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# Kluwer Patent Blog

## A new European patent landscape (5): just two more days!

Kluwer Patent blogger · Monday, February 27th, 2023

**In June 2023 the European patent landscape will see one of the most dramatic changes in decades with the introduction of the Unitary Patent (UP) and the opening of Unified Patent Court (UPC). In a short series this blog will go through the main characteristics of the system and decisions that need to be made to get ready and to protect inventions, both new and existing.**

**The 5<sup>th</sup> and last part: just two more days!**

Since [this report on the Kluwer Patent Blog](#), with the ever optimistic Kevin Mooney – who was involved in laying down the UPC's Rules of Procedure – saying the court could probably open its doors in January 2016, many, many predicted dates for the start of the UPC's operations have passed. But finally the moment has come! Just two more days and the sunrise period of the Unified Patent Court will start. And three months after that, on 1 June 2023, the court will open for cases and at the same moment the Unitary Patent will see the light of day.

Since January 2023, [transitional measures](#) for European patent applications have already entered into force at the EPO. Applicants can file early requests for unitary effect. Or they can request to delay the grant of a European patent in the final phase of the procedure. In this way it can be avoided that applicants miss the opportunity to obtain a Unitary Patent in the transitional phase. [According to the EPO](#), more than 2200 requests for unitary effect and/or for delay of grant have been filed since the start of the year.

Most attention in the upcoming weeks will undoubtedly go to the Unified Patent Court and more particularly the sunrise period. European patents will probably be opted out massively, and it would be a boost for the trust in the new UP system if this goes smoothly. Over the last half year there has been quite some trouble to get the IT system up and running, particularly the strong authentication required to access the Case Management System.

The upcoming changes in Europe's patent system have led to a flurry of activity. Law firms and their clients have prepared with new litigation cooperation, booklets, trainings, lectures inside and outside Europe, webinars, discussion tables and mock proceedings for the new era.

Important choices are currently being made, agreements checked. Patent proprietors who prefer to keep things as they are for the moment, need to realize that future and existing European patents fall under the jurisdiction of the UPC unless they are opted out. So action is required.

And many other issues need attention: Are there licensing agreements which need to be changed?

In case of co-ownership of a patent, are amendments necessary in view of the national law that will be applicable?

Many experts think that the Unitary Patent will need time to find its niche but the Unified Patent Court may conquer ground faster.

The Unitary Patent has many advantages. It provides widespread protection, in currently 17 EU member states, for a relatively low fee. No translations are necessary after the transitional phase. The EPO collects the renewal fees, there is one central register and litigation at the UPC. This central litigation however has an important downside as well: the risk of revocation across multiple countries all in one go. And the court is expensive in comparison to many national courts.

A traditional European patent can be preferable if protection is sought in a relatively low number of states. As many proprietors will seek protection not only in UP member states, but also in the UK for instance and possibly other non-UP-states, the option of a Unitary Patent is less attractive for them. Moreover, an advantage of the traditional European patent (or national patents) is that coverage and costs can easily be reduced over time by letting it lapse in some countries. The UP is all or nothing.

Other reasons to stay away from UP and UPC are legal uncertainties inherent to an untested system. There is no UPC case law yet, and the whole system itself may be challenged in court, for instance because of the way changes due to the Brexit were implemented.

Decades of endeavours to create a new patent system have ended, a new phase is starting. It will be very exciting to see what effect the Unitary Patent system will have on the European patent landscape.

*Earlier episodes in this series: [The bumpy road to the Unitary Patent system](#), [Scope of the Unitary Patent system](#), [Languages and costs of the Unitary Patent](#), [the Unified Patent Court](#).*

*Download our [White Paper: Preparing for the Unitary Patent](#).*

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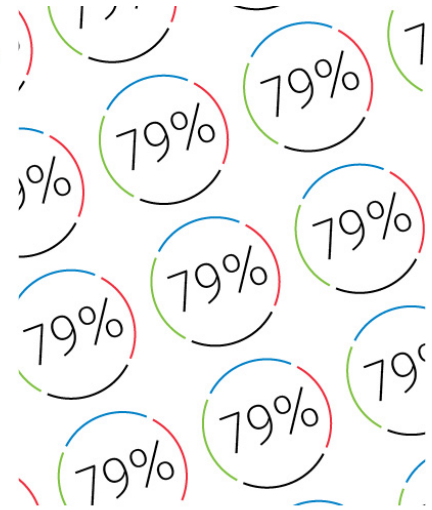
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