



Europäisches  
Patentamt  
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Patent Office  
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des brevets

# Unitary patent and Unified Patent Court state of play and prospects



# Unitary patent Regulations

- **20 January 2013:** Entry into force of the Regulations
  - **Regulation (EU) No. 1257/2012** of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection
  - **Regulation (EU) No. 1260/2012** of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements

for the 25 participating Member States (pMS)

# Unitary patent Regulations

- **IT** joined enhanced cooperation on unitary patent protection in early October 2015
- Regulations are **applicable** at the date of the entry into force of the Agreement on a Unified Patent Court (UPC Agreement)

# Regulations on unitary patent protection

- The **UPC Agreement** was signed on 19 February 2013 by 25 EU Member States (not by Croatia, Poland and Spain)
- It will **enter into force** after the deposit of the **13th instrument of ratification or accession**, including France, Germany and the UK
- So far, **eight states** have deposited their instruments of ratification  
**Austria**: 7 August 2013, **France**: 14 March 2014, **Sweden**: 5 June 2014, **Belgium**: 6 June 2014, **Denmark**: 20 June 2014, **Malta**: 9 December 2014, **Luxembourg**: 22 May 2015, **Portugal**: 28 August 2015



Several states have indicated their intention to ratify in 2015

# The unitary patent: concept

- The **unitary patent** is a "**European patent** with unitary effect"
- The unitary patent has **unitary character** throughout the territories of the 26 participating states
- A European patent will benefit from unitary effect **at the request** of the patentee
- Single EPC procedure for European and "unitary patents"



Application and examination procedure will remain **unchanged**

# The unitary patent: concept


- The unitary patent will **co-exist** with national patents and with classical European patents
- Various **combinations** of classical European patent and unitary patent
  - a unitary patent for the 26 participating EU Member States (pMS)
  - together with**
  - a classical European patent taking effect in one or more EPC Contracting States, such as for instance NO, ES, CH, TR
- **No double protection** by a unitary patent and a classical European patent on the territory of the 26 pMS.
- **Effect:**
  - unitary patent takes effect retroactively in the pMS as from the date of publication of the mention of the grant of the European patent

# The unitary patent: Translation arrangements

## Basic concept

- **Builds** on EPO language regime (Article 14(6) EPC)
- No further translations required after transitional period, unless a legal dispute arises
- Reliance on high-quality machine translations
  - for both applications and specifications
  - to be available for free in all EU official languages
  - for information only (no legal effect)
- Compensation scheme

Beschreibung zu EP2154475 (A2)

Diesen Text übersetzen 

Englisch 

 patenttranslate powered by EPO and Google

# The unitary patent: The Select Committee

- A Select Committee of the Administrative Council

Representatives of the 26 participating Member States, as well as the European Commission, *epi*, *BusinessEurope* and EPC Contracting States that do not participate in the enhanced cooperation scheme - such as eg Norway or Switzerland - as observers

- Principle tasks in relation to the implementation of the unitary patent into the European patent system:

- Adoption of the implementing rules relating to unitary patent protection

- Setting of level of renewal fees and share of distribution of renewal fees

- Up to date **16 meetings** of the committee



# The unitary patent: Implementing Rules

- Define inter alia **in detail**
  - the **registration of unitary effect** and the tasks of the EPO related to it
  - the **tasks and competences** of the Select Committee, the EPO President, as well as
  - the entries in the **Register for unitary patent protection**
- Consolidated version of the Implementing Rules were adopted in principle by the Select Committee on 9 December 2014

<http://www.epo.org/law-practice/unitary/unitary-patent.html>

# The unitary patent: Renewal fees

- **Single renewal fee** for the unitary patent to be paid to the EPO:
  - EPO retains 50%
  - remaining amount distributed in accordance with Article 146 EPC and the key defining the participating Member States' share
- To fix the level of the renewal fees and the distribution key is highly complex
- A very delicate balance needs to be achieved between the need to fix the fee at a level which makes the Unitary Patent attractive for users and the need to achieve a balanced budget for the EPO and to generate appropriate income for national offices

# The unitary patent: Renewal fees

- June 2015: Select Committee takes a preliminary decision on the EPO's True TOP 4 proposal for renewal fees for European patents with unitary effect
- This proposal provides fee levels corresponding to the equivalent of the renewal fees which have to be paid for the four countries out of the 25 participating Member States in which European patents are currently most often validated (DE, FR, GB, NL)
- Discussions in the Select Committee will now focus on the Rules relating to Fees and the distribution key determining the share of distribution of the renewal fees among the participating Member States

# Renewal fees: the adopted “True Top 4” approach

2nd year:	35 EUR	11th year:	1 460 EUR
3rd year:	105 EUR	12th year:	1 775 EUR
4th year:	145 EUR	13th year:	2 105 EUR
5th year:	315 EUR	14th year:	2 455 EUR
6th year:	475 EUR	15th year:	2 830 EUR
7th year:	630 EUR	16th year:	3 240 EUR
8th year:	815 EUR	17th year:	3 640 EUR
9th year:	990 EUR	18th year:	4 055 EUR
10th year:	1 175 EUR	19th year:	4 455 EUR
		20th year:	4 855 EUR



**Business-friendly fee pattern**

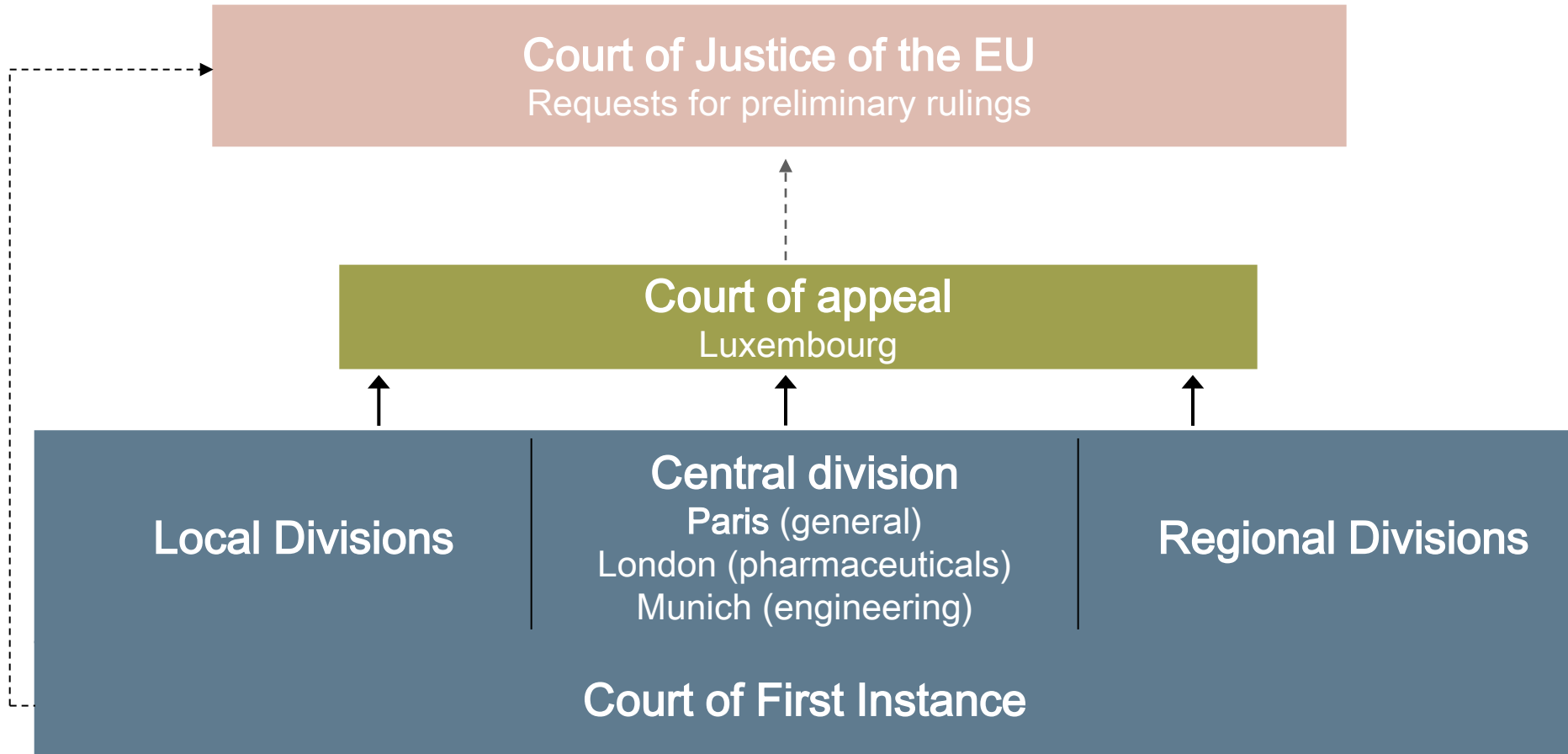


## Concrete benefits of the unitary patent

- Protection in **one single step** for the 26 states currently participating
- **Simplified registration** procedure instead of 26 different validations
- **Simplified and cost-effective** renewal fee payment
- **No post-grant translation** required (after initial transition period)
- **Centralised register** maintained by the EPO
- **Uniform litigation system** affording greater legal certainty

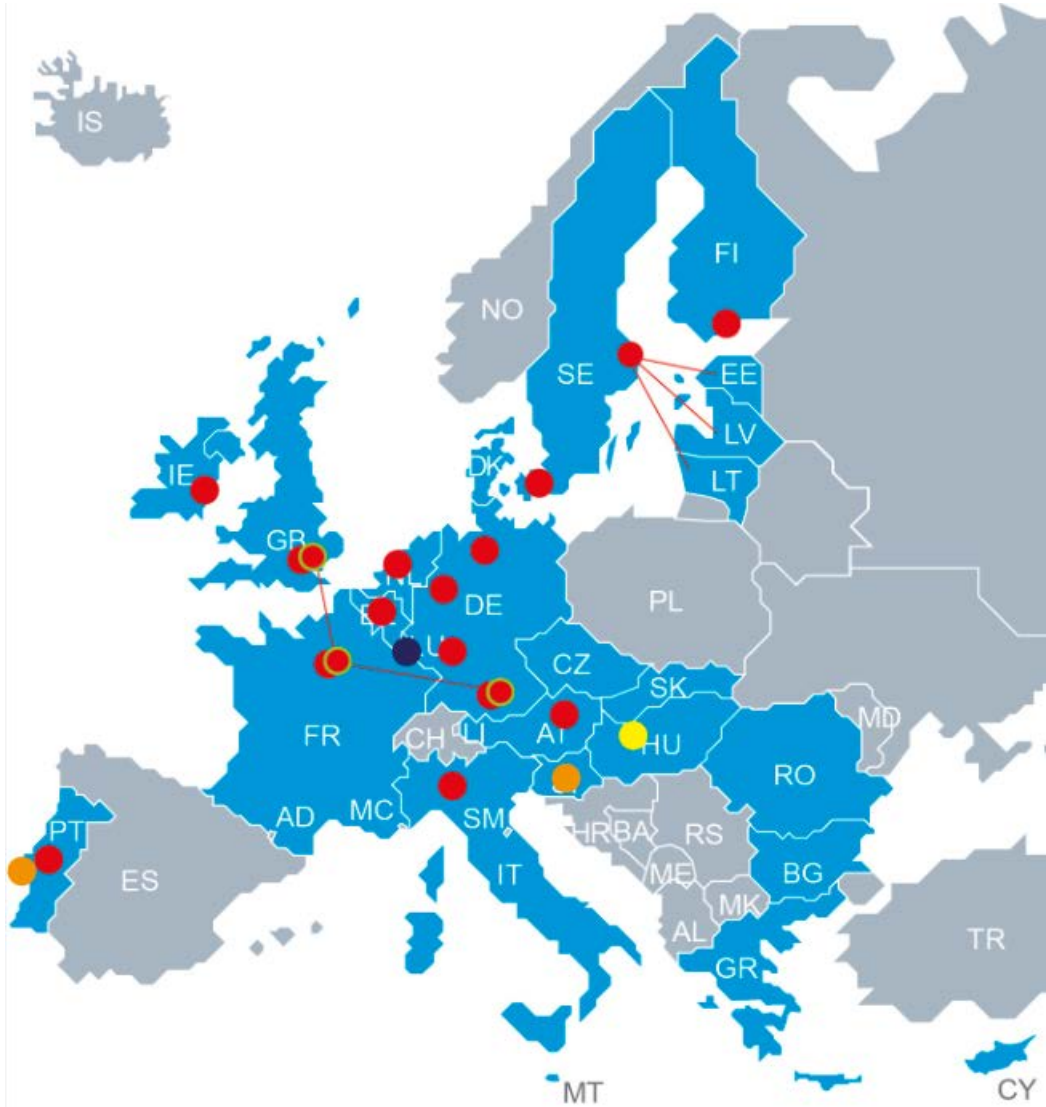


# UPC Agreement : Court structure



<http://www.unified-patent-court.org/>

# UPC Locations



- **Local/regional division(s)**  
 Brussels, Copenhagen, Dublin, Dusseldorf, Hamburg, Helsinki, Lisbon, London, Mannheim, Milan, Munich, Paris, Stockholm, The Hague, Vienna
  
- **Central division**  
 Paris, London, Munich
  
- **Court of Appeal**  
 Luxembourg
  
- **Patent mediation and arbitration centres**  
 Lisbon, Ljubljana
  
- **Judicial Training Centre**  
 Budapest

# The Preparatory Committee



- Five working parties:
  - legal
  - finance
  - facilities
  - IT
  - human resources



<http://www.unified-patent-court.org/>



# The Preparatory Committee

- Up to date the committee held **11 meetings**
- Contents of discussions *inter alia*:
  - Budgetary rules
  - Fee structure
  - Legal aid
  - Contributions of signatory states
  - Rules on the European Patent Litigation Certificate (EPLC)
  - Rules related to the mediation and arbitration proceedings
  - Training of candidate judges
  - Rules of proceedings of the UPC different committees
  - Protocol on provisional application of the UPC Agreement

## Preparatory Committee: Major steps

- **November 2014:** Public hearing concerning the 17th draft of the UPC Rules of procedure
- **February 2015:** Start of the training of candidate judges with the support of the EPO
- **May 2015:** Consultation on Rules on Court fees and recoverable costs
- **September 2015:** Agreement on the draft proposal for rules on the European Patent Litigation Certificate (EPLC)
- **1 October 2015:** Protocol on provisional application of the UPC Agreement signed in Brussels