



The Unitary Patent: Key Facts

A unitary patent will be treated as a single right in all participating countries, not as a bundle of national rights requiring separate enforcement and transfer

What is a unitary patent?

A unitary patent is a European patent granted by the European Patent Office that after grant will automatically take effect in all countries of the European Union party to the new Unitary Patent Package. Like the existing Community Trademark, it will be treated as a single right in all participating countries, not as a bundle of national rights requiring separate enforcement and transfer. Revocation of the unitary patent will therefore also take effect uniformly throughout all of the participating member states of the EU. Notably, Spain, Poland and Croatia, while being members of the EU, are currently outside of the new system.

How do I apply for a unitary patent?

After grant of a European patent, the patentee will now have the additional option of requesting that the patent be granted as a patent with unitary effect. The request for unitary effect must be filed within one month of grant, accompanied by a full translation of the patent into another language of the European Union (for European patents granted in French or German, the language is English). No action is required on filing a new European patent application to be able to request unitary effect after grant.

Does the Unitary Patent System replace the existing European Patent System?

Not quite. Unitary patents are an additional choice of protection for the patentee once their European patent has been granted. If the patentee does not wish their European patent to have a unitary effect, then, as is presently the case, they can convert their European patent into separate national rights by 'validating' the granted European patent within the usual deadline of three months (sometimes six) from grant.



Unitary patents and national patents obtained via the validation of a European patent will fall under the jurisdiction of the newly established Unified Patent Court

To the extent that patent protection is desired in non-EU countries (such as Norway, Switzerland, Liechtenstein and Iceland) and countries outside of the unitary patent system, validation of the granted European patent will still be necessary. However, where a unitary patent is selected, this would take precedence for those EU countries participating in the new unitary patent system, and it would not be possible to obtain a separate non-unitary national patent in those countries by validation of the same European patent.

Ultimately, it will be possible for a single European patent to be granted with either a) “Unitary Effect” with optional validations in EPO countries outside of the new package, or b) “non-unitary effect”, in other words national patents obtained via validation of the European patent for selected countries of interest in the EPO member states.

National patents in the separate European states will still be available but will need to be filed separately via the local national patent offices.

What about the new Unified Patent Court?

Unitary patents and national patents obtained via the validation of a European patent will fall under the jurisdiction of the newly established Unified Patent Court. Decisions of the Unified Patent Court concerning validity and infringement will therefore automatically take effect in all participating countries, despite the disparate nature of European rights that are non-unitary in nature. Holders of national patents obtained via validation of a granted European patent will be able to opt out for a period of seven years by filing a request. This will have effect for the life time of the patent.

Timeline

The Unitary Patent Package is made up of two Regulations of the European Council (covering the granting of patents and the requirements for their translation) and one International Treaty (the applicable court system). The whole package will only take effect once 13 countries of the European Union (including the UK, Germany and France) ratify the International Treaty. Even then, the system will only apply to those countries that have ratified the agreement.

Updated October 2015

London Office

16 Theobalds Road
London
WC1X 8PL

T + 44 (0)20 7242 0901
F + 44 (0)20 7242 3290

Cambridge Office

Clarendon House
Clarendon Road
Cambridge CB2 8FH

T + 44 (0) 1223 360 350
F + 44 (0) 1223 360 280

Reddie & Grose LLP

www.reddie.co.uk

For general enquiries, please email:
enquiries@reddie.co.uk

This article is for general information only. Its content is not a statement of the law on any subject and does not constitute advice. Please contact Reddie & Grose LLP for advice before taking any action in reliance on it.