



Background material for the press

The **reform of the European patent system** is ongoing in two inter-related fields: the creation of a new, **unitary European patent protection**, and the **establishment of the Unified Patent Court (UPC)**. The creation of an EU patent has been discussed for decades, and was bogged down in disagreements about language issues, but under the 2011 Hungarian EU Council Presidency the process gained significant momentum. Member states have set 2015 as their target for the first unitary patents to be granted.

On the establishment of the Unified Patent Court (UPC)

One of the pillars of the European patent reform is the **UPC Agreement**, which was signed by 25 EU Member States in February 2013. The Agreement establishes a **centralised patent jurisdiction** to take over certain functions of the national courts of EU Member States parties to the Agreement to ensure the settlement of legal disputes related both to unitary patents and to “traditional” European patents. As a result of the reform, after a transitional period of at least seven years, enforcement and revocation proceedings will cease to fall within the competence of the courts and authorities of the Member States.

Cases relating to infringements and validity of European patents will fall under **the exclusive competence of the UPC**. The UPC will consist of a Court of First Instance, a Court of Appeal and a Registry. The Court of First Instance will comprise local and regional divisions as well as a central division. The Court of Appeal will be located in Luxembourg while the seat of the central division of the Court of First Instance will be in Paris. Specialised sections of the central division will be set up in London and in Munich. The panels of these courts will have a multinational composition. In addition, they will be composed of legally qualified judges and, depending on the cases, they will also include technically qualified judges. In the course of its operation this Court will observe the primacy of Union law, and concerning the correct application and uniform interpretation of Union law it will – by way of the preliminary ruling procedure – closely cooperate with the Court of Justice of the EU.

With a view to establishing the system as soon as possible, following the signature of the UPC Agreement the Contracting Member States set up a **Preparatory Committee** to ensure the completion of the most urgent preparatory work. The first half of 2015 was set as a goal for the entry into force of the UPC Agreement, but in order to achieve this at least 13 Member States (among them the United Kingdom, France and Germany) have to ratify the Agreement. At this writing, only [Austria had done](#)



[so](#), but draft ratification bills were under discussion in several other national parliaments. Malta and France have now completed the relevant parliamentary procedures, and preparations for ratification are also well under way in Belgium and the UK. Hungary will make a decision on the promulgation of the Agreement when the results of the relevant impact assessments and basic information for the implementation of the system are available; it is expected that the necessary proposal will be prepared in the course of 2014.

The main task of the five working groups of the Preparatory Committee is to work out the detailed rules before the entry into force of the UPC Agreement, but the Preparatory Committee must also provide for the necessary decisions in financial matters, the setting-up of the IT system of the Court, and the selection and training of the judges of the UPC. The task of the **Human Resources Working Group, operating under Hungarian coordination**, is to determine the **method of selecting the first judges**, and to lay down the principles for putting together the pool of judges. It will also be the task of this Working Group to draw up a training plan for candidate judges, to outline the basis of a future training plan for the periodic further training of judges and the future Staff Regulations.

In the course of establishing the UPC one of the most urgent tasks is to organise the **preparation of future judges of the UPC**, including training of judges from Member States with a low case-load. In order to do this, Member States with more experience in the area of patent litigation will provide professional training for candidate judges from other Member States. The Preparatory Committee will draw up training plans for this purpose. **The training of judges will commence before the entry into force of the UPC Agreement.** It will be the task of the HR Working Group to determine the mechanism for the selection of candidate judges, since the procedure laid down for the selection of judges will apply only as of the entry into force of the UPC Agreement. The HR Working Group will be assisted by an Advisory Panel in the pre-selection procedure; the panel will examine the applications received to check whether applicants meet the necessary requirements for holding the office of judge of the UPC. On the basis of the Advisory Panel's opinion, the HR Working Group will draw up a list of suitable candidates, then following the approval of the Preparatory Committee the selected candidates can, if necessary, take part in the training for judges during the preparatory phase.

One of the results of the negotiations leading to the achievement of the European patent reform, and a result with domestic implications, is that **the Training Centre of the UPC will be situated in Budapest**. The Training Centre will operate as a coordinating office for the training and further training of judges and candidate judges of the UPC, and it will be located in a government building in the Castle District (together with a local or regional division of the UPC in Hungary).



On the unitary patent

The European patent with unitary effect (the “unitary patent”) will **ensure identical protection** for inventions in all EU Member States joining the UPC system, with the exception of Spain and Italy which do not participate in the so-called “enhanced cooperation”. The former system of national patents and of European patents granted by the European Patent Office (EPO) in respect of the states chosen by the applicants will continue to exist after the entry into force of the new rules; the European patent with unitary effect will constitute a new type of European patent in addition to the current system of patents “fragmented” into national patents. The proprietor may – within one month of the granting of the “traditional” European patent – request at the EPO that the European patent be registered as a patent with unitary effect.

After the expiry of the transitional period it will not be necessary to make translations of European patents with unitary effect for their enforcement in the territory of the Member States. The claims defining the scope of patent protection will be available in English, French and German, and the specifications in the “official” language of the patent (in English, French or German).

As is the case currently, applications for European patents must be submitted in English, French or German for the EPO to consider the application. One of the new features will be the compensation mechanism according to which – up to a certain ceiling – the costs of translation will be reimbursed to privileged applicants (natural persons, small and medium-sized enterprises, universities) which file their applications in EU languages other than the above-mentioned ones. Moreover, the EPO has developed a free online automatic translation service, called Patent Translate, which will ensure free access to the translations of patents in the official languages of the EU.

The working out of the details necessary for the implementation of the system is carried out within the institutional structure of the European Patent Organisation (EPOrg). A sub-committee of the Administrative Council of EPOrg will decide, inter alia, on the level of **renewal fees** for future unitary patents, and, in particular, on their distribution between the Member States participating in the enhanced cooperation, and these decisions will have far-reaching consequences for the domestic institutional and budgetary impact of the European patent reform.