

The Unitary Patent

The German government has now ratified the Agreement on a Unified Patent Court (UPC), meaning that the UPC will become operational on 1 June 2023.

The UPC will fundamentally change the patent landscape in Europe by offering users of the European patent system a new option for patent protection (the Unitary Patent).

What is a Unitary Patent?

The Unitary Patent aims to allow patent proprietors to obtain uniform territorial protection across all participating EU member states, by filing a single request with the European Patent Office (EPO). The procedure is designed to be very simple and straightforward to use, and as a consequence the cost of obtaining patent protection throughout the participating states will be lowered. In particular, different “validation” requirements in different states are dispensed with, and a single annual renewal fee will be payable to the EPO.

How do I get a Unitary Patent?

Unitary Patents will be obtained via the existing European patent system, run by the EPO.

Thus, as with the current system, a single patent application is filed with the EPO (in either English, French or German) which is examined and, if found to meet the necessary criteria, granted as a European patent.

The patentee must then decide in [which of the 38 contracting states](#) they wish the patent to be effective. Under the current system, a validated European patent is treated as a separate national patent in each of the validated states, is subject to the jurisdiction of the local courts, and to the payment of annual renewal fees to each of the local authorities. Thus, a granted European patent is effectively a bundle of separate national patents.

Under the new system, the Unitary Patent will give patentees an additional option, by allowing validation of European patents to cover **all the EU member states** which have signed the UPC Agreement as a **single patent**. Thus, when the European patent is granted, to obtain a Unitary Patent the patentee files a “request for unitary effect” with the EPO. If the European patent is in English, then a translation of the patent

specification into any other official EU language must be filed (if in French or German, then a translation into English must be filed).

Which EU states are covered by the Unitary Patent system?

The Unitary Patent is an EU property right, and thus only those EPO contracting states which are members of the EU will be covered.

Out of the 27 current EU countries, 24 have agreed to participate in the Unitary Patent and Unified Patent Court. Of these countries, to date 17 have ratified the necessary legislation: *Austria, Belgium, Bulgaria, Denmark, Estonia, Finland, France, Germany, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Slovenia and Sweden*.

These are thus the countries which will initially be covered by a Unitary Patent when it becomes operational.

The remaining countries (which have agreed to participate but have not yet ratified) are: *Cyprus, Czech Republic/Czechia, Greece, Hungary, Ireland, Romania and Slovakia*.

Spain and Poland have **not signed up**. *Croatia* joined the EU on 1 July 2013 (after the UPC agreement was signed) and is expected to join the system in the future.

(The *United Kingdom* originally signed the UPC agreement, but following Brexit is no longer covered by the Unitary Patent).

Patent protection in those countries which are outside of the Unitary Patent system (i.e., because they are not EU member states or have not signed the UPC agreement) will continue to be obtained via the current EPO national validation route (or of course via a separate, non-EP national patent).

What is the cost?

Unitary Patents are obtained via validation of European patents granted by the EPO. Thus, filing and prosecution costs will be the same as for current European patents. Validation costs for Unitary Patents should be similar to costs in those countries which require translations of the specification (e.g., Italy, Spain).

Renewal fees

Currently, separate renewal fees are payable annually in each state in which a European patent is validated if the patent is to remain in force. For the Unitary Patent, a single annual renewal fee will be payable to the EPO. The cost of this renewal fee is aimed to be attractive and business friendly, set at a level equivalent to the combined renewal fees of the top four countries where European patents were most commonly validated at the time the fee level was adopted.

Transitional measures for existing European patent applications

Unitary Patents are only available for **European patents granted on or after 1 June 2023**. With this in mind, two transitional measures are in place for existing European patent applications which have already successfully passed through examination by the EPO but have not yet been granted:

1. Early request for unitary effect – an applicant can file an early request for unitary effect, following which the EPO will register unitary effect immediately at the start of the system (provided the formal requirements are met).
2. Delay in issuing grant decision – an applicant can request that the EPO delays issuing a decision to grant a European patent so that grant occurs after the start of the Unitary Patent system and the patent is thus eligible for Unitary Patent protection.

Why Lewis Silkin is uniquely positioned to help

At Lewis Silkin we have created “IP360”, developed from working with household name brands, in which we have brought together our highly regarded full-service IP expertise, including our own in-house European Patent Attorneys working alongside our specialist contentious and commercial IP lawyers, which we believe is without parallel in the market.

Our team of European Patent Attorneys has decades of experience in representing clients before the European Patent Office, drafting, filing and prosecuting patent applications, managing European patent validations and renewals with our bespoke in-house systems, and representing patentees and opponents in opposition and appeal proceedings. As scientists with various academic specialities, our team has a thorough experience of a wide range of technologies, from computer-related inventions through to biotechnology, via mechanical engineering, chemistry and life sciences. We not only apply our technical skills to obtain patents for our clients, but advise on portfolio management and wider business strategies, including invention capture and IP leverage.

Our Disputes team is a highly respected provider of Intellectual Property Dispute Resolution services, acting for some of the largest companies in the world as well as for

small and medium businesses. Many of our lawyers are ranked as leaders in the field and have experience of all relevant tribunals from the Intellectual Property Office through to the European Court of Justice.

Whilst our objective is often to resolve disputes with the minimum of fuss and costs, we also have a track record of acting in and winning the most complex IP disputes and creating substantial value for our clients. Many of the disputes that we work on have multi-jurisdictional aspects to them, meaning we are perfectly positioned to advise on litigation strategies/forum shopping. We believe we are uniquely positioned to provide a seamless team of European Patent Attorneys and litigators under one roof.

For further information please contact a member of our team:



Tom Gaunt
Partner

+44 (0)20 7074 8250
tom.gaunt@lewissilkin.com



Paul Williams
Partner

+44 (0)20 7074 8055
paul.williams@lewissilkin.com

Find out more

 twitter.com/lewissilkin

 linkedin.com/company/lewis-silkin

lewissilkin.com