

The Unitary Patent System is coming!

Unitary Patent and Unified Patent Court



CLIENT INFORMATION 1/2022 AND BRIEF OVERVIEW*

Main Advantages

- The Unitary Patent is a patent that confers uniform protection in the participating member states of the European Union.
- There is only one validation step for the Unitary Patent for all participating states.
- Only one annual fee will be due for the Unitary Patent.
- A centralized procedure for infringement or nullity proceedings will be available at the Unitary Patent Court. Its decisions will have effect within all participating member states of the European Union.
- In many cases effort and cost reduction will be achieved due to the unitary effect of the Unitary Patent and the centralized proceedings before the Unified Patent Court.
- Within a transitional phase infringement or nullity claimants can choose whether to pursue their case before a competent national court of an EU member state or before the Unified Patent Court.

Introduction

The Unitary Patent System is expected to come into force in **mid to late 2022**, offering patent applicants a further opportunity to obtain and enforce patent protection.

Until now, protection of a European patent has separately covered each individual country in which it was validated after grant. Also infringement and nullity proceedings require national processes in the individual states.

After entry into force of the new Unitary Patent System, applicants can additionally obtain a **Unitary Patent** (European Patent with Unitary Effect, EU patent), which is expected to be valid in 17 participating member states of the European Union.

Another component of the Unitary Patent System is the **Unified Patent Court** (EU Patent Court, UPC), which is a specialized international patent court where in the future infringement and nullity proceedings will be conducted in relation to Unitary Patents but also for European patents that have been nationally validated in individual states of the EU.

* This summary is for information purposes only and cannot be used as a substitute for legal advice on specific issues or questions. We would be happy to answer any specific questions you have.

Further Information

1. Participating EU member states

The following countries are expected to participate in the Unitary Patent System from the beginning: **Austria, Belgium, Bulgaria, Denmark, Estonia, Finland, France, Germany, Italy, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Portugal, Slovenia, Sweden**. Other EU member states may join over time if they ratify the relevant treaties.

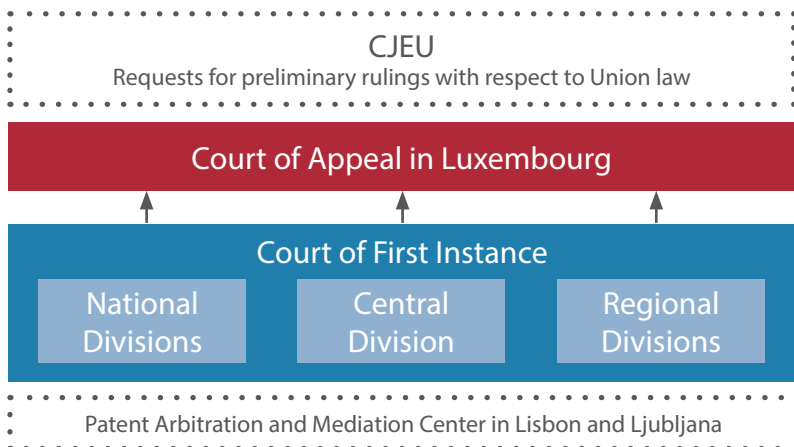
2. How to obtain a Unitary Patent

First, the application and examination procedure of a European patent will be carried out by the European Patent Office in its present form. After grant of the European patent, applicants can decide whether they want to obtain a Unitary Patent or, as before, nationally validate the European patent in individual states of the European Patent Convention. A mixed validation of the European patent as Unitary Patent and nationally in further states is also possible.

3. Unified Patent Court

The Unified Patent Court will hear infringement and/or nullity cases in relation to Unitary Patents but also in relation to (present and future) European patents that have been nationally validated in individual states of the EU.

Infringement and nullity proceedings relating to a **Unitary Patent** must necessarily be heard by the Unified Patent Court. In contrast, relating to **national parts of a European patent** in EU member states, infringement or nullity claimants can choose within a transitional phase whether to pursue their case before a competent national court or before the Unified Patent Court. The structure of the Unified Patent Court is shown in the figure below.



4. Transitional phase

Within a transitional phase of at least 7 years and during a phase of several months preceding the entry into force of the Unitary Patent System (the so-called „Sunrise Period“) applicants and proprietors of parts of European patents that are not a Unitary Patent may permanently opt out from the jurisdiction of the Unified Patent Court for infringement or nullity proceedings. To do so, a notice of opt-out must be filed for the European patent or European patent application. Infringement and nullity proceedings will then be conducted before the respective competent national courts as before. The patent proprietor can **opt-out** to prevent a nullity plaintiff from challenging the patent using centralized proceedings before the Unified Patent Court. The opt-out may be withdrawn provided that no action has yet been brought against the respective European patent before a national court.

Our Advice:

It is expected that the „Sunrise Period“, during which an opt-out can be requested before the Unitary Patent System enters into force, is to start in the second quarter of 2022. We therefore recommend that you already now review patent portfolios to determine whether it makes sense to make use of the opt-out option for some or all patents or patent applications. We will gladly support you with this review.

We will inform you as soon as we have further information about the entry into force of the Unitary Patent System and the possibilities to obtain a Unitary Patent or to opt-out from the jurisdiction of the Unified Patent Court. The agreement on which the Unitary Patent System is based contains further provisions the explanation of which would go beyond the scope of this brief information. Please do not hesitate to contact us for further information.