

Introducing the Unified Patent Court

14 October 2021

By Sean Trigona

The [Unified Patent Court](#) will soon become operative, and its arrival may arguably present stakeholders with one of the most significant patent reforms in the European Union. This development is also coupled with the introduction of a **Unitary Patent Right**, making this patent package all the more substantial. Consequently, with a multitude of key changes well underway within the European patent framework, it is fundamental to expand upon what the upcoming developments entail – including the various challenges and opportunities which a Unified Patent Court may bring.

What are patents and why are they important?

Patents are a form of intellectual property (IP) which broadly refer to [creations of the mind](#), such as inventions. In order to promote innovation, these inventions are typically protected under law as IP. More specifically, an invention may be protected as a patent if it possesses **technical character**. In addition, the invention must be **new** and it must involve an **'inventive step'**, whilst further being capable of **industrial application**.

Patents are extremely valuable. They equip the owner with the right to prevent other parties from making, using or distributing the invention without prior consent. Patents further incentivize companies to inject the investment necessary for continued innovation, whilst also encouraging individuals and companies to allocate resources to research and development.

Perhaps, however, the most significant patent reform may currently be underway, with the likely introduction of both a Unified Patent Court and the Unitary Patent System within the European Union (EU).

Reshaping the Patent – the UPC and a UP

At the outset, the concept of a Unified Patent Court ('**UPC**') may seem fairly complex, however the principal notion behind a UPC is that of establishing an **international court** to handle the infringement and validity of both Unitary Patents ('**UPs**') and European Patents ('**EPs**'). In addition, the UPC would be founded by 25 participating Member States. As a result, rulings made by the UPC would consequently be applied in all those Member States which have ratified the [Agreement on a Unified Patent Court](#) (the '**UPC Agreement**').

Unlike typical patents, when acquiring a UP, the patent holder will be equipped with a single patent right which covers all the Member States which participated in the enhanced cooperation. Essentially,

what is taking place here is the creation of a new and distinct patent right, and until the UPC comes into full effect, this new right, in the form of a UP, cannot be granted by the EPO.

Should the UPC be constructed, and UPs be granted, the EU would have successfully introduced a new patent enforcement system and a new patent right. Whilst this is all well and good, one must however question the reasons why such a substantial initiative is being developed in the first place. In fact, when assessing the proposed '**patent package**', it is possible to identify a number of [potential benefits](#), including:

- **Increased Efficiency and Protection** – Establishing this patent package would enable UP holders (as individuals, companies or institutions) to protect their inventions in all the participating Member States through the submission of a single patent application. This would imply that the UP owner would no longer need to validate the relevant patent in each country – as is currently required to do so;
- **Cost Efficiency and Simplified Procedure** – UP protection would streamline the current European patenting system, as well as reduce expenses for UP holders to protect their IP. UP protection may further mitigate complex validation requirements whilst simultaneously limiting costly requirements in the participating Member States;
- **Incentivize Growth** – Putting the patent package into action may also enhance research, development and investment in innovation, which would likely have the cumulative effect of bolstering growth in the EU;
- **Preserved Patent Value** – Looking at the current patenting system in the EU, it is often the case that patent holders would only patent their invention in a few countries, since the validation of a European patent in each Member State presents prohibitive costs to the patent owner. With the introduction of UPs, such costs will significantly decrease, as well as the patent in question being protected in a large number of countries, making it more of a challenge for the patent to be freely infringed, thus overall strengthening the value of the relevant patent.

[What's Next for the Development of the UPC?](#)

In order for the UPC to progress to the next stage of its development, the UPC Agreement will be required to come into force. For this to happen, the Agreement must be ratified by 13 Member States – particularly, ratification is required by Germany, France and Italy, as they are the countries where the most European patents originate.

As things currently stand, 12 member states have so far ratified the [protocol on the provisional application](#) ('PAP') of the UPC. One more country will therefore be required to ratify the PAP before it is possible for the UPC for the next phase of the UPC to commence. It is however expected that Austria may complete this step shortly, even though the Austrian government would need to pass the corresponding law through parliament first. Once the 13 UPC states ratify the PAP, the UPC organizing committee may commence critical preparations, including the identification of judges, electing a president, and securing a sound IT infrastructure.

[Looking at the UPC's Jurisdiction](#)

Following the commencement of the UPC as well as a consequent [transitional period](#) of a minimum 7 years, the UPC will possess exclusive jurisdiction over UPs and EPs which derive from participating Member States. It is important to note that during the transitional period:

- EPs may be '**opted out**' from the UPC's jurisdiction;



- With regards to cases relating to ‘**non-opted out**’ EPs, a dual jurisdiction arrangement will be in place, enabling those cases to either be brought before the UPC or a national *court* - *depending on the action being brought*.

The impact on your business and how Lighthouse Europe can help you

With the UPC set to be fully functioning in the near future, it is crucial that businesses prepare for one of EU’s most significant patent reforms. In this regard, the intellectual property team at Lighthouse Europe is well positioned to help businesses navigate through the current and upcoming UPC developments, amongst other initiatives included in the [IP Action Plan](#). In addition, Lighthouse Europe’s unique network and expertise, enables the firm to swiftly assist companies in communicating their positions on the UPC initiative.