

UNITARY PATENT AND UNIFIED PATENT COURT

Inevitable and Fundamental Change

The launch of the Unitary Patent (UP) and the Unified Patent Court (UPC) will remodel the European patent landscape. The so-called “EU Patent Package” consists of three legislative acts: a Regulation on UP protection, a Regulation on the language regime for the UP, and an Agreement setting up the UPC. This package will inevitably and fundamentally change the way patents are granted and enforced in the EU.

How Will the New System Work?

At the request of the patent proprietor, a UP, once granted by the European Patent Office, will benefit from unitary effect in the participating member states. It is therefore a supplementary and optional instrument that multinational companies, SMEs, or individuals will have at their disposal. Patent applicants will therefore still be able to apply either for a (series of) national patent(s), or for a European patent under the European Patent Convention (to take effect in one or more of the Convention’s contracting states).

The UP will not only provide EU-wide uniform protection and have equal effect in all the participating member states, it will also offer an interesting alternative vis-à-vis cost. Indeed, the cost of obtaining unitary effect will be lower than the cost of validating a European patent or multiple national patents in the different designated states. The new patent system will also be easier to manage: a single annual renewal fee, a single set of rules, a single jurisprudence, and a single Court. As a result, decisions on validity or infringement with effect across the whole of the territory of the participating member states will become a reality.

Unified Jurisprudence on Patent Law

The new system sets up a single court (the UPC) for litigation relating to the infringement and validity of patents. The aim of the UPC is to enhance legal certainty by creating a unified jurisprudence, providing

a single forum for patent litigation, and to improve the enforcement of patents throughout Europe.

More precisely, the Agreement on the UPC creates a new specialist patents court that will be common to all the participating states. This court will have exclusive jurisdiction for litigation relating to the UP and will even in some cases have jurisdiction in respect of old style European patents, and supplementary protection certificates. A pan-European (preliminary or permanent) injunction, as well as a pan-European revocation will therefore become possible. However, the UPC will not have jurisdiction over national patents.

The UPC will consist of a Court of First Instance (comprising central, local, and regional divisions), a Court of Appeal, and a Registry. Local and regional divisions will have the competence to handle infringement actions, while the central division will be concerned with revocation matters and declarations of non-infringement. To encourage the use of alternative dispute resolution for patent disputes, the Agreement also establishes a mediation and arbitration center.

Pro-active Planning Is a Must

The above is excellent in theory, but creates some significant challenges in practice. The new system has indeed been created from scratch and draws inspiration from different legal cultures. Although the newly created rules are elaborate, they remain incomplete and on occasion even unclear. With the Rules of Procedure virtually finalized, it is clear that the management and enforcement of European patent portfolios will require pro-active planning. Given the many different angles and aspects of the UP(C) most patentees and licensees will have difficulties successfully executing their patent strategies. Our team of lawyers is uniquely positioned to help local and international clients understand how these changes will impact their existing patent and

license portfolios and advise on appropriate courses of action.

"[Crowell & Moring's] litigation capabilities [...] are a forte, although the internationally focused unit also provides valuable counsel on cross-border transactions." The World's Leading Patent Practitioners - IAM Patent 1000, 2014

A Team Devoted to Your Success!

Crowell & Moring's Brussels office has a strong domestic, European and international IP practice. Patent litigation is at the heart of this practice. The firm's Brussels lawyers provide support not only in contentious matters, but also in transactional, counseling, arbitration, and regulatory matters.

Crowell & Moring is one of the few firms that have excellent and highly experienced patent lawyers both across the U.S. and in Europe.

We can also rely on an international network of trusted local patent lawyers to complement our own capabilities. This network is not franchise- or alliance-based. Our local UPC partners will be selected from this network because we have worked with these

lawyers on many different patent matters and know that they provide impeccable quality at the best price.

"... an IP team well versed in regulatory and competition law. Precedent-setting litigation is the order of the day [...] but it also has an affinity for the fine print of contracts and licences." IAM Patent 1000, 2015

More Information at Your Fingertips

The EU Patent Package is so large that it would be naive to try and summarize its practical implications for every client on a leaflet. That is why we have published a Q&A series covering in detail virtually every aspect of the UP and the UPC. You can find this and other information on the UP and UPC webpages of our website. In addition, our team of experienced patent lawyers (details below) would be delighted to provide you with any additional information you may require, and with answers to your specific questions.

<https://www.crowell.com/NewsEvents/AlertsNewsletters/Unified-Patent-Court-Alerts>

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