

Information on Requesting a Unitary Patent

Once the Unified Patent Court Agreement (“UPCA”) enters into force (on June 1, 2023), a European patent with unitary effect (“Unitary Patent”/“UP”) may be requested within a non-extendible, one-month period from the date of grant of a European patent (“EP”). A full translation of the specification will have to be filed along with the request. Specifications in English may be translated into any official language of the European Union. Specifications in French or German must be translated into English. The request is free of official charge.

In contrast to a classical EP, a UP is a single patent right covering all participating Member States. (At the outset, 17 countries will participate in the UP: Austria, Belgium, Bulgaria, Denmark, Estonia, Finland, France, Germany, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Slovenia, and Sweden.) Patent protection for countries not covered by the UP (e.g., Great Britain, Switzerland, and Spain) will be obtained through EPs and handled as before, by validating the patent in each country individually.

A UP may bring significant cost benefits in terms of annuity and validation fees if patent protection is sought in more than four or five of the participating countries. The cost benefit will vary depending on several factors, such as in which and for how many countries protection is sought as well as the length of the patent specification. Furthermore, as the EPO will be the one-stop shop for administering UPs, maintaining and managing a patent could become simpler and less expensive. For example, the EPO alone will handle tasks such as annuity payments and registrations of transfers, licenses, and other rights for UPs.

Please bear in mind that a UP can be limited, revoked, abandoned, or transferred only in respect of **all** participating Member States. Moreover, disputes relating to a UP may be brought only before the Unified Patent Court (“UPC”). Opting out is not possible for UPs. (See Information on opting EPs out of the UPC system.) Therefore, the decision to request a UP rests not only on cost and administrative aspects, but also on willingness to be subject to the competence of the UPC for the entire patent (and potentially SPC) term.

To encourage early uptake of the UP, the EPO has introduced two interrelated but separate transitional measures for its users. These measures will be made available **beginning from January 1, 2023, and ending on the start date of the UPC**. They apply to EP applications for which the Rule 71(3) EPC Communication has been dispatched.



The first transitional measure enables applicants to file requests for a UP **before** the start of the new system. These early requests for a UP will allow the EPO to register unitary effect immediately as soon as the system begins operating. An early request will only be valid if the required translation of the patent text is also filed. Importantly, an early request will **not** lead to delay in the issuance of the decision to grant the EP.

The second transitional measure allows the applicant to request a **delay** in issuing the decision to grant. This will ensure that the mention of grant is published on or immediately after the date that the new system enters into force, so that a request for a UP can be timely filed within the one-month deadline mentioned above. Alternatively, the request for delay can be combined with the early request for a UP to enable immediate registration of a UP when the new system starts. The request for delay will only be valid if the text intended for grant has **not** been approved. However, the request for delay has **no** effect on the four-month period for replying to the Rule 71(3) EPC Communication. Therefore, applicants must still file a reply to this communication within the applicable time limits after having filed the request for delay.

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