

EU's ground-breaking Unified Patent Court



The EU's eagerly awaited and long overdue Unified Patent Court (UPC) is opening on 1st June 2023. The UPC is a new single court which is responsible for infringement and revocation actions concerning European patents. The opening of the UPC also coincides with the introduction of a new "unitary patent", initially covering 17 of the participating EU Member States, with the option of covering more in the future.

Notwithstanding Brexit and the UK's withdrawal from the UPC, UK-based European patent attorneys, such as those at Schlich, will have the right to represent clients before the UPC. Therefore, it remains possible for clients to use a UK-based legal team for UPC infringement and revocation actions. Schlich and PDT have joined forces to provide clients with a strong choice of representation before the UPC, drawing on Schlich's impressive expertise in substantive patent law and extensive experience handling contentious matters before the European Patent Office, and PDT's wealth of experience handling litigation in the UK and a growing number of European jurisdictions.

What is the current situation, and why is it changing on 1st June?

Traditionally, European patents granted centrally by the European Patent Office are maintained as separate national patents in the European countries of commercial interest to their owners. The national courts of those countries are then responsible for infringement and revocation actions concerning that patent as it applies to their territory. This system has many advantages, but it can be costly to pursue legal steps in multiple countries. Furthermore, this system risks different conclusions being reached by different national courts with a European patent being held to be valid and enforceable in some European countries, but invalid and susceptible to revocation in others.



What is the EU's new Unified Patent Court? And what does this mean for you?

The UPC will act as a single court responsible for infringement and revocation actions concerning European patents across all of the participating EU Member States.

It will also have exclusive responsibility for the new “unitary patent” (also known as a “European patent validated with unitary effect”). This is a single patent which covers the participating EU Member States and provides an alternative to having the European patent treated as separate, national patents in each of these countries.

Proprietors of European patents wanting to enforce their rights in the EU will, in the very near future, be able to start a single action at the UPC, with the decision of that court being uniformly applied across all of the participating EU Member States. Equally, third parties believing a European patent is invalid will be able to apply to the UPC to revoke that patent across all of the participating EU Member States in a single action.

The landmark introduction of the UPC and the unitary patent therefore aims to speed up and simplify the patent validation process, reduce costs, and provide consistent infringement and revocation decisions across the participating EU Member States.

Alex Bajjon, Director of Schlich, had this to say: “Due to its unique nature, the long-awaited opening of the UPC is a momentous occasion in the world of IP and we are thrilled to be working with PDT Solicitors (now Cripps) to make use of this new court. As patent proceedings in the UK will need to be brought separately to the UPC, parties who choose to use UK representatives, such as the team of PDT Solicitors and Schlich, benefit from a concerted and coordinated approach between litigation in the UK and the UPC”.

Justin McConville, a senior associate in PDT's Dispute Resolution and Litigation team, added: “An EU-wide harmonized patent right has been in the pipeline for decades and it's truly exciting to join forces with Schlich on the cusp of its fruition and beyond. Whilst the UK is no longer to play a part, we are looking forward to complementing the tremendous patent work of Schlich with our expertise in resolving disputes through the courts.”

How we can help

If you would like more information regarding the UPC and how it might impact upon your European patent rights, then please contact Alex, David or Sean at Schlich to discuss your needs and objectives.

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