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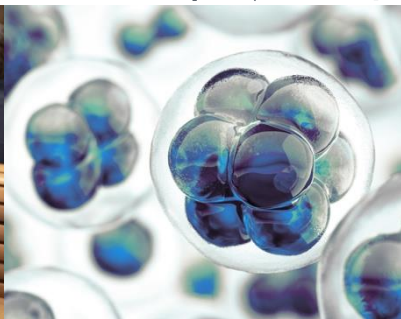
# Introduction to the patent invalidation system in Europe 欧洲专利无效制度介绍

IP Key, 19 May 2022

IP Key, 2022年5月19日



Stefan Luginbuehl



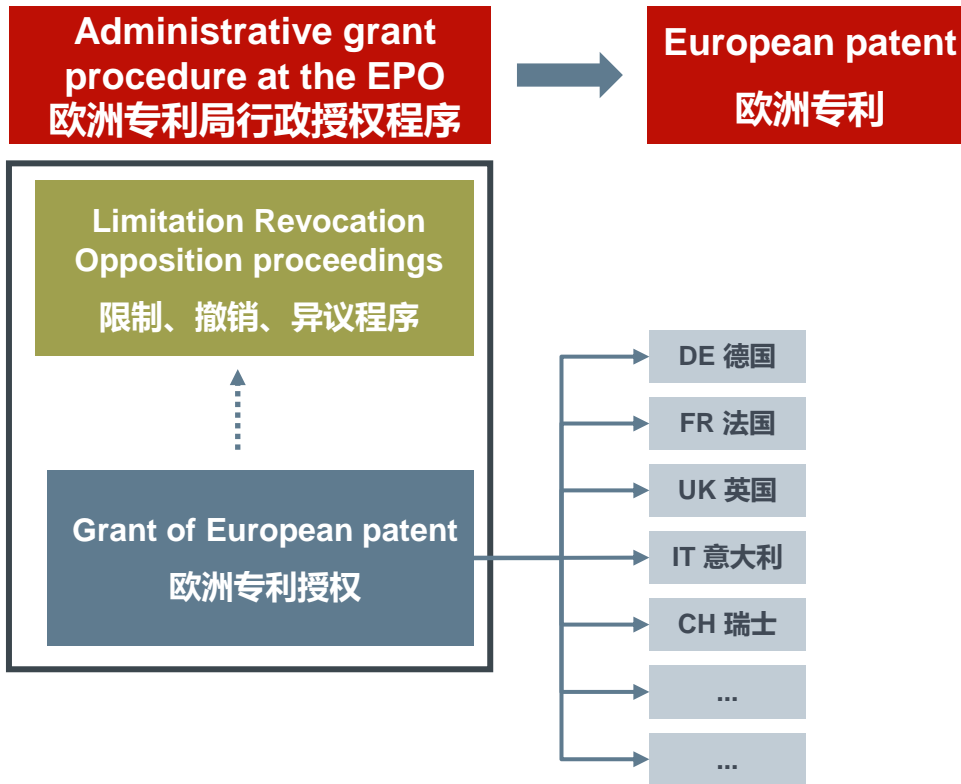
Head of Department | European Legal Affairs  
部门主管 | 欧洲法务部



19 May 2022  
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# Europe's patent system 欧洲的专利制度

- There are **two ways** to the protection of an invention by a patent in Europe: 欧洲专利采用**两种方式**保护发明:
  - National patent granted by a national patent authority (NPO)  
国家专利局授予的国家专利
  - European patent granted by the European Patent Office (EPO) on the basis of the European Patent Convention (EPC) for 38 contracting states  
欧洲专利局在38个缔约国订立的《欧洲专利公约》基础上所授予的欧洲专利



# Europe's patent system 欧洲的专利制度

- A European patent has the **effect of a national patent** granted for the territory of that state.
- 欧洲专利具备缔约国境内所授**国家专利的同等效力**。
- National and European patents are granted in an **administrative procedure**.
- 国家专利和欧洲专利的授予均为**行政程序**。
- Patents can be invalidated in administrative proceedings or in civil proceedings.
- 请求宣告专利权无效可采用行政程序或民事诉讼程序。

# Patent invalidation system in Europe 欧洲的专利无效制度

## Administrative procedure (EPO/NPO) 行政程序 (欧洲专利局/国家专利局)

### First instance 一审

- Opposition can often be filed **by anyone** after grant 授权后一般**任何人**可提出异议
- Often certain **time limits** (e.g. EPO: 9 months after grant of the patent) 往往有具体**时限** (例如, 欧洲专利局: 授权后9个月内)
- Invalidation takes effect **in state(s) for which patent was granted** (e.g. EPO: usually 38 states) 无效宣告在**专利授权国生效** (例如, 欧洲专利局: 一般包括38个国家)

### Second instance 二审

- Appeal can be filed by defeated party 败诉方可上诉
- EPO: **Boards of Appeal** 欧洲专利局: **上诉委员会**
- In many NPOs: **national patent courts of first instance** as second or third instance 国家专利局 (较常见) : **一审专利法院**进行二审或三审

## Civil procedure (National Court) 民事程序 (国家法院)

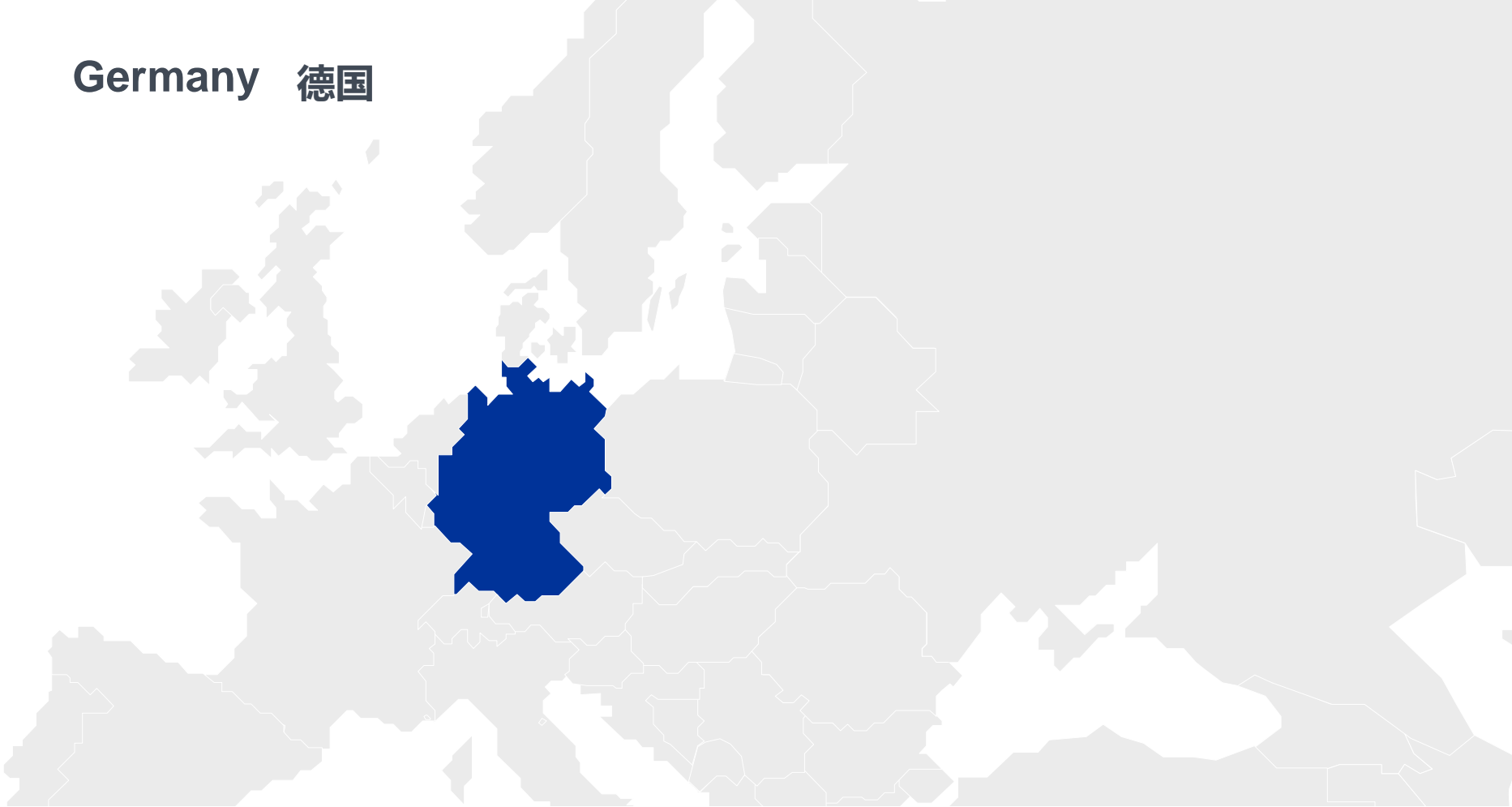
### First instance 一审

- Revocation action can usually be filed by **anyone interested** 一般有**利益冲突的任何人**可提出撤销申请
- **No time limits** (even after patent has lapsed) **无时限** (即使在专利失效后)
- Invalidation takes effect only **in the territory within the jurisdiction of the court** 无效宣告仅在**法院管辖权覆盖区域**生效

### Second instance 二审

- Appeal can be filed by defeated party 败诉方可上诉
- **National court of appeal** **国家上诉法院**
- Third instance (in some states) 三审 (某些国家)

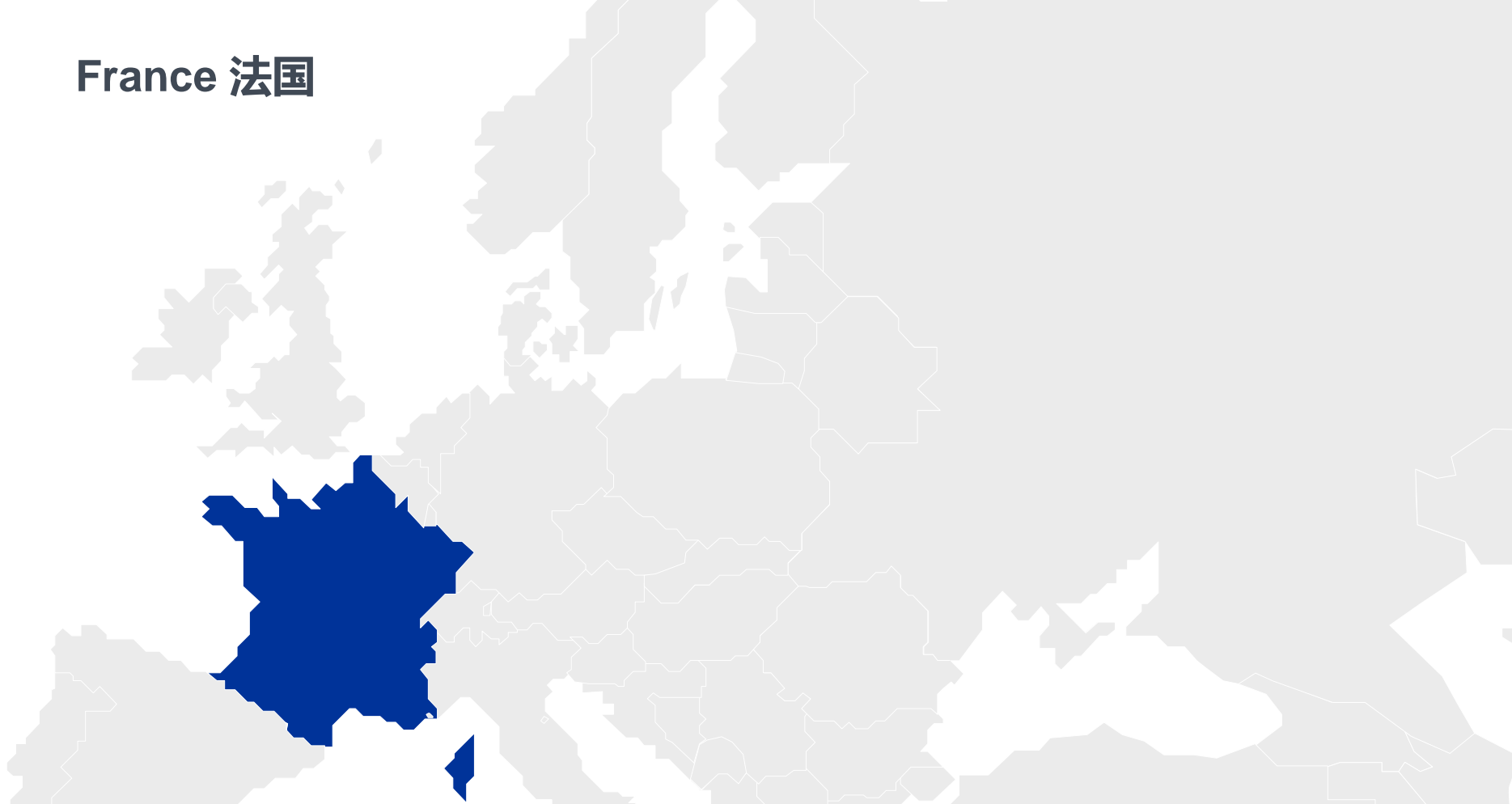
**Germany 德国**



# Revocation proceedings in court 法院撤销程序

- **Bifurcation System**, revocation proceedings are strictly separate from infringement proceedings.
- **二元制度**: 撤销程序与侵权程序严格分开。
- The **Federal Patent Court** (*Bundespatentgericht*) has exclusive jurisdiction to handle **revocation actions** with regard to **national and European patents** validated in Germany.
- 针对在德国生效的**国家和欧洲专利**, **德国联邦专利法院**具有处理其**撤销诉讼**的专属管辖权。
- **Composition of panel**: Five judges per senate, two legally and three technically qualified judges.
- **合议庭的组成**: 参议院推选五名法官, 分别为两名法律法官和三名技术法官。
- No time limit for filing revocation actions, but they may **not be filed as long as opposition proceedings** may be **initiated or are pending**.
- 无效宣告请求无时限要求, **但如果可以发起异议程序, 或异议程序待决, 则无法提出无效宣告请求。**
- Decisions by the Federal Patent Court can be **appealed** before the **Federal Court of Justice** (*Bundesgerichtshof*).
- 不服联邦专利法院裁决的, 可**上诉至联邦法院**。

# France 法国

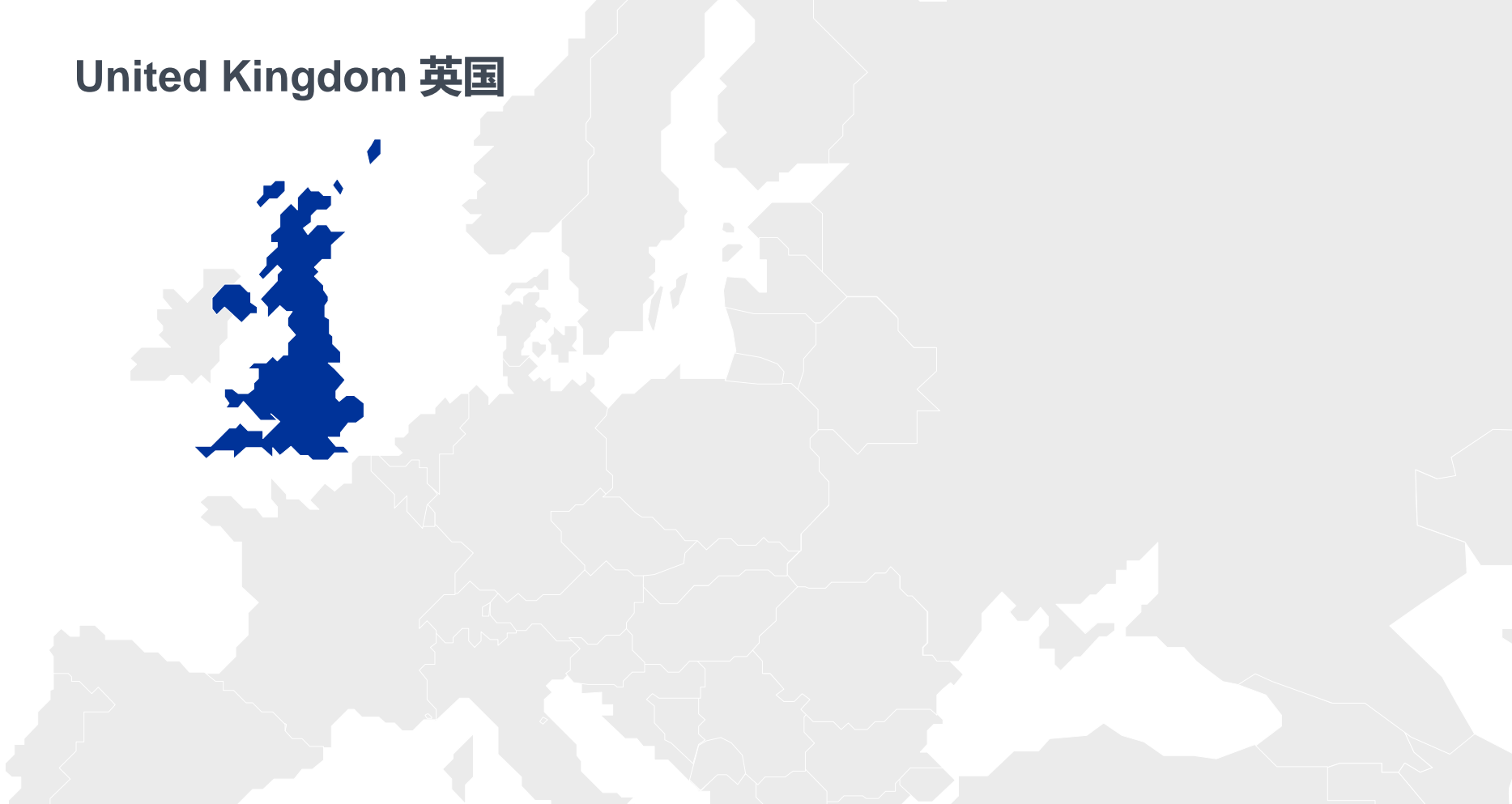


# Revocation proceedings in court 法院撤销程序

- No bifurcation, the competent court hears **revocation, as well as infringement** actions regarding **national patents** and **European patents**.
- 非二元制度：主管法院审理**国家专利和欧洲专利的撤销及侵权**诉讼程序。
- Exclusive jurisdiction of the **Paris Court of First Instance** (*Tribunal de Grande Instance de Paris*) at first instance.
- **巴黎一审法院**具备一审专属管辖权。
- **Composition of panel: three legally qualified judges** with no technical background but who are very experienced in patent litigation.
- **合议庭构成：三名无技术背景但有丰富专利诉讼经验的法官。**
- No time limit for filing revocation actions. **Parallel proceedings** at EPO possible. However, court may stay the national proceedings to await the outcome of EPO proceedings.
- 撤销申请无时限要求。可以在欧洲专利局开展**平行程序**。但法院可搁置国家诉讼程序，以等待欧洲专利局程序的结果。
- The **Paris Court of Appeal** (*Cour d'appel de Paris*) is competent to hear appeals. **Final appeal** is possible before the **Court of Cassation** (*Cour de Cassation*) at third instance.
- **巴黎上诉法院**审理上诉程序。可以向法国最高上诉法院提交**三审/终审上诉**。



# United Kingdom 英国



# Revocation proceedings in court 法院撤销程序

- No bifurcation, the courts hear **revocation**, as well as **infringement** actions regarding **national patents** and **European patents**.
- 非二元制度：法院审理**国家专利**和**欧洲专利**的**撤销及侵权**诉讼程序。
- Patents in England and Wales can be revoked in the specialised **Patents Court** or alternatively in the **Intellectual Property Enterprise Court (IPEC)**, both located in London.
- 英格兰和威尔士专利的撤销程序均可在位于伦敦的**专利法院**或**知识产权企业法院 (IPEC)** 进行。
- The **IPEC** typically deals with **less complex cases** of a **lower monetary value** than those heard by the Patents Court. Limit on cost recovery: GBP 50 000.
- 知识产权企业法院通常处理相较专利法院**金额和复杂度更低的案件**。成本收回限额为5万英镑。
- Cases are usually heard before a single judge. 案件一般由一名法官听审。
- **Parallel proceedings** at the EPO possible, decision to stay national proceedings on a case-by-case basis.
- 可在欧洲专利局开展**平行程序**，可根据个案决定是否搁置国家程序。
- Appeals go to the **Court of Appeal**. Further appeal concerning points of law to the **Supreme Court** possible.
- 由**上诉法院**受理上诉。可向**最高法院**就法律条文或条款提出进一步上诉。

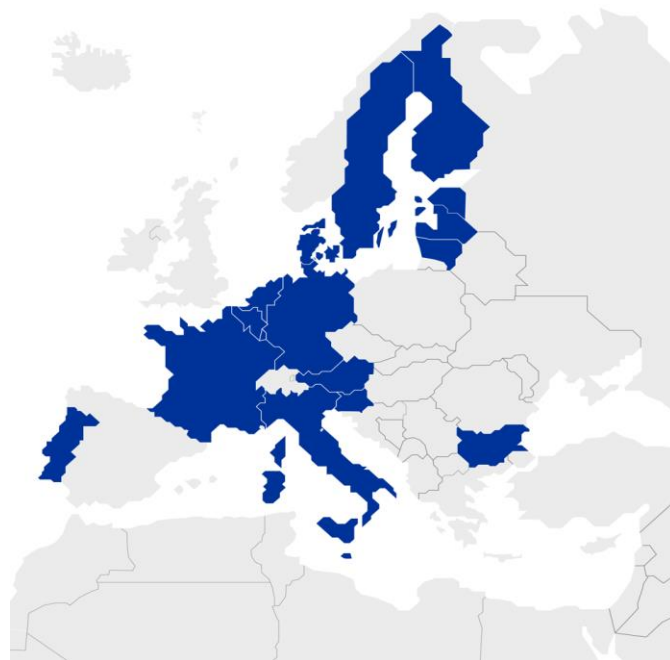
# Administrative procedure at the EPO vs. civil procedure

## 欧洲专利局行政程序与民事程序对比

- Proceedings are **independent** from each another. 两种程序互相**独立**。
- **Diverging decisions** are possible. **裁决可能出现分歧**。
- National courts **may stay the proceedings** until a decision is issued by the EPO.
- 国家法院可在欧洲专利局作出裁决之前，**搁置民事程序**。
- **Revocation (full or partial) takes precedence** over the other body's decision to partly/fully uphold the patent **within its jurisdiction**.
- 效力：**撤销（全部或部分）专利的裁决高于其他机构在其司法管辖区内支持全部或部分专利的裁决**。

# Reform of the European patent system: 欧洲专利制度改革: The Unitary Patent and Unified Patent Court 统一专利和统一专利法院

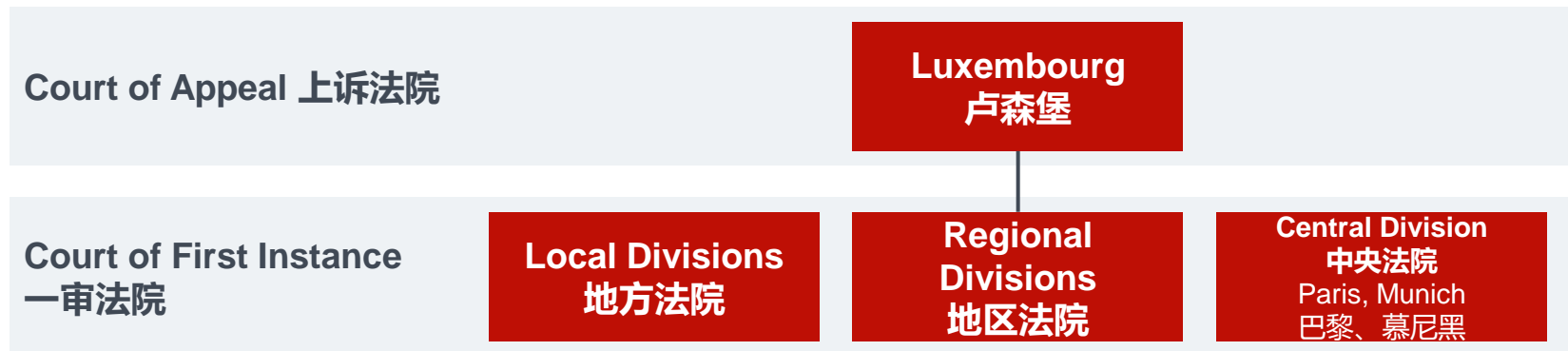
- The Unitary Patent (UP) will be a European patent to which unitary effect is provided by the EPO upon request from the patent holder.
- 统一专利 (UP) 将成为应专利权人的请求, 由欧洲专利局授予的具有统一效力的欧洲专利。
- **Uniform protection** in at least 17 EU member states in one single step.
- **只需一步**, 便至少在17个欧盟成员国享有统一保护。
- The **Unified Patent Court (UPC)** will be an international court common to the participating EU member states.  
It is based on the **Agreement on a Unified Patent Court (UPCA)**.
- **统一专利法院**将成为缔约欧盟成员国的共同国际法院。法院依据《统一专利法院协议》运行。
- The new system (UP & UPC) will take effect in the second half of 2022/early 2023.
- 新制度 (统一专利/统一专利法院) 将于2022年下半年/2023年初生效。



UPCA states: AT, BE, BG, DK, EE, FI, FR, DE, IT, LV, LT, LU, MT, NL, PT, SI, SE

统一专利法院协议缔约国: 奥地利、比利时、保加利亚、丹麦、爱沙尼亚、芬兰、法国、德国、意大利、拉脱维亚、立陶宛、卢森堡、马耳他、荷兰、葡萄牙、斯洛文尼亚、瑞典

# The Unified Patent Court (UPC) 统一专利法院



- **International** panels composed of legally and technically qualified judges. 国际合议庭由法律法官和技术法官组成。
- The UPC will apply its own procedural law. 统一专利法院使用其自有程序法。
- It will have **exclusive jurisdiction** over (inter alia) the revocation of **Unitary Patents**. 统一专利法院在**统一专利**的撤销等方面享有**专属管辖权**。
- For a **transitional period** of seven years it will have **parallel jurisdiction** with **national courts** with regard to the revocation of “classic” European patents. 在七年**过渡期**内，对于“传统”欧洲专利的撤销，将由统一专利法院与**国家法院**共享**平行管辖权**。
- Revocations will take effect for **the territory of the participating EU member states**. 撤销决定在**缔约欧盟成员国境内**均有效力。

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[international\\_legal\\_affairs@epo.org](mailto:international_legal_affairs@epo.org)



# Thank you for your attention!

Stefan Luginbuehl, PhD  
Lawyer,  
Head of Department European Legal Affairs  
European & International Legal Affairs, PCT | Dir. 5.2.2  
European Patent Office, Munich

Tel. +49 89 2399-5290  
Fax +49 89 2399-5219  
email [sluginbuehl@epo.org](mailto:sluginbuehl@epo.org)  
[www.epo.org](http://www.epo.org)