

Update on the Unitary Patent



Table of content

- What is the Unitary Patent?
- How to obtain it?
- What will it cost?
- When will it be it available and what is the impact of the Brexit-vote?
- Conclusion

What is the Unitary Patent?

- The Unitary Patent is based on a European patent granted by the EPO under the EPC's rules and procedures,
- to which, upon request of the patentee, unitary effect is given for the territory of 26 Member States participating in the Unitary Patent scheme,
- i.e. no need for national validations.

What is the Unitary Patent? (cont'd)

- The Unitary Patent will co-exist with national patents and with classical European patents.
- Patent owners will be able to choose between various combinations of a Unitary Patent, classical European patents, and national patents.
- But: No double protection by a Unitary Patent and a classical European patent on the territory of the 26 participating states. But double protection by UP and national patent is possible in some countries.

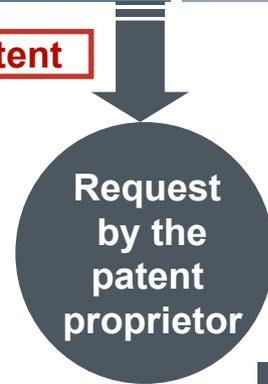
What is the Unitary Patent? (cont'd)

- Legal basis:
 - Unitary Patent Regulations:
 - EU Regulation No. 1257/2012 of 17 Dec 2012 introducing the European Patent with unitary effect
 - EU Regulation No. 1260/2012 of 17 Dec 2012 relating to the translation arrangements for European Patents with unitary effect
 - Secondary legal framework (completed by the EPO's Administrative Council's Select Committee on 15 Dec 2015):
 - Rules relating to Fees
 - Budgetary and Financial Rules
 - Rules relating to Unitary Patent Protection
 - Rules relating to the Distribution of Fees among the participating Member States
 - Agreement on the Unified Patent Court (OJ EPO 5/2013)
 - Single court system with jurisdiction for classical European patents and Unitary Patents.

How to obtain it?



Same grant procedure as for a classical European Patent



**European Patent with
Unitary Effect
in the territories of
26 Member States**

**The European Patent is deemed not
to have taken effect as a national
patent in the 26 Member States**

How to obtain it?

- Requirements for the registration are rather simple and straightforward:
 - Substantive requirements:
 - Unitary effect can only be requested for European patents that were granted
 - in respect of all 26 participating states
 - with the same set of claims for all of them.
 - Procedural requirements:
 - Filing of the request: in writing, in the language of the proceedings, within 1 month following the publication of the mentioning of the grant.
 - Request must contain: the number of the European patent concerned, the particulars of the proprietor(s), and if a representative has been appointed also the particulars of the latter.
 - In case of multiple proprietors request must be filed by common representative.
 - During a transitional period, a translation of the European Patent has to be submitted with the request (full EN translation if the patent is granted in FR or DE. Or full translation into any language of the EU if the patent is granted in EN).

What will it cost?

- The registration of the unitary effect will be free of charge before the EPO, i.e. no fee for the filing of the request, its examination and for the registration of the unitary effect.
- Possible compensation of a lump sum of € 500,- for translation costs for certain entities, such as SMEs, non-profit org., universities, etc..
 - The lump sum complements the existing reduction of the application and examination fee before the EPO if a patent application or an examination request is filed in a language other than English, French or German.
- Level of renewal fees based on so-called “True TOP 4”:
 - The level of renewal fees has been fixed to the equivalent of the combined renewal fees of the top 4 countries where a traditional European patent was most frequently validated at the time the “True Top 4” approach was adopted (DE, FR, UK and NL).
 - Fees will be less than € 5.000 in the first 10 years.

When will it be available?

- The Unitary Patent Regulations are now in force for 26 EU Member States.
 - Italy joined the enhanced cooperation in Sept 2015.
 - Not participating: Spain and Croatia.
- The Unitary Patent Regulations apply from the date of the entry into force of the Agreement on a Unified Patent Court (UPCA):
 - UPCA enters into force 4 months after the deposit of the 13th instrument of ratification, incl the 3 most patent intensive Member States (FR, DE, UK).
 - So far, 11 Member States have deposited their instruments of ratification incl. FR, with several others having indicated their intention to ratify by the end of the year.

Impact of the Brexit-vote?

- Impact of “Brexit”-vote on the Unitary Patent Package:
 - As long as the UK is a EU Member State, the UK’s ratification of the UPCA is required for the system to start.
 - Still too early to determine the exact ramifications. But whatever the impact may be, adequate answers will be developed.
 - *President of the EPO: “there are a variety of good reasons for the UK to ratify the UPCA, which is an international agreement. I am convinced that with the support of the user community the right solutions can and will be found.”*
 - The work dedicated to the technical implementation continues to progress as envisaged and will be finalized within the initial timeframe. The work of both the Select Committee of the Administrative Council of the EPO and the UPC Preparatory Committee is far advanced and expected to be completed in the fall.
 - *Joint statement by the Chairmen of the Select Committee and the UPC Preparatory Committee: “[...] the work dedicated to the technical implementation should continue to progress as envisaged, in accordance with the mandate of both Committees and in line with the clear wish of the user community to bring the Unified Patent Court and the Unitary Patent into operation as soon as possible.”*

Conclusion

- The Unitary Patent offers an attractive additional option for patent protection in Europe
 - Uniform protection for up to 26 participating Member States
 - Centralised process for filing, examining and granting patents in exactly the same way as for classical European patents. One-stop-shop at the EPO with a great reduction of complexity and associated costs:
 - No change of the application and examination procedure for the European patent to which unitary effect is provided
 - Simple and straight forward procedure instead of complex national validations
 - Simplified and cost-effective renewal fee payment
 - Centralised post-grant administration by EPO
 - Centralised register maintained by the EPO
 - Attractive and business-friendly renewal fee pattern ensuring that the Unitary Patent provides good value for money
 - No post-grant translations required (after initial transition period)
 - Centralised enforcement through new Unified Patent Court (UPC) in the states where the UPC Agreement entered into force

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>

Email: International_Legal_Affairs@epo.org

