

THE UNITARY PATENT AN INTRODUCTION TO THE NEW SYSTEM

SEMINAR WITH THE CELANDIC INTELLECTUAL PROPERTY OFFICE

DR. PIERRE TREICHEL | EUROPEAN AND INTERNATIONAL LEGAL AFFAIRS | 23 MAY 2023

FROM COMMUNITY PATENT TO UNITARY PATENT

1959

- Commission initiates negotiations between the MS on the creation of an **EEC patent** and a common patent court

1973

- Signature of the **EPC**



1975

- Signature of the Community Patent Convention (**CPC**) combined with a resolution to conclude a litigation protocol

1985

- Following the failure of the ratification of the **CPC** in DK and IE a second diplomatic conference in Luxembourg fails

1989

- Third diplomatic conference in Luxembourg: signature of the second **CPC** - ratification subsequently fails in a number of MS

1999

- The **Paris Intergovernmental Conference** mandates an EPO Working Party on Litigation (**WPL**) to produce an optional protocol to the EPC on a European Patent Litigation System

2000

- The **London Intergovernmental Conference** establishes a subgroup of MS interested in joining a European Patent Litigation Agreement (**EPLA**) – subsequently drawn up

2000

- Commission presents a proposal for a Community Patent Regulation (**CPR**) – system proposes accession of EU to the EPC

2011

- EU Council adopts the decision authorising **enhanced cooperation** among 25 participating MS

2013

- The two **EU Regulations** on the Unitary Patent enter into force
- **UPC Agreement** signed on 19 February 2013

THE UNITARY PATENT SYSTEM WILL START ON 1 JUNE 2023!

19 Jan 2022



Start of UPCA provisional application phase

Austria ratified UPC Protocol on Provisional Application (18.01.2022)

1 Jan 2023



EPO transitional measures

- Early requests for unitary effect
- Requests for delay of grant

17 Feb 2023



Ratification of UPCA by Germany

Launch of the countdown as set under Art. 89 UPCA

1 Mar 2023



Start of UPC sunrise period

- Opt-outs
- Register as representative

1 Jun 2023



Simultaneous start of

- **Unitary Patent**
- **Unified Patent Court**

UPCA provisional application phase

BASIC PRINCIPLES OF THE UNITARY PATENT PACKAGE



Cost-effective option for broader patent protection and dispute settlement across Europe

- Based on a European patent, granted by the EPO under the EPC
- Broader uniform protection in up to 25 EU member states, upon the request of the patent holder
- An additional alternative for patent holders, alongside the existing European and national patent systems
- One centralised procedure at the EPO
- One uniform litigation system (Unified Patent Court) providing greater legal certainty at reduced cost

COST EFFICIENCY THANKS TO SIMPLIFICATION

Classic European patent

Multiple national post-grant administration procedures

National patent offices

- Translation requirements
- National validation fees
- Procedures
- Renewal fees
- Currencies



Costs for local attorneys

Unitary Patent

The EPO acts as a one-stop-shop for all post-grant administration

One office

- Simplified translation regime
- No fee for obtaining a Unitary Patent
- One procedure
- One set of renewal fees
- One currency (€)
- One Register

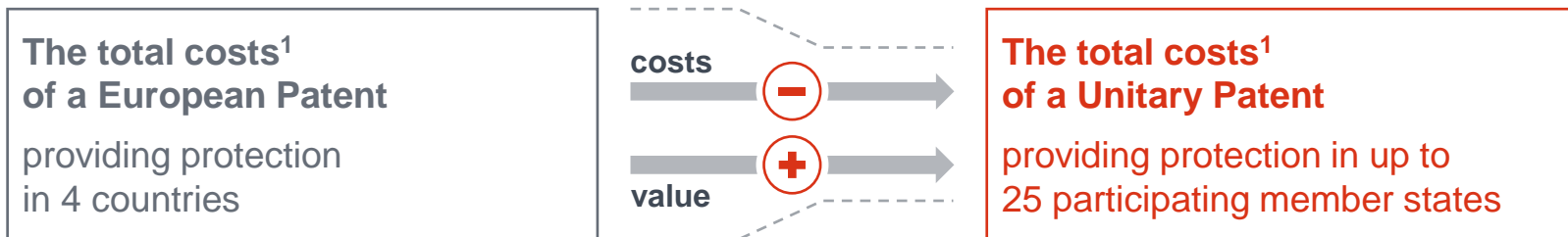


Your European patent attorney



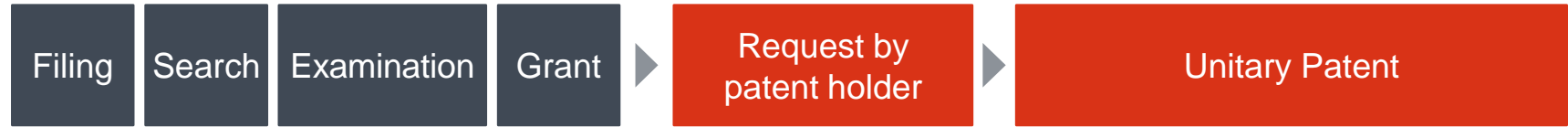
REDUCED COSTS

- No fees are charged by the EPO for the request for a Unitary Patent
- Attractive fee level, with renewal fees for maintaining a Unitary Patent for ten years – the current average lifetime of a European patent – amounting to less than EUR 5 000
- Compensation scheme for SMEs and 15% renewal fee reduction for licence of right
- A comparison of fees and all associated costs shows that a Unitary Patent will be significantly less expensive on average than a European patent validated and maintained in four countries



¹ Direct costs of the renewal fees + associated indirect costs arising from validating and maintaining a European patent in all countries.

A SIMPLE ONE-STEP PROCEDURE AFTER GRANT



! Based on a European patent, granted by the EPO under the EPC

! Same application and examination procedure

! High-quality product and service

! Registered in one single step at the EPO

! Uniform protection in up to 25 Member States

! No need for multiple parallel national validations (administrative procedures, fees, translations)

! EPO acts as one-stop shop for all subsequent transactions

HOW TO OBTAIN A UNITARY PATENT (1/2)

Substantive requirements

Unitary effect can be requested for European patents that were granted

- in respect of all 25 participating Member States and
- with the same set of claims for all of them.

Main procedural requirements

- Filing of the request by the patent owner in writing, including via online means, in the language of the proceedings and no later than one month after the mention of the grant is published.
- Translations only during a transitional period

HOW TO OBTAIN A UNITARY PATENT (2/2)

EXAMINATION OF THE REQUEST FOR UNITARY EFFECT

All requirements met

- ▶ ■ Registration of unitary effect
 - ▶ ■ Communication of date of registration to the requester
-

Substantive requirements not met

- ▶ ■ Rejection of the request
-

Request filed after expiry of one-month period

- ▶ ■ Rejection of the request
 - ▶ ■ If substantive requirements met, possibility to request re-establishment of rights within two months of expiry of the one-month period for filing the request
-

Request filed in due time, substantive requirements met but formal ones not met

- ▶ ■ EPO invites requester to correct deficiencies within non-extendable period of one month

CERTIFICATE FOR UNITARY PATENT HOLDER

The holder of a Unitary Patent will be issued
a certificate as shown on the right.



Einheitspatent | Unitary Patent | Brevet unitaire

Hiermit wird bescheinigt, dass die einheitliche Wirkung für das nachstehende europäische Patent im Register für den einheitlichen Patentschutz eingetragen wurde.

It is hereby certified that unitary effect has been registered in the Register for unitary patent protection for the European patent indicated below.

Il est certifié que l'effet unitaire a été inscrit au Registre de la protection unitaire conférée par un brevet pour le brevet européen ci-dessous.

Europäisches Patent No.
European patent No.
Brevet européen n°

XXXXXXX

Territorialer Geltungsbereich
Territorial scope
Champ d'application territorial

AT, BE, BG, DE, DK, EE, FI, FR, IT,
LT, LU, LV, MT, NL, PT, SE, SI

Register-Entragung
Date of registration
Date d'inscription

DD.MM.2023

Tage des Eintritts der Wirkung
Date of effect
Date de prise d'effet

DD.MM.2023

Patenthaber | Proprietor of the patent | Titulaires du brevet

AI Innovations Limited
Broadwalk Industrial Estate
London
WC4A 4XZ/GB

Antonio Campino
Antonio Campino
Präsident des Europäischen Patentamts | President of the European Patent Office | Président de l'Office européen des brevets
München, den | Munich, | Munich, le DD.MM.2023

URKUNDE | CERTIFICATE | CERTIFICAT



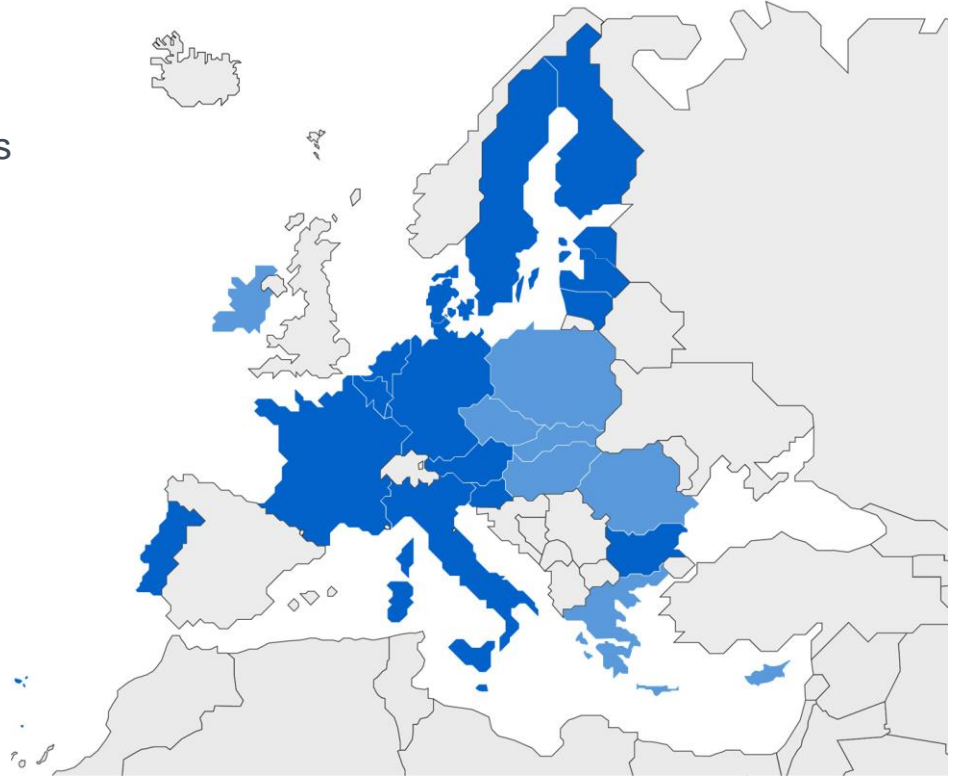
EPN/EPPO/GB 70506 10/22

UNITARY PATENT: TERRITORIAL SCOPE

Unitary effect is possible for all Member States participating in enhanced cooperation and for which the UPCA has entered into force at the date of registration of unitary effect

Expected 17 states: AT, BE, BG, DE, DK, EE, FI, FR, IT, LT, LV, LU, MT, NL, PT, SE, SI (UPCA not ratified: CY, CZ, GR, HU, IE, RO, SK; UPCA not signed: PL)

- Different generations of Unitary Patents with different territorial coverage in the initial years
- No extension of the territorial coverage to other participating Member States which ratify the UPCA after the registration of unitary effect
- Territorial coverage will be indicated in the Register for unitary patent protection



UNITARY PATENT TRANSITIONAL MEASURES

The EPO has provided [two transitional measures](#) to support users in an early uptake of the Unitary Patent which are available since 1 January 2023:

Early request for unitary effect

Allows applicants to file requests for unitary effect already before the start of the Unitary Patent system.

Request for a delay in issuing the decision to grant

Offers the possibility to request a delay in issuing the decision to grant a European patent, so that users do not miss the opportunity to obtain a Unitary Patent.

- Uptake of measures is excellent: more than 6000 requests filed in total
- EPO is ready to deal with the potentially numerous requests for those files where a delay of grant was requested during the transitional period

UNITARY PATENT TRANSITIONAL MEASURES

- The two transitional measures are available **since [1 January 2023](#)**
 - This date is independent from the start of the UPC sunrise period (1 March 2023) and the UPCA entry into force (1 June 2023), see [UPC press release](#)
- Transitional measures will end once the Unitary Patent system starts i.e. will be available until 31 May 2023
- Further information:
 - **Decision of the President** of the EPO dated 11 November 2022 on the possibility of requesting a delay in issuing the decision to grant a European patent in response to a communication under Rule 71(3) EPC (OJ EPO 2022, A102)
 - Accompanying **EPO Notice** dated 11 November 2022 (OJ EPO 2022, 104)
 - **EPO Notice** dated 11 November 2022 on the possibility to file early requests for unitary effect (OJ 2022, A105)
- Very detailed explanations of the system including some examples at [dedicated EPO webpage](#)

“EARLY” REQUESTS FOR UNITARY EFFECT AS OF 1 JUNE 2023

- Requests for unitary effect must be filed with the EPO no later than one month after publication of the mention of the grant of the European patent in the European Patent Bulletin.
- To give users more flexibility, the EPO will offer the option of filing requests for unitary effect at an early stage, namely **once the decision to grant the European patent has been issued (EPO Form 2006A)**.
- Requests for unitary effect filed early
 - will not be processed by the EPO before the date of the publication of the mention of the grant of the European patent in the European Patent Bulletin and
 - will appear in the Unitary Patent Register only as of that date.

FILING A REQUEST FOR UNITARY EFFECT

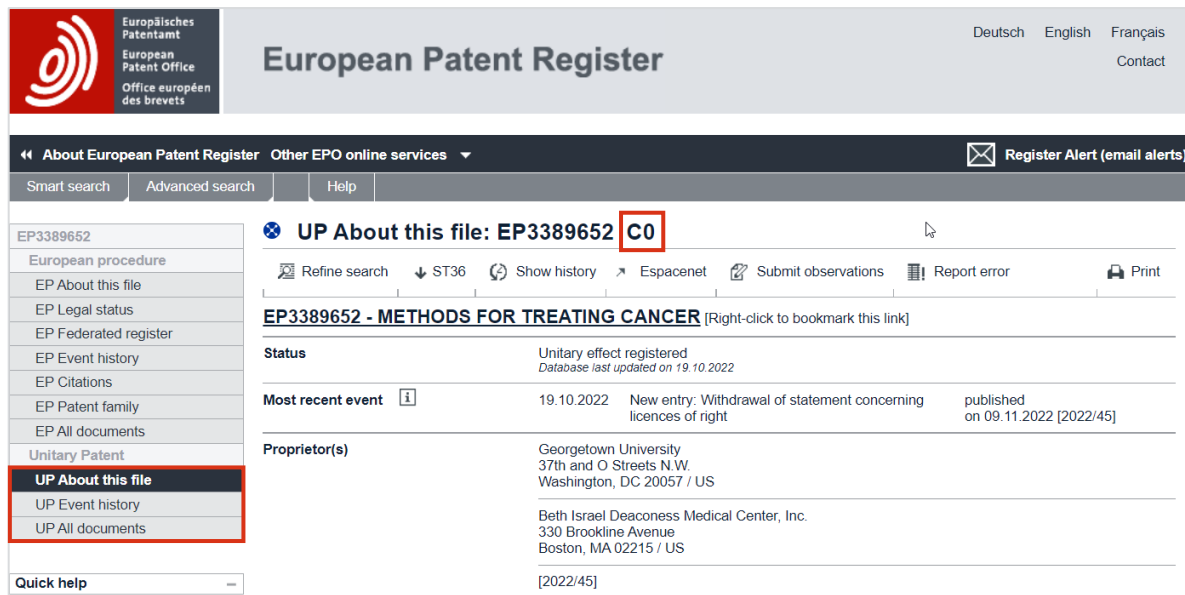
- The request for unitary effect (Form 7000) should preferably be filed online
- The EPO offers three ways to file (trilingual) Form 7000 online:
 - Online Filing
 - Online Filing 2.0
 - Web-Form Filing
- Advisable to carefully read [explanatory notes](#), see also the [FAQ](#) and the Unitary Patent Guide
- In Online Filing and Online Filing 2.0, Form 7000 is integrated, enabling the entry of the information required for the request for unitary effect via several tabs.
- With Web-Form Filing, you can upload an already filled-out PDF version of Form 7000
- The request for unitary effect and any subsequently filed related documents should **not** be filed as an attachment to Form 1038

TOP-UP SEARCH FOR EARLIER NATIONAL RIGHTS

- **Search** always included earlier national rights (besides the conflicting European applications under Articles 54(3) and 153(5) EPC) (GL, B-VI, 4.2): earlier national rights to be cited in search report for information
- Top-up **at grant stage** was now [extended to earlier national rights from all EPC member states](#) since 01.09.2022
 - Earlier national rights which are *prima facie* relevant for the application are communicated to the applicant in the communication under Rule 71(3) EPC (intention to grant); if there are none, this is also communicated
 - Assists applicants in deciding whether to file separate claims under Rule 138 EPC
 - Service not provided by EPC: extra quality measure provided by EPO free of charge
 - Non-binding information: applicants responsible to make in-depth assessments of earlier national rights/need to file separate sets of claims
- Internal instructions issued on expanded top-up search; revised Guidelines mention it (C-IV, 7.2).
- New top-up search functionality in Ansera dedicated to earlier national rights will improve systematic top-up searches.

UNITARY PATENT REGISTER

New [UP Register](#) will be integral part of the European Patent Register



The screenshot shows the EPO website header with the logo and name in German, English, and French. Below the header is a navigation bar with 'About European Patent Register', 'Other EPO online services', and a 'Register Alert' button. A search bar contains 'EP3389652'. The main content area displays the title 'UP About this file: EP3389652 C0' with a red box around 'C0'. Below the title are search tools and a list of actions: 'Refine search', 'ST36', 'Show history', 'Espacenet', 'Submit observations', 'Report error', and 'Print'. The title is followed by 'EP3389652 - METHODS FOR TREATING CANCER'. The 'Status' section indicates 'Unitary effect registered' with a database update date of 19.10.2022. The 'Most recent event' section shows a withdrawal of statement concerning licenses of right on 19.10.2022 and a publication on 09.11.2022. The 'Proprietor(s)' section lists Georgetown University and Beth Israel Deaconess Medical Center, Inc. A sidebar on the left contains a menu with 'UP About this file' highlighted in red.

**UP chapter displayed
when European patent
granted and unitary effect
requested**

UNITARY PATENT REGISTER

- Same basic structure and functionality as the European Patent Register
- Contains all the entries that are expressly but not exhaustively listed in Regulation (EU) No 1257/2012, in particular the fact that unitary effect has been registered/date of registration
- Additional procedural information (Rule 16(1) UPR) such as:
 - date of filing of the request for unitary effect
 - the participating Member States in which the Unitary Patent has effect
 - date of filing/withdrawal of a statement on licences of rights
 - data as to the payment of renewal fees for Unitary Patents
 - information on decisions on the validity of Unitary Patents taken by the UPC.
 - Full list of legal events available on [EPO website](#).

MATERIALS ON THE EPO WEBSITE

EPO Website: [Unitary Patent section](#)

- [Transitional Measures](#)
- [Forms](#) (Form 7000 etc. with explanatory notes)
- [FAQs](#)
- Direct link to training materials and future training offers: [e-learning centre](#)
 - Introductory brochures
 - Unitary Patent Package – recorded online seminar
 - The Unitary Patent in EPO data tools (short videos)
 - Unitary Patent IT Workshops
 - Patent Data User Days
- [Unitary Patent information in patent knowledge](#)

UNITARY PATENT INFORMATION IN PATENT KNOWLEDGE

Home
Searching for patents
Applying for a patent
Law & practice
News & events

Home > Searching for patents > Helpful resources > Unitary Patent information in patent knowledge

First time here?

Asian patent information

Events, training and publications

Patent information centres

Information on EPO data

Patent Translate

Can't find a product?

Patent Knowledge News

Business and statistics

Unitary Patent information in patent knowledge

Unitary Patent information in patent knowledge

The introduction of the [Unitary Patent \(UP\)](#) and the [Unified Patent Court \(UPC\)](#) will create new data, for example, around the legal status of European patents. The data relating to unitary effect will be curated and reported in the EPO's many patent information tools and services, providing users with an additional layer of patent information. To help users recognise UP-related information in patent knowledge products, a new marker - "CO*" - will signal those patents for which unitary effect has been registered. Some products, such as the European Patent Register, Espacenet, etc., will also display a blue icon (📘) to indicate that unitary effect has been requested or registered for a given patent application.

Overview of UP-related information in patent knowledge

The table below provides an overview of the most prominent UP-related information in selected EPO patent information data, tools and services:

Product with information on unitary effect	CO marker displayed	Search for registered UP	Access to UP Register	Access to UP file inspection	Access to UPC and opt-out information	Legal events
DOCDB in XML	yes	no	no	no	no	no
Espacenet	yes	yes	yes ^[1]	no	yes ^[2]	yes ^[2]
EP bibliographic data (EBD)	yes	yes	no	no	no	yes
European Patent Bulletin	yes	yes	no	no	no	no
EP Bulletin Search	no	yes	yes	yes ^[1]	yes	yes
EP full-text data ^[3]	no	no	no	no	no	no
EP full-text search	no	no	yes ^[4]	yes ^[4]	no	yes ^[2]


- New Unitary Patent information published on patent knowledge web page
- Central entry point for UP-related information in the EPO's data, tools and services
- Short URL:
epo.org/up-in-patent-knowledge



EUROPEAN PATENT REGISTER – SHORT EXPLANATORY VIDEO

Patent Knowledge Nuggets

European Patent Register - Searching for Unitary Patents and the results list



6:26

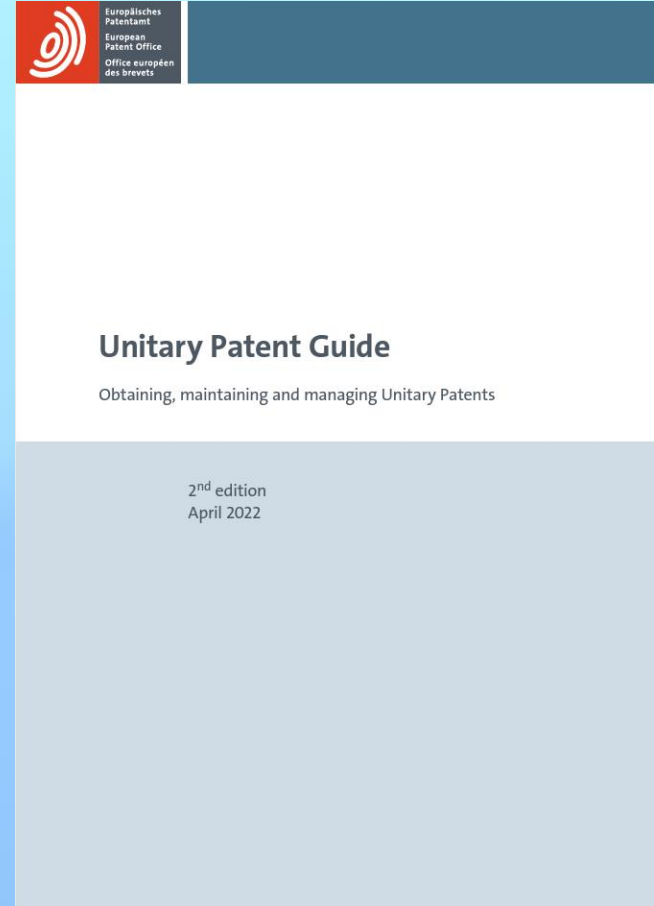
European Patent Register – Searching for Unitary Patents and the results list

European Patent Office • 2270 Aufrufe • vor 4 Monaten

https://www.youtube.com/watch?v=sijpngx1zVs&list=PLgDIswd0__eJqswYSYYLlkaSWishs7M&index=5

UNITARY PATENT GUIDE

- Provides companies, inventors and their representatives with an outline of the procedure involved in obtaining a Unitary Patent.
- Deals with the accessory procedures relating to Unitary Patents (e.g. compensation scheme for translation costs, registering a statement on licences of right) and gives an overview of the rules on paying renewal fees for Unitary Patents.
- Available at: epo.org/law-practice/unitary/unitary-patent/unitary-patent-guide.html
- HTML-version regularly updated



NATIONAL MEASURES RELATING TO THE UNITARY PATENT

- New HTML and PDF booklet "[National measures relating the Unitary Patent](#)" provides concise overview of the most important national measures in the participating Member States having ratified the UPCA.
- Modelled on the EPO's successful online publication "National law relating to the EPC", allowing the relevant information to be easily retrieved country by country.
- Contains five chapters: General, Safety Net, Simultaneous protection, Territorial field of application: overseas territories, and areas, Any other important aspect

National measures relating to the Unitary Patent

Overview of the most important national measures in the participating Member States having ratified the Agreement on a Unified Patent Court

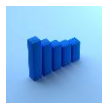
1st edition | September 2022



GREATER LEGAL CERTAINTY WITH THE UNIFIED PATENT COURT



Establishes an effective forum for enforcing or challenging patents in Europe



Leads to a decrease in parallel national court proceedings



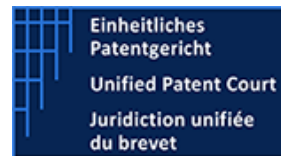
Enhances legal certainty through harmonised case law on patent infringement and validity



Provides simpler, quicker and more efficient judicial procedures



Applies uniform substantive patent law on the scope of the rights conferred and their limits, as well as standard remedies in cases of infringement



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