

## Unitary Patent (UP) System Guide

As part of our ongoing series of country and regional annuity guides in 2021 and 2022, we are pleased to provide this guide that summarises the upcoming Unitary Patent System.

### Unitary Patent (UP) System

#### What is the Unitary Patent?

The Unitary Patent is a classic European Patent which, when granted by the EPO, will be given Unitary Effect. Instead of validating European Patents in several states individually, patent owners can file a single request with the European Patent Office (EPO) and obtain unitary protection.

#### How to obtain UP?

##### 1. Substantive requirements

The underlying European Patent must have been granted with the same set of claims in respect of all the participating European Patent Convention Member States.

##### 2. Some of the main procedural requirements

The request for Unitary Patent must be filed within one month after the publication of the grant of the patent.

#### The Unified Patent Court (UPC)

The UPC will have jurisdiction on all UP cases as well as the European Patents already granted or applied for by the end of the transitional period.

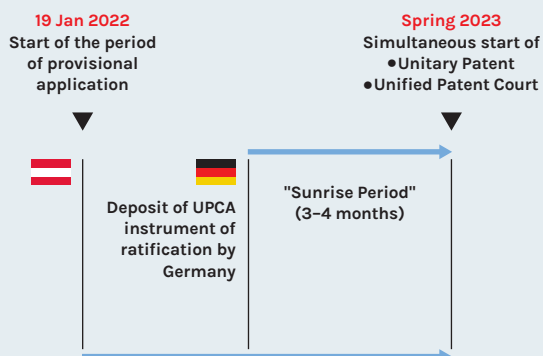
Patent owners can opt out of the UPC's jurisdiction at any point after the start of the new system provided no action has been brought against them before the UPC.

The Sunrise Period represents the period of time before the Unitary Patent system enters into force, in which patent owners can opt out, but no action can be brought against them in the UPC.

#### FACT

To opt out of the UPC successfully, it will be important to ensure all records are up-to-date and proprietors details are correct.

#### When will the new system start



### Sunrise Period

The Deposit of the German ratification instrument will start the countdown for the entire system and its entry into operation.

It is currently expected that Germany will deposit its instrument of ratification in December 2022 which means that the start of the System can be expected in April 2023.

The Sunrise period is planned to start 3-4 months before the start of the Unitary Patent system.

Source:

[www.epo.org/applying/european/unitary/unitary-patent.html](http://www.epo.org/applying/european/unitary/unitary-patent.html)

## Transitional Period

In order to facilitate the transitional period, the EPO will provide 2 transitional measures to patent applicants:

### 1. Early request for unitary effect

- Allows applicants to file requests for Unitary Patent before the start of the Unitary Patent system.

### 2. Request for delay in issuing the grant decision

- Allows applicants to file requests for a delay in issuing the decision to grant the European Patent.
- This would allow applicants to obtain unitary protection on patents that would be granted just before the start of the Unitary Patent system.

The transitional measures will be available from the date Germany deposits the instrument of ratification of the UPC agreement. Once an applicant receives a communication under Rule 71(3) EPC (Intention to Grant) they may use any of the transitional measures before they have replied to this communication.

#### FACT

A request for a granted European Patent to obtain unitary effect must be filed no later than one month after the date of the mention of the grant in the European Patent Bulletin.

Source:

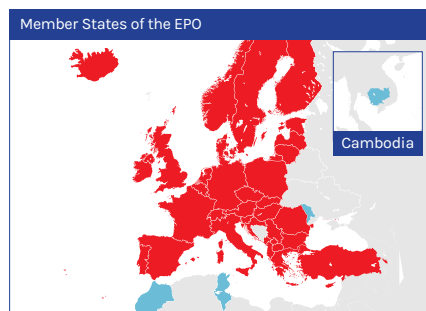
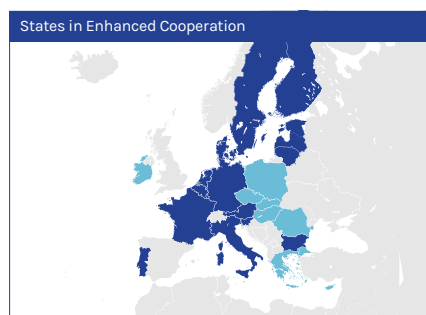
[epo.org/applying/european/unitary/unitary-patent/applying.html](https://epo.org/applying/european/unitary/unitary-patent/applying.html)

## What countries are part of the UPC?

There are 17 states in enhanced cooperation that ratified the Agreements and will participate in the Unitary Patent when it starts. They are: Austria, Belgium, Bulgaria, Denmark, Estonia, Finland, France, Germany, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Slovenia and Sweden. These are represented in dark blue on the top map.

More states are expected to follow. In total there will be 25 states participating in enhanced cooperation. This means that applicants seeking unitary protection route would eventually have protection in; Cyprus, Czech Republic, Greece, Ireland, Poland, Romania, and Slovakia as well. These are represented in light blue on the top map.

However, it is important to note that there are 39 member states of the EPO. This means that applicants going down the Unitary Patent route would not have protection in countries and key markets like the United Kingdom, Spain or Switzerland. However, it is understood that the EPO is exploring the possibility of concurrently requesting unitary effect while also validating in the above countries. Nonetheless, we await further guidance on this matter.



## Feeling a bit lost?

You are not alone. In a recent survey of IPRIS clients (n=87) we queried general awareness of the upcoming introduction of the UP system and what the current position and strategy was on the Unitary Patent system. The charts to the right illustrate the preparedness and thinking of organisations that range from Universities to Corporations on the upcoming sunrise period and rollout of the UP system.

## But do not worry

IP Pragmatics and IPRIS are monitoring the development and are on hand to answer any queries around the introduction of the Unitary Patent system and the UP opt-out and EP validation in relation to renewals.

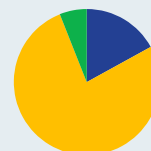
General awareness of the upcoming UP system:

Not prepared – 30%  
Vague idea – 25%  
Researching – 20%  
Prepared – 25%



Our clients' current position & strategy on the UP system:

Opt out – 17%  
Unclear – 77%  
Stay in – 6%



**Talk to us about your patent renewal needs**  
[renewals@ip-pragmatics.com](mailto:renewals@ip-pragmatics.com)



Disclaimer: This guide is based on the latest available information from the European Patent Office. As the guidance may change at any point, please use this guide as an informational starting point only. If you need advice on opting out, please do contact your attorneys.