

The Unified Patent Court

The German government has now ratified the Agreement on a Unified Patent Court (UPC), meaning that the UPC will become operational on **1 June 2023**.

The UPC will fundamentally change the patent landscape in Europe by offering users of the European patent system new options for patent protection and for the settlement of patent disputes across Europe.

There may be important steps you need to take before the UPC becomes operational.

The UPC will have jurisdiction over new Unitary Patents, and by default will also have jurisdiction over all **existing** European patents effective in participating EU Member States.

The risk this presents to owners of existing European patents is that from 1 June 2023 a third party will be able to seek revocation of a European patent in **all** states in which it was validated through a **single** revocation action filed with the UPC.

The good news is that this **risk can be avoided by “opting out”** existing European patents from the UPC system. Opted-out patents will fall under the jurisdiction of the various national courts, as is currently the case.

A three month “sunrise” period starts on **1 March 2023** during which patent owners will be able to opt out their existing European patents, and thus avoid the jurisdiction of the UPC, before it comes into effect. Opting-out will continue to be available after the UPC becomes operational, but will only be possible if no case involving the patent has been brought before the UPC. The opt out can subsequently be withdrawn, for example in order to bring a central infringement action with the UPC.

What should I do now?

We recommend the following actions are considered:

- ▶ **Review your European patent portfolio.** Are the rights held in the correct name? Is the owner indicated on the European or national register of patents the true owner? Do the registers need updating?

- ▶ **Decide upon an opt out strategy** for the sunrise period. Which patents should be opted out of the UPC, and which left in? Should all patents be opted out, left in, or considered on a case-by-case basis? Should any divisional applications be filed, to allow for patents in a given family to be both opted out and opted in? Are any of the patents co-owned with a third party, and can an opt out/leave in strategy be agreed between the parties?

At Lewis Silkin we are here to make your life easier, and our team of European Patent Attorneys and specialist Dispute Resolution lawyers can file opt-out requests with the UPC on your behalf: if you provide us with details of the patents you want opted-out then we can do the rest. However, if opting your patents out of the UPC system is of interest to you then we strongly recommend contacting us as soon as possible to discuss this with us first, to ensure that the adopted strategy meets your business needs and to identify any specific issues which may need to be addressed.

For further information please contact a member of our team:



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