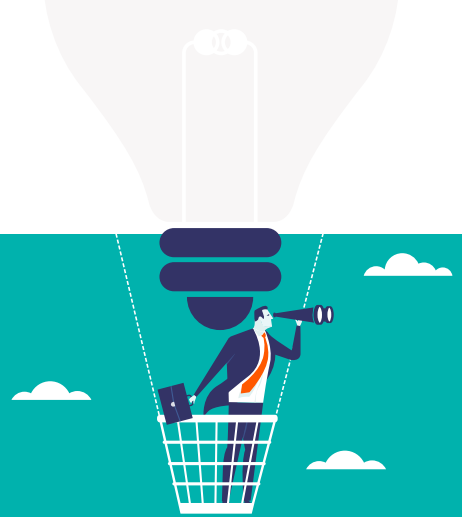


Patents Developments in Europe: Unitary Patent (UP) and Unified Patent Court (UPC)



These will come into force on 1 June 2023. What are they? How will they affect clients of Mohun Aldridge Sykes?

The Unitary Patent (UP):

Patents for Europe will still be granted by the European Patent Office (EPO), in the same way they are now. At grant, applicants will now have a choice: a Unitary Patent (UP) or a traditional European Patent (t-EP). The Unitary Patent is simple in principle - one patent covering all participating countries as a single territory. In contrast the traditional European Patent (t-EP) involves a split, called 'national validation', into separate national patents, which can be kept in force by country-by-country renewal fees. The Unitary Patent (UP) has reduced translation requirements and requires a single renewal fee to keep the UP in force. This sounds good but this renewal fee is set at a high level.

The EPO will still grant all European Patents, whether UP or t-EP patents. If you want a Unitary Patent (UP) you must make a request at the time of grant. Otherwise you get a traditional European Patent (t-EP).

However, even if you want a Unitary Patent (UP) not all countries have signed up to the new system, and some may never do so. For example the UK will never join. Spain is unlikely to, and some other countries are slow to sign up. A Unitary Patent will not cover the

whole of the European Union. Some applicants may need a Unitary Patent and a traditional European Patent activated in other countries of interest, to cover all the countries they need.

If you are interested in patent coverage widely across Europe the Unitary Patent (UP) may be cost-effective. If you are interested in a few countries, the traditional European Patent (t-EP) may be better value. Mohun Aldridge Sykes will advise you on this at the right time.

The Unified Patent Court (UPC):

A new court, the UPC, will be the only court which can issue judgements on Unitary Patents. It can handle patent infringement and can revoke patents centrally. The UPC should be effective, perhaps after initial uncertainty.

The Unified Court will also have effect for traditional European patents (t-EP) **unless an opt out is obtained**. Patent holders can opt t-EP patents out of the Unified Court system at the time of grant, and can also opt **already-granted** t-EP patents out. Legal decisions on these opted out t-EP patents then remain with national courts.

Opting out can be done even before the Unified Court opens its doors on 1 June 2023. If opting out is wanted there is a legal benefit in doing it by 1 June 2023: if an opponent files a revocation action at the Unified Court before a traditional European Patent (t-EP) has been opted out, all legal matters will

then take place in the Unified Court. It is too late then to opt out. **In these circumstances and due to the newness of the Unified Court we strongly recommend opting out by 1 June 2023.**

Actions

Existing EP patents – they stay as traditional European Patents (t-EP) but the Unified Court (UPC) governs legal disputes unless an opt out is obtained. **We believe an opt out is the better course for our clients.**

Future EP patents – should clients take a traditional European Patent (t-EP) or a Unified Patent (UP)? Or might they need both, given the countries of interest? If they take a t-EP should they opt out of the Unified Court (UPC)? We are talking here about future patents, so **no decisions are needed immediately. We will help you decide at the time.**