



CHINA

UNITARY PATENT PACKAGE

Making Europe more attractive for innovation and
investors

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CONTENTS

THE UNITARY PATENT SYSTEM	3
THE EPO AND THE CURRENTLY FRAGMENTED PATENT SYSTEM AFTER GRANT IN EUROPE	3
THE UNITARY PATENT: SIMPLER AND BROADER PATENT PROTECTION AT A LOWER COST	4
THE UNIFIED PATENT COURT (UPC): CENTRALISED ENFORCEMENT AND INCREASED LEGAL CERTAINTY	6
A BOOST TO TRADE AND INVESTMENT	6
MULTIPLE BENEFITS FOR COMPANIES, IN PARTICULAR SMES, START-UPS AND UNIVERSITIES	7
WHEN WILL THE NEW SYSTEM START?	8

The Unitary Patent System

The Unitary Patent will boost Europe's competitiveness by supplementing and strengthening the existing centralised European patent granting system. Together with the Unified Patent Court, it will provide users with a cost-effective option for patent protection and dispute settlement across Europe and so stimulate research, development, and investment in frontier technology. This is a vital step towards the realisation of an EU single market for technology.

The EPO and the currently fragmented patent system after grant in Europe

As the patent office for Europe, the European Patent Office (EPO) supports innovation, competitiveness and economic growth across Europe. The EPO is not an EU institution but a separate intergovernmental institution set up on the basis of the [European Patent Convention](#) (EPC).

The EPO centrally examines and grants **European patents** for the 38 EPC Contracting States, which include not only all the EU Member States but a number of non-member states too. This saves inventors the costs of parallel patent applications at several national patent offices and at the same time ensures a high quality of granted patents.

However, the granted European patent is not a unitary right but instead a bundle of national patents, meaning it has to be validated and maintained individually in each country in which it is to take effect. This process can be cumbersome and expensive as the patent documents may have to be translated into other languages, national validation and renewal fees have to be paid individually and the costs of hiring local attorneys and service providers in the various countries add up.

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The Unitary Patent: simpler and broader patent protection at a lower cost

The **Unitary Patent** will eliminate these shortcomings by enabling inventors to obtain uniform patent protection for the entire territory of the EU member states participating in the system more simply and cheaply.

The centralised pre-grant procedure at the EPO will be supplemented by a centralised post-grant procedure: instead of validating their European patent in several states individually, proprietors will be able to obtain a Unitary Patent by filing a single request with the EPO, which will act as a one-stop shop also responsible for centrally administering the Unitary Patent and the related fee payments. This will significantly cut down on the red tape and cost involved. Today's fragmented post grant system means paying different renewal fees of different amounts and in different currencies to different national patent offices, which also have different legal requirements, especially in terms of time limits. Unitary Patent proprietors will instead pay the EPO a single renewal fee in a single currency and under a single regime of time limits and accepted payment methods. This will not only make the process much simpler but also open up potential for massive costs savings, as proprietors will now be able to take care of all the post-grant administration by themselves.

What is more, the request for a Unitary Patent will be entirely free of charge, meaning no filing, examination or registration fees will be payable to the EPO for this. The renewal fee for a Unitary Patent has also been set at a very attractive and business-friendly level: the total cost of maintaining it for the first ten years, which is the average lifetime of a patent granted by the EPO, will be less than EUR 5 000.

Renewal fees for the Unitary Patent

-	-	11 th year	EUR 1 460
2 nd year	EUR 35	12 th year	EUR 1 775
3 rd year	EUR 105	13 th year	EUR 2 105
4 th year	EUR 145	14 th year	EUR 2 455
5 th year	EUR 315	15 th year	EUR 2 830
6 th year	EUR 475	16 th year	EUR 3 240
7 th year	EUR 630	17 th year	EUR 3 640
8 th year	EUR 815	18 th year	EUR 4 055
9 th year	EUR 990	19 th year	EUR 4 455
10 th year	EUR 1 175	20 th year	EUR 4 855

— Additional fee for belated payment of a renewal fee = 50 % of the belated renewal fee (Rule 2[1], item 2, RFeesUPP)

— Renewal fee reduction of 15 % in case of a license of right (Rule 12 UPR, Rule 3 RFeesUPP)

For more information about the cost of a Unitary Patent as compared with equivalent protection in just four leading European countries under the “classic” European patent system, see the [EPO website](#).



The Unitary Patent will cover at least the following 17 states when the new system starts: Austria, Belgium, Bulgaria, Denmark, Estonia, Finland, France, Germany, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Slovenia, Sweden.

While the Unitary Patent will eventually cover all the 25 EU Member States participating in the enhanced co-operation on Unitary Patent protection (all EU Member States except Croatia and Spain), protection will already be available for at least 17 of them when the new system starts. The other participating states will follow once the system is up and running.

The Unified Patent Court (UPC): centralised enforcement and increased legal certainty

Centralised enforcement through the new Unified Patent Court.

Judicial enforcement will also become much simpler. So far, the national courts have had exclusive jurisdiction over patent litigation. For example, revocation actions against European patents must be brought before national courts but each court's decision has effect only for the territory of its state. This can sometimes mean having to conduct parallel litigation in different member states, and the resulting fragmentation is not only costly and highly complex for all parties but also entails a risk of conflicting national decisions.

The new Unified Patent Court (UPC) will introduce a uniform, specialised and efficient framework for patent litigation at a European level. A supranational court set up under an international treaty – the Agreement on a Unified Patent Court (UPCA) – the UPC will have jurisdiction over disputes, including infringement and revocation actions, relating to both Unitary Patents and European patents (although some exceptions will apply for the latter during a transitional period of seven years). The specialist UPC will be an effective new forum for enforcing and challenging patents that benefits inventors, third parties and the general public alike. Patent proprietors will be able to enforce their patents more efficiently, while third parties and the general public will be able to seek revocation of European and Unitary Patents in one centralised procedure. This will put an end to parallel disputes over the same patent in different countries and so make litigation considerably cheaper. In addition, the UPC will enhance legal certainty by eliminating the risk of conflicting national decisions and by harmonising the case law.

A boost to trade and investment

According to a study, an alignment of EU countries on the best existing standard of patent protection has the potential to generate a 2% increase in annual trade inflows and a 15% increase in annual FDI inflows.

Industries with above-average use of intellectual property, and especially patents, are already known to make a greater contribution to GDP and external trade. However, their contribution to trade and foreign direct investment (FDI) flows between EU countries is still limited, suggesting untapped potential to achieve an EU single market for technology. The fragmentation of the current European patent system undoubtedly acts to limit the circulation of patented inventions among EU countries. Most European patents are validated in only a few EU Member States to save on the cost of validating and maintaining them.

The harmonisation of patent protection brought by the Unitary Patent is expected to have a positive impact on trade and FDI flows in IP- and technology-intensive industries. According to a study conducted by the EPO in collaboration with the University of Colorado Boulder and the London School of Economics, an alignment of EU countries on the best existing standard of patent protection has the potential to generate a 2% increase (EUR 14.6 billion) in annual trade inflows and a 15% increase (EUR 1.8 billion) in annual FDI inflows in these industries in the EU.

In addition, the broad territorial protection the Unitary Patent offers will facilitate cross-border technology transfers and co-operation across European countries. A central register containing legal status information on transfers of Unitary Patents and licences – including licences of rights – will help to establish an efficient market for technology transfer in the participating Member States. The market for technology will also be more inclusive: it will facilitate technology transfers and research collaborations with parties located in countries where European patents have so far seldom been validated. Finally, technology transfers will also benefit from the reduction in renewal fees available to patent proprietors who grant licences.

Multiple benefits for companies, in particular SMEs, start-ups and universities

SMEs and start-ups will be in a better position to decide whether and when to scale up and enter new markets.

The new Unitary Patent system will have many benefits for applicants, in particular those with limited resources, such as small and medium-sized enterprises (SMEs), start-ups and universities, on which the future of the European economy largely depends.

Intellectual property rights play a key role in helping these small entities to bring new technologies to market. They enable them to reap the benefits of their creativity, inventiveness and investment and so create an incentive for further investment and innovation.

Many small entities that use patents today tend to rely on national rights. As a result, they often end up with no effective protection of their inventions in Europe at all or with protection only in a very small number of countries. The Unitary Patent system will dismantle the bureaucratic and financial hurdles these small entities face in entering the EU market with their invention, thus enabling them to better compete with their rivals. SMEs and start-ups that have registered a Unitary Patent will be in a better position to decide whether and when to scale up and enter new markets, depending on the success of the product or on new business opportunities in other EU markets. The Unitary Patent will also provide research institutions with broad protection for promising inventions at an early stage, facilitating cross border partnerships and technology transfers as the technology matures.

Today's fragmented system – with all its complexities and the possible need for parallel litigation in multiple jurisdictions – also makes it practically impossible for small entities to cope effectively with patent litigation, be it as claimant or defendant. The reduced cost of litigation before the UPC will ensure that access to justice and the enforcement of patent protection will no longer depend on financial power.

In addition, a compensation and fee-reduction scheme will be in place for those with limited resources. Natural persons, SMEs, non-profit organisations, universities and public research organisations filing a successful application in an official language of the EU other than English, French or German will be entitled to lump-sum compensation of EUR 500 for their translation costs.

More importantly, the fees at the UPC will be fixed so as to strike the right balance between ensuring parties make an adequate contribution towards its costs and the principle of fair access to justice. For instance, the rules on court fees include measures ensuring that SMEs are charged a reduced rate of only 60%. In addition, where an SME presents reasonable evidence that the amount of payable court fees threatens its economic existence, the UPC may reimburse some or even all of those fees. To limit the litigation risk even further, the UPC may also set a cap on recoverable costs for the winning party if those costs might threaten the economic existence of the losing party.

When will the new system start?

The new Unitary Patent system is expected to come into effect **end of 2022**, when the Unified Patent Court will also begin to operate.