

New European Unitary Patent and Court

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What Is a Unitary Patent?

Deemed “a better patent system for Europe,” the Unitary Patent System will make it possible to obtain a single patent right that covers up to 25 (currently 17) EU Member States through the European Patent Office, centralizing the conventional EP Patent validation and enforcement procedures to make them simpler and potentially more cost-effective for applicants.

Participating EU Member States currently include Austria, Belgium, Bulgaria, Denmark, Estonia, Finland, France, Germany, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Slovenia, and Sweden. Other countries, likely including Ireland, Romania, Cyprus, and Greece, will join later, and Spain and Poland have yet to sign up. Please see the [Official UPC Listing](#) for the most up-to-date list of participating EU Member States.

Owners of a Unitary Patent can license rights on a country-by-country basis but must assign rights of the Unitary Patent as a whole.

There will be no change in the pre-grant phase of prosecuting an EP Patent application. Within one month of the publication of the notice of grant, applicants will have the option to file a request for unitary effect with any necessary translations of the application to obtain a Unitary Patent.

A Unitary Patent can be obtained alongside national validations outside of the participating EU Member States (e.g., you could obtain a Unitary Patent and U.K. and Spanish validations of an EP Patent from the same EP application). There are no changes to the validation steps of a conventional EP Patent, including for countries not participating in the Unitary Patent System.

When Is It Happening?

The option to obtain Unitary Patents goes into effect on **June 1, 2023**.

What Is the Unitary Patent Court?

The Unified Patent Court (UPC) is a new, untested international court set up by the participating EU Member States to make determinations regarding infringement and validity of both Unitary Patents and conventional EP Patents. For other matters, such as determining questions of entitlement to a patent, the relevant national courts retain jurisdiction.

Eventually, the UPC will have sole jurisdiction over all Unitary Patents and conventional EP Patents, except those that opted out of the Unitary Patent System before being challenged in the UPC in the participating EU Member States. Opting out results in complete exclusion from UPC jurisdiction for that conventional EP Patent and lasts for the life of the patent. If the opt-out is withdrawn, it may not be reinstated. The main benefit of opting out is to prevent third parties from using the UPC to attack a patent centrally and potentially achieve revocation for all participating EU Member States.

While the UPC will always have exclusive jurisdiction for Unitary Patents, EP validations can be litigated before the UPC or national courts during a seven-year transitional period, which may be extended up to 14 years.

When Can You Opt-Out?

The option to file an opt-out is now available during the so-called “sunrise period” before the UPC starts practice on June 1.

Patent owners may file an opt-out any time during the seven-year to 14-year transitional period, so long as it is before a conventional EP Patent is challenged in the UPC.

Opt-Out Considerations

For new and pending EP Patent applications, patent owners must decide whether to proceed as a Unitary Patent or with conventional EP validations in participating EU Member States, potentially in combination with validations in nonparticipating countries. Two considerations are the sole jurisdiction of the UPC and the relative cost to obtain a Unitary Patent versus traditional EP validations (with Unitary Patent expenses typically costing less over time than EP validations in more than four participating EU Member States). One possible strategy for particularly important patents may be tactical divisional applications to allow one patent to be opted out and another to be a Unitary Patent.

For existing granted EP Patents, patent owners must decide whether to opt out and when to file an opt-out decision. Considerations include the value and strength of the patent, the importance of contributory infringement, likelihood and timing of the EP Patent being challenged in litigation, and related costs for opting out.

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