

The UPC

What you need to know

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The UPC system represents the biggest change to the European patent system for 40 years. What are these changes and what do they mean for your business?

There are two elements to the new system:

- a new European patent with unitary effect ('unitary patent') covering most of the EU
- a new Unified Patent Court for litigating unitary patents and existing and future 'classical' European patents (unless these 'classical' patents have been 'opted out') as well as Supplementary Protection Certificates.

Here we list some of the key aspects that you and your business should be aware of in the countdown to the opening of the UPC.

Extent of coverage

The system will cover a significant economic and consumer market, probably eventually 26 countries with a population about the same as the US. This means that every company doing business in the EU needs to understand the impact of the new system on their business.

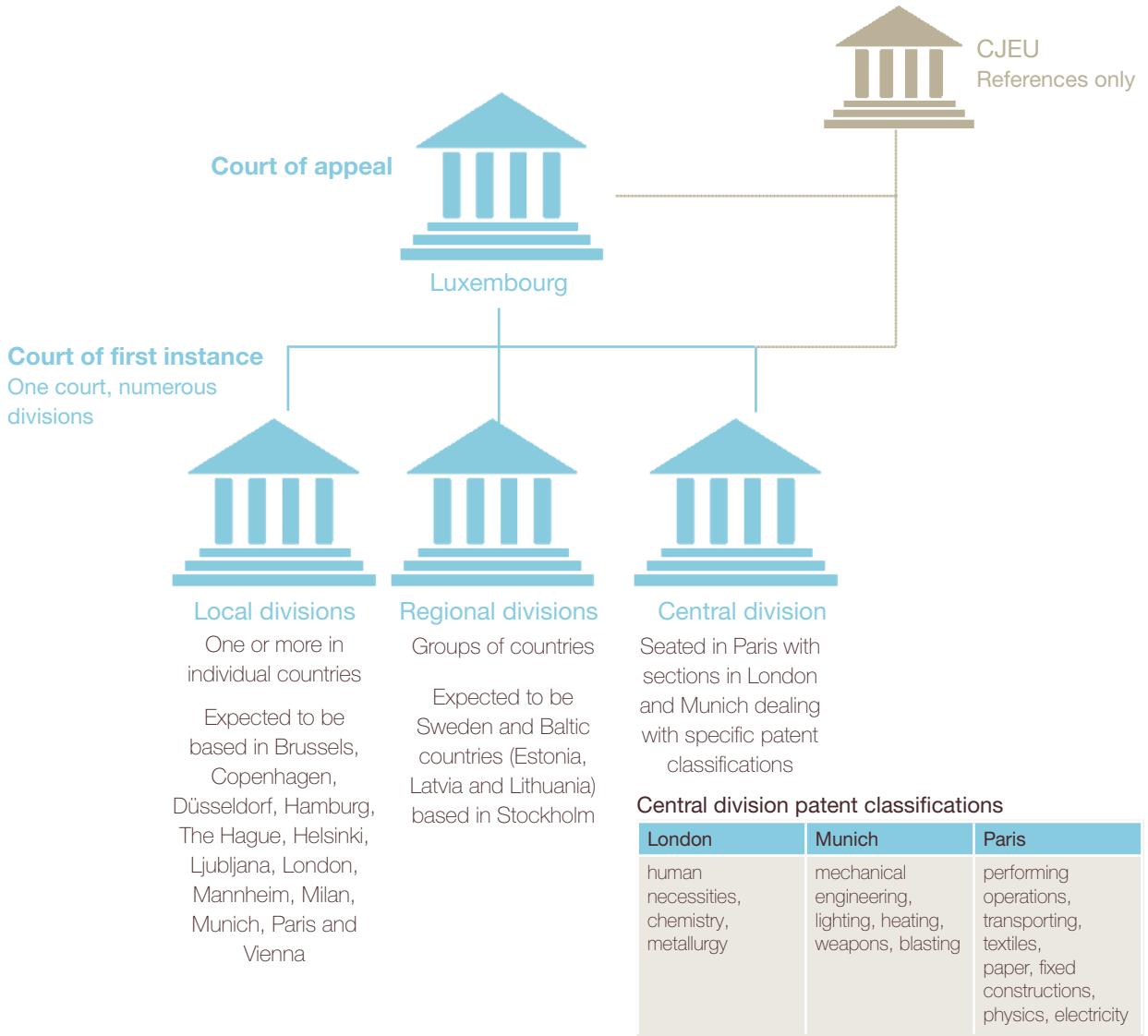
This map shows the current reach of the new system:

 Countries definitely in the system at its start.

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



Court structure



The pros and cons

The upside of the new system is that rights owners have a new choice in how to manage and enforce their patents and SPCs in Europe.

- Unitary patent protection will be cheaper for patentees who routinely validate their European patents over a wide geographic area.
- Central enforcement (whether of unitary patents or non opted out European patents) across a substantial part of the EU will be possible in a relatively quick procedure (12 - 15 months).

On the flip-side, it raises issues that you need to know about and prepare for.

- The significant possibility of being sued in the UPC by competitors and/or non-practising entities - who may find the UPC, with its wide geographical coverage, more attractive than national courts.
- For unitary patents and European patents which have not been opted out of the UPC system, there is the prospect of losing vital patents in central revocation actions.



What if I don't want my patents to be subject to the UPC?

You will need to consider the full benefits and risks of opting your existing European patents and applications out of the UPC, bearing in mind that if you do wish to take this step, it should ideally be done during the 'sunrise period' before the UPC opens for business.

Opting-out can be done at no cost. The 'sunrise period' will start 3-4 months before the UPC system opens to allow this.



What other steps do I take to prepare?

- For your existing European patent applications coming to grant after the system starts, choose which type of patents to elect - 'classical' European (as of present), or a combination of unitary and 'classical' patents.
- Take the UPC and unitary patent option into consideration when you draft any new licence and joint venture or other technology sharing arrangements, and review existing agreements.
- Take into account new budgetary implications, litigation risks and opportunities when deciding upon future patent filing and enforcement or defence strategies.

When should I prepare?

Now! With the sunrise period potentially starting in a matter of months, businesses need urgently to start preparing and re-evaluating their European patenting and litigation strategy.

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.

- 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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The screenshot shows the Bristows UPC website homepage. At the top left is the logo 'BRISTOWS UPC'. A search bar is located at the top right. On the left side, there is a navigation menu with links for Home, Latest news, Preparing for the UPC, Commentary, Legislation and documents, Cases, Q&A, Useful links, Bristows UPC Action, and Expert profiles. Below the menu are language options: 中文 - Chinese, 日本語 - Japanese, and 한국어 - Korean. The main content area features a large blue graphic with the text 'UNIFIED PATENT COURT' and a background of patent symbols. Below this graphic is a section titled 'Unified Patent Court - Bristows' with a paragraph of text. To the right of the graphic, there are sections for 'Latest news' (dated 30 January 2016) and 'Commentary' (dated 25 August 2017). At the bottom of the page, there are three buttons: 'UPC Health Check', 'Unitary patents', and 'To sign out or not?', each with a 'Prepared for the UPC' tag.

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