



Europäisches
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des brevets

The Unitary Patent and the Unified Patent Court

A better patent system for Europe



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What is the Unitary Patent (1)

- The Unitary Patent is based on a European patent granted by the EPO under the EPC's rules and procedures. Upon request of the patentee, unitary effect can be given post-grant for the territory of 26 Member States participating in the Unitary Patent scheme.
- Unlike the EU trade mark or the registered Community design, the Unitary Patent is not a new EU intellectual property title.

What is the Unitary Patent (2)

- The Unitary Patent will co-exist with national patents and with "classical" European patents.
 - Patent holders will be able to choose between various combinations of a Unitary Patent, "classical" European patents, and national patents.
 - UP combined with EP:
 - a Unitary Patent for the 26 participating Member States, combined with a
 - a classical European Patent taking effect in one or more EPC Contracting States which do not participate in the scheme (e.g. Spain, Switzerland, etc.).

What is the Unitary Patent (3)

- UP combined with national patent:
 - a Unitary Patent for the 26 participating Member States, combined with
 - one or more national patent(s) in one or more EPC Contracting States, which either do not participate in the scheme or which allow double protection.

What is the legal basis (1)

- Unitary Patent Regulations:
 - EU Regulation No. 1257/2012 of 17 Dec 2012 creating the European Patent with unitary effect (OJ EPO 2013, 111–131);
 - EU Regulation No. 1260/2012 of 17 Dec 2012 relating to the translation arrangements for European Patents with unitary effect (OJ EPO 2013, 132–142).

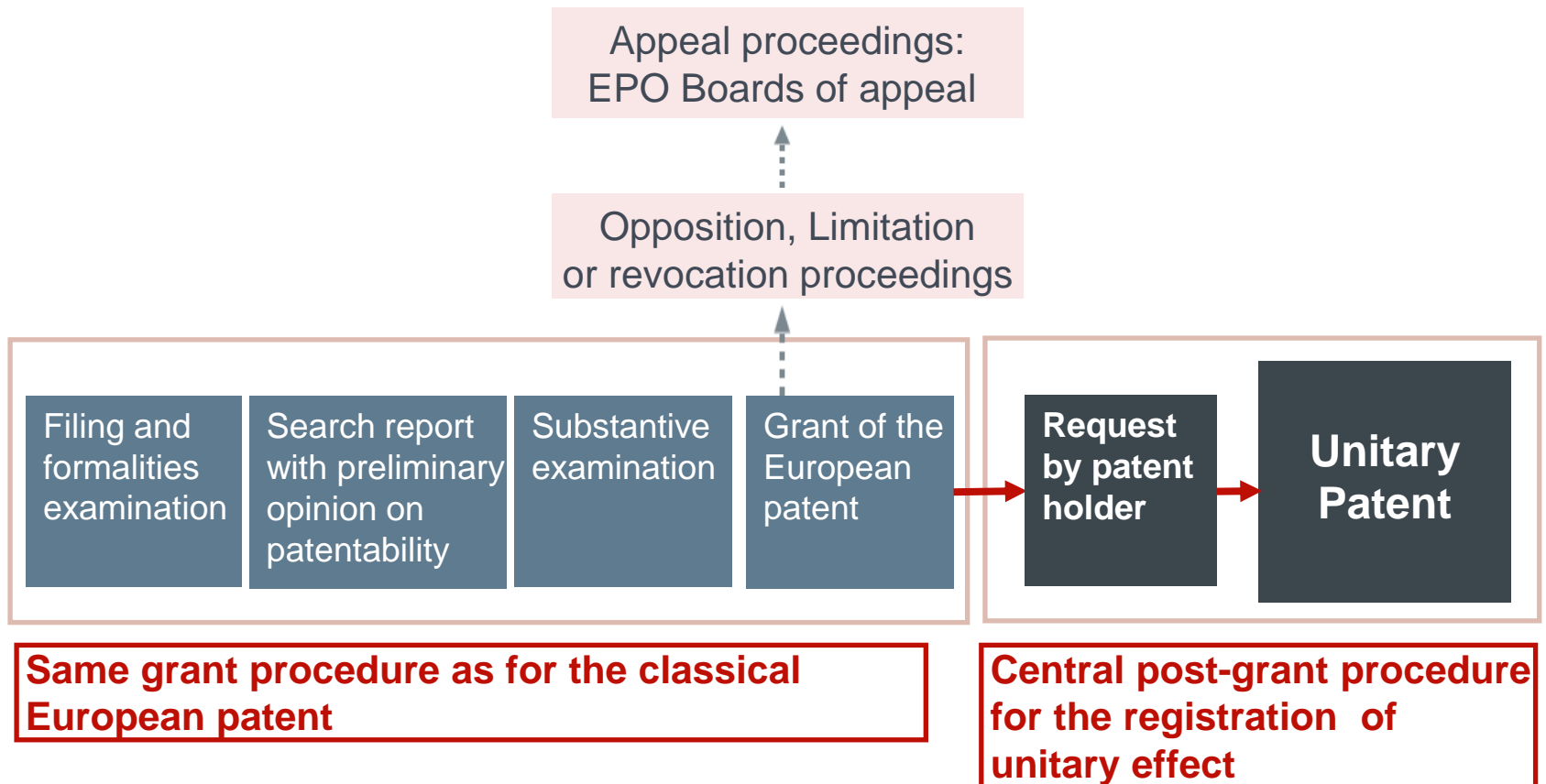
What is the legal basis (2)

- Secondary legal framework of the Unitary Patent (completed by the EPO's Administrative Council's Select Committee on 15 Dec 2015):
 - Rules relating to Unitary Patent Protection (OJ EPO 2016, A39);
 - Rules relating to Fees (OJ EPO 2016, A40);
 - Budgetary and Financial Rules (OJ EPO 2016, A41);
 - Rules relating to the Distribution of Fees among the participating EU Member States.

What is the legal basis (3)

- Agreement on the Unified Patent Court (UPCA; OJ EPO 2013, 287–364)
 - Unitary Patent comes into operation together with the UPC, because Unitary Patents can be enforced or revoked only in a uniform way at the Unified Patent Court.

How to obtain it



What will it cost (1)

- No fees are due at the EPO for the filing and examination of the request and for the registration of Unitary Patents.
- Business-friendly renewal fee level:
 - The level of renewal fees is based on the so-called "True TOP 4". This is the equivalent of the combined renewal fees payable in the top four participating Member States where a European patent was most frequently validated at the time the renewal fee scale was adopted (DE, FR, GB, NL).
 - For the first ten years, which is the average lifetime of a European patent, the aggregate costs of paying renewal fees for a Unitary Patent will be less than EUR 5 000.

What will it cost (2)

- Full cost-saving potential of Unitary Patents materializes when considering also the indirect costs that currently arise when validating and maintaining a European patent, such as attorney fees for validations, translation costs for validations, publication fees to be paid to national patent offices and fees for attorneys or other service providers for maintenance.
- Simplified renewal fee payment:
 - Patent holders can easily pay the renewal fees themselves directly to the EPO.
 - One common renewal fee in one currency under a single legal regime, with no obligation to use a representative.
 - Payments can be made by bank transfer or online payment methods.

What will it cost (cont'd)

2nd year	€	35	11th year	€	1 460
3rd year	€	105	12th year	€	1 775
4th year	€	145	13th year	€	2 105
5th year	€	315	14th year	€	2 455
6th year	€	475	15th year	€	2 830
7th year	€	630	16th year	€	3 240
8th year	€	815	17th year	€	3 640
9th year	€	990	18th year	€	4 055
10th year	€	1 175	19th year	€	4 455
			20th year	€	4 855

- Additional fee for belated payment of a renewal fee = 50% of the belated renewal fee (Article 2(1), item 2, RFeesUPP)
- Renewal fee reduction of 15% in case of a statement (offer) of licences of right (Article 12 UPR, Article 3 RFeesUPP)

The Unified Patent Court in a nutshell (1)

- The Unified Patent Court (UPC) is a new supranational court covering 25 Member States with one action.
 - The UPC will be a court common to the Contracting Member States of the UPC Agreement and part of their judicial system.
 - It will have exclusive competence in respect of both Unitary Patents and European patents (subject to exceptions during a seven year transitional period).
 - Decisions will be issued by internationally composed panels comprising both legally and technical qualified judges.
 - The UPC will consist of a Court of First Instance, a Court of Appeal and a Registry. The Court of First Instance will have a central division as well as local and regional divisions.

The Unified Patent Court in a nutshell (2)

- The UPC will put an end to costly multiple parallel patent litigation in different countries and will enhance legal certainty for all users of the patent system.
 - The UPC will apply its own procedural law. The procedure is designed in a way that judgments at 1st instance can be expected within approx. one year after of the start of the action.
 - The UPC Agreement harmonises substantive patent law relating to the scope of the rights conferred by a patent and the limitations to the rights conferred as well as to the remedies available in case of violation.

Key benefits (1)

- Unitary Patents offer an attractive additional option for patent protection in Europe providing better value for money:
 - **Broader territorial protection** → Uniform protection for up to 26 participating Member States.
 - **Reduction of red tape** → One-stop-shop at the EPO instead of national validations and translation requirements and fee payments with several national patent offices, resulting in a major reduction of complexity and transaction costs:
 - Centralised process for filing, examining and granting patents in exactly the same way as for classical European patents;
 - Simple and straightforward post grant procedure instead of complex national validations;

Key benefits (2)

- Simplified and cost-effective renewal fee payment;
- Centralised register maintained by the EPO;
- Centralised administration of post-grant transactions by the EPO.

Key benefits (cont'd) (1)

- **Cost efficiency:**

- Filing of the request for the registration of Unitary Patents, examination, and registration is completely free of charge before the EPO.
- Business-friendly renewal fee pattern. A Unitary Patent will on average be less expensive than a classical European patent validated and maintained in four countries when comparing fees and all associated costs (see also above Slide 6).
- No post-grant translations are required for the purpose of obtaining a Unitary Patent (after an initial 6-year transitional period during which only one translation will be required for information purpose only having no legal effect).

Key benefits (cont'd) (2)

- **Better access to the internal market** → Broad territorial protection in up to 26 participating Member States will enable companies to enter more national markets depending on the initial success of the patented product or on business opportunities in other Member States.

Key benefits (cont'd) (3)

- **Fostering technology transfers** → A future central register for licensing and transfers of Unitary Patents will contribute to an efficient market for technology transfers which are likely to foster investments in innovation in the participating Member States.
- **Enhanced access to funding and IP services** → Broader market protection will increase chances to attract venture capital for start-ups. Enhanced integration of the patent system will also facilitate technology transfers and R&D cooperation with a wide variety of potential partners and intermediaries across the European single market.

Key benefits (cont'd) (4)

- **Enhanced protection at the EU's external borders** → Protection in up to 26 participating Member States will enable patent proprietors to rely in an efficient manner on the EU Customs Border Regulation (No 608/2013) to prevent infringing goods and products from third countries from entering the European single market.
- **Increased legal certainty and reduction of litigation costs** → Centralised enforcement through the new Unified Patent Court (UPC) in the states where the UPC Agreement entered into force, thereby reducing costs and complexity resulting from the risk of multiple litigation in different jurisdictions.

When will the Unitary Patent system start? (1)

- The new system is expected to start in early 2018.
- The Unitary Patent Regulations are now in force for 26 EU Member States.
 - Italy joined the enhanced cooperation in Sept 2015.
- The Unitary Patent Regulations apply from the date of the entry into force of the UPCA:
 - UPCA will enter into force on the first day of the fourth month after the deposit of the 13th instrument of ratification or accession, including the three States in which the highest number of European patents had effect in the year preceding the signature of the Agreement (DE, FR, and UK).

When will the Unitary Patent system start? (2)

- So far, 13 EU Member States have deposited their instruments of ratification incl. France, with several others having indicated their intention to ratify anytime soon.
- The United Kingdom is currently undertaking the remaining national legislative steps to ratify the UPCA and so is Germany.

Impact of Brexit (1)

- UK's ratification of the UPCA is required for the system to start.
- 28 Nov 2016: UK announced at the meeting of the EU Competitiveness Council that it will go ahead with the ratification to bring the UPC into operation despite the Brexit-vote.
- The Preparatory Committee of the UPC is working under the assumption that the UPCA can enter into force and the system become operational in early 2018.

Impact of Brexit (2)

- The continued participation of the UK in the Unitary Patent and the UPCA after its withdrawal from the EU will be a political decision by the EU, its remaining Member States and the UK and may be addressed in the context of the exit negotiations.
- If as a result of the "Brexit" the UK leaves the Unitary Patent and the Unified Patent Court, it can be expected that appropriate solutions will be put in place to avoid any loss of right and any legal uncertainty. The protection of acquired rights and the preservation of legal certainty are general principles of law which are respected throughout Europe.

Thank you for your attention!

More information about the Unitary Patent can be found on the EPO's website at:

<http://www.epo.org/law-practice/unitary/unitary-patent.html>

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