

Bird & Bird

# The Unitary Patent (UP) & Unified Patent Court (UPC)

The Essentials

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# The UP & UPC: The Essentials

## UP Package

- The system started on June 1<sup>st</sup>, 2023. Currently 18 EU member states are participating.
- One single patent right, the Unitary Patent (UP), obtainable, covering a large part of the EU.
- A single court, the Unified Patent Court (UPC), covering a large part of the EU, for the enforcement/revocation of UPs and traditional European Patents (EPs).
- Transitional period of 7 years, possibly extending for up to another 7, during which both the UPC and national courts have jurisdiction over traditional EPs.

## Unitary Patent (UP): Essentials

- One patent, granted through the EPO, covering most of the EU. Patent applicant files a request for unitary effect once EP patent granted.
- One renewal process, at advantageous cost (approx. the same as the renewal fees for four EU countries) compared to paying multiple national fees to maintain EPs.
- One injunction granted through one procedure in UPC. Similarly, one procedure to invalidate UP.

## Unified Patent Court (UPC): Essentials

- Single court with jurisdiction over infringement, invalidity and other matters, for UPs and traditional EPs (subject to opt-out) for most of EU.
- Effective procedures for preliminary relief and evidence preservation.
- Experienced and trained patent judges supported by technical judges.

## UP Package – what should I do?

- Consider whether to opt out existing (if not already done) and newly granted EPs in your portfolio so that the UPC will not have jurisdiction over them.
- Consider requesting unitary effect for newly granted patents before the EPO.
- Review licences in and out for coverage, control of opt-out and rights of action.
- Consider preparing protective letters for products at risk of infringement in EU.
- Consider status of non-UPC EU countries, in particular Spain and Poland.
- Consider status of non-EU countries covered by the EPC, in particular UK and Turkey.

# UPC *v* national courts

UPC	National courts
One procedure and one decision for most of EU for each patent.	Multiple procedures and decisions for each patent.
Same powers e.g., for preliminary relief or preservation of evidence available regardless of location of infringement (within the UPC region).	Despite the IP Enforcement Directive, substantial differences remain between different countries' approaches to preliminary relief and tools for preserving evidence.
Clarity appearing about how procedure and powers will be interpreted, but still some uncertainty.	Relative certainty, in most countries, about how most procedures and powers will be interpreted.
There is the ability to bifurcate infringement and validity, but to date this has been sparingly used.	Uncertainty in other countries where patent litigation is rare – especially smaller countries.
Specially trained and appointed patent judges, including technical judges.	Judicial experience with patent or technical matters varies by country.
Jurisdiction over UPs and EPs. No jurisdiction to deal with national-filed patents and opted-out EPs.	Jurisdiction over national patents and, for the transitional period of 7 to 14 years, EPs. Exclusive jurisdiction over opted-out EPs. No jurisdiction over UPs.
No jurisdiction to handle certain patent-related issues, in particular issues of entitlement, nor other subject matter such as associated tort or trade secrets-based claims, or claims based on other IP rights such as design rights.	Each court has jurisdiction over all issues for national or EP-nationalised patents in that country together with associated claims permitted under the laws of that country or over which the court may have jurisdiction.
Various language options: all UPC divisions permit English to be used and encourage this.	Most national courts require proceedings to be conducted in the local language.
Costs of comparable cases in UPC should be comparable.	Costs of comparable cases in different national courts differ substantially. With multiple actions, costs can multiply quickly.

# UP v traditional EP v national patents – comparison

UP	Traditional EP	National patent
Single application process and single right granted by EPO covering most of EU (currently 18 and up to 24 countries).	Single application process leading to grant decision by EPO for all EPC countries (39 in Europe), allowing applicant to validate in countries of choice.	Separate application process and grant decision in each country's own patent office.
Claims must be the same for all countries.	Claims may be different for different EPC countries if required.	Claims may be and quite likely to be different in different countries.
Cheaper than validating an EP in many countries but commit to UP-scale of fees for life of patent.	Cost of validating in many countries (>4) more expensive than UP but can allow patents to lapse in countries that become unimportant over life of patent.	Cost of maintaining patent in many countries likely to exceed that of a UP.
Minimal translation requirements.	Translation requirements for validation vary by country.	Patents generally prosecuted and granted in national languages.
Patentee may declare willingness to license patent for 15% reduction in renewal fees.	Licensing of right and similar regimes differ by country.	Licensing of right and similar regimes differ by country.

## Comprehensive UPC Coverage Across Europe and Unmatched Support

With 21 offices strategically located throughout Europe's major economies and a presence in all key UPC division jurisdictions, we are uniquely positioned to support your intellectual property needs under the Unitary Patent and the UPC system.

Our experienced team specialises in providing practical and commercial guidance to help future-proof your IP portfolio in this evolving landscape. Each of our experts brings deep sector-specific knowledge and understands the intricacies of different technologies.

Contact our central team below to connect with a specialist who has in-depth expertise in your particular field and can provide tailored advice for your business needs.



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