

EIP



What are the options if you want to avoid the UPC?

During the transitional period, it is possible to opt classical (i.e. non-unitary) European patents and applications out of the competence of the UPC (provided that no action has commenced at the UPC in respect of that patent). The opt out lasts for the lifetime of the patent. After the transitional period, European patents granted for member states participating in the UPC (both unitary and non_opted_out classical) will fall within the competence of the UPC. The only way to avoid the UPC for applications filed after the transitional period ends will be to avoid using the European Patent Office altogether, which can be achieved through filing patent applications at national patent offices. (This route is of course also available during the transitional period.) Finally, for non_opted_out patents during the transitional period, the UPC and national courts share competence, so it is possible to commence an action at a national court during this period. It will then generally not be possible to re_litigate the same matter (i.e. sue the same party for similar infringements of the same patent in the same territory) in the UPC or in the same national court. However, if the same patent is litigated against a different defendant, then both national and UPC options would be available as originally.