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SUBJECT: Results of the questionnaire on national measures accompanying the implementation of the European patent with unitary effect – update

SUBMITTED BY: Chairperson of the Select Committee

ADDRESSEES: Select Committee of the Administrative Council (for information)

SUMMARY

This document replaces SC/3/22 dated 03.03.2022. The amendments are indicated by grey hatching.

The present document gives an overview of the replies received from delegations to questions posed in writing by the Chairperson. It is an update of document SC/5/19.

Annex 1 contains the full replies submitted by the delegations.

This document has been issued in English and electronic form only.

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I. STRATEGIC/OPERATIONAL

1. Operational.

II. RECOMMENDATION

2. The Select Committee is requested to take note of the updated results of the questionnaire on national measures accompanying the implementation of the European patent with unitary effect.

III. MAJORITY NEEDED

3. N/A.

IV. ARGUMENTS

A. INTRODUCTION

4. At the 19th meeting of the Select Committee, the Chairperson suggested that the European Patent Office (EPO) prepare a list of questions on any (legislative) measures accompanying the implementation of the European patent with unitary effect in the participating Member States. Five different questions were prepared by the EPO and sent to delegations. The initial replies received from delegations were collated in document SC/7/16 and the updated replies in documents SC/5/17 and SC/5/19. Delegations were asked by the Chairperson of the Select Committee to update their replies to the questionnaire. All delegations submitted a reply, some of them indicating that there were no changes to the previously submitted replies.
5. The present document contains an update of the results of the questionnaire on national measures accompanying the implementation of the European patent with unitary effect, taking into account the modified replies sent by some delegations (Bulgaria, Estonia, France, Germany, Hungary, Latvia, Luxembourg, the Netherlands, Poland and Portugal). It follows the structure of documents SC/7/16, SC/5/17 and SC/5/19 and contains five tables giving an overview of the replies received with regard to the respective question. Each table is preceded by the relevant question. The detailed replies provided by the delegations can be found in annex 1.
6. The EPO will make the collected information available to the public online so as to give users of the European patent with unitary effect easy access to national legislation accompanying its implementation, in a similar manner to the EPO's online booklet "National law relating to the EPC", where the relevant information can be retrieved country by country. Since the implementation of the European patent with unitary effect at national level is an ongoing process and may be subject to changes, there will be a continuing need to follow up on any legislative developments in the participating Member States.

B. OVERVIEW OF THE REPLIES RECEIVED FROM DELEGATIONS

QUESTION 1. GENERAL

Please indicate whether any measure, i.e. any legislation, is envisaged or has been adopted for the purpose of accompanying the implementation of the European patent with unitary effect at domestic level (such as amendments to the Patent Act or to associated Regulations).

If yes, please provide the relevant (draft) legal instrument(s) (by providing an internet link or a PDF copy) and any related official explanatory or introductory notes if available. Please do also provide a translation of all the aforementioned texts into English, if available (also by providing an internet link or a PDF copy).

Please specify the state of affairs of the legislative process (date of adoption of the legislative act and date of entry into force, draft pending before national parliament, next steps, etc.).

	Legislation under consideration	Legislation envisaged and/or engaged	Legislation adopted
Bulgaria			X
Belgium			X
Czech Republic		X	
Denmark			X
Germany			X
Estonia			X
Hellenic Republic	X		
France			X
Ireland		X	
Italy			X
Cyprus	X		
Latvia			X
Lithuania			X
Luxembourg	X		
Hungary	X		
Malta	X		
Netherlands			X
Austria		X	
Poland	X		
Portugal	X		
Romania		X	
Slovenia		X	
Slovakia	X		
Finland			X
Sweden		X	

QUESTION 2. NATIONAL VALIDATION OF A EUROPEAN PATENT WHERE A REQUEST FOR UNITARY EFFECT HAS BEEN REJECTED (“SAFETY NET”)

The Select Committee, on several occasions, discussed the issue of providing the possibility to validate a European patent where a request for unitary effect has been rejected either by the EPO or the UPC or the unitary effect has been revoked by the UPC at the time when the validation deadlines have already expired (see documents SC/32/13, SC/4/14 and SC/30/15).

Does your country intend to introduce or has your country already introduced such a safety net? If yes, please explain how the mechanism will work and specify the relevant (draft) provisions, if available.

In case your country does not intend to introduce such a safety net, please indicate if other measures are envisaged, and if yes please specify these measures.

If there are no specific measures envisaged or provided for, please explain how patent holders can validate their European patent in the situation described above.

	Safety net envisaged	Safety net not envisaged	Safety net under consideration
Bulgaria	X		
Belgium	X		
Czech Republic	X		
Denmark	X		
Germany	X		
Estonia	X		
Hellenic Republic			X
France	X		
Ireland			X
Italy	X		
Cyprus			
Latvia	X		
Lithuania	X		
Luxembourg			X
Hungary	X		
Malta			
Netherlands	X		
Austria	X		
Poland			
Portugal	X		
Romania	X		
Slovenia	X		
Slovakia			X
Finland	X		
Sweden	X		

QUESTION 3. SIMULTANEOUS PROTECTION BETWEEN A EUROPEAN PATENT WITH UNITARY EFFECT AND A NATIONAL PATENT ALLOWED?

Under Article 139(3) EPC, any Contracting State may prescribe whether and on what terms an invention disclosed in both a European patent application or patent and a national application or patent having the same date of filing or, where priority is claimed, the same date of priority, may be protected simultaneously by both applications or patents (see also Article 140 EPC).

Please indicate whether, and if yes to which extent, simultaneous protection will be allowed for an invention covered by a European patent with unitary effect and a national patent. Please specify the relevant (draft) provisions of national law if available. Please specify whether in this respect you foresee a difference between a classical European patent and a European patent with unitary effect.

If applicable, please also specify whether any accompanying measures are provided, such as but not limited to possible procedural safeguards aiming at estopping a patentee from filing for two actions for infringement against the user of the invention based on the one hand on the national patent in front of a competent national court, and on the other hand on the basis of the European patent with unitary effect at the Unified Patent Court (UPC).

	Is simultaneous protection possible between a Unitary Patent and a national patent (Y/N)	Is simultaneous protection possible between a classical European patent and a national Patent (Y/N)	Accompanying measures	Question is under consideration as regards the Unitary Patent
Bulgaria	N	N		
Belgium	N	N		
Czech Republic	N	N		
Denmark	Y	Y		
Germany	Y	Y (only if EP is not opted out)	X	
Estonia	Y	N		
Hellenic Republic				X
France	Y	Y (only if EP is not opted out)	X	
Ireland		N		X
Italy	N	N		
Cyprus				X
Latvia	N	N		
Lithuania	N	N		
Luxembourg		N		X
Hungary	Y	Y		
Malta				
Netherlands	N			
Austria	Y	Y		
Poland		Y		
Portugal		N		X
Romania	N	N		
Slovenia		Y under certain conditions		
Slovakia		N		X
Finland	Y	Y		
Sweden	Y	Y		

QUESTION IV. TERRITORIAL SCOPE OF THE EUROPEAN PATENT WITH UNITARY EFFECT (IN PARTICULAR FR AND NL): OVERSEAS TERRITORIES AND AREAS

Please indicate whether there are territories/areas, the external relations of which your country is responsible for, in which the European patent with unitary effect will not be applicable.

Rationale for the question is that some of the (overseas) territories or areas of some participating Member States do not form part of the EU and therefore of the European patent with unitary effect. By contrast, a classical European patent granted for that State may have effect in said territories or areas (see Article 168 EPC and the EPO publication "National law relating to the EPC" available in HTML at <http://www.epo.org/law-practice/legal-texts/html/natlaw/en/x/index.htm> which sets out detailed information per EPC Contracting State).

It would therefore be useful, in particular for the users of the system, to know where the European patent with unitary effect will apply, for example via an extension to some territories/areas. It would also be useful to know whether it will be possible to obtain a classical European patent in the territories not part of the EU (in addition to a European patent with unitary effect).

Please briefly explain the envisaged approach and specify the envisaged (draft) legal provisions, if any, or whether in the event that a European patent with unitary effect does not extend to certain territories it is possible to obtain a national patent for the same invention for those territories.

	Replies
Bulgaria	N/A
Belgium	N/A
Czech Republic	N/A
Denmark	Denmark's accession to the European Patent Convention does not encompass the Faroe Islands and Greenland (though a part of the Kingdom of Denmark) cf. Article 168 EPC. Further, the Faroe Islands and Greenland are not members of the European Union. A Unitary Patent or a designation of Denmark in a classic European Patent therefore does not cover the Faroe Islands or Greenland. (see page 18)
Germany	N/A
Estonia	N/A
Hellenic Republic	N/A
France	Under the rules governing the European Union's association with the overseas countries and territories, the two EU Regulations are not directly applicable there. However, the state with the power to legislate in the area of industrial property for those territories can put applicable provisions in place.

	<p><u>Overseas applicability of order No. 2018-341 of 9 May 2018 implementing the unitary patent and the UPC:</u></p> <ul style="list-style-type: none"> - Order No. 2018-341 of 9 May 2018 applies in full to <u>Guadeloupe, French Guiana, Martinique, Réunion, Mayotte, Saint Barthélemy, Saint Pierre and Miquelon, Saint Martin and the French Southern and Antarctic Lands</u>, as well as to Wallis and Futuna. This means that, like a traditional European patent, a <u>European patent with unitary effect will apply in all of those places</u> (see Article L. 811-2-2). - By contrast, the order applies only in part to New Caledonia and French Polynesia. They have their own powers in the area of industrial property and the French state ("Metropolitan France") does not have the authority to pass legislation on this for them. <u>As things stand, the unitary patent will therefore not apply in New Caledonia or French Polynesia.</u> (It is possible that New Caledonia and French Polynesia will exercise their powers in this area soon; if so, this questionnaire will be updated accordingly.) (see pages 37, 38)
Ireland	N/A
Italy	N/A
Cyprus	N/A
Latvia	N/A
Lithuania	N/A
Luxembourg	N/A
Hungary	N/A
Malta	N/A
Netherlands	<p>The Unitary Patent (European patent with unitary effect) will only give protection in the European part of the Netherlands.</p> <p>The Kingdom of the Netherlands consists of 4 countries:</p> <ul style="list-style-type: none"> (i) the Netherlands, (ii) Aruba, (iii) Curaçao and (iv) Sint Maarten. <p>The Netherlands (the country within the Kingdom) consists of two parts:</p> <ul style="list-style-type: none"> - the part of the Netherlands within Europe; and - the Caribbean part of the Netherlands, which consists of: <ul style="list-style-type: none"> o Bonaire; o Sint Eustatius; and o Saba. <p>These three islands are special municipalities of the Netherlands and are often abbreviated as the 'BES'.</p> <p>Only the part of the Netherlands within Europe belongs to the territory of the European Union. Aruba, Curaçao, Sint Maarten and the BES are,</p>

	<p>with regard to the EU, so-called ‘overseas countries and territories’ (‘pays et territoires d’outre-mer’).</p> <p>The European Patent Convention (EPC) is ratified by the Kingdom of the Netherlands for:</p> <ul style="list-style-type: none"> - the Netherlands (European part and BES); - Curaçao; and - Sint Maarten. <p>This is also the territory covered by the Rijksoctrooiwet 1995 (the Netherlands Patent Act of the Kingdom 1995). The territorial scope of a national patent and of a European patent are therefore the same.</p> <p>The Rijksoctrooiwet 1995 is not applicable in Aruba. Aruba has its own patent act, the Aruba Patent Act (for the IP office of Aruba, see http://www.opi-aruba.org/index.html). The EPC is not ratified for Aruba. European patents are therefore valid in the whole Kingdom, except for Aruba.</p> <p>The UPP Regulations 1257/2012 and 1260/2012 only apply within the territory of the EU, i.e. in the European part of the Netherlands.</p> <p>The UPC Agreement is ratified for the European part of the Netherlands, the BES, Curaçao and Sint Maarten. The Patents Act determines that the protection of the European patent in the overseas territories is equal to the protection given by a European patent with unitary effect. The envisaged new provision in the Patents Act states (in short) that UPP Regulations 1257/2012 and 1260/2012 shall apply accordingly to the European patent that gives protection in these overseas territories. (see pages 60, 61)</p>
Austria	N/A
Poland	N/A
Portugal	N/A
Romania	N/A
Slovenia	N/A
Slovakia	N/A
Finland	N/A
Sweden	N/A

QUESTION V. ANY OTHER IMPORTANT ASPECT OF NATIONAL LAW WHICH MAY BE RELEVANT FOR USERS OF THE UNITARY PATENT PROTECTION SYSTEM

Please indicate any other important aspect of the planned or adopted national legislation which may be of interest to the users of the unitary patent protection system.

	Any other important aspect
Bulgaria	
Belgium	X (see page 14)
Czech Republic	
Denmark	X (see page 18)
Germany	
Estonia	
Hellenic Republic	
France	
Ireland	X (see page 39)
Italy	
Cyprus	
Latvia	
Lithuania	
Luxembourg	
Hungary	X (see page 57)
Malta	
Netherlands	X (see page 62)
Austria	
Poland	
Portugal	
Romania	
Slovenia	
Slovakia	
Finland	X (see page 74)
Sweden	

V. FINANCIAL IMPLICATIONS

7. N/A

VI. RECOMMENDATION FOR PUBLICATION

8. Yes

ANNEX 1 FULL REPLIES PROVIDED BY THE DELEGATIONS

I. BULGARIA

1. General

REPLY:

Bulgaria has already adopted amendments in the Act on patents and registration of utility models, in force since October 2020 with proviso according that art. 72c, para. 1 and 8 in the part for the European patent with unitary effect, and art. 72g, para. 2, 4 and 5 in the part for the European patent with unitary effect, shall be applied after the entry into force of the Agreement on the Unified Patent Court, signed in Brussels on 19 February 2013 (ratified by an Act - SG, 32/16).

2. National validation of a European patent where a request for unitary effect has been rejected (“safety net”)

REPLY:

Bulgaria has already introduced such an option with the amendments at the Chapter “Effect of the European patent and of the European patent with unitary action” by the Act on patents and registration of utility models in force since October 2020 according to which:

Art. 72c. (new – SG 66/02) (1) (Amend. – SG, 92/20) A European patent, in which the Republic of Bulgaria is pointed out, shall concede to the holder of the patent from the date of the announcement about its issuing in the European patent bulletin the rights under this Act, if in three months term after this date, or from the date of entry into force of the decision to refuse or revoke the unitary effect of the European patent, where unitary action is requested under Regulation (EU) № 1257/2012 of the European Parliament and of the Council of 17 December 2012, enhanced cooperation in the field of the creation of unitary patent protection (OJ L 361/1 of 31 December 2012), a request was made to the Patent Office for recognition of the validity of the European patent, accompanied by a translation of the description and claims into the Bulgarian language, and a publication fee is paid.

and

Art. 72c (8) (New - SG, 92/20) (*) When it is established, that for a European patent, for which a request for securing action has been filed on the territory of the Republic of Bulgaria, a request for unitary action has been filed before the European Patent Office, the proceedings on the request before the Patent Office shall be suspended until the entry into force of the decision on the request for unitary action.

3. Simultaneous protection between a European patent with unitary effect and a national patent allowed?

REPLY:

Simultaneous protection is not allowed, under the provisions with the changes in the chapter “Prohibition of simultaneous protection” by the Act on patents and registration of utility models in force since October 2020 according to which :

Art. 72g. (new – SG 66/02) (1) (Amend. – SG, 92/20) When a national patent for invention is issued, for which a European patent is issued with validity on the territory of the Republic of Bulgaria is pointed out with one and the same date of application, respectively one and the same priority date, to one and the same person or his legal successor, the national patent shall terminate its validity.

Art. 72g. (2) (Amend. – SG, 92/20) (*) Under the conditions of Para. 1, the national patent shall terminate its effect as of the date of publication of a notice for issuance of the European patent in the European Patent Bulletin, in case the European patent with effect on the territory of the Republic of Bulgaria or with registered unitary effect has not been declared invalid with an enforced decision or no objection has been lodged to the extent, that they overlap.

Art. 72g. (4) (New, SG, 92/20) (*) National patent for an invention, for which a European patent has been issued with unitary effect, with the same date of application or priority date, on the same person or his successor in title, shall terminate its effect to the extent, that it is identical to the European patent. The proceedings shall be initiated at the request of any person or ex officio and shall be considered as the requests under Art. 55, Para. 2.

4. Territorial scope of the European patent with unitary effect (in particular FR and NL): overseas territories and areas

REPLY:

-

5. Any other important aspect of national law which may be relevant for users of the unitary patent protection system

REPLY:

-

II. BELGIUM

1. General

REPLY:

Some amendments have been introduced in the Belgian Patent legislation through the adoption of the new Code of Economic Law (hereafter “CEL”) in order to take into account the existence of the Regulations related to the Unitary Patent Protection:

- definitions of the European patent with unitary effect and of Regulation 1257/2012 have been introduced in the list of definitions applicable to the patent chapter of the CEL (article I.14 CEL);
- a provision concerning the prohibition of double protection mentioned in article 4.2 of Regulation 1257/2012 is now contained in article XI.83, § 5, CEL.

These provisions have been introduced by the Law of 19 April 2014 and entered into force on 22 September 2014 (Royal Decree of 19 April 2014, article 1bis).

Translations are not available. This is the link to the aforementioned provisions of the Code of Economic Law (consolidated online version): article [I.14 CEL](#) and [XI.83 CEL](#) (French and Dutch texts).

A second set of amendments has been adopted in order to:

- align the wording of the provisions of the CEL related to the rights, exceptions and limitations with the wording of articles 25-27 of the UPC Agreement;
- provide for a safety net in case of late rejection of the unitary effect in order for the rightholder of a European patent to apply for national patent protection (article XI.83/1 CEL).

While these amendments have been introduced by the Law of 19 December 2017, only the provision related to the safety net has since entered into force, on 1 February 2018. The provisions related to the rights, exceptions and limitations will enter into force on the date of entry into force of the UPC Agreement.

Translations are not available. This is the link to the aforementioned provision of the Code of Economic Law (consolidated online version) as well as the provisions related to the rights, exceptions and limitations having yet to enter into force: [article XI.83/1 CEL](#) and [articles 2 to 4 of the Law of 19 December 2017](#) (French and Dutch texts).

2. National validation of a European patent where a request for unitary effect has been rejected (“safety net”)

REPLY:

A safety net mechanism is provided for in article XI.83/1 of the Code of Economic Law in case a request for unitary patent has been rejected by the EPO or by the UPC or in case the unitary effect has been revoked by the UPC at the time when the deadline for the payment of the national renewal fee has expired. The mechanism has been introduced by the Law of 19 December 2017 and entered into force on 1 February 2018.

Translations are not available. This is the link to the aforementioned provision of the Code of Economic Law (consolidated version): article [XI.83/1 CEL](#) (French and Dutch texts).

The main features of this safety net are the following:

- restoration-type (restitutio in integrum) mechanism (no automatic extension of time limits);
- twofold safety net corresponding to “option 1” in the joint NL-SE submission (SC/30/15):
 - the patent proprietor will be required to establish that
 - the request for unitary effect was submitted to the EPO in due time (and was not withdrawn);
 - the request was rejected.
 - the request will have to be filed before the Belgian IP office two months (at the latest) after the date of the rejection decision;
 - after having its request processed and declared admissible, the patent proprietor will have a one month term to pay the overdue renewal fee(s).

3. Simultaneous protection between a European patent with unitary effect and a national patent allowed?

REPLY:

In Belgium, according to article [XI.86 CEL](#), no simultaneous protection is allowed between a European patent - with or without unitary effect - and a national patent. For reasons related to the temporal scope of the relevant patent legislations, similar provisions are contained in previous legislations, namely [article 5 of the Law of 21 April 2007](#) and [article 7 of the Law of 8 July 1977](#). The wording of the provisions makes no difference between a classic European patent and a European patent with unitary effect.

Moreover, as mentioned before, a simultaneous protection for the same invention between a unitary patent and a national protection stemming from a classical European patent is not allowed. This exclusion is implemented in article [XI.83, § 5 CEL](#).

4. Territorial scope of the European patent with unitary effect (in particular FR and NL): overseas territories and areas

REPLY:

This issue does not apply to Belgium: European patents with unitary effect will have effect on the territory of the Kingdom of Belgium, which is part of the European Union.

5. Any other important aspect of national law which may be relevant for users of the unitary patent protection system

REPLY:

In the patent chapter of the Code of Economic Law, the provisions related to the rights of the patent holder, and to the exceptions and limitations, will be amended by the [Law of 19 December 2017](#), in order to align them to the wording of articles 25-27 of the UPC Agreement. This will create a level playing field for all rightholders, regardless of whether they choose the unitary protection, the European protection or the national protection. These amendments should enter into force on the date of entry into force of the UPC Agreement.

III. CZECH REPUBLIC

1. General

REPLY:

Yes, the Czech Republic envisages necessary legislative changes relating to the implementation of the European patent with unitary effect at national level. So far, the draft proposal has not been finalized and is not available. Preparatory work is ongoing.

2. National validation of a European patent where a request for unitary effect has been rejected (“safety net”)

REPLY:

Yes, the Czech Republic intends to introduce a safety net.

The Patent Act will provide that the patent proprietor may – despite the expiry of the relevant national time period – still retain the European patent by validation in cases where a request for unitary effect has been rejected by a final decision of the EPO or the UPC. A 3-month time period is envisaged – starting from the notification of the final decision of the EPO or the UPC rejecting the request for unitary effect – during which the patent proprietor can still validate the European patent.

3. Simultaneous protection between a European patent with unitary effect and a national patent allowed?

REPLY:

The Czech Republic does not intend to allow simultaneous protection. We do not foresee a difference between a classical European patent and a European patent with unitary effect.

4. Territorial scope of the European patent with unitary effect (in particular FR and NL): overseas territories and areas

REPLY:

The Czech Republic has no such territories/areas.

5. Any other important aspect of national law which may be relevant for users of the unitary patent protection system

REPLY:

IV. DENMARK

1. General

REPLY:

The Unified Patent Court etc. Act (Act No. 551 of 2 June 2014) has been adopted and can be retrieved via this link:

<http://www.dkpto.org/media/23027058/the%20unified%20patent%20court%20etc.%20%20act.pdf>

The Unified Patent Court etc. Act makes references to the Consolidate Patent Act, which can be retrieved via this link:

<http://www.dkpto.org/media/23032336/the%20consolidate%20patents%20act%202016.pdf>

2. National validation of a European patent where a request for unitary effect has been rejected (“safety net”)

REPLY:

Denmark intends to introduce a safety net provision in its national legislation (the Consolidate Patent Act). The safety net mechanism will be drafted along the lines proposed in document SC/30/15 (proposal submitted by Netherlands and Sweden). The chosen option and further details are still under consideration.

3. Simultaneous protection between a European patent with unitary effect and a national patent allowed?

REPLY:

Denmark doesn't have any provisions in its national legislation prohibiting simultaneous protection by a national patent and a classical European patent/Unitary patent.

Consequently, simultaneous protection for an invention covered by a European patent with unitary effect and a national patent will be allowed in Denmark in accordance with Article 139(3) EPC.

This is in order to provide a possibility to obtain patent protection on the Faroe Islands and in Greenland (which is a part of the Kingdom of Denmark) which is only possible through a national patent.

A national Danish patent can co-exist with a Unitary patent. Any litigation regarding a national Danish patent is dealt with by the Danish courts; also after the patent reform enter into force.

4. Territorial scope of the European patent with unitary effect (in particular FR and NL): overseas territories and areas

REPLY:

Denmark's accession to the European Patent Convention does not encompass the Faroe Islands and Greenland (though a part of the Kingdom of Denmark) cf. Article 168 EPC.

Further, the Faroe Islands and Greenland are not members of the European Union.

A Unitary patent or a designation of Denmark in a classic European Patent therefore doesn't cover the Faroe Islands or Greenland.

5. Any other important aspect of national law which may be relevant for users of the unitary patent protection system

REPLY:

The provisions for penalty in relation to infringements will also comprise infringement of Unitary patents, see provisions in the Unified Patent Court etc. Act.

V. GERMANY

1. General

REPLY:

In Deutschland sind zur Implementierung des einheitlichen Patentschutzes drei Gesetze in Kraft getreten, nämlich

- das Gesetz zum Übereinkommen vom 19. Februar 2013 über ein Einheitliches Patentgericht vom 7. August 2021 (BGBl. II S. 850¹),
- das Gesetz zur Anpassung patentrechtlicher Vorschriften auf Grund der europäischen Patentreform vom 20. August 2021 (BGBl. I S. 3914²),
- das Gesetz zum Protokoll vom 29. Juni 2016 über die Vorrechte und Immunitäten des Einheitlichen Patentgerichts vom 20. August 2021 (BGBl. II S. 953³).

Deutschland hat das Protokoll zum Übereinkommen über ein Einheitliches Patentgericht betreffend die vorläufige Anwendung am 27. September 2021 ratifiziert. Die Ratifikationsurkunde für das Übereinkommen über ein Einheitliches Patentgericht wird Deutschland hinterlegen, sobald die Arbeitsfähigkeit des Einheitlichen Patentgerichts im Rahmen der „vorläufigen Anwendung“ des Übereinkommens so weitgehend hergestellt ist, dass eine Funktionsfähigkeit des Gerichts zum Zeitpunkt des Inkrafttretens des Übereinkommens sichergestellt ist.

2. National validation of a European patent where a request for unitary effect has been rejected (“safety net”)

REPLY:

Artikel II § 7 Absatz 1 IntPatÜbkG bestimmt, dass für das mit Wirkung für die Bundesrepublik Deutschland erteilte europäische Patent Jahresgebühren nach § 17 PatG zu entrichten sind. Sie werden jedoch erst für die Jahre geschuldet, die dem Jahr folgen, in dem der Hinweis auf die Erteilung des europäischen Patents im Europäischen Patentblatt bekanntgemacht worden ist. Fälligkeit und Zahlungsfristen richten sich nach den Vorschriften des Patentkostengesetzes (PatKostG).

¹ Gesetzesmaterialien des Deutschen Bundestages: <https://dip.bundestag.de/vorgang/gesetz-zu-dem-%C3%BCbereinkommen-vom-19-februar-2013-%C3%BCber-ein/265750?term=%E2%80%A2das%20Gesetz%20zum%20%C3%9Cbereinkommen%20vom%2019.%20Februar%202013%20%C3%BCber%20ein%20Einheitliches%20Patentgericht&f.wahlperiode=19&f.wahlperiode=20&f.typ=Vorgang&f.metatyp=Gesetze&rows=25&pos=1>

² Gesetzesmaterialien des Deutschen Bundestages: <https://dip.bundestag.de/vorgang/gesetz-zur-anpassung-patentrechtlicher-vorschriften-auf-grund-der-europ%C3%A4ischen-patentreform/74552>

³ Gesetzesmaterialien des Deutschen Bundestages: <https://dip.bundestag.de/vorgang/gesetz-zu-dem-protokoll-vom-29-juni-2016-%C3%BCber-die/79640?term=Gesetz%20zum%20Protokoll%20vom%2029.%20Juni%202016%20%C3%BCber%20die%20Vorrechte%20und%20Immunit%C3%A4ten%20des%20Einheitlichen%20Patentgerichts&f.wahlperiode=18&rows=25&pos=1>

§ 7 Absatz 1 Satz 1 PatKostG sieht vor, dass die Jahresgebühren für Patente bis zum Ablauf des zweiten Monats nach Fälligkeit zu zahlen sind. Wird die Gebühr nicht innerhalb dieser Frist gezahlt, so kann die Gebühr mit einem Verspätungszuschlag noch bis zum Ablauf des sechsten Monats nach Fälligkeit gezahlt werden, § 7 Absatz 1 Satz 2 PatKostG. Damit sieht bereits das geltende deutsche Recht eine Absicherung für Fälle der verspäteten Zahlung von Jahresgebühren vor.

Die Fälligkeit richtet sich im Grundsatz nach § 3 Absatz 2 Satz 1 PatKostG. Dieser bestimmt, dass die Jahresgebühren für Patente für die folgende Schutzfrist am letzten Tag des Monats fällig werden, der durch seine Benennung dem Monat entspricht, in den der Anmeldetag fällt.

Vor diesem Hintergrund wird in Artikel II § 15 Absatz 3 IntPatÜbkG in der Fassung des Begleitgesetzes eine zusätzliche Vorschrift aufgenommen, um sicherzustellen, dass ein europäisches Patent aufrechterhalten werden kann, wenn der Antrag auf einheitliche Wirkung nach einem – ggf. längeren – Verfahren vor dem Europäischen Patentamt oder dem Einheitlichen Patentgericht zurückgewiesen wird und die Zahlungsfrist für die Aufrechterhaltung eines europäischen Patents ohne die Neuregelung verstrichen wäre. Im Falle der Zurückweisung eines Antrags auf einheitliche Wirkung sind Anknüpfungspunkte für die Bestimmung der Fälligkeit zur Zahlung von Jahresgebühren nach der genannten Vorschrift die Zustellung der Entscheidung des Europäischen Patentamts oder bei einer Klage nach Artikel 32 Absatz 1 Buchstabe i des Übereinkommens über ein Einheitliches Patentgericht die Zustellung der Entscheidung des Einheitlichen Patentgerichts, die Rechtskraft erlangt. Ergibt sich nach § 3 Absatz 2 Satz 1 PatKostG zugunsten des Patentinhabers eine spätere Fälligkeit, so ist diese maßgeblich.

3. Simultaneous protection between a European patent with unitary effect and a national patent allowed?

REPLY:

Das Begleitgesetz sieht die Möglichkeit eines Doppelschutzes zwischen einem nationalen Patent und einem europäischen Patent bzw. einem europäischen Patent mit einheitlicher Wirkung vor.

Dies ergibt sich zum einen daraus, dass Artikel II § 8 IntPatÜbkG, der das bislang geltende Doppelschutzverbot zwischen nationalen Patenten und europäischen Patenten vorsieht, auf europäische Patente mit einheitlicher Wirkung nicht zur Anwendung gebracht wird (Artikel II § 15 Absatz 1 IntPatÜbkG in der Fassung des Begleitgesetzes).

Zum anderen soll das derzeit geltende Doppelschutzverbot nach Artikel II § 8 IntPatÜbkG im Verhältnis nationaler Patente und europäischer Patente nur noch dann gelten, wenn das europäische Patent auf Grund der Inanspruchnahme der Ausnahmeregelung nach Artikel 83 Absatz 3 des Übereinkommens über ein Einheitliches Patentgericht nicht der ausschließlichen Gerichtsbarkeit des Einheitlichen Patents unterliegt.

Als Ausgleich für die Möglichkeit des Doppelschutzes sieht Artikel II § 18 IntPatÜbkG in der Fassung des Begleitgesetzes einen Schutzmechanismus für Beklagte in der Form der Einrede der doppelten Inanspruchnahme vor, die vor den nationalen Gerichten erhoben werden kann. Hierdurch soll nach Möglichkeit vermieden werden, dass eine beklagte Partei vor einem nationalen Gericht und vor dem Einheitlichen Patentgericht doppelt in Anspruch genommen wird.

4. Territorial scope of the European patent with unitary effect (in particular FR and NL): overseas territories and areas

REPLY:

5. Any other important aspect of national law which may be relevant for users of the unitary patent protection system

REPLY:

Translation of Germany's reply

1. General

REPLY:

In Germany, three laws implementing unitary patent protection have entered into force:

- law of 7 August 2021 assenting to the Agreement of 19 February 2013 on a Unified Patent Court (Federal Law Gazette II, p. 850⁴)
- law of 20 August 2021 updating national patent legislation in the light of the European patent reform (Federal Law Gazette I, p. 3914⁵)
- law of 20 August 2021 assenting to the Protocol of 29 June 2016 on Privileges and Immunities of the Unified Patent Court (Federal Law Gazette II, p. 953⁶).

Germany ratified the Protocol to the Agreement on a Unified Patent Court on provisional application on 27 September 2021. It will deposit the instrument of ratification for the Agreement on a Unified Patent Court as soon as sufficient arrangements for the Court's functioning have been made on the basis of the Agreement's "provisional application" to ensure that it will be operational when the Agreement enters into force.

2. National validation of a European patent where a request for unitary effect has been rejected ("safety net")

REPLY:

Under Article II.7(1) LIPT, renewal fees under Section 17 PL are payable for a European patent effective in Germany, but only for years following the one in which the mention of its grant was published in the European Patent Bulletin. The fees' due dates and payment deadlines are governed by the Law on Patent Fees (LPF).

Under Section 7(1), first sentence, LPF, they must be paid by the end of the second month after the due date. Failing that, they can still be paid, together with a late-payment surcharge, up to the end of the sixth month after the due date (Section 7(1), second sentence, LPF). So German law already offers a safety net for late payment of renewal fees.

⁴ Legislative materials of the German Bundestag: <https://dip.bundestag.de/vorgang/gesetz-zu-dem-%C3%BCbereinkommen-vom-19-februar-2013-%C3%BCber-ein/265750?term=%E2%80%A2das%20Gesetz%20zum%20%C3%9Cbereinkommen%20vom%2019.%20Februar%202013%20%C3%BCber%20ein%20Einheitliches%20Patentgericht&f.wahlperiode=19&f.wahlperiode=20&f.typ=Vorgang&f.metatyp=Gesetze&rows=25&pos=1>.

⁵ Legislative materials of the German Bundestag: <https://dip.bundestag.de/vorgang/gesetz-zur-anpassung-patentrechtlicher-vorschriften-auf-grund-der-europ%C3%A4ischen-patentreform/74552>.

⁶ Legislative materials of the German Bundestag: <https://dip.bundestag.de/vorgang/gesetz-zu-dem-protokoll-vom-29-juni-2016-%C3%BCber-die/79640?term=Gesetz%20zum%20Protokoll%20vom%2029.%20Juni%202016%20%C3%BCber%20die%20Vorrechte%20und%20Immunit%C3%A4ten%20des%20Einheitlichen%20Patentgerichts&f.wahlperiode=18&rows=25&pos=1>.

The fees are payable for the year ahead, and their due date is normally prescribed (by Section 3(2), first sentence, LPF) as the last day of the month containing the anniversary of the filing date.

Against this backdrop, a new Article II.15(3) LIPT as per the accompanying law will be added to ensure that European patents can remain in force if the EPO or UPC – possibly after lengthy proceedings – refuses a request for unitary effect, and without the new rule the deadline for paying the renewal fee would have expired.

Under the new rule, if a request for unitary effect is refused, the due date for renewal fees will depend on when the decision of the EPO or – in the event of litigation under Article 32(1)(i) UPC Agreement – a final decision of the UPC is notified, unless a later one is available to the patent proprietor under Section 3(2), first sentence, LPF.

3. Simultaneous protection between a European patent with unitary effect and a national patent allowed?

REPLY:

Simultaneous protection by a national patent and a European one, with or without unitary effect, will be possible under the accompanying law.

Firstly, Article II.8 LIPT hitherto prohibiting simultaneous protection by national and European patents will not apply to European patents with unitary effect (new Article II.15(1) LIPT as per the accompanying law).

Secondly, the existing prohibition under Article II.8 LIPT will in future apply only to European patents which do not fall under the UPC's exclusive jurisdiction because the proprietor has opted out under Article 83(3) UPC Agreement.

To make up for this, the new Article II.18 LIPT as per the accompanying law will offer defendants a protection mechanism, namely a "double jeopardy" defence which they can plead before national courts to ensure that they cannot be sued there as well as before the UPC.

4. Territorial scope of the European patent with unitary effect (in particular FR and NL): overseas territories and areas

REPLY:

5. Any other important aspect of national law which may be relevant for users of the unitary patent protection system

REPLY:

VI. ESTONIA

1. General

REPLY:

In connection with the further implementation of the European patent with unitary effect, the Estonian Parliament Riigikogu passed on 14 June 2017 the Act amending the Implementation of the Convention on the Grant of European Patents Act and other acts (hereinafter: amendments Act).

Available only in Estonian: <https://www.riigiteataja.ee/akt/104072017004>.

The amendments will enter into force simultaneously with the entry into force of the Agreement on a Unified Patent Court and of the Agreement on the Establishment of a Nordic-Baltic Regional Division of the Unified Patent Court for Estonia.

A consolidated version of the Implementation of the Convention on the Grant of European Patents Act, as amended, is available in English:

<https://www.riigiteataja.ee/en/eli/524072017003/consolide>.

The amended name of the act is Implementation of the Convention on the Grant of European Patents and of Regulation (EU) No 1257/2012 of the European Parliament and of the Council Act.

With the abovementioned amendments Act were also amended and supplemented the following Acts:

Patents Act

<https://www.riigiteataja.ee/akt/119032019165> (amended full text in Estonian only)

The Act is amended as follows:

1) throughout the Act, the text "Implementation of the Convention on the Grant of European Patents Act" is replaced by the text "Implementation of the Convention on the Grant of European Patents and of Regulation (EU) No 1257/2012 of the European Parliament and of the Council Act";

2) ... ;

3) § 39⁵ is amended by adding section 1¹ worded as follows:

"(1¹) Supplementary protection, the basic patent of which is a European patent with unitary effect, shall be registered by entering the data prescribed in the relevant supplementary protection regulation in the Register of European Patents Valid in Estonia.";

Utility Models Act

<https://www.riigiteataja.ee/akt/119032019164> (amended full text in Estonian only)

In § 24 section 3 subsection 2 the text "Implementation of the Convention on the Grant of European Patents Act" is replaced by the text "Implementation of the Convention on the Grant of European Patents and of Regulation (EU) No 1257/2012 of the European Parliament and of the Council Act";

[RT I, 04.07.2017, 4 – enters into force simultaneously with the entry into force, in respect of Estonia, of the Agreement on a Unified Patent Court and of the Agreement on the establishment of a Nordic-Baltic regional division of the Unified Patent Court]

Code of Civil Procedure

<https://www.riigiteataja.ee/en/eli/513042021008/consolide>

§ 11 is amended by adding section 1¹ worded as follows:

(1¹) A district court shall not deal with civil matters related to European patents and European patents with unitary effect, except for such civil matters related to European patents or European patents with unitary effect which are not in the competence of the Unified Patent Court in accordance with the Agreement on a Unified Patent Court (OJ C 175, 20.6.2013, p. 1–40).

[RT I, 04.07.2017, 4 - enters into force simultaneously with entry into force of the Agreement on a Unified Patent Court and the Agreement on the establishment of a Nordic-Baltic regional division of the Unified Patent Court with regard to Estonia]

Code of Civil Procedure and Code of Enforcement Procedure Implementation Act

<https://www.riigiteataja.ee/en/eli/531032021005/consolide>

The Act is amended by adding §2⁵ worded as follows:

§ 2⁵. Jurisdiction of district courts in connection with the entry into force of Agreement on Unified Patent Court

For seven years following the entry into force of the Agreement on a Unified Patent Court (OJ C 175, 20.6.2013, pp. 1–40), jurisdiction to dispose of cases related to infringement or revocation of European patents and cases related to infringement or declaration of invalidity of a supplementary protection certificate issued for a product protected by a European patent is also vested in district courts.

[RT I, 04.07.2017, 4 – enters into force simultaneously with the entry into force, in respect of Estonia, of the Agreement on a Unified Patent Court and of the Agreement on the establishment of a Nordic-Baltic regional division of the Unified Patent Court]

Code of Enforcement Procedure

<https://www.riigiteataja.ee/en/eli/515042021001/consolide>

§ 2 section 1 is amended by adding subsection 4¹ worded as follows:

4¹) a decision or order of the Unified Patent Court that has entered into effect and is mentioned in Article 82 of the Agreement on a Unified Patent Court (OJ C 175, 20.06.2013, pp. 1–40);

[RT I, 04.07.2017, 4 – enters into force simultaneously with the entry into force of the Agreement on a Unified Patent Court and the Agreement on the establishment of a Nordic-Baltic regional division of the Unified Patent Court with regard to Estonia]

Principles of Legal Regulation of Industrial Property Act

<https://www.riigiteataja.ee/akt/119032019166> (amended full text in Estonian only)

§ 1 section 2 is amended and worded as follows:

(2) For the purposes of this Act, the following are objects of industrial property rights:

1) inventions registered pursuant to the Patents Act, the Utility Models Act or the Implementation of the Convention on the Grant of European Patents and of Regulation (EU) No 1257/2012 of the European Parliament and of the Council Act;

[RT I, 04.07.2017, 4 – enters into force simultaneously with the entry into force of the Agreement on a Unified Patent Court and the Agreement on the establishment of a Nordic-Baltic regional division of the Unified Patent Court with regard to Estonia]

2. National validation of a European patent where a request for unitary effect has been rejected (“safety net”)

REPLY:

The provision of the "safety net" from the earlier draft, which has not been substantially amended, has been introduced in the Implementation of the Convention on the Grant of European Patents and of Regulation (EU) No 1257/2012 of the European Parliament and of the Council Act by adding to §7 a new section 1² as follows:

(1²) If the European Patent Office refuses to register the unitary effect of a European patent, in which the Republic of Estonia is indicated as the designated state, in accordance with Regulation (EU) No. 1257/2012 of the European Parliament and of the Council, and the request for registration of unitary effect has been filed with the European Patent Office in a timely manner, the proprietor of the respective European patent has the rights provided for in this section. In such case the term provided for in subsection (1) of this section shall be calculated from the entry into force of the decision on refusal to grant unitary effect for a European patent. The decision, which has entered into force, on refusal to grant unitary effect for a European patent shall be submitted together with the translation of the patent specification.

3. Simultaneous protection between a European patent with unitary effect and a national patent allowed?

REPLY:

The amendments Act does not prohibit a simultaneous protection between European patent with unitary effect and a national patent. Neither have any possible procedural safeguards been envisaged for possible filing for action under both national patent and European patent with unitary effect. Legislator's decision not to introduce a prohibition of simultaneous protection was mainly based on the different scope of the European patent with unitary patent and national patent.

4. **Territorial scope of the European patent with unitary effect (in particular FR and NL): overseas territories and areas**

REPLY:

Not applicable.

5. **Any other important aspect of national law which may be relevant for users of the unitary patent protection system**

REPLY:

None.

VII. HELLENIC REPUBLIC

1. General

REPLY:

No legislation has been introduced pending ratification of the UPC Agreement.

2. National validation of a European patent where a request for unitary effect has been rejected (“safety net”)

REPLY:

The issue of introducing a safety net remains under consideration.

3. Simultaneous protection between a European patent with unitary effect and a national patent allowed?

REPLY:

Simultaneous protection is currently not allowed between a European patent and a national patent. The issue whether the current system will be applied to unitary patents remains under consideration.

4. Territorial scope of the European patent with unitary effect (in particular FR and NL): overseas territories and areas

REPLY:

Not applicable.

5. Any other important aspect of national law which may be relevant for users of the unitary patent protection system

REPLY:

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VIII. FRANCE

1. General

REPLY:

La France a adopté les lois suivantes concernant la juridiction unifiée du brevet :

- Loi n° 2014-199 du 24 février 2014 autorisant la ratification de l'accord relatif à une juridiction unifiée du brevet

<https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000028652178>

- Loi autorisant la ratification du protocole sur les privilèges et immunités de la juridiction unifiée du brevet : Loi n° 2017-1840 du 30 décembre 2017 parue au JO n° 0305 du 31 décembre 2017

<https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000036339433>

Et décret n° 2021-1515 du 22 novembre 2021 portant publication du protocole sur les privilèges et immunités de la Juridiction unifiée du brevet

Par ailleurs, la législation française a été modifiée par :

- l'ordonnance n° 2018-341 du 9 mai 2018 relative au brevet européen à effet unitaire et à la juridiction unifiée du brevet, publiée au Journal officiel de la République française le 10 mai 2018. Cette ordonnance a été ratifiée le 24 octobre 2018.
- Le décret d'application : décret n° 2018-429 du 31 mai 2018 relatif au brevet européen à effet unitaire et à la juridiction unifiée du brevet, publié au Journal officiel de la République française le 2 juin 2018.

L'ordonnance modifie le code de la propriété intellectuelle, en prévoyant, notamment :

- l'articulation entre les différents types de brevets (national, européen « classique » et européen à effet unitaire),
- la compétence exclusive de la juridiction unifiée du brevet,
- la diffusion aux tiers par l'Institut national de la propriété industrielle des informations relatives au brevet européen à effet unitaire et l'extension des effets de ce brevet aux territoires d'outre-mer.

Grâce à cette ordonnance et son décret d'application, la législation française sera parfaitement adaptée lorsqu'interviendra l'entrée en vigueur de l'accord sur la juridiction unifiée du brevet.

Ordonnance ° 2018-341 :

<https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000036887984>

JO du mai 2018 (ordonnance) :

https://www.legifrance.gouv.fr/download/pdf?id=sXvPY0VT_ADyolcZFbY0j0ycNHXqMIUc82RslXqJcgs=

Décret n° 2018-429 :

<https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000036974745>

JO du 2 juin 2018 (décret) :

<https://www.legifrance.gouv.fr/download/pdf?id=zGYDO4iRqLfb6GifkZSqBhUb5qYpQSmpiNju56jLx8=>

2. National validation of a European patent where a request for unitary effect has been rejected (“safety net”)

REPLY:

La France a prévu la mise en place d'un système de type “filet de sécurité” pour la validation des brevets européens dans le cas où une requête d'effet unitaire a été rejetée.

Les dispositions sont prévues à l'article R. 614-16, modifié par le décret n° 2018-429 du 31 mai 2018, et entreront en vigueur à la même date que celle de l'entrée en vigueur de l'ordonnance n° 2018- 341 du 9 mai 2018 relative au brevet européen à effet unitaire et à la juridiction unifiée du brevet, c'est à dire à la date de l'entrée en vigueur de l'accord relatif à une juridiction unifiée du brevet signé à Bruxelles le 19 février 2013.

En vertu de l'article L. 612-19 du code de la propriété intellectuelle, toute demande française, brevet français ou brevet européen ayant effet en France donne lieu au paiement de redevances annuelles. Ces redevances sont dues pour chaque année de la durée des brevets. Pour les brevets européens, seulement pour les années qui suivent la publication de la mention de délivrance au Bulletin européen des brevets. En vertu de l'article R. 613-46, le paiement des annuités vient à échéance le dernier jour du mois de la date anniversaire du dépôt de la demande.

Lorsque le paiement d'une redevance annuelle n'a pas été effectué à la date prévue, ladite redevance peut être valablement versée dans un délai de grâce de six mois moyennant le paiement d'un supplément dans le même délai.

Par ailleurs, l'article R. 614-16 prévoit, conformément à l'article 141 de la convention sur le brevet européen (CBE), que les taxes annuelles dues au titre du brevet européen ne sont perçues que pour les années suivant celle de la publication de la mention de délivrance au Bulletin européen des brevets et que si des taxes annuelles viennent à échéance dans les deux mois à compter de cette date, elles peuvent être payées dans ce délai de deux mois sans surtaxe.

En outre, lorsque le titulaire d'un brevet européen a déposé une demande d'effet unitaire et que celle-ci est rejetée, il dispose d'un « filet de sécurité » permettant de payer, dans un délai de trois mois à compter de la date de la signification de la décision de rejet qui n'est plus susceptible de recours :

- les redevances venues à échéance entre la date de la publication de la mention de la délivrance du brevet européen et la date de signification de la décision de rejet de l'effet unitaire
- les redevances venant à échéance dans les trois mois à compter de la date de signification de la décision de rejet de l'effet unitaire

Dans tous les cas, les redevances peuvent encore être payées dans un délai supplémentaire de six mois, moyennant le paiement d'une surtaxe.

3. Simultaneous protection between a European patent with unitary effect and a national patent allowed?

REPLY:

La France a prévu :

- la possibilité d'un cumul de protection entre un brevet national et un brevet unitaire d'une part ou un brevet européen soumis à la compétence de la JUB d'autre part ;
- la substitution d'un brevet européen ayant fait l'objet d'un opt-out au brevet national français comme c'était déjà le cas jusqu'à la mise en œuvre du BU.

Les dispositions sont prévues aux articles L. 614-13, L. 614-14 et L. 614-16-3, modifiés ou créés par l'ordonnance n° 2018-341 du 9 mai 2018, et entreront en vigueur à la date de l'entrée en vigueur de l'accord relatif à une juridiction unifiée du brevet signé à Bruxelles le 19 février 2013.

Application des dispositions :

A. Cumul de protection entre un brevet unitaire ou un brevet européen n'ayant pas fait l'objet d'un opt-out et un brevet national

Lorsque le brevet européen n'a pas fait l'objet d'une dérogation à la compétence exclusive de la JUB, le brevet français continue à produire ses effets.

Un brevet français peut couvrir une invention pour laquelle un brevet européen à effet unitaire a été délivré au même inventeur ou à son ayant cause avec la même date de dépôt ou de priorité.

Des mesures spécifiques s'appliquent en cas de coexistence d'un brevet national et d'un

brevet unitaire ou d'un brevet européen relevant de la compétence de la JUB, lorsque ces demandes/brevets ont la même date de dépôt ou la même date de priorité, couvrent la même invention et appartiennent au même inventeur ou à son ayant cause :

- Les demandes / brevets ne peuvent, pour les parties communes, faire l'objet indépendamment l'une de l'autre d'un transfert, gage, nantissement ou d'une concession de droits d'exploitation, à peine de nullité. (Articles L. 614-14 et L. 614-16-4)
- Si le tribunal français est saisi d'une action en contrefaçon d'un brevet français alors que la juridiction unifiée du brevet est saisie en parallèle d'une demande fondée sur un brevet unitaire ou sur un brevet européen ne faisant pas l'objet d'une dérogation à sa compétence exclusive et porte sur les mêmes faits entre les mêmes parties, il sursoit à statuer jusqu'à ce que la décision de la juridiction unifiée du brevet sur cette demande ne soit plus susceptible de recours. (Art. R. 615-2).
- Une action en contrefaçon formée devant le tribunal français est irrecevable lorsque la juridiction unifiée du brevet a statué sur la même demande fondée sur les mêmes faits entre les mêmes parties par une décision ayant autorité de la chose jugée. (Art. R. 615-2).

B. non cumul de protection entre un brevet européen ayant fait l'objet d'un opt-out et un brevet national.

Il s'applique dans la mesure où un brevet français couvre une invention pour laquelle un brevet européen a été délivré au même inventeur ou à son ayant cause avec la même date de dépôt ou de priorité, et où le brevet européen a fait l'objet d'une dérogation à la compétence exclusive de la juridiction unifiée du brevet (« opt-out »), en application du paragraphe 3 de l'article 83 de l'accord relatif à une juridiction unifiée du brevet, le brevet français cesse de produire ses effets :

- Soit à la date à laquelle le délai prévu pour la formation de l'opposition au brevet européen est expiré sans qu'une opposition ait été formée ;
- Soit à la date à laquelle la procédure d'opposition est close, le brevet européen ayant été maintenu ;
- Soit à la date à laquelle la dérogation est inscrite au registre en application du paragraphe 3 de l'article 83 de l'accord précité lorsque cette date est postérieure à celles mentionnées aux 1° et 2°.

4. Territorial scope of the European patent with unitary effect (in particular FR and NL): overseas territories and areas

REPLY:

Conformément au régime d'association entre l'Union Européenne et les pays et territoires d'outre-mer, les deux règlements européens n'ont pas vocation à s'y appliquer directement. Toutefois, l'Etat, qui est compétent pour légiférer sur ces territoires en matière de propriété industrielle, peut y rendre les règlements applicables.

Application de l'ordonnance n° 2018-341 du 9 mai 2018 sur la mise en œuvre du BU et de la JUB à l'Outre-Mer :

- Les dispositions de l'ordonnance n° 2018-341 du 9 mai 2018 s'appliquent de plein droit à la Guadeloupe, à la Guyane, à la Martinique, à la Réunion, à Mayotte, Saint-Bathélemy, Saint-Pierre et Miquelon, Saint-Martin, Terres Australes et Antarctiques françaises. Elles s'appliquent également à Wallis et Futuna. Ainsi, le brevet européen à effet unitaire, comme le brevet européen classique, est applicable sur l'ensemble de ces territoires (voir article L. 811-2-2).

En revanche, les dispositions de l'ordonnance ne s'appliquent qu'en partie à la Nouvelle Calédonie et à la Polynésie Française. En effet l'Etat français (métropole) n'est pas compétent pour prévoir des dispositions en matière de propriété industrielle pour la Nouvelle-Calédonie et la Polynésie Française qui ont compétence en matière de propriété industrielle. **Le brevet unitaire n'est donc pas applicable, aujourd'hui, en Nouvelle Calédonie et Polynésie française.** (Il est possible que la Nouvelle Calédonie et la Polynésie française s'empare de leur compétence sur ce sujet prochainement, si tel était le cas, présent questionnaire sera alors complété en conséquence).

5. Any other important aspect of national law which may be relevant for users of the unitary patent protection system

REPLY:

Pas de sujet autre

Translation of France's reply

1. General

REPLY:

France has adopted the following three laws on the Unified Patent Court (UPC):

- law No. 2014-199 of 24 February 2014 authorising ratification of the UPC Agreement (UPCA)

<https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000028652178>

- law No. 2017-1840 of 30 December 2017 authorising ratification of the Protocol on Privileges and Immunities of the UPC, published in Official Journal (OJ) No. 0305 of 31 December 2017

<https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000036339433>

decree No. 2021-1515 of 22 November 2021 publishing the Protocol on Privileges and Immunities of the UPC.

In addition, existing French legislation has been amended by:

- order No. 2018-341 of 9 May 2018 on European patents with unitary effect and the UPC, published in the OJ of the French Republic on 10 May 2018 and ratified on 24 October 2018
- implementing decree No. 2018-429 of 31 May 2018 on European patents with unitary effect and the UPC, published in the OJ of the French Republic on 2 June 2018.

The order amends the Intellectual Property Code to include, in particular, provisions:

- on the interplay between the various types of patent (national, "classic" European and European with unitary effect)
- on the exclusive competence of the UPC
- on the duty of the French Patent Office (INPI) to provide third parties with information about European patents with unitary effect and on the extension of their effect to overseas territories.

Thanks to this order and its implementing decree, French law will be fully compatible when the UPCA enters into force.

Order No. 2018-341:

<https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000036887984>

OJ of May 2018 (order):

https://www.legifrance.gouv.fr/download/pdf?id=sXvPY0VT_ADyolcZfY0j0ycNHXqMIUc82RslXgJcgs=

Decree No. 2018-429:

<https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000036974745>

OJ of 2 June 2018 (decree):

https://www.legifrance.gouv.fr/download/pdf?id=zGYDO4iRqLfB6GifkZSqBhUb5qYpQSm_piNju56jLx8=

2. National validation of a European patent where a request for unitary effect has been rejected (“safety net”)

REPLY:

France has put a "safety net" system in place to allow for validation of a European patent where a request for unitary effect has been rejected.

The applicable provisions are laid down in Article R. 614-16, as amended by decree No. 2018-429 of 31 May 2018, and will enter into force on the same date as order No. 2018-341 of 9 May 2018, i.e. on the date of entry into force of the UPCA signed in Brussels on 19 February 2013.

Under Article L. 612-19 of the Intellectual Property Code, renewal fees are payable for any French patent application or patent or European patent having effect in France. They are due for each year of the patent term; for European patents, however, only for the years following publication of the mention of grant in the European Patent Bulletin. Under Article R. 613-46, renewal fees are due on the last day of the month containing the anniversary of the date of filing of the European patent application.

If a renewal fee has not been paid on the due date, it can still be validly paid within a six-month grace period, subject to payment of an additional fee within the same period.

Moreover, Article R. 614-16 provides, in accordance with Article 141 EPC, that renewal fees for a European patent may only be imposed for the years following that in which the mention of its grant was published in the European Patent Bulletin and that fees falling due within two months of that publication in the European Patent Bulletin can be paid within that two-month period without any additional fee.

In addition, where a European patent proprietor has filed a request for unitary effect and that request is rejected, they have a "safety net" enabling them to pay the following fees within three months of the date of notification of the non-appealable rejection:

- fees that fell due between the date on which the mention of grant was published and the date on which the decision to reject the request for unitary effect was notified
- fees falling due within three months of notification of the decision to reject the request for unitary effect.

In any event, the fees can still be paid within a further six-month period, subject to payment of an additional fee.

3. Simultaneous protection between a European patent with unitary effect and a national patent allowed?

REPLY:

France has allowed for:

- simultaneous protection by a national patent and by a unitary patent or a European patent for which the UPC is competent
- replacing a French national patent with a European patent for which an opt-out has been exercised, in the same way as before introduction of the unitary patent.

The applicable provisions are laid down in Articles L. 614-13, L. 614-14 and L. 614-16-3, as amended or enacted by order No. 2018-341 of 9 May 2018, and will enter into force on the date of entry into force of the UPCA signed in Brussels on 19 February 2013.

How the provisions apply:

A. Simultaneous protection by a unitary patent or a European patent for which there is no opt-out and by a national patent

If no opt-out from the UPC's exclusive competence has been exercised for the European patent, the French patent will continue to have effect.

It is permissible for a French patent to relate to an invention for which a European patent with unitary effect has been granted to the same inventor or to their successor in title with the same filing or priority date.

However, special rules apply where a national patent co-exists with a unitary patent or a European patent for which the UPC is competent and the two patents (or applications) have the same filing or priority date, relate to the same invention and are owned by the same inventor (or successor in title):

- It is not possible to validly transfer, pledge, mortgage or license the common parts of the patents (or applications) separately from one another (Articles L. 614-14 and L. 614-16-4).
- If an action for infringement of a French patent is brought before a French court and, at the same time, the UPC is hearing a claim based on a unitary patent or a European patent falling within its exclusive competence in a dispute about the same facts between the same parties, the French court must stay the proceedings before it until the UPC's decision has become final (Article R. 615-2).
- An infringement action brought before a French court is inadmissible if the UPC has already taken a final decision on the same claim in a dispute about the same facts between the same parties (Article R. 615-2).

B. No simultaneous protection by a European patent for which there is an opt-out and by a national patent

Where a French patent relates to an invention for which a European patent has been granted to the same inventor or to their successor in title with the same date of filing or priority and an opt-out from the UPC's exclusive competence has been exercised under Article 83(3) UPCA for the European patent, the French patent will cease to have effect:

- on the date on which the period for filing opposition against the European patent expires, if no opposition has been filed by then,
- on the date on which opposition proceedings are closed if the European patent is maintained, or

on the date on which the opt-out is entered in the register under Article 83(3) UPCA if that date is later than the dates mentioned in the first and second indents.

4. Territorial scope of the European patent with unitary effect (in particular FR, NL and UK): overseas territories and areas

REPLY:

Under the rules governing the European Union's association with the overseas countries and territories, the two EU Regulations are not directly applicable there. However, the state with the power to legislate in the area of industrial property for those territories can put applicable provisions in place.

Overseas applicability of order No. 2018-341 of 9 May 2018 implementing the unitary patent and the UPC:

- Order No. 2018-341 of 9 May 2018 applies in full to Guadeloupe, French Guiana, Martinique, Réunion, Mayotte, Saint Barthélemy, Saint Pierre and Miquelon, Saint Martin and the French Southern and Antarctic Lands, as well as to Wallis and Futuna. This means that, like a traditional European patent, a European patent with unitary effect will apply in all those places (see Article L. 811-2-2).
- By contrast, the order applies only in part to New Caledonia and French Polynesia. They have their own powers in the area of industrial property and the French state ("Metropolitan France") does not have the authority to pass legislation on this for them. As things stand, the unitary patent will therefore not apply in New Caledonia or French Polynesia. (It is possible that New Caledonia and French Polynesia will exercise their powers in this area soon; if so, this questionnaire will be updated accordingly.)

5. Any other important aspect of national law which may be relevant for users of the unitary patent protection system

REPLY:

None

IX. IRELAND

1. General

REPLY:

A referendum must be held to allow Ireland to ratify the Agreement on a Unified Patent Court as it entails a transfer of judicial jurisdiction from our national courts to the UPC. This referendum is included in the current programme for Government. Following a positive outcome to the referendum changes will then be required to our National Patent legislation to recognise the new European Patent with Unitary effect and the Unified Patent Court, prior to the ratification of the agreement.

These changes are currently being drafted and will be submitted to government after the referendum is passed.

2. National validation of a European patent where a request for unitary effect has been rejected (“safety net”)

REPLY:

We are aware that some Member States have included a “safety net” in their legislation. The issue remains under consideration, and we are currently not in a position to give a response to this.

3. Simultaneous protection between a European patent with unitary effect and a national patent allowed?

REPLY:

Our current legislation does not allow for simultaneous protection on an invention by a classic European Patent and a National patent. It is still under deliberation if the same approach will be adopted for the Unitary Patent.

4. Territorial scope of the European patent with unitary effect (in particular FR and NL): overseas territories and areas

REPLY:

Not applicable.

5. Any other important aspect of national law which may be relevant for users of the unitary patent protection system

REPLY:

Ratification of the UPC is subject to the outcome of the referendum.

X. ITALY

1. General

REPLY:

The Ratification Bill of the Unified Patent Court Agreement (UPCA) was published in the Italian Official Journal on November 24th 2016 and entered into force on November 25th 2016 (*LEGGE 3 novembre 2016, n. 214 Ratifica ed esecuzione dell'Accordo su un tribunale unificato dei brevetti, con Allegati, fatto a Bruxelles il 19 febbraio 2013*).

For the full text of the Ratification Bill in Italian see:

https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.data_PubblicazioneGazzetta=2016-11-24&atto.codiceRedazionale=16G00227&elenco30giorni=false

The ratification procedure of the UPCA was completed on February 10, 2017 with the notification of the Ratification Bill to the European Council.

UPC ratification details are available on the European Council's website:

<http://www.consilium.europa.eu/en/documents-publications/agreements-conventions/agreement/?aid=2013001>

The UPCA Ratification Bill includes amendments to the national legislation to implement the Agreement, including the introduction into the Italian Industrial Property Law (Codice della Proprietà Industriale, decreto legislativo n. 30/2005) of provisions on indirect patent infringement. In the past, indirect infringement was only acknowledged by the national case law.

Italy signed the Protocol on Provisional Application of the UPCA in Brussels on February 20th 2017 at the margin of the EU Competitiveness Council. No further ratification is needed for its application.

The Ratification Bill of the Protocol on Immunities and Privileges (PPI) of the UPCA was published in the Italian Official Journal on December 23rd 2017 (LEGGE 4 dicembre 2017 n. 201 Ratifica ed esecuzione del Protocollo sui privilegi e le immunita' del tribunale unificato dei brevetti, fatto a Bruxelles il 29 giugno 2016) and entered into force on December 24th 2017.

For the full text of the Ratification Bill of the PPI in Italian see:

<https://www.gazzettaufficiale.it/eli/id/2017/12/23/17G00209/sq>

The Ratification procedure of the PPI was completed on April 20th 2018 with the notification of the Ratification Bill to the European Council.

The set-up of a local division of the UPC in Milan (address: Via San Barnaba 50, 20122, Milan) will require a separate legal instrument, considering that a Headquarter Agreement between the Italian Republic and the UPC is needed in this regard and it can be signed only after the start of the provisional application period. Details concerning the venue of the Milan local division were officially communicated from the Italian representative to the Preparatory Committee on October 10th 2016. A technical workshop of the UPC was hosted by the Italian authorities in Milan on April 4th 2019 and included an official visit to the premises of the future UPC local division.

For information and pictures on the Milan local division see:

<https://www.unified-patent-court.org/locations>

With a view to the introduction of the Unitary Patent, amendments to the Italian Industrial Property Law (Decreto legislativo n. 30/2005, Codice della Proprietà industriale) were introduced by the Legislative Decree n. 18 of 19th February 2019 [Legislative Decree no. 18 of 19 February 2019, to adapt national legislation to the provisions on European patent with unitary effect, in particular the Unitary Patent Regulation (Regulation (EU) no. 1257/2012) and the Agreement on a Unified Patent Court (UPC Agreement) ratified by Italy with Law no. 214 of 3 November 2016 (so called “Unitary Patent Package”)]. The Legislative Decree entered into force on March 27th 2019.

For the text see the Italian Official Journal of March 12th 2019:

http://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario;jsessionid=k6M-flfHCtotwLaSPTTk3Q...ntc-as3-guri2b?atto.dataPubblicazioneGazzetta=2019-03-12&atto.codiceRedazionale=19G00024&elenco30giorni=false

The amendments to the Italian Industrial Property Law (art. 56, 58, 59, 68, 70, 163, 245 bis) provided for by the Legislative Decree n. 18 are described as follows:

- Application of art. 25-26 and 27 of the UPCA to both European patents and unitary patents in Italy;
- Introduction of a “safety net” mechanism in case the unitary effect is rejected or revoked or withdrawn, to allow the patent owner to benefit from a 3 month period to validate his European patent at a national level;
- No simultaneous protection is allowed for an invention covered by a European patent with unitary effect and a national patent;
- Clarifications about applicable law at national level in case of national jurisdiction during the transitional period (according to art 83 UPCA).

The full text of the Italian Industrial Property Law (Codice della proprietà industriale) is available in Italian at:

<https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2005-02-10:30>

2. National validation of a European patent where a request for unitary effect has been rejected (“safety net”)

REPLY:

In case the unitary effect is rejected or revoked or withdrawn a “safety net mechanism” is introduced in the Italian Industrial Property Law (Codice della Proprietà Industriale, decreto legislativo n. 30/2005) to allow the patent owner to benefit from a 3-month period to still validate the European patent at a national level. This provision is included in the revised art. 56.

Articolo 56

Diritti conferiti dal brevetto europeo

1. ((Il brevetto europeo rilasciato per l'Italia ed il brevetto europeo con effetto unitario conferiscono al titolare i diritti di cui agli articoli 25 e 26 dell'Accordo su un tribunale unificato dei brevetti, ratificato e reso esecutivo ai sensi della legge 3 novembre 2016, n. 214, e impongono i limiti di cui all'articolo 27 dello stesso Accordo. Il brevetto europeo rilasciato per l'Italia ed il brevetto europeo con effetto unitario producono effetto a decorrere dalla data in cui è pubblicata nel Bollettino europeo dei brevetti la menzione della concessione del brevetto.)) Qualora il brevetto sia soggetto a procedura di opposizione ovvero di limitazione, l'ambito della protezione stabilito con la concessione o con la decisione di mantenimento in forma modificata o con la decisione di limitazione è confermato a decorrere dalla data in cui è pubblicata la menzione della decisione concernente l'opposizione o la limitazione.

2. ((COMMA ABROGATO DAL D.LGS. 19 FEBBRAIO 2019, N. 18)).

3. Il titolare ((di un brevetto europeo rilasciato per l'Italia)) deve fornire all'Ufficio italiano brevetti e marchi una traduzione in lingua italiana del testo del brevetto concesso dall'Ufficio europeo nonché' del testo del brevetto mantenuto in forma modificata a seguito della procedura di opposizione o limitato a seguito della procedura di limitazione.

4. La traduzione, dichiarata perfettamente conforme al testo originale dal titolare del brevetto ovvero dal suo mandatario, deve essere depositata entro tre mesi dalla data di ciascuna delle pubblicazioni di cui al comma 1.

((4-bis. Per i brevetti europei, per i quali è stata presentata una richiesta di effetto unitario nei termini previsti dall'articolo 9, paragrafo 1, lettera g), del regolamento (UE) n. 1257/2012, il termine di cui al comma 4 decorre dalla data di ricezione della

comunicazione dell'atto definitivo di rigetto o revoca dell'effetto unitario ovvero dalla data di ricezione dell'istanza di ritiro da parte dell'Ufficio europeo.)

5. In caso di inosservanza alle disposizioni di cui ai commi ((3, 4 e 4-bis)), il brevetto europeo è considerato, fin dall'origine, senza effetto in Italia.

Unofficial English translation:

Revised Article 56

Rights conferred by the European patent

1. ((The European patent granted for Italy and the European patent with unitary effect shall confer on its proprietor the rights referred to in Articles 25 and 26 of the Agreement on a Unified Patent Court, ratified and made enforceable pursuant to the Law no. 214 of November 3, 2016, and impose the limitations set forth in Article 27 of the same Agreement. The European patent granted for Italy and the

European patent with unitary effect shall take effect from the date on which the mention of the grant of the patent is published in the European Patent Bulletin. If the patent is under opposition or limitation proceedings, the scope of protection established by the grant or by the decision to maintain it in an amended form or by the decision to a limitation shall be confirmed from the date on which the mention of the decision on the opposition or on the limitation is published.

2. ((SUBSECTION REPEALED BY LEGISLATIVE DECREE NO. 18 OF FEBRUARY 19, 2019)).

3. The holder ((of a European patent granted for Italy)) shall provide the Italian Patent and Trademark Office with a translation in Italian language of the text of the patent granted by the European Office as well as of the text of the patent maintained in a modified form following the opposition proceedings or limited following the limitation proceedings.

4. The translation, declared to be perfectly in conformity with the original text by the patent proprietor or his representative, must be filed within three months from the date of each of the publications referred to in paragraph 1.

((4-bis). For European patents, for which a request for unitary effect has been filed within the terms provided for by Article 9 (1) (g) of Regulation (EU) No 1257/2012, the time limit referred to in paragraph 4 starts from the date of receipt of the communication of the final act of rejection or revocation of unitary effect or from the date of receipt of the request for withdrawal by the European Office.

5. In case of non-compliance with the provisions of paragraphs ((3, 4 and 4-bis)), the European patent shall be deemed, from the outset, to be without effect in Italy.

3. Simultaneous protection between a European patent with unitary effect and a national patent allowed?

REPLY:

According to the Italian Industrial Property Law (Dlgs. N. 30/2005) double protection for a national patent and for a European patent is not allowed.

A specific provision (art 59) ensures the supremacy of the European patent over the national patent.

In compliance with the principle of no double protection, the same provision applies now also as regards unitary patents, following the legal reform entered into force in Italy in March 2019.

Revised article 59, Italian Industrial Property Law (Dlgs. N. 30/2005):
Preminenza del brevetto europeo in caso di cumulo delle protezioni

1. Qualora, per la medesima invenzione un brevetto italiano ed un brevetto europeo valido in Italia o un brevetto europeo con effetto unitario, siano stati concessi allo stesso inventore o al suo avente causa con la medesima data di deposito o di priorità, il brevetto italiano, nella misura in cui esso tutela la stessa invenzione del brevetto europeo o del brevetto europeo con effetto unitario, cessa di produrre i suoi effetti alla data in cui:

a) il termine per promuovere l'opposizione al brevetto europeo o al brevetto europeo con effetto unitario è scaduto senza che sia stata fatta opposizione;

b) la procedura di opposizione si è definitivamente conclusa con il mantenimento in vigore del brevetto europeo o del brevetto europeo con effetto unitario;

c) il brevetto italiano è stato rilasciato, se tale data è posteriore a quella di cui alle lettere a) o b).

2. Le disposizioni del comma 1 rimangono valide anche se, successivamente, il brevetto europeo, o il brevetto europeo con effetto unitario, venga annullato o decada.

3. Alla scadenza dei termini di cui al comma 1, colui che ha promosso un'azione a tutela del brevetto italiano può chiederne la conversione nella corrispondente azione a tutela del brevetto europeo o del brevetto europeo con effetto unitario, fatti salvi i diritti che scaturiscono dal brevetto italiano per il periodo anteriore.

Unofficial English translation:

Revised Art 59 Precedence of the European patent in case of cumulation of protections

1. Where, in respect of the same invention, an Italian patent and a European patent valid in Italy or a European patent with unitary effect have been granted to the same inventor or his successor in title with the same filing date or priority date, the Italian patent, to the extent that it protects the same invention as the European patent or the European patent with unitary effect, shall cease to have effect on the date on which:

(a) the time limit for filing an opposition to the European patent or the European patent with unitary effect has expired without any opposition being filed;

(b) the opposition proceedings have been definitively terminated with the maintenance into force of the European patent or the European patent with unitary effect

(c) the Italian patent has been granted, if this date is later than the date referred to in points (a) or (b).

2. The provisions of paragraph 1 shall remain valid even if, subsequently, the European patent, or the European patent with unitary effect, is revoked or lapses.

3. On expiry of the terms referred to in paragraph 1, the person who has brought an action for the protection of the Italian patent may request its conversion into the corresponding action for the protection of the European patent or the European patent with unitary effect, without prejudice to the rights deriving from the Italian patent for the earlier period.

4. Territorial scope of the European patent with unitary effect (in particular FR and NL): overseas territories and areas

REPLY:

Not applicable: Italy has no overseas territories or areas.

5. Any other important aspect of national law which may be relevant for users of the unitary patent protection system

REPLY:

Not applicable.

XI. CYPRUS

1. General

REPLY:

There has been no legislative measure accompanying the implementation of the European Patent with Unitary Effect, so far.

2. National validation of a European patent where a request for unitary effect has been rejected (“safety net”)

REPLY:

No such measures have been introduced for the time being. It will be examined after the Unitary Patent System is introduced.

3. Simultaneous protection between a European patent with unitary effect and a national patent allowed?

REPLY:

There is no provision in the Cyprus Patent Law (Law 16(I)/1998) for the above cases for the time being. It will be examined after the Unitary Patent System is introduced.

4. Territorial scope of the European patent with unitary effect (in particular FR and NL): overseas territories and areas

REPLY:

N/A.

5. Any other important aspect of national law which may be relevant for users of the unitary patent protection system

REPLY:

No, nothing for the time being.

XII. LATVIA

1. General

REPLY:

National Patent Law has been amended and entered into force on the 12th July 2021. The following amendments relating to UPP and UPCA have been introduced:

I – Sub-sections 10' and 15 have been added to the Section 1 defining the European patent with unitary effect and the Unitary Patent Court Agreement:

10¹) European patent with unitary effect - a European patent which has a unitary effect in the participating Member States in accordance with Regulation (EU) No 1257/2012 of the European Parliament and of the Council of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection;

15) Agreement on a Unified Patent Court - an international agreement to which Latvia has acceded by the law On Agreement on a Unified Patent Court.

II – Sub-section 1 of the Section 3 has been amended with reference to the scope of the UPCA:(1) The provisions of the Law regarding patents shall also apply to the filing of international applications and European patent applications of inventions, and also to the rights related to European patents, the validity, use and protection thereof, insofar as the provisions of the European Patent Convention and the Patent Cooperation Treaty or the Agreement on a Unified Patent Court or the special provisions of Chapters XI and XII of this Law regarding the filing of international patent applications, a European patent application and a European patent do not provide for otherwise.

III - Sub-section 4 to the Section 65 has been added stipulating disputes which are subject to jurisdiction of the UPC under Article 32 of the UPC Agreement:

(4) On the basis of Article 32 of the Agreement on a Unified Patent Court, the disputes shall be examined if they are based on:

- 1) a European patent with unitary effect;
- 2) a European patent regarding which the owner of the patent has not opted out from the exclusive competence of the Unified Patent Court during the transitional period provided for in Article 83(3) of the Agreement on a Unified Patent Court;
- 3) a supplementary protection certificate issued for a product protected by the patent referred to in Clause 1 or 2 of this Section.

2. National validation of a European patent where a request for unitary effect has been rejected (“safety net”)

REPLY:

Specific provisions relating to safety net mechanism are under consideration and will be introduced later.

3. Simultaneous protection between a European patent with unitary effect and a national patent allowed?

REPLY:

Section 75 of the Patent Law has been amended including the reference to unitary patents as follows:

If the European patent or the European patent with unitary effect and the national patent has been granted for one and the same invention with the same filing date to one and the same person or successor in title thereof, or - if a priority has been requested - with the same priority date, in such a case, if the European Patent Office has not received the opposition to the grant of a patent referred to in Article 99, Paragraph one of the European Patent Convention, the operation of the national patent shall be discontinued from the day when the time limit for the filing of oppositions has ended but, if oppositions have been received, from the day when the examination of the relevant opposition has been completed and a final decision regarding maintaining the European patent in force has been taken.

4. Territorial scope of the European patent with unitary effect (in particular FR and NL): overseas territories and areas

REPLY:

Not applicable.

5. Any other important aspect of national law which may be relevant for users of the unitary patent protection system

REPLY:

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XIII. LITHUANIA

1. General

REPLY:

UPCA was ratified by the Parliament of the Republic of Lithuania on 3 November 2016, ratification came into force on 1 July 2017. Amendments of the Patent Law of the Republic of Lithuania were adopted on 4 May 2017 and came into force on 1 July 2017.

Please find amendments enclosed, together with their translation into English (please note that the translation is unofficial).

2. National validation of a European patent where a request for unitary effect has been rejected (“safety net”)

REPLY:

The provision concerning introduction of the safety net for the situations where a request for unitary effect has been rejected by the EPO is included in the amendments of the Patent Law (Article 3 of the attached law, amending Article 79 of the Patent Law).

3. Simultaneous protection between a European patent with unitary effect and a national patent allowed?

REPLY:

Patent Law precludes simultaneous protection of a classical European patent and national patent for the same invention.

The provision precluding double protection of a European patent with unitary effect and a national patent is included in the amendments of the Patent Law (Article 4 of the attached law, new Article 84 of the Patent Law).

4. Territorial scope of the European patent with unitary effect (in particular FR and NL): overseas territories and areas

REPLY:

The Republic of Lithuania does not have any territories/areas or external relations in which the European patent with unitary effect will not be applicable.

5. Any other important aspect of national law which may be relevant for users of the unitary patent protection system

REPLY:

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LAW OF THE REPUBLIC OF LITHUANIA
ON AMENDING ARTICLES 2, 51, 79 AND ANNEX OF THE PATENT LAW NO I-372
AND SUPPLEMENTATION OF THE LAW WITH CHAPTER TWELVE

4 May 2017, No XIII-344

Vilnius

Article 1. Amendment of Article 2

1. Article 2 shall be supplemented with new paragraph 1:

“1. European Patent with Unitary Effect – European patent, the unitary effect of which is regulated by Regulation (EU) No 1257/2012 of the European Parliament and of the Council of 17 December 2012 Implementing enhanced cooperation in the area of the creation of unitary patent protection (OB 2012 L 361 p. 1) (hereinafter referred to as Regulation (EU) No 1257/2012.”

2. Paragraphs 1-20 of Article 2 shall be respectively regarded as paragraphs 2-21.

Article 2. Amendment of Article 51

Article 51 shall be supplemented with subparagraph 3:

“3) Unitary Patent Court – a court that settles disputes relating to European patents and European patents with unitary effect according to the Agreement on a Unified Patent Court, signed in Brussels on 19 February 2013 (hereinafter referred to as Agreement on a Unified Patent Court).”

Article 3. Amendment of Article 79

Paragraph 2 of Article 79 shall be amended and shall read as follows:

“An owner of a European patent shall, within 3 months after the date on which the mention of the grant of the patent is published, supply to the State Patent Bureau a translation of the claim of the European patent into the Lithuanian language and pay a fixed fee for publication of such translation. If the owner of a European patent has filed a request to European patent office to register unitary effect of the European patent within 1 month after the date on which the mention of the grant of the European patent was published, and the European patent office has rejected this request, the 3 month time limit shall be calculated from the date on which the decision of the European patent office to reject the request has taken effect.”

Article 4. Supplementation of the Law with Chapter Twelve

The Law shall be supplemented with Chapter Twelve:

**“CHAPTER TWELVE
EUROPEAN PATENT WITH UNITARY EFFECT**

Article 84. Preclusion of double protection

1. If a European patent with unitary effect and a patent granted according to this Law, having the same date of filing or priority, have been granted to the same person or his successor to the title for the same invention, the patent granted according to this Law shall become null and void from the date on which the time limit for opposing the European patent with unitary effect expires and an opposition has not been filed, or from the date when, having taken account of the opposition, a decision to leave the European patent with unitary effect valid has been adopted.

2. If the translation of the claims of the invention of the European patent has not been published according to Article 79 of this Law, this European patent shall be regarded as invalid *ab initio* in the Republic of Lithuania, if the unitary effect for this European patent has been registered according to Regulation (EU) No 1257/2012.

Article 85. Execution of decisions and rulings of the Unitary Patent Court

1. Decisions and rulings of the Unitary Patent Court are executive documents.

2. Decisions and rulings, executive letters of decisions, that are submitted to be executed in the Republic of Lithuania, shall be translated into the official language.

Article 86. Liability for damages caused by infringements of European Union law

An action for damages caused by the Unitary Patent Court, resulting from an infringement of European Union law, according to Article 22(2) of the Agreement on a Unified Patent Court, shall be brought in Vilnius County court.”

Article 5. Amendment of Annex of the Law.

Annex of the Law shall be supplemented with subparagraph 6:

“6. Regulation (EU) No 1257/2012 of the European Parliament and of the Council of 17 December 2012 Implementing enhanced cooperation in the area of the creation of unitary patent protection (OB 2012 L 361 p. 1).“

Article 6. Entry into force and implementation of this Law

1. This Law, except paragraph 2 of this Article, shall become effective as of 1 July 2017.

2. The State Patent Bureau of the Republic of Lithuania shall adopt implementing legal acts for this Law before 30 June 2017.

XIV. LUXEMBOURG

1. General

REPLY:

The draft law Nr 6784 indicated in our previous reply to the questionnaire has been withdrawn, for reasons unrelated to the unitary patent. New, similar measures are envisaged in a new draft law, but a date of entry into force of this law cannot be foreseen yet.

2. National validation of a European patent where a request for unitary effect has been rejected (“safety net”)

REPLY:

There is no validation procedure for European patents in Luxembourg. The only required act is the timely payment of the annual fees.

A safety net is not currently under proposal but is being envisaged.

A general restoration procedure exists, which can be requested within 20 months of the lapse date of a European patent due to non-payment of annual fees. We believe that this procedure will be able to reinstate most European patents for which the unitary effect has been rejected.

3. Simultaneous protection between a European patent with unitary effect and a national patent allowed?

REPLY:

The simultaneous protection between a European patent with unitary effect and a national patent is not excluded under the current state of the legislation. An exclusion is envisaged in the draft law under preparation.

4. Territorial scope of the European patent with unitary effect (in particular FR and NL): overseas territories and areas

REPLY:

Not applicable to Luxembourg

5. Any other important aspect of national law which may be relevant for users of the unitary patent protection system

REPLY:

None

XV. HUNGARY

1. General

REPLY:

Following the decision of the German Federal Constitutional Court published on 9 July 2021, the law ratifying the UPC Agreement was promulgated on 12 August 2021.

Even though it had been previously foreseen that following Germany's ratification a decision would be taken on the ratification by Hungary, such decision has not yet been taken given that the constitutional preconditions of ratification are not met.

2. National validation of a European patent where a request for unitary effect has been rejected ("safety net")

REPLY:

The Expert Draft supplements the provision on the deadline for validation of a European patent (i.e. the deadline to submit the necessary translations required under Hungarian legislation in conformity with the London Agreement) with additional rules.

These rules re-open the 3-month validation deadline

- in the event of the request for the registration of unitary effect being rejected, and
- if the European patent with unitary effect is revoked based on a prior national patent or patent application (cf. Article 139 EPC).

As a necessary accompanying measure to the above, the Expert Draft provides for an extra 6-month deadline to pay the renewal fees for the newly validated European patents that have fallen due before the rejection or revocation.

3. Simultaneous protection between a European patent with unitary effect and a national patent allowed?

REPLY:

Pursuant to the Expert Draft, simultaneous protection of the same invention by way of a European patent with unitary effect and a national patent shall be, in the absence of an envisaged provision to the contrary effect, allowed in Hungary. In this respect, there is no difference between the treatment of classical European patents and European patents with unitary effect *vis-à-vis* national patents.

However, the effects of national patents (including exceptions and limitations as well as exhaustion) will not be aligned with Articles 25-29 UPCA, as opposed to those of European patents (irrespective of whether they have unitary effect or not). Instead, they will continue to be laid down in the Patent Act. This will also result in a potential difference between the effects of national SPCs based on national patents and those based on European patents (with or without unitary effect).

4. Territorial scope of the European patent with unitary effect (in particular FR and NL): overseas territories and areas

REPLY:

This issue is not applicable relating to Hungary.

5. Any other important aspect of national law which may be relevant for users of the unitary patent protection system

REPLY:

The Expert Draft provides for the transfer of data relating to compulsory licenses granted for European patents with unitary effect to the European Patent Office. The forwarding authority shall be the Hungarian Intellectual Property Office (HIPO), irrespective of whether the compulsory license is granted by the court (compulsory licenses for non-use or for holders of dependent patents) or by the HIPO [compulsory licenses granted for public health reasons under Regulation (EC) 816/2006].

The Expert Draft clarifies the relationship of national law provisions and European patents with unitary effect, specifying which national provisions are applicable to such patents [especially where Article 7 of Regulation (EU) 1257/2012 points to Hungarian law] and which provisions are by no means applicable to them (formal prerequisites of the validity of pledges and the possibility to surrender the patent).

Apart from the elements listed above, the Expert Draft of course also lays down the necessary technical arrangements to implement Regulation (EU) 1257/2012 and Regulation (EU) 1260/2012, such as the lack of validation requirement for European patents with unitary effect and the rules preventing double protection of the same invention by classical and unitary European patents (the HIPO deeming the validation translations not to have been submitted if unitary effect is registered).

XVI. MALTA

1. General

REPLY:

No legislation has been adopted for the purpose of accompanying the implementation of the European patent with unitary effect at domestic level.

2. National validation of a European patent where a request for unitary effect has been rejected (“safety net”)

REPLY:

The introduction of a safety net would be considered once work on legislation ensues.

3. Simultaneous protection between a European patent with unitary effect and a national patent allowed?

REPLY:

The introduction of a simultaneous protection would be considered once work on legislation ensues however it should be noted that this is provided in the case of a European Patent.

4. Territorial scope of the European patent with unitary effect (in particular FR and NL): overseas territories and areas

REPLY:

Not applicable for Malta.

5. Any other important aspect of national law which may be relevant for users of the unitary patent protection system

REPLY:

Nil reply.

XVII. NETHERLANDS

1. General

REPLY:

Two separate Acts

Like in many member states, the implementation of the Patent Package (UPC Agreement and both UPP regulations) in the Netherlands results into two separate acts. One act concerning approval of the UPC Agreement, needed for ratification of the Agreement; and one act amending the Patents Act of the Kingdom 1995 ('Rijksoctrooiwet 1995').

Ratification UPC Agreement

The first act has entered into force and in September 2016 the Netherlands has ratified the UPC Agreement. For the act, see Stb. 2016, 314:

<https://zoek.officielebekendmakingen.nl/stb-2016-314.html>.

Amendment Patents Act

The proposal for the second act, the amendment of the Patents Act of the Kingdom 1995 ('Rijksoctrooiwet 1995'), has been approved by parliament. The act will enter into force on the same date the UPC Agreement enters into force. For the act, see Stb. 2019, 476:

<https://zoek.officielebekendmakingen.nl/stb-2019-476.html>.

2. National validation of a European patent where a request for unitary effect has been rejected ("safety net")

REPLY:

Yes, the Netherlands will introduce a 'safety net' in the Patents Act.

For a successful safety net request, the following conditions have to be met:

- the request for UE has to be rejected by the EPO;
- the request for UE had to be filed at the EPO in due time (see art. (1)(g) of Regulation 1257/2012);
- the patent should be void, either due to not filing the translation as prescribed in the Netherlands Patent Act or lapsed due to not paying the renewal fee;
- the safety net request should be filed at the Netherlands Patent Office within two month from either the refusal of the UPP Division (EPO) or the confirmation of the refusal by the UPC (CFI or CoA);
- a copy of the EPO refusal or the UPC confirmation should be enclosed with the safety net request; and

- the translation and the translation fee, if they were not already filed with the Netherlands Patent Office, need also to be enclosed with the safety net request.

(The payment of a filing fee for the safety net request is not foreseen.)

If all conditions are met, the Netherlands Patent Office will re-establish the European patent. However, if at the date of notification of a positive decision on the safety net request, renewal fees were due, then these fees (without surcharge) have first to be paid before the patent will be re-established. The fee due (if any) will be mentioned in the decision of the Office. The patent proprietor will have a term of four weeks for paying the fee. After receipt of these renewal fees, the patent will be re-established. The re-establishment will be entered in the Netherlands Patent Register.

The refusal of the EPO or the confirmation by the CFI of the UPC does not need to be final. The national validation makes third parties aware that the patent proprietor wants protection for his invention in The Netherlands. If at any moment in the future the European patent will benefit from unitary effect, article 4 of the regulation 1257/2012 makes clear that the unitary effect is retro effective as from the date of publication of the grant (which will also be implemented in the Netherlands Patents Act).

A negative decision of the Office on a safety net request can be appealed according the normal procedures.

3. Simultaneous protection between a European patent with unitary effect and a national patent allowed?

REPLY:

The introduction of simultaneous protection on the same territory is not foreseen.

4. Territorial scope of the European patent with unitary effect (in particular FR and NL): overseas territories and areas

REPLY:

The Unitary Patent (European patent with unitary effect) will only give protection in the European part of The Netherlands.

The Kingdom of the Netherlands consists of 4 countries:

- (i) The Netherlands,
- (ii) Aruba,
- (iii) Curaçao and
- (iv) Sint Maarten.

The Netherlands (the country within The Kingdom) consist of two parts:

- the part of The Netherlands within Europe; and
- the Caribbean part of The Netherlands, which consists of:
 - o Bonaire;
 - o Sint Eustatius; and
 - o Saba.

These three islands are special municipalities of The Netherlands and are often abbreviated as the 'BES'.

Only the part of The Netherlands within Europe belongs to the territory of the European Union. Aruba, Curaçao, Sint Maarten and the BES are with regards to the EU so-called 'overseas countries and territories' ('pays et territoires d'outre-mer').

The European Patent Convention (EPC) is ratified by the Kingdom of the Netherlands for:

- The Netherlands (European part and BES);
- Curaçao; and
- Sint Maarten.

This is also the territory of the Rijksoctrooiwet 1995 (the Netherlands Patent Act of the Kingdom 1995). So the territorial scope of a national patent and of a European patent are the same.

The Rijksoctrooiwet 1995 is not applicable in Aruba. Aruba has its own patent act, the Aruba Patent Act (for the IP office of Aruba, see <http://www.opi-aruba.org/index.html>). The EPC is not ratified for Aruba. So European patents are valid in the whole Kingdom, except for Aruba.

The UPP regulations 1257/2012 and 1260/2012 only apply within the territory of the EU, which is the European part of The Netherlands.

The UPC Agreement is ratified for the European part of the Netherlands, the BES, Curaçao and Sint Maarten. The Patents Act determines that the protection of the European patent in the overseas territories is equal to the protection given by a European patent with unitary effect. The envisaged new provision in the Patents Act states (in short) that UPP regulations 1257/2012 and 1260/2012 shall apply accordingly on the European patent giving protection in these overseas territories.

5. Any other important aspect of national law which may be relevant for users of the unitary patent protection system

REPLY:

The provisions concerning the reasonable compensation for infringing activities after publication of a European patent application (article 67 EPC) but before the grant of the European patent will apply to European patents with unitary effect as well (cf. article 72 of the Netherlands Patent Act). Since the UPC Agreement does not contain any substantive provision on the reasonable compensation before grant it is foreseen that article 72 of the Netherlands Patents Act (on the reasonable compensation) will explicitly mention European Patents with unitary effect.

XVIII. AUSTRIA

1. General

REPLY:

An amendment of the law is being drafted in order to create the accompanying measures for the implementation of the European patent with unitary effect. It is envisaged that the European patent reform will be incorporated into the Federal Law of 16 December 1978 on the Introduction of the European Patent Convention and the Patent Cooperation Treaty (PatV-EG) and the Law of Fees (PAG).

The draft is to be subject to a review procedure before being transferred to Parliament and has not yet been made officially available.

2. National validation of a European patent where a request for unitary effect has been rejected (“safety net”)

REPLY:

Pursuant to Section 5 of the PatV-EG, in the case where a European patent is not published in the German language - not later than three months after publication of the reference to the grant of the European patent in the European Patent Bulletin - a German translation has to be submitted to the Austrian Patent Office and a publication fee has to be paid.

If the patent holder once applies for the unitary effect of the European patent under the new patent system, Section 5 of the PatV-EG is not applicable. If, however, the request for a unitary effect is rejected by the European Patent Office, it will be in the interest of the patent holder to maintain his patent right in the form of a European patent with effect for Austria.

Austria intends to introduce a safety net: the draft of the law, which has not yet been made officially available, is intended to ensure that the time limits for the translation and the payment of the publication fee are not expiring before it is definitively decided that the request for a unitary effect is rejected. This can also be the case after the outcome of judicial proceedings against the decision of the European Patent Office before the UPC under Article 32 (1) (i) of the Convention. The date on which the decision of the European Patent Office becomes effective or the date on which the decision of the Single Patent Court becomes effective will be the relevant date for the beginning of the time limit.

3. Simultaneous protection between a European patent with unitary effect and a national patent allowed?

REPLY:

Pursuant to Article 139 (3) EPC, any Contracting State may prescribe whether, and on what terms an invention disclosed in both a European patent application or patent, and a national patent application or a patent having the same filing date or, where priority is claimed, the same date of priority, may be protected simultaneously by both applications or patents.

According to Art. 140 EPC (National utility models and utility certificates), Art. 139 shall apply accordingly in the Contracting States, whose laws provide protection for such models or certificates.

Austria admits double protection by means of a European patent and a national patent and/or national utility model, there are neither provisions which exclude double protection nor special procedures for the enforcement of the rights.

Double protection in the current form has now existed in Austria for more than 40 years. In the long-term practice, this legal situation has not caused any problems, and the introduction of a double-protection ban in Austria has never been the subject of legislative initiatives. There has been no need for changes to the existing system.

In the draft of the amendment of the law it is not envisaged to include provisions concerning the prohibition of the double protection of one and the same invention by a European patent with unitary effect and a national patent/or utility model.

4. Territorial scope of the European patent with unitary effect (in particular FR and NL): overseas territories and areas

REPLY:

Art. 168 EPC is not applicable in Austria. The European patent with unitary effect will have effect in the whole territory of Austria.

5. Any other important aspect of national law which may be relevant for users of the unitary patent protection system

REPLY:

XIX. POLAND

1. General

REPLY:

The Government of the Republic of Poland has not signed the Agreement on the Unitary Patent Court and the final decision on this issue has not been made yet. Upon the final decision on possible joining to the system of the European patent with unitary effect, the respective works and plans to introduce any related changes to the national legislation will be undertaken.

2. National validation of a European patent where a request for unitary effect has been rejected (“safety net”)

REPLY:

Due to the fact that for the time being Poland will remain outside the unitary patent system, users of the European patent system will need to validate their European patents in Poland to obtain protection on the territory of our country. Therefore, there will be no change in the current procedure and the possible rejection of the request for unitary effect will have no impact on the time limits applicable with regard to validation of European patents.

Generally, Poland recognizes the need of introducing a safety net provision for the presented situations. However, to ensure harmonization of this mechanism among all the participating MS and to ensure legal certainty we believe that such a provision should be preferably adopted on the EU level to guarantee its unified application.

3. Simultaneous protection between a European patent with unitary effect and a national patent allowed?

REPLY:

Due to being outside the unitary patent system, Poland has not made any decision on future possible treatment of European patents with unitary effect.

4. **Territorial scope of the European patent with unitary effect (in particular FR and NL): overseas territories and areas**

REPLY:

This question does not apply to the Republic of Poland.

5. **Any other important aspect of national law which may be relevant for users of the unitary patent protection system**

REPLY:

No proposals.

XX. PORTUGAL

1. General

REPLY:

So far Portugal does not have any legislation envisaged or adopted for the purpose of accompanying the implementation of the European patent with unitary effect at domestic level.

2. National validation of a European patent where a request for unitary effect has been rejected (“safety net”)

REPLY:

Portugal is still evaluating the “safety net” option.

3. Simultaneous protection between a European patent with unitary effect and a national patent allowed?

REPLY:

Portugal is still evaluating the possibility of simultaneous protection between a European patent with unitary effect and a national patent.

4. Territorial scope of the European patent with unitary effect (in particular FR and NL): overseas territories and areas

REPLY:

This situation does not apply to Portugal.

5. Any other important aspect of national law which may be relevant for users of the unitary patent protection system

REPLY:

At the moment we don't have any further comments.

XXI. ROMANIA

1. General

REPLY:

The ratification process is under consideration.

2. National validation of a European patent where a request for unitary effect has been rejected (“safety net”)

REPLY:

Romania intends to give the patent holders being in the situation described above the possibility to enjoy protection by means of the classic European patent system, within a time limit to be established.

3. Simultaneous protection between a European patent with unitary effect and a national patent allowed?

REPLY:

It is not possible in Romania to have double patenting for one and the same invention (Article 10 – Law 611/2002). The same applies for utility models and patents and we intend to follow the same rule for the European patent with unitary effect.

4. Territorial scope of the European patent with unitary effect (in particular FR and NL): overseas territories and areas

REPLY:

Not applicable

5. Any other important aspect of national law which may be relevant for users of the unitary patent protection system

REPLY:

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XXII. SLOVENIA

1. General

REPLY:

Concerning the European patent with unitary effect Slovenian Intellectual Property Office (SIPO) is considering to propose amendments to the Industrial Property Act (Official Gazette of the Republic of Slovenia, No. 51/06 - official consolidated text, 100/13 and 23/20); unofficial English translation without the last amendments is available on http://www.uil-sipo.si/fileadmin/upload_folder/zakonodaja/ZIL_EN_2006.pdf), mainly with provisions concerning.

- the prohibition of double protection for the invention covered by a European patent with unitary effect and a European patent,
- proprietors right to prevent the indirect use of the invention and
- safety net for subsequent validation (when the registration of unitary effect for the European patent is rejected by EPO).

2. National validation of a European patent where a request for unitary effect has been rejected (“safety net”)

REPLY:

SIPO intends to propose amendments to Industrial Property Act to enable validation of a European patent where request for unitary effect has been rejected by the EPO.

3. Simultaneous protection between a European patent with unitary effect and a national patent allowed?

REPLY:

According to Industrial Property Act (Article 3(3)) a national application shall not give rise to an industrial property right if a prior application has been filed abroad and seeking protection in the Republic of Slovenia. Therefore, if the European patent application has been filed, earlier than a national patent application for the same invention, the national patent application will have no effect.

If the national patent application has been filed earlier than European patent application, the national patent application will be effective. In this case, the simultaneous protection is possible.

4. Territorial scope of the European patent with unitary effect (in particular FR and NL): overseas territories and areas

REPLY:

Slovenia is not responsible for other territories or areas.

5. Any other important aspect of national law which may be relevant for users of the unitary patent protection system

REPLY:

None.

XXIII. SLOVAKIA

1. General

REPLY:

The need and extent of amending the Act No. 435/2001 Coll. on Patents, Supplementary Protection Certificates and on Amendment of Some Acts as Amended (hereinafter “the Patent Act”; see <http://www.upv.sk/?legislation-in-force>) in order to implement the European patents with unitary effect at domestic level is still under consideration.

2. National validation of a European patent where a request for unitary effect has been rejected (“safety net”)

REPLY:

The final decision whether in given situation (i.e. where a request for unitary effect has been rejected either by the EPO or the UPC or the unitary effect has been revoked by the UPC at the time when the validation deadlines have already expired) it will be possible to validate a European Patent in the Slovak Republic also after deadlines for validation set in Article 63(2) or 63(3) of the Patent Act expire, has not been adopted yet. The issue is still under discussion.

3. Simultaneous protection between a European patent with unitary effect and a national patent allowed?

REPLY:

The final decision whether simultaneous protection of the same invention disclosed in both a European patent application and a national patent application having the same filing date or, where priority is claimed, the same priority date, by a national patent and a European patent with unitary effect will be allowed, has not been adopted yet. The issue is still under discussion. However, taking into consideration the fact that the simultaneous protection by a classical European patent and a national patent is not allowed (see Article 64 of the Patent Act) it is highly probable that it will not be possible to protect the invention simultaneously by a European patent with unitary patent and a national patent either.

4. Territorial scope of the European patent with unitary effect (in particular FR and NL): overseas territories and areas

REPLY:

Not applicable in respect of the Slovak Republic.

5. Any other important aspect of national law which may be relevant for users of the unitary patent protection system

REPLY:

None.

XXIV. FINLAND

1. General

REPLY:

Finland ratified the UPC Agreement on 19 January 2016. During the ratification process amendments to Finnish Patents Act (550/1967) were adopted. The amendments included implementation of the article 4(2) of the Regulation (EU) No 1257/2012 and amendments required by the UPC Agreement. Some of the amendments were not required by the UPC Agreement, but were seen advisable eg. safety net – provision for late rejection of a UPP request and harmonisation of the limitations included in national law with the limitations in the UPC Agreement (art 27 UPCA).

The amendments to the national legislation were approved on 8 January 2016 and they will enter into force the same day as the UPC Agreement enters into force.

Link to the government proposal (in Finnish and Swedish)

<http://finlex.fi/fi/esitykset/he/2015/20150045>

Link to the amendment to Patents Act (in Finnish and Swedish)

<http://finlex.fi/fi/laki/alkup/2016/20160023>

Unofficial English translation of the Patents Act will be provided later.

Finland has decided to establish a local division, the Act on the local division (Laki yhdistetyn patenttitoimistoistuen paikallisjaostosta Suomessa (971/2016) has been adopted in 2016 and the Act shall enter into force by decree. Link to the Act (in Finnish and Swedish):

<https://finlex.fi/fi/laki/alkup/2016/20160971>

2. National validation of a European patent where a request for unitary effect has been rejected (“safety net”)

REPLY:

Safety net provision has been introduced to the Finnish Patents Act (70h § 2).

The new term for validation will begin the day the decision of EPO or UCP rejecting the request for unitary effect gains legal force. The current national term assigned for validation (3 months) and paying the first renewal fee will respectively apply to the new term. This approach was considered to be the most simple and legally certain solution for all relevant parties including the NPO.

The standard re-establishment of rights rules in Finnish Patents Act apply also to the new term for validation.

3. Simultaneous protection between a European patent with unitary effect and a national patent allowed?

REPLY:

The Finnish Patents Act allows simultaneous protection between a European patent and a national patent. This also applies to a European patent with unitary effect.

No legislative amendments were made during the ratification and implementation process and there are no special provisions concerning the situation where national patent and European patent with unitary effect are simultaneously in force in Finland.

The article 4(2) of the Regulation (EU) No 1257/2012 is implemented by 70 y § of the Patents Act. The national validation of the European patent has no legal effect in the situation where unitary effect is registered to the same European patent.

4. Territorial scope of the European patent with unitary effect (in particular FR and NL): overseas territories and areas

REPLY:

Not relevant to Finland.

5. Any other important aspect of national law which may be relevant for users of the unitary patent protection system

REPLY:

A Local division of the Court of First Instance of the UPC will be set up in Finland. It will be located in Helsinki and will share the premises with the Market Court which is the specialized IPR- Court in Finland. The languages of the proceeding at the local division in Finland will be English and national languages Finnish and Swedish.

Criminal enforcement: The infringement of a European patent with unitary effect is criminally sanctioned like the infringement of a national patent and a classical European patent validated in Finland.

XXV. SWEDEN

1. General

REPLY:

Two sets of legislation (2014, 2016) and a first set of implementing regulations (2016) have been adopted in Sweden. From a material point of view Sweden's legal implementation was completed until 6 April 2017 – when the unexpected delay in the reform's operationalisation made it legally-technically necessary to cancel the first set of implementing regulations.

The intention is to readopt the first set of implementing regulations, and at the same time to fix the date of the legislative amendments' entry into force by means of a second set of implementing regulations, once the date for the UPP/UPC applicability is certain. The overall idea is of course to synchronize national and European operationalisation.

* The first, necessary set of legislation is found in the first bill introduced into parliament (prop. 2013/14:89):

[Prop. 2013/14:89 Ett enhetligt patentskydd i EU \(regeringen.se\)](#)

The amendments to the Patent Act, adopted on 27 May 2014, are found on page 5–15 with an annex on page 16–27. The reasons (page 30–58) and explanatory notes (page 58–75) follow.

* The second, complimentary set of legislation is found in the second bill introduced into parliament (prop. 2015/16:124):

[Ökad rättssäkerhet i det enhetliga patentsystemet, Prop. 2015/16:124 \(regeringen.se\)](#)

The amendments to the Patent Act and the Public Access to Information and Secrecy Act, adopted on 9 June 2016, are found on page 4–7. The reasons (page 9–24) and explanatory notes (page 24–32) follow.

* The first set of implementing regulations, adopted on 9 June 2016 however cancelled on 6 April 2017, affecting the Swedish Intellectual Property Office, the Office of the Chancellor of Justice and The Legal, Financial and Administrative Services Agency and The Legal, Financial and Administrative Services Agency, is not officially available.

Translations are not available and will therefore not be provided. However, a memorandum outlining, in English, the different implementing stages and amendments is enclosed to this questionnaire (the nutshell paper, 2.0). Please observe that the memorandum (which we wrote to for fellow Members States asking for help) covers the whole legal implementation of the patent package including parts pertaining to the UPC.

2. National validation of a European patent where a request for unitary effect has been rejected (“safety net”)

REPLY:

The safety-net is twofold and corresponds to “option 2” in the joint NL-SE submission (SC/30/15).

The first part concerns validation and reads (in English translation and while using transcripts of substance in provisions referred to in the article) something like this:

- If the patent proprietor’s request for unitary effect has been rejected, the [normal] three months term for submitting a translation and paying the fee for its publication shall not start until the rejection decision has gained legal force, provided that the request was submitted to the EPO in due time.

In order to enjoy the safety-net, the patent proprietor will be required to establish three facts before the national patent office, namely:

1. That the request for unitary effect was submitted in due time.
2. That the request was rejected.
3. That the rejection decision has gained legal force.

The second part concerns fee payment and reads (in English translation and while using transcripts of substance in provisions referred to in the article) something like this:

- The first renewal fee for a European Patent shall never have to be paid earlier than three months from the day when the rejection decision has gained legal force, provided that the request for unitary effect was submitted to the EPO in due time.

3. Simultaneous protection between a European patent with unitary effect and a national patent allowed?

REPLY:

Double patenting (Swedish patents-EP) is currently not forbidden in Sweden. The issue has been re-analysed in the context of the UPP/UPC implementation. In summary: The starting point has been that there is no obligation to introduce a ban, neither in the EPC, nor in the UPP Regulation. Theoretically, double patenting could lead to problems on the execution level. However in drafting and applying a ban there would be difficulties concerning identification of the inventions in issue. Furthermore, in order for a ban to be effective it would be necessary to also consider overlapping scope of protection. Moreover it is questionable whether the absence of a ban would lead to any problems in practice. Therefore the Swedish legislator has opted for not introducing a ban.

4. Territorial scope of the European patent with unitary effect (in particular FR and NL): overseas territories and areas

REPLY:

This does not apply to Sweden.

5. Any other important aspect of national law which may be relevant for users of the unitary patent protection system

REPLY:



10 June 2016

Ministry of Justice Sweden

*Division for Intellectual Property Law and
Transport Law*

**Sweden's legal UPP/UPC implementation in a nutshell,
2.0**

Procedure

Two implementing stages

The Swedish implementation of the UPP and the UPC takes place in two stages. The main reasons for the split are the declaratory commitment to ratify the UPC Agreement as quick as possible in combination with the then ongoing Preparatory- and Select Committee preparations.

In the first stage, actions deemed necessary for Sweden's fulfilment of its obligations pursuant to the UPP Regulations and the UPC Agreement were taken. The first stage comprised a national Patent Law Committee preparation and -proposal to amend the Patent Act, a user consultation, judicial review, a government bill, and parliamentary preparations. The first stage was concluded by the parliament's adoption on 27 May 2014 of the UPC Agreement, the Nordic-Baltic Regional UPC Division Agreement, and a proposal to amend the Patent Act, as well as by the government's promulgation on 5 June 2014 and deposition of the Swedish instruments of ratification on the same day.

In the second stage, a fine tuning of the system took place. The Patent Law Committee was tasked by the Government to look further into certain additional UPP/UPC implementation issues, identified in the first national implementation stage and/or in the Select Committee discussions on accompanying measures. The Patent Law Committee

submitted a second proposal to amend the Patent Act. User consultation, judicial review, a government bill and parliamentary preparations followed. The second stage was concluded by the parliament's adoption on 26 May 2016 of the proposed amendments to the Patent Act and the Public Access to Information and Secrecy Act (the latter amendments initiated by the government) and the government's promulgation on 9 June 2016. On the same day as the promulgation, the government also adopted implementation regulations giving certain new, mostly limited, tasks to three national public authorities.

The amendments of the Patent Act and the Public Access to Information and Secrecy Act will enter into force on the day the government assigns. The idea is of course to synchronize this date with the date when the UPC Agreement enters into force and the UPP Regulations apply.

Substance

First stage (necessities)

Unitary Patent Protection

The analytical starting point was that the application of the UPP Regulation does not depend on the provisions of the Patent Act. At the same time, it was deemed necessary to adjust the Act so that it does not contravene the Regulation. The central provisions of the Regulation considered in this aspect were Articles 3.2, 4.2, 7.1, and 7.4.

Roughly, the UPP Regulation provokes the following complementary modifications to the Patent Act:

- Exceptions for unitary patents from provisions on limitation, administrative revocation, surrender, validation, and pledging, representation, and renewal fees.
- A new paragraph which essentially lays down that validation measures by the applicant are ineffective, if unitary effect is attributed to a European patent.
- A new paragraph which essentially provides is that a pledging of a unitary patent has effect as an object property (right in rem), if the EPO registers the contract of pledge in the European patent register.

The UPP Translation Regulation has been deemed to not require any complementary modifications to the Patent Act.

In a bit more detail, the modifications to the Patent Act provoked by the UPP Regulation are the following:

40 a §: Currently, this paragraph essentially lays down a right for the patent proprietor to require the Swedish Patent Office to limit or revoke the patent. An exception for unitary patents will be introduced into the paragraph. However, this exception will not apply to SPCs.

The exception is provoked by Article 3.2 of the UPP Regulation. The provision on SPCs is based on the EU MS and CION consensus that the SPC Regulations apply also when the basic patent is a unitary patent (as well as Article 19.1 and 18.1 respectively of the SPC Regulations).

54 §: Currently, this paragraph essentially lays down an obligation for the Swedish Patent Office to declare, upon the patent proprietor's declaration of surrender, that the patent has lapsed (*ex nunc*). An exception for unitary patents will be introduced into the paragraph. However, this exception will not apply to SPCs.

The exception is provoked by Article 3.2 of the UPP Regulation. The provision on SPCs is based on the EU MS and CION consensus that the SPC Regulations apply also when the basic patent is a unitary patent (as well as Article 19.1 and 18.1 respectively of the SPC Regulations).

71 §: Currently, this paragraph essentially lays down an obligation for a patent proprietor domiciled outside Sweden to have a representative domiciled here and provisions on how such a representative is served documents in certain cases. An exception for holders of unitary patents is introduced into the paragraph.

The exception is caused by the fact that unitary effect will be registered by the EPO in the register for unitary patent protection, not by the Swedish Patent Office in the Swedish patent register.

80 §: Currently, this paragraph essentially informs about the existence of European patents. A provision informing about the possibility of attributing unitary effect to such patents pursuant to the UPP Regulation will be introduced into the paragraph.

81 §: Currently, this paragraph stipulates that a European patent has the same effect as a patent granted in Sweden and follows, as to the rest, the same provisions as such a patent – without prejudice to other provisions of the 'European patent chapter' of the Patent Act. A modification will be made so that the reservation applies not only to the said chapter but to the Patent's Act in its entirety.

The modification is structural; so as to allow for exceptions for unitary patents wherever in the Patent Act they belong substantially.

82 §: Currently, this paragraph lays down the obligation for the applicant to validate the European patent within three months from the date on which the EPO published its mention to grant the patent, in order for the patent to have effect in Sweden . An exception for unitary patents will be introduced into the paragraph.

The exception is induced from Articles 3 and 9.1 of the UPP Regulation.

82 a §: A new paragraph will be introduced which essentially provides that validation measures by the applicant are ineffective, if unitary effect is attributed to a European patent.

The introduction is provoked by Article 4.2 of the UPP Regulation.

86 §: Currently, this paragraph stipulates that renewals fees for a European patent are payable to the Swedish Patent Office. An exception for unitary patents will be introduced into the paragraph.

The exception is provoked by Article 11.1 of the UPP Regulation.

94 §: Currently, this paragraph provides that a patent which is granted or has effect in Sweden may be pledged, as an object of property (right in rem), pursuant to the provisions of the 'pledging chapter' of the Patent Act. This chapter contains provisions on both the conditions for, and the effects of, such pledging. Exceptions for unitary patents will be introduced into the paragraph as regards the conditions for pledging. As regards the effect of pledging, the provisions will thus apply to unitary patents.

The exceptions are caused by Article 7.4 of the UPP Regulation. The application of the 'pledging chapter' provisions also on unitary patents stems from Article 7.1 and 7.2 of the UPP Regulation.

94 a §: A new paragraph will be introduced which lays down that a pledging of a unitary patent has effect as an object of property (right in rem), if the EPO registers the contract of pledge in the European patent register.

Unified Patent Court

The analytical starting point was that the UPC competence is regulated in the UPC Agreement with no need for a national regulation of this competence. At the same time, it has been deemed necessary to adjust the Patent Act to ensure that the UPC competence

be exclusive in the degree provided for in the UPC Agreement. The central provisions of the Agreement in this and other aspects have been Articles 2, 3, 22, 31, 32, 25–30, 62, 63, 82, 83, and 88.

Roughly, the UPC Agreement provokes the following modifications to the Patent Act:

- A new paragraph and modifications to other paragraphs which essentially provide that Swedish Courts are not competent if the UPC is exclusively competent pursuant to the UPC Agreement.
- An exception for unitary patents from the prospective plaintiff's obligation to notify the Swedish Patent Office and to inform licensees and pledgees before initiating certain Court actions.
- A new paragraph which incorporates Articles 25–30 of the UPC Agreement into the Patent's Act for the purpose of the UPC's handling of cases.
- A new paragraph which lays down that decisions and orders of the UPC are enforced in Sweden like corresponding Swedish decisions and orders.
- A new paragraph pursuant to which the State is liable for damage resulting from an infringement of Union law by the UPC Court of Appeal, and a modification to another paragraph according to which Stockholm District Court has exclusive competence in such damage cases.

In a bit more detail, the modifications to the Patent Act provoked by the UPC Agreement are the following:

5 a §: A new paragraph will be introduced which incorporates Articles 25–30 of the UPC Agreement into the Patent Act. The paragraph addresses the UPC. It will apply in cases where an application of Articles 5.3 and 7 of the UPC Agreement points out Swedish law as the applicable law.

The introduction is caused by Article 5.2 and 5.3 of the UPP Regulation. The incorporating technique results from the fact that Sweden has a dualistic legal tradition.

57 e §: Currently, this paragraph stipulates essentially that the national Court who has in principle exclusive competence in patent cases (Stockholm District Court) is also competent to order the communication of information. Additional language will be introduced into the paragraph in order to clarify that this competence has limitations pursuant to another paragraph (65 a §, as a result of the establishment of the UPC).

The addition stems from Article 32.1 of the UPC Agreement.

59 b §: Currently, this paragraph lays down essentially that the national Court who has in principle exclusive competence in patent cases (Stockholm District Court) is also competent to order the inspection of premises. Additional language will be introduced in order to clarify that this competence has limitations pursuant to another paragraph (65 a §, as a result of the establishment of the UPC).

The addition stems from Article 32.1 of the UPC Agreement.

64 §: Currently, this paragraph essentially stipulates that a party who wants to initiate an action for the revocation or the transfer of a patent or for the issuing of a compulsory licence shall notify the Swedish Patent Office and inform any licensees and pledgees. An exception for parties who want to bring actions to the UPC or to a Swedish Court concerning unitary patents will be introduced into the paragraph.

The exception is caused partly by the fact that unitary effect will be registered by the EPO in the register for unitary patent protection, not by the Swedish Patent Office in the Swedish patent register, and partly by the impossibility of having Swedish law regulating procedural conditions as regards the UPC.

65 §: Currently, this paragraph lays down that Stockholm District Court has in principle exclusive competence in patent cases. Additional language will be introduced partly in order to clarify that this competence has limitations pursuant to another paragraph (65 a §, as a result of the establishment of the UPC), partly to establish that Stockholm District Court has exclusive competence also as regards cases on liability of the State for damage resulting from an infringement of Union law by the UPC Court of Appeal.

The first addition stems from Article 32.1 of the UPC Agreement. The second addition is provoked by Article 22 of the Agreement.

65 a §: A new paragraph will be introduced which stipulates that an action is not admissible in Swedish Courts, if the UPC has exclusive competence pursuant to the UPC Agreement.

The introduction is caused by Article 32.1 of the UPC Agreement. Also Articles 2, 3, 31 and 83 of the Agreement are directly relevant here.

70 a §: A new paragraph will be introduced which provides that decisions and orders of the UPC are enforced in Sweden like corresponding Swedish decisions and orders.

The introduction is provoked by Article 82 of the UPC Agreement. Also Articles 62.1 and 63.2 are relevant here.

93 a §: A new paragraph will be introduced which essentially informs about the existence of the UPC Agreement and the UPC.

The introduction is provoked by the UPC Agreement as a whole.

93 b §: A new paragraph will be introduced which lays down essentially that the State is liable for damage resulting from an infringement of Union law by the UPC Court of Appeal in a case where Sweden is pointed out by Article 22 as primarily liable.

The introduction is caused by Article 22 of the UPC Agreement.

Second stage (fine tuning)

The Patent Law Committee

The issues comprised in the second stage implementation are either addressed in the Select Committee (by the Swedish Government or others) and/or raised during the user consultation or judicial review of the first stage national implementation. The Patent Law Committee received, in new instructions, nine developed issues to consider (and a mandate to consider other issues encountered along the way).

The first issue pertains to confidentiality of documents received from the UPC by the national authority competent to try damage cases pursuant to Article 22 of the UPC Agreement.

The second issue is about the protection of third party rights (rights in rem) in relation to a patent proprietor's surrender of a unitary patent.

The third issue addresses the situation where a request for unitary effect is rejected after the deadlines have passed for validation and payment of the first renewal fee in relation to a European patent.

The fourth issue concerns national prior rights invoked against a unitary patent.

The fifth issue calls in question the obligation (pursuant to 71 § of the Patent Act) for a patent proprietor domiciled outside Sweden to have a representative domiciled here.

The sixth issue bears upon the interrelation between Swedish law, on one side, and the UPP Regulation and the UPC Agreement, on the other, as regards compulsory licences and unitary patents.

The seventh issue bears upon the interrelation between Swedish law, on one side, and the UPP Regulation and the UPC Agreement, on the other, as regards SPCs and unitary patents.

The eighth issue concerns a possible, voluntary incorporation of Articles 25–30 of the UPC agreement into the Patent's Act for the purpose of Swedish Courts' handling of cases.

The ninth issue addresses the more precise legal consequences of the fact that the UPC Agreement does not regulate criminal law.

The Committee was also tasked to propose necessary implementing regulations.

Following user consultation, judicial review, the government's work on a bill and the parliamentary preparations, this is the second stage output:

Unitary Patent Protection

Roughly, the few further modifications to the Patent Act and modifications to the Public Access to Information and Secrecy Act aim at increasing rule of law and legal certainty. The modifications to the Patent Regulation also task the Patent Office, the Office of the Chancellor of Justice and the Legal, Financial and Public Procurement Agency to perform certain functions in the UPP/UPC system.

As to the Patent Act, in just a little bit more detail and relevant parts:

44 §: Compulsory licenses with unitary patents as basic patents are excluded from the Swedish Patent Office's obligation to make entries in the Swedish Patent Register.

82 b §: A twofold safety-net for rejected requests for unitary effect is introduced. According to this first part, the deadline for validation is postponed in such cases.

86 §: A twofold safety-net for rejected requests for unitary effect is introduced. According to this second part, the deadline for payment of the first renewal fee is postponed in such cases.

As to the Patent Regulation, in just a little bit more detail and relevant parts:

38 a §: Unitary patents are excluded from the Patent Office's obligation to make entries in the Swedish Patent Register. However, the exception does not apply SPCs with unitary patents as basic patents.

40 a §: In case of double patenting (EP-UP), the Patent Office shall use its registry and publications to inform about the material provision in the Patent Act (see 82 a § above).

44 and 59 §§: When a registration of a pledging contract is requested with respect to a European patent or a European patent application, the Patent Office shall inform the holder of the pledge about the material provisions in the Patent Act (see 94 and 94 a §§ above).

As to the Regulation on the State's liability for damages, in just a little bit more detail and relevant parts:

3 §: The Chancellor of Justice is identified as a competent authority under Article 22 of the UPC Agreement.

As to the Regulation with instructions for the Legal, Financial and Public Procurement Agency, in just a little bit more detail and relevant parts:

5 §: The Agency is tasked to pay damages, obtain proportional contribution and pay proportional contribution under Article 22 of the UPC Agreement in case of an approved claim for damages.

Unified Patent Court

As to the Patent Act, in just a little bit more detail and relevant parts:

61 §: The general obligation on the alleged infringer objecting patent invalidity to lodge a formal counterclaim will not apply in criminal cases (regardless of whether the patent has unitary effect or not).

As to the Public Access to Information and Secrecy Act, in just a little bit more detail and relevant parts:

Chapter 36, 2 a §: Confidential information from the UPC received by a Swedish court in a case on damages under Article 22 of the UPC Agreement shall be treated with secrecy.

Chapter 42, 4 a §: Confidential information from the UPC received by the Office of the Chancellor of Justice in a case on damages under Article 22 of the UPC Agreement shall be treated with secrecy.

Hence the first, third, sixth, seventh and nine issues resulted in new or amended legal provisions.

The second issue was discussed in the second bill, with the conclusion that, in the absence of a possibility to surrender unitary patents, no more measures are needed.

On the fourth issue, it was observed that all imaginable scenarios rested on a hypothesis of what the UPC will do with a unitary patent in case of a national prior right, and assessed that these cases will be rare. Therefore the legislator chose to wait and follow the practice of the UPC.

The fifth issue is not very relevant.

The eighth issue has been transferred into the major ongoing work of reviewing the Patent Act and the Patent Regulation as a whole and is still pending.