



Europäisches
Patentamt
European
Patent Office
Office européen
des brevets

Latest developments in the European Patent System



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Content

§ The European Patent Office (EPO) today

§ Timeliness – Early Certainty

- Concept of Early Certainty
- Applicant's options
- Informed decisions – Fee refunds
- Streamlined Opposition

§ Boards of Appeal Structural Reform

§ Unitary Patent in Europe

Key facts: the EPO at a glance

- § **Second largest** intergovernmental institution in Europe
- § **Global player** and voice of Europe in patents
- § **7000** employees, of which around **4300 highly qualified examiners**
- § **Self-financing**: budget of EUR 2.1bn without any public funding
- § Will be in charge of **granting and administering the unitary patent**
- § **High-quality European patents (ISO 9001 certification)** are drivers of innovation and secure the competitiveness of the European economy

Patent protection in up to 42 countries

European Patent Organisation
Founded in 1973
Some 650 million inhabitants

European member states (38)

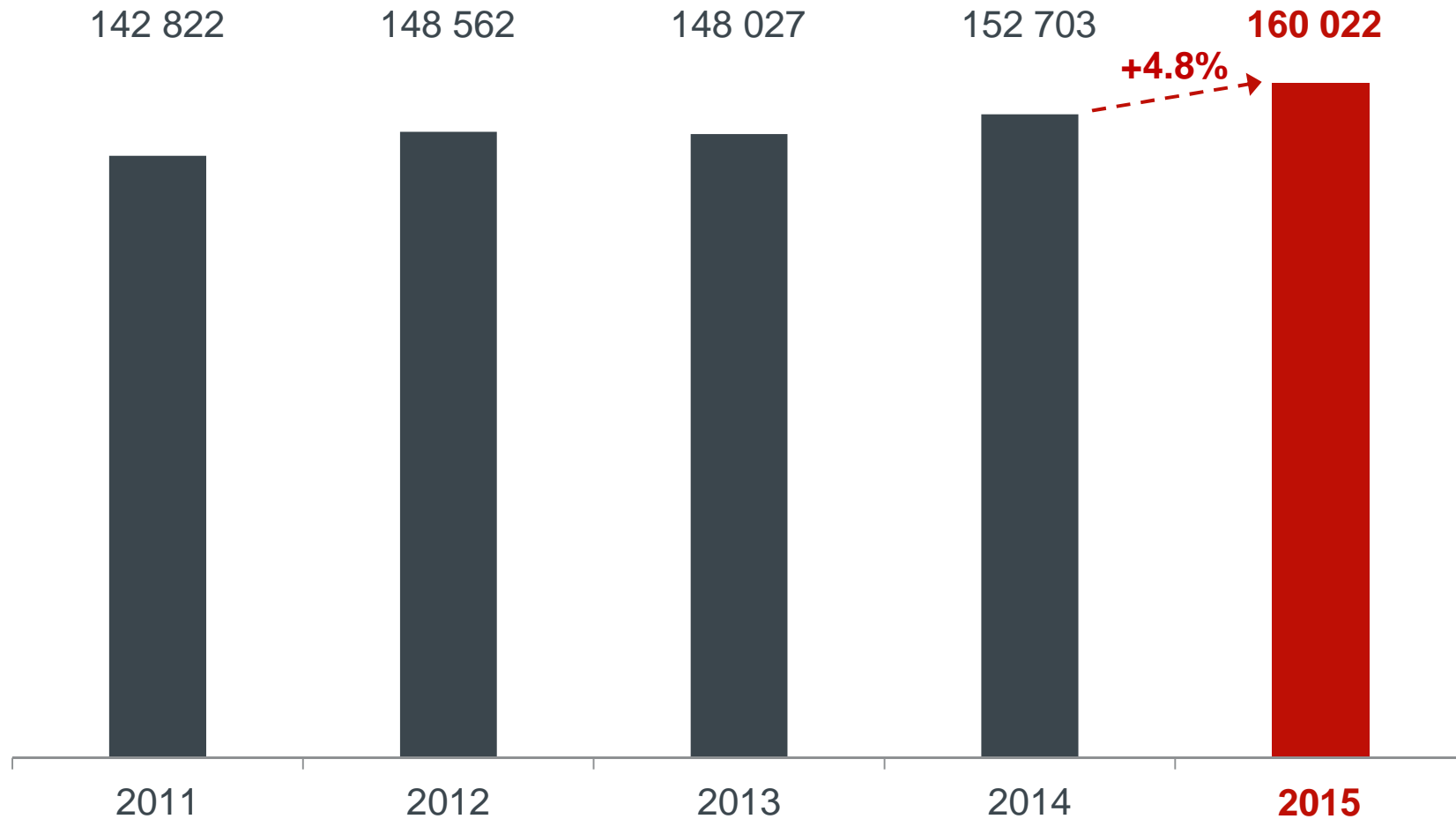
European extension states
Bosnia and Herzegovina
Montenegro

Validation states

Morocco 2015
Moldova 2015
Tunisia – 2016 (TBC)

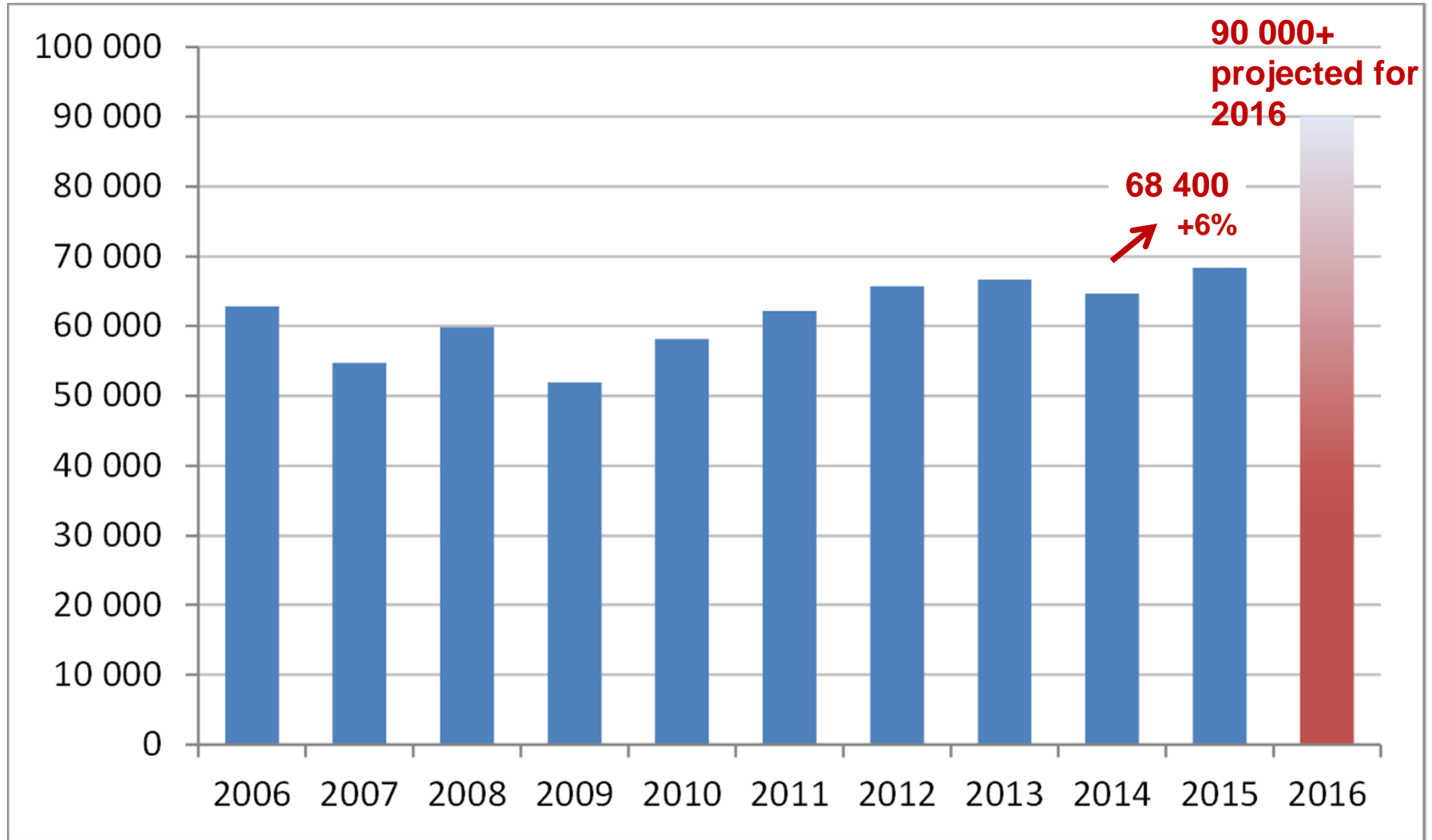


Total European patent applications in 2015



Applications are the files for which applicants have decided to request a European patent from the EPO. They are a direct measure of the explicit interest of innovating firms to assert their patent rights on the European technology market (Direct European applications and international (PCT) applications entering the European phase).

European patents granted 2006-2016



Steep increase in grants projected in 2016: 2/3 capacity increase, 1/3 efficiency increase

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Early certainty

Early Certainty: High quality in time

- From 2005 onwards: not only prior art search, also written opinion
- Since July 2014: Early Certainty from Search – backlog cleared
- **Now Substantive Examination & Opposition !**

§ Prior art search & written opinion within	6 months
§ Examinations within	12 months
§ Opposition within	15 months

Applicant's possibilities to expedite proceedings

§ Acceleration of proceedings by PACE request

- PACE for search and examination
- PACE also available for opposition and appeal (with reasoning)

§ For Euro-PCT applications further possibilities:

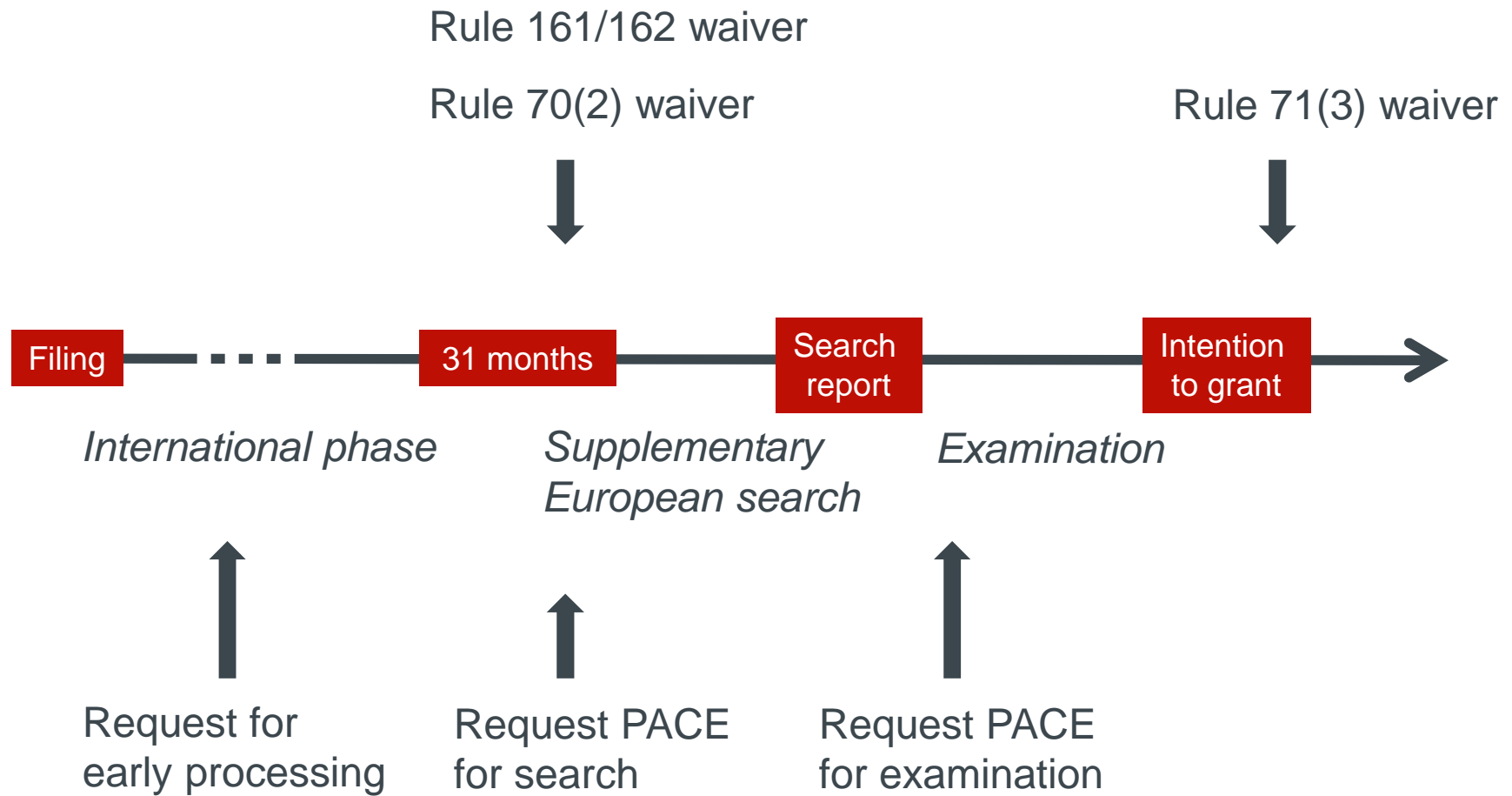
- PCT Direct
- Early entry

§ Shortening the procedural steps by waiving rights to communications •

“Waivers”

§ PPH

Expediting the procedure



The EPO PPH pilot programmes

§ Fast track examination of applications

§ EPO work products can be used at other PPH Offices

(**IP5** + Australia (AU), Canada (CA), Columbia (CO), Mexico (MX), Singapore (SG) Israel (IL) **NEW: RUSSIAN FEDERATION (RU)**, The Philippines (PH), Malaysia (MY)

EP

Search and/or examination reports (incl. PCT) produced by EPO accelerate applications at:

JP

US

KR

CN

CA

MX

MY

PH

RU

IL

SG

AU

CO

Informed Decisions - Refund of the examination fee

§ Increase of the fee refund from 75 % to 100 % in case of withdrawal, deemed withdrawal or refusal before substantive examination has begun (amendment of Article 11(a) RFees)

§ Advance information on the intended start of examination

§ as from 1 July 2016

§ Refund of the International Preliminary Examination by the EPO as the IPEA is also increased from 75% to 100%

Informed Decisions - Refund of the examination fee

- § An additional opportunity for a 50% refund in case the application is withdrawn after substantive examination has begun but before
- expiry of the time limit for reply to the first Article 94(3) communication, or
 - issuance of intention to grant (in direct grant cases)
- (amendment of Article 11(b) RFees)

§ As from 1 November 2016

Streamlined Opposition - Objective

- § Public/users demand for faster decisions on oppositions
- § Duration under the current workflow in standard cases: 19-27 months
 - Duration in 2015: average 25.8 months
- § Objective behind the revised procedural approach
 - Reduce overall length and variations between different cases
- § Full review of internal workflow and time limits; without rule change
- § **Aim:** For **standard cases** reduce procedural duration from expiry of opposition period to decision in oral proceedings to ca. **15 months**

Streamlined Opposition - Procedural modifications

- § Observations and/or amendments filed by the patentee are **communicated to the opponent for information**

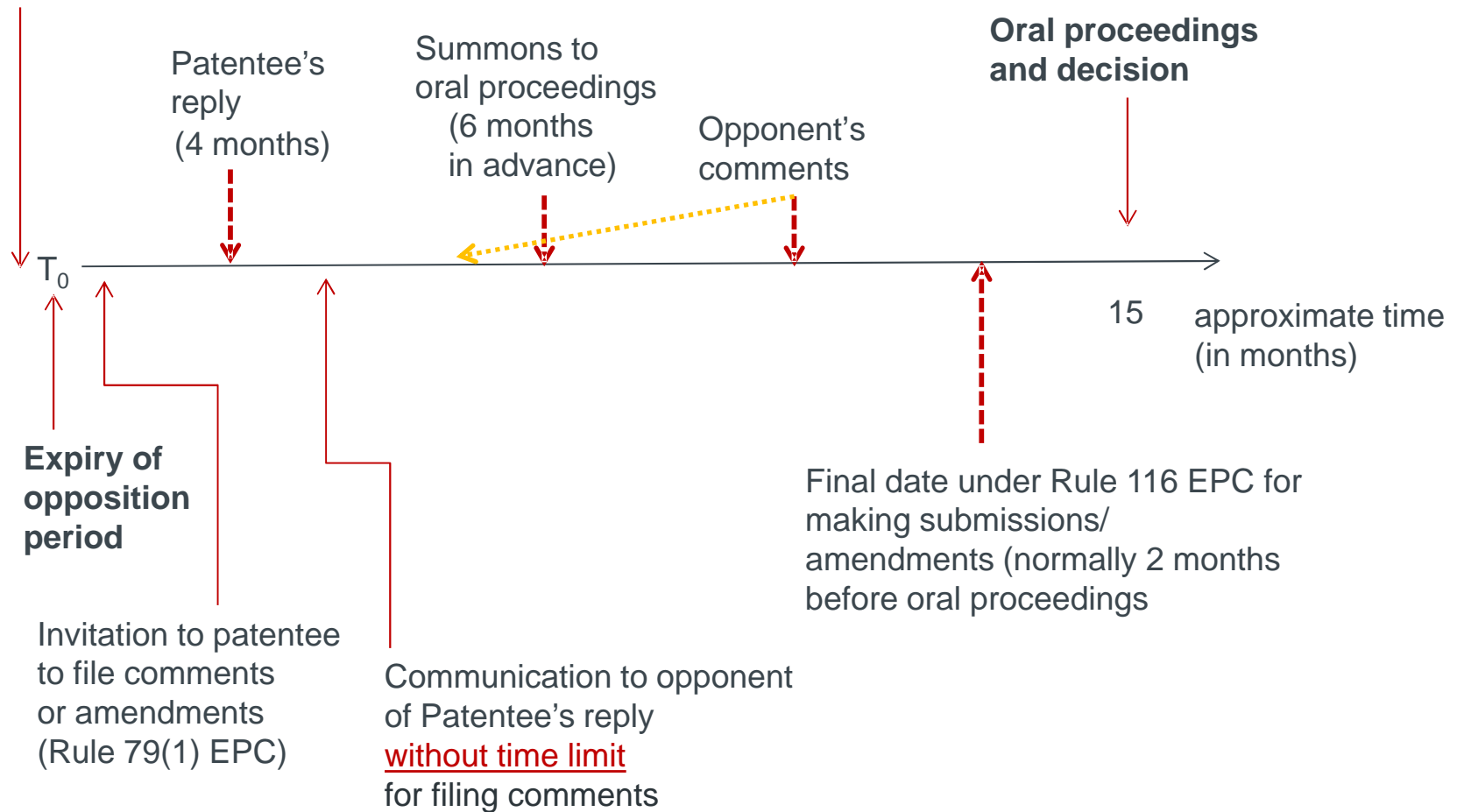
- § At the same time the file is forwarded to the opposition division for preparing the next action, normally **summons to oral proceedings**
 - Summons are dispatched at least six months in advance
 - Final date under Rule 116 EPC: two months before oral proceedings

- § Making more use of the possibility of summoning to **oral proceedings at the instance of the EPO**

- § Allowing **extension of time limits only exceptionally**

Streamlined Opposition - Revised workflow

Notice of opposition



Streamlined opposition proceedings

§ The EPO applies the revised workflow as from **July 2016**

§ **OJ notice** explains the new opposition workflow
(OJ EPO 2016, A42, A43) [here](#)

§ Additional information will be available on the **EPO homepage**
<https://media.epo.org/play/opposition> and in the **Guidelines 2016**

Content

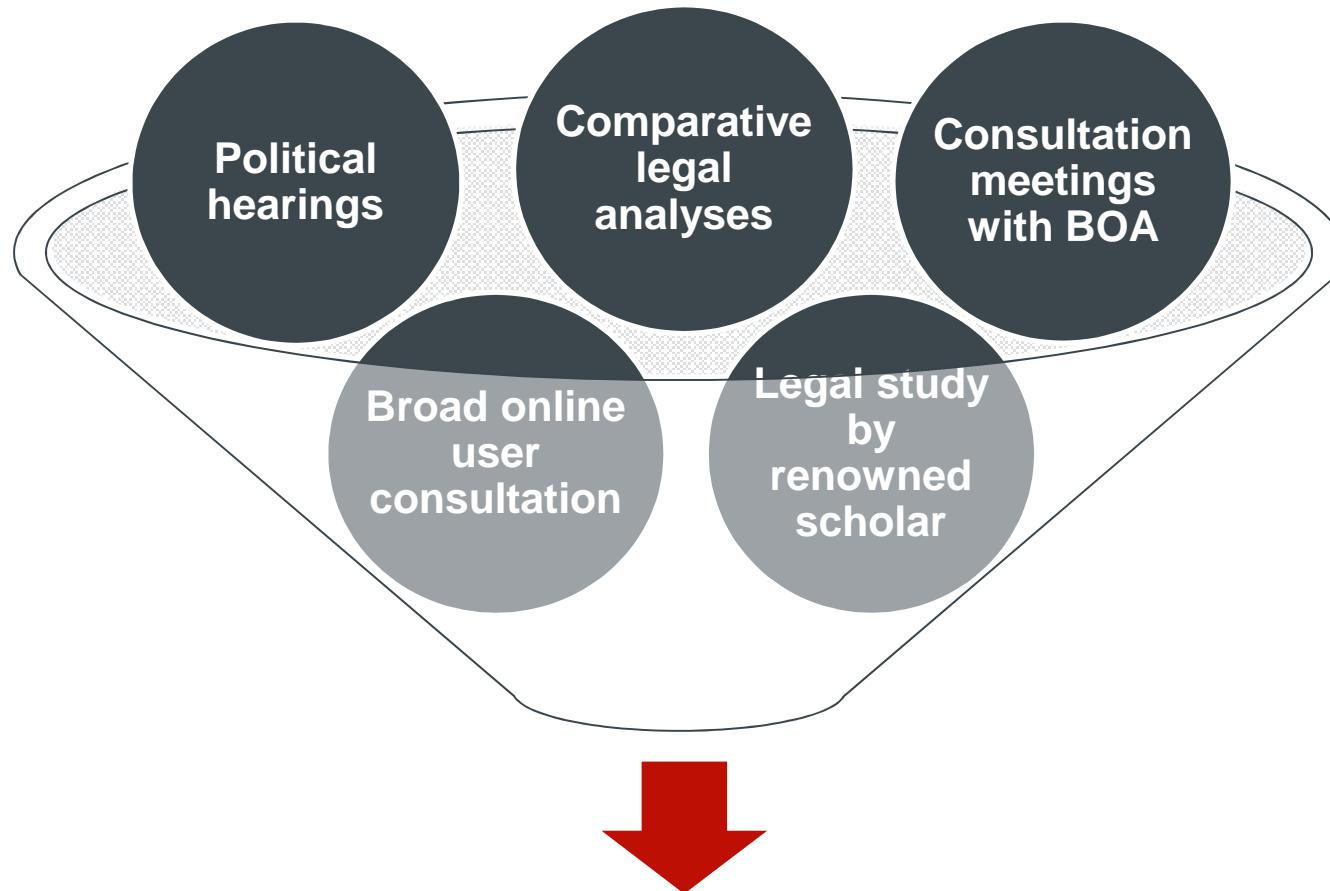
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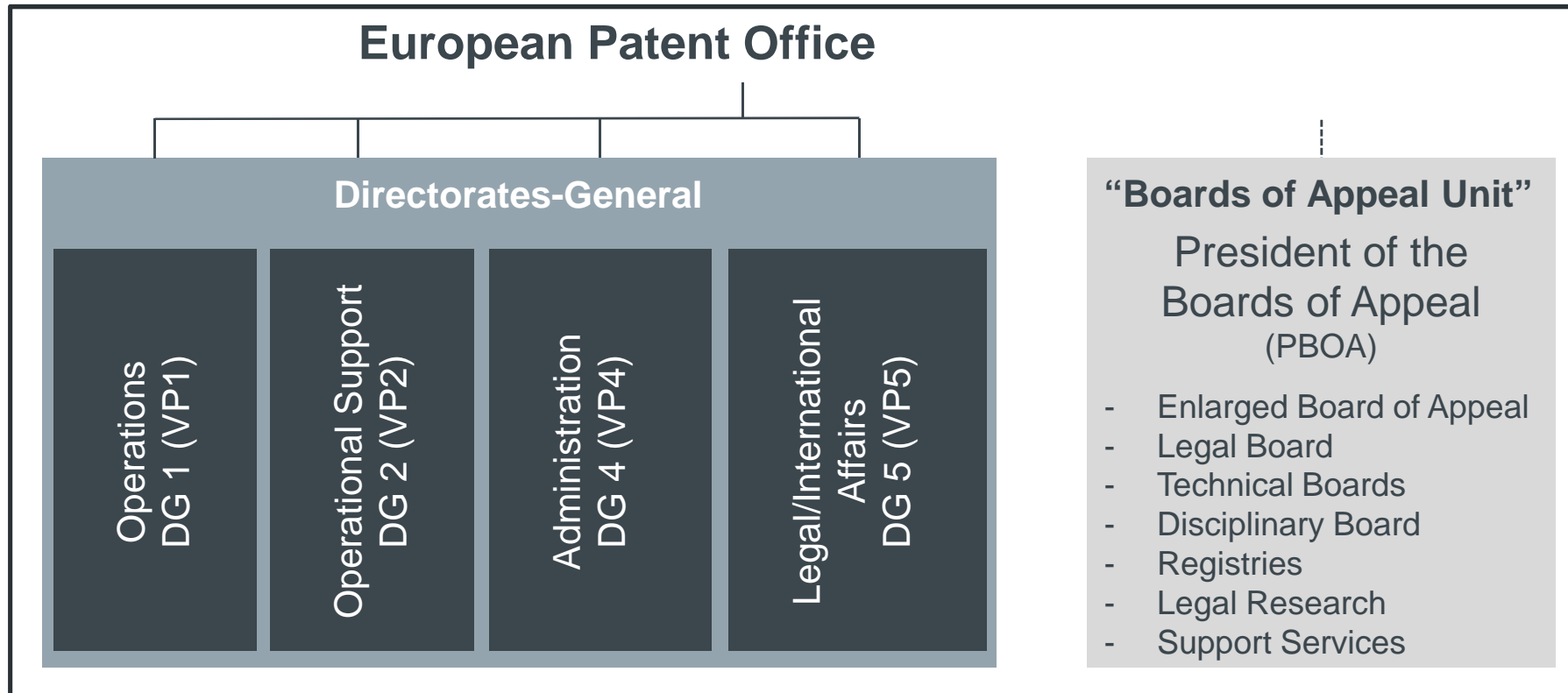
Preparatory work for the reform



Approval of the structural reform of the Boards of Appeal in June 2016.

The reform will become **operational on the 1 January 2017**.

Organisation of the BOA as separate unit



- § The Boards of Appeal are reorganised as **separate unit within the EPO**, directed by a PBOA.
- § The **PBOA who will also be Chairman of the EBOA** is appointed by the AC on a **joint proposal from the President of the Office and the BOAC**.
- § The President of the Office delegates powers to the PBOA.

Structure

§ **Managerial powers** in relation to the BOA Unit **delegated** by the President of the Office to President of the Boards of Appeal.

§ Creation of a **Boards of Appeal Committee** as subsidiary body of the AC:

- **Composition:**

- 3 members of AC;
- 3 judges of international, European or national courts

- **Functions:**

- guiding and supervisory functions;
- adoption of the Rules of Procedure of the BOA proposed by the President of the BOA for approval by the AC;
- monitoring of independence and efficiency of the BOA

Other reform aspects

§ Focus on efficiency and independence:

- **Conflict of interest rules:**
 - Duty to inform about professional activities after end of service.
 - Possibility to prohibit the activity.
- **Relocation:**
 - The AC agreed to a **relocation into a separate building in Munich**
- **Procedure for amendment of the Rules of Procedure**
 - Draft from the PBOA, **adoption by the BOAC** and approval by the AC
- **Career:**
 - New structure to take into account **performance**
- **New fee policy:**
 - Intention to **increase the cost coverage** of the BOA primarily by increasing the efficiency and later additionally by fee increases.

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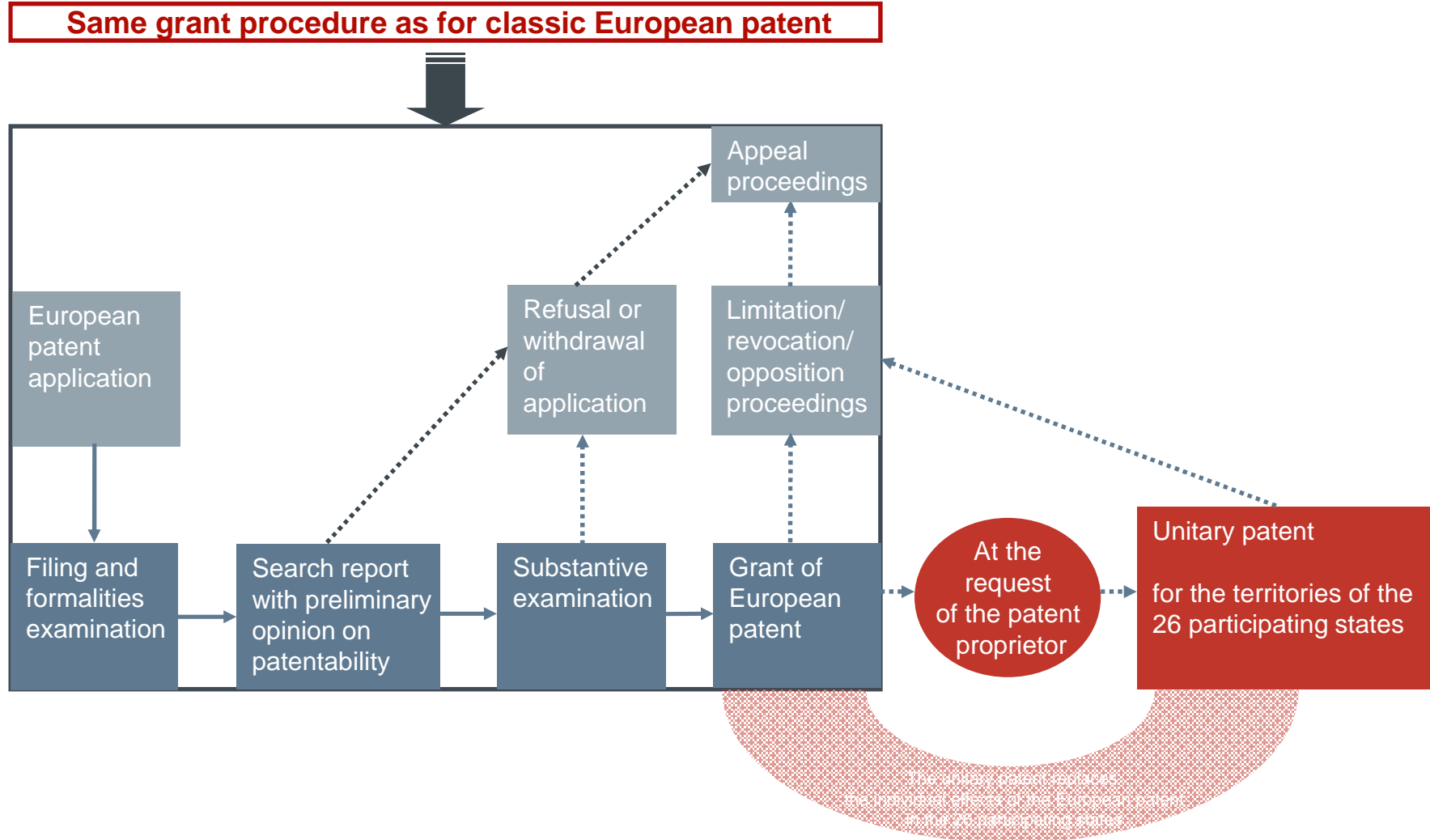
§ Unitary Patent in Europe

Objectives of the unitary patent

**A less expensive
and less cumbersome
patent system for Europe**

- Æ Facilitates access to patent protection for **SMEs** and **research centres**
- Æ **Makes Europe more attractive** for innovation and investors
- Æ Boosts Europe's **competitiveness**

The European patent with unitary effect



Main features of the Unitary Patent

- § **Quality:** A **European patent**, granted by the EPO under the EPC
- § **Cost-effective:** **Attractive and business-friendly renewal fee pattern** ensuring that the Unitary Patent provides good value for money
- § **Broad territorial protection:** **Uniform protection in up to 26 EU Member States** instead of protection in a few Member States only
- § **Reduction of red tape:** **One-stop shop at the EPO** instead of national validation and translation requirements and fee payments with several national patent offices. Reduction of complexity and associated costs.
- § **Flexibility:** An **additional option for patent owners**, alongside the existing European and national patent systems
- § **Legal certainty:** **Uniform litigation system through the Unified Patent Court**

* in comparison with a corresponding European patent validated in the same member states

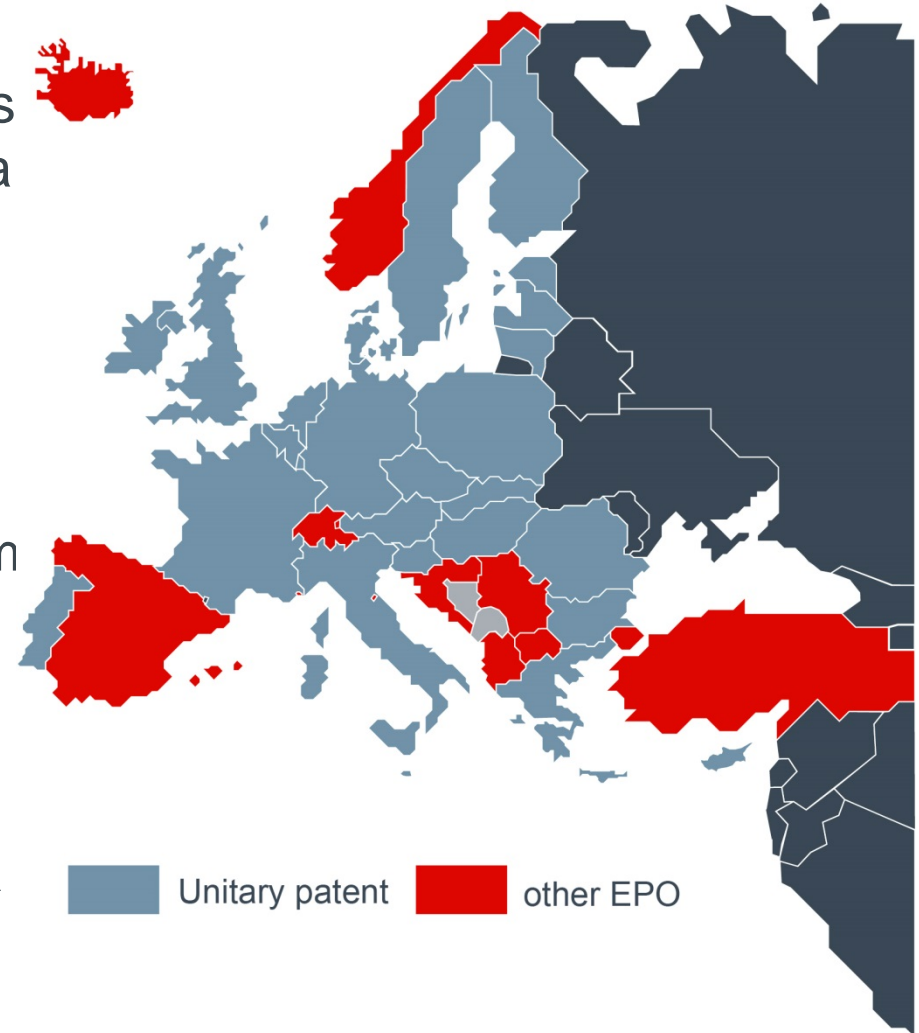
The unitary patent and the EPO member states

Unitary patent states

Austria • Belgium • Bulgaria • Cyprus
Czech Republic • Denmark • Estonia
Finland • France • Germany
Greece • Hungary • Ireland • Italy
Latvia • Lithuania • Luxembourg
Malta • Netherlands • Poland
Portugal • Romania • Slovakia
Slovenia • Sweden • United Kingdom

Other EPO member states

Spain • Iceland • Switzerland
Norway • Turkey • Monaco
San Marino • Liechtenstein • Croatia
Serbia • Albania • Former Yugoslav
Republic of Macedonia



Unitary Patent – Final preparations

EPO preparations

- **Completed**

§ Breakthrough on the legal implementation in December 2015 – adoption of complete secondary legal framework, including: **implementing rules, budgetary and financial rules, the level and distribution of the renewal fees.**

§ Finalisation of the technical implementation about to be concluded.

Member States preparations

- **Ongoing**

§ Ongoing ratifications of the UPC Agreement by participating Member States. **10 out of the 13 necessary states have ratified so far** and a number of others have planned to ratify in 2016.

§ **Brexit:** Ways will be sought for the Unitary Patent package to go ahead and to enter into operation as soon as possible.

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Thank you for your attention!