

Learning path for patent professionals

Unitary Patent Procedure Intermediate level

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Introduction

This publication, "Unitary Patent procedure – intermediate level", part of the "Learning path for patent administrators" series, is edited and published by the European Patent Academy. The series is intended for patent administrators who are taking part in training and certifications organised by the European Patent Office (EPO). It is also freely available to the public for independent learning.

Topics covered include: general aspects of the patent system; the European patent system and the European patent granting procedure; the International Patent System (PCT) and the PCT procedure; European and international publications; filing a European patent application and filing an international application; the formalities during the European and during the international search; the formalities during the European examination and during the international preliminary examination; the formalities during the appeal procedure after refusal (EPC), during the opposition procedure (EPC); national validation (EPC); unitary patent protection (UPP); entry into national/regional phases and entry into the European phase (PCT).

Each chapter focuses on one topic at entry, intermediate or advanced level, as appropriate. The series will be revised annually to ensure it remains up to date.

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All references to natural persons are to be understood as applying to all genders.

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1. Learning objectives

Participants in this course will learn about:

- the legal framework of the Unitary Patent system
- the territorial coverage of a Unitary Patent
- the request for unitary effect, most common deficiencies and legal remedies
- correction of defects and remedies
- renewal fees and the most common issues
- transfer of rights, licences and statement on licences of right

2. Legal framework

EU regulations 1257/2012 and 1260/2012

European Union (EU) regulations No 1257/2012 and No 1260/2012 (both of 17 December 2012) were adopted as part of the enhanced co-operation to set up the Unitary Patent across the participating EU member states (25 in total).

→ Regulation No 1257/2012

Title: "Implementing enhanced co-operation in the area of the creation of Unitary Patent protection"

→ Regulation No 1260/2012

Title: "Implementing enhanced co-operation in the area of the creation of Unitary Patent protection with regard to the applicable translation arrangements"

Secondary legislation

In December 2015, the Select Committee adopted the necessary secondary legislation, in particular the Rules relating to Unitary Patent Protection (UPR) and the Rules relating to Fees for Unitary Patent Protection (RFeesUPP).

The UPR provide for the establishment of a Unitary Patent Division at the EPO and lay down the procedures to be carried out by the EPO under Regulations (EU) No 1257/2012 and No 1260/2012. The main provisions relate to the request for unitary effect, the procedure for obtaining a Unitary Patent at the EPO and the main remedies available. They are divided into four parts:

Part I - Institutional Provisions, comprising Rule 1 to Rule 4

Part II - Procedures to be carried by the European Patent Office under Regulations (EU) No 1257/2012 and No 1260/2012, comprising Rule 5 to Rule 14

Part III - Information to the public, comprising Rule 15 to Rule 19

Part IV - Common provisions, comprising Rule 20 to Rule 24

→ The UPR

The Rules relating to Fees for Unitary Patent Protection (OJ EPO 2022, A42) set out the fees to be paid to the EPO as provided for in the UPR by proprietors of a Unitary Patent and the methods of paying them. They also lay down the amount of compensation available for translation costs.

→ The RFeesUPP

The Unitary Patent (UP) Guidelines

The UP Guidelines, which were published for the first time in April 2025, provide guidance on the practice relating to the procedures for Unitary Patent protection, including the examination of requests for unitary effect, the maintenance of Unitary Patents and other related procedures.

While the UP Guidelines do not constitute legal provisions, they are intended to serve the users of the Unitary Patent system as a basis for illustrating the law and practice in UP proceedings before the EPO.

Territorial scope, accession and UP generation

The territorial scope of a Unitary Patent covers the territories of those EU member states participating in enhanced co-operation in Unitary Patent protection (i.e. all EU member states except Croatia and Spain) and in which the UPCA is in force at the time of registration of the unitary effect.

When a participating EU member state accedes to the UPCA, a new generation of Unitary Patents is created and the scope of any Unitary Patent registered after the date of this accession will cover the territory of the newly acceded EU member state. The territorial scope of an existing Unitary Patent will, however, not be extended to include the newly acceded EU member state but will remain the same for its lifetime.

When a new EU member state is due to accede to the UPCA, the EPO may allow patent proprietors to request a delay to the registration of unitary effect. This ensures that the Unitary Patent will be included in the new UP generation and will also extend to the new EU member state. Users will be informed of the possibility to request a delay in a notice published in the Official Journal

A total of 17 member states had acceded to the UPCA by the time the Unitary Patent system started on 1 June 2023. The 17 member states in enhanced co-operation which had already ratified the UPCA were: Austria, Belgium, Bulgaria, Denmark, Estonia, Finland, France, Germany, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Slovenia and Sweden.

On 1 September 2024, Romania acceded to the Unitary Patent system, creating the second UP generation which extended the territorial coverage of the Unitary Patent to 18 member states. A notice dated 5 June 2024 was published in the Official Journal (OJ EPO 2024, A61), informing users of the possibility to request a delay to the registration of unitary effect for all requests filed as of the date of the notice.

Unified Patent Court opt-out

Under Article 83(3) UPCA, applicants for and proprietors of a "classic" European patent, as well as holders of a supplementary protection certificate (SPC) issued for a product protected by a "classic" European patent, can opt out from the exclusive competence of the Unified Patent Court (UPC). In such cases, the UPC will have no jurisdiction concerning any litigation related to this application, patent or SPC.

Please note that it is not possible to opt out a Unitary Patent from the UPC's competence.

Where unitary effect is registered for a European patent subject to an opt-out pursuant to Rule 5(9) UPC Rules of Procedure, the opt-out will be deemed to have been withdrawn and the Registrar will enter the withdrawal in the Register as soon as practicable.

All patents that have been opted out will be published on the UPC's website.

It is possible to correct or withdraw an opt-out.

Legal references:

Rules of Procedure of the Unified Patent Court

Unified Patent Court opt-out

3. Request for unitary effect

Requirements and eligibility

Before unitary effect can be registered by the EPO, the proprietor must first obtain a European patent.

The request for unitary effect is entirely free of charge. The EPO recommends using EPO Form 7000 to file the request for unitary effect.

The Rules relating to Unitary Patent Protection (UPR) are the legal framework for the UP procedure. Rule 20 UPR provides a list of the procedural rules of the EPC (both from the Convention and the Implementing Regulations) that apply *mutatis mutandis* to the UP procedure.

In order to register unitary effect, certain substantive requirements must be met. Unitary effect can be requested for European patents that were granted:

- on or after the date of entry into operation of the Unitary Patent package
- in respect of all the 25 EU member states participating in enhanced co-operation
- with the same set of claims for all EU member states

An additional requirement was introduced to the UPR on 15 November 2024, according to which the request for unitary effect must not be filed by Russian nationals or natural persons residing in Russia, or legal persons, entities or bodies established in Russia, including if jointly filed with one or more non-Russian natural or legal persons.

The request must be filed in the language of the proceedings.

Where a representative has to be appointed, their particulars must be included in the request. With regard to representation before the EPO, the EPC regime applies. Patent proprietors who have their residence or principal place of business in an EPC contracting state may act on their own behalf in proceedings before the EPO with respect to the Unitary Patent. Proprietors having their residence or principal place of business in an EPC contracting state are not obliged to be represented by a professional representative or legal practitioner in UP proceedings. Irrespective of whether the proprietor is a legal or natural person, they may act through an employee, who need not be a professional representative or a legal practitioner; but in such cases, an authorisation must be filed.

Additionally, during the transition period, a translation of the European patent must be filed. This must be a full translation into English if the patent was granted in French or German, or a full translation into any official EU language if the patent was granted in English.

Should the request for unitary effect not meet the requirements mentioned above, the requester may be invited to remedy any deficiencies via EPO Form 7040. EPO Form 7040 is only dispatched where the deficiency may be remedied. The deficiency must then be remedied within the allocated and non-extendable one-month time limit. Failure to reply in time, or to reply at all, will result in the request being rejected. The time limit for remedying deficiencies is excluded from the procedure for re-establishment of rights.

Common deficiencies in requests

The following are the deficiencies that recur most frequently and their usual outcomes.

→ Substantive deficiencies:

Missing designations

- One or more of the 25 EU member states participating in enhanced co-operation have not been designated. This issue will often be due to the fact that:
 - 1) the European patent application was filed before one (or more) of the said 25 EU member states acceded to the EPC (most often Malta, which acceded on 1 March 2007), or
 - 2) a designation was actively withdrawn during the grant procedure
- A withdrawal of designation for one or more of the 25 member states participating in enhanced co-operation results in ineligibility for the registration of unitary effect.
- The same applies when claims are missing in respect of one or more of the 25 member states participating in enhanced co-operation. For example, if the date of filing of an application - or of the root application in the case of a sequence of divisional applications - is earlier than 1 March 2007, the resulting European patent will not have been granted with the same set of claims in respect of all 25 member states participating in enhanced co-operation as required under Rule 5(2)(a) UPR because the last participating member state within the meaning of Art. 2(a) Regulation (EU) No 1257/2012 and Rule 5(2)(a) UPR to accede to the EPC, i.e. Malta, did not do so until 1 March 2007 (OJ EPO 2007, 1). A request for unitary effect must be rejected if the 25 EU member states participating in enhanced co-operation are not designated in the European patent. An intention to reject the request for unitary effect will be issued. Unfortunately, whatever the reason for the missing designation(s), there is no way for the proprietor to remedy such a deficiency and the request will be rejected.

Proprietor's and representative's particulars

- The proprietor's or the representative's particulars contain inconsistencies or there is information missing. In many cases the name and/or address of the proprietor does not match the information recorded in the European Patent Register. The information submitted may also be incomplete, e.g. only the city and the country of the address of the proprietor are indicated. The proprietor's (and, where applicable, the representative's) particulars must be included in the request for unitary effect and must match those recorded in the European Patent Register.

- The proprietor of a European patent should not, at the time of filing the request for unitary effect, be subject to the restrictive measure (e.g. Russian sanctions) laid down in Article 5s(2) of Regulation (EU) No 833/2014 as amended by Regulation (EU) No 2024/1745, having regard to Article 5s(5) of that Regulation (Rule 5(2)(b) UPR).
- If the request for unitary effect has a similar issue, you will receive an invitation to remedy the deficiencies noted (EPO Form 7040) within one month from the date of notification. If no reply is received within the one-month time limit, or if the reply is not complete or satisfactory, the request will be rejected.

Translation

- It is also often the case that a request for unitary effect is submitted without a translation or with parts of the translation (e.g. claims) missing. Where the language of the proceedings was French or German, the translation must be provided in English.
- If there are translation-related deficiencies in the request for unitary effect, an invitation to remedy the deficiencies (EPO Form 7040) will be issued. A reply must be filed within one month from the date of notification. If no reply is received within the one-month time limit or if the reply is not complete or satisfactory, the request will be rejected.

→ **Formal deficiencies:**

Request filed too early

- If the request for unitary effect is filed before the decision to grant (EPO Form 2006A) has been issued, the request is considered as filed too early. However, if the request is filed after the decision to grant is issued but before publication of the mention of grant in the European Patent Bulletin, the Unitary Patent Division will treat the request as an "early request", which will be processed only after publication.
- Where the request is filed too early, i.e. before the decision to grant (EPO Form 2006A) has been issued, a short communication inviting the requestor to refile the request at a later point will be issued.

Late-filed request for unitary effect

- The request for unitary effect must be filed within one month of the date of publication of the mention of grant in the European Patent Bulletin. The only available remedy for a late-filed request is re-establishment of rights. The request for re-establishment of rights must meet all the relevant requirements for admissibility and must be duly substantiated. For the request for re-establishment of rights to be granted, it must be clear that all due care required by the circumstances had been taken to comply with the time limit concerned.
- The request for unitary effect will only be processed where the request for re-establishment of rights is granted. Should the request for re-establishment of rights be rejected, the request for unitary effect will be too.

Legal references:

Article 6 Regulation (EU) No 1260/2012

Article 133(2) EPC

Rule 5 UPR; Rule 6 UPR; Rule 7 UPR; Rule 20(2)(I) UPR
OJ EPO 2022, A6
UP Guidelines, 2

Legal remedies against decisions of the Unitary Patent Protection Division

Applications to annul or alter decisions of the UPP Division must be filed with the Registry of the Unified Patent Court (see Article 32(1)(i) UPCA) within two months of notification of the decision (see Rule 88 RoP UPC).

If the decision contested is a rejection of a request for unitary effect, any application to reverse the decision must be lodged with the UPC Registry within three weeks of service of the decision (see Rule 97(1) RoP UPC).

Interlocutory revision by the EPO

Where an application to annul or alter a UPP Division decision is brought before it, the UPC will first perform an admissibility check and, if the application is admissible, will forward it to the UPP Division with an indication that the application is admissible (Rule 90(d) RoP UPC).

Interlocutory revision is not available for a decision to reject a request for unitary effect (Rule 85(2) RoP UPC).

If the UPP Division is informed by the UPC that an application to annul or alter an EPO decision is admissible, and the UPP Division considers the application to be well-founded, it will:

- a) rectify the contested decision in accordance with the order or remedy sought by the claimant, and
- b) inform the UPC that the decision has been rectified (see Rule 24 UPR and Rule 91 RoP UPC).

within two months of the date of receipt of the application.

Once the UPC is informed by the UPP Division that the contested decision has been rectified, it will inform the claimant that the action is closed. It may order full or partial reimbursement of the fee for the action against an EPO decision (see Rule 91(2) RoP UPC).

If, on the contrary, the UPP Division considers that the application to annul or alter a decision is not well-founded, it will be assigned to a panel of the central division of the UPC, or to a single judge if requested by the claimant, where it will be examined in accordance with Rules 92 to 96 RoP-UPC.

Legal references:

Article 9 Regulation (EU) No 1257/2012
Rule 24 UPR
Article 32 UPCA
Rules 85 to 98 RoP UPC
UP Guidelines, 8.9

4. Compensation scheme

The proprietor of a Unitary Patent may request compensation for translation costs incurred in the pre-grant phase of the European patent application. This compensation is only available for European patent (or Euro-PCT) applications filed in one of the official languages of the EU other than the three official languages of the EPO.

To be eligible for compensation (see Rule 8(2) UPR), proprietors and any initial applicants must:

- have (had) their residence or principal place of business in an EU member state (any of the current 28) and
- be a natural person, or
- be an SME, a non-profit organisation or a university or public research organisation

The request for compensation must be made in the request for unitary effect (by selecting the checkbox in section 2.2 of EPO Form 7000). The request also includes a declaration that the proprietor of the European patent meets the requirements under Rule 8(2) UPR (see above description). The request for compensation may also be filed with a free-text letter with the request for unitary effect. The free-text letter must contain the above-mentioned declaration.

Should there be one or more deficiencies in the request for compensation for translation costs, a communication pursuant to Rule 10(1) UPR (EPO Form 7040A) is issued. Depending on the deficiency, the requester is given the opportunity to file comments and/or remedy the deficiencies within a non-extendable period of two months from notification of Form 7040A. Should the proprietor fail to take appropriate action within this period, their request for compensation for translation costs will be rejected.

Most common deficiencies in requests for compensation:

Filing language:

- The most common deficiency in requests for compensation tends to be that the European patent or Euro-PCT application was, in fact, filed in English.
- In such a case, the proprietor is not entitled to compensation.

Doubts as to SME status:

- It may be that the UPP Division doubts the declared status of the legal person as an SME and cannot establish their status.
- In such a case, the UPP Division will invite the requester to provide evidence of the SME status of the legal person.

The European patent (or the underlying application) was transferred:

- Often, one of either the initial applicant(s) or the current proprietor(s) do not satisfy the requirements as mentioned above. More often than not, the issue will be that the initial applicant or proprietor was not domiciled or did not have its principal place of business in the territory of an EU member state.

- The UPP Division will reject the request (EPO Form 7040A). The requester is afforded a non-extendable period of two months from the notification of the communication to provide comments.

Legal references:

Rule 8 UPR; Rule 9 UPR; Rule 10 UPR; Rule 11 UPR
UP Guidelines, 4.2, 4.3

5. Renewal fees

Renewal fees

To maintain a Unitary Patent, the patent proprietor has to pay annual renewal fees.

Fees are payable to the EPO – in euros – via any of the accepted payment methods, i.e. credit card, transfer to the EPO bank account or debit from a deposit account held with the EPO. All of these accepted payment methods can be accessed using Central Fee Payment (payments can be made in single or batch mode, and refunds can be credited to the payer's bank or deposit account). Anyone may pay the renewal fees – there is no need to use a representative.

Due date for renewal fees

Due dates for the payment of fees related to Unitary Patents follow the same principle as those for European patent applications, namely they are due as of the first day on which the fees may validly be paid, not the last day of a period for such payment. If no due date is specified, the fee is due on the date of receipt of the request for the service incurring the fee concerned.

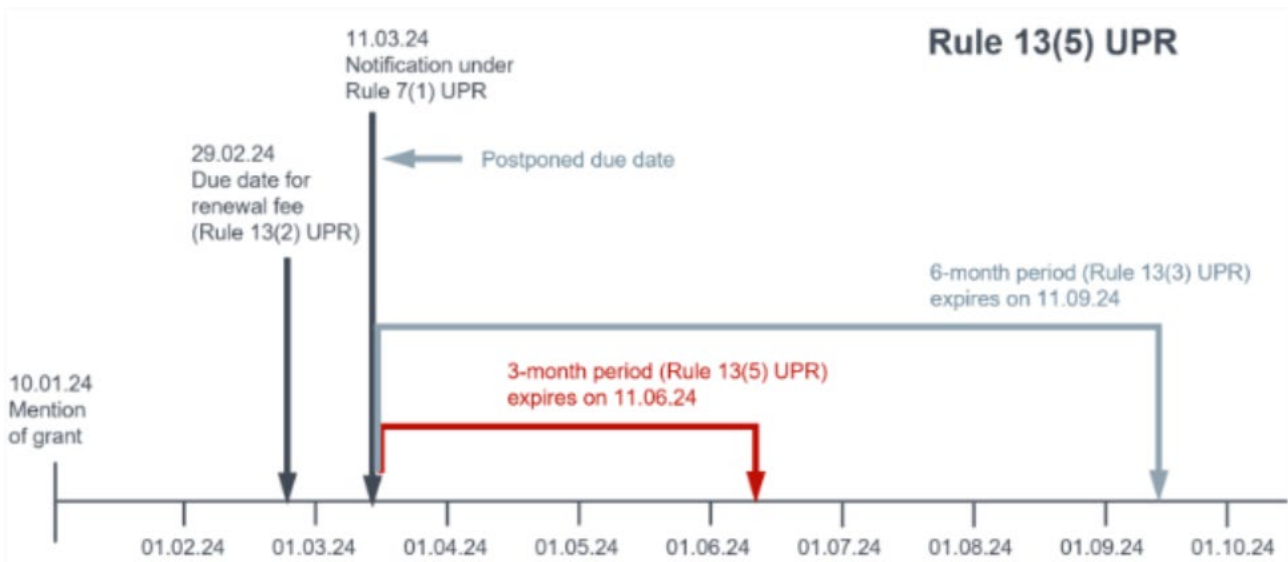
A renewal fee for a Unitary Patent in respect of the coming year will be due on the last day of the month containing the anniversary of the date of filing of the European patent application which led to the Unitary Patent. Renewal fees cannot be validly paid more than three months before they fall due (Rule 13(2) UPR). The payment periods are calculated in accordance with Rule 20(2)(g) UPR in conjunction with Rules 131 and 134 EPC. Therefore, if the due date is a day on which the EPO cannot receive mail within the meaning of Rule 134(1) EPC, the due date will not change. Instead, the last day for the payment to be validly performed will be deferred to the first day on which all filing offices are open for receipt of documents and on which mail is delivered.

Special provisions for the first renewal fee due for a Unitary Patent

A renewal fee falling due within three months of the notification of the communication referred to in Rule 7(1) UPR (confirmation of registration of unitary effect) may be paid within that three-month period without an additional fee (Rule 13(4) UPR).



The due date of a renewal fee falling due after the publication of the mention of grant but before the registration of unitary effect by the EPO shifts to the date of the notification of the communication referred to in Rule 7(1) UPR (confirmation of registration of unitary effect). The renewal fee may be paid without the additional fee within three months from this shifted start due date. If the renewal fee is not paid within this three-month period, it may still be paid with an additional fee within six months of the notification of the communication referred to in Rule 7(1) UPR (confirmation of registration of unitary effect) (Rule 13(5) UPR).



Legal references:

Rules relating to Fees for Unitary Patent Protection (RFeesUPP)

Rule 13 UPR

UP Guidelines, 3.7, 3.13, 3.14

6. Transfer of rights, licences and other rights, statements on licences

Rights, such as licences and other rights (rights in rem, pledges, security interests and any legal means of execution) and the transfer of rights relating to Unitary Patents, may be recorded in the Register for unitary patent protection (or “UP Register”). Entries in the UP Register follow the same rules as registrations for European patent applications.

Registering a transfer of rights

A Unitary Patent may be transferred only in respect of all the participating member states for which it is registered.

A transfer may be recorded in the UP Register at the request of an interested party (e.g. patent proprietor, transferee, etc.). The request is deemed to have been filed only when the administrative fee has been paid. However, a request filed via MyEPO will be free of charge (Rule 22(1) and (2) EPC; Rule 5 RFeesUPP).

If the request complies with the requirements of Rule 22(1) EPC, the transfer will be registered with the date on which the request, the required evidence or the fee was received by the EPO - whichever is the latest.

Submission of evidence

Any kind of written evidence suitable for proving the transfer is admissible. A translation into one of the three EPO official languages may be required where applicable. A declaration signed by both parties to the contract verifying the transfer is also sufficient. If the evidence submitted is found to be insufficient, the UPP Division will invite the requester to remedy the deficiencies found.

The usual EPC provisions governing signature and authorisation requirements apply (see OJ EPO 2024 A17; Rules 85 and 152 EPC).

Legal references:

Article 3 Regulation (EU) No 1257/2012

Rule 20(2) UPR

Article 5 RFeesUPP

Rule 22 EPC; Rule 85 EPC; Rule 152 EPC

OJ EPO 2024, A17

UP Guidelines, 7.4

Changes of name or address

Changes that do not involve a modification of the legal identity of the proprietor, i.e. changes of name or address, can be entered in the UP Register upon request and production of relevant evidence, as long as the Unitary Patent proceedings before the EPO are pending.

Such requests are free of charge.

Submission of evidence

See earlier section on transfers.

Legal references:

UP Guidelines, 7.3

Licences

A Unitary Patent may be licensed in respect of the whole or part of the territories of the participating member states. It may, in respect of all the participating member states, give rise to rights in rem and may be the subject of legal means of execution. Unitary Patents may also be subject to a compulsory licence (see Recital 10 Regulation (EU) No 1257/2012).

Registering a licence

It is recommended that EPO Form 7005 be used for requesting the registration of such licensing commitments. The request is deemed to have been filed only when the administrative fee has been paid. However, a request filed via MyEPO will be free of charge (Rule 22(1) and (2) EPC; Rule 5 RFeesUPP).

Upon request, the licence may be registered as an exclusive licence. Where a licence is granted by a licensee, the new licence will be registered as a sub-licence (Rule 24 EPC).

Deregistering a licence

On request, a licence can be cancelled, i.e. removed from the UP Register. An administrative fee must be paid (unless the request is filed via MyEPO), and the requester must produce evidence of the lapse of the right, for example, or a declaration of invalidity. A declaration of the proprietor of the right consenting to the cancellation may also be submitted (Rule 23(2) UPR).

Submission of evidence

See earlier section on Transfers.

Legal references:

Article 3 Regulation (EU) No 1257/2012

Rule 20(2) UPR

Article 5 RFeesUPP

Rules 22 to 24 EPC

UP Guidelines, 7.4, 7.5

Statements concerning licences of right

Unitary Patent proprietors may file a statement with the EPO that they are prepared to allow any person to use their invention as a licensee in return for appropriate consideration. A licence obtained under the system of licences of right will be treated as a contractual licence (Article 8(2) Regulation (EU) No 1257/2012).

A reduction of 15% applies to renewal fees for a Unitary Patent for which a statement on licences or rights is recorded (Article 3 RFeesUPP). Any additional fee for late payment of a renewal fee will be calculated on the basis of the reduced renewal fee (Rule 13(3) UPR and Article 2(1), item 2, RFeesUPP).

Registering the statement on licences of right

The statement can be filed using EPO Form 7001. This service is free of charge. The requirements under Rules 85 and 152 EPC apply to any evidence submitted.

The statement will not be registered where there is an exclusive licence recorded in the UP Register (or a pending request for one). Similarly, once a statement is entered in the UP Register, a request for the registration of an exclusive licence is no longer admissible.

Withdrawing the statement on licences of right

The proprietor of the Unitary Patent may withdraw the statement on licences of right at any time. The withdrawal can be requested using EPO Form 7002. The withdrawal is conditional on the repayment to the EPO of the amount by which the renewal fees were reduced (that is, the totality of the amount, covering all the renewal fees which fell due after the registration of the statement).

Legal references:

Article 8 Regulation (EU) No 1257/2012

Rule 12 UPR; Rule 13 UPR

Article 2 RFeesUPP; Article 3 RFeesUPP

UP Guidelines, 7.5

7. Practical example: filing a request for unitary effect (EPO Form 7000)

A video demonstrating how to prepare a request for unitary effect using EPO Form 7000 via Online Filing 2.0 is available in the course room.

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