



The European Unitary Patent System and the European Unified Patent Court



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1. Basic Facts

A new system for European Union (EU)-wide patent enforcement and revocation entered into force on 1 June 2023. This system enables applicants, following the grant of a European patent (EP) by the European Patent Office (EPO), to obtain a *single patent with unitary effect covering most of the EU member states*, thereby eliminating the need for separate national validation in those countries.

The “*European Patent with Unitary Effect*” (in short: Unitary Patent, UP) is one of two pillars of the new system established by the member states of the EU¹. The second pillar of the new system is the *European Unified Patent Court* (UPC) which has exclusive jurisdiction over Unitary Patents.

While the new system does not affect the application, examination, and grant procedures before the EPO, it introduces the following key differences at the post-grant stage:

- Following the grant of a European patent, the proprietor may request *unitary effect within one month of the publication of the mention of grant in the European Patent Bulletin*. A Unitary Patent provides uniform protection in all Member States participating in the system at the date of registration of unitary effect. As a result, separate national validation in those participating states is no longer required.
- Alternatively, the patent proprietor may still choose *to validate the European patent in one or more participating states in the traditional manner*², i.e. by pursuing separate national validations, instead of requesting unitary effect.

¹ See EU regulations No. 1257/2012 and No. 1260/2012, and Agreement on a Unified Patent Court (16315/12)

² We use the term “*traditional*” to refer to the validation of a European patent in individual national Member States of the European Patent Convention, as was standard practice prior to the entry into force of the Unitary Patent system. We further distinguish between bundles of national parts of European patents (commonly referred to as “European bundle patents”) and European patents with unitary effect (Unitary Patents, UPs)

- *For all Unitary Patents (UPs), the Unified Patent Court (UPC) has exclusive jurisdiction.* Consequently, both infringement and revocation proceedings relating to such patents are conducted exclusively before the UPC in a single, unitary procedure.
- *The UPC also has jurisdiction over the national parts of traditional European bundle patents* in the participating Member States, including those granted prior to the entry into force of the new system. However, *patent proprietors may declare an “opt-out”*, thereby excluding such patents from UPC jurisdiction and maintaining the competence of the national courts for the entire lifetime of the patent. This “opt-out” option is not available for Unitary Patents, which are always subject to UPC jurisdiction.

As the new system was *established within the framework of the European Union (EU)*, non-EU member states of the European Patent Convention (EPC), including, for example, the United Kingdom, Switzerland, Norway, and Turkey, do not participate. In addition, certain EU Member States, such as Spain, Poland, and Croatia, are currently not part of the system. A *Unitary Patent may coexist* with “true” national patents (i.e. patents not derived from a European patent) in participating Member States, as well as with the national parts of European patents in non-participating EPC Member States.

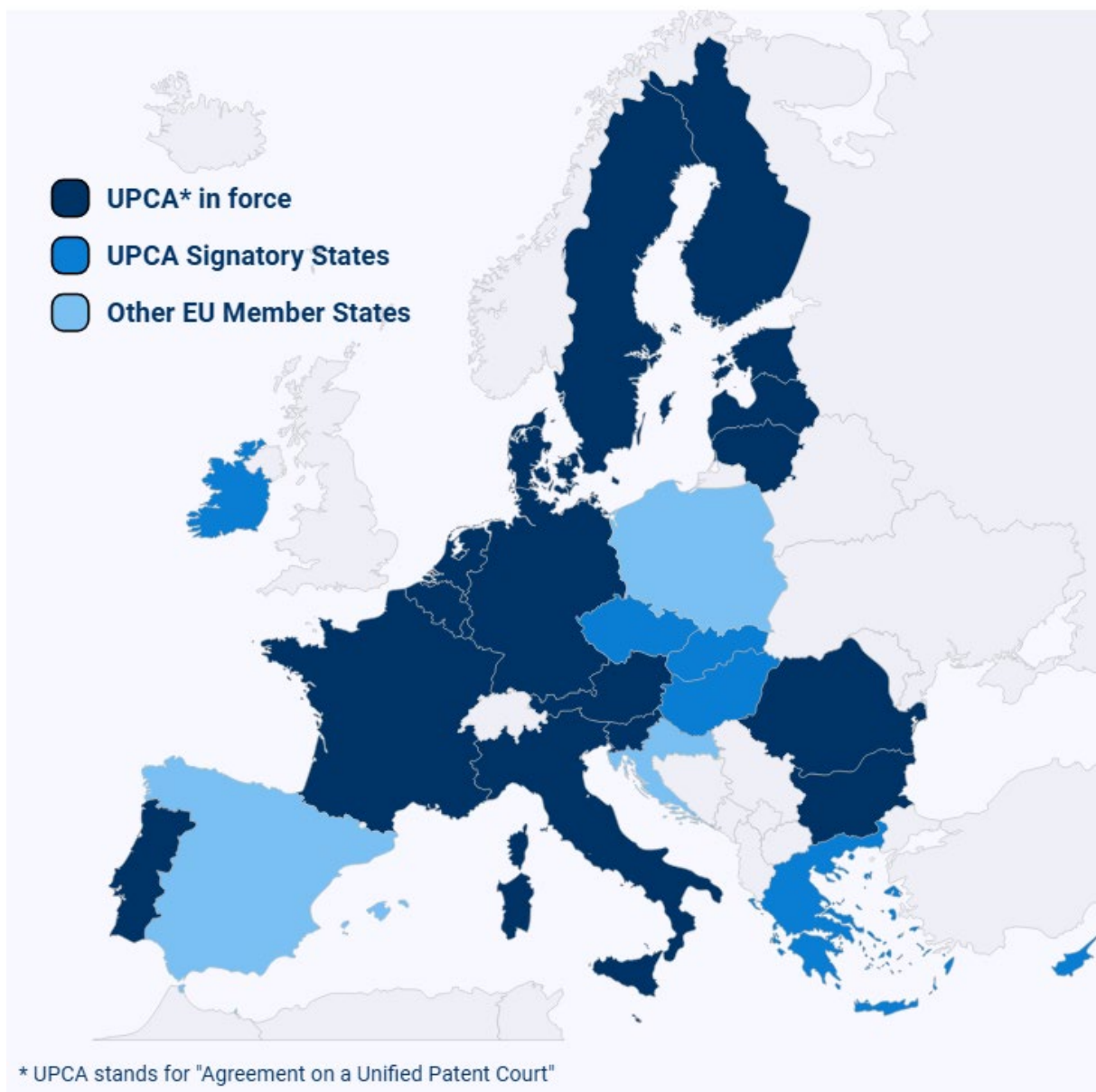
After Romania acceded to the new UPC system on September 1, 2024, the following 18 EU member states are participating.:

- Portugal
- France
- Belgium
- Netherlands
- Germany
- Austria
- Italy
- Denmark
- Sweden
- Finland
- Estonia
- Latvia
- Lithuania
- Bulgaria
- Malta
- Luxembourg
- Slovenia
- Romania

Six further EU countries (*"UPCA signatory states"*) are supposed to join at a later date (depending on when they ratify the UPC Agreement), which are:

- Cyprus
- Czech Republic
- Greece
- Hungary
- Ireland
- Slovakia.

The geographical coverage of a Unitary Patent, at present and once all 24 EU Member States participate, is illustrated in the following map³:



³ Source: [The Unified Patent Court | Unified Patent Court](https://www.unifiedpatentcourt.org/en) at <https://www.unifiedpatentcourt.org/en>

2. Procedural Aspects

Under the European Unitary Patent system (also referred to as the “UP system”), proprietors of a granted European patent *may request unitary effect within one month of the publication of the mention of the grant of the European patent*. This period is significantly shorter than the three-month time limit applicable for traditional national validation of a European patent in individual countries. The one-month deadline is non-extendable, and there is generally no ordinary legal remedy available if the time limit is missed.

European patents that have already been granted and validated in the traditional manner cannot subsequently be converted into Unitary Patents. Moreover, even where unitary effect is requested, *separate national validation remains necessary for EU Member States that have not ratified the Unified Patent Court Agreement at the time of grant, as well as, of course, for all non-EU countries* where patent protection is sought.

Together with the request for a Unitary Patent, *a full translation of the European patent* must be filed. Where the patent has been granted in English, a full translation of the specification must be provided in one other official language of the European Union. Given that Germany represents the largest economy among the UPC participating states, a translation into German may be advantageous. Where the patent has been granted in French or German, a full translation of the specification must be provided in English.

Even after the entry into force of the UP/UPC system, applicants *may still choose to follow the traditional route of separately validating a granted European patent* in some or all of the participating countries (i.e. obtaining a European “bundle patent”) *as an alternative to requesting unitary effect*. The choice between these options will require an assessment of costs as well as strategic considerations, which are addressed in more detail below.

It is also important to note that, with the entry into force of the European Unitary Patent system, the *Unified Patent Court (UPC) has jurisdiction not only over Unitary Patents, but also over traditional European bundle patents with effect in any of the participating Member States*. Accordingly, the UPC is competent both for UPs and for the national parts of European patents that have been validated in one or more participating countries, including patents granted before the entry into force of the system, provided they fall within its temporal scope (i.e. having a filing date of 1 March 2007 or later).

However, for such traditional European patents, whether granted before or after the entry into force of the system, *an “opt-out” from the jurisdiction of the UPC may be declared*. This option is not available for Unitary Patents, which are always subject to the exclusive jurisdiction of the UPC and cannot be opted out.

For example, where a European patent granted in 2020 has been validated in France, Germany, Spain, and the United Kingdom, the Unified Patent Court (UPC) has jurisdiction over the French and German parts with respect to both enforcement and invalidation proceedings. In such cases, the UPC may hear these proceedings in a single, centralized action covering both national parts, unless an “opt-out” has been declared, in which case jurisdiction remains with the respective national courts under the traditional system. As Spain and the United Kingdom do not participate in the UPC system, the entry into force of the Unitary Patent system has no impact on the separate national proceedings relating to the Spanish and UK parts of the European patent.

For all European patents that have been or are validated in the traditional manner, irrespective of whether they were granted before or after the entry into force of the Unitary Patent system, *an “opt-out” from the jurisdiction of the UPC may be declared at any time during the lifetime of the respective national parts of the patent*. However, such an “opt-out” is no longer possible once an action for revocation has been brought before the UPC by a third party, or once infringement proceedings concerning the patent have been initiated before the UPC.

Further, it should be noted that an “opt-out” must be declared for each European patent individually, meaning that each patent number must, inter alia, be expressly included in the opt-out declaration. However, it is possible to submit a single (batch) request covering multiple patents belonging to the same proprietor. There is also no requirement to notify the opt-out separately in each participating Member State.

If the patent proprietor subsequently changes their mind, *an “opt-in” is possible, i.e. the withdrawal of the opt-out declaration*. However, such withdrawal is no longer permitted if proceedings concerning a national part of the bundle patent have already been initiated before a national court. Moreover, once an “opt-out” has been withdrawn and the patent has been brought back under the jurisdiction of the UPC, a second “opt-out” is not possible.

The EPO has compiled further information on obtaining, maintaining, and managing the unitary patent in a helpful guide⁴. Further relevant information may be obtained from the official website of the Unified Patent Court⁵.

⁴ [Unitary Patent Guide updated | epo.org](https://www.epo.org/en/news-events/news/unitary-patent-guide-updated) at <https://www.epo.org/en/news-events/news/unitary-patent-guide-updated>

⁵ [The Unified Patent Court | Unified Patent Court](https://unifiedpatentcourt.org/en) at <https://unifiedpatentcourt.org/en>

3. Cost Aspects

First, the costs for filing and prosecuting a European patent application up to grant remain unchanged, as the Unitary Patent system does not affect the existing application, examination, and grant procedure at the European Patent Office (EPO). However, by requesting a Unitary Patent instead of pursuing separate national validations in the participating countries after grant, a very significant cost reduction can be achieved, depending on the number of countries in which protection is sought.

For example, national validation of a granted European patent in the traditional manner across all 18 member states currently participating in the Unified Patent system may, in an average case, result in costs in the range of EUR 25,000 to 50,000 (including customary IP agency fees, official fees, and translation costs, which may vary considerably depending on the length of the text).

By contrast, *obtaining a Unitary Patent (UP) for the same average case*, instead of pursuing traditional national validation in all participating countries, may incur costs of only approximately EUR 2,000 to 4,000 (including IP agency and translation costs). Accordingly, the UP can offer substantial cost savings in such a scenario, which are expected to increase further as all 24 participating countries (see above) join the system.

If, on the other hand, protection for a granted European patent is sought only in the UK, Germany, France, and Spain, the patent would in any event need to be validated in the traditional manner in the UK and Spain (as these countries do not participate in the new system), such that no cost savings can be achieved by requesting a Unitary Patent. Moreover, the costs for traditional validation in Germany and France may amount to approximately EUR 1,000 or even less (as no translations are required), whereas obtaining a Unitary Patent (which, inter alia, covers Germany and France) may, in an average case, incur costs of around EUR 2,000 to 4,000 due to the necessary translation requirements.

As a general rule of thumb, it can be stated that *where protection is sought in at least four member states participating in the Unitary Patent system*, obtaining a Unitary Patent, thereby extending protection to all 18 participating states (and potentially up to 24 in the future), will generally be more cost-effective than pursuing separate national validations in those countries in the traditional manner. The cost advantage will, of course, increase with the number of participating countries in which protection is desired.

An additional important cost factor relates to renewal fees. Unlike the national parts of a traditional European patent, for which renewal fees must be paid separately to

each national patent office, a Unitary Patent requires *only a single annual renewal fee* payable centrally to the EPO. This not only may result in potential savings in official fees, but also significantly simplifies the monitoring of renewal deadlines and payment processes, which typically involve additional administrative costs.

The amount of the official renewal fees for a European Unitary Patent has been set at a level corresponding to the sum of the renewal fees payable to the national patent offices of the four EU countries in which European patents were most frequently validated in the past (Germany, the United Kingdom, France, and the Netherlands). At the time the fee level was determined, the United Kingdom was still included among these four countries; however, the fee structure has been maintained following Brexit. *Accordingly, the official renewal fees for a Unitary Patent range from approximately EUR 475 in year 6 to EUR 4,855 in year 20⁶.*

The total renewal fees payable to the national patent offices of the 18 countries currently participating in the system (and, in the future, potentially up to 24 participating countries) for a traditional European bundle patent, assuming that the patent is maintained in all of these countries, are significantly higher. According to calculations by the EPO, these amounts would be approximately EUR 2,224 in the 6th year and EUR 14,702 in the 20th year for all 18 countries participating so far.

It is therefore clear that *the renewal fees for a Unitary Patent are substantially lower than the combined renewal fees for maintaining protection separately* in the individual countries covered by the system.

A further aspect to consider is that, in practice, additional IP agency costs arise for the monitoring and payment of renewal fees. In the case of a Unitary Patent, such costs are incurred only once, whereas for a traditional European bundle patent they are multiplied by the number of countries in which the patent is maintained.

However, similar to the costs associated with traditional validation of a European patent in the desired countries, *the potential cost advantage in relation to renewal fees for a Unitary Patent depends significantly on the number and nature of the countries in which the patent is to be maintained.*

For example, if a European patent is to be maintained only in Germany, France, the United Kingdom, and Spain, renewal fees will, in any event, have to be paid in the United Kingdom and Spain, as these countries are not covered by the Unitary Patent system and are therefore unaffected by it. In addition, renewal fees will be due for

⁶ A list of Unitary Patent renewal fees for all years, in comparison with the renewal fees for national patents, is available at: <https://www.epo.org/law-practice/unitary/unitary-patent/cost.html>

Germany and France, which, in the case of a European bundle patent validated only in these two countries, would be payable separately to the respective national patent offices, whereas in the case of a Unitary Patent (which, inter alia, covers Germany and France), they are payable centrally to the EPO.

The combined national renewal fees for Germany and France amount, for example, to EUR 226 in year 6 and EUR 2,830 in year 20, whereas the corresponding renewal fees for a Unitary Patent are EUR 475 in year 6 and EUR 4,855 in year 20, respectively. Even if additional administrative costs for monitoring and paying renewal fees are taken into account (which will typically be approximately twice as high for a Germany/France bundle patent compared to a Unitary Patent), it is nevertheless clear that, *in this scenario, the total maintenance costs for the national route remain significantly lower than the renewal fees for a Unitary Patent.*

Consequently, with regard to renewal fees, a comparison between the costs of paying maintenance fees to the national patent offices for a European bundle patent and the renewal fees for a Unitary Patent shows that, *where it is intended to maintain a European patent in at least three to four countries participating in the Unitary Patent system, maintaining a Unitary Patent will generally be more cost-effective than maintaining separate national validations in those same countries.* The cost advantage will, of course, increase with the number of participating countries in which protection is desired.

However, it should also be noted that, once a Unitary Patent has been chosen, the patent proprietor cannot selectively allow individual states to lapse during the lifetime of the patent in order to reduce renewal costs.

4. The Unified Patent Court (UPC)

The Unified Patent Court (UPC) constitutes the second pillar of the European Unitary Patent system and was established by the Agreement on a Unified Patent Court⁷. It is an international court common to the participating Member States and has *exclusive jurisdiction over infringement and revocation actions concerning Unitary Patents* and, in principle, also over the national parts of traditional European bundle patents valid in the participating Member States.

However, during a transitional period of seven years following its entry into force on 1 June 2023 (which may be extended by a further seven years by the UPC Administrative Committee), *patent proprietors may “opt-out” traditional European*

⁷ Agreement on a Unified Patent Court of 19 February 2013 (UPCA); see e.g. <https://www.unified-patent-court.org/sites/default/files/upc-agreement.pdf>

bundle patents from the jurisdiction of the UPC, as discussed above (see item 2). For example, where a European patent has been validated in Germany, France, Spain, and the United Kingdom, the UPC has jurisdiction over the German and French parts with respect to both infringement and revocation proceedings, which may be brought in a single, centralized procedure before the UPC, unless the patent proprietor has declared an opt-out. Such an opt-out may be declared at any time during the transitional period.

Where the UPC has (exclusive) jurisdiction over a European patent, *any decision of the UPC will have unitary effect in all participating Member States* in which the relevant Unitary Patent or traditional European bundle patent is in force.

Moreover, during a transitional period of seven years from the date of entry into force of the UPC system, infringement actions based on traditional European bundle patents, as well as revocation actions against such patents, may still be brought before national courts or other competent national authorities, even in the absence of an opt-out by the patent proprietor. Where an opt-out has been validly declared, the national courts will retain jurisdiction over the bundle patent for the remainder of its lifetime.

The *first instance of the UPC includes several local and regional divisions* spread over the participating member states and encompasses *a central division located in Paris, Munich and Milan*. Generally, the local and regional divisions deal with infringement actions while the central division has exclusive jurisdiction over declarations of non-infringement and invalidation actions. The *second instance („Court of Appeals“)* is located in Luxembourg.

The local jurisdiction of the UPC is divided as follows:

- Infringement actions can be brought in local/regional divisions where the infringement occurs or in the local/regional division where the defendant has its residence, or principal place of business, or in the absence of residence or principal place of business, its place of business.
- Invalidation actions must be brought before the central division unless brought as a counterclaim when they can be heard with the infringement action or transferred to the central division by the panel hearing the infringement action.
- Declarations of non-infringement must be brought before the central division.

Compared to multiple national invalidation actions, the UPC invalidation procedure may be initiated with comparatively moderate costs. Also, in the case of an unsuccessful attack, the reimbursement amount of the patent holder's legal costs is

capped, albeit at a relatively high level. Accordingly, *it will be easier and more attractive for other parties to attack a European patent* if the opposition period has been missed or if an opposition at the EPO was unsuccessful.

The UPC invalidation (revocation) action is a procedure that, for the first time, *allows the revocation of a European patent in respect of all participating Member States covered by a Unitary Patent*, and this at any time during the lifetime of the patent. At present, central revocation of a European patent is only possible through the EPO opposition procedure, which, if successful, has effect for all designated states, including both UPC and non-UPC countries. However, this procedure must be initiated within nine months of the grant of the patent. Once the opposition period has expired, the only remaining option to challenge a European patent was to bring separate national revocation actions against the respective national parts of the bundle patent. These actions are limited in territorial scope to the individual country concerned and are typically time-consuming and costly if multiple proceedings in different jurisdictions are required.

In comparison, the UPC revocation procedure can be initiated at relatively moderate court costs. As regards legal cost reimbursement, the recovery of costs in the event of an unsuccessful action is subject to a cap; however, the ceiling is relatively high. *Overall, it is easier and more attractive for third parties to challenge European patents before the UPC than before national courts* once the opposition period has expired or where an opposition before the EPO has been unsuccessful.

According to Art. 24 of the UPC Agreement, the *UPC must base its decisions on EU law, the UPC Agreement, the European Patent Convention (EPC), other applicable international agreements binding on all participating Member States, and the relevant national law of those States*.

Accordingly, the UPC is required to develop its own body of case law and has already begun to do so since commencing its operations. A considerable number of decisions have been issued at both first instance and appellate level. All UPC decisions are publicly available on the official UPC website⁸.

For example, in an early decision in preliminary injunction proceedings (UPC_CoA_335/2023 “NanoString Technologies vs. 10xGenomics”, issued February 26, 2024⁹), the Court of Appeal held that the *patent claim is not merely the starting point, but the decisive basis for determining the scope of protection of a European*

⁸ see [Decisions and Orders | Unified Patent Court](https://www.unifiedpatentcourt/decision-and-orders) at <https://www.unifiedpatentcourt/decision-and-orders>

⁹ see <https://www.unifiedpatentcourt.org/en/node/575> with correction of an error in the headnote of March 11, 2024, see <https://www.unifiedpatentcourt.org/en/node/576>

patent. The interpretation of a patent claim is not confined to its strict literal wording; rather, the description and drawings must always be taken into account as interpretative aids, and not only for the purpose of resolving ambiguities.

This approach is largely consistent with the case law of the European Patent Office, as reflected, for example, in decision G 1/24 of the Enlarged Board of Appeal¹⁰, according to which the description and any drawings must always be considered when interpreting claims, and not only in cases of ambiguity.

A review of the decisions issued to date shows *that UPC case law, in many respects, closely follows the jurisprudence developed by the Boards of Appeal of the EPO*, in particular with regard to substantive and procedural issues of patentability.

A noteworthy decision in this context is UPC_CoA_529/2024 (Amgen Inc. v. Regeneron Pharmaceuticals Inc.), issued by the Court of Appeal in November 2025¹¹. In this decision, the Court further clarified its position on claim interpretation (confirming earlier decision UPC_CoA_335/2023) and addressed issues of added matter, sufficiency of disclosure, and inventive step.

The Court's reasoning on all of these issues is largely aligned with established EPO case law. With regard to inventive step, although the decision does not expressly refer to the EPO's problem-solution approach, it applies a methodology that is, in substance, closely comparable.

Furthermore, the *UPC may refer questions of EU law to the Court of Justice of the European Union (CJEU)* under the preliminary ruling procedure pursuant to Article 267 TFEU, as reflected in Article 21 UPCA. In particular, it may request preliminary rulings on the interpretation of the EU Treaties and on the validity and interpretation of acts of the Union's institutions, bodies, offices, or agencies. The rulings of the CJEU are binding on the UPC.

It is worth noting that the binding nature of CJEU rulings on questions of EU law was one of the key reasons why the United Kingdom ultimately decided not to participate in the system, although this issue remained the subject of considerable debate for some time even after Brexit.

The *cost structure for proceedings before the UPC* has been modeled closely on that of German infringement and invalidation proceedings. For example, to initiate infringement proceedings, *a court fee must be paid to the UPC consisting of a fixed fee (EUR 14,600) and a variable fee depending on the value in dispute (VID)*. The

¹⁰ see <https://www.epo.org/en/boards-of-appeal/decisions/g240001ex1>

¹¹ see <https://www.unifiedpatentcourt.org/e/node/159789>

variable portion ranges from EUR 0 (for a VID of up to EUR 500,000) to EUR 430,300 (for a VID of more than EUR 50 million).

For an average patent infringement case, the VID in proceedings before the German Federal Patent Court may be estimated at between EUR 500,000 and EUR 1 million leading to a court fee of approx. EUR 8,000 and 12,500, respectively. As UPC proceedings typically concern infringement in multiple countries, the VID before the UPC is generally higher and may, for an average case, be estimated in the range of EUR 1 million to EUR 4 million. This would result in a variable court fee component of approximately EUR 5,300 (VID EUR 1 million) to EUR 34,400 (VID EUR 4 million), leading to *total court fees in the range of EUR 19,900 to EUR 49,000 for typical infringement actions*.

In contrast to the German national revocation procedure, where court fees also depend on the value in dispute (VID), only a fixed fee is payable for revocation proceedings before the UPC (EUR 26,500 for a revocation action, without any VID-based component, and up to EUR 26,500 for a counterclaim for revocation).

As in the German system, the *successful party in UPC proceedings is entitled to reimbursement of its costs, including court fees and reasonable representation costs* (e.g. attorneys' fees). Recoverable representation costs are subject to a ceiling that depends on the VID. However, these caps are relatively high—for example, EUR 112,000 for a VID of EUR 1 million and EUR 400,000 for a VID of EUR 4 million—such that, in many cases, a substantial portion of the actual costs may be recovered.

The figures indicated above for both court fees and representation costs apply per instance with the second instance usually being still a little bit more expensive, say factor of 1.2 compared to first instance.

Small and medium-sized enterprises ("SMEs") benefit from a 40% reduction in court fees before the Unified Patent Court ("UPC"). SMEs are defined in accordance with Commission Recommendation 2003/361/EC as enterprises employing fewer than 250 persons and having either an annual turnover not exceeding EUR 50 million or a balance sheet total not exceeding EUR 43 million.

Further detailed information on all cost aspects of the UPC may, for example, be taken from <https://www.unifiedpatentcourt.org/en/registry/court-fees>.

5. Pros and Cons and Uptake of the European Unitary Patent System

Here are the key questions to be addressed by European patent holders in light of the new Unitary Patent (UP) system:

- *For European patents granted before the entry into force of the UP system* (and therefore validated nationally in the traditional manner): should an *opt-out from the jurisdiction of the UPC* be declared in order to avoid UPC jurisdiction?
- *For European patents granted as of the entry into force of the UP system* (1 June 2023):
 - should a *Unitary Patent be requested*, or is it preferable to pursue *traditional national validation in selected participating Member States*?
 - if traditional validation is chosen in selected participating Member States: should an *opt-out from the UPC system* be declared?

The answers to these questions depend on both *cost considerations and strategic factors*.

The cost considerations primarily concern the question of whether a *Unitary Patent (UP) should be obtained instead of a traditional European bundle patent*, i.e. national validation of a European patent in selected Member States of the EPC. In contrast, when deciding whether to opt out of the UPC system (which is, in any event, only available for traditional European bundle patents and not for Unitary Patents), cost aspects relating to the “opt-out” itself are of minor relevance, as an “*opt-out*” *can be declared by a simple procedural request for which no official fee is payable*.

Further cost-related aspects have been discussed in detail above (see item 3) and include *both the costs of obtaining protection and the ongoing renewal fees*. In summary, both in terms of acquisition costs and maintenance costs, a Unitary Patent will generally be more cost-effective where protection is sought in at least three to four UPC participating Member States.

The strategic considerations mainly relate to *whether UPC jurisdiction is desirable for a given European patent*. As outlined above, the UPC has jurisdiction, both for infringement and for revocation proceedings, over all Unitary Patents and over traditional European bundle patents that have not been opted out. *From a patentee's perspective, UPC jurisdiction may be advantageous in infringement scenarios*, as it allows enforcement across multiple participating Member States in a single action, avoiding the need to initiate separate national proceedings in each jurisdiction, which would otherwise be more costly and burdensome. If successful, such proceedings

enable enforcement and recovery of damages across all UPC participating states “*in one go*”.

This advantage for patent holders in UPC infringement proceedings is, of course, of higher importance in industry fields where infringement proceedings are rather common, such as in the fields of pharmaceuticals, and may be less of an advantage where such proceedings are less common, as e.g. in the chemical industry.

As regards *invalidation (revocation) proceedings*, *UPC jurisdiction is generally less favorable from a patent proprietor’s perspective*, as third parties may challenge a patent in all UPC participating Member States in a single action, resulting in a “*one-shot*” revocation with unitary effect. Until now, such centralized attacks were only possible through EPO opposition proceedings (which, if successful, had effect for all designated states, including non-UPC countries such as the UK). However, *UPC revocation actions may be brought at any time during the lifetime of the patent* and even after the expiry of the opposition period or following an unsuccessful opposition before the EPO.

Accordingly, particularly in the case of commercially valuable patents, the UPC revocation procedure constitutes an attractive enforcement mechanism for competitors and can be expected to be used accordingly.

A further relevant consideration is the *perceived “strength” of the patent in question*. Where it is clear from prosecution history or parallel family members that no highly relevant prior art exists, this may favor opting into the UPC system, as in such cases the advantages of centralized UPC infringement enforcement are likely to outweigh the potential risks associated with a centralized invalidity attack.

Finally, whereas in most UPC-participating countries a body of case law for both infringement and invalidation proceedings has been established, this is, of course, only in the stage of early development the case for UPC proceedings. Although it can be expected based on the case law issued so far that the *UPC case law as regards invalidation will closely adhere to the case law of the EPO*, there is some uncertainty on how it will develop in infringement proceedings, and it remains to be seen whether it will be “patent holder friendly” as it traditionally is, for example, in Germany.

The strategic considerations outlined above can be further elaborated and more effectively assessed with reference to statistical data on the uptake and acceptance of the new system.

Since the commencement of its operations in June 2023, the Unified Patent Court has experienced steadily increasing activity. As of April 2026, *approximately 1,000*

proceedings have been initiated before the Court, indicating a broad acceptance of the new judicial system.

Furthermore, the *overall uptake of the Unitary Patent* system has developed as follows¹²:

Year	Overall share of granted European patents converted into Unitary Patents	Share attributable to EU applicants
2023*	17.5%	26.3%
2024	25.6%	37.3%
2025	28.6%	40.5%

*The 2023 figures relate to a partial year, as the system entered into force in June 2023

It can be seen from these figures that, while a Unitary Patent is requested for approximately one third of newly granted European patents, indicating that full market acceptance has not yet been reached, there remains a notable degree of uptake.

Among *non-European applicants*, the share of UP requests in 2025 was as follows:

Jurisdiction	Share of Unitary Patent filings
United States	19.5%
China	22.4%
South Korea	19.1%
Japan	9.5%

The *uptake by technical field for selected technology areas* (2025), as well as a breakdown by applicant size, is shown below:

Technical field	Overall uptake	Share attributable to EU applicants
Medical technology	35.5%	44.9%
Computer technology	21.6%	40.0%
Digital communication	20.2%	30.9%
Pharmaceuticals	40.1%	57.2%
Organic fine chemistry	31.6%	38.9%
Biotechnology	39.4%	54.2%

¹² see www.epo.org/en/about-us/statistics/statistics-centre#/unitary-patent

Category	Share of Unitary Patent filings
Micro Entities	71.3%
Small and Medium Size Entities	57.9%
Research Institutions (including Universities)	49.5%
European large applicants	36.5%
Large Applicants (overall)	28.8%

Finally, it can be estimated that *approximately 55–60% of European bundle patents* which are validated nationally under the traditional validation system *are opted-out* of the jurisdiction of the UPC.

6. Conclusion

All in all, a careful balancing of the above-mentioned cost aspects and strategic considerations is required in order to determine whether the new UPC system should be used for a European patent, or whether it is preferable to avoid it by refraining from requesting unitary protection and, where applicable, by opting out in respect of a granted European patent.

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