

EIP



What are the options if you want to be able to use the UPC?

All Unitary patents fall within the competence of the Unified Patent Court (UPC). Additionally, classical validations of European Patents in States which have ratified the UPC agreement are within the competence of the UPC (unless opted out).

Can I obtain a Unitary Patent now?

Yes – this can be done as part of the grant procedures at the EPO. It is similar to the existing validation procedures, except it is performed at the EPO and the timescale is quite fast: the request for a Unitary Patent must be filed no later than one month after the date of publication of the mention of the grant in the European Patent Bulletin, and a translation must be supplied.

Your usual EIP contact can advise on this if of interest.

What about other validated EP patents?

During the transitional period, national courts and the UPC share competence in respect of classical validations of European patents (that are not opted out) in the member states participating in the UPC.

If use of the UPC is important, there is merit in being the party to initiate litigation so that you choose the forum. If an action is brought in a national court, it may no longer be possible to use the UPC for an action involving the same parties in respect of that patent. This is expected to be a complex area of law due to different relevant regulations, and EIP Latest are able to advise on the appropriate strategy for your situation.

What if an EP patent has been opted_out?

It is possible to withdraw the opt_out, provided that no national litigation has taken place. This would then allow the use of the UPC in respect of that patent. An opt_out can only be done once, so if a patent is opted out and then that opt_out is withdrawn, the patent cannot be opted out again.