Unitary patents and the Unified Patent Court

A structural overview of the new system

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What is the legal basis (1)

Unitary Patent Regulations:

- **EU Regulation No. 1257/2012**
  of 17 Dec 2012 creating the European Patent with unitary effect
  (OJ EPO 2013, 111–131);

- **EU Regulation No. 1260/2012**
  of 17 Dec 2012 relating to the translation arrangements for European Patents with unitary effect
What is the legal basis (2)

Secondary legal framework of the Unitary Patent (completed by the EPO’s Administrative Council’s Select Committee on 15 Dec 2015):

- Rules relating to Unitary Patent Protection (OJ EPO 2016, A39);
- Rules relating to Fees (OJ EPO 2016, A40);
- Budgetary and Financial Rules (OJ EPO 2016, A41);
- Rules relating to the Distribution of Fees among the participating EU Member States.
What is the legal basis (3)

Agreement on the Unified Patent Court
(UPCA; OJ EPO 2013, 287–364)

Unitary Patent comes into operation together with the UPCA, because Unitary Patents can be enforced or revoked only in a uniform way at the Unified Patent Court.
The unitary patent: basic concept

- The unitary patent is a "European patent with unitary effect"

- It has unitary character and shall provide uniform protection and shall have equal effect in all the participating Member States

- A European patent will benefit from unitary effect at the request of the proprietor: post-grant attribution of unitary effect

- Single EPC procedure for European and “Unitary Patents“

- EPC grant procedure remains unchanged
The unitary patent: basic concept

Territorial scope
Unitary effect only in those participating MS for which the UPC has entered into force "at the date of registration of unitary effect" (Art. 18(2) Reg. 1257/2012)

- Different generations of European patents with unitary effect with a different territorial coverage

- No extension of the territorial coverage of a given European patent with unitary effect to other Member States which ratify the UPC Agreement after the registration of unitary effect by EPO
The unitary patent: basic concept

- Unitary patent is an additional option besides national patents and classical European patents

- **Combinations** of classical European patent and unitary patent
  - a unitary patent for the 26 participating EU Member States **together with**
  - a classical European patent taking effect in one or more EPC Contracting States where the unitary patent does not take effect, such as for instance CH, ES, NO, TR

  **No double protection** by a unitary patent and a classical European patent on the territory of the 26 participating states

- Double protection by unitary patent and national patent to be considered at national level (Art. 139(3) EPC): different approaches possible
The unitary patent: basic concept

Same grant procedure as for a traditional European patent

European patent application

Filing and formalities examination

Search report with preliminary opinion on patentability

Substantive examination

Grant of European patent

Refusal or withdrawal of application

Limitation/revocation/opposition proceedings

Appeal proceedings

Request of the patent proprietor

European patent with unitary effect in the territories of the 26 participating EU member states

The European patent is deemed not to have taken effect as a national patent in the 26 participating EU Member States
UP Certificate
The Unified Patent Court in a nutshell (1)

The Unified Patent Court (UPC) is a new supranational court covering 25 Member States with one action.

- The UPC will be a court common to the Contracting Member States of the UPC Agreement and part of their judicial system.
- It will have exclusive competence in respect of both Unitary Patents and European patents, e.g. infringements, declarations of non-infringement, revocation, actions for provisional and protective measures and injunctions, (subject to exceptions during a seven year transitional period).
- The UPC Court of First Instance (Central Division) will have exclusive competence with regard to appeals against decisions of the EPO concerning the Unitary Patent.
- Exchange of information/documents between EPO and UPC.
The Unified Patent Court in a nutshell (1)

Decisions will be issued by internationally composed panels comprising both legally and technical qualified judges.

Central Division
Munich

Central/Local Division
London

Baltic Regional Division
Stockholm
The Unified Patent Court – Court structure

[CJEU] (Referrals from both instances to decide on questions of interpretation and application of EU law)

Court of Appeal

Court of First Instance

Local Divisions\(^1\) [max.4 per MS]

Regional Divisions\(^2\) [min. 2 MS]

Central Division\(^3\) Paris, London, Munich

Mediation and Arbitration Centre

Ljubljana and Lisbon

\(1\) Local divisions planned in AT, BE, DK, FI, FR, IT, NL, UK, + 4 in DE (Düsseldorf, Mannheim, Munich, Hamburg)

\(2\) So far one Regional division in Stockholm created by Sweden and the Baltic states

\(3\) Central division will be seated in Paris with sections in London (patent classifications A and C) and Munich (patent classifications F)
Locations of the Unified Patent Court (UPC)

- **Local/regional division(s)**

- **Central division**
  Paris, London, Munich

- **Court of Appeal**
  Luxembourg

- **Patent mediation and arbitration centres**
  Lisbon, Ljubljana

- **Judicial Training Centre**
  Budapest
The Unified Patent Court in a nutshell (2)

The UPC will put an end to costly multiple parallel patent litigation in different countries and will enhance legal certainty for all users of the patent system.

- The UPC will apply its own procedural law. The procedure is designed in a way that judgments at 1st instance can be expected within approx. one year after the start of the action.

- The UPC Agreement harmonises substantive patent law relating to the scope of the rights conferred by a patent and the limitations to the rights conferred as well as to the remedies available in case of violation.
Need more information?

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