is opted out or not
- Whether any previous opt-out has been withdrawn, and

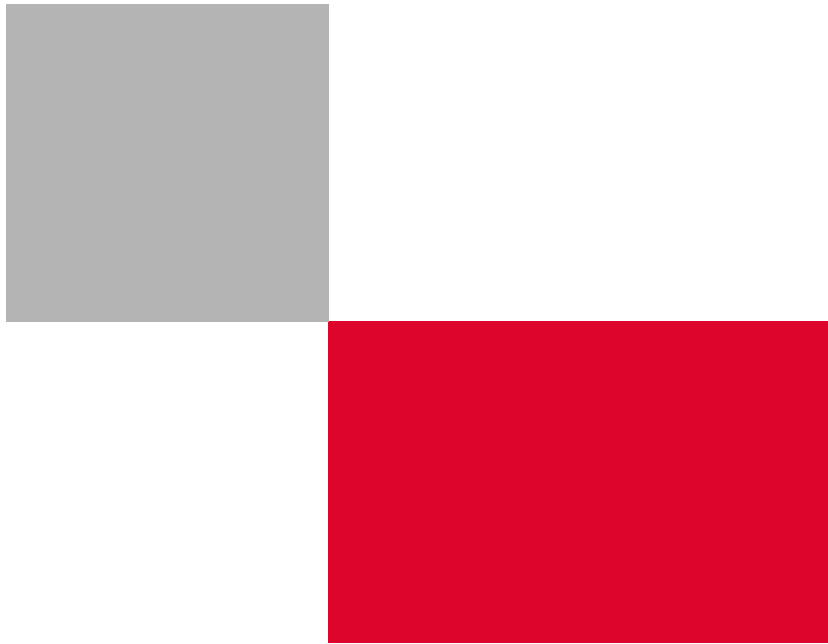
• For EPs, whether the transitional period is still running or has finished.

The following charts summarise the choices both during the transitional period and after the transitional period has finished.





Forum choice after transitional period



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