



**Topic  
Brief 5**

**The EU patent -  
almost here**

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## The EU patent – almost here

For the last 40 years attempts have been made to construct a truly European Patent System, which would provide so-called “unitary” protection throughout the EU. During this time, unitary systems have been established for both Trade Marks and Designs, both operated via the European Union Intellectual Property Office, located in Alicante, Spain, which is an EU institution.

All EU member states are parties to the European Patent Convention (EPC). This enables a patent to be obtained in each member state via the European Patent Office (EPO). The European Patent Organisation (which runs the EPO) is not an EU institution, so the European Commission does not govern its operation. The patents which the EPO grants are not unitary and are dealt with, after grant, in the same way as patents obtained via the individual National Patent Offices, all of which continue to exist.

Having patent protection in some EU member states but not others could have a distorting effect on interstate trade, so the European Commission has wanted to provide a “Community Patent” for several decades. A convention to do this was signed in 1973, but it never came into force, and is now effectively superseded by an agreement at EU level signed in 2012, which will enable the EPO to grant a single unitary EU Patent (not a bundle of national patents as currently) which will be effective throughout the EU.

The EPO, although it will be the granting authority for an EU Patent, has no jurisdiction with respect to enforcement. This will be dealt with by way of a new institution, the Unified Patent Court (UPC), which will be headquartered in Paris but which will operate in other centres as well, including London and Munich. This means that in future a unitary patent and a unitary enforcement system will exist. What this means for Unitary EU patent owners is that both validity and enforceability will be EU-wide – if you secure an injunction to stop infringement, it will operate throughout the EU, and if your patent is declared invalid, that will also apply throughout the EU.

The agreements both for granting unitary EU patents and for EU wide enforcement, do not come into force until a sufficient number of EU member states ratify, one of which must be the UK. While it was originally hoped that an EU Patent would be available from 1st January 2014, this proved not possible because of the time needed to negotiate and settle the rules governing the operation of the UPC. Though the availability of an EU-wide unitary patent and EU-wide enforcement are now much closer than ever before, the system is unlikely to come into operation before 2017 and this could be delayed further if the UK votes for “Brexit”.

To what extent industry and inventors will trust and use the unitary EU patent system is unclear. It will not be compulsory and applicants can opt out of doing so for a fairly long transitional period – putting all your eggs in one basket may not appeal to everyone. The costs of maintaining the unitary patent are relatively small corresponding to the cost of maintaining national patents in four major EU patenting countries. The cost of using the UPC will depend on the value of the suit. At present the costs associated with securing a patent position in Europe (and possibly enforcing it) are substantial and are thought to deter SMEs from using the system. Even large users, while desirous of having a simpler, speedier and less expensive system (and less patchy in its effects) than the present one, may hesitate to use the new unitary system, or may choose to use it for only part of their portfolio of patents. Much will depend on whether the new UPC arrangements will engender confidence that it will provide a fair, usable and trustworthy system for litigating patent disputes. The training of Judges for the UPC has already commenced. The European Commission is exploring ways to assist SMEs in reducing their patenting costs.

### **Suggested further information**

Unitary Patent webpage: [http://ec.europa.eu/growth/industry/intellectual-property/patents/unitary-patent/index\\_en.htm](http://ec.europa.eu/growth/industry/intellectual-property/patents/unitary-patent/index_en.htm)