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Reform of the European Patent System: The Unitary Patent package

欧洲专利制度： 统一专利方案







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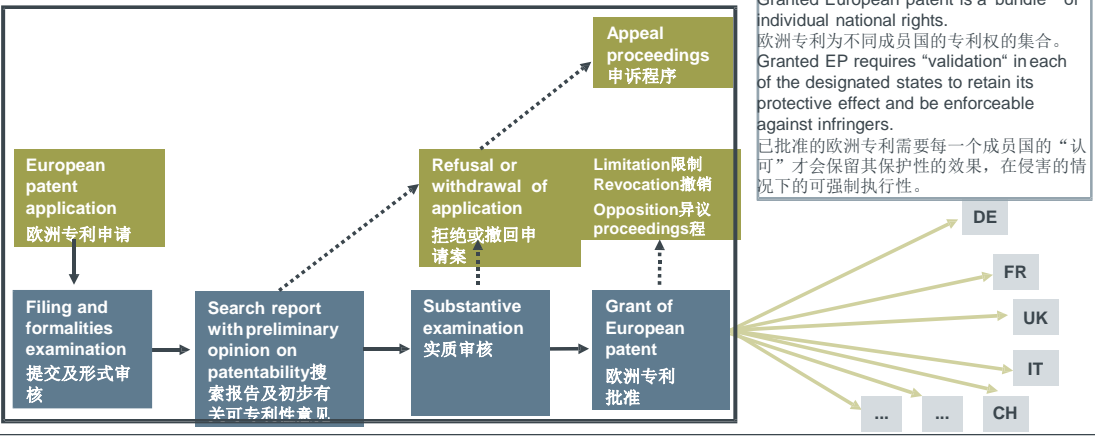
9 September 2019

Why a reform of the patent system in Europe (1)

欧洲专利制度为何需要改革？（一）

- EPC provided Europe with a very successful centralised patent granting procedure
- 欧洲专利法院已提供高度成功的集中化的专利批准程序

Centralised granting procedure for European patents
欧洲专利的集中化批准程序



Protection in up to 42 states
42国家的保护

Granted European patent is a "bundle" of individual national rights. 欧洲专利为不同成员国的专利权的集合。Granted EP requires "validation" in each of the designated states to retain its protective effect and be enforceable against infringers. 已批准的欧洲专利需要每一个成员国的“认可”才会保留其保护性的效果，在侵害的情况下可强制执行。

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Why a reform of the patent system in Europe (2)

欧洲专利制度为何需要改革？（二）

- Shortcomings of the current system in the post-grant phase are caused by the "national effect" of the European patent which is a bundle of patents subject to national legal regimes as regards:

目前体系中存在的批准后缺点源于不同成员国专利集合的欧洲专利的“成员国效果”，例如：

- translation requirements and national renewal fees 翻译相关要求及成员国续展费
 - infringement, rights conferred by the patent and limitations 侵权，专利所赋予的权利及限制
- This fragmentation of post-grant procedures results in 这些批准后程序的分散性导致
 - high costs and complexity for users 用户高成本及复杂性
 - diverging scope of protection according to national law 由于成员国不同法律规定的不一致的保护范围

Why a reform of the patent system in Europe (3)

欧洲专利制度为何需要改革？（三）

- Similarly, the fragmented litigation system and parallel litigation before different national courts also causes 同样，分裂的起诉制度及在不同成员国进行平行起诉导致
 - high costs and complexity 高价及高度复杂性
 - legal uncertainty resulting from conflicting decisions of national courts 源于成员国相互冲突决定的法律上不确定性
 - long delays in certain jurisdictions 在某一些管辖范围的延误
 - risks for patent holders and third parties 专利权人及第三方的风险
- Aim of the reform 改革的意義:
 - Is to offer business an alternative, simplified and cost-effective route to patent protection and dispute settlement throughout Europe 提供另一种全欧、简化、划算的专利保护及争端解决途径给企业

Objectives of the Unitary Patent package

统一专利方案的目标



Simplified and broader patent protection in Europe at lower cost

更简单、更广、更廉价在欧洲的专利保护



Provides better value with reduced complexity
更加划算、减少复杂度



Facilitates access to patent protection for SMEs, universities and public research centres
大幅简化中小企业、大学及公共研究中心的专利保护的申请



Makes Europe more attractive for innovation and investors
提高欧洲对创新及投资者的吸引力



Boosts Europe's competitiveness
加强欧洲的竞争力

What is the Unitary Patent? (1)

统一专利是什么？（一）

- The Unitary Patent is based on a European patent granted by the EPO under the EPC's rules and procedures 统一专利基于按照欧洲专利公约的规定及程序由欧洲专利局所批准的欧洲专利
- Upon request of the patent owner, unitary effect is given for the territory of up to 26 Member States participating in the Unitary Patent scheme 应专利权利人的要求，相关专利在26个参与统一专利制度的成员国的领土一样有效。

What is the Unitary Patent? (2)

什么是统一专利（二）

- The Unitary Patent will co-exist with national patents and with "classical" European patents 统一专利将与成员国的专利及“传统”欧洲专利并存
 - Patent holders will be able to choose between various combinations of a Unitary Patent, "classical" European patents, and national patents. 权利人可以选择统一专利、“传统”欧洲专利及成员国专利的不同组合。
 - Unitary Patent can be combined with classic European patent 统一专利可与传统欧洲专利融汇：
 - a Unitary Patent for the 26 participating Member States, combined with a 一个覆盖了26个参加制度的成员国，以外加
 - a classical European Patent taking effect in one or more EPC Contracting States which do not participate in the scheme 在一个或多个不参与制度的欧洲专利公约缔约国的传统欧洲专利 (e.g. Norway, Spain, Switzerland, etc.例如挪威、西班牙、瑞士等)

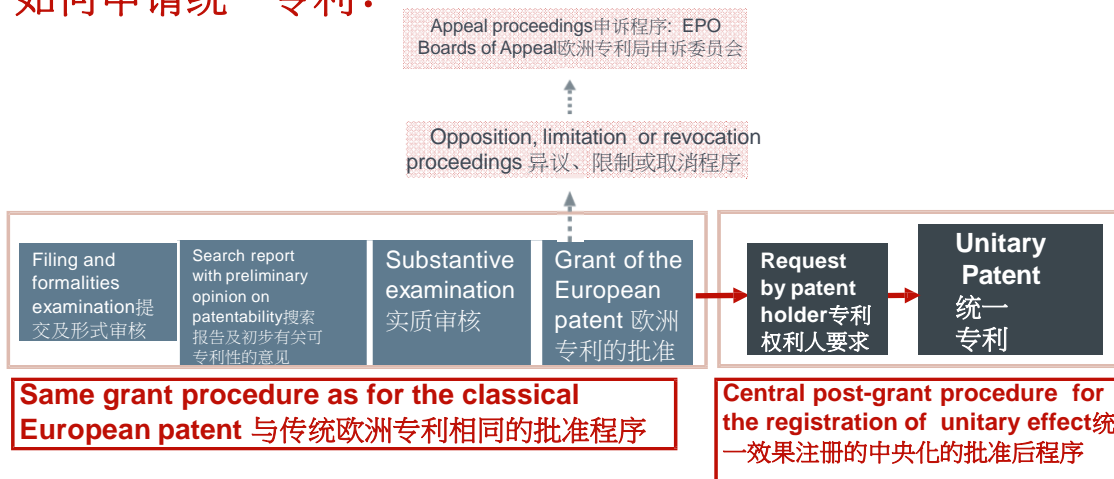
What is the Unitary Patent? (3)

统一专利是什么？（三）

- Unitary Patent combined with national patent 与成员国融汇的统一专利：
 - a Unitary Patent for the 26 participating Member States, combined with 覆盖26个成员国的统一专利，融汇于
 - one or more national patent(s) in one or more EPC Contracting States, which either do not participate in the scheme or which allow double protection 一个或多个不参加制度或不接受双重保护的欧洲专利公约的缔约国

How to obtain the Unitary Patent?

如何申请统一专利?



Reduced costs and new business opportunities

减少成本、提供新兴商机



- ▶ **More flexibility for trade and investment in the EU single market** 欧盟单一市场更高贸易及投资的灵活度
- ▶ **Enhanced opportunities for licensing and technology transfer** 提供更好的发牌及技术转让的机会

¹ Direct costs of the renewal fees + associated indirect costs arising from validating and maintaining a European patent in all countries. 续展费及相关在所有国家生效及维持欧洲专利的间接成本

Cost efficiency thanks to simplification 由于简化的成本效果

Classic European patent 传统欧洲专利
Fragmented post-grant administration procedure at national level 成员国层级的分散性批准后行政程序

National patent offices 成员国专利局
with their own 有个别的:

- Translation requirements 翻译要求
- National validation fees 成员国生效费
- Procedures, particularly deadlines 程序, 尤其截止日期
- Renewal fees 续展费
- Currencies 货币

Requiring your own local attorney 需要当地律师

Unitary Patent 统一专利
One-stop-shop at the EPO for all post-grant administration 欧洲专利局批准后行政的一条龙服务

One office 统一行政机构

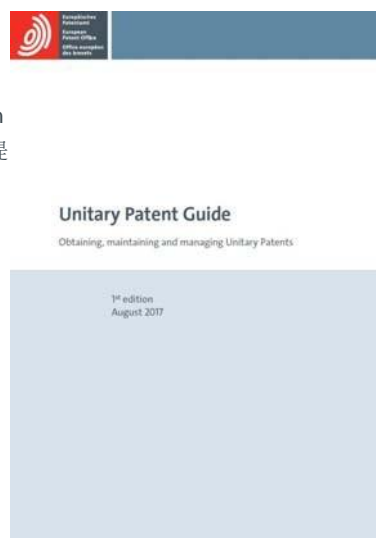
- No more translations 不需翻译¹
- No additional fee for obtaining a Unitary Patent 无额外统一专利申请费
- One procedure, particularly deadline 统一程序及截止日期
- One renewal fee 一个续展费
- One currency (€) 一个货币 (欧元)

¹ after an initial transition period when translations will be required, but for information purposes only with no legal effect. 过渡期需要翻译, 但仅提供信息而无法律权限。

State of implementation at the EPO

欧洲专利局实施现状

- **Unitary Patent Guide 统一专利指南**
 - Provides companies, inventors and their representatives with an outline of the procedure involved in obtaining a Unitary Patent. 提供申请统一专利程序的大纲给企业、发明家及其代表。
 - Deals also with the accessory procedures relating to Unitary Patents (eg compensation scheme for translation costs, registering a statement on licences of right) and gives overview of the rules on how to pay renewal fees for Unitary Patents). 也提到统一专利相关程序, 如同翻译费用的补偿计划、注册当然许可, 并且描述统一专利续展费付款规定。
- Available at 提供于: www.epo.org/law-practice/unitary/unitary-patent/unitary-patent-guide.html



The Unified Patent Court (UPC) in a nutshell 一目了然欧洲专利法院（UPC）

- The UPC is based on the Agreement on a Unified Patent Court (UPC Agreement) and is a new supranational court for 25 EU member states. UPC基于欧洲专利法院协议，为25个欧盟成员国的、超国家的法院。
- It will be a court common to the contracting EU member states having signed up to the UPC Agreement and will thus be part of their judicial system.将成为欧盟缔约国的共同法院，如此成为成员国的法律体系的一部分。
- It will have exclusive jurisdiction over Unitary Patents, as well as classical European patents (with the exception of a seven year transitional period) 会有统一专利及（七年的过渡期后）传统欧洲专利的专属管辖权。
- The UPC will employ specialised patent judges and will apply its own autonomous substantive and procedural law. UPC将会雇佣专业专利律师，适用自己独立的实质及程序法。
- Decisions will be issued by internationally composed panels comprising both legally and technical qualified judges.作出决定的评审团会是由不同国籍的法律及技术律师组成的。
- It has been designed to work in a highly efficient way with tight deadlines and judgments at first instance to be delivered one year after the start of the action. UPC的设计迫使该法院工作中维持高效率，在程序启动了之后第一年内作出一审判决。



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The Unified Patent Court (UPC) – Court structure

统一专利法院（UPC）——法院结构



[CJEU] (Referrals from both instances to decide on questions of interpretation and application of EU law 由一、二审提交的欧盟法律解释及适用相关的问题)
欧洲联盟法院



* Local divisions planned in AT, BE, DK, FI, FR, IT, NL, UK, + 4 in DE (Dusseldorf, Mannheim, Munich, Hamburg) 地方分庭拟设于奥地利、比利时、丹麦、芬兰、法国、意大利、荷兰、英国及4个在德国（杜塞尔多夫、曼海姆、慕尼黑、汉堡）

So far one Regional division in Stockholm created by Sweden and the Baltic states 目前只设立一个由瑞典及波罗的海诸国建立的地区分庭

† Central division will be seated in Paris with sections in London (patent classifications A and C) and Munich (patent classifications F) 中央分庭将设于巴黎，有一些部门设于伦敦（A、C类专利）及慕尼黑（F类专利）

When will the new system start? 新制度何时会被启动?

- The Unitary Patent Regulations which provide the legal basis for the Unitary Patent are in force for 26 EU Member States. They apply only from the date of the entry into force of the UPC Agreement 作为统一专利的法律基础的统一专利条例在26个欧盟成员国已生效，但在统一专利法院协议生效之后才可以适用。
 - UPC Agreement enters into force on the first day of the fourth month after the deposit of the 13th instrument of ratification, incl. the three most patent intensive Member States (i.e. FR, DE and UK) 统一专利法院协议于第13个批准书被提交了后的第四个月的第一天生效，包含专利总数最大的成员国（即法、德、英国）
 - So far, 16 EU Member States have deposited their instruments of ratification, incl. FR, IT, and the UK 目前为止，16个欧盟成员国已尽提交了批准书，包括法国、意大利、英国
 - DE: parliamentary approval for the ratification has been obtained on 31 March 2017. Delay in ratification procedure is caused by a complaint pending at the German Federal Constitutional Court 德国议会于2017年3月31日已经批准了该协议，德国联邦宪法法庭待决定的投诉案件造成了批准程序的耽误。
 - Time of entry into force of the system is currently foreseen for 2020 目前，新制度生效时间估计为2020年

State of play of implementation of UPC Agreement

UPC协议落实程度



- The works concerning the establishment of UPC Court of First Instance divisions in the different states are well advanced 不同国家UPC一审法院分庭设立的工作已有巨大进展。



Central and local divisions in Munich, Mannheim and Hamburg 位于慕尼黑、曼海姆、汉堡的中央及地方分庭



Central and local divisions, London 中央及地方分庭，伦敦



Local division, Milan 地方分庭，米兰



Nordic-Baltic regional division, Stockholm 北欧波罗的海地方分庭，斯德哥尔摩



谢谢大家!

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