

The Unitary Patent system – game-changer for innovation in Europe

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On 17 November, the Belgian FPS Economy and the European Patent Office, with the support of the European Commission co-organized a conference to celebrate the introduction of the Unitary Patent system in Europe. The long-awaited entry into operation of the Unitary Patent system in spring 2023 will be a true game changer and is the biggest change in patent law in Europe in 50 years.

What does the Unitary Patent system mean in practice? If you are holding a patent granted by the EPO or applying for one, the arrival of the unitary patent system is a major change for you. In particular start-ups, scale-ups and SMEs will be implicated by the new system. The Sirris patent cell participated to this event, so that we can update you on the latest developments.

Single approach to patent registration and litigation

The introduction of the Unitary Patent (UP), accompanied by the introduction of the new Unified Patent Court (UPC) creates a single approach to patent registration and litigation. It is expected to offer opportunities to reduce costs, extend territorial scope of protection, speed up litigation and increase legal certainly across a part of Europe.

The system is initially applicable in 17 member states and may eventually be expanded to 25 countries.

The Unitary Patent will allow inventors to obtain uniform patent protection states by submitting a single application at the EPO. Prosecution or European patent up to grant is unchanged by the new system, meaning that the high standards for search and examination applied to European patents granted by the EPO will be maintained. This results into a cost-effective and administrative less complex procedure, as e.g., no translations, national validation and maintenance fees are due anymore. UP owners will pay one single renewal fee to the EPO. Thus, there will be only one procedure, one currency (Euro) and one deadline to be met.

It is nevertheless important to note that the UP can only be transferred or abandoned in all participating UPC states together. Forum-shopping among the participating jurisdictions will not be possible. On the other hand, a license on a UP can be granted for all countries or a limited number, or for all aspects of the technology or just some of it.

Important to know here is that you can still file national patents at the national patent offices, but will leads, of course, not to a Unitary Patent.

As regards to infringement and validity issues, the Unified Patent Court will be the sole jurisdiction over Unitary Patents (in all member states that have ratified the agreement on the Unified Patent Court), therefor ending the need for litigation in different countries.

Transition period

However, in preparation of the coming into existence of the new system, the EPO has implemented transitional measures as well. Patent applicants will be authorized to withdrawn from the exclusive jurisdiction of the UPC during a transitional period (initially seven years, extendable to 14 years), also known as “opt-out”.

It is by far clear that the introduction of the UP and UPC will for sure affect all applicants and holders of EP patents. Patent applicants and holders need to consider carefully how to take advantage of the opportunities and how to handle the challenges arising from these changes.

Would you like to know more on the Unitary Patent?

For more information:

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