

# 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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## 1. Learning objectives

Participants in this course will learn:

- 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 cooperation to set up the Unitary Patent across the participating EU Member States (25 in total).

➔ Regulation No 1257/2012

Title: "Implementing enhanced cooperation in the area of the creation of unitary patent protection"

➔ Regulation No 1260/2012

Title: "Implementing enhanced cooperation 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 4 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.

## ➔ UP Guidelines

### **The Unitary Patent (UP) Guide**

The UP Guide was published to provide users of the Unitary Patent system with an outline of Unitary Patent proceedings. The introduction of the UP Guidelines, however, led to the discontinuation of the UP Guide. The last version of the UP Guide remains available for information purposes.

### **Territorial scope**

The Unitary Patent will eventually cover the 25 EU Member States participating in enhanced cooperation in Unitary Patent protection (i.e. all EU Member States except Croatia and Spain).

To be covered by the Unitary Patent, a Member State must not only be participating in this enhanced cooperation, it must also have ratified the Agreement on a Unified Patent Court (UPCA) by the date on which unitary effect is registered.

A total of 17 states had done so by the time the new system started on 1 June 2023. The 17 states in enhanced cooperation which have already ratified the UPCA and enjoy Unitary Patent protection are: Austria, Belgium, Bulgaria, Denmark, Estonia, Finland, France, Germany, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Slovenia and Sweden.

### **Accession of EU Member States and UP generations**

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 state. The territorial scope of an existing Unitary Patent will, however, not be extended to include the newly acceded EU Member State but rather 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.

## **Accession of Romania**

On 1 September 2024, Romania acceded to the Unitary Patent system (having deposited the instrument of ratification on 31 May 2024). A notice dated 5 June 2024 was published in the Official Journal (OJ EPO 2024, A61), informing of the possibility to request a delay to the registration of unitary effect for all requests filed as of the date of the notice.

The accession of Romania to the Unitary Patent system created the second UP generation, which extended the territorial scope of Unitary Patents to 18 states.

## **Unified Patent Court opt-out**

Under Art. 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 an application for a European patent subject to an opt-out pursuant to Rule 5(9) UPC Rules of Procedure proceeds to grant as a European patent with unitary effect, 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 for users or machines to search.

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 dedicated 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 the 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 participating EU Member States  
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. 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 time limit. Failure to reply in time or to reply at all will result in the request being rejected. The one-month time limit for remedying deficiencies is excluded from the procedure for re-establishment of rights.

### **Common deficiencies in requests**

The following are the deficiencies recurring most often, and their usual outcomes.

#### **→ Substantive deficiencies:**

##### Missing designations

- One or more participating EU Member States have not been designated. This issue will often be the result of two things: 1) the European patent application was filed before one (or more) of the participating 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 request for unitary effect must be rejected if the 25 participating EU Member States are not designated in the European patent. An intention to reject the request for unitary 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 proprietors or the representative's particulars contain inconsistencies, or there is information missing. It will often be the case that the name and/or address of the proprietor doesn't match the information recorded in the European Patent Register. It can also be that the information submitted is not complete, 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.



- If your request for unitary effect has a similar issue, you will receive an invitation to remedy the deficiencies noted (EPO Form 7040). You have one month from the date of notification of the invitation to reply. If you do not reply within the one-month time limit, or if your reply is not complete or satisfactory, your 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 your request for unitary effect, you will receive an invitation to remedy the deficiencies (EPO Form 7040). You have one month from the date of notification of the invitation to reply. If you do not reply within the one-month time limit or if your reply is not complete or satisfactory, your 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", keep it as pending and process it only after publication.
- Where the request is filed too early, i.e. before the decision to grant (EPO Form 2006A) has been issued, you will receive a short communication inviting you to refile the request at a later point.

#### 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, so will the request for unitary effect.

### **Legal references:**

Article 6 Regulation (EU) No 1260/2012

Rule 5 UPR; Rule 6 UPR; Rule 7 UPR

OJ EPO 2022, A6

UP Guidelines, 2



## **Legal remedies against decisions of the UPC**

Applications to annul or alter decisions of the UPC 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 an EPO decision is brought before it, the UPC will first perform an admissibility check and, if it is admissible, will forward it to the EPO 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 EPO is informed by the UPC that an application to annul or alter an EPO decision is admissible, and the EPO considers the application to be well-founded, it will, within two months of the date of receipt of the application:

- 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).

Once the UPC is informed by the EPO 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 EPO considers that the application to annul or alter a decision is not well-founded, then the procedure under Rule 92 et seq. RoP UPC is followed.

## **Legal references:**

Article 9 Regulation (EU) No 1257/2012

Rule 24 UPR

Article 32 UPCA

Rules 85 to 98 RoP UPC

UP Guidelines, 7.7

## **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 Unitary Patent Protection Division (UPPD) doubts the declared status of the legal person as an SME and cannot itself establish their status.
- In such a case, the UPPD 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 UPPD 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, 3.2

## **5. Maintaining a Unitary Patent**

### **Renewal fees and common pitfalls**

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.

### **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 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:**

Rule 13 UPR  
UP Guidelines, 3.1.7

### **Transfer of rights, licences and other rights, statements on licences**

Rights relating to Unitary Patents, such as transfers, licences and other rights (rights in rem, pledges, security interests, etc.), and any legal means of execution may be entered in the Register for unitary patent protection. Entries in the Register for unitary patent protection 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 Register for unitary patent protection 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 EPO 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

Rule 5 RFeesUPP

Rule 22 EPC; Rule 85 EPC; Rule 152 EPC

OJ EPO 2024, A17

UP Guidelines, 6.2

### **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 Register for unitary patent protection. An administrative fee must be paid (unless the request is filed via MyEPO), and the requester must produce evidence, for example of the lapse of the right, 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

Rule 5 RFeesUPP

Rules 22 to 24 EPC

UP Guidelines, 6.4

**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 Register for unitary patent protection (or a pending request for one). Similarly, once a statement is entered in the Register for unitary patent protection, 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 during 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, 6.5

## **6. Practical examples**

In preparation for the session of 21 May 2025, consider the two scenarios below, and try to spot all the issues that may arise when requesting a Unitary Patent. You may also want to make a note of if, and how, these issues may be overcome, in order to guarantee the swift and smooth processing of the request for unitary effect.

During the session we will discuss the scenarios and do a live demonstration of a request for unitary effect using Online Filing 2.0.

### **Case Scenario 1**

- Applicant: Ivan Petrov, MoscowTech Innovations LLC
- Address: İstiklal Caddesi No: 50, Beyoğlu, 34430 İstanbul, Türkiye
- Nationality: Turkish

Ivan Petrov, founder of MoscowTech Innovations LLC, is keen to extend the protection of his European patent by requesting unitary effect. He submits the request from his office in İstanbul, Türkiye, relying on the English-language proceedings of his application EP12345678.9, originally filed on 15 July 2005 and with the mention of the grant of unitary effect published on 5 June 2024. The application claims priority from a Russian application filed on 10 May 2002. Petrov carefully prepares the necessary documents, including Form 7000 for the request for unitary effect. To fulfil the formal requirements, an Italian translation is included with the submission. Confident that his request will secure protection across multiple EU Member States, Petrov starts to complete Form 7000 on 15 June 2024 and sends it on 16 June 2024. Petrov also takes the opportunity to verify the payment of renewal fees of the European patent and makes inquiries about the status of the change of professional representative for the application that had been filed earlier.

### **Case Scenario 2**

- Applicant: Shanghai Tech Innovations Co., Ltd (the company is not an SME)
- Address: London, UK
- Nationality: Chinese

Shanghai Tech Innovations Co., Ltd., a major international technology company submits a request for unitary effect on 20 March 2024. The Unitary Patent is based on European patent application EP23456789.1 filed on 10 March 2022 as a divisional application of the earlier European patent application EP 19876543.6, having a date of filing of 28 March 2020. The language of the proceedings was French. The mention of the grant was published in the European Patent Bulletin on 20 February 2024. As the company's corporate headquarters are located there, the company files its request for unitary effect with London, UK as its address. The company also requests compensation for translation costs under Article 5 UPR, seeking to benefit from the available financial support for SMEs. No translation is submitted with the request. Additionally, the company does not appoint a professional representative for the Unitary Patent proceedings.

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