



Europäisches  
Patentamt  
European  
Patent Office  
Office européen  
des brevets

# Unitary Patent

An introduction to the new system



December 2022

# Objectives of the Unitary Patent



Cost-effective option for broader patent protection and dispute settlement across Europe



Providing better value with reduced complexity



Facilitating access to patent protection, in particular for SMEs, universities and public research centres



Making Europe more attractive for innovation and investors



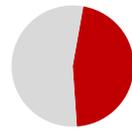
Boosting Europe's competitiveness

- Today an invention can be protected in Europe by a national or a European patent. The EPO examines European patent applications centrally, which saves inventors the costs of parallel applications and at the same time ensures a high quality of the patents granted. Once granted, however, the European patent only exists as a bundle of national patents. The European patent must be validated and maintained individually in each country where it takes effect. This can be a complex and costly process. Similarly, a European patent has to be enforced before the national courts, which leads to fragmentation that results in high costs and complexity.
- The Unitary Patent system will eliminate these shortcomings. It will complement and strengthen the existing centralised European patent granting system.
- It introduces a simpler and more cost-effective route to patent protection and dispute settlement across Europe.
- The Unitary Patent supplements the centralised pre-grant procedure with a centralised post-grant procedure in which the EPO acts as a one-stop shop for the administration of Unitary Patents, i.e. for obtaining, maintaining and managing them. It enables applicants (whether natural persons, companies or institutions) to obtain uniform and broad territorial protection in the participating Member States.
- The Unified Patent Court, a common court for the participating Member states, will centralise the litigation for both Unitary Patents and classic European patents.
- The new system aims at
  - providing better value while reducing complexity and the associated costs
  - making access to effective patent protection easier for applicants with limited resources
  - attracting investors and fostering innovation
  - boosting Europe's competitiveness

## Building a single market for innovation in the EU



### IPR-intensive industries in the EU



**47.1% of GDP**  
€ 6.4 trillion in the EU



**39.4% of employment**  
82 million jobs in the EU

Share of EU imports

**81%**

Share of EU exports

**80%**

Source: IPR-intensive industries and economic performance in the European Union – Joint Report 2022 by the EPO and the EUIPO, based on data for 2017-2019.  
Note: IPR = IP rights, meaning patents, trade marks, designs, copyrights, geographical indications and plant variety rights.

European Patent Office

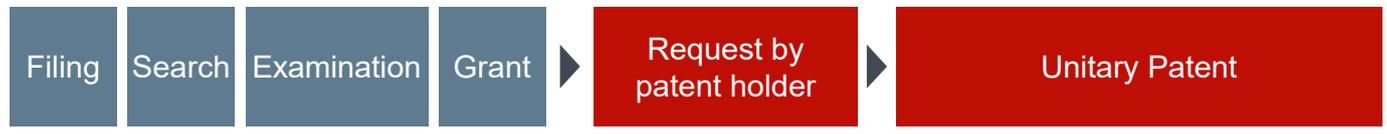
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- In 2017-2019, IPR-intensive industries accounted for 47,1% of GDP and over 39% of employment in the EU (30% direct; 9% indirect). They also typically create better-paid jobs and are responsible for the bulk of the EU's external trade (EPO-EUIPO, 2022).
  - See <https://www.epo.org/news-events/news/2022/20221011.html> and <https://www.epo.org/service-support/publications.html?pubid=243>
- The UP/UPC system will provide patent protection in up to 25 Member States, thereby creating a large and truly integrated single market for IPR-intensive industries in the EU.
- By putting an end to the current fragmentation of patent protection across Europe, the UP/UPC system will facilitate the commercialisation of new technology, providing innovating companies with enhanced flexibility to enter national markets depending on the initial success of the patented product or on business opportunities in other Member States.
- The extra gains derived from more effective, EU-wide patents under the UP/UPC system will in turn further incentivise R&D investment and innovation in the EU.
- The pan-European patent protection conferred by unitary patents will facilitate the scaling up of innovative start-ups and SMEs within the EU single market.
- More generally, it has been estimated (EPO, 2017) that a broad alignment on the best European standards for patent protection could further increase FDI and trade in technology-intensive industries in the EU by 2% and 15% respectively, resulting in annual gains of EUR 14.6 billion in trade and EUR 1.8 billion in FDI.
  - See <https://www.epo.org/news-events/news/2017/20171114.html> and

<https://www.epo.org/service-support/publications.html?pubid=162>

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## A simple one-step procedure after grant



Based on a European patent, granted by the EPO under the EPC



Same application and examination procedure



High-quality product and service



Registered in one single step at the EPO



Uniform protection in up to 25 Member States



No need for multiple parallel national validations (administrative procedures, fees, translations)



EPO acts as one-stop shop for all subsequent transactions

## How to obtain a Unitary Patent

### Substantive requirements

- Unitary effect can be requested for European patents that were granted
- in respect of all 25 participating Member States and
  - with the same set of claims for all of them.

### Main procedural requirements

- Filing of the request by the patent owner in writing, including via online means, in the language of the proceedings and no later than one month after the mention of the grant is published.
- Translations only during a transitional period

- The requirements for registering a Unitary Patent are quite simple:
- Regarding the substantive requirements, in order to be eligible for registration as a Unitary Patent, the European patent must have been granted
  - in respect of all the 25 participating Member States
  - with the same set of claims
- This means that if the designation of any of those Member States is withdrawn, no Unitary Patent can be obtained.
- Looking now at the main procedural requirements:
  - The request for unitary effect has to be filed with the EPO within one month after the mention of the grant of the European patent is published in the European Patent Bulletin
  - The request must be filed by the patent proprietor in writing, and in the language of the proceedings.
  - During a transitional period of at least 6 and a maximum of 12 years, a translation of the patent has to be submitted. An English translation is needed where the language of the proceedings is French or German. Where the language of the proceedings is English, the patent has to be translated into one other official language of the European Union. It is important to note that the translated version has no legal effect and is for information purposes only.
- Provided that the substantive and procedural requirements are met, the unitary effect is then registered for the European patent, with the consequence that the Unitary Patent is in force for the territory of the participating Member States without the need for additional national validations.

## Certificate for Unitary Patent holder

- The holder of a Unitary Patent will be issued a certificate as shown on the right.



European Patent Office

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Unitary Patent proprietors will be sent a certificate once unitary effect has been registered by the EPO.

Its design closely follows that of the new “classic” EP certificate which has been in use since April and features a “seal” depicting the EPO member states. The UP certificate similarly includes a seal depicting the 17 participating Member States for which the Unitary Patent will be valid on day one of the entry into operation of the system. As more states join the Unitary Patent system the seal will be updated accordingly.

The Unitary Patent certificate states the European patent number, the particulars of the patent proprietor and the following essential information:

- date of registration of unitary effect of the European patent in the Register for unitary patent protection

This is the date on which the EPO registers unitary effect in the Register for unitary patent protection, i.e. the date on which it grants a Unitary Patent. This date reappears after the President’s signature as the date of issuance of the certificate.

- date of effect of the European patent with unitary effect

This is the date on which the Unitary Patent (retroactively) takes effect in the participating Member States. It is the date of publication by the EPO of the mention of the grant of the European patent in the European Patent Bulletin.

- territorial scope of the European patent with unitary effect at the date of registration of unitary effect

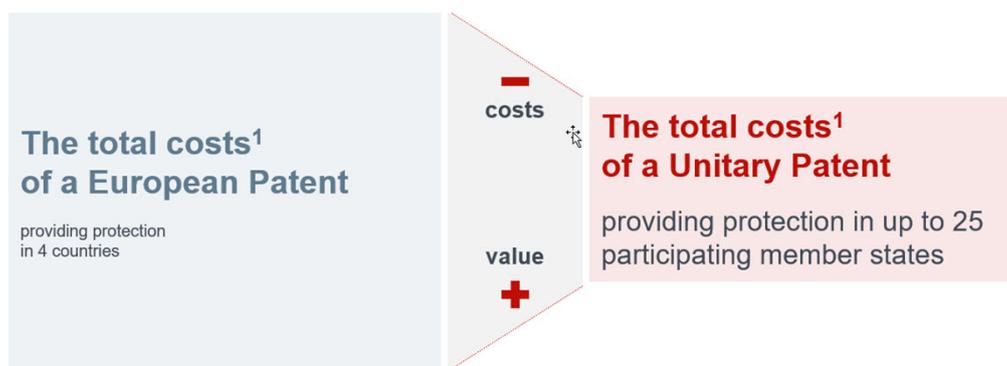
by the EPO

This is the geographical scope of the Unitary Patent, i.e. the participating Member States covered by a given Unitary Patent at the date of registration of unitary effect by the EPO. A Unitary Patent will cover the territories of those participating Member States in which the Agreement on a Unified Patent Court has taken effect at the date of registration of unitary effect by the EPO.

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## Reduced costs

- No fees are charged by the EPO for the request for a Unitary Patent
- Attractive fee level, with renewal fees for maintaining a Unitary Patent for ten years – the current average lifetime of a European patent – amounting to less than EUR 5 000
- A comparison of fees and all associated costs shows that a Unitary Patent will be significantly less expensive on average than a European patent validated and maintained in four countries



<sup>1</sup> Direct costs of the renewal fees + associated indirect costs arising from validating and maintaining a European patent in all countries.

- The Unitary Patent will offer patent protection at a reduced cost.
- The EPO does not charge fees for obtaining a Unitary Patent. No fees are due either for filing and examining the request or for registering the unitary effect in the Register for Unitary Patent Protection.
- The renewal fees have been set at a business-friendly level equivalent to the combined renewal fees due in the four countries where European patents were most often validated at the time the renewal fee level was set.
- For the first ten years, which is the average lifetime of a European patent, the aggregate renewal fees for maintaining a Unitary Patent will be less than EUR 5 000.
- When the fees and all associated costs are compared, the Unitary Patent will be less expensive on average than a classic European patent that is validated and maintained in four EU Member States – as a consequence, the more countries a classic European Patent would have been validated in, the more cost-effective a Unitary Patent will be.

## Cost efficiency thanks to simplification

**Classic European patent**  
Multiple national post-grant administration procedures

### National patent offices



- Translation requirements
- National validation fees
- Procedures
- Renewal fees
- Currencies

Costs for local attorneys

**Unitary Patent**  
The EPO acts as a one-stop-shop for all post-grant administration

### One office



- Simplified translation regime
- No fee for obtaining a Unitary Patent
- One procedure
- One set of renewal fees
- One currency (€)
- One Register

Your European patent attorney

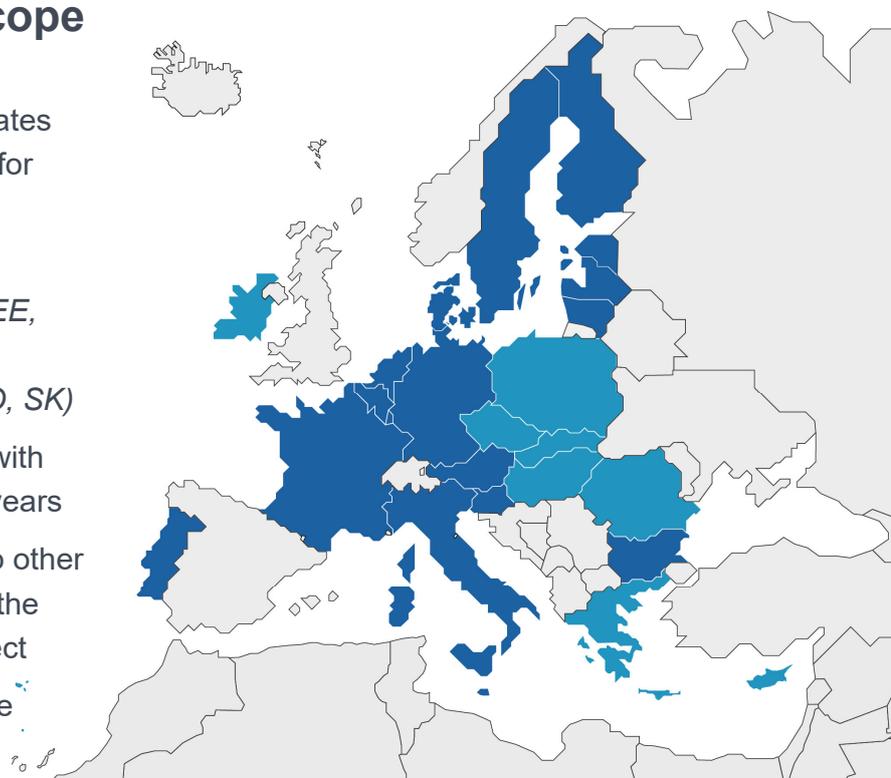
- The cost comparison is even more favourable for the Unitary Patent if the savings resulting from the simplified administrative burden are also taken into account.
- In today's fragmented post-grant phase different renewal fees of different amounts have to be paid in different currencies to different national patent offices, which also have different legal requirements, especially with regard to time limits
- For the Unitary Patent there will be a single renewal fee payable centrally to the EPO, in a single currency and under a single legal system as regards time limits and admissible methods of payment.
- There will also be a simplified translation regime in place, where the patent proprietor will have to file a translation only during the initial transition period and no fees are charged by the EPO for obtaining a Unitary Patent.
- This not only simplifies matters considerably, but also opens potential for massive costs savings, as applicants will not need different local attorneys but can be represented by their European patent attorney before the EPO and can even take care of large parts of the post-grant administration by themselves.

## Unitary Patent: Territorial scope

Unitary effect is possible for all Member States participating in enhanced cooperation and for which the UPCA has entered into force at the date of registration of unitary effect

*Expected 17 states: AT, BE, BG, DE, DK, EE, FI, FR, IT, LT, LV, LU, MT, NL, PT, SE, SI*  
*(UPCA not ratified: CY, CZ, GR, HU, IE, RO, SK)*

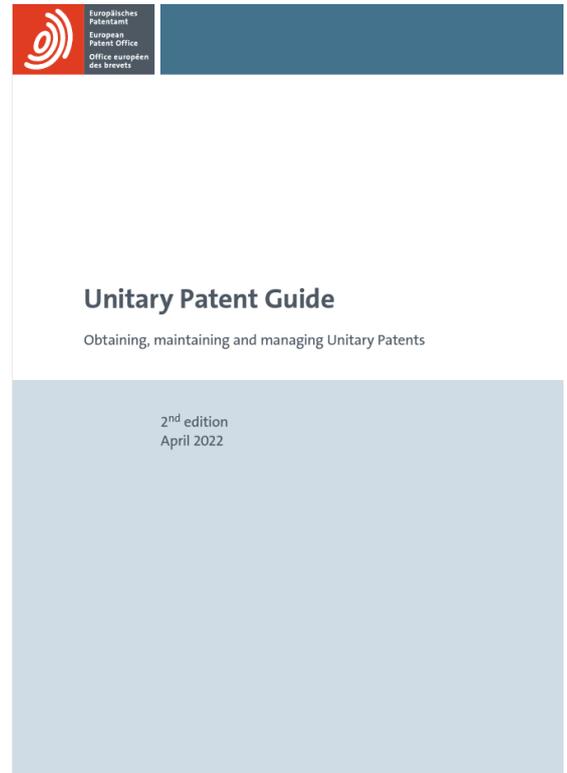
- Different generations of Unitary Patents with different territorial coverage in the initial years
- No extension of the territorial coverage to other participating Member States which ratify the UPCA after the registration of unitary effect
- Territorial coverage will be indicated in the Register for unitary patent protection



- The Unitary Patent scheme is an area of enhanced cooperation. This is a procedure allowing 9 or more EU Member States to work together to achieve greater integration in a certain area. All EU Member States are participating in the enhanced cooperation regarding the Unitary Patent, except Spain and Croatia, but they can still join later.
- In order to be covered by the Unitary Patent, however, the Member States must not only participate in enhanced cooperation, but must have ratified or acceded to the Agreement on a Unified Patent Court (UPCA) at the date of the registration of unitary effect.
- At least 17 EU Member States will have ratified the UPCA when the system starts. The others will follow when the system is already up and running.
- If other EU Member States were to join at a later date, the Unitary Patents registered after that date would also cover these states. However, the coverage of a Unitary Patent already registered will not be extended to the Member States joining after its registration.
- Consequently, for the first years there will be different generations of Unitary Patents with different territorial coverage.
- The information on which countries are covered by a particular Unitary Patent will be clearly indicated in the Register for the Protection of Unitary Patents. This will make the territorial scope of each unitary patent clear and easy to identify.

## Unitary Patent Guide

- Provides companies, inventors and their representatives with an outline of the procedure involved in obtaining a Unitary Patent.
- Deals with the accessory procedures relating to Unitary Patents (e.g. compensation scheme for translation costs, registering a statement on licences of right) and gives an overview of the rules on paying renewal fees for Unitary Patents.
- Available at: [epo.org/law-practice/unitary/unitary-patent/unitary-patent-guide.html](https://epo.org/law-practice/unitary/unitary-patent/unitary-patent-guide.html)



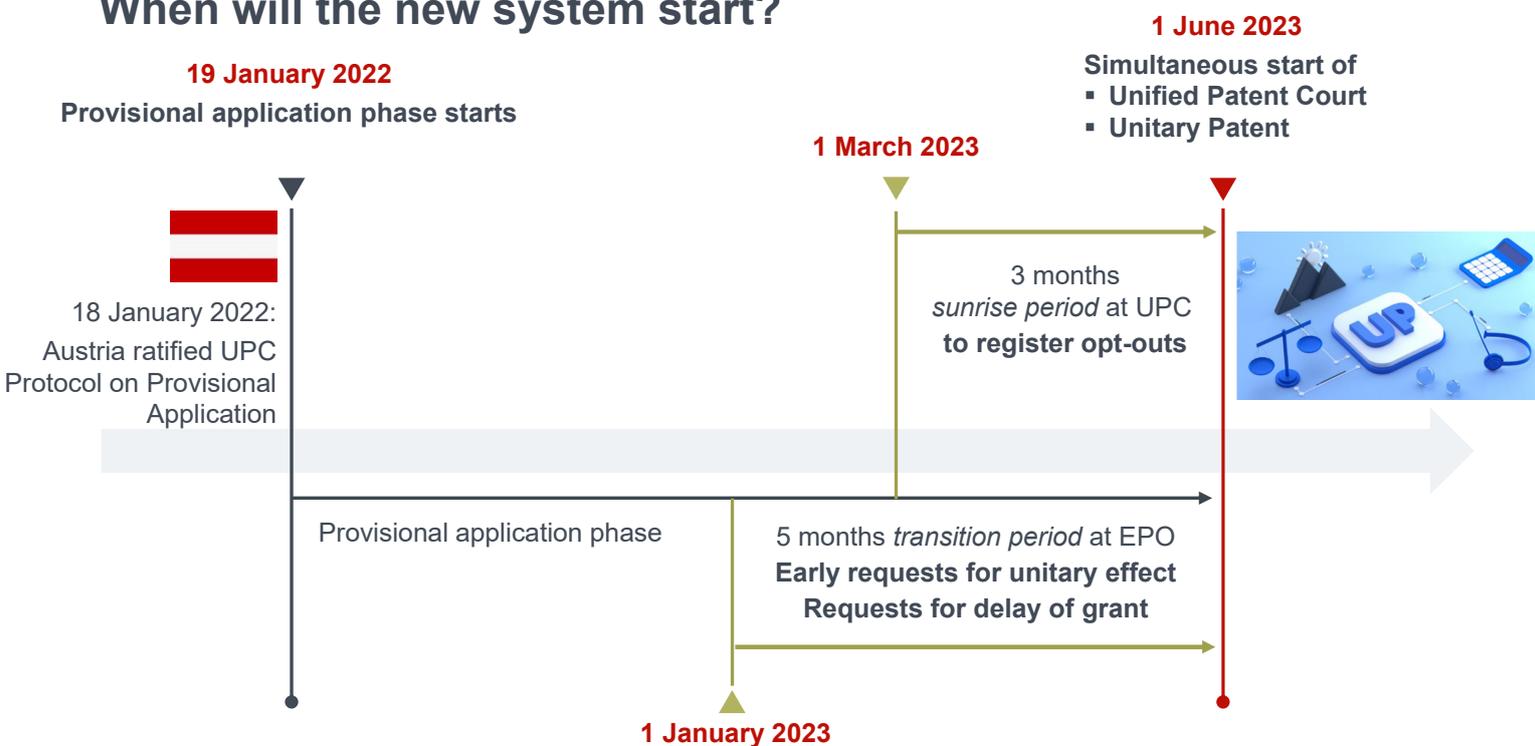
- For more detailed information on how to obtain, maintain and manage a Unitary Patent, the Unitary Patent Guide can be downloaded free of charge from the webpage of the European Patent Office.
- It provides all parties involved with a simple and detailed overview of the procedure for obtaining a Unitary Patent. It also deals with all the accessory procedures relating to Unitary Patents and gives overview of the rules on how to pay renewal fees for Unitary Patents.

## Greater legal certainty with the Unified Patent Court



- The Unified Patent Court (UPC) will take up its work with the start of the new system and will establish an effective forum for enforcing or challenging patents in Europe.
- The UPC will lead to a decrease in parallel national court proceedings. Currently, national courts and authorities decide on the infringement and validity of European patents, which leads to fragmentation. This can result in high costs, complexity and even parallel patent litigation in different member states with the risk of divergent national decisions.
- The UPC will eliminate these shortcomings by creating a specialised patent court with exclusive jurisdiction for infringement and validity proceedings relating to both Unitary Patents and European patents. The UPC will also have exclusive jurisdiction to review decisions of the EPO in relation to the Unitary Patents.
- The Court will apply uniform substantive patent law relating to the scope and limitations of the rights conferred. The decisions of the Court will be issued by internationally composed panels comprising both legally and technically qualified judges, meeting highest standards of quality and ensuring that harmonised case law is established, thus enhancing legal certainty.
- The procedures before the Unified Patent Court will be simpler, quicker, and more efficient. In addition, the costs for litigation will be reduced as there will be no need to litigate in each Member State.
- With regard to classic European patents, however, actions for infringement or revocation may still be brought before national courts during a transitional period of seven years which may be prolonged for up to a further seven years. During this transitional period, proprietors can also choose to opt out of the UPC's exclusive competence for their European patents.
- These exceptions do not apply to Unitary Patents, which cannot be opted-out.
- The national courts remain competent for national patents and classic European patents that have been opted-out.

## When will the new system start?



- We are currently in what is called the provisional application phase, following Austria's ratification of the Protocol on the provisional application of the UPC Agreement.
- The new system is expected to enter into operation **on 1 June 2023**, after a 3 months "sunrise period" which will start on 1 March 2023. The Unified Patent Court and the Unitary Patent will then start simultaneously.
- During the sunrise period before the UPC, it is possible for patent holders to file so called opt-out declarations to exclude their patents from the jurisdiction of the court, and for patent attorneys to register as representatives before the UPC.
- In order to support users in an early uptake of the Unitary Patent, the EPO has decided to introduce two transitional measures as of 1 January 2023.
  - The first measure is the early request for unitary effect, which will enable applicants to file a request for unitary effect before the start of the Unitary Patent system. This will then allow the EPO to register unitary effect immediately at the start of the system, provided the requirements are met.
  - The second measure allows applicants to request a delay in issuing the decision to grant a European patent. The idea here is to make European patents eligible for unitary protection that would have otherwise been granted before the start of the system.
- These transitional measures are described in more details here:

<https://www.epo.org/applying/european/unitary/unitary-patent/transitional-arrangements-for-early-uptake.html>

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## Need more information?



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