

# Kluwer Patent Blog

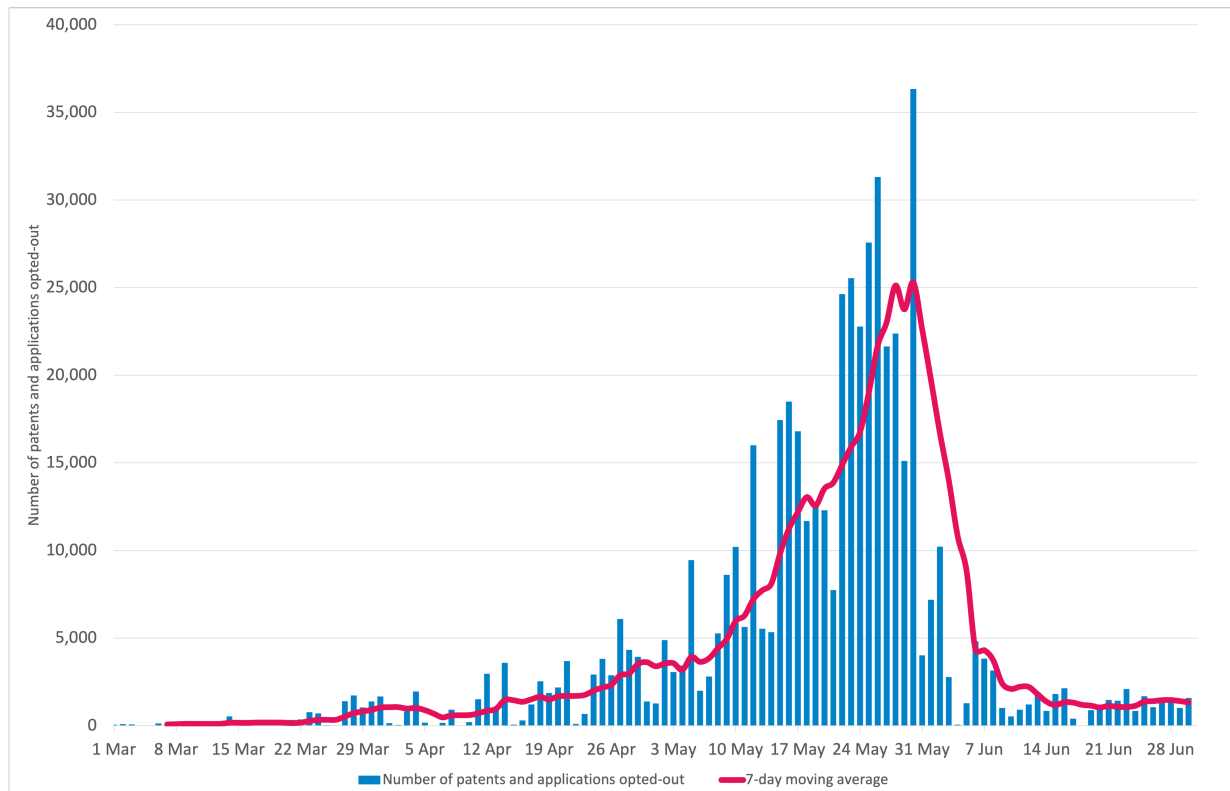
## UPC opt-outs: statistics and trends one month in

Laurence Lai (Simmons & Simmons LLP) · Sunday, July 2nd, 2023

As of the end of June 2023, **535,152** patents and applications have been opted-out of the jurisdiction of the Unified Patent Court. The effective number of opt-outs is already being reduced by subsequent withdrawals and removals. To date, **54** withdrawals and **220** removals of opt-outs have been requested. There have also been **52** automatic withdrawals due to requests for unitary effect of opted-out patents.

The rate of opt-out filings dramatically but unsurprisingly increased in the closing weeks of the sunrise period reaching a peak of just over **36,336** patents and applications opted-out on 30 May 2023, the day before the UPC's Case Management System was taken offline for entry into force upgrades.

### Number of opted-out patents and applications per day since the start of the sunrise period

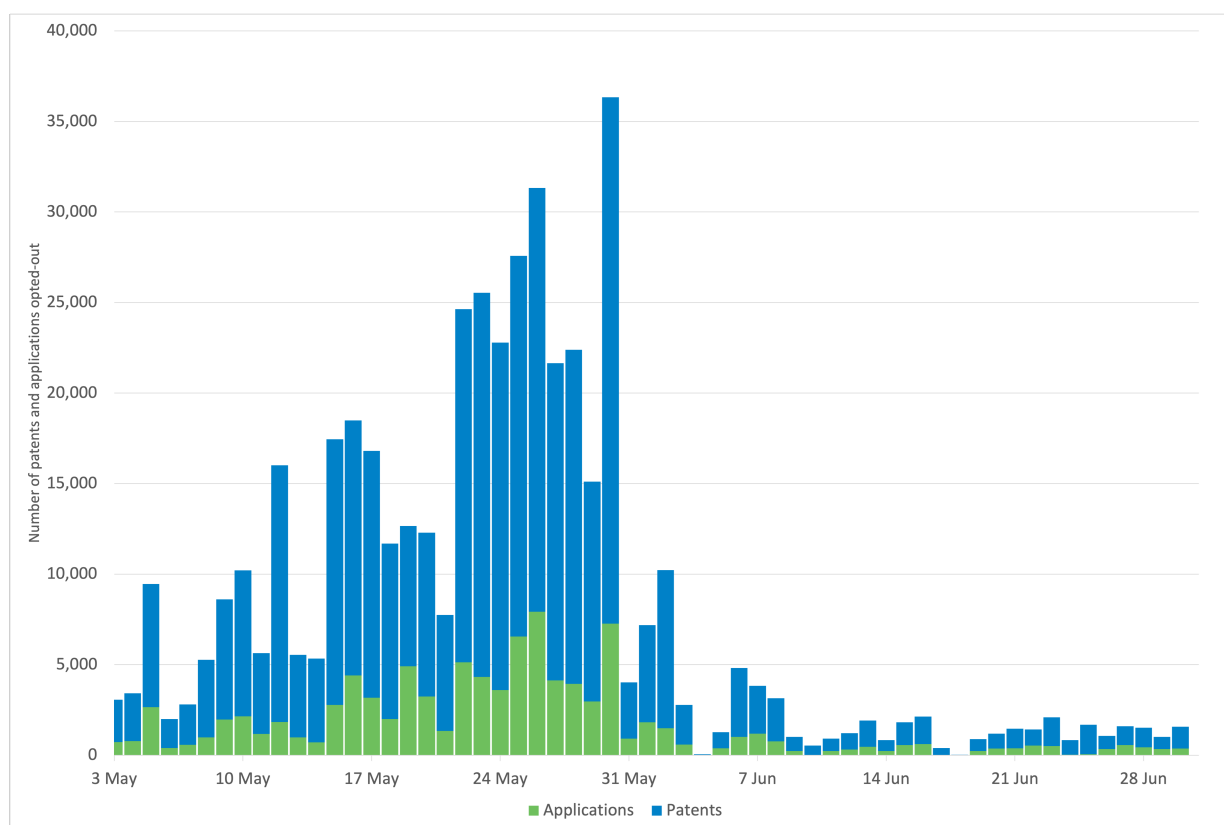


In May, **4.1** times more patents were opted-out than applications but this dropped to **2.8** times after the UPC opened its doors on 1 June 2023.

Since the opening of the Court, the number of opt-outs has stabilised to around **2,700** applications and **7,600** patents per week. This compares to around **3,700** applications filed per week at the EPO and approximately **1,500** patents granted per week by the EPO.

With significantly more patents currently being opted-out than granted per week, this indicates that many patent owners are still reviewing their European portfolios to opt-out patents that granted before the UPC opened. As such, we might expect the number of new opt-outs to gradually reduce as this backlog is caught up.

### Proportion of patents to applications opted-out in May and June



Of note regarding representatives, the fourth busiest filer of opt-outs, with **5.0%** of the total number of opted-out patents and applications is a firm based in Japan. Presumably filing on the basis of mandates from its clients rather than being representatives before the UPC, this firm had the advantage of being 7 hours ahead of most of Europe allowing it to easily avoid peak hours for the UPC's Case Management System towards the end of the sunrise period.

### Owners of opted-out cases and their country of origin

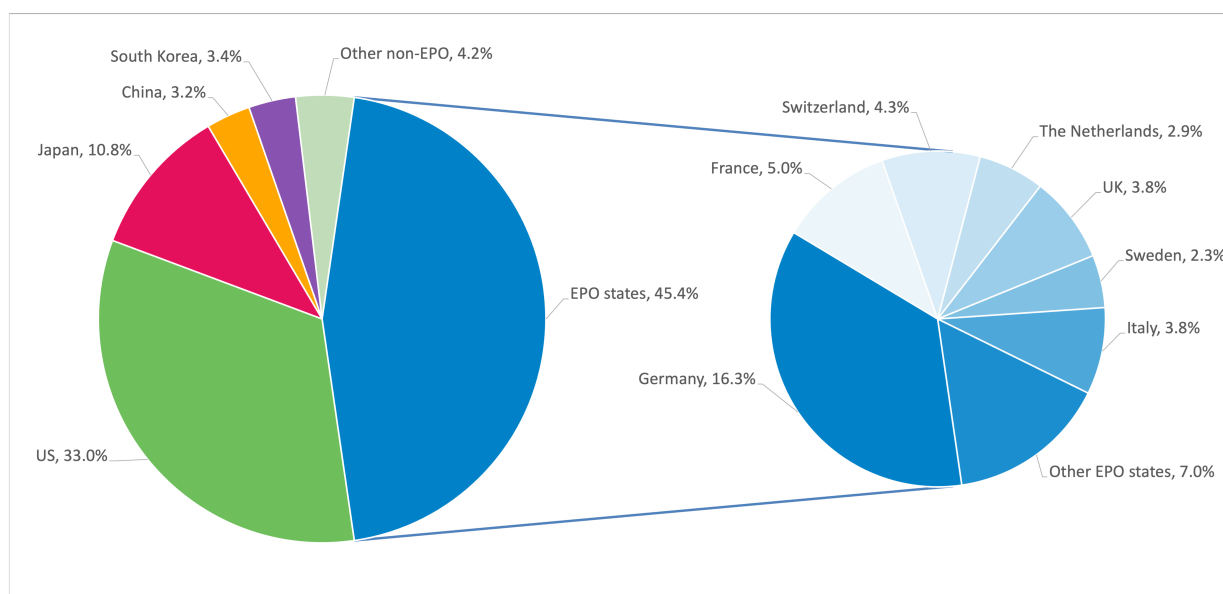
The most patents and applications opted-out by absolute number were published in the name of:

1. Huawei Technologies (5,384)
2. Honeywell International (4,724)
3. The Boeing Company (4,441)
4. Microsoft Technology Licensing (4,328)
5. Samsung Electronics (3,939)

These large numbers seem to suggest that some major technology, media and telecoms companies are adopting a blanket approach of keeping their entire patent war chests away from the new Court.

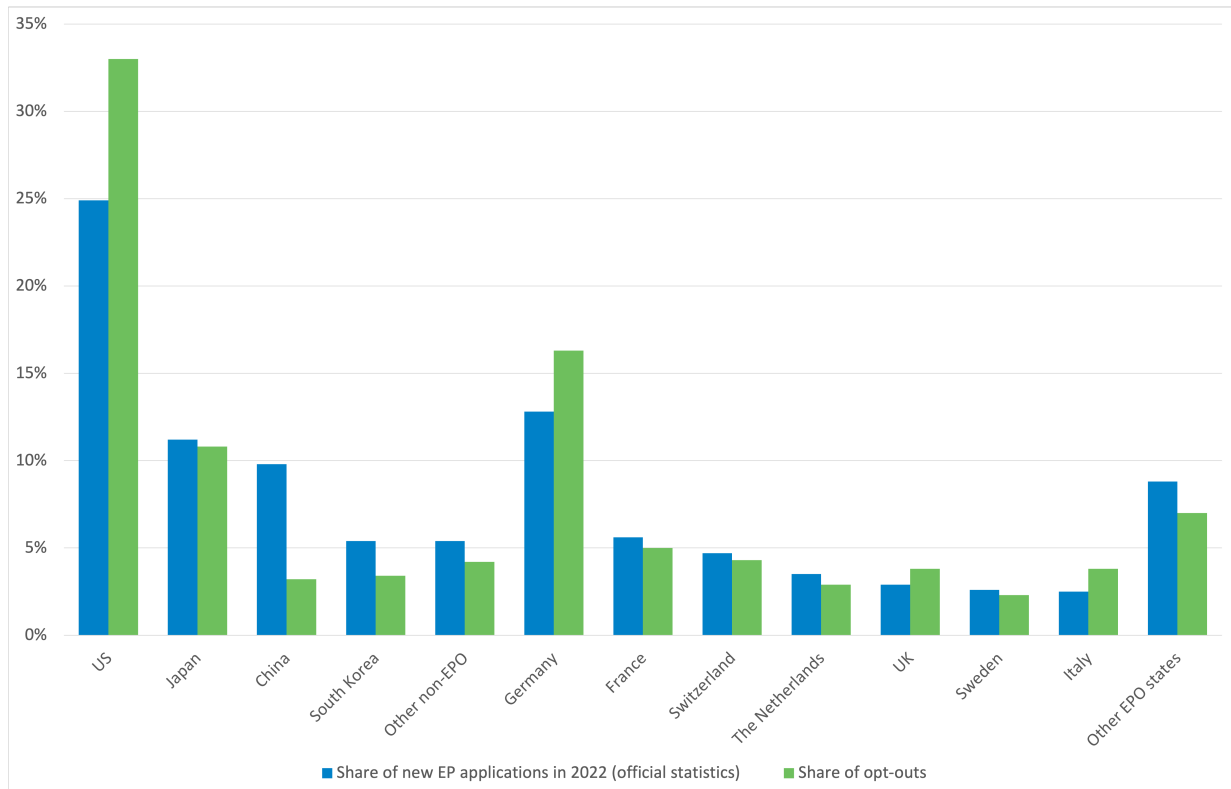
Whilst the companies in this top five list are all outside the EU, the 39 member states of the EPO still account for over **45.4%** of all opt-outs when looking at the country of the first-named applicant or proprietor.

### Country of origin of first-named owner of opted-out patent or application



To provide a very rough indication of proportionality, these shares can be compared against [official statistics from the EPO for 2022](#). This seems to show that owners based in the US and Germany are over-represented compared to their proportion of European patent applications filed last year. Asian countries, in particular China and South Korea appear to be more open minded and less averse to the UPC, keeping their patents and applications within its jurisdiction.

### Country of origin: new European applications in 2022 v opt-outs



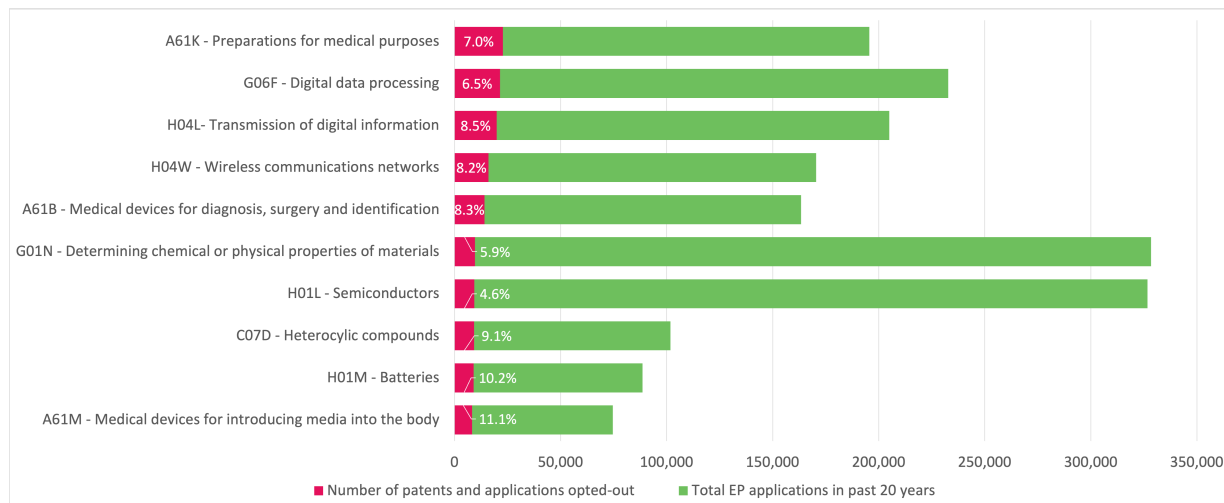
## Technology fields

Looking at the first International Patent Classification of each opted-out patent or application, the IPC covering preparations for medical purposes, A61K, took the prize for first place with **22,810** cases. Second, third and fourth places go to computing and communications fields, which is to be expected given the dominance of technology, media and telecoms companies in the opt-out rankings.

Taking an imperfect comparison with the number of European patent applications filed in these IPCs over the last 20 years (potentially as far back as some of the opted-out patents were filed), healthcare and life sciences again takes the top spot, with **11.1%** of applications related to medical devices for introducing media into the body from the last 20 years having been opted-out.

Battery-related patents and applications were also opted-out in relatively high proportion at **10.2%** when compared to how many battery-related European applications were filed in the past 20 years.

## Top International Patent Classifications of opted-out patents and applications

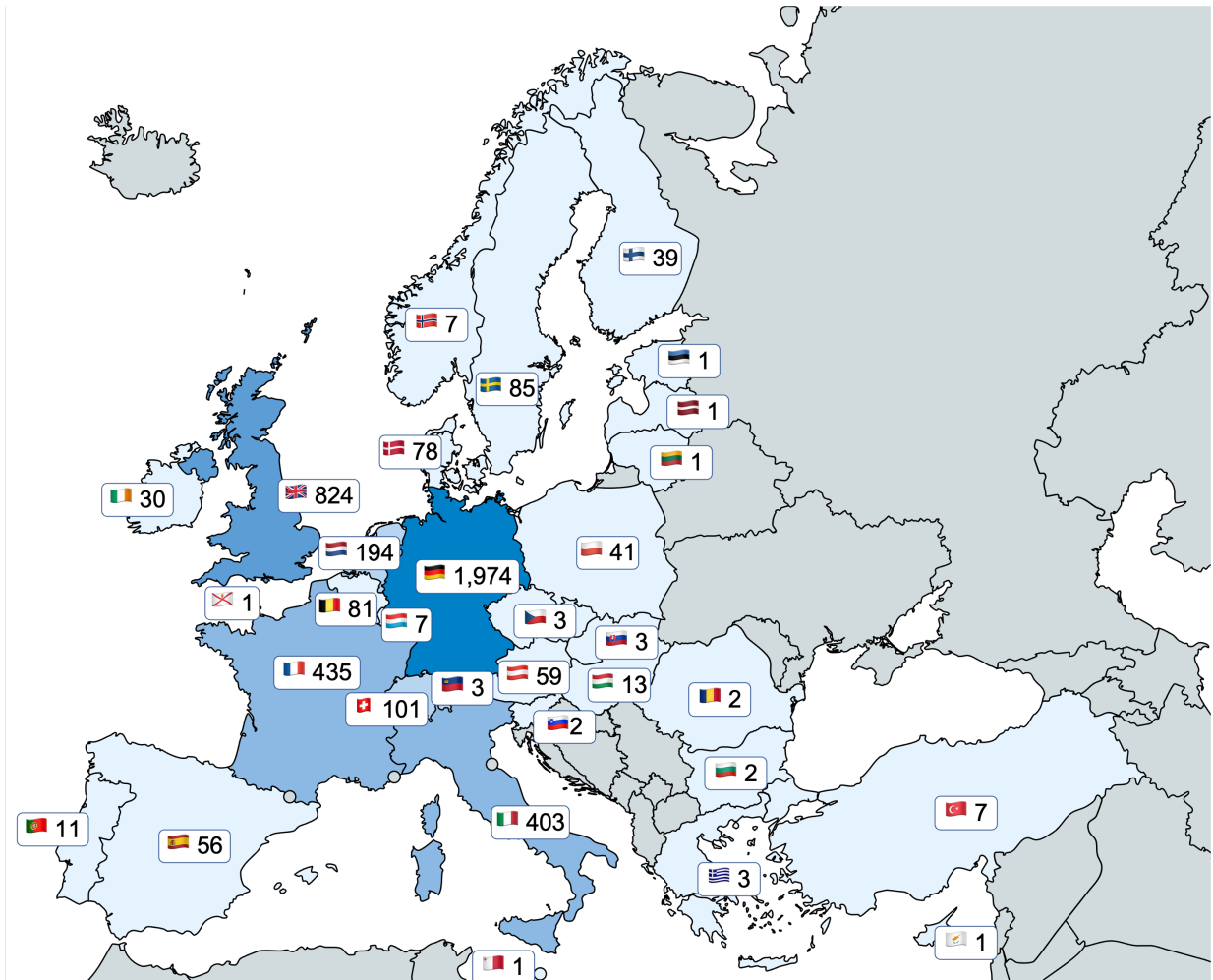


## UPC representatives

**4,469** people have applied to be representatives before the Unified Patent Court, all of which appear to have been registered following manual review by the Registry of the UPC. Germany has, by far, the highest number of UPC representatives with **1,974** individuals registered – **44.2%** of all representatives.

The recognised pre-existing qualifications obtainable in Germany and the UK in particular seem to have enabled a relatively high number of attorneys from those countries to register.

## Country in address of representative

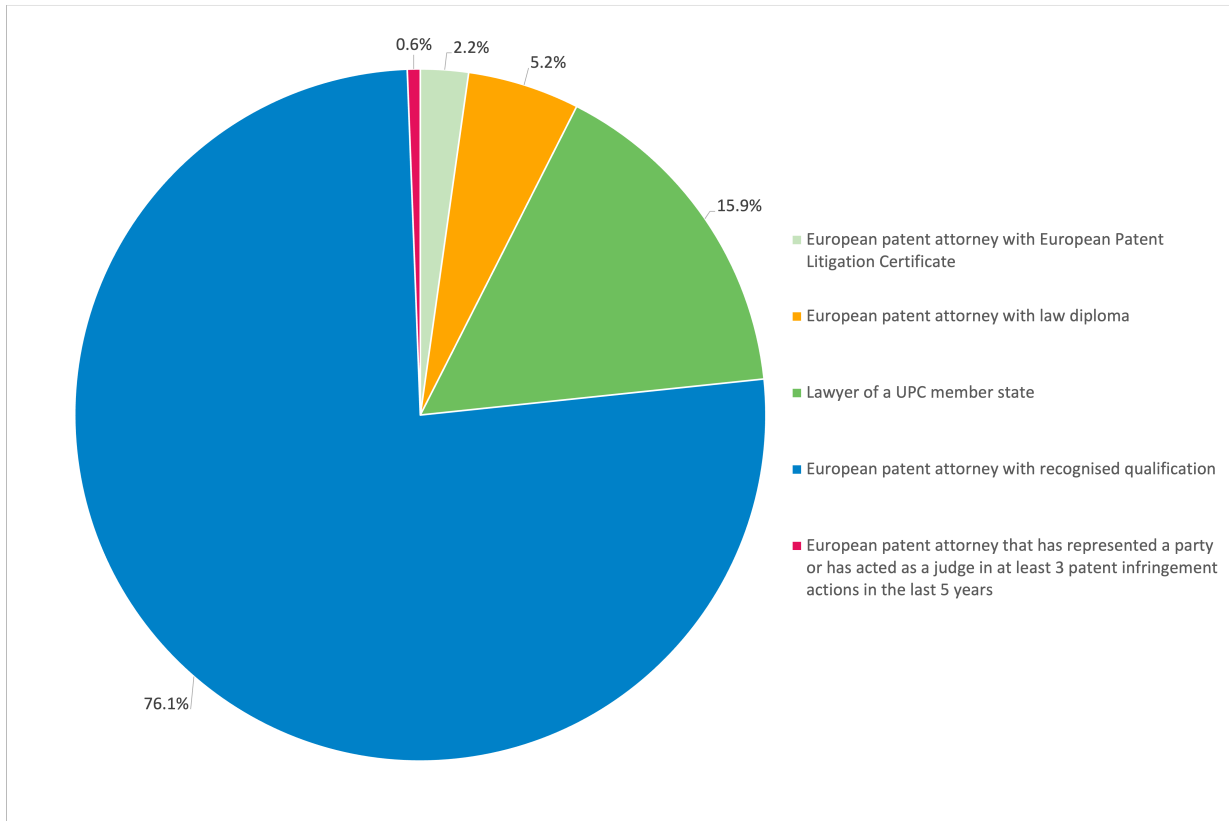


European patent attorneys currently form the majority, **84.1%**, of the list of UPC representatives as they will have been more likely than lawyers to file opt-outs on behalf of their clients during the sunrise period, although a greater proportion of national lawyers have now signed up [compared to the early days of the sunrise period](#).

Another reason for the high proportion of European patent attorneys is that they can, up to the end of May 2024, make use of recognition by the UPC of pre-existing qualifications to request entry onto the list of UPC representatives, without requiring the attorney to obtain the European Patent Litigation Certificate or a law diploma.

It is unclear whether any European Patent Litigation Certificate courses have been formally accredited by the UPC (none had yet been approved [as of 24 March 2023](#)). Nonetheless, **100** representatives have been registered on the basis of being European patent attorneys holding respective European Patent Litigation Certificates.

### **Indicated entitlement to be a UPC representative**



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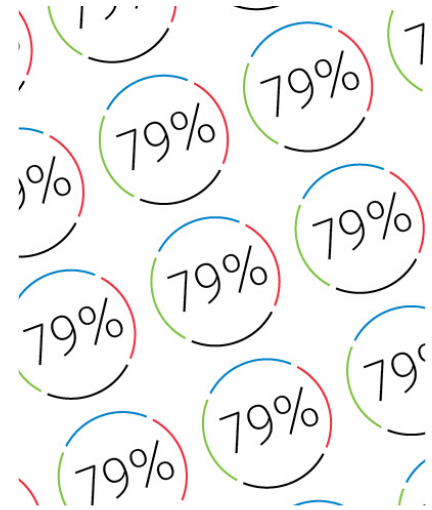
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