



# Translation Requirements for the Unitary Patent

**For a transitional period, a patentee will also have to provide a translation of the patent specification into a further European Union language**

In order to establish the Unitary Patent System, law makers have had to balance the reasonable expectations of member states against the requirement for a “simple and cost-effective” procedure. On the one hand, member states of the European Patent Organisation that do not share a language with one of the three official languages of the EPO have a reasonable expectation that European patents with unitary effect be granted in their own language. On the other hand, if the patentee or the European Patent Office were required to provide translations into each language of the Union, the cost of using the new patent system would remain high and the system would likely be impractical.

To make the patent specification of European patents with unitary effect available to all, law makers intend to rely on high quality machine translations. These will eventually allow third parties to look up European patents with unitary effect online, and read the patent specification in a language of their choosing. However, until such machine translations are routinely available, a patentee requesting that a granted European patent should have unitary effect will also have to provide (for information purposes only) a translation of the patent specification into a further European Union language. In cases of infringement or dispute, the patentee is required to provide a translation to the alleged infringer or the court.

However, the requirement for the patentee to provide the additional translation for information purposes will only apply during a transitional period. The transitional period commences when the new patent system enters into force, and is limited to a maximum duration of 12 years. Once this period has expired, further translations will only be necessary in the case of disputes with third parties.

Further details and aspects of the system are explained below.



## Translation requirements depend on the language of the proceedings during prosecution before the EPO

### Date of Entry into Force

The Regulation with regard to the Applicable Translation Arrangements will enter into force on the date of entry into force of the Agreement on the Unified Patent Court.

### The Transitional Period

Article 6 of the Regulation defines the transitional period and the associated additional requirements placed on the patentee while the transitional period is in force. Under Article 6(1), during the transitional period, when the patentee makes a request for unitary effect, the patentee must submit a translation of the patent specification. This translation will be published with the unitary patent, but under Article 6(2) “shall have no legal effect and shall be for information purposes only”.

Translation requirements depend on the language of the proceedings during prosecution before the EPO:

- Where the language of the proceedings is English, a full translation of the specification into any other official language of the Union must be filed.
- Where the language of the proceedings is French or German, a full translation of the specification into English must be filed.

### Duration and Termination of the Transitional Period

The transitional period begins once the Regulation on the Unitary Patent is adopted and, under Article 6(5) will last for a maximum duration of 12 years. Each year from the sixth year after the initiation of the language regime, an independent committee of experts will meet to review the system and confirm whether the machine generated translations are up to standard and serving to effectively disseminate patent information into the other languages of the European Union (Article 6(3) of the Regulation). Based on the findings of the committee, the European Commission will recommend to the European Council whether to continue with the transitional period or terminate it (Article 6(4) of the Regulation).

### Post Transition Period Language Requirements

Article 3 deals with the general language requirements for European patents with unitary effect. European patents with unitary effect will be published in the language of proceedings before the EPO, with the translations of the claims into the other two languages of the European Patent Organisation provided by the



## Further translations may be required in the case of disputes

patentee. Article 3 confirms that no other translations will be required for a unitary patent to be granted. The EPO will expect third parties in the participating member states to rely on machine translations if they are not conversant in the official languages of the EPO. Translations of the description or the claims will therefore no longer have to be provided by the patentee as for the current post grant validation procedure.

### Translations in Case of Disputes

Article 4 sets out the responsibilities of the patentee in the case of a dispute. The patentee must provide an alleged infringer with a translation of the patent and claims into either a) the language of the member state where the alleged infringement took place, or b) the language of the member state where the alleged infringer is domiciled (Article 4(1) of the Regulation). Where legal proceedings are commenced, the patentee must also provide the court with a full translation of the patent into the language of the court proceedings (Article 4(2) of the Regulation). This translation cannot be machine generated as it will form the legal basis for the proceedings.

Under Article 4(1), as the request and the choice of language are left to the alleged infringer, there is scope for two translations of the patent being required if the alleged infringer requests a translation into the language of the state where they are domiciled, and this is not the language of the state where the patentee ultimately brings a court action.

Article 4(5) requires a court awarding damages to take into account, particularly “where the alleged infringer is a SME, a natural person or a non profit organisation, a university or a public research organisation, whether the alleged infringer acted without knowing or without reasonable grounds for knowing, that he was infringing the European patent with unitary effect before having been provided with the translation”.

The patentee might therefore wish to consider during the transitional period where infringement is most likely to occur (the members states of known competitors) and file the translation in that language, as this could mitigate the risk of reduced damages under section 5. However, as that translation is only for information purposes and not intended to have legal effect, this strategy will need testing in litigation before it can be relied upon.

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