



CHINA

# UNITARY PATENT GUIDE

Obtaining, maintaining and managing Unitary  
Patents

European Patent Office

© EPO April 2022, 2<sup>nd</sup> edition

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## Foreword

This "Unitary Patent Guide" aims to provide companies, inventors and their representatives with an outline of the procedure involved in obtaining a Unitary Patent from the European Patent Office (EPO) once it has granted a European patent on the basis of the provisions laid down in the European Patent Convention (EPC). It gives a practical overview of the new system for users and provides useful information on how to obtain a Unitary Patent, without establishing guidelines for the execution of tasks related to the Unitary Patent by the EPO.

The guide also deals with the accessory procedures relating to Unitary Patents, such as those to be followed under the compensation scheme for translation costs or when registering a statement on licences of right, and gives an overview of the rules on how to pay renewal fees for Unitary Patents.

As to the procedure for getting a classic European patent, you can consult our two other, regularly updated guides "How to get a European patent – Guide for applicants" and "Euro-PCT Guide: PCT procedure at the EPO".

Please also note that although the relevant legislation uses the terms "European patent with unitary effect" and "unitary patent protection", this guide largely uses "Unitary Patent" as a synonym for these terms for the sake of simplicity.

Any comments and questions on the present guide may be addressed to the EPO's Directorate European and International Legal Affairs, PCT ([international\\_legal\\_affairs@epo.org](mailto:international_legal_affairs@epo.org)).

## General

### 1 Introduction

- 1 This guide outlines the provisions relevant to obtaining, maintaining and managing Unitary Patents and, in particular, offers practical advice to smooth the way to them. It cannot, however, go into the details or specific issues of all the procedures relating to Unitary Patents, and it does not constitute an official commentary on the applicable legislation.
- 2 In this guide, you will find references to various provisions of the two EU regulations relating to Unitary Patents, the European Patent Convention (hereinafter "EPC"), the secondary legislation (Rules relating to Unitary Patent Protection and Rules relating to Fees for Unitary Patent Protection), the EPO's Official Journal (hereinafter "OJ") and the Agreement on a Unified Patent Court (hereinafter "UPCA"). You are strongly advised to consult the legislation and, if you lack the requisite experience, to consult a professional representative before the EPO.
- 3 The authentic texts of the two EU regulations and the relevant secondary legislation

adopted by the Select Committee of the Administrative Council of the European Patent Organisation have been published in OJ EPO 2013, 111 and 132, and OJ EPO 2016, A41, and A42<sup>1</sup>.

- 4 The authentic text of the EPC is to be found in a separate EPO publication, the European Patent Convention. We also refer you to the decisions and notices published by the EPO in its OJ and on its website ([epo.org](http://epo.org)). You should ensure that you use the latest edition of these or any of the other publications mentioned in this guide.
- 5 The most important sources of law governing Unitary Patents, along with a range of other useful information, are accessible online on the EPO's website. Information on the Unified Patent Court is available on its [website](http://www.upc.europa.eu).

The EPO will also publish detailed information on the subsidiary legislation which may apply to Unitary Patents in the EU Member States participating in the Unitary Patent scheme ("participating Member States"), in particular on national procedures allowing proprietors to opt for national validation if their request for a Unitary Patent is rejected by the EPO or the Unified Patent Court.

## 2 Legal framework

The Unitary Patent package consists of two EU regulations that provide the legal framework for the Unitary Patent and an international agreement, the UPCA, which sets up the Unified Patent Court.

### 2.1 The two EU regulations adopted under enhanced cooperation

- 6 In December 2012, the EU Council and the European Parliament adopted two regulations laying the foundation for Unitary Patent protection in the EU:
  - Regulation (EU) No 1257/2012 of the European Parliament and of the Council of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection (OJ EPO 2013, 111 and Official Journal of the European Union, OJ L 361, 31.12.2012, 1-8), and
  - Council Regulation (EU) No 1260/2012 implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements (OJ EPO 2013, 132 and Official Journal of the European Union, OJ L 361, 31.12.2012, 89-92).

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<sup>1</sup> OJ EPO 2013, 111 and 132 OJ EPO 2016, A41, OJ EPO 2022, A41, A42

## 2.2 The “participating Member States”

- 7 These two regulations implement enhanced cooperation in the area of the creation of Unitary Patent protection (see Council Decision 2011/1167/EU). Enhanced cooperation is a procedure allowing nine or more EU Member States, referred to as “participating Member States”, to work together to achieve greater integration in a given area within the EU structures but without the non-participating Member States being involved. It is regulated by Article 20 of the Treaty on European Union and Articles 326 to 334 of the Treaty on the Functioning of the European Union (“TFEU”).
- 8 All EU Member States except Spain and Croatia are participating in the enhanced cooperation in the area of the creation of Unitary Patent protection. It is open to Spain and Croatia to join in the future following the procedure laid down in Article 331(1) TFEU. Please note that the United Kingdom withdrew from the European Union on 31 January 2020 and is therefore no longer a participating Member State. A list of all the EU Member States is available on the [website of the EU](#).
- 9 The two EU regulations are in force since 20 January 2013, but will only apply from the date of the entry into force of the UPCA.

## 2.3 The Agreement on a Unified Patent Court

- 10 The UPCA is the third component of the Unitary Patent package<sup>2</sup>. In February 2013, 25 EU Member States signed the UPCA (published in OJ EPO 2013, 287), which was subject to ratification in accordance with their respective constitutional requirements. The UPCA is open to accession by any other EU Member State. It is not open to states outside the European Union. So far, all EU Member States except Croatia, Poland and Spain have signed the Agreement. The United Kingdom withdrew its ratification of the UPCA. Details on the ratification of the UPCA can be found on the [website of the European Council](#).
- 11 The Unified Patent Court (“UPC”) is a court common to all the contracting states party to the UPCA and thus part of their judicial system. It will have exclusive competence in respect of Unitary Patents as well as in respect of classic European patents validated in one or more of those states. The UPC provides proprietors with a means of avoiding the high costs, risk and complexity associated with multiple litigation in different jurisdictions. Its specialised and highly qualified judges (including technically qualified judges) will establish harmonised case law and increase legal certainty.
- 12 As regards classic European patents, however, the UPC’s exclusive competence is

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<sup>2</sup> OJ EPO 2013, 287



subject to exceptions for a transitional period of seven years, which may be prolonged by up to a further seven years<sup>3</sup>. During this period, actions for infringement or revocation may still be brought before national courts (Article 83(1) UPCA). Moreover, proprietors of – or applicants for – a European patent granted or applied for before the end of this transitional period can opt out of the UPC's competence for their patent or application by notifying **the Registry of the UPC** (not the EPO) unless an action has already been brought before the UPC (Article 83(3) UPCA). They can also withdraw their opt-out at any time unless an action has already been brought before a national court (Article 83(4) UPCA). Moreover, it will be possible to opt out even before the UPCA enters into force ("**sunrise period**"). Please note, however, that **the possibility of opting out or bringing an action before a national court during the transitional period is not available for Unitary Patents**.

- 13 The UPC's rulings are truly pan-European: they have effect in the territories of all the contracting Member States that have ratified the UPCA. The UPC has no competence with regard to national patents. More information on the UPCA and the possibility of opting out is available on the [UPC website](#).
- 14 The UPC also has jurisdiction over decisions taken by the EPO in carrying out the tasks referred to in Article 9 of [Regulation \(EU\) No 1257/2012](#). The EPO is bound by decisions handed down by the UPC in actions brought under [Article 32\(1\)\(i\) UPCA](#) (Rule 1(1) UPR)<sup>4</sup>.

## 2.4 Secondary legislation

The following two pieces of legislation adopted by the Select Committee of the Administrative Council of the European Patent Organisation further implement the Unitary Patent protection system and are of central importance for its users.

- 15 The **Rules relating to Unitary Patent Protection** ("UPR") lay down the details regarding all the procedures to be conducted by the EPO under the two above-mentioned EU regulations and provide for the establishment of a Unitary Patent Division within the EPO (see [OJ EPO 2022, A41](#)).
- 16 Most of the UPR provisions relate to requesting unitary effect, i.e. the procedure for obtaining a Unitary Patent from the EPO. The UPR also include important provisions on the compensation scheme for translation costs, licences of right, renewal fees and lapse. In addition, they establish a centralised Register for unitary patent protection and set out the entries to be made in it. Finally, they contain (or refer to) some common procedural provisions which are largely taken from the EPC and its Implementing Regulations and which apply *mutatis mutandis*.

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<sup>3</sup> [Article 83 UPCA](#)

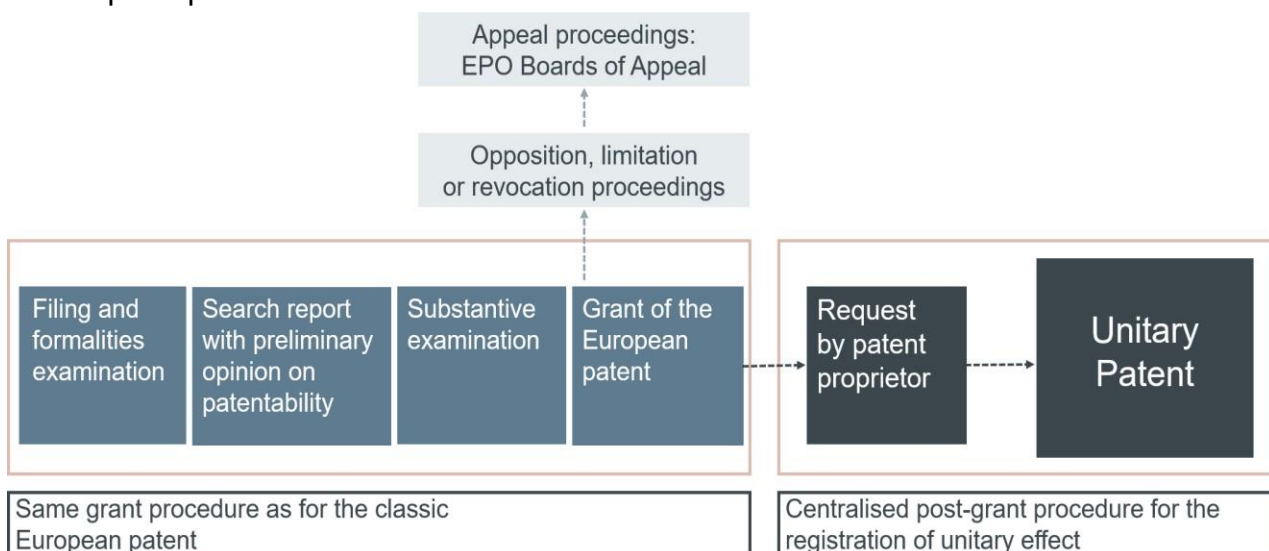
<sup>4</sup> [Article 32\(1\)\(i\) UPCA](#) [Rule 1\(1\) UPR](#)

- 17 The **Rules relating to Fees for Unitary Patent Protection** ("RFeesUPP") set out the amounts of all the fees and expenses payable to the EPO by Unitary Patent proprietors and how they can be paid (see OJ EPO 2022, A42). They also provide for the amount of compensation for translation costs which eligible proprietors can receive from the EPO. You should note that the most important provisions of the Rules relating to Fees under the EPC will equally apply to the Unitary Patent, in particular those governing how to pay fees to the EPO.

### 3 Unitary Patents: the concept

#### 3.1 The Unitary Patent architecture

- 18 A Unitary Patent is a "European patent with unitary effect", which means a European patent granted by the EPO under the rules and procedures of the EPC to which, after grant, unitary effect is attributed for the territory of the participating Member States at its proprietor's request.
- 19 The Unitary Patent system builds on the EPC. This means that the pre-grant phase is exactly the same as for European patents. Applicants file a European patent application seeking the grant of a European patent for some or all of the EPC contracting states with the EPO. It examines their application in accordance with the EPC and, if all formal and substantive requirements for patentability are met, grants a European patent.
- 20 The EPO has been entrusted by the participating Member States with certain administrative tasks relating to Unitary Patents, in particular the administration of requests for a Unitary Patent (requests for unitary effect). Accordingly, once a European patent has been granted, a separate, post-grant procedure can be initiated at the EPO with a view to obtaining a Unitary Patent (see point 44 onwards). This procedure is less complex and significantly cheaper than the existing system of national validation and so offers an attractive new alternative for proprietors of European patents.



### 3.2 Uniform protection and equal effect

- 21 If all the requirements are met, the EPO will register a Unitary Patent ("unitary effect") for the European patent concerned<sup>5</sup>. A Unitary Patent has unitary character, meaning it provides uniform protection and has equal effect in all the participating Member States<sup>6</sup>. It may only be licensed in respect of the whole or part of the territories of the participating Member States.

### 3.3 When and for which European patents can a Unitary Patent be requested?

- 22 A Unitary Patent may be requested for any European patent granted on or after the date of application of Regulations (EU) No 1257/2012 and (EU) No 1260/2012. These regulations will apply from the date of entry into force of the UPCA. The EPO will announce this date on its website<sup>7</sup>.

### 3.4 The territorial scope of a Unitary Patent

- 23 A Unitary Patent covers the territories of those participating Member States in which the UPCA has taken effect at the date of registration of unitary effect by the EPO<sup>8</sup>.
- 24 This means that, although 25 EU Member States are currently participating in the Unitary Patent scheme, Unitary Patents registered at the outset will not cover all 25 of their territories because some of them have not yet ratified the UPCA. You will find a list of the EU Member States in which the UPCA has taken effect on the EPO's website. You can also check the UPCA's status of ratification on the website of the Council of the European Union.
- 25 It is also likely that the outstanding ratifications of the UPCA will not take place all at once but rather successively. Consequently, there will be different generations of Unitary Patents with different territorial coverage. The territorial coverage of a given generation of Unitary Patents will stay the same for their entire lifetime, irrespective of any further EU Member States participating in enhanced cooperation and of any subsequent ratifications of the UPCA after the date of registration of unitary effect. In other words, a given Unitary Patent's territorial coverage will not be extended to other

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<sup>5</sup> Article 4(2) Regulation (EU) No 1257/2012

<sup>6</sup> Article 5 Regulation (EU) No 1257/2012

<sup>7</sup> Article 18(6) Regulation (EU) No 1257/2012

<sup>8</sup> Article 2(a) and 18(2) Regulation (EU) No 1257/2012

Member States which ratify the UPCA after the EPO has registered its unitary effect.

- 26 The participating Member States covered by a given Unitary Patent will be listed in the Register for unitary patent protection (Rule 16(1)(g) UPR) and in the EPO's communication informing the requester of the date of registration of unitary effect (Rule 7(1) UPR)<sup>9</sup>. The territorial scope of each Unitary Patent will thus be clearly visible and easy to establish.

#### 4 The Unitary Patent: an additional option enhancing the European patent system

- 27 The aim of the reform of the European patent system through the creation of Unitary Patent protection is to offer businesses a simpler alternative to the existing system and introduce a more cost-effective route to patent protection and dispute resolution.
- 28 A Unitary Patent offers an additional option for patent protection in Europe, available alongside the two existing options, namely the national route or a classic European patent.
- 29 Those preferring to seek protection in individual EPC contracting states can still file patent applications with those states' national patent offices, and it also remains possible to validate a European patent in one or more EPC contracting states.
- 30 Moreover, a Unitary Patent can be combined with a classic European patent: it is possible to seek a Unitary Patent and, in addition, validate the European patent in those EPC contracting states whose territories are not covered by the Unitary Patent scheme because they are not EU Member States or they are EU Member States not participating in enhanced cooperation on Unitary Patent protection or they are EU Member States that are participating in enhanced cooperation but have not yet ratified or acceded to the UPCA.

#### 5 The benefits of the Unitary Patent

- 31 The primary aim of the Unitary Patent is to supplement the centralised pre-grant procedure with a centralised post-grant procedure in which the **EPO acts as a one-stop shop for the administration of Unitary Patents**, i.e. for obtaining, maintaining and managing them. A Unitary Patent offers broad and uniform territorial protection together with a business-friendly level of renewal fees. It therefore provides **better value for money and reduces both complexity and the associated costs**.
- 32 Moreover, under the current system, companies may have to litigate in parallel in all countries where their European patent is validated. Such multi-forum litigation is expensive and complex and can give rise to legal uncertainty. As a court common to

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<sup>9</sup> Article 18(2) Regulation (EU) No 1257/2012 Rule 16(1)(g) UPR

the participating Member States, the Unified Patent Court centralises the litigation for both Unitary Patents and classic European patents, facilitates the development of consistent jurisprudence and increases legal certainty. This is a major step towards **reducing fragmentation**.

- 33 A Unitary Patent enables inventors to obtain **uniform and territorially broad** protection in the participating Member States. Uniform protection means that the scope of the right conferred by a Unitary Patent and its limitations, as well as the available remedies, are the same for all the participating Member States.
- 34 Instead of validating their European patent in several states, which can be a costly, time-consuming and complex administrative process, patent proprietors can obtain a Unitary Patent by filing a single request with the EPO. As explained in more detail below, the procedure for obtaining a Unitary Patent is **very simple and straightforward and entirely free of charge**.
- 35 The Unitary Patent makes the European patent system simpler **and significantly lowers the costs** of obtaining patent protection in the participating Member States. It eliminates the **need to comply with validation requirements in the participating Member States and the high costs** associated with this. These costs can be considerable, especially where a European patent is validated in several participating Member States, and typically include translation costs incurred for validations and the publication fees payable to the various national patent offices, as well as the fees charged by local attorneys or other service providers. By contrast, there is no need to retain different local attorneys, agents or specialised service providers for a Unitary Patent.
- 36 Moreover, under the current fragmented system, several renewal fees, which may vary in amount and currency, have to be paid to different national patent offices subject to different legal requirements. Unitary Patent proprietors pay **one single** renewal fee to the EPO, in one currency (i.e. in euros) and under a single legal regime as regards deadlines and admissible means of payment. This greatly simplifies matters for users.
- 37 The **renewal fee level is very attractive and business friendly** as it is set at a level equivalent to the combined renewal fees of the top four countries among the participating Member States, i.e. those where classic European patents were most often validated at the time the fee level was adopted. The total fees for the first ten years – which is the average lifetime of a patent – amount to less than EUR 5 000. Moreover, patent proprietors who file a statement on a licence of right with the EPO can obtain a 15% reduction on the renewal fees.
- 38 A comparison of the costs of a Unitary Patent with those of a classic European patent should take into account not only the level of the renewal fees but also the costs associated with the validation and maintenance of a classic European patent. Based on such a comparison, a Unitary Patent will be significantly less expensive than a European patent validated and maintained in four countries. Consequently, the more countries a classic European patent would have been validated in, the more cost-effective a Unitary Patent will be.

## Renewal fees for the Unitary Patent

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

— Renewal fee reduction of 15 % in case of a license of right (Rule 12 UPR, Rule 3 RFeesUPP)<sup>11</sup>

- 39** A Unitary Patent offers small and medium-sized enterprises (SMEs) and other small entities, which typically have only limited resources available, a simpler and more cost-effective route to broad and uniform protection for their inventions. A particular advantage of a Unitary Patent for these entities is the **compensation scheme**, which reduces translation costs for SMEs, natural persons, non-profit organisations, universities and public research organisations by providing for a lump-sum payment of EUR 500 (see point 75 onwards).
- 40** Finally, as regards the **management of a Unitary Patent**, transfers, licences and other rights no longer have to be registered country by country in the national patent registers. Instead, a single registration entered in the Register for unitary patent protection centrally administered by the EPO is sufficient. The same applies to statements regarding licences of right. This considerably reduces administrative complexity, as the EPO operates under a single legal regime, also with regard to the kind of documents and evidence required. It also reduces the associated costs such as administrative fees or costs incurred in hiring multiple local agents.

## 6 The EPO's Unitary Patent Protection Division

### 6.1 Introduction

<sup>10</sup> Article 2(1), item 2, RFeesUPP.

<sup>11</sup> Articles 8 and 11(3) Regulation (EU) 1257/2012, Rule 12(1) UPR, Article 3 RFeesUPP.

- 41 A "**Unitary Patent Protection Division**" has been set up at the EPO as a special department to deal with Unitary Patents<sup>12</sup>. It is responsible for all the EPO's additional tasks relating to Unitary Patents referred to in Article 9(1) Regulation (EU) No 1257/2012 and entrusted to it by the participating Member States under Rule 1(1) UPR.
- 42 The EPO departments entrusted with the procedures laid down in the EPC, namely the search, examining and opposition divisions and the Boards of Appeal, will have no responsibilities in relation to Unitary Patents<sup>13</sup>. In particular, actions against decisions of the Unitary Patent Protection Division must be brought before the Unified Patent Court (see Articles 32(1)(i) and 47(7) UPCA) and not before the EPO Boards of Appeal.

## 6.2 Decisions of the Unitary Patent Protection Division

- 43 Decisions of the Unitary Patent Protection Division are taken by one legally qualified member<sup>14</sup>. The President of the EPO may, however, entrust employees who are not legally qualified members with carrying out duties of the Unitary Patent Protection Division that involve no legal difficulties.

## How to obtain a Unitary Patent

### 1 The requirements

- 44 In order to be eligible for registration as a Unitary Patent, a European patent must have been granted with the **same set of claims in respect of all the 25 participating Member States** (Article 3(1) in conjunction with Recital 7 Regulation (EU) No 1257/2012; Rule 5(2) UPR)<sup>15</sup>. This condition must be met irrespective of the number of participating Member States in which the UPCA will have taken effect at the date of registration of unitary effect by the EPO (see point 23). It is therefore important not to withdraw the designation of any of the 25 participating Member States because this would rule out obtaining a Unitary Patent. Moreover, a European patent should not contain a different set of claims for any of the participating Member States (see Rule 138 EPC), as this too would also prevent the EPO from registering a Unitary Patent

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<sup>12</sup> Article 143(2) EPC Rule 4 UPR

<sup>13</sup> Article 32(1)(i) UPCA Article 47(7) UPCA

<sup>14</sup> Rule 4(3) UPR Rule 4(4) UPR

<sup>15</sup> Article 3(1) Regulation (EU) No 1257/2012 Rule 5(2) UPR Rule 138 EPC



(Rule 5(2) UPR).

## 2 The request for unitary effect

### 2.1 Form and time limit

- 45 As regards the procedure for obtaining a Unitary Patent, the proprietor of a European patent must file a formal "request for unitary effect" in writing with the EPO (Rule 5(1) UPR)<sup>16</sup>. It is strongly recommended that the dedicated **EPO Form 7000** be used to file the request. **The request must be filed no later than one month after the mention of the grant of the European patent is published in the European Patent Bulletin** (see Article 9(1)(g) Regulation (EU) No 1257/2012; Rule 6(1) UPR; Article 97(3) EPC). It is important to bear in mind that this is a non-extendable period (see point 67 for the legal remedy available if it is not observed). The requester must be the proprietor mentioned in the European Patent Register at the date of filing of the request for unitary effect or, at the latest, at the date of registration of unitary effect.
- 46 The request must be **duly signed**. It may be signed by the representative if one has been appointed<sup>17</sup>. Where it is signed on behalf of a legal person, the signatory's position within that legal entity must also be indicated. If it is filed using Online Filing, the signature may be in the form of a facsimile, text string or enhanced electronic signature. If it is filed using Online Filing 2.0 or the web-form filing service, the signature may take the form of a facsimile signature or a text string signature. If it is filed on paper, it may be a handwritten signature or a reproduction of the filer's signature (on faxes).
- 47 Where the request for unitary effect is filed on paper, one copy of the request itself must be filed; the receipt for documents (page 4 of the form for filing the request for unitary effect) must however be filed in triplicate. If it is filed online, no additional copies are necessary.
- 48 A Unitary Patent can also be requested for a European patent granted to multiple proprietors in respect of the same or different participating Member States as long as it was granted with the same set of claims in respect of all those participating Member States.
- 49 If there is more than one proprietor, the request for unitary effect should preferably **appoint one proprietor or representative as common representative**<sup>18</sup>. If it does not name a common representative, the first-named requester will be deemed to be the common

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<sup>16</sup> *Article 9(1)(g) Regulation (EU) No 1257/2012 Rule 6(1) UPR Article 97(3) EPC*

<sup>17</sup> *Rule 20(2)(c) UPR Rule 50(3) EPC*

<sup>18</sup> *Rule 20(2)(l) UPR Rule 151(1) EPC*



representative. However, if one of the requesters is obliged to appoint a professional representative, that representative is deemed to be the common representative unless the first-named requester has appointed a professional representative (see Rule 151(1) EPC, which applies *mutatis mutandis* under Rule 20(2)(l) UPR).

- 50 Only, however, if the request for unitary effect has been duly **signed** by all the proprietors (or their representative(s)) is their common representative entitled to act for them all. Multiple proprietors need not be listed in the request for unitary effect in the same order as in the request for grant (EPO Form 1001) or in the European patent specification.
- 51 Please note that a co-proprietor of a European patent who owns that patent exclusively in respect of one or more EPC contracting states not territorially covered by the Unitary Patent scheme (see point 23) cannot request unitary effect or be designated as common representative. For instance, this will apply where the European patent is granted to a co-proprietor either exclusively for one or more EPC contracting states that are not participating Member States (e.g. Switzerland or the United Kingdom) or exclusively for one or more participating Member States in which the UPCA has not taken effect. Such a co-proprietor should therefore not be listed in the request for unitary effect.

## 2.2 Mandatory information to be provided in the request for unitary effect

- 52 The request for unitary effect must contain the following information (Rule 6(2) UPR)<sup>19</sup>:
- (a) particulars of the proprietor of the European patent making the request as provided for in Rule 41(2)(c) EPC;
  - (b) the number of the European patent to which unitary effect is to be attributed;
  - (c) where the requester has appointed a representative, particulars as provided for in Rule 41(2)(d) EPC.

## 2.3 Voluntary indication of a place of business on the date of filing of the European patent application (Article 7(1)(b) Regulation (EU) No 1257/2012 and Rule 16(1)(w) UPR)

- 53 In addition to the mandatory information specified under point 52, a **voluntary indication** may be made together with the request for unitary effect as to **a place of business on the date of filing the European patent application** within the meaning

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<sup>19</sup> Rule 6(2) UPR

of Article 7(1)(b) Regulation (EU) No 1257/2012 (Rule 16(1)(w) UPR)<sup>20</sup>. Article 7(1) Regulation (EU) No 1257/2012 provides that "a European patent with unitary effect as an object of property shall be treated in its entirety and in all the participating Member States as a national patent of the participating Member State in which that patent has unitary effect and in which according to the European Patent Register:

- (a) the applicant had his residence or principal place of business on the date of filing of the application for the European patent; or
- (b) where point (a) does not apply, the applicant had a place of business on the date of filing of the application for the European patent."

**54** It can prove useful to have an entry in the Register for unitary patent protection (which is an integral part of the European Patent Register)<sup>21</sup> showing "a place of business on the date of filing" within the meaning of point (b) above (see Rule 16(1)(w) UPR) in cases where an applicant, when filing a European patent application or international application under the PCT designating or electing the EPO (Euro-PCT application), did not have a residence or principal place of business in one of the participating Member States within the meaning of point (a), for example where the applicant had its residence or principal place of business in the United States of America or Switzerland (see Rule 16(1)(x) UPR). Providing information on such a "place of business on the date of filing" is voluntary. Please note that it may however only be provided together with the request for unitary effect. If, in the case described above, no information concerning such place of business is provided together with the request for unitary effect, German law will apply with regard to the treatment of the European patent with unitary effect as an object of property pursuant to Article 7(3) Regulation (EU) No 1257/2012.

**55** The proprietor of the European patent must take care to provide the correct information as to a place of business within the meaning of point (b) above in order to avoid any legal uncertainty<sup>22</sup>. This is not only relevant for the proprietor but also for third parties, for whom incorrect information may have adverse legal consequences.

## 2.4 Translation of the European Patent

**56** The request for unitary effect must also contain a **translation** of the European patent as required under Article 6(1) Regulation (EU) No 1260/2012<sup>23</sup>:

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<sup>20</sup> Article 7 Regulation (EU) No 1257/2012, Rule 16(1)(w) and (x) UPR

<sup>21</sup> Article 7 Regulation (EU) No 1257/2012, Rule 16(1)(w) and (x) UPR

<sup>22</sup> Article 7 Regulation (EU) No 1257/2012 Rule 16(1)(w) UPR

<sup>23</sup> Article 6(1) Regulation (EU) No 1260/2012 Rule 6(2)(d) UPR

- Where the language of the proceedings is French or German, a full translation of the specification of the European patent into English must be submitted.
- Where the language of the proceedings is English, a full translation of the specification of the European patent into any other official language of the European Union must be submitted.

- 57** Translations of the claims into the two official languages of the EPO other than the language of the proceedings will already have been filed with the EPO at the end of the grant procedure under the EPC<sup>24</sup>. These can be reused, so, in practice, only a translation of the description may at most be additionally needed for the purpose of filing the request for unitary effect.
- 58** Similarly, where the language of the proceedings is English, patent proprietors who choose to file a translation of the European patent specification into an official EU language other than French or German will often be able to use an adapted version of an application first filed with a national patent office. Moreover, patent proprietors who choose to validate the European patent in a state not covered by the Unitary Patent that requires a translation of the specification may also use that translation.
- 59** Compensation for translation costs is available for SMEs, natural persons, non-profit organisations, universities and public research organisations having their residence or principal place of business in an EU Member State. To be eligible, they must have filed their European patent application in an official EU language other than English, German or French. See point 75 onwards for more information on the eligibility requirements.
- 60** The translation should be drawn up in a form enabling it to be disseminated, i.e. it should be typewritten or printed (see Article 6(2) Regulation (EU) No 1260/2012; Rule 50(2) EPC, which applies *mutatis mutandis* pursuant to Rule 20(2)(c) UPR)<sup>25</sup>.
- 61** The translated text has no legal effect and is for information only.

### 3 Filing the request for unitary effect

#### 3.1 Language of the request for unitary effect

<sup>24</sup> Article 14(6) EPC Rules 71(3) and 71a(1) EPC

<sup>25</sup> Rule 20(2)(c) UPR Rule 50(2) EPC

- 62 Requests for unitary effect must be filed in the language of the proceedings within the meaning of Article 14(3) EPC (Article 9(1)(g) Regulation (EU) No 1257/2012; Rule 6(2) UPR)<sup>26</sup>. If the request is filed using Online Filing or Online Filing 2.0, this language requirement will be satisfied automatically<sup>27</sup>. If filing by postal services, fax or via web-form filing, it is recommended that you use **trilingual EPO Form 7000** to be sure you meet this requirement. For more detailed explanations of the applicable language rules, see points 128 to 130 below.

### 3.2 How and where to file the request for unitary effect

- 63 The request for unitary effect should preferably be filed online. This is not only reliable, efficient, secure and fast, it also has the advantage of reducing the clerical and administrative burden. The EPO offers three ways of requesting a Unitary Patent online: via Form 7000 in both Online Filing and Online Filing 2.0 and via the web-form filing service. For web-form filing, it is highly recommended that you use Form 7000 provided on the EPO's website. Online Filing, Online Filing 2.0 and the web-form filing service are all free of charge and have numerous features and benefits. Detailed descriptions of the various options and guidance on which one to choose can be found on the EPO's website, as can information about the EPO's other online services, such as Online Fee Payment, Secure File Inspection, the European Publication Server, My Files, Secure File Inspection and the Mailbox service, and the advantages of using them.
- 64 You can also file your request for unitary effect in person, by postal services or by fax<sup>28</sup>. In these cases too, it is strongly recommended that you use **Form 7000**, reading the **explanatory notes** carefully before completing it. Duly completing Form 7000 will ensure that you provide all the information required for a valid request. Requests can be filed with the EPO at its headquarters (Isar) and PschorrHöfe buildings in Munich, its branch at The Hague and its Berlin sub-office, but not at its sub-offices in Vienna and Brussels. The EPO's addresses can be found on the EPO's website. Requests cannot be filed with the central industrial property office or competent authority of an EPC contracting state (see Rule 6(1) UPR, which unlike Article 75(1) EPC, exclusively mentions the EPO).

### 3.3 Acknowledgement of receipt

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<sup>26</sup> Article 9(1)(g) Regulation (EU) No 1257/2012 Rule 6(2) UPR

<sup>27</sup> Article 14(3) EPC

<sup>28</sup> Rule 6(1) UPR

- 65 Receipt of requests for unitary effect filed via Online Filing or Online Filing 2.0 is acknowledged electronically during the submission session. If the web-form filing service is used, an electronic acknowledgment of receipt will be displayed on the website once the files are transferred. You can also request that acknowledgment of receipt be sent by email.
- 66 For requests filed by postal services or fax, i.e. on paper, the EPO acknowledges receipt without delay by sending you page 4 of the request, on which it notes the date it received the request, the number of the European patent for which unitary effect was requested and the accompanying documents.

### 3.4 Re-establishment of rights in respect of the one-month period for requesting unitary effect

- 67 If the period for filing a request for unitary effect – that is, one month after publication of the mention of the grant of the European patent in the European Patent Bulletin (see [Rule 6\(1\) UPR](#)) – has not been observed, you can request re-establishment of rights in respect of this one-month period (see [Rule 22\(1\) UPR](#))<sup>29</sup>. Your request for re-establishment must however be filed within two months of expiry of the one-month period (see [Rule 22\(2\) UPR](#)), and you must also file the request for unitary effect and pay the prescribed fee within the same two-month period ([Rule 22\(3\) UPR](#), [Article 2\(2\) RFeesUPP](#)).

### 3.5 Withdrawal of the request for unitary effect

- 68 Requests for unitary effect may be withdrawn as long as no decision has been taken by the EPO, i.e. registration of unitary effect or rejection of the request.

## 4 Examination of the request for unitary effect by the EPO

- 69 If you meet the [Rule 5\(2\) UPR](#) requirement (European patent granted with the same set of claims in respect of all the participating Member States) and your request for unitary effect complies with the formal requirements set out in [Rule 6 UPR](#), the EPO will grant you a Unitary Patent, i.e. register unitary effect in the Register for unitary patent protection, and inform you of the date of registration (see [Rule 7\(1\) UPR](#))<sup>30</sup>. The Unitary Patent will take effect on the date of the publication of the grant of the

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<sup>29</sup> [Rule 6\(1\) UPR](#), [Rule 22 UPR](#) [Article 2\(2\) RFeesUPP](#)

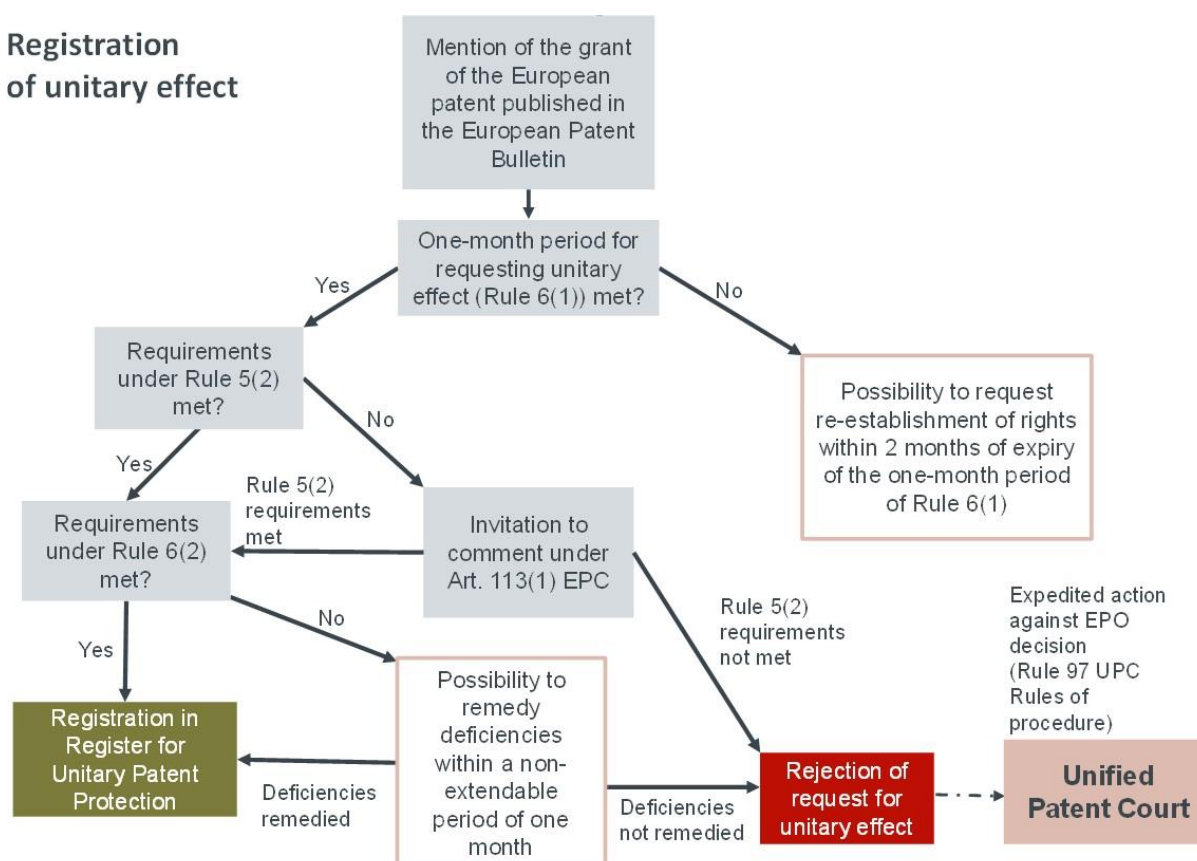
<sup>30</sup> [Article 4\(1\) Regulation \(EU\) No 1257/2012](#), [Rule 5\(2\) UPR](#) [Rule 7\(1\) UPR](#)

European patent in the European Patent Bulletin (Article 4(1) Regulation (EU) No 1257/2012).

If you comply with the one-month deadline under Rule 6(1) UPR and the Rule 5(2) UPR requirement, but do not meet all the formal requirements under Rule 6(2) UPR, the EPO will give you an opportunity to comply with the outstanding requirements within a non-extendable period of one month (Rule 7(3) UPR)<sup>31</sup>. You cannot seek re-establishment of rights in respect of this new period (see Rule 22(6) UPR), and no other legal remedy is available. So, if you have failed to comply with the requirements within this period, the EPO will take a final decision rejecting your request for unitary effect. You can bring an action against this decision before the UPC.

- 70** If you do not meet the requirement under Rule 5(2) UPR (European patent granted with the same set of claims in respect of all the participating Member States) or fail to file your request for unitary effect within the one-month period under Rule 6(1) UPR, the EPO will reject your request for unitary effect (Rule 7(2) UPR). Before doing so, however, it will invite you to comment at least once in accordance with Article 113(1) EPC, which applies pursuant to Rule 20(1) UPR<sup>32</sup>.

## Registration of unitary effect



<sup>31</sup> Rule 5(2) UPR, Rule 6 UPR, Rule 7(3) UPR, Rule 22(6) UPR

<sup>32</sup> Rule 5(2) UPR, Rule 6(1) UPR, Rule 7(2) UPR, Rule 20(1) UPR, Article 113(1) EPC

## 5 Filing documents other than the request for unitary effect

- 71 Once a request for unitary effect has been filed, any other documents needed for the procedure for obtaining a Unitary Patent or relating to already registered Unitary Patents may be filed with the EPO in Munich, The Hague or Berlin, either electronically, using one of the EPO's online filing options, or by hand or by postal services.
- 72 The EPO provides forms which serve either as a prepared acknowledgement of receipt (**Form 7037**) or as a letter accompanying subsequently filed documents (**Form 7038**). Documents (other than authorisations) may also be filed by fax. Documents cannot be filed by email, on diskette, or by teletex, telegram, telex or similar means.
- 73 With the exception of annexes, any documents filed after the filing of the request for unitary effect, must be **duly signed**<sup>33</sup>. The signatory's name and position must be clear from the signature. If the signature is omitted from a document, the EPO will invite the party concerned to sign within a fixed time limit. If signed in due time, the document retains its original date of receipt; otherwise it is deemed not to have been received (Rule 50(3) EPC, which applies *mutatis mutandis* pursuant to Rule 20(2)(c) UPR).

### 5.1 Acknowledgement of receipt

- 74 The EPO acknowledges receipt of subsequently filed items on the forms provided for this purpose and duly completed (**EPO Forms 7037 and 7038**). If the items are filed electronically, an acknowledgement of receipt is generated immediately.

## The compensation scheme

### 1 Eligibility and procedure

- 75 Under certain conditions, proprietors of European patents with unitary effect for which the European patent application was filed in an **official EU language other than English, French or German** are entitled to compensation for their translation costs<sup>34</sup>.
- 76 To be eligible for this compensation, they must have their **residence or principal place of business in an EU Member State**<sup>35</sup>. It does not matter if the Member State is not one participating in the Unitary Patent scheme. Furthermore, they must either be a natural person or fall within one of the following categories:

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<sup>33</sup> *Rule 20(2)(c) UPR Rule 50(3) EPC*

<sup>34</sup> *Article 9(1)(f) Regulation (EU) No 1257/2012, Article 5 Regulation (EU) No 1260/2012, Rule 8 UPR*

<sup>35</sup> *Rule 8(1) UPR Rule 8(2) UPR*



- small and medium-sized enterprises as defined in European Commission Recommendation 2003/361/EC dated 6 May 2003, or
- non-profit organisations as defined in Article 2(1)(14) of Regulation (EU) No 1290/2013, or
- universities or public research organisations.

- 77** Universities and public research organisations are not expressly defined in any EU legislation, but a definition – as well as more details on the definitions of SMEs and non-profit organisations – can be found in the notice from the EPO dated 10 January 2014 (OJ EPO 2014, A23)<sup>36</sup>.
- 78** Compensation is granted only at the express request of the patent proprietor<sup>37</sup>. The request for compensation must be filed together with the request for unitary effect. It must contain a declaration that the proprietor is a natural person or one of the entities mentioned above. Both Form 7000 and the various online options for filing requests for unitary effect include a check box for making the required declaration of eligible status, making it easy in practice to request compensation.
- 79** If the request for compensation is submitted by the same entity as the one that filed the European patent application, the above eligibility criteria must be fulfilled at the time of filing the European patent application<sup>38</sup>.
- 80** Where a request for compensation is submitted after ownership of the European patent application or European patent has changed (e.g. following a transfer or merger), compensation will be granted only if both the original applicant and the new proprietor (in the latter's case, at the time of requesting compensation) fulfil the eligibility criteria set out above (see Rule 8(4) UPR)<sup>39</sup>.
- 81** If there are multiple proprietors, compensation will be granted only if each proprietor fulfils the above-mentioned eligibility criteria (Rule 8(3) UPR)<sup>40</sup>.
- 82** The compensation scheme applies not only to Euro-direct applications filed at the EPO but also to Euro-PCT applications originally filed at a PCT receiving Office or the International Bureau in an EU official language that is not one of the EPO's official languages (see Rule 8(5) UPR)<sup>41</sup>.
- 83** The EPO will examine requests for compensation and then notify the proprietor

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<sup>36</sup> *OJ EPO 2014, A23*

<sup>37</sup> *Rule 9 UPR*

<sup>38</sup> *Article 5 Regulation (EU) No 1260/2012, Recital 10 Regulation (EU) No 1260/2012*

<sup>39</sup> *Rule 8(4) UPR*

<sup>40</sup> *Rule 8(3) UPR*

<sup>41</sup> *Rule 8(5) UPR*



whether or not it can be granted<sup>42</sup>. The EPO cannot pay compensation until unitary effect has been entered in the Register for unitary patent protection (Rule 10(1) UPR). Once compensation has been granted, proprietors retain it regardless of any possible subsequent change in status, i.e. even if, for instance, they no longer fulfil the SME criteria or assign their Unitary Patent to a new proprietor who does not meet the above eligibility criteria (see Rule 10(2) UPR).

- 84 The compensation amounts to EUR 500 and is paid as a lump sum (see Rule 11 UPR in conjunction with Article 4(1) RFeesUPP)<sup>43</sup>. It can be combined with a reduction in the filing or examination fee provided for under the EPC (see Rule 6(3) to 6(7) EPC)<sup>44</sup>.

## 2 False declaration of eligibility

- 85 If the EPO has serious doubts about the correctness of the declaration filed with the request for compensation, e.g. on the basis of information received from a third party, it can review the grant of compensation and request that the beneficiary provide evidence that the eligibility criteria are met in proceedings under Articles 113(1) and 114 EPC (see Rule 10(3) UPR)<sup>45</sup>.
- 86 If, at the end of these proceedings, the EPO still believes that a false declaration has been made, it will inform the beneficiary under Rule 10(4) UPR that it has revised its decision to grant compensation and require payment of an **additional fee** with the next renewal fee for the Unitary Patent in question<sup>46</sup>. This additional fee is composed of the amount of the compensation paid by the EPO, plus an administrative fee amounting to 50% of that compensation amount (see Article 4(2) RFeesUPP). If the additional fee is not paid in due time, the Unitary Patent will lapse under Rule 14 UPR.

# Renewal fees for Unitary Patents

## 1 Introduction

- 87 Renewal fees for Unitary Patents and any additional fees for their late payment are to be paid to the EPO<sup>47</sup>. They are due in respect of the years following the year in which the mention of the grant of the European patent which benefits from unitary effect is published in the European Patent Bulletin (see Rule 13(1) UPR). See point 38 for the

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<sup>42</sup> Rule 10(1) UPR, Rule 10(2) UPR

<sup>43</sup> Rule 11 UPR

<sup>44</sup> Article 4(1) RFeesUPP

<sup>45</sup> Rule 10(3) UPR, Article 113(1) EPC Article 114 EPC

<sup>46</sup> Rule 10(4) UPR, Rule 14 UPR Article 4(2) RFeesUPP

<sup>47</sup> Rule 13(1) UPR

amount of the renewal fees and point 138 for the payment methods.

- 88 The due dates for renewal fees for Unitary Patents are in line with the system in place for European patent applications under Rule 51(1) EPC, so a renewal fee for a Unitary Patent in respect of the coming year will be due on the last day of the month containing the anniversary of the date of filing of the European patent application which led to the Unitary Patent. Renewal fees cannot be validly paid more than three months before they fall due (Rule 13(2) UPR)<sup>48</sup>.

## 2 Additional six-month period for paying renewal fees

- 89 If a renewal fee is not paid in due time, it may still be paid within six months of the due date, provided that an additional fee is also paid within that period (Rule 13(3) UPR). This provision is identical to the corresponding EPC provision in Rule 51(2) EPC. The amount of this additional fee is laid down in Article 2(1), item 2, RFeesUPP as 50% of the belated renewal fee. Where a renewal fee is reduced in accordance with Article 3 RFeesUPP (licences of rights), the 50% additional fee is to be calculated on the basis of the reduced renewal fee<sup>49</sup>.
- 90 If a renewal fee for a Unitary Patent has not been paid by the due date, the EPO will, as a courtesy (and in line with its current practice with respect to renewal fees to be paid for European patent applications under Article 86 EPC), inform the proprietor as soon as possible of the option of paying the fee, plus an additional fee, in the six months following the due date. This six-month period, however, will begin to run immediately from the due date.
- 91 If the renewal fee is not paid within that additional six-month period, the EPO will send a communication under Rule 112(1) EPC (which applies *mutatis mutandis* pursuant to Rule 20(2)(d) UPR), notifying the Unitary Patent proprietor of a loss of rights. Such a communication does not constitute a decision within the meaning of Article 32(1)(i) UPCA, so an action against it cannot be brought before the UPC<sup>50</sup>.
- 92 Failure to pay the renewal fee within the additional six-month period can be redressed by re-establishment of rights under Rule 22 UPR. If the finding of the EPO causing the loss of rights is inaccurate, a review of the finding can be requested by applying for a decision under Rule 112(2) EPC (which applies *mutatis mutandis* under Rule 20(2)(d) UPR). An action against that decision can be brought before the UPC<sup>51</sup>.
- 93 The payment periods are calculated in accordance with Rules 131 and 134 EPC (see Rule 20(2)(g) UPR) in line with existing EPO practice. So, if the due date is a day on which the EPO cannot receive mail within the meaning of Rule 134(1) EPC (which applies *mutatis*

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<sup>48</sup> Rule 13(2) UPR Rule 51(1) EPC

<sup>49</sup> Rule 12 UPR Rule 13(3) UPR, Article 3 RFeesUPP Article 2(1), item 2, RFeesUPP

<sup>50</sup> Rule 20(2)(d) UPR Rule 112(1) EPC

<sup>51</sup> Rule 20(2)(d) UPR, Rule 22 UPR Rule 112(2) EPC

*mutandis* under Rule 20(2)(g) UPR, the due date itself will not change, as it is not a period which can be extended, but instead the last day for valid payment will be deferred to the first working day thereafter<sup>52</sup>.

- 94 Furthermore, the six-month additional period under Rule 13(3) UPR starts on the last day of the month referred to in Rule 13(2) UPR, even if the EPO cannot receive mail on that date because of holidays, a mail interruption or a strike. However, Rule 134(1) EPC will apply to the expiry of the six-month additional period, so that the last day for valid payment will again be deferred to the first working day thereafter (see Rule 20(2)(g) UPR)<sup>53</sup>.
- 95 When calculating the additional period under Rule 13(3) UPR, the internal rules of the EPO, as established by decision J 4/91 of the Legal Board of Appeal (see OJ EPO 1992, 402), are to be applied. It follows that the six-month period for the payment of a renewal fee with an additional fee expires on the last day of the sixth month after the due date (in the light of Rule 13(2) UPR) and not on the day of that month corresponding in number to the due date. Thus, the calculation is to be made from the last day of the month to the last day of the sixth month thereafter (e.g. if the due date is 28 February, then the end of the six-month period will be 31 August and not 28 August)<sup>54</sup>.
- 96 Non-payment of the renewal fee and of any additional fee will result in the lapse of the Unitary Patent (Rule 14(1)(b) UPR). In such cases, it will be deemed to have lapsed on the date on which the renewal fee was due (Rule 14(2) UPR)<sup>55</sup>.

### 3 Special features relating to first renewal fees

#### 3.1 Three-month safety period under Rule 13(4) UPR

- 97 A renewal fee in respect of a Unitary Patent falling due within three months of the notification of the communication referred to in Rule 7(1) UPR (i.e. the one informing the requester of the date of registration of unitary effect) may still be paid within that three-month period without any additional fee under Rule 13(3) UPR (see Rule 13(4) UPR)<sup>56</sup>.
- 98 This does not affect the course of the six-month additional period under Rule 13(3) UPR: it nevertheless starts running from the due date. However, Rule 13(4) UPR has the effect that an additional fee under Rule 13(3) UPR does not have to be paid where the renewal fee is paid within the three-month safety period.

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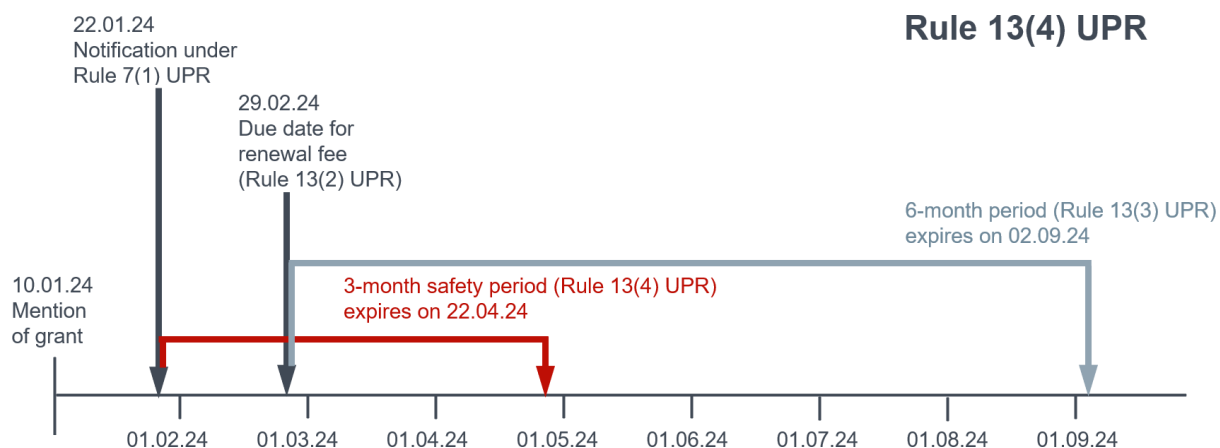
<sup>52</sup> Rule 20(2)(g) UPR Rule 131 EPC Rule 134 EPC

<sup>53</sup> Rule 20(2)(g) UPR Rule 131 EPC Rule 134 EPC

<sup>54</sup> Rule 20(2)(g) UPR OJ EPO 1992, 402 Rule 131 EPC Rule 134 EPC

<sup>55</sup> Rule 14(1)(b) UPR Rule 14(2) UPR

<sup>56</sup> Rule 13(4) UPR



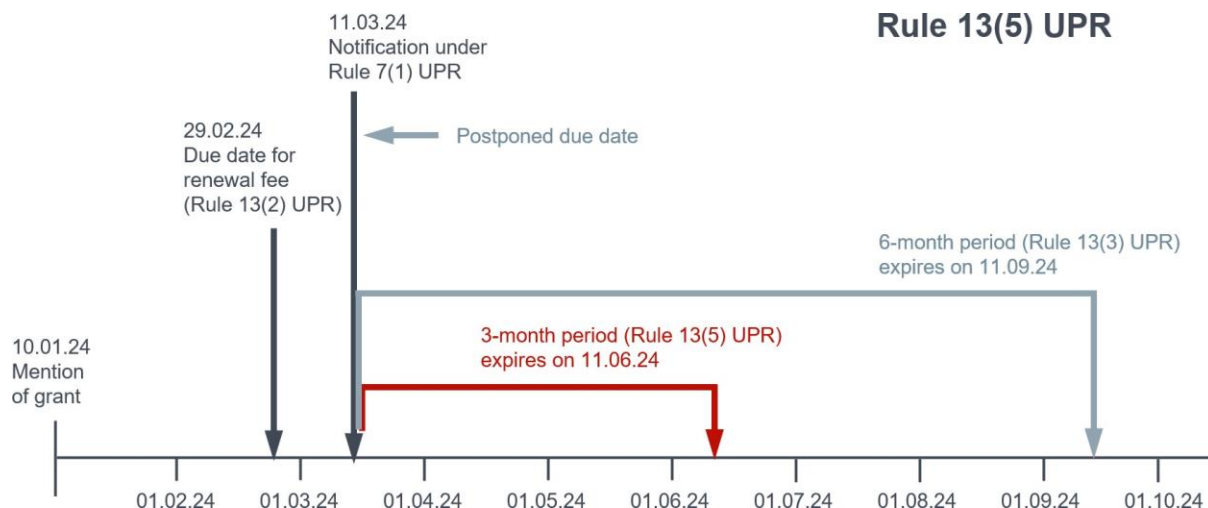
### 3.2 Renewal fee falling due between the grant of the European patent and the registration of unitary effect (Rule 13(5) UPR)

- 99** It may happen that a renewal fee falls due after the date of publication of the mention of the grant of the European patent in the European Patent Bulletin, but before or on the day unitary effect is registered by the EPO<sup>57</sup>.
- 100** Once the EPO has finally notified the patent proprietor of the decision to register unitary effect, the Unitary Patent takes effect on the date of publication of the mention of the grant of the European patent in the European Patent Bulletin in accordance with Article 4(1) Regulation (EU) No 1257/2012<sup>58</sup>.
- 101** Owing to this retroactive effect (see Recital 8 Regulation (EU) No 1257/2012), renewal fees may have fallen due for the period starting on the date of publication of the mention of the grant of the European patent in the European Patent Bulletin up to and including the date of the notification of the communication referred to in Rule 7(1) UPR<sup>59</sup>.
- 102** To accommodate such cases, Rule 13(5) UPR shifts the due date to the date of the notification and allows renewal fees to be paid within three months of this notification without any additional fee. If they are not paid within this period of three months, Rule 13(3) UPR applies, i.e. the renewal fee(s) can still be paid with an additional fee within six months, starting from the date of notification of the communication referred to in Rule 7(1) UPR.

<sup>57</sup> Rule 13(5) UPR

<sup>58</sup> Article 4(1) Regulation (EU) No 1257/2012

<sup>59</sup> Recital 8 Regulation (EU) No 1257/2012 Rule 7(1) UPR, Rule 13(3) UPR Rule 13(5) UPR



## Publication and file inspection

### 1 Register for unitary patent protection

- 103** The participating Member States have given the EPO some additional tasks to be carried out in accordance with its "internal rules". The tasks assigned under Article 9(1)(b) Regulation (EU) No 1257/2012 are the inclusion and administration of the Register for unitary patent protection within the European Patent Register<sup>60</sup>.
- 104** Article 2(e) Regulation (EU) No 1257/2012 specifies that "Register for unitary patent protection means the register constituting part of the European Patent Register in which the unitary effect and any limitation, licence, transfer, revocation or lapse of a European patent with unitary effect are registered."<sup>61</sup>
- 105** A Register for unitary patent protection has therefore been set up as an integral but special part of the European Patent Register already kept by the EPO under Article 127 EPC (see Rule 15 UPR). For reasons of legal certainty and transparency for users, the Register for unitary patent protection has the same basic structure and functionality as the European Patent Register<sup>62</sup>.
- 106** The Register for unitary patent protection contains all the entries that are expressly but not exhaustively listed in Regulation (EU) No 1257/2012, in particular the fact that unitary effect has been registered and the date of that registration.
- 107** The Register for unitary patent protection comprises procedural information such as

<sup>60</sup> Article 9(1)(b) Regulation (EU) No 1257/2012

<sup>61</sup> Article 2(e) Regulation (EU) No 1257/2012

<sup>62</sup> Rule 15 UPR

the date of filing of the request for unitary effect for the European patent, the participating Member States in which the Unitary Patent has effect pursuant to [Article 18\(2\) Regulation \(EU\) No 1257/2012](#) and the date of filing – and, if applicable, the date of any withdrawal – of a statement on licences of rights<sup>63</sup>. It also contains data as to the payment of renewal fees for Unitary Patents and information on decisions on the validity of Unitary Patents taken by the Unified Patent Court. Please refer to [Rule 16\(1\) UPR](#) for these register entries.

## 2 European Patent Bulletin

- 108** The European Patent Bulletin referred to in [Article 129\(a\) EPC](#) will contain, in a special part, the particulars the publication of which is prescribed by the UPR, the Chairperson of the Select Committee or the President of the EPO<sup>64</sup>.

## 3 Official Journal of the EPO

- 109** All provisions relating to the Unitary Patent, for example notices, decisions and information of a general character, will be published in a dedicated chapter of the EPO's Official Journal. Any other information relevant to the implementation of Unitary Patent protection will also be published here (see [Rule 17 UPR](#))<sup>65</sup>.

## 4 File inspection and communication of information on file

- 110** The files relating to European patents with unitary effect are available for online inspection on the [EPO website](#) under "European Patent Register", in the chapter "Unitary Patent" under the panel view "UP All documents". On request and subject to payment of a fee, copies of the files can be made available for inspection<sup>66</sup>.

## 5 No additional patent documents for Unitary Patents

- 111** Please note that no additional documents beyond the European patent specification published by the EPO under the EPC will be published for a Unitary Patent. Unitary Patent proprietors will be sent a certificate once unitary effect has been registered. Moreover, Unitary Patents will be assigned a specific identifier (the identifier "C0") in the Register for unitary patent protection, the European Patent Bulletin and in the data sets provided by the EPO, making it easier to identify them through the EPO's patent information products and services, e.g. Espacenet and Global Patent Index.

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<sup>63</sup> [Rule 16\(1\) UPR](#)

<sup>64</sup> [Rule 17\(1\) UPR](#)

<sup>65</sup> [Rule 17\(2\) UPR](#)

<sup>66</sup> [Rule 20\(1\) UPR](#) [Rule 20\(2\)\(i\) UPR](#), [Article 128\(4\) EPC](#) [Rules 144 to 147 EPC](#)

## How to register transfers, licences and other rights and file statements on licences of right

- 112 Rules 22 to 24 EPC apply *mutatis mutandis* to entries made in the Register for unitary patent protection, namely transfers, licences and other rights and any legal means of execution (see Rule 20(2)(b) UPR in conjunction with Rule 16(1)(j) UPR). This means that registrations in the Register for unitary patent protection follow the same rules as registrations for European patent applications<sup>67</sup>.
- 113 All types of national rights and legal means of execution can be recorded in the Register for unitary patent protection.

### 1 Transfer

- 114 A Unitary Patent may be transferred only in respect of all the participating Member States (Article 3(2) Regulation (EU) No 1257/2012). Transfers are recorded in the Register for unitary patent protection at the request of an interested party and on production of documents satisfying the EPO that they have taken place. Requests for recording a transfer are deemed not to have been filed until such time as the prescribed administrative fee has been paid (Rules 22(1) and (2) EPC in conjunction with Article 5 RFeesUPP)<sup>68</sup>.
- 115 Any kind of written evidence suitable to prove the transfer is admissible<sup>69</sup>. This includes formal documentary proof such as the instrument of transfer itself (original or a copy thereof) or other official documents or extracts therefrom, provided that they immediately verify the transfer. Where the evidence is not in one of the EPO's three official languages, the EPO may require a certified translation into one of those languages. A declaration signed by both parties to the contract verifying the transfer is also sufficient.
- 116 Assignment documents filed electronically may bear qualified electronic signatures instead of handwritten signatures<sup>70</sup>. Where a document is signed on behalf of a legal person, only such persons as are entitled to sign by law, by the legal person's articles of association or equivalent or by a special mandate may do so. In all cases, an indication of the signatory's entitlement to sign, e.g. their position within the legal entity where the entitlement to sign results directly from such position, is to be given. Where the entitlement results from a special authorisation, this authorisation (a copy thereof,

<sup>67</sup> Rule 16(1)(j) UPR Rule 20(2)(b) UPR Rules 22 to 24 EPC

<sup>68</sup> Article 3(2) Regulation (EU) No 1257/2012 Rule 20(2)(b) UPR, Rule 22(1) and (2) EPC, Article 5 RFeesUPP

<sup>69</sup> Rule 3(3) and Rule 5 EPC

<sup>70</sup> OJ EPO 2021, A86



which need not be certified) has to be submitted in every case. As a general rule, the authorisation to represent a party in proceedings before the EPO within the meaning of Rule 152 EPC, be it an individual or a general authorisation, is not as such considered to empower the representative to enter into such a contract.

- 117** If the evidence submitted is found to be insufficient, the EPO will inform the party requesting the transfer accordingly and invite it to remedy the deficiencies found<sup>71</sup>. If the request complies with the requirements of Rule 22(1) EPC, the transfer will be registered with the date on which the request, the required evidence or the fee was received by the EPO, whichever is the latest.

## 2 Licences and other rights and any legal means of execution

- 118** A Unitary Patent may be licensed in respect of the whole or part of the territories of the participating Member States (Article 3(2) Regulation (EU) No 1257/2012). It may, in respect of all the participating Member States, give rise to rights in rem and may be the subject of legal means of execution. Unitary Patents may also be subjected to a compulsory licence (see Recital 10 Regulation (EU) No 1257/2012). Rule 22(1) and (2) EPC also applies to registration of the grant, establishment or transfer of such rights and any legal means of execution affecting a Unitary Patent (see Rule 23(1) EPC)<sup>72</sup>.
- 119** A licence will be recorded in the Register for unitary patent protection as an exclusive licence if the applicant and the licensee so require. A licence will be recorded as a sub-licence where it is granted by a licensee whose licence is recorded in the Register for unitary patent protection (see Rule 24 EPC)<sup>73</sup>.
- 120** As to the standard of proof applying to the registration of licences and other rights and any legal means of execution, see point 115.
- 121** Upon request and subject to payment of the prescribed administrative fee, a registration of a licence or other right will be cancelled on production of documents satisfying the EPO that the right has lapsed or has been declared invalid, or of a declaration of the proprietor of the right that they consent to the cancellation (Rule 23(2) EPC)<sup>74</sup>.
- 122** The EPO has been entrusted with receiving licensing commitments undertaken by the proprietor of the European patent with unitary effect in international standardisation bodies (Article 9(1)(c) Regulation (EU) No 1257/2012 and Rule 16(1)(k) UPR). It is

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<sup>71</sup> Rule 22(1) EPC

<sup>72</sup> Articles 3(2) Regulation (EU) No 1257/2012, Recital 10 Regulation (EU) No 1257/2012 Rule 20(2)(b) UPR Rule 23(1) EPC

<sup>73</sup> Rule 24 EPC

<sup>74</sup> Rule 23(2) EPC



recommended that **Form 7005**, which is available on the EPO's website, be used for requesting the registration of such licensing commitments<sup>75</sup>.

### 3 Statement on licences of right

- 123** Unitary Patent proprietors may file a statement with the EPO to the effect that they are prepared to allow any person to use their invention as a licensee in return for appropriate consideration (Article 8(1) Regulation (EU) No 1257/2012 and Rule 12(1) UPR). A licence obtained under the system of licences of right will be treated as a contractual licence (Article 8(2) Regulation (EU) No 1257/2012). The statement will be entered in the Register for unitary patent protection free of charge<sup>76</sup>.
- 124** Such statements should preferably be filed with the EPO using dedicated **Form 7001**. Please note that a statement cannot be filed as long as an exclusive licence is recorded in the Register for unitary patent protection or a request for the recording of such a licence is pending before the EPO (Rule 12(3) UPR)<sup>77</sup>.
- 125** Renewal fees for a Unitary Patent which fall due after receipt of a statement under Rule 12(1) UPR will be **reduced by 15%** (see Article 3 RFeesUPP). Any additional fee for belated payment of a renewal fee (Rule 13(3) UPR and Article 2(1), item 2, RFeesUPP) will be calculated on the basis of the reduced renewal fee<sup>78</sup>.
- 126** Proprietors may withdraw their statement at any time by filing a communication to this effect with the EPO. Such withdrawal will however take effect only if the amount by which the renewal fees were reduced is paid to the EPO (Rule 12(2) UPR)<sup>79</sup>. The withdrawal should preferably be filed using dedicated EPO **Form 7002**.
- 127** Please note that a request for recording of an exclusive licence in the Register for unitary patent protection is no longer admissible once a statement on a licence of right has been filed unless that statement is withdrawn (Rule 12(4) UPR)<sup>80</sup>.

## Other procedural questions: language regime, representation and fee payment

### 1 Language regime

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<sup>75</sup> Article 9(1)(c) Regulation (EU) No 1257/2012 Rule 16(1)(k) UPR

<sup>76</sup> Article 8 Regulation (EU) No 1257/2012 Rule 12(1) UPR

<sup>77</sup> Rule 12(3) UPR

<sup>78</sup> Rule 12(1) UPR, Article 3 RFeesUPP

<sup>79</sup> Rule 12(2) UPR

<sup>80</sup> Rule 12(4) UPR

- 128** Article 14(1) EPC provides that the official languages of the EPO are English, French and German, while Article 14(3) EPC defines the term "language of the proceedings". Both provisions are applicable pursuant to Rule 20(1) UPR. However, contrary to the normal EPC regime, where any of the three EPO official languages may be used in written proceedings (see Rule 3(1) EPC), requests for unitary effect must be filed in the language of proceedings (see Article 9(1)(g) Regulation (EU) No 1257/2012 and Rule 6(2) UPR; see also point 62 above). This exception is dealt with in Rule 20(2)(a) UPR, which states that, unless otherwise provided, Rule 3(1), first sentence, EPC (as well as Rule 3(3) EPC) applies *mutatis mutandis*<sup>81</sup>.
- 129** This means that parties may use any official language of the EPO in written proceedings before the EPO, except when making the request for unitary effect itself, which has to be filed in the language of proceedings. It is therefore strongly recommended that you use either one of the online filing options provided by the EPO or the trilingual EPO Form 7000 when requesting unitary effect to ensure that you are using the language of proceedings.
- 130** The EPC provisions that allow documents having to be filed within a time limit to be filed initially in an admissible non-EPO language, provided that a translation is filed within a month (Article 14(4) EPC; Rule 3(1), second sentence, EPC; and Rule 6(2) EPC) do not apply, so you cannot, for instance, file a request for re-establishment of rights pursuant to Rule 22 UPR in an admissible non-EPO language and then file a translation within a month<sup>82</sup>.

## 2 Representation before the EPO

- 131** The same regime as under the EPC applies to representation. Patent proprietors who have their residence or principal place of business in an EPC contracting state may act on their own behalf in proceedings before the EPO with respect to the Unitary Patent<sup>83</sup>.
- 132** Patent proprietors who do not have a residence or a principal place of business in an EPC contracting state must appoint a representative and act through them in all EPO proceedings concerning their Unitary Patent, **including the procedural act of requesting unitary effect** (see Rule 20(1), (2)(I) and (3) UPR). **However, compulsory representation does not apply to the payment of fees** (Article 6 RFeesUPP)<sup>84</sup>.
- 133** Representatives may be authorised either by individual authorisation or by general

<sup>81</sup> Article 9(1)(g) Regulation (EU) No 1257/2012 Rule 6(2) UPR Rule 20(1) UPR Rule 20(2)(a) UPR, Article 14(1) EPC, Article 14(3) EPC

<sup>82</sup> Rule 20 UPR

<sup>83</sup> Article 133 EPC

<sup>84</sup> Rule 20(1) UPR, Rule 20(2)(I) UPR, Rule 20(3) UPR, Article 6 RFeesUPP

authorisation. An extra authorisation is needed for all proceedings relating to a Unitary Patent. In particular, an authorisation for all proceedings established by the EPC does not cover the proceedings relating to a Unitary Patent. Accordingly, a separate check box has been added to Forms 1003 (individual authorisation) and 1004 (general authorisation) which can be used to issue authorisation covering all proceedings relating to a Unitary Patent. Furthermore, new Forms 7003 and 7004 provide, respectively, for an individual and a Form 7000 (request for unitary effect), it is possible simply to refer to a previously filed specific or general authorisation if it also covers proceedings relating to Unitary Patents.

- 134 More information on representation before the EPO can be found in "How to get a European patent – Guide for applicants".

### 3 Fee amounts, payment methods and refunds

- 135 Fee amounts, payment methods and effective payment dates with respect to Unitary Patents are governed by the Rules relating to Fees for Unitary Patent Protection (RFeesUPP).
- 136 The main fees provided for in the RFeesUPP are:
- renewal fees (Article 2(1), item 1, RFeesUPP),
  - renewal fees (Article 2(1), item 1, RFeesUPP), item 2, RFeesUPP),
  - fee for re-establishment of rights (Article 2(2) RFeesUPP),
  - fees, expenses and prices laid down by the President of the EPO, such as the fee for registering transfers, licences and other rights (Article 5 RFeesUPP).
- 137 The RFeesUPP also provide for a reduction of 15% in the renewal fees if a statement by the proprietor offering a licence of right is registered (Article 3 RFeesUPP). They also lay down the amount of the lump sum to be paid as compensation for translation costs and the administrative fee to be paid if the EPO finds that compensation was granted on the basis of a false eligibility declaration (Article 4 RFeesUPP)<sup>85</sup>.
- 138 Fee payments, which must be made in euros, can be made online by debit order from an EPO deposit account in Online Fee Payment, by using the payment functionalities of the online filing services or by using Central Fee Payment, which also allows you to pay by credit card with immediate effect or use the bank transfer functionality. More information can be found on the [EPO website](#)<sup>86</sup>.
- 139 The EPO refunds fees to any deposit account that the party to the proceedings indicates in its refund instructions. You may therefore also indicate a deposit account held by a third party. If you have not filed any refund instructions and do not hold a deposit account with the EPO, you may claim any pending refunds or, where

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<sup>85</sup> [Article 3 RFeesUPP](#), [Article 4 RFeesUPP](#).

<sup>86</sup> [Article 6 RFeesUPP](#).

applicable, the compensation online and ask for them to be credited to a bank account. Following its usual practice, if the EPO cannot make a refund to a deposit account held with it, it will invite the party to the proceedings to claim the refund via its website.

- 140 Moreover, it is important to note that under the RFeesUPP, some core procedural provisions of the Rules relating to Fees under the EPC, namely Articles 4 to 8 and Articles 12 and 13 (due dates, payment of fees, particulars concerning payments, date to be considered as the date on which payment is made, insufficiency of the amount paid), apply *mutatis mutandis* to the Unitary Patent. This means, in particular, that payments may be made by any person, including persons who are obliged to be represented<sup>87</sup>.
- 141 Guidance on paying fees is published periodically in the Official Journal. This enables you to find out at any time which Rules relating to Fees are currently applicable and whether any information given in this guide has changed since it was published. It is advisable to check the latest information on paying fees available on the EPO website.
- 142 For general advice and recommendations on paying fees to the EPO, please also see the EPO's "How to get a European patent – Guide for applicants".

## Legal remedies against EPO decisions: the role of the Unified Patent Court

### 1 Introduction

- 143 Actions against decisions of the EPO in carrying out the administrative tasks relating to Unitary Patents that are entrusted to it under Article 9 Regulation (EU) No 1257/2012 must be filed with the Registry of the **Unified Patent Court** (see Article 32(1)(i) UPCA) within two months of service of the decision (see Rule 88 of the Rules of Procedure of the Unified Patent Court – hereinafter "RoP UPC" – for more details on how to lodge an "Application to annul or alter a decision of the Office")<sup>88</sup>.

### 2 Interlocutory revision by the EPO

- 144 Where an application to annul or alter an EPO decision is brought before it, the UPC will first perform an admissibility check and, if it is admissible, forward it to the EPO under Rule 90(d) RoP UPC<sup>89</sup>.
- 145 If the EPO is informed by the UPC that an application to annul or alter a decision of the

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<sup>87</sup> Article 4 to 8, 12 and 13 RFees

<sup>88</sup> Article 32(1)(i) UPCA Rule 88 RoP UPC Rule 20(1)(f) UPR, Rules 126 and 127 EPC

<sup>89</sup> Rule 90(d) RoP UPC

EPO is admissible and if the EPO considers the application to be well founded, it will within two months of the date of receipt of the application<sup>90</sup>,

- a. rectify the contested decision in accordance with the order or remedy sought by the claimant, and
- b. inform the UPC that the decision has been rectified (see Rule 24 UPR and Rule 91 RoP UPC).

**146** Where the UPC is informed by the EPO that the contested decision has been rectified, it will inform the claimant that the action is closed. It may order full or partial reimbursement of the fee for the action against a decision of the Office (see Rule 91(2) RoP UPC)<sup>91</sup>.

### 3 Expedited action against a decision of the EPO pursuant to Rule 97 RoP UPC: application to annul a decision of the EPO to reject a request for unitary effect

**147** If the EPO rejects a request for unitary effect, any application to reverse its decision must be lodged with the UPC Registry within three weeks of service of the decision (see Rule 97(1) RoP UPC). This procedure does not include the possibility of interlocutory revision by the EPO (see Rule 85(2) RoP UPC)<sup>92</sup>.

## Transitional measures

A Unitary Patent may be requested for any European patent granted on or after the date of application of Regulations (EU) No 1257/2012 and (EU) No 1260/2012. These regulations will apply from the date of entry into force of the UPCA. The EPO will announce this date on its website<sup>93</sup>.

To encourage early uptake of the Unitary Patent, the EPO has introduced two transitional measures for users. These measures apply to European patent applications having reached the final stage of the grant procedure and will be made available ahead of the entry into operation of the Unitary Patent system from the date of deposit of the instrument of ratification of the UPCA by the Federal Republic of Germany. This date is three to four months before the entry into force of the UPCA and will be communicated on the EPO's website. The UPCA will enter into force on the first day of the fourth month after the deposit of the instrument of ratification by

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<sup>90</sup> Rule 24 UPR Rule 91 RoP UPC

<sup>91</sup> Rule 91(2) RoP UPC

<sup>92</sup> Rule 97(1) RoP UPC Rule 85(2) RoP UPC Rule 20(1)(f) UPR, Rules 126 and 127 EPC

<sup>93</sup> Article 4(2) Regulation (EU) No 1257/2012, Article 5 Regulation (EU) No 1257/2012

Germany as the third of the three UPCA Member States with the highest number of European patents having effect in their territories (Article 89(1) UPCA).

The first measure enables applicants to file requests for unitary effect before the start of the Unitary Patent system. These early requests for unitary effect will allow the EPO to register unitary effect immediately as soon as the system begins operating, provided all the requirements set forth in the UPR are met (for details please see the relevant notice from the EPO, OJ EPO 2022, A6)<sup>94</sup>.

The second measure makes it possible for the applicant to request a delay in issuing the decision to grant a European patent after dispatch of a communication under Rule 71(3) EPC by the EPO and before approving the text intended for grant. Such a request will ensure that the mention of the grant of the European patent is published in the European Patent Bulletin on or immediately after the date the Unitary Patent system enters into force, and will thus make a European patent eligible for Unitary Patent protection that would otherwise have been granted before the start of the new system (for details please see the relevant decision of the President and the accompanying notice from the EPO, OJ EPO 2022, A4 and OJ EPO 2022, A5)<sup>95</sup>.

Detailed explanations as well as some examples on the two transitional measures can be found on the EPO's website.

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<sup>94</sup> OJ EPO 2022, A6

<sup>95</sup> OJ EPO 2022, A4 and A5