

Bird & Bird

Your *Quick Guide* to The Unitary Patent and The Unified Patent Court

Bird & Bird's Intellectual Property Group



A new era of patent litigation in Europe: *The Unitary Patent Package*

The Unitary Patent Package (UPP) established by the participating EU Member states comprises two elements: the Unitary Patent (UP) and the Unified Patent Court (UPC). This new system started on 1 June 2023. The UPP represents the most radical change to patent law in Europe for over 40 years: it is a single patent and a single court covering up to 24 EU Member States (currently 18), with a combined population of about 400 million.

The introduction of a single patent is intended to make establishing patent protection across Europe easier and more effective, thereby facilitating the protection of innovations and inventions. The establishment of a single court makes it possible to obtain a single decision preventing the sale of goods and the use of patented processes across all participating EU Member States. Stakeholders need to understand how the new system operates alongside the existing system in order to simultaneously take advantage of it and not be caught unexpectedly by competitors who seek to do so.

Any companies operating in Europe for whom the protection and exploitation of intellectual property is an important concern would be well advised to make the time to inform themselves about both the Unitary Patent and the Unified Patent Court in order to develop a tailored patent filing and litigation strategy for Europe. This guide provides an overview of the key aspects of the Unitary Patent and Unified Patent Court and sets out the considerations that companies may wish to consider when they prepare their patent filing and litigation strategies.

“*Bird & Bird is excellently positioned to support clients from all technical fields in pan-European proceedings and before the UPC. The firm has its own patent litigation teams at all UPC venues, as well as experts in all technical sectors who have proven their litigation skills*”

JUVE Patent



The Unitary Patent

How it works

The Unitary Patent is a single patent that is effective across all participating EU Member States.

Once the EPO has decided that a European patent application can proceed to grant, the patentee then has one month from the date of grant to request that the patent should be given unitary effect. No fee is payable and only one translation will be required.

In contrast to the pre-existing system, a request that the patent should be given unitary effect avoids national validations in the participating EU Member States covered by the Unitary Patent. Patentees still have the option to validate the granted European patent in any of the other EPC contracting states.

There is a single renewal fee instead of a renewal fee per country: this was set to be equivalent to the renewal fee for a European patent validated in the UK (even though no longer part of the UPP), Germany, France and The Netherlands. It should be noted that Poland, Spain and Croatia are not currently participating in the UPP.

The territorial scope of Unitary Patents will not necessarily be the same. This depends on the EU states that have ratified the UPC Agreement (UPCA) at the date of grant of the Unitary Patent.

Different patents available under the new system

The introduction of the Unitary Patent gives patentees a choice of three options for obtaining patent protection in Europe, the first two via the EPO and the third via national patent offices:

- **(Traditional) European patent:** If, following a decision by the EPO to grant a European patent, the patentee decides not to request a Unitary Patent then the patent can be validated by the patentee in the EPC contracting states of choice.
- **European Patent with unitary effect:** If, following a decision by the EPO to grant a European patent, the patentee decides to request a Unitary Patent (formally referred to as a "European patent with unitary effect"), then they must do so within one month of the date of publication of the grant in the European Patent Bulletin. They will then be granted a Unitary Patent covering all the participating EU Member States. The European patent can be validated by the patentee in any of the remaining EPC contracting states of choice.
- **National patents:** Applicants can still apply to national patent offices for national patents thereby avoiding both the EPO and potentially also the UPC altogether.

Costs

There is no fee for requesting unitary effect. However, the cost of one additional translation will arise for a transitional period of (at least) 6 years: into English if the language of the patent is French or German; into any other official EU language, if the language of the patent is English.

Renewal Fees

Unitary Patent renewal fees are equal to the combined renewal fees of the top 4 states where a traditional European patent is granted. Over 20 years the sum (at current rates) would be:

- Ca. €35,500 – if the patent is granted in the year of application.

The only financial disadvantage of a Unitary Patent is that it cannot be 'pruned'. In other words, the patentee cannot drop countries one by one over time – the Unitary Patent is 'all or nothing'.

Applicable Court

Unitary Patents are subject to the exclusive jurisdiction of the UPC.

Potential advantages and pitfalls

The Unitary Patent is intended to provide advantages over the European patent: a Unitary Patent patentee only has to pay one renewal fee to the EPO and translate the text of the patent into, at most, one additional language for the Unitary Patent to cover all of the participating EU Member States.

Unitary Patents are subject to the exclusive jurisdiction of the UPC. As such:

- an injunction granted by a single court will stop infringements in all participating Member States, thereby providing protection over a consumer base of approximately 400 million.
- a Unitary Patent will however remain vulnerable throughout its life to being revoked in an action before a single court – it effectively puts all the patent 'eggs in one basket'.

The Unified Patent Court

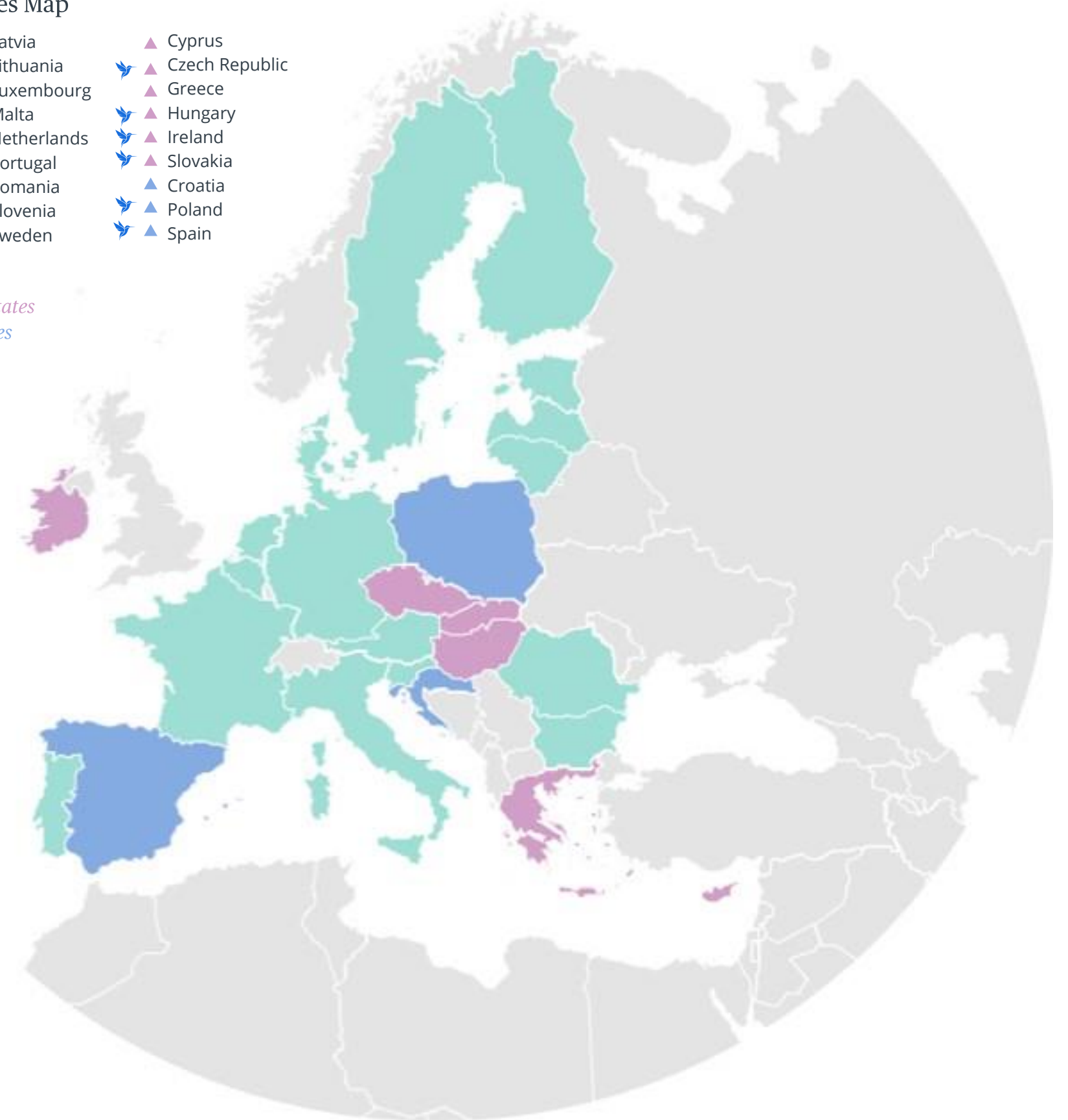
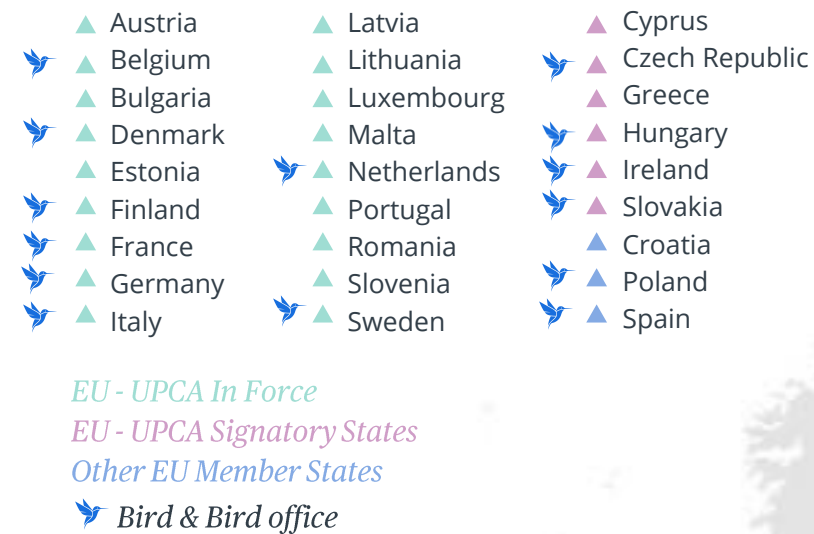
Key Features

- A single court with multiple locations across the EU
- A single judgment may cover all participating EU Member States (currently 18 participating EU Member States)
- A single territory for direct and indirect infringement proceedings
- Proceedings on the merits are expected to be concluded in around slightly over 1 year
- English is available in all divisions
- The UPC benefits from a pool of experienced and/or trained patent judges
- Preliminary injunctions are available
- Seizure of evidence is possible in some circumstances

The approach of the UPC's main local divisions, at least in the early years, has in many cases proved similar to the approach taken by the corresponding national courts (i.e., these local divisions are reflecting a degree of 'couleur locale'). As UPC decisions increase, especially Court of Appeal decisions, we will see what happens. Forum shopping options therefore require careful consideration.

A patent filing and litigation strategy should also consider litigation in national courts either as an alternative to the UPC or in parallel to it, including in countries not covered by the UPC such as the UK. It is not clear whether the UPC will take notice of reasoned judgments from other courts e.g the Patents Courts of England.

UPC Member States Map



Court structure

How it works

The UPC is a supranational court that has jurisdiction over all participating EU Member States in one action.

The UPC has jurisdiction over new Unitary Patents, as well as traditional European patents. It has specialised patent judges and applies its own autonomous substantive and procedural law. The stated intention was that judgments at first instance would be given within slightly over 1 year of the start of the action and so far this has proved to be so for many decisions.

The structure of the UPC

The UPC Court of First Instance has several divisions located in various participating EU Member States, together with a Court of Appeal based in Luxembourg:

Central division: Seated in Paris (mainly electronics, SPCs), with specialist divisions in Munich (mainly mechanical engineering and chemistry, excluding SPCs) and in Milan (human necessities, excluding SPCs). Before the Milan central division opened its doors (replacing the originally planned third seat in London), the respective responsibilities of this division were divided between Paris and Munich.

Local divisions: Seated in individual participating EU Member States (see right).

Regional divisions: There is presently one regional division in Stockholm for Sweden and the Baltics.

The Court of Appeal: Seated in Luxembourg.

Central division

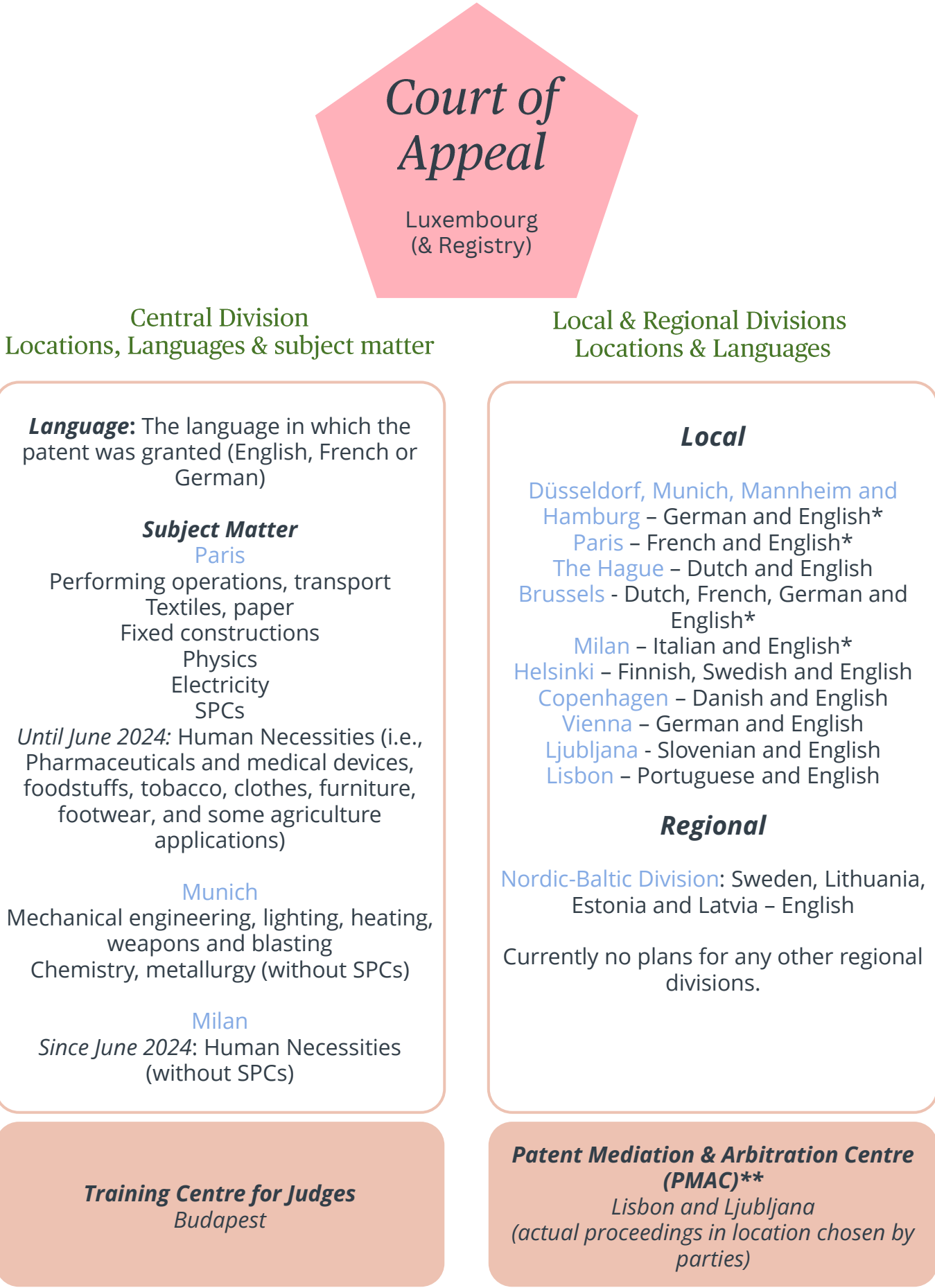
The central division has exclusive jurisdiction over declarations of non-infringement and revocation actions (other than counterclaims). If a revocation action is pending at the central division, the patentee may bring an infringement action in the central division too.

Local and regional divisions

Local and regional divisions are responsible for infringement actions and counterclaims for revocation.

Bifurcation is procedurally possible. but in practice this has occurred very rarely, in cases where there is already a revocation action in existence. In such cases, the UPC has tried to schedule the infringement hearing after the revocation hearing.

From the outset, the Local/Regional divisions have shown a certain ‘couleur locale’ in terms of judicial discretion regarding processes and procedures, similar to that currently seen in the corresponding national courts.



Notes
* English limited rule: The local division may allow pleadings in the local language if the language of litigation is English and reserves the right to hold oral hearings and issue judgments in the local language. In practice, in these divisions, English is generally being used throughout the proceedings when English is the language of litigation.
** due to be operative late 2025/early 2026

Forum shopping between divisions

A patentee may bring an infringement action either in the local or regional division where infringement occurs or in a jurisdiction where the defendant resides or has a place of business. For non-participating EU Member State defendants, a patentee may also bring an infringement action at the central division. A defendant cannot transfer an infringement action from a local division to the central division.

Bifurcation and other procedural issues

Bifurcation is possible but in practice bifurcation has tended to happen only if there is already another revocation action pending. In such cases, the oral hearing of the infringement proceedings has tended to be timetabled to be after the hearing of the revocation proceedings.

In a counterclaim for revocation in an infringement action, the local or regional division has four options:

- Keep both sides of the case
- Refer the counterclaim to the central division and keep the infringement action
- Refer the counterclaim to the central division and stay the infringement action
- Refer the entire case to the central division, provided the parties agree

In the event of bifurcation, an infringement action will be stayed where there is a "high likelihood" of the relevant claims being held invalid (UPC Rules of Procedure Rules 37.4 and 118.2(b)).

Where the counterclaim is referred to the central division but there is no stay, the judge rapporteur in the central division will endeavour to set a date for the revocation action hearing before the infringement action hearing (Rule 40(b)).

Transitional period and provisions

The transitional provisions within the UPC Agreement provide that the UPC will have non-exclusive jurisdiction over all existing European patents validated in participating Member States during the 'transitional period' of 7 years (possibly to be extended by a further 7 years).

Art. 83 of the UPC Agreement also provides that patentees can opt their European patent applications or European patents out of the jurisdiction of the UPC altogether provided that an action has not already been brought before the UPC.

Opt-outs can be filed until one month before the end of the 7-year transitional period. The opt-out request must be filed on behalf of all actual patent owners for all the EPC Member States where the patent is validated, not just the UPC Member States.

Patentees who wish to withdraw their opt-out (i.e., opt back in) may do so at any time, provided no national proceedings have previously been commenced (post 1 June 2023) in relation to the patent.

Art. 83(1)

- *"... an action for infringement or for revocation of a European patent ... may still be brought before national courts"*

Art. 83(3)

- *"Unless an action has already been brought before the Court, a proprietor of or an applicant for a European patent granted or applied for prior to the end of the transitional period (...) shall have the possibility to opt out from the exclusive competence of the Court (...). The opt-out shall take effect upon its entry into the register."*

Art. 83(4)

- *"Unless an action has already been brought before a national court, proprietors of or applicants for European patents who made use of the opt-out in accordance with paragraph (3) shall be entitled to withdraw their opt-out at any moment.... The withdrawal of the opt-out shall take effect upon its entry in the register."*

Choice of Court

Patent Type		Court Forum
Unitary Patent	▶	UPC
European patent validated in participating EU Member States (and not opted out)	▶	UPC or national courts*
European patent validated in participating EU Member States and opted out	▶	National courts
(a) European patent validated in EU Member States that have not participated or ratified UPCA or (b) in other EPC states	▶	National courts
National patent	▶	National courts
European patent susceptible to central attack/revocation – options		
Patent owner	▶	File opt out
Third Party	▶	File action at UPC to block opt out File action in national court to block withdrawal of opt-out
Lis pendens rules for (non-opted-out) European patents		
Seize UPC first	▶	Blocks national courts
Third Party	▶	Action at UPC to block opt out

* During the transitional period of at least seven years.

Costs

Court fees

- Basic infringement actions cost €11,000, plus a sliding scale value-based fee of €0 - 325,000
- Revocation actions cost €20,000 (fixed fee)
- Application for provisional measures cost €11,000 (fixed fee)
- Micro and small enterprises are entitled to a 40% reduction on all court fees (fixed and value-based) which are incurred in the Court of First Instance as well as in the Court of Appeal.
- Scale of recoverable costs ranges from €38,000 to €2,000,000 (depending on value of proceedings)
- No fee to opt-out or to withdraw an opt-out

Patent litigation US v Europe

Historically, the US has been perceived as a highly attractive location for patent litigation for obvious economic and business reasons, given that a decision from a single court can provide a patentee with protection in one of the most important consumer markets in the world.

However, with the Unitary Patent Package system currently covering up 18 EU Member States with a consumer base of approximately 400 million, the Unitary Patent and the UPC offer an attractive proposition for global companies.

In addition to covering a significant consumer market, generally infringement proceedings in the UPC are considerably faster and cheaper than in the District Courts in the US, with the UPC also having other benefits:

- Applications for preliminary measures, with the possibility for preliminary injunctions, available in a day to a few months
- No or only limited documentary discovery and non-oral discovery
- No or very limited oral testimony and therefore shorter trials
- Experienced/trained patent judges
- A first instance judgment on the merits is expected to be concluded in slightly over 1 year
- In most cases, the losing party will be expected to pay a significant proportion of the winning party's costs.



Strategic Considerations

Patentees: Opt in or Opt out?

Opting-out

Patentees may want to exclude some existing European patents from the jurisdiction of the UPC by filing opt-outs, thereby preventing central attacks on validity.

- Only available for European patents and patent applications (not Unitary Patents)
- No fee
- Remains effective (unless withdrawn) for the life of the patent and any subsequent SPCs
- Excludes the jurisdiction of the UPC for that patent
- Not possible if an action is or has ever been pending before the UPC

Opting back in

Patentees who have opted-out have the option to withdraw their opt-out (i.e., to opt back in), free of charge.

This will not be possible if an action in a national court has been started since 1 June 2023. (The UPC Court of Appeal has confirmed that national proceedings filed prior to 1 June 2023 do not block withdrawal of an opt-out.)

- No fee

Patentees - Portfolio management: potential filing strategies

With all the options for obtaining and litigating patents in Europe, patentees need to develop a strategy for the management of their portfolios in order to determine the mix of European patents, Unitary Patents and national patents they want to obtain. Patentees should consider the following strategic options:

Same "type" of patent for all inventions: This is the easiest and most straightforward strategy. However, it may not be the most cost effective. Additionally, the default type of patent may not necessarily be ideal for a particular case, considering both the available countries and the strength of the patent.

As a compromise between cost and optimal protection, a patentee might be advised to apply as a matter of course for the same type of patent of all inventions but to actively consider a different type or types to be selected in particular circumstances.

National patents: Pursuing a national patent strategy may be considered appropriate in some circumstances such as if a patent is only needed in a few jurisdictions in Europe (for example, where a patent is relevant to a product developed for a particular market).

European patent with unitary effect/Unitary Patent: Unitary Patents and non-opted out European patents can be invalidated in a single, central attack; therefore, patentees might consider using this route for strong patents where there is confidence in their validity and where protection is required across Europe (for example, pharmaceutical NCE patents) or where enforcement is needed in countries with little experience in patent litigation.

(Traditional) European patent: Consider opting-out European patents which cover economically important products, but where the strength of the patents is not so certain. Even if the patent is invalidated in one or two jurisdictions, its validity in others may still have value.

Consider a combination of parent and divisional patents in different categories: A patentee could consider having a parent patent with unitary effect (or an opted-in European patent) with a very narrow scope and an opted-out divisional (or divisionals) with wider scope (taking into account the double patenting prohibition provisions of the EPC).

Consider the cost and speed of obtaining patents: The EPO can be notoriously slow and costly in comparison to some national patent offices where the procedures are far less burdensome (for example, in Belgium, France, Italy and The Netherlands). In some cases, obtaining a patent (even a less well (or un-) examined national patent) which is then enforceable can be commercially advantageous.

Strategic Considerations

Patentees and licensees

Licensees may want patentees to opt-out, but their existing licences may contain no such provisions. Licensees who want to prevent a central attack should look at this now and discuss the issue with their licensors.

Exclusive licensees have the authority to enforce a patent without consent from the patentee, unless the licence provides otherwise. The defendant can counterclaim for revocation, which counterclaim would be served on the patentee who thereby becomes a party to the action. Patentees should therefore check their existing exclusive licence agreements.

Non-exclusive licensees do not have this option unless the licence provides otherwise (i.e., unless it confers this right on the licensee), so non-exclusive licensees should also check their licences.

Implementers

Implementers may have concerns about a possible infringement action being started against them, so should consider early on any bases for attacking the validity of a patent.

For those patents that are not opted out of the jurisdiction of the UPC, implementers can attack the validity of a patent in a central revocation procedure.

For those patents opted out of the jurisdiction of the UPC, national proceedings started before a national court will prevent a patent being opted back into the jurisdiction of the UPC.

Implementers may tactically take advantage of these two positions.

For instance, for Unitary Patents or European patents that are not opted out, implementers can start a revocation action before the UPC.

However, implementers should bear in mind that in response the patentee can start a central infringement action before the UPC.

For opted out patents, starting revocation proceedings in a national court means that a patent proprietor cannot opt the patent back into the jurisdiction of the UPC for central infringement proceedings. Any infringement proceedings would then have to take place before national court(s).

In both cases, the implementer would be the claimant, with the benefits this brings.

Implementers who have reason to believe that an infringement action might be filed against them:

- Can file a 'Protective Letter' with the UPC. This reduces the chances of an ex-parte decision being taken in respect of an application for preliminary measures involving the implementer.
- Should start as early as possible building a case for revocation so that they are fully prepared to start a revocation action (or respond to an infringement action).

Whether a patent is opted out of the jurisdiction of the UPC can be checked on the EPO's [European Patent Register](https://register.epo.org/regviewer) (<https://register.epo.org/regviewer>) and alerts can be set up to alert a party of any change on the European Patent Register.



One in-house counsel describes the firm as “the most experienced UPC representatives so far”

JUVE 2025

Curious to know why you should choose Bird & Bird for the UPC?

Cross-border IP is what we do best – now with the UPC in the mix.

We've been advising on multijurisdictional IP strategy for years, and now seamlessly integrate the UPC into that approach.

Our team is built to operate across Europe and beyond, combining deep local knowledge with cross-border co-ordination to give you one clear, effective path forward - whether in national courts, the UPC, or both.

We didn't just prepare for the UPC – we helped build it.

We contributed to drafting the rules, trained future UPC judges, and played an active role in shaping national discussions across Europe.

Today, we're handling around 14% of all UPC proceedings.

That means our clients don't just benefit from deep familiarity with the system — they get insight into the thinking behind it.

We're exactly where your UPC strategy needs us to be.

With offices in every major UPC jurisdiction - and litigators who've appeared before these judges in national courts - we offer more than just presence. We offer insight.

Our integrated European team helps you choose the most strategic venue to start your action - giving you the advantage from day one.

We know the judges - and how to shape your strategy accordingly.

Success before the UPC isn't just about knowing the rules - it's about knowing the people applying them. Our team has litigated patent cases across Europe before many of the same judges now sitting on the UPC.

We use that experience to tailor strategies that align with your goals - leveraging the system's flexibility, local nuance, and procedural options to your advantage.

Curious to know why you should choose Bird & Bird for the UPC?

We're built for front-loaded litigation – and we know how to win it.

From day one, we're ready. Our team has extensive experience preparing decisive evidence, filing substantive briefs, and managing both infringement and nullity issues - whether in combined or separate proceedings.

We know how to shape your case early, focus the issues, and drive it toward the result you need - efficiently and effectively.

When Everything's on the Line, You Need the Right Team

The Unified Patent Court offers huge opportunity - and equally high risk. A single decision can grant or wipe out patent protection across the entire UPC zone. That's why you need a robust, strategic partner by your side.

At Bird & Bird, we offer an integrated team of experienced litigators, technically qualified lawyers, and patent attorneys with litigation know-how — fluent in the legal and technical languages that matter.

We bring more than just patent expertise. From jurisdictional issues and UPC-national interplay to competition law and cross-border damages, we navigate the legal complexity so you can stay focused on what matters: winning.

One Firm, Your Firm - we have the experience and breadth

As one of the world's leading patent litigation teams, we bring the firepower, speed, and strategic depth you need to navigate the UPC with confidence. With unmatched resources across Europe, we're ready to move fast, adapt to complexity, and deliver results - wherever and whenever you need us.

Recognition that matters



We're ready when you are:
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