

# THE UNITARY PATENT

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# BACKGROUND AND OVERVIEW



# TIMELINE TO THE START OF THE NEW SYSTEM

19 Jan 2022



## Start of provisional application phase

Austria ratified UPC Protocol on Provisional Application (18.01.2022)

1 Jan 2023



## EPO transitional measures

- Early requests for unitary effect
- Requests for delay of grant

17 Feb 2023



## Ratification of UPCA by Germany

Launch of the countdown as set under Art. 89 UPCA

1 Mar 2023



## Start of UPC sunrise period

- Opt-outs
- Register as representative

1 Jun 2023



## Simultaneous start of

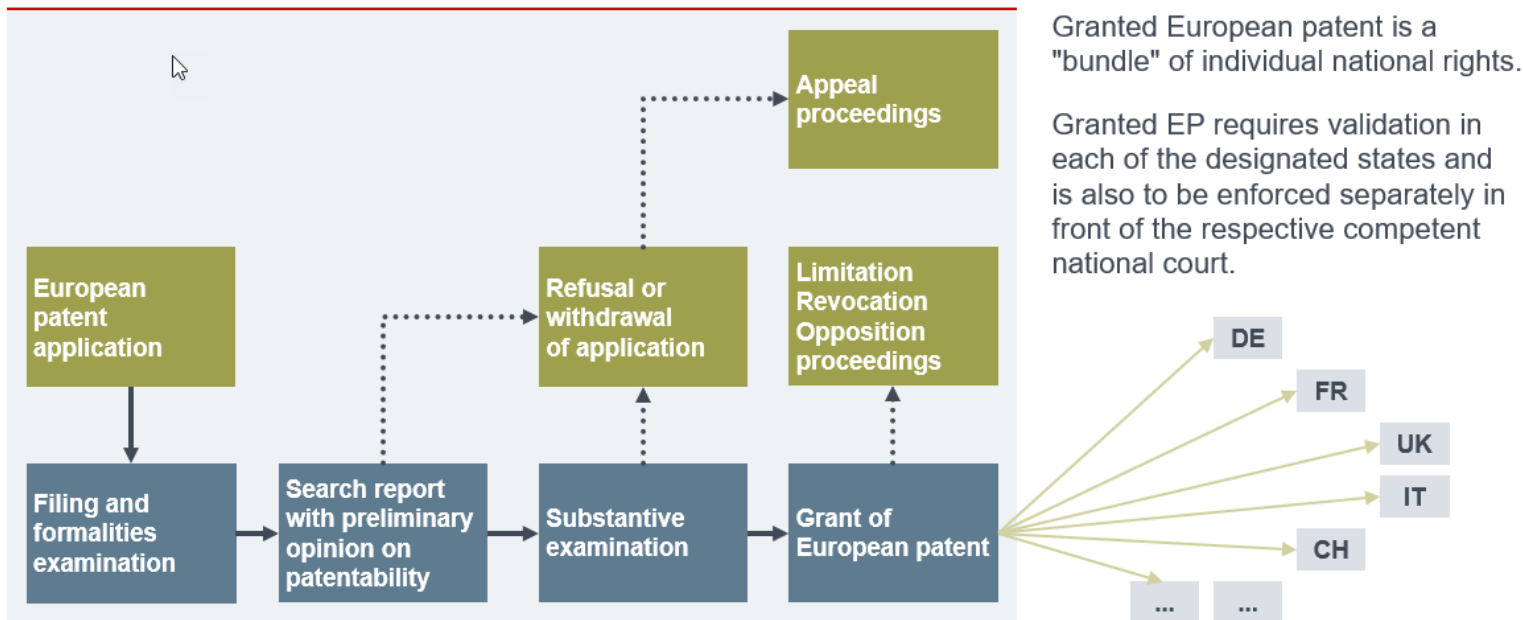
- Unitary Patent
- Unified Patent Court

Provisional application phase

# WHY A REFORM OF THE PATENT SYSTEM IN EUROPE

EPC provided Europe with a very successful centralised patent granting procedure

## Centralised granting procedure for European patents



# OBJECTIVES OF THE UNITARY PATENT PACKAGE



**Cost-effective  
option for broader  
patent protection  
and dispute  
settlement  
across Europe**



Providing better value with reduced complexity



Facilitating access to patent protection for SMEs, universities  
and public research centres



Making Europe more attractive for innovation and investors



Boosting Europe's competitiveness

## A BOOST FOR INNOVATIVE SMEs

Innovative SMEs and universities already benefit of EPs, but still validate these patents only in a small number of countries.

Access to unitary protection in up to 25 member states will:

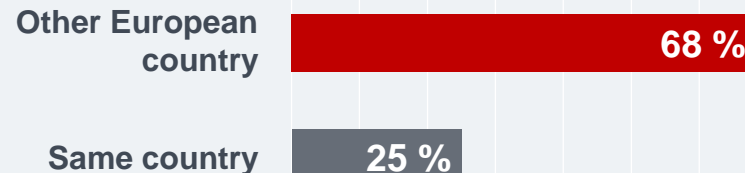
- create enhanced flexibility for SMEs and universities to enter national markets and commercialise their technology on a broad geographical scale,
- enable them to set up collaborations with a broader variety of partners to commercialise inventions across the EU,
- constitute a strong signal of economic value to attract venture capitalists and other sources of funding.

Sources: EPO-EUIPO (2019) High-growth firms and intellectual property rights: the IPR profile of high-potential SMEs in Europe. EPO (2019) Patent commercialisation scoreboard: European SMEs

### Odds of growth of SMEs with prior patent use



### SMEs' preferred partner location for patent commercialisation



# LEGAL FRAMEWORK

## EU Regulations

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- EU Regulation No. 1257/2012 of 17 December 2012 creating the European patent with unitary effect ([OJ EPO 2013, 111](#))
- EU Regulation No. 1260/2012 of 17 December 2012 relating to the translation arrangements for European patents with unitary effect ([OJ EPO 2013, 132](#))

## Rules relating to Unitary Patent Protection

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- Rules relating to Unitary Patent Protection ([OJ EPO 2022, A41](#))
- Rules relating to Fees ([OJ EPO 2022, A42](#))



## BASIC CONCEPT – A SIMPLE ONE-STEP PROCEDURE AFTER GRANT



Unitary Patent is not an autonomous EU right, but based on a European patent, granted by the EPO under the EPC



Same application and examination procedure



High-quality product and service



Co-exists with national patents and classic EP



Upon request of the patent owner, unitary effect is registered for the participating Member States



Registered in one single step at the EPO with no need for multiple parallel national validations



Uniform protection in up to 25 Member States



EPO acts as one-stop shop for all subsequent transactions



## AN ADDITIONAL OPTION ENHANCING THE EUROPEAN PATENT SYSTEM

- Various combinations of a Unitary Patent classic European patent:
  - a Unitary Patent for the participating EU member states, together with
  - a classic European patent taking effect in one or more EPC contracting states not covered by the Unitary Patent
- No double protection by a Unitary Patent and a classic European patent on the territory of a state covered by the Unitary Patent.
- Effect: unitary patent takes effect retroactively in the participating EU member states as from the date of publication of the mention of grant of the European patent

# PRACTICAL CONSIDERATIONS



# REQUIREMENTS FOR THE REGISTRATION OF UNITARY EFFECT

## Substantive requirements

Unitary effect can be requested for European patents that were granted

- in respect of all 25 participating Member States, and
- with the same set of claims for all of them.

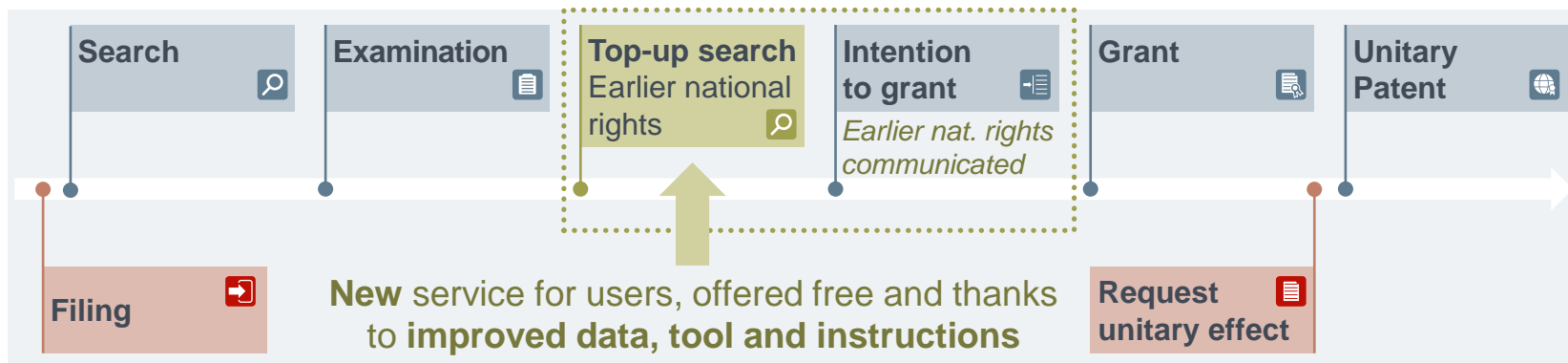
## Some of the main procedural requirements

Filing of the request by the patent owner

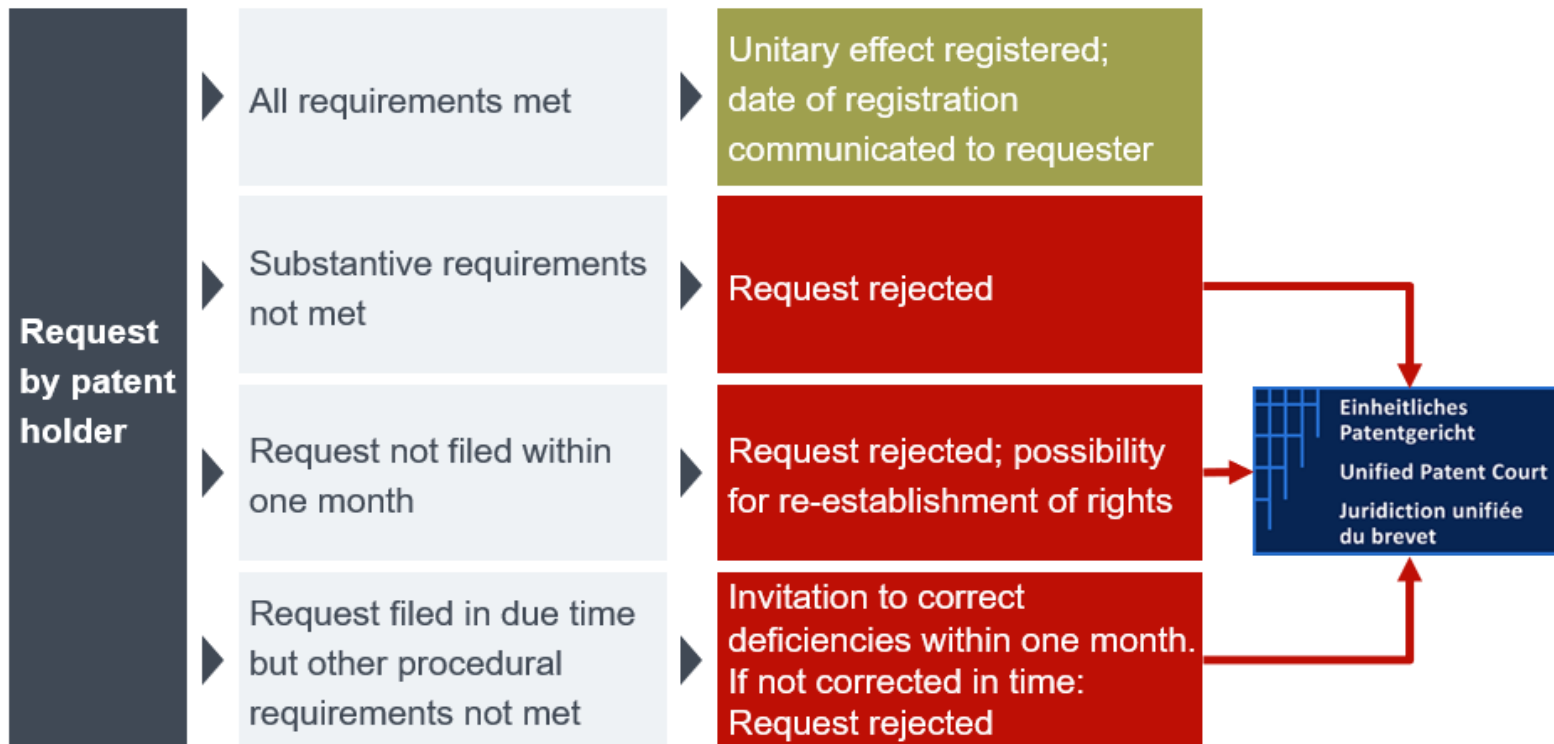
- in writing, in the language of the proceedings, and
- no later than one month after the mention of the grant is published.
  - Translations only during a transition period  
a full **English** translation if the patent is **granted in French** or **German**,  
or
  - a full translation into **any language of the EU** if the patent has been **granted in English**

# TOP-UP SEARCH FOR EARLIER NATIONAL RIGHTS

- Unitary effect can only be registered for European patents granted with the same set of claims for all participating EU Member States. The exact effect of prior national rights on the Unitary Patent will be subject to interpretation by the UPC (Article 3 Regulation (EU) No 1257/2012)
- Since 1 Sep 2022, the EPO carries out systematic top-up searches to find "earlier national rights" and assess their *prima facie* relevance. This service is free of charge to all applicants
- In the vast majority of cases since the launch of the service, no earlier national rights have been found, which is in line with the assumptions made during the pilot phase



## EXAMINATION OF THE REQUEST FOR UNITARY EFFECT



# CERTIFICATE FOR UNITARY PATENT PROTECTION



**INHEITSPATENT | UNITY PATENT**  
**BREVET UNITAIRE**

Hiermit wird bescheinigt, dass die einheitliche Wirkung für das nachstehende europäische Patent im Register für den einheitlichen Patentschutz eingetragen wurde.

It is hereby certified that unity effect has been registered in the Register for unity patent protection for the European patent indicated below.

Il est certifié que l'effet unitaire a été inscrit au Registre de la protection unitaire conférée par un brevet pour le brevet européen ci-dessous.

Europäisches Patent Nr.  
European patent No.  
Brevet européen n°

**XXXXXXX**

Territorialer Geltungsbereich  
Territorial scope  
Champ d'application territoriale

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

Tag der Eintragung  
Date of registration  
Date d'enregistrement

**DD.MM.2023**

Tag des Gerichts zur Wirkung  
Date of effect  
Date d'entrée en effet

**DD.MM.2023**

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Patentinhaber | Proprietor(s) of the patent | Titulaire(s) du brevet

**AAA inventions Limited**  
Aardbeek Industrial Estate  
London  
WC1A 4XZ/GB



**António Campinos**

Präsident des Europäischen Patentamts | President of the European Patent Office | Président du Office européen des brevets  
München, den (Month), (Year) für **DD.MM.2023**

**URKUNDE | CERTIFICATE | CERTIFICAT**



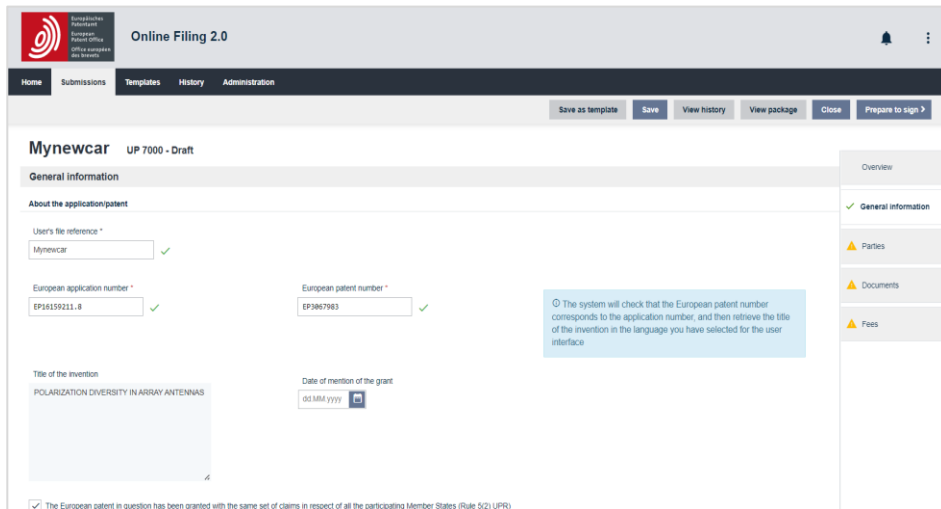
Einheitspatent 1999/01/22



URKUNDE | CERTIFICATE | CERTIFICAT

# ONLINE FILING TOOLS AND FORM

- UP7000 form for filing the request for unitary effect
- Use of online filing tools is strongly encouraged
- [Tutorials and Videos](#) are available on the website



Online Filing 2.0

Home Submissions Templates History Administration

Save as template Save View history View package Close Prepare to sign

Mynewcar UP 7000 - Draft

General information

About the application/patent

User's file reference \*

Mynewcar ✓

European application number \*

EP16159211.8 ✓

European patent number \*

EP0967963 ✓

ⓘ The system will check that the European patent number corresponds to the application number, and then retrieve the title of the invention in the language you have selected for the user interface

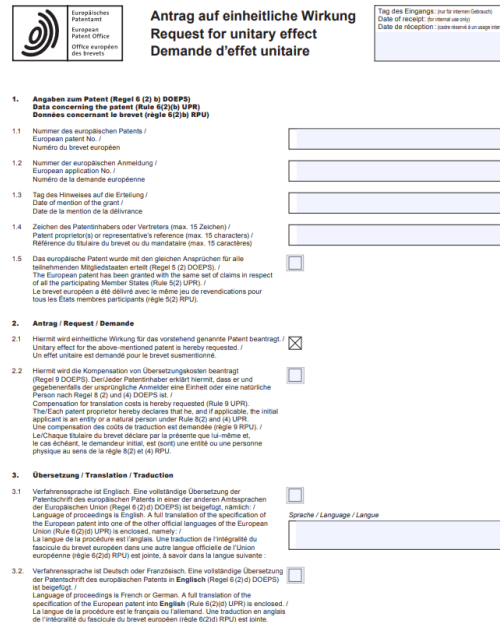
Title of the invention

POLARIZATION DIVERSITY IN ARRAY ANTENNAS

Date of mention of the grant

00.MM.yyyy

☒ The European patent in question has been granted with the same set of claims in respect of all the participating Member States (Rule 5(2) EPC).



Europäisches Patentamt  
European Patent Office  
Office européen des brevets

Antrag auf einheitliche Wirkung  
Request for unitary effect  
Demande d'effet unitaire

Tag des Eingangs (zu füllen (falls))  
Date of receipt (to fill in (if))  
Date de réception (à compléter (si applicable))

1. Angaben zum Patent (Regel 6 (2) b) DOEPS)  
Data concerning the patent (Rule 6(2)(b) EPC)  
Données concernant le brevet (Règle 6(2)(b) RPJ)

1.1 Nummer des europäischen Patents /  
European patent No. /  
Numéro du brevet européen

1.2 Nummer der europäischen Anmeldung /  
European application No. /  
Numéro de la demande européenne

1.3 Tag des Hinweises auf die Erteilung /  
Date of mention of the grant /  
Date de la mention de la délivrance

1.4 Zeichen des Patentinhabers oder Vertreters (max. 15 Zeichen) /  
Patent proprietor(s) or representative's reference (max. 15 characters) /  
Référence du titulaire du brevet ou du mandataire (max. 15 caractères)

1.5 Das europäische Patent wurde mit den gleichen Ansprüchen für alle teilnehmenden Mitgliedstaaten erteilt (Regel 5 (2) DOEPS) /  
The European patent has been granted with the same set of claims in respect of all the participating Member States (Rule 5(2) EPC) /  
Le brevet européen a été délivré avec le même jeu de revendications pour tous les États membres participants (Règle 5(2) RPJ)

2. Antrag / Request / Demande

2.1 Hiermit wird einheitliche Wirkung für das vorstehend genannte Patent beantragt /  
Unitary effect for the above-mentioned patent is hereby requested /  
Un effet unitaire est demandé pour le brevet susmentionné

2.2 Hiermit wird die Kompensation von Übersetzungskosten beantragt (Regel 9 DOEPS). Der/Each Patentinhaber erklärt hiermit, dass er und gegebenenfalls der ursprüngliche Anmelder eine Einheit oder eine natürliche Person nach Regel 8 (2) und (4) DOEPS ist. /  
Compensation for translation costs is hereby requested (Rule 9 EPC). The/Each patent proprietor hereby declares that he, and if applicable, the initial applicant is an entity or a natural person under Rule 8(2) and (4) EPC. /  
Le/Chaque titulaire du brevet déclare par la présente que lui-même et, le cas échéant, le demandeur initial, est (sont) une entité ou une personne physique au sens de la règle 8(2) et (4) RPJ.

3. Übersetzung / Translation / Traduction

3.1 Verfahrenssprache ist Englisch. Eine vollständige Übersetzung der Patentchrift des europäischen Patents in einer der anderen Amtssprachen der Europäischen Union (Regel 6(2)(c) DOEPS) ist beigelegt, nämlich: /  
Language of proceedings is English. A full translation of the specification of the European patent into one of the other official languages of the European Union (Rule 6(2)(c) EPC) is enclosed, namely: /  
La langue de la procédure est l'anglais. Une traduction de l'intégralité du fascicule du brevet européen dans une autre langue officielle de l'Union européenne (Règle 6(2)(c) RPJ) est jointe, à savoir dans la langue suivante:

3.2 Verfahrenssprache ist Deutsch oder Französisch. Eine vollständige Übersetzung der Patentchrift des europäischen Patents in Englisch (Regel 6(2)(c) DOEPS) ist beigelegt. /  
Language of proceedings is French or German. A full translation of the specification of the European patent into English (Rule 6(2)(c) EPC) is enclosed. /  
La langue de la procédure est le français ou l'allemand. Une traduction en anglais de l'intégralité du fascicule du brevet européen (Règle 6(2)(c) RPJ) est jointe.

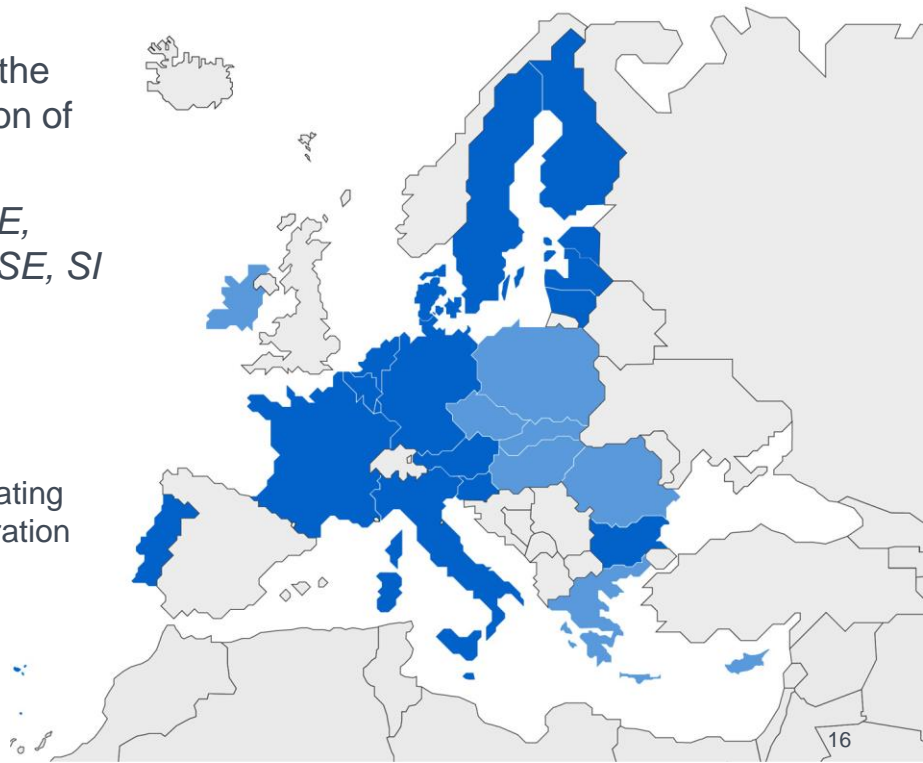


## UNITARY PATENT: TERRITORIAL SCOPE

Unitary effect is possible for all Member States participating in enhanced cooperation and for which the UPCA has entered into force at the date of registration of unitary effect

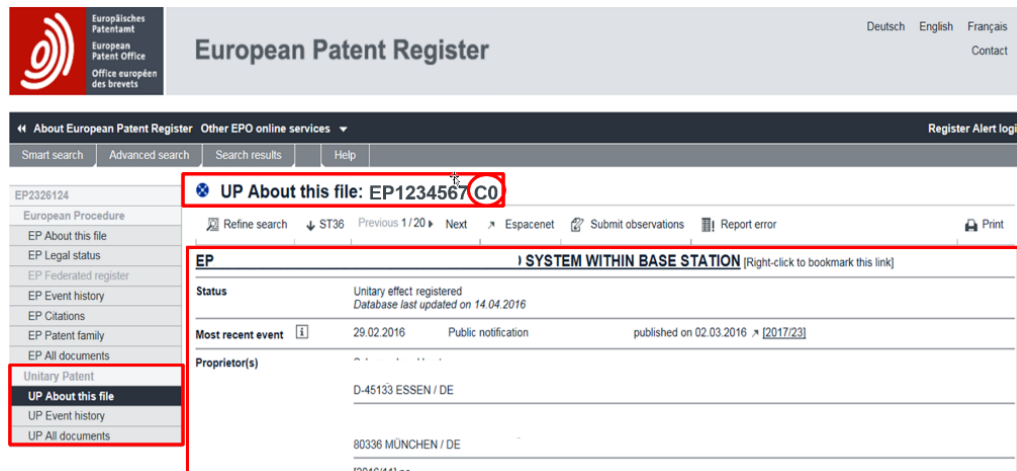
*17 states covered by the first Unitary Patents : AT, BE, BG, DE, DK, EE, FI, FR, IT, LT, LV, LU, MT, NL, PT, SE, SI*  
*(UPCA not ratified: CY, CZ, GR, HU, IE, RO, SK)*

- Different generations of Unitary Patents with different territorial coverage in the initial years
- No extension of the territorial coverage to other participating Member States which ratify the UPCA after the registration of unitary effect
- Territorial coverage will be indicated in the Register for unitary patent protection



# REGISTER FOR UNITARY PATENT PROTECTION

- The new Register for Unitary Patent Protection (UPP Register) will be an integral part of the European Patent Register, but designed separately
- Entries in the UPP register will be made in the three official languages of the EPO
- Unitary Patents will be identifiable and searchable
- Content of the UPP Register is extensive (Rule 16(1) UPR)



The screenshot displays the European Patent Register website. The header includes the EPO logo and the text 'European Patent Register' in German, English, and French. A navigation bar at the top contains links for 'About European Patent Register', 'Other EPO online services', and 'Register Alert login'. Below this, there are tabs for 'Smart search', 'Advanced search', 'Search results', and 'Help'. The main content area shows a search result for 'UP About this file: EP1234567 C0'. The left sidebar lists various options, with 'Unitary Patent' and 'UP About this file' highlighted. The main content area displays details for the selected file, including the status 'EP', the system 'SYSTEM WITHIN BASE STATION', and the most recent event '29.02.2016 Public notification published on 02.03.2016'. The proprietor is listed as 'D-45133 ESSEN / DE' and '80336 MÜNCHEN / DE'.

## TRANSITIONAL MEASURES

The EPO will provide [two transitional measures](#) to support users in an early uptake of the UP:

### Early request for unitary effect

- Allows applicants to file requests for unitary effect already before the start of the Unitary Patent system.
- May only be filed for European patent applications in respect of which a communication under Rule 71(3) EPC has been dispatched.
- Available since 1 January 2023.

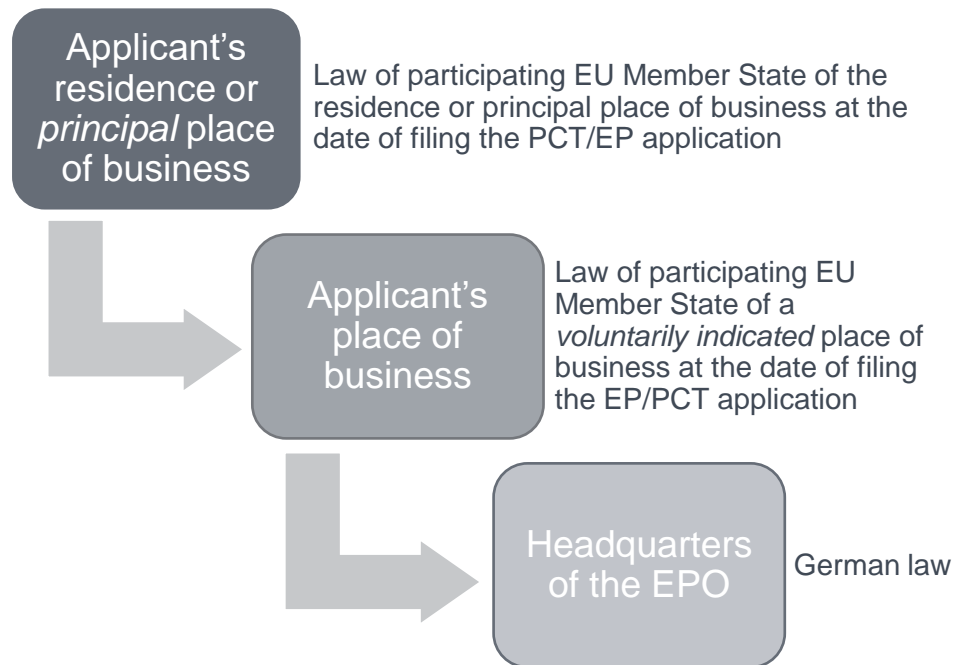
### Request for a delay of grant

- Offers the possibility to request a delay in issuing the decision to grant a European patent.
- May be validly filed only for European patent applications in respect of which the applicant has been informed of the text intended for grant by a communication under Rule 71(3) EPC but has not yet approved that text.
- Available since 1 January 2023.

# STRATEGIC CONSIDERATIONS



# LAW APPLICABLE TO THE UP AS AN OBJECT OF PROPERTY



- It can prove useful to have an entry in the Register for unitary patent protection showing "a place of business"
- Information on a place of business can be provided only together with request for unitary effect, UPR i.e. within one month as from the grant of the European patent
- The EPO's Online Filing Software for requesting unitary effect (Form 7000) will provide a specific field for entering a place of business

## COST EFFICIENCY

- No fees are charged by the EPO for the purpose of obtaining a Unitary Patent.
- Maintaining a Unitary Patent for ten years amounts to less than EUR 5 000.
- UP is less expensive than a EP validated and maintained in 4 of the 25 participating Member States. But various elements are to be considered when comparing the costs (which states to validate, expected lifetime of the patent, etc.)

### Classic European patent

Fragmented post-grant administration  
procedure at national level

National patent offices  
*with their own:*



- Translation requirements
- National validation fees
- Procedures, particularly deadlines
- Renewal fees
- Currencies
- Requiring own local attorney



### Unitary Patent

One-stop-shop at the EPO  
for all post-grant administration

One office

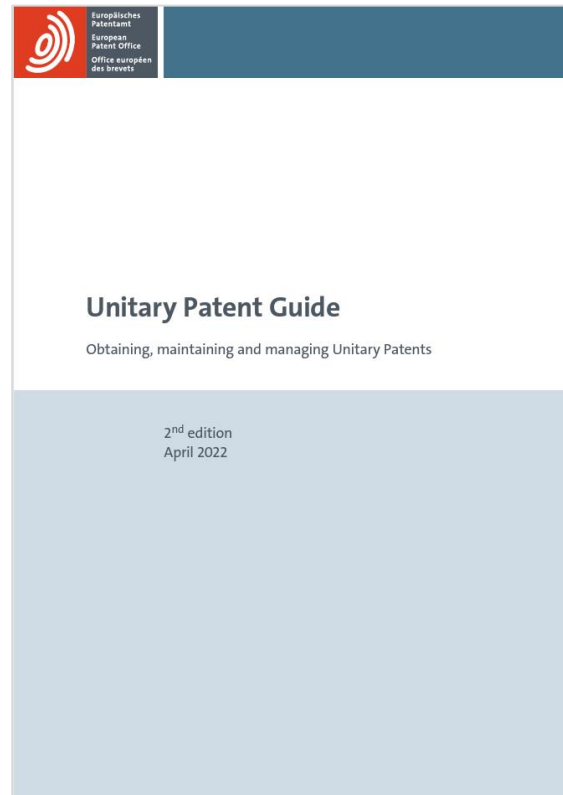


- No more translations<sup>1</sup>
- No additional fee for obtaining a Unitary Patent
- One procedure, particularly deadline
- One renewal fee
- One currency (€)

<sup>1</sup> after an initial transition period when translations will be required, but for information purposes only with no legal effect.

## UNITARY PATENT GUIDE

- Provides companies, inventors and their representatives with an outline of the procedure involved in obtaining a Unitary Patent.
- Deals with the accessory procedures relating to Unitary Patents (e.g. compensation scheme for translation costs, registering a statement on licences of right) and gives an overview of the rules on paying renewal fees for Unitary Patents.
- Available at: [epo.org/law-practice/unitary/unitary-patent/unitary-patent-guide.html](https://epo.org/law-practice/unitary/unitary-patent/unitary-patent-guide.html)





## ACCOMPANYING MEASURES AT NATIONAL LEVEL: "SAFETY NET"

- "Safety net" providing the possibility to validate a European patent where a request for unitary effect has been withdrawn or rejected either by the EPO or the UPC, or where the unitary effect has been revoked by the UPC at the time when deadlines for validating the European patent have already expired.
- A large number of Member States have introduced such a "safety net", e.g. Germany, France, Italy, etc.

## ACCOMPANYING MEASURES AT NATIONAL LEVEL: DOUBLE PROTECTION

- No double-protection for the same invention by a Unitary Patent and a classical European patent in the territory of the 26 participating Member States.
- Double-protection by a Unitary Patent and national patents left open in EU Reg. 1257/2012 and left to be decided at national level.
  - Germany and France introduced the possibility of limited double protection, i.e. double protection will be possible between a national patent and a Unitary Patent; and between a national patent and a European patent for which no opt-out has been declared.
  - To compensate for the possibility of double protection, a protective procedural defence is introduced to prevent a defendant from being sued twice before the UPC and before the national court.

## BOOKLET "NATIONAL MEASURES ACCOMPANYING THE IMPLEMENTATION OF THE UNITARY PATENT"

- Overview of the most important national measures adopted in the participating Member States for the purpose of accompanying the implementation of the Unitary Patent
- <https://www.epo.org/law-practice/legal-texts/national-measures-up.html>

### National measures relating to the Unitary Patent

28 September 2022



# NEED MORE INFORMATION?

## Revamped [website](#), including updated [FAQ](#)

### Unitary Patent & Unified Patent Court



#### A better patent system for Europe

The Unitary Patent and the Unified Patent Court are the building blocks which will supplement and strengthen the existing centralised European patent granting system. They will offer users of the patent system a cost-effective option for patent protection and dispute settlement across Europe.

#### Unitary Patent

Unitary Patents will make it possible to get patent protection in up to 25 EU Member States by submitting a single request to the EPO, making the procedure simpler and more cost effective for applicants.

#### Transitional measures

##### FAQ

##### Unitary Patent Guide

##### Select Committee documents

##### Learn more about Unitary Patents

#### When will it start?

The start of the new system is currently expected for the second half of 2022.

#### Learn more about the start date

#### Unified Patent Court

The Unified Patent Court (UPC) is an international court set up by participating EU Member States to deal with the infringement and validity of both Unitary Patents and European patents, putting an end to costly parallel litigation and enhancing legal certainty.

#### Learn more about the UPC

#### Materials & recordings

Access presentations and videos from previous events

#### Training resources

#### Events & training

Register for forthcoming seminars and courses

#### Patent Data User Days, 8 & 9 June 2022

## Webinars

### Unitary Patent Package - recorded online seminar

The Unitary Patent will supplement and strengthen the existing centralised European patent granting system and will make it possible to obtain uniform patent protection in up to 25 EU member states by submitting a single request to the EPO. It will offer users of the patent system a cost-effective option for patent protection and dispute settlement across Europe.

Watch here the recorded live session held on 05 April 2022 with Stefan Luginbuehl as speaker and download the presentation shown.



#### The Unitary Patent package

An introduction to the new system and latest update



#### Download presentation

#### The Unitary Patent: practical aspects for patent attorneys and paralegals

In an online lecture on 13 May 2022, two experienced EPO lawyers focussed on practical aspects of Unitary Patents, addressing patent attorneys, paralegals and administrative staff.

Find below the material of the online session.

#### An introduction to the new system

#### Requesting unitary effect at the EPO

## IT workshops for users

### Unitary Patent IT Workshop

On 7 and 8 April, the EPO held the first of two UP IT workshops to inform users about the changes made to the existing IT infrastructure for the new UP system to make it easier for them in future to access and use the necessary tools and forms.

Find below the material of the workshop.

#### Latest developments

#### Filing of the forms related to the unitary patent in Online Filing

#### Data related to Unitary Patents - EP bibliographic data

#### The European Patent Register and the Unitary Patent Register

#### European Patent Bulletin - What is new for European Patents with unitary effect

### Recordings of the tools demos

On 23 and 25 May the EPO held a second Unitary Patent IT workshop which included a live demonstration of how to access and use the tools and forms required for the new Unitary Patent system.

Recordings of these demos can be found below.



#### Unitary Patent IT workshop

Filing of the new forms related to Unitary Patent



## Flyers



## IF YOU FAIL TO PREPARE ...



Make yourself familiar with the new system

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Explore the opportunities and benefits

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Take informed decisions for your existing portfolio and create/adapt your IP strategy accordingly

# THANK YOU FOR LISTENING!

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**Contact us**

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

