

HOW TO GET A UNITARY PATENT

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Legal Briefings

Enhanced cooperation under [Regulation 1257/2012 of 17 December 2012](#) implementing enhanced cooperation in the area of unitary patent protection was used to establish the unitary patent (UP). Also termed the European patent with unitary effect, the UP will be a single patent right covering all the states that take part in the enhanced procedure. It is expected that the UP will cover 24 of the 27 Member States. This means all Member States save Croatia and Spain who have not taken part in the enhanced cooperation procedure so far, and Poland which, although it participated in the enhanced cooperation, has since indicated that it will not sign the UPC Agreement establishing the Unified Patent Court (UPC), and thus UPs will not be enforceable there (only the UPC has jurisdiction over UPs).

At the time that the provisional application period commenced (19 January 2022) 16 of the other 24 EU Member States had fully ratified the UPC Agreement with Germany also guaranteed to join the system, so a UP granted on the first day the UPC is active would only apply to those 17 states if no others ratify in the interim. A UP will only ever have effect in the states that have both ratified the UPCA and taken part in the UP Regulation at the time that particular patent's unitary status is registered. For more on this see the section of this Hub, [Where will a UP have effect?](#).

The application process for UPs will be the same as that for a standard EP, ie centrally via the EPO. In fact the application process for both EPs and UPs will be the same. At grant the proprietor will have the option to select unitary protection rather than a bundle of national rights. Once the UPCA is in force any new EP application or EP application that is already in the EPO system can be converted into a UP within a month of grant (nb the EPO cannot start granting UPs until the UPC system is in place). The EPO has issued [guidance on transitional measures](#) it will introduce to enable patents coming to grant close to the start of the new system to achieve unitary protection (ie UP status) from “day 1”, including via a delayed grant mechanism. See [our IP blog post](#) here for the details.

Exclusive jurisdiction of the UPC: Both UPs and EPs will be litigated in the UPC, although there will be a transition period during which there will be dual jurisdiction between national courts and the UPC over EPs (7 years plus a possible further 7) but this will not affect UPs which will be under the exclusive jurisdiction of the UPC at all times. EPs can be opted out of the jurisdiction of the UPC (see [here](#)) but UPs cannot.

Patent coverage for Europe: Even if a UP is used, if full European coverage is required then separate EPs will need to be obtained for non-EU EPC states: the UK, Norway, Turkey and Switzerland and also for any EU Member States which have not taken part in the enhanced cooperation procedure (currently Spain and Croatia) or which have not signed up to the UPCA (currently Spain, Poland and Croatia) or have not fully ratified the UPC Agreement at the date that unitary status is granted (currently this encompasses Cyprus, Czech Republic, Greece, Hungary, Ireland, Romania, Slovakia). If the EPO application route is not to be used, then national patents will still be available from national patent offices and will be litigated in national courts.

Rules and guidance: A consolidated version of the draft Rules relating to the Unitary Patent Protection (dealing with the administration of the UP by the EPO) is available [here](#). The EPO issued guidance on the unitary patent [here](#) (dated August 2017 but published September 2017).

Costs: The EPO has adopted what it refers to as a [business friendly fee pattern](#) for the fees payable for unitary patents. The Select Committee of the Administrative Council of the EPO endorsed the "True Top 4 proposal" tabled by the European Patent Office on renewal fees applicable to the unitary patent. This proposal corresponds to the charges for renewal in the Top 4 most popular validation jurisdictions: Germany, France, Great Britain and the Netherlands (the alternative had been the "Top 5" approach which included Swedish designations). There is provision for a reconsideration of this Top 4 basis after 4 years.

For more comparative detail on fees see the "[Comparison of fees and external costs between a European Patent and a Unitary Patent](#)", submitted by the President of the EPO to the Select Committee to assist in their deliberations, which compares the costs of registering EPs in 1,2,3,4,5,6 or 7 designations and all 25 designations that would be covered by the UP under current participation rates with the cost of the revised proposal. The comparison assumes that grant is in year 4. The figures show cumulative savings on this basis for 4 or more designations over 20 years although all the assumptions should be reviewed. The EPO guidance gives details of the renewal fees to be paid and describes the renewal fee level as "very attractive and business friendly" (see pages 10-11).

See also on this hub: [Where will a UP have effect?](#)

For more on the UPC and unitary patent see our series of feature articles published in PLC Magazine's March and April editions 2022 and shared in pdf form on our IP blog [here](#).

[< SEE MORE ON OUR UPC AND UP HUB](#)

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If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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