

The Unified Patent Court

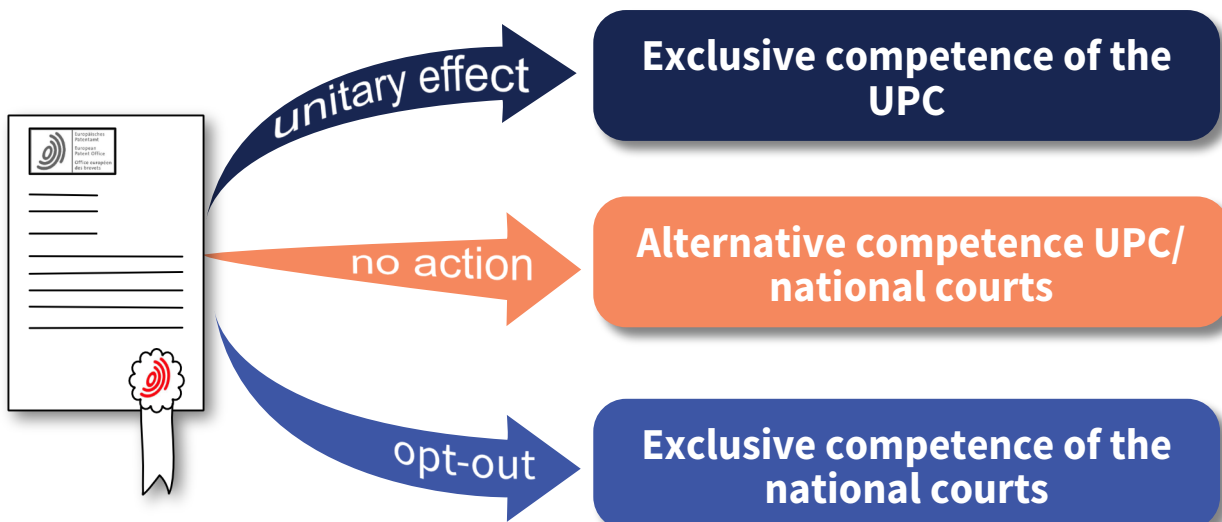
Its competence and the decision to opt-out

The Unified Patent Court (UPC) will be the common court of the Contracting Member States for future European Patents and Unitary Patents and thus a central part of all those States' judicial systems.

In the future, the UPC will have exclusive competence in the Contracting Member States in respect of European Patents and Unitary Patents; the UPC will have no jurisdiction over national patents, patents in non-EU Member States (e.g. the UK, Switzerland and Turkey) and EPs validated in non-participating EU states (Spain, Poland and Croatia).

However, the exclusive competence for European Patents will be subject to exceptions during a transitional period. During this period, an action for infringement or for revocation of a European Patent may still be brought before national courts (so called "alternative competence").

Under the new system, for all patents granted by the European Patent Office (EPO), one may request unitary effect (for the Contracting Member States) or "traditional" national validations. For the latter, one has further to decide which court will become competence, which also applies to "old" validations.



Exclusive competence of the UPC

During the transitional period, the only option that guarantees the exclusive competence of the UPC is a request for unitary effect after grant. This obviously is **not possible for existing validated patents**, i.e. those patents granted prior to the onset of the UPC.

Alternative competence

If NO ACTION is taken, one should be aware that the UPC will gain competence for all your existing European Patents. During the transitional period, the competence will depend on the court with which the complaint is filed, i.e., the **plaintiff** decides whether an action is brought before a national court or the UPC.

Therefore, if the **status quo** with national jurisdiction retained is preferred, an **opt-out** request should be filed.

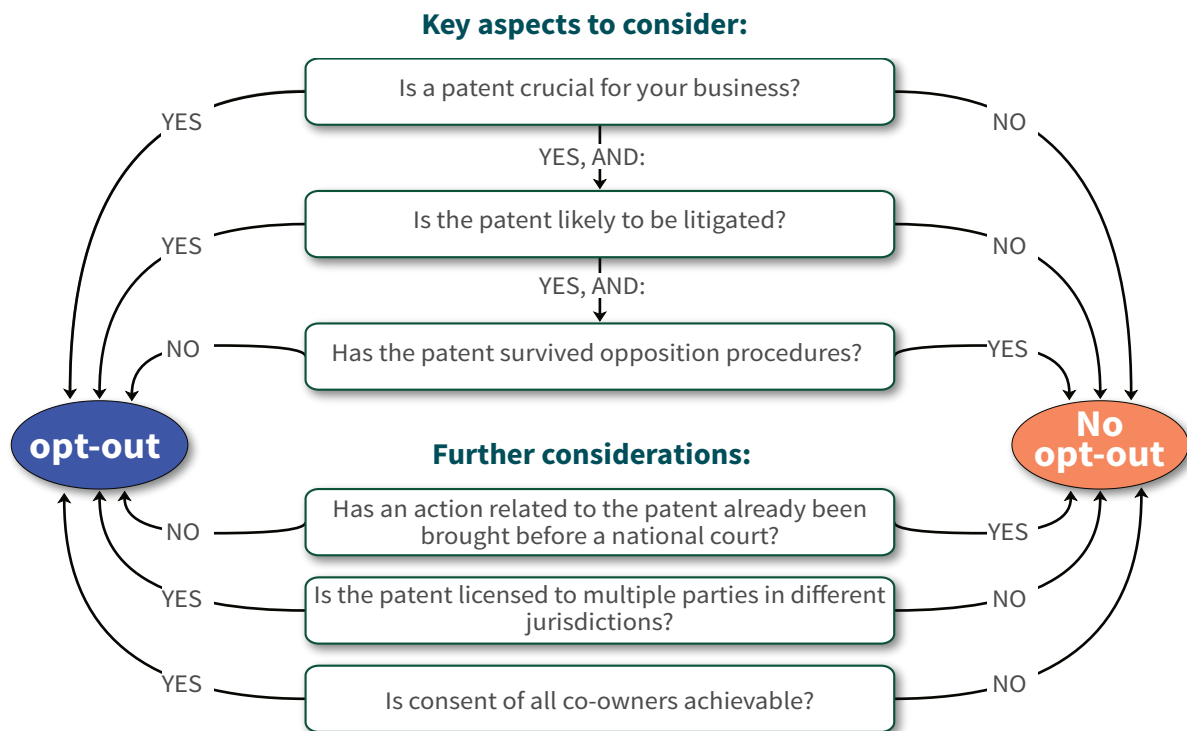
Exclusive competence of the national courts - option to opt-out

If a patentee does not yet want to make use of central infringement actions and/or wants to make sure that revocations related to own patents cannot be brought before the UPC, a request for "opt out" from the exclusive competence of the UPC can be filed; such a request can be withdrawn, unless an action related to the respective patent has already been brought before a national court.

Reasons for choosing the competence of the UPC or the national courts - for future and existing European Patents:

| | no opt-out (competence UPC / national courts, later UPC only) | opt-out (exclusive competence of the national courts) |
|--------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| pros: | <ul style="list-style-type: none"> Central and complete attack/injunction possible Potentially cheaper than litigation in various jurisdictions Double protection with DE patent possible Possibility to contribute to the development of the UPC Flexibility regarding the choice of the courts | <ul style="list-style-type: none"> Known case law of national courts No central revocation by the UPC |
| cons: | <ul style="list-style-type: none"> Alternative competence (proceedings may be started in the UPC or in national courts) Risk of central revocation No experiences with the new system (yet) Plaintiff chooses the court | <ul style="list-style-type: none"> Opt-out withdrawal only possible if no action has been brought before a national court Administrative burden <ul style="list-style-type: none"> - Active request - Consent of all co-owners required |

Examples of a decision-making process:



If you wish assistance in your decision-making process and /or you are concerned about the administrative burden of the opt-out process → Talk to us!

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