

# UPC FAQs



## When will the Unitary Patent system begin?

The Unified Patent Court (UPC) has announced that the system is expected to commence on 1 April 2023. The mechanism that brings the Unitary Patent (UP) into existence will be deposit of the instrument of ratification of the UPC Agreement by Germany, and the UP system will apply to European patents from the 1<sup>st</sup> day of the fourth month following the month in which this occurs.

## Which countries are covered by the Unitary Patent?

Initially, the UP will cover 17 EU states: Austria (AT), Belgium (BE), Bulgaria (BG), Denmark (DK), Estonia (EE), Finland (FI), France (FR), Germany (DE), Italy (IT), Latvia (LV), Lithuania (LT), Luxembourg (LU), Malta (MT), the Netherlands (NL), Portugal (PT), Slovenia (SI) and Sweden (SE). The system may be expanded to other EU states later.

## Will the United Kingdom be covered by the Unitary Patent?

No, the United Kingdom will not be covered by the Unitary Patent. It will continue instead to be covered as an individual “validation” country of a European patent, in common with many other countries that are members of the European Patent Convention but not the UPC Agreement, such as Norway (NO), Switzerland (CH), Spain (ES), Poland (PL) and Croatia (HR).

## Can Kilburn & Strode manage my UP and UPC litigation?

We will continue to represent clients before the European Patent Office on all matters, including the procedure for registering a European patent as a UP. In terms of UPC proceedings, we will handle the filing of opt-out requests at the UPC, as well as UPC revocation proceedings. For more complex matters, including patent infringement cases, at the UPC, we will continue to cooperate with individual specialist litigators (barristers) and other firms (e.g. solicitors in other European countries) to build specialist litigation teams, particularly in connection with patent enforcement litigation.

## Can I still use the national courts for patent litigation, or must I use the UPC?

The UPC is intended to have exclusive jurisdiction for patent litigation relating to countries covered by the UPC system, whether the patent is registered as a UP or not. However, for a transitional period of 7 years from the start of the system, and potentially extendable to 14 years, it will be possible for patent proprietors to opt their conventionally validated European patents out of the jurisdiction of the UPC and to continue to use the national courts. In addition, the courts of any country that is not part of the UPC system will continue to decide cases concerning European patents in that country.

## What is an opt-out?

An opt-out is the name given to the mechanism for actively withdrawing a European patent from the jurisdiction of the UPC. If no opt-out is submitted for a European patent, then the UPC will be able to hear cases concerning infringement and validity of the patent (even if the patent is not registered as a UP). A UP cannot be the subject of an opt-out.

## What is pinning?

If an action is brought in relation to a patent before the UPC, this will prevent an opt-out being submitted and the UPC will have exclusive jurisdiction in all UP states covered by the patent. If an action is brought in a national court after an opt-out has been filed, the opt-out cannot be withdrawn, meaning that the national courts will have jurisdiction and the UPC cannot be used. In either case, this persists for the lifetime of the patent, and is known as “pinning” the patent to the respective court system.