



Unified Patent Court  
Einheitliches Patentgericht  
Juridiction unifiée du brevet

# The Unified Patent Court (UPC)

# 统一专利法院 (UPC)

# A patent court for Europe /// 面向欧洲的专利法院

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All written and said is my personal view and not a communication of the UPC Court of Appeal.

所有内容均为个人观点, 不代表UPC上诉法院意见。

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**I. State of Play until 31 May 2023**  
**截至2023年5月31日的情况**



## Prosecution of a European Patent /// 欧洲专利的实施

### One stop shop /// 一站式

- European patents (EPs) are granted by the European Patent Office (EPO) under the European Patent Convention (EPC) of 5 October 1973 /// 欧洲专利 (EP) 由欧洲专利局 (EPO) 根据《欧洲专利公约》 (EPC, 1973年10月5日) 授予
  - 38 Contracting States, including all 27 EU Member States and 11 other non-EU Member States /// 38个缔约成员国, 包括所有27个欧盟成员国和11个非欧盟成员国

### “Bundle patent” /// “多件专利”

- The European patent (EP) has in each EPC Contracting State for which it has been granted the effect of a national patent granted in that State, Art. 2(2), 64(1) EPC /// 在缔约成员国，已生效的欧洲专利具有与该国家专利同等的效力 (EPC 2(2)、64(1)款)
- Provided it has been validated and maintained in the respective EPC Contracting State. /// 前提是该欧洲专利已在缔约成员国进行验证和维护。
  - Translation /// 翻译
  - Fees /// 缴费



**Enforcement of an EP state by state /// 欧洲专利权在缔约成员国的维权**

- EPs can be enforced by bringing an action for infringement of a national part of the EP against an alleged infringer before a national court of a Contracting Member State. /// 可以在缔约成员国法院对侵权人提起与该国有关部分的欧洲专利侵权诉讼，进行欧洲专利维权。
- **National courts have jurisdiction on cross-border EP infringement and revocation proceedings only exceptionally. /// 缔约成员国法院仅在特殊情况下对跨境欧洲专利侵权和撤销程序具有管辖权。**

**II. State of Play as of 1 June 2023 (Entering  
into force of the UPC Agreement)  
自2023年6月1日以来的情况  
(统一专利法院协议生效后)**

- **The Unified Patent Court (UPC) is a “court common to several (currently 17) EU Member States”, Art. 71a Brussels Ia Reg /// 统一专利法院 (UPC) 是“数个 (目前17个) 欧盟成员国的共同法院” (布鲁塞尔Ia条例第71a款)**
- **As such the UPC has exclusive jurisdiction /// 因此, 统一专利法院具有专属管辖权**
  - **where the court of the CMS would have jurisdiction in EP matters**
  - **if the UPCA had not transferred that competence to the UPC, Art. 71a Brussels Ia Reg.**

**统一专利法院协议未将管辖权移交统一专利法院的, 由缔约成员国法院对欧洲专利事务行使管辖权 (布鲁塞尔Ia条例第71a款)**

## Jurisdiction of the UPC – infringement actions /// 统一专利法院的管辖权——侵权诉讼

The UPC has jurisdiction on an EP infringement action when /// 在下列情况下，统一专利法院对欧洲专利侵权诉讼具有管辖权

- the place of the infringement or /// 侵权行为发生地；或
- the seat of the defendant or /// 被告住所；或
- the seat of one of a number of defendants (provided the claims are closely connected) /// （诉讼请求高度相关的）多名被告之一的住所

is in a Contracting Member State (CMS). /// 位于缔约成员国（CMS）。



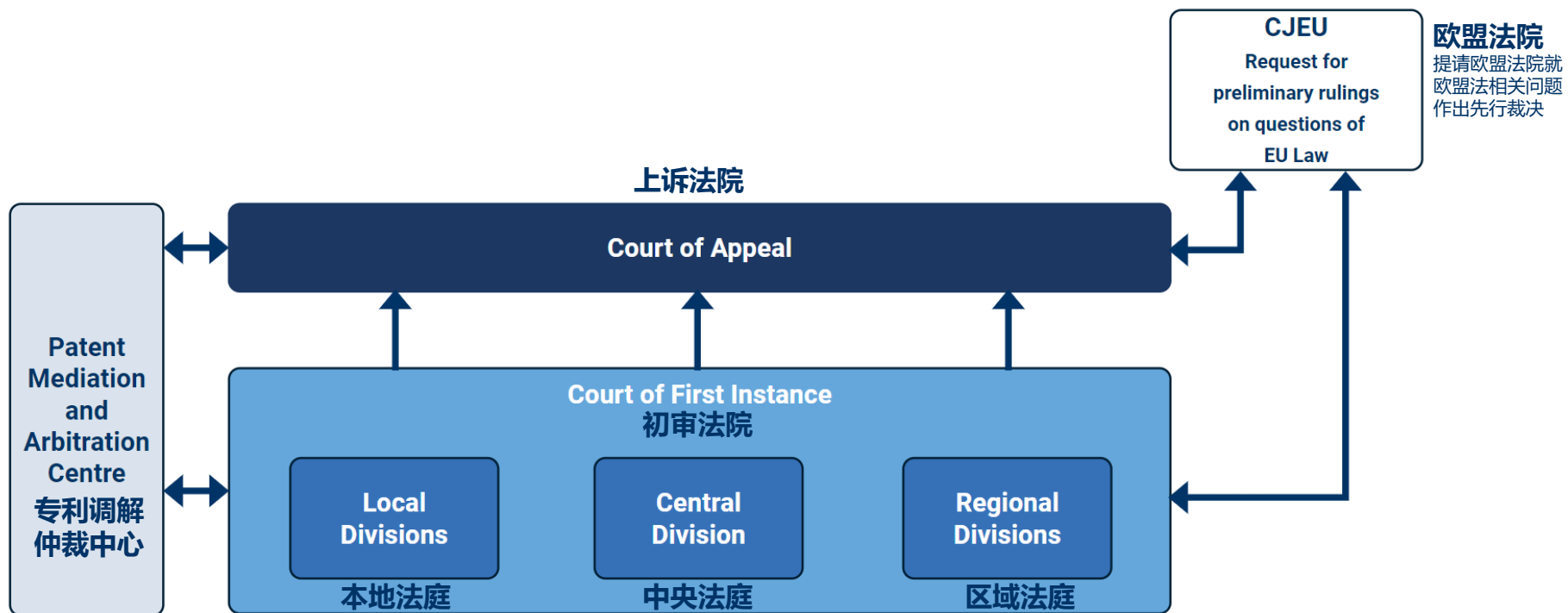
## Jurisdiction of the UPC – revocation actions /// 统一专利法院的管辖权— —撤销请求

- The UPC has jurisdiction on a revocation action or counterclaim for revocation concerning the national parts of an EP (bundle patent) that have been granted for the CMS /// 就缔约成员国生效的欧洲专利（多件专利）中与该国有关的部分，统一专利法院具有对其撤销请求或撤销反诉的管辖权
  - provided the EP has not been opted-out. /// 前提是该欧洲专利未“选择退出”统一专利法院的管辖。

## Jurisdiction of the UPC /// 统一专利法院的管辖权

- The UPC also has exclusive jurisdiction on EPs with unitary effect (Unitary patents). /// 统一专利法院还对统一专利（具有统一效力的欧洲专利）拥有专属管辖权。
  - Since the UPCA entered into force, the applicant of an EP may, after grant of the EP, request to obtain an EP with unitary effect (Unitary patent) within one month. /// 自统一专利法院协议生效以来，申请人可以在获得欧洲专利授权后一个月内请求授予具有统一效力的欧洲专利（统一专利）。
  - A Unitary patent /// 统一专利
    - confers on its proprietor protection throughout the territory of the CMS and /// 在缔约成员国领土范围内向其权利人提供保护，并且
    - reduces complexity and lowers costs. /// 能够简化流程，降低成本。

# Structure of the UPC /// 统一专利法院的组织结构



## Locations Map

**Legend:**

- UPCA in force (Expected)\*
- UPCA Signatory States
- Other EU Member States

**Show location types**

- Court of Appeal
- Court of First Instance
- Training Centre
- Patent Mediation and Arbitration Centre

\* UPCA stands for "Agreement on a Unified Patent Court"

**Select a Member State below to learn more**

- Austria
- Belgium
- Bulgaria
- Denmark
- Estonia
- Finland
- France
- Germany
- Italy
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Portugal
- Slovenia
- Sweden
- Cyprus
- Czech Republic
- Greece
- Hungary
- Ireland
- Romania
- Slovakia
- Croatia
- Poland
- Spain

**Select a Location below to learn more**

- Luxembourg (LU)
- Paris (FR)/C
- Munich (DE)/C
- Riga (LV)/R
- Stockholm (SE)/R
- Tallinn (EE)/R
- Vilnius (LT)/R
- Brussels (BE)/L
- Copenhagen (DK)/L
- Düsseldorf (DE)/L
- Hamburg (DE)/L
- Helsinki (FI)/L
- Lisbon (PT)/L
- Ljubljana (SI)/L
- Mannheim (DE)/L
- Milan (IT)/L
- Munich (DE)/L
- Paris (FR)/L
- The Hague (NL)/L
- Vienna (AT)/L
- Lisbon (PT)
- Ljubljana (SI)
- Budapest (HU)

C: Central division L: Local division R: Regional Division

## Central Division 中央法庭

- Panel of 3 judges /// 由三位法官组成合议庭
- 2 legally qualified judges from different CMS 来自不同缔约成员国的两位符合法律资格要求的法官
- 1 technically qualified judge /// 一位符合技术资格要求的法官

## Local/Regional Division 本地/区域法庭

- Panel of 3 or 4 judges 由三或四位法官组成合议庭
- 3 legally qualified judges from different CMS /// 来自不同缔约成员国的三位符合法律资格要求的法官
- 1 technically qualified judge /// 一位符合技术资格要求的法官

## Court of Appeal 上诉法院

- Panel of 5 judges /// 由五位法官组成合议庭
- 3 legally qualified judges from different CMS /// 来自不同缔约成员国的三位符合法律资格要求的法官
- 2 technically qualified judges /// 两位符合技术资格要求的法官

Central Division

中央法庭

Local/Regional  
Division

地区/区域法庭

Court of Appeal

上诉法院

- **Language in which the patent concerned was granted. /// 授予专利时使用的语言**

- **Official language(s) of the CMS hosting the LD or the official language(s) designated by CMS sharing a RD. ///** 使用地区法庭所在缔约成员国的官方语言，或使用区域法庭所辖缔约成员国指定的官方语言。
- **CMS may designate one or more of the official EPO languages. (In practice all CMS designated English.) ///** 缔约成员国可在欧洲专利局官方语言中指定一个或多个语言。（实操层面上，所有缔约成员国指定的语言中均有英语。）
- **With the agreement of the parties and consent of the panel: the language in which the patent was granted (English, French or German) ///** 经当事各方及合议庭同意，使用授予专利时使用的语言（英语、法语或德语）
- **At the request of one party and after having heard the other parties, the Co1<sup>st</sup> I President may decide on the language in which the patent was granted. ///** 经一方请求，并听取其他当事方意见后，初审庭长可以就授予专利时使用的语言作出决定

- **Language of proceedings before the Co1<sup>st</sup> I. ///** 初审前使用的程序语言。
- **Parties may agree on the language in which the patent was granted. ///** 当事人也可以就授予专利时使用的语言达成一致。
- **Exceptionally the CoA may decide on another official language of a CMS. ///** 在特殊情况下，上诉法院也可以决定使用缔约成员国的其他官方语言。

- **Stages of proceedings of an EP infringement action /// 欧洲专利侵权诉讼的诉讼程序阶段**
  - **Written procedure /// 书面程序**
    - Front loaded (all relevant facts and evidence relied on have to be submitted. /// 前置要求 (必须提交所有相关事实及其证据) 。
    - Deadlines for written submissions /// 提交书面材料的截止日期
  - **Interim procedure /// 中期程序**
    - Preparation of oral hearing /// 口头审理的准备工作
    - Exploration of possibilities to settle the case /// 探寻庭外和解的可能性
  - **Oral procedure /// 口头审理程序**
    - Preliminary introduction to the case by the judges possible /// 可能由法官对案情作初步介绍
    - Pleadings of the parties /// 各方诉讼文件
      - Time limits may be set in advance /// 可以提前设定时间限制
    - Hearing of witnesses and experts. Judges and parties may put questions. /// 听取证人和专家证词。法官和当事人可以提出问题。
    - Endeavour to complete the oral hearing in one day. /// 力争在一天内完成口头审理。

## – Further procedural aspects: /// 诉讼程序 (续)

### ▪ **Videoconference /// 视频会议**

- Parties and representatives may be allowed to attend the oral hearing by video conference /// 当事人和代理人可以通过视频会议的方式参加口头审理
- Parties, witnesses or experts may be heard by video conference /// 当事人、证人或者专家可以通过视频会议方式参加听证。
- Hearings may be held by video conference under exceptional circumstances. /// 特殊情况下，可以完全采用视频会议方式进行听证。

### ▪ **Public access to the electronic register /// 电子档案公开**

- decisions and orders are published /// 决定和命令均会公布
- written pleadings and evidence are available upon reasoned request by decision of the judge-rapporteur after consulting the parties /// 与当事方协商后，法官/预审法官可以依据合理请求，作出披露书面诉讼文件和证据的决定。
- A party may request that certain information be kept confidential. /// 当事方可以要求对某些机密信息不予披露。



- **Further procedural aspects: /// 诉讼程序 (续) :**
  - **Protection of confidential information /// 机密信息的保护**
    - Confidentiality club available /// 可以成立“机密会”
    - Representatives and at least one natural person from each party /// 由代理人及来自各当事方的至少一位自然人组成
  - **Pretrial procedures /// 审前程序**
    - No pretrial discovery US style available /// 没有美式“审前披露”程序
    - Order to preserve evidence (e.g. by detailed description or seizure of the allegedly infringing product) or to inspect premises /// 命令证据保全（例如，详细描述或扣押涉嫌侵权产品），或对场所进行检查
    - Provisional and protective measures (preliminary injunctions, etc.) /// 临时性、保护性措施（临时禁制令等）
  - **Experts /// 专家**
    - Party experts or court appointed experts /// 当事人专家，或法院指定专家
    - Examination in oral hearing by the judges and the party representatives /// 由法官和当事方代理人在口头审理中进行询问

- **Further procedural aspects: /// 诉讼程序 (续) :**
  - **Permanent injunction /// 永久禁令**
    - When infringement has been found and upon request of the claimant permanent injunction will be granted /// 当发现侵权时，应原告请求，下达永久禁制令。
    - No Ebay test US style but injunctions have to be proportionate, Art. 3(2) ED. /// 不对禁制令进行美式检验 [“eBay (易趣网) 案”判例]，但禁制令必须合理适度 [欧盟知识产权执法指令 (ED) 第3(2)款]
  - **Award of damages /// 损害赔偿**
    - 3 ways of calculation (lost profits, return of infringer's profits, royalties) /// 3种计算方式：权利人利润损失、侵权人退还不当利润、专利使用费
    - No punitive damages /// 没有惩罚性损害赔偿

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Thank you for your attention  
感谢聆听

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