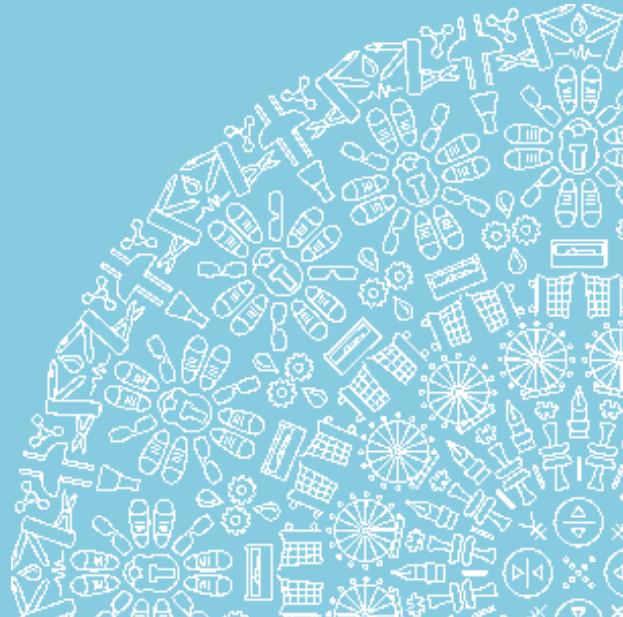


# Unitary patents

BRISTOWS UPC

## Preparing for the

# UPC



# Unitary patents

The first decision patentees have to make is what to do with their existing and future European Patent applications, especially those nearing grant. Do they continue to validate as now in a variety of EPC states, or do they elect for the newly available combination of unitary protection for participating states and 'classical' EP's for non-EU states such as Switzerland and Norway, and non-participating EU states such as Spain.

## What is a unitary patent?

Unitary patent (or UP) is shorthand for a European patent with unitary effect. It is, as the name suggests, a single patent right covering a significant number of European countries.

Any currently pending applications which mature after the UPC system goes live can benefit from unitary protection, except very old applications made before March 2007 when Malta joined the EPC. It also is not possible to 'upgrade' existing granted European patents so as to give them unitary effect. However, once granted the unitary patent automatically takes effect in a number of European countries without the need for further validation. The unitary patent has to be enforced in the UPC.

## Geographic coverage

The coverage of a UP will be the EU member states participating in the UPC Agreement. The initial coverage will include the major patent jurisdictions of UK, France and Germany, and at least 14 others who have ratified.

A UP's coverage will remain only in those states which had ratified at the time of the grant. While it will not be possible to elect for a UP and also, for example, an EP (UK), it will still be possible to have a UP plus, for example EP (ES) or an EP (CH).

The UK's decision to leave the EU may affect unitary patent coverage post-Brexit. At this time, depending on political and legal questions, future unitary patent coverage may exclude the UK with existing unitary patents possibly being converted to EP (UK)'s for the UK territory.

## How do you obtain a UP?

The process will be very simple. Within one month of grant, the patentee must elect for unitary protection and file a translation of the whole patent. This to be into English if the application was prosecuted in French or German, and into another EU language if the application was prosecuted in English.



This map shows the current reach of the new system:

Countries definitely in the system at its start.

Countries likely to join but which have not yet done so.

## The pros and cons

Benefits of unitary protection	Downsides of unitary protection
No validation fee	
Limited translation costs (one translation only)	
Administrative simplicity of a single renewal fee payment	
Lower cost of renewal fees if currently validating in more than four or five countries	Higher cost of renewal fees if currently validating in fewer than four countries
	Inability to prune the UP by abandoning EP national designations and save renewal fees
	Uncertainty as to the future, especially fees in respect of UK protection post-Brexit
Enforcement in multiple countries in one action (in the UPC)	Subject to revocation in one action in multiple countries (in the UPC as well as by EPO opposition)
No complications of dual UPC/national litigation during the transitional period (an issue for 'classical' EPs)	

# How Bristows can help

- Bristows can work with you to help prepare your patent portfolio and litigation strategy in advance of the UPC. We offer tailor-made workshops, seminars and strategy sessions to support your UPC planning.

For more information, contact our UPC experts at [upc@bristows.com](mailto:upc@bristows.com).

- Visit our dedicated UPC site and Twitter account which are packed with information including legislation and documents, latest news, commentary, cases, upcoming events, and Q&A:

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**Unified Patent Court - Bristows**  
The Unified Patent Court (UPC) and unitary patent system represents the most important change ever seen in the European patent landscape. With the Court ready to open within the next 12 months, and this being preceded by a 'testbed period' in which patents may be 'opted out' in advance, businesses must now ensure they are prepared for the new system.  
At Bristows we have been involved closely in the project since its inception, gaining insights from participation in groups advising and lobbying on the issue, and advising clients on latest developments and how to prepare for the new regime. We are therefore ideally placed to assist in reviewing clients' strategies in the coming months.

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