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Unitary Patent

A Practical Guide to Strategy and Scope of Protection



Background

The Unitary Patent (UP), or European Patent with Unitary Effect, is a European patent system that allows applicants to obtain protection in multiple European Union (EU) countries through a single application. The Unitary Patent has been discussed for many years, and the necessary legislation has been adopted by a majority of EU member states.

Currently, 18 EU countries participate in the Unified Patent Court and the EU unitary patent system.

The UP system can replace the classic European patent validation system or coexist with it, depending on the needs of the applicant. In the classic system, a granted European patent must be validated in each country individually, making protection in multiple countries more costly and time-consuming. Under the UP system, a granted European patent is valid in all participating countries.

The Unitary Patent has a significant impact on the European patent system, simplifying and reducing the cost of protecting inventions across multiple countries.

Effective management of these assets is crucial for maintaining competitiveness in an increasingly demanding market.

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European patent granted. What are the next steps?

Once the European Patent is granted by the European Patent Office (EPO), the patent owner selects the member states of the European Patent Convention (EPC) and/or the extension states where protection is desired, ensuring the patent takes effect in the countries of interest.

The patent owner can choose one of the following options or a combination of both:

National validations

Unitary Patent (UP)

The pre-grant prosecution of a European patent remains unchanged, ensuring that applications are examined by the EPO according to the same high-quality standards applied to all patent applications filed with the Office.

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Post-grant prosecution of the UP is conducted before the EPO, reducing costs and administrative workload for the owner, without the need for national validations in each EU member state.

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Unitary Patent (UP)

As of June 1, 2023, the Unitary Patent (UP) allows patent owners to enforce a granted European patent before the European Patent Office (EPO) and obtain protection across all European Union (EU) member states that have ratified the required legislation.

Post-grant prosecution of the UP is conducted before the EPO, reducing costs and administrative workload for the owner, without the need for national validations in each EU member state.

Classic European patents remain fully in force and unchanged with the introduction of the UP system.

Patent owners have the flexibility to choose the UP system, the classic validation system, or a combination of both, depending on costs, protection strategy, and countries of interest.

For example, under the Unitary Patent system, a patent owner can protect their invention in participating member states while also validating the patent through the classic national system in other countries of interest.

Main characteristics of each of the two routes

Characteristics	National validations (classical route)	Unitary Patent (UP)
Member States and Extension States (*)	<p>Albania, Austria, Belgium, Bulgaria, Switzerland, Cyprus, Czechia, Germany, Denmark, Estonia, Spain, Finland, France, United Kingdom, Greece, Croatia, Hungary, Ireland, Iceland, Italy, Liechtenstein, Lithuania, Luxembourg, Latvia, Monaco, Montenegro, North Macedonia, Malta, Netherlands, Norway, Poland, Portugal, Romania, Serbia, Sweden, Slovenia, Slovakia, San Marino, and Turkey.</p> <p>(*) Bosnia and Herzegovina, Morocco, Republic of Moldova, Tunisia, and Cambodia.</p>	<p>Currently, a European patent validated with unitary effect (Unitary Patent) is valid across the following 18 participating EU Member States:</p> <p>Austria, Belgium, Bulgaria, Denmark, Estonia, Finland, France, Germany, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Romania, Slovenia and Sweden.</p>
Countries of interest	It is necessary to validate the patent in each of the countries of interest.	The patent has effect in the 18 participating member countries.
Request	Request for each of the National Institutes of the selected countries (official fees apply).	Single request and without official fee, submitted to the EPO.
Annual fees	Due to each of the National Institutes of the selected countries.	Annuities paid to the EPO.
Translations	It may be necessary to translate the patent into the official language of a selected country, as defined in their respective national laws (translation with legal effect).	A single translation of the patent into another language of the EU, other than English, (informative translation).
Possible litigation	Unified Patent Court (UPC) or National Courts** of the selected countries.	Unified Patent Court (UPC)

* Must be selected in advance in the European patent application.

** The owner of the European patent may choose to opt-out of the jurisdiction of the Unified Patent Court (UPC).

Actions required to make the European Patent effective *

Actions Required	National validations (classical route)	Unitary Patent (UP)
Measures after notification of intention to grant of the European Patent	Reply to the notification of intention to grant the European patent, pay the official grant and publication fee. Submit the translations of the granted claims into German and French within 4 months after the date of said notification.	
Deadline for application	3 months after the publication of the European Patent grant.	1 month after the publication of the European Patent grant.

* Actions required to make the European Patent effective in the countries of interest from the moment the applicant receives an intention to grant notification from the EPO.

Feel free to contact our team for further clarifications on the Unitary Patent & UPC System or any other related matter.

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