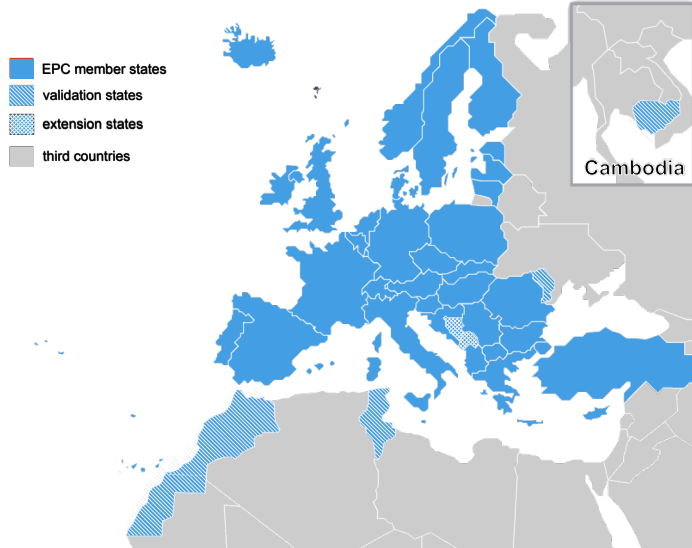


The Future of Patent protection in Europe

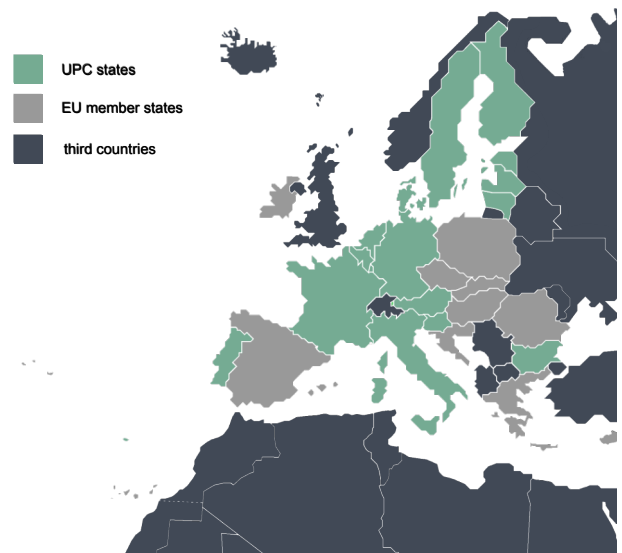
(...as of end 2022)

With providing and acknowledging the legal framework for the Unitary Patent System, i.e. the EU regulations creating a European patent with unitary effect, the so-called Unitary Patent and the agreement establishing the Unified Patent Court, UPC, which will have jurisdiction over Unitary Patents and "classic" European patents, an additional route for patent protection has been opened.

Possible coverage via EPC:



Coverage of the Unitary Patent:



Applicants will then have the choice between National patents, European patents and Unitary patents, the latter two having common examination and grant procedures at the European Patent Office, EPO; after grant a European patent can either be validated resulting in national parts of the patent **and/or** registration as a Unitary Patent can be requested (if certain requirements are met).

Comparison of present and future patent coverage available in Europe:

	European Patent	Unitary patent	National Patents
Participation	38 + 6 countries Individually selectable	17 countries (up to 24) Unitary approach	Individual selection
Territorial adaptation	Possible	Not possible	Possible
Costs (prosecution)	EPO fees		National fees
Costs (renewals)	<ul style="list-style-type: none"> until grant one fee payable to the EPO after grant individual renewal fees per country 	<ul style="list-style-type: none"> until grant one fee payable to the EPO after grant one fee (equivalent to fees for 4 countries, i.e., DE, FR, IT, NL) 	Individual fees
Post-grant proceedings	<ul style="list-style-type: none"> National validations + fees National representatives translations 	<ul style="list-style-type: none"> one request for unitary protection one translation (EN, DE, or FR) 	<ul style="list-style-type: none"> National fee National representation
Litigation	<ul style="list-style-type: none"> National courts (risk of different outcomes); after transition period (7y) also at UPC 	<ul style="list-style-type: none"> Single supranational court (UPC) for enforcement & revocation proceedings; Pan-European injunction 	National Court
Legal framework	<ul style="list-style-type: none"> European Patent Convention (EPC) National Jurisdictions 	<ul style="list-style-type: none"> European Patent Convention (EPC), European patent with unitary effect / UPC agreement 	National Jurisdiction

“The UPC will be a common court of the participating member states with jurisdiction for infringement and revocation actions concerning patents granted by the EPO. This specialised court will make the Europe-wide enforcement of patents easier, offer greater legal certainty and reduce costs resulting from litigation in multiple jurisdictions.”

(<https://www.epo.org/news-events/news/2022/20220208.html>)

However, even in view of this enthusiastic official statement, it is clear that the Unitary Patent may not be the best choice for all applicants / inventions.

Comparison of present and future IP strategies available in Europe:

	Advantages / Disadvantages	Actions:
Unitary Patent	Promising development: <ul style="list-style-type: none"> • Central and complete attack/injunction possible • Suitable for strong patents • Improved legal certainty • Simplified administration • higher cost efficiency per country 	<ul style="list-style-type: none"> • request within 1 month after decision to grant • Delay of decision to grant possible Talk to us
European Patent	Established system for harmonised application procedure (bundle patent): <ul style="list-style-type: none"> • Reach into (in total) more countries • Validity/Enforcement of granted EP dependent on national jurisdiction • After transition period (at least 7 years) UPC will obtain jurisdiction for EP • During transition “Opt-out” possible to avoid jurisdiction of UPC 	<ul style="list-style-type: none"> • Option to opt-out from UPC competence • Review of patent portfolio • Opt-out to be requested on a single case basis by <u>all</u> applicants (PoA required) Talk to us
National Patent	Known risks or necessities <ul style="list-style-type: none"> • Suitable if only few jurisdictions needed • Valuable products for whole European market (to avoid central attacks) • Potentially quicker prosecution than EPO (e.g. IT, BE, FR) 	Talk to us
Combination UP / EP	Combination of Unitary patent & further EPC states to be validated <ul style="list-style-type: none"> • Reach into all countries • Cost effective approach 	Talk to us
Combination UP / EP or NP	Unitary patent & EP Divisional (validated) or National Patent for separate states of exceptional importance (no exclusion of double protection)	Talk to us

The Unitary Patent package is not a substitute for national patents nor for the classical European patent, but an additional option for protecting of technical innovations in Europe and should be considered in your IP management strategy.

As some of the effects of the Unitary Patent package become effective automatically, i.e., when no action is taken by the applicant, you should review your current portfolio and take the necessary steps.

In case you need any help, please reach out : office@fleuchaus.com



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