

The Unified Patent Court: A New Forum for European Patent Strategy

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KEY POINTS

- The Unified Patent Court, which opened June 1, 2023, provides a single forum to enforce and challenge patents across 18 EU member states, with matters designed to resolve in approximately 13 months.
- Under Article 83(3) of the UPCA, holders of European patents granted before June 1, 2023, may opt out of UPC jurisdiction during the transitional period, which runs through at least May 2030.
- An accused infringer may pair an infringement defense with a counterclaim for central revocation, creating a single proceeding capable of invalidating a patent across all participating member states simultaneously.
- The UPC's default expectation of permanent injunctive relief upon a finding of infringement contrasts with the discretionary four-factor standard under U.S. law established in *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388 (2006).
- The Patent Mediation and Arbitration Centre, launched June 2, 2026, offers an alternative dispute resolution pathway for patent disputes within the UPC framework.

SECTION I: INTRODUCTION: WHAT IS THE UNIFIED PATENT COURT?

The European Unitary Patent (UP) system and the Unified Patent Court (UPC) provide a single legal framework to protect and enforce inventions across 18 participating EU member states in one centralized process. The UP system provides patentees with the opportunity to file for and receive a Unitary Patent — a single patent right with uniform effect in participating EU member states. Meanwhile, the UPC provides a unified court system that can enforce Unitary Patent rights, and in many cases adjudicate infringement and validity of traditional European patents. These centralized forums offer a cost-effective option for patent prosecution, protection, and dispute resolution across Europe.

As of July 1, 2026, 18 EU member states have formally ratified the Unified Patent Court Agreement (UPCA) and participate in the court: Austria, Belgium, Bulgaria, Denmark, Estonia, Finland, France, Germany, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovenia, and Sweden.[1] However, a recent Court of Justice of the European Union (CJEU) decision in *BSH v. Electrolux (C-339/22)* may also signal an expanded practical reach of European patent infringement litigation, allowing certain courts to address infringement questions involving nonparticipating states.

As its name suggests, the [UPC](#) has helped unify the many different independent national patent systems across Europe into one central European system. This new centralized forum for European patent disputes gives patent owners and accused infringers a single court system for enforcement and validity challenges across participating

EU member states. Having opened on June 1, 2023, through the EU regulations ([No 1257/2012](#); [No 1260/2012](#)) and the [Agreement on a Unified Patent Court \(UPCA\)](#), the UPC now operates alongside national courts for certain European patents while serving as the mandatory forum for Unitary Patents.

The [UPC caseload](#) has grown steadily [from 274 cases by February 2024](#), to [633 by December 2024](#), and to [946 by June 2025](#), underscoring that the forum is no longer theoretical. Specifically, as of June 2025, 351 infringement actions have been filed with 188 of them involving counterclaims for revocation.[2] More recent data shows that 691 infringement actions and 356 counterclaims for revocation have been filed in the court of first appearance. This does not account for the 108 standalone revocation actions that have been filed.[3]

SECTION II: STRUCTURE AND ORGANIZATION OF THE COURT

The UPC is composed of three branches: the UPC Registry, the Court of First Instance, and the Court of Appeal.[4]

The UPC Registry, in Luxembourg, is the administrative core of the UPC that manages case filings, maintains the public register of proceedings, and oversees the court's daily operations. The UPC Registry is led by the Registrar and Deputy-Registrar. Both the Registrar and Deputy-Registrar are appointed for a renewable term of six years.[5]

The Court of First Instance is organized into Local Divisions, Regional Divisions, and Central Divisions, each serving different procedural functions. Local and Regional Divisions are [located in participating member states](#) and generally handle infringement actions, provisional measures, and counterclaims for revocation. The Central Division has seats in Paris, Munich, and Milan. It primarily hears standalone revocation actions, declarations of noninfringement, and cases in which no Local or Regional Division has jurisdiction. For petitioners, division selection can affect language, speed, judicial panel composition, and procedural expectations.[6]

The Court of Appeal, headquartered in Luxembourg, alongside the UPC registry, serves as the single appellate body for first-instance UPC decisions. It has already issued consequential rulings on matters ranging from the standard preliminary injunctions to managing director liability for patent infringement, establishing a growing body of precedent that will shape litigation strategy.

PRACTICING BEFORE THE UNIFIED PATENT COURT

Representation

A party may only be represented by attorneys authorized to practice before a court of a European member state or European patent attorneys entitled to act as professional representatives before the European Patent Office and who have appropriate qualifications such as a European Patent Litigation Certificate (EPLC).[7]

A UPC litigation team commonly includes:

- Attorneys authorized to appear before a court of a contracting member state;
- European patent attorneys holding the required Certificate of Representation; and
- U.S. counsel supporting global litigation strategy, technical record development, and coordination with parallel U.S. proceedings, including certain confidential UPC proceedings where permitted.[8]

The UPC has also clarified that corporate representatives with extensive administrative and financial powers within a party may not serve as that party's representative. Clients should identify independent UPC counsel early, particularly where in-house personnel are closely involved in commercial decision-making.[9]

Opt-Out Mechanism

Owners of traditional European patents may face parallel jurisdiction in the UPC and national courts. Under Article 83(3) of the UPCA, holders of European patents granted before June 1, 2023, may opt out of UPC jurisdiction during the [transitional period](#). The transitional period began in June 2023 and is scheduled to end in May 2030, with a possible extension to May 2037. An opted-out patent remains exclusively subject to national courts unless the opt-out is withdrawn, making opt-out strategy a portfolio-level decision rather than an administrative formality.

Condensed Timelines and Procedures

The UPC's procedural rules impose strict, court-managed deadlines at every stage of a dispute, from the initial pleadings through the oral hearing. UPC procedures are highly front-loaded and designed to move quickly with matters expected to reach resolution in [approximately 13 months](#). This compressed framework serves the interests of patentees seeking rapid enforcement as well as defendants who benefit from swift resolution of uncertainty over their freedom to operate. The result is a forum that demands rigorous advance preparation but rewards it with a level of procedural predictability and efficiency rarely seen in cross-border patent disputes.

The procedural sequence begins with a detailed statement of claim, followed by the defendant's three-month deadline to file a defense and any counterclaim for revocation. Subsequent written pleadings form the written procedure phase, followed by an interim conference and an oral hearing. Because the pleadings must develop infringement, validity, technical, and damages issues early, companies should prepare claim charts, prior art analyses, technical witness materials, and commercial evidence before initiating or defending a UPC action.

Injunctions and Remedies

Beyond its procedural efficiency, the UPC offers a remedial framework that makes it a particularly powerful forum for patent enforcement — and one that U.S. practitioners should understand carefully before advising clients on litigation strategy. The court's injunctive relief and cost-shifting model can significantly alter the risk-benefit calculus for both patentees and accused infringers.

Injunctive relief is a central remedy at the UPC. Litigants from the U.S. should be aware that injunctive relief may be more readily available at the UPC than in U.S. federal courts, under the discretionary U.S. standard articulated in [eBay Inc. v. MercExchange, L.L.C.](#), 547 U.S. 388 (2006). Additional remedies include damages, account of profits, destruction or recall of infringing products, and publication of the judgment.

The UPC also [adopted a cost-shifting model](#) under which a successful party may recover eligible litigation costs within prescribed ceilings. For U.S. companies accustomed to the American rule, that feature increases the financial stakes on both sides and places a premium on early assessment of the merits of infringement, validity, and potential damages.

KEY STRATEGIC AND PRACTICAL CONSIDERATIONS

The court's architecture creates risks and opportunities that have no direct analogue in U.S. practice. Understanding them is essential for any company that develops, licenses, manufactures, or sells patented technology in Europe. A single UPC action can simultaneously threaten patent validity across an entire continent, generate injunction exposure in multiple markets, and resolve in a fraction of the time required for U.S. litigation. These features have drawn particular attention in the pharmaceutical and technology sectors, where the stakes of patent enforcement are highest, and where UPC dockets are already taking shape.

The Dual-Track Threat: Infringement and Central Revocation

One of the UPC's most significant features is the ability of an accused infringer to pair an infringement defense with a counterclaim for revocation, creating a single proceeding in which infringement and patent validity may both be at issue.

A successful revocation can invalidate a patent across all participating member states in a single stroke. As reported in IAM's [2027 Patent Prosecution Review](#), revocation actions and counterclaims now comprise over 40% of all UPC cases filed. This central revocation risk raises the stakes for patentees and makes pre-suit validity analysis, claim construction, and prior art review essential before enforcement.

Considerations for US Companies

[U.S. companies with European patent portfolios](#) should consider several practical implications:

- Compressed schedules require early development of technical, invalidity, noninfringement, and damages positions;
- Injunction exposure can create substantial settlement leverage and business interruption risk; and
- A single action can affect multiple European markets, making portfolio triage and product launch planning especially important.

Pre-emptive steps are now essential for companies with European market exposure, including portfolio audits, opt-out decisions, forum strategy, evidence preservation, coordinated U.S./European litigation planning, and early assessment of settlement objectives.

Pharmaceuticals and Technology Sectors Dominate

The most active sectors at the UPC thus far have included pharmaceuticals and biotechnology, with disputes involving biosimilars, COVID-19 vaccines,[10] and supplementary protection certificates. Technology companies are also increasing UPC activity in standard-essential patent (SEP) and FRAND disputes, signaling that the court will be important for both life sciences and high-tech patent strategies.[11]

RECENT DEVELOPMENTS AND NEWS

PMAC Launched

The [Patent Mediation and Arbitration Centre \(PMAC\)](#) launched [on June 2, 2026](#), in Ljubljana, Slovenia, with a second seat in Lisbon, Portugal. The [PMAC's procedural rules](#) were formally adopted by the UPC Administrative

Committee, creating an alternative dispute resolution pathway for patent disputes connected to the UPC system. Per the European Patent Office ([EPO](#)), the PMAC is intended to make Europe's patent system more affordable and accessible, particularly for smaller businesses and licensees. For clients, the PMAC may offer a more flexible route to resolve licensing, settlement, or portfolio disputes without fully litigating through a UPC merits action.

Selected Recent Cases and Strategic Themes

- **Managing Director Liability** (*Philips v. Belkin*, UPC_CoA_534/2024, October 3, 2025): The Court of Appeal held that a managing director's position alone does not make the individual an infringer or accomplice to the company's patent infringement. Personal liability requires conduct showing deliberate use of the company to commit infringement, a holding that is important for governance, settlement authority, and individual-exposure analysis.
- **Inventive Step and Permanent Injunctions** (*Amgen v. Sanofi*, UPC_CoA_528/2024, and *Meril v. Edwards*, UPC_CoA_464/2024, November 25, 2025): The Court of Appeal issued two coordinated decisions on the same day, addressing both substantive patentability and remedial consequences:
 - An inventive step framework intended to apply across technology sectors; and
 - A default expectation that permanent injunctions follow a finding of infringement, subject to limited exceptions such as public health considerations.
- **Cross-Border Jurisdiction** (*BSH v. Electrolux*, C?339/22 CJEU, February 25, 2025): The [CJEU confirmed](#) that courts in countries where a defendant is domiciled may exercise infringement jurisdiction with potential effect beyond UPC participating states. The ruling marked a departure from the CJEU's prior precedent and has since been cited in efforts to assert jurisdiction over UK, Spanish, Irish, Norwegian, and Swiss patent designations.

CONCLUSION

The UPC is reshaping European patent litigation in real time, with developing law on personal liability, inventive step, injunctions, revocation, and cross-border jurisdiction. For companies that own, license, or compete against European patent portfolios, the forum creates both opportunity and risk: faster enforcement, broader remedies, centralized validity challenges, and higher pressure to prepare early. Troutman Pepper Locke's cross-border IP team helps clients evaluate opt-out strategy, enforcement options, defense planning, and coordinated U.S./European patent disputes. For more information, please contact [Griffin Mesmer](#) or [Pantelis Takos](#), or visit our [Intellectual Property Practice Group](#) page.

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[1] Notably, the United Kingdom withdrew from the UPCA process following Brexit.

[2] Case load of the Court since start of operation in June 2023 (update 30 June 2025).

[3] <https://portal.unifiedpatents.com/upc/analytics>.

[4] The UPC also includes a Registry that manages administrative and procedural functions.

[5] <https://www.unifiedpatentcourt.org/en/registry/presentation>.

[6] Active local divisions include those in Paris, Munich, Mannheim, Hamburg, Düsseldorf, Milan, The Hague, Lisbon, Ljubljana, Brussels, Helsinki, and Stockholm as part of the Nordic-Baltic Regional Division.

[7] <https://www.unifiedpatentcourt.org/en/registry/representation> (citing Article 48(1) and 48(2) of the UPCA).

[8] See, e.g., *Daedalus v. Xiaomi*, Court of Appeal.

[9] The Court of Appeal clarified this issue in *Suinno Mobile & AI Technologies Licensing Oy v. Microsoft Corporation* (UPC_CoA_563/2024).

[10] Key cases include *Novartis v. Celltrion* (biosimilar launch timing), *Genevant & Arbutus v. Moderna*, and *GSK v. Pfizer & BioNTech*.

[11] The UPC issued its first FRAND decision in December 2024.

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