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# Patent reform package - Frequently Asked Questions

## I. Presentation of the unitary patent package

### 1. What is the 'unitary patent package'?

The 'unitary patent package' consists of three elements:

- a Regulation creating a European patent with unitary effect (or 'unitary patent');
- a Regulation establishing a language regime applicable to the unitary patent;
- an international agreement among Member States setting up a single and specialised patent jurisdiction (the 'Unified Patent Court').

The two Regulations implement enhanced cooperation in the area of the creation of unitary patent protection. 25 Member States participate in this enhanced cooperation. All these Member States and Italy which signalled in December 2011 its intention to join will conclude the international agreement on the Unified Patent Court.

### 2. What are the advantages of the proposed unitary patent package?

The unitary patent package will have four major advantages:

- It will create a unitary patent with uniform protection within the territory of the participating 25 Member States;
- The unitary patent will be available on a one-stop shop basis at affordable costs, as it will be centrally granted by the European Patent Office and no further validation requirements need to be fulfilled and applications can be filed in any language;
- It will create a unified and specialised jurisdiction in patent matters for the participating Member States, and thus avoid an unnecessary duplication of litigation cases before the various courts of the various Member States concerned, and enhance legal certainty; and
- It will ensure the dissemination of patent information in all languages of the European Union through high-quality machine translation services which will be available online and free of charge.

The single unitary patent option will offer those who wish to protect their invention in Europe huge cost advantages and reduce the administrative burden.

The single jurisdiction for patent matters will have the major advantage compared to today's situation that, in the future, legal certainty will be enhanced. The risk of multiple parallel court proceedings leading possibly to divergent outcomes will disappear.

### **3. What is a patent?**

A patent can be granted for any inventions having a technical character provided that they are new, involve an inventive step and are susceptible of industrial application. A patent can cover how things work, what they do, what they are made of, and how they are made. Anybody - an individual or a company or an institution - can apply for a patent.

Aesthetic creations, mathematical methods, computer games etc. are not regarded as inventions as they lack a technical character. To qualify as new, it is important that the invention has not been in the public domain (state of the art) before the date on which the patent application is filed.

Patents encourage companies to make the necessary investment for innovation. There would be little incentive otherwise for individuals and companies to devote the necessary resources to research and development.

A patent gives the owner the right to prevent others from making, using or selling the invention without permission. However, it is not automatically implied that the patent owner may make use of it. Quite often, permits from national authorities governed by laws other than patent law, have to be obtained before commercialising a product covered by a patent.

In general, the exclusive rights of a patent owner to exploit the invention commercially last for a maximum of 20 years from the filing date, subject to the payment of regular renewal fees. Anyone else wishing to use the invention while it is still patented must request authorisation from the patent holder and may have to pay a licence fee. In return for this exclusive right, the details of how it works are published 18 months after filing the patent application. In this way, the scientific or technical know-how - the technical teaching of the invention - is made public allowing others to further their own research. As a general rule the patent renewal fees increase over time. This means that only the most commercially viable patents are maintained for the full period. At the end of the 20-year term, the patent lapses.

As a hypothetical example, a company may get a patent for a new chemical that acts as better lubricant than existing products on the market. The patent could include claims about the molecule or composition of the lubricant, how it can be made, and examples of where the lubricant can be applied, for example, in the engine of a car. Anyone wanting to produce the chemical would have to ask the company for a licence, normally in return for payment. However, researchers in the field would benefit from the technological knowledge disclosed, for example the process involved to make the chemical protected by the patent. This could bring about further research leading to more advanced lubricants which themselves could be patented.

#### **4. What is a ('classical') European patent?**

Today, (technical) inventions can be protected in Europe either by national patents granted by the competent national authorities or by European patents granted centrally by the European Patent Office (EPO).

Member States have their own patent authorities which deal with applications for national patents. The protection conferred by a national patent is limited to the territory of the State concerned.

If the applicant chooses to apply for a European patent, the application will be dealt with by the EPO, having its headquarters in Munich and a branch in The Hague. The EPO is a body of the European Patent Organisation, an international organisation comprising 38 members (27 EU Member States + 11 other European countries). The Organisation was established in 1973 following the signature of the European Patent Convention (EPC).

The EPC provides a single procedure for granting patents in Europe. On the basis of one single patent application processed in one of the three official languages of the EPO (English, French and German), inventors and businesses can obtain a European patent. When the EPO grants a European patent, the full text of the patent, known as the specification, is published in the official language of the EPO chosen by the applicant as the language of the proceedings. At the grant stage, the applicant must also provide a translation of the part of the patent that defines the scope of protection - the claims - into the other two official EPO languages.

However, the grant of the European patent is not enough for it to take effect in most Contracting States to the EPC. The patent proprietor must choose the countries in which he/she wishes to have protection and validate the European patent in these states within a short time limit after grant. A number of different validation requirements may apply. For example, the patent proprietor may have to pay a fee to the national patent office, comply with various formal requirements and provide a translation of the patent to the official language of the State.

In order to obtain unitary effect, patent holders need to request the unitary effect at the European Patent Office (EPO) no later than one month after the grant of their European patent has become effective. The unitary effect which is entered by the EPO into its Register transforms the European patent into one single patent for the 25 Member States. Anybody, regardless of the country of origin, can opt for a unitary patent.

The unitary patent will be centrally administered by the EPO throughout its whole life, i.e. until the end of the patent term (20 years from the filing date of the patent application at the latest).

For the two Member States which, up until now, do not participate in this project, inventors will of course be able to obtain patent protection via their 'classical' European patents. The European patent will need to be separately validated in these two countries.

As the unitary patent is a further option, it is at the moment not clear how frequently the new alternative will be used. We are however confident that the system will stand the test which however can only be demonstrated once the system is in place.

## **5. What is a 'unitary patent'?**

The unitary patent – which is the object of today's EU regulations - will be a third option for companies or inventors seeking patent protection in Europe. It will be a further tool in the inventor's toolbox in addition to national patents and 'classical' European patents (i.e. without unitary effect). For more details on the latter see point 6.

A unitary patent is a European patent with unitary effect. The procedure up to the grant of the patent will be the same as for ('classical') European patents without unitary effect. After grant, European patents will fall into one of the two categories.

A 'classical' European patent needs to be validated in each State for which it has been granted. It has the same effect as a national patent granted in the respective territory and its fate in these States may be different, depending e.g. on any court proceedings which take place in these States. The 'classical' patent is therefore often compared with a bundle of national patents which is centrally granted.

In contrast, the unitary patent will ensure uniform protection for an invention in 25 Member States (all Member States except Italy and Spain) on a one-stop shop basis.

## **6. How many applications for European patents are submitted annually? Which countries patent the most? How many European patents are granted a year?**

In 2011, 142 810 patent applications were filed with the EPO, of which 71 904 came from EPC countries and 70 906 from other parts of the world.

Germany filed the most applications to the EPO (26 234), followed by France (9 633), the Netherlands (5 611), the UK (4 765) and Italy (3 982). For the full list, please consult the EPO's 2011 annual report at

<http://www.epo.org/about-us/office/annual-report/2011.html>

In 2011, 62 112 European patents were granted by the EPO.

## **7. What is the history of the EU patent?**

Efforts to create a common patent applicable across all European countries have been made since the 1960s but for a number of reasons have never been successful.

In 2000 the European Commission made a proposal to create a Community Patent through a Regulation [now 'EU patent' under the Lisbon Treaty]. The aim was to provide for a single patent title applicable in all Member States. In 2003 Member States agreed a common political approach but failed to reach a final agreement, including over the details of the translation regime. Following a wide-scale consultation in 2006, the Commission produced a Communication in April 2007 which confirmed the commitment to the Community patent and re-launched negotiations in Member States.

In December 2009 Member States unanimously agreed on Conclusions for an enhanced patent system, including the main features of the EU patent, except for the translation arrangements. Instead, they affirmed the need for a new Regulation to cover the latter matter. The Commission proposed a regulation on the translation arrangements for the EU patent in July 2010. But despite all the efforts of the Belgian Presidency, the Council could not reach a unanimous agreement on the applicable translation arrangements. In December 2010 the Competitiveness Council confirmed that there were insurmountable difficulties that made the establishment of such a regime impossible to attain within a reasonable period by applying the relevant provisions of the Treaties.

At the request of 12 Member States, the Commission proposed to launch enhanced cooperation in the area of unitary patent protection on 14 December 2010. Following the Commission's decision, another 13 Member States submitted their request to join the enhanced cooperation. The European Parliament gave its consent on 15 February and on 10 March 2011, the Competitiveness Council authorised the launch of enhanced cooperation with the participation of 25 Member States.

The implementation of the authorising Council decision requires the adoption of two regulations; one on the creation of unitary patent protection and a second on the applicable translation arrangements. On 13 April 2011, the Commission adopted the proposals for the two implementing regulations which now form two of the three legal initiatives of the unitary patent package.

## **8. Why has the unitary patent package been proposed?**

One aspect of the reform package is the creation of unitary patent protection via the European patent with unitary effect ('unitary patent'). This will make it possible for inventors (individuals, companies or institutions) to protect their inventions in 25 Member States by filing a single patent application with the European Patent Office. After the patent is granted, there will be no need to validate it one by one in each country. This will make the existing system much simpler, much less burdensome and less expensive for inventors. It will end the complex validation requirements, and in particular limit the very expensive translation requirements in the participating Member States. Today, obtaining patent protection in the territory of the 27 Member States by means of a European patent costs about 36 000 euro (the majority of which goes on translation and other costs linked to validation, such as fees of local patent offices and costs for local patent agents). After full implementation of the unitary patent project, the costs will go down to about 5 000 euro (i.e. the fees up until the grant of the patent including the translation of the claims into the two other official languages of the EPO).

Unitary patent protection will also protect inventions better than the current system. Due to the prohibitive costs involved in the national validation of European patents, today many inventors only patent their inventions in a handful of countries. This makes inventions less valuable as the lack of protection in other countries allows them to be copied more easily.

The second aspect is the setting up of the Unified Patent Court (UPC). This court will have exclusive competence for European patents with unitary effect and, after a transitional period, for all 'classical' European (bundle) patents. Undertakings will thus have legal certainty (once the UPC has decided) and will no longer need to defend, or respectively challenge, the patents in various national courts. The risk of parallel court proceedings with different outcomes in the participating Member States will therefore disappear.

The new system will consequently stimulate research, development and investment in innovation helping to boost growth in the EU. It will be advantageous for all inventors, in particular those which are most affected by the deficiencies of the current system, including SMEs.

For other major markets such as the United States of America and China, one single patent with a single jurisdiction is in place. The implementation of the unitary patent package will do the same for Europe.

## **II. Functioning of the unitary patent**

### **9. Will the European patent with unitary effect be valid in all Member States?**

No. The European patent with unitary effect will be based on two regulations which will be adopted in the framework of enhanced cooperation of 25 Member States (all Member States but Italy and Spain). This was necessary because an agreement between all 27 Member States could not be found. Eventually, 25 Member States have decided to proceed with enhanced cooperation in order to create a system of unitary patent protection in Europe. Member States not participating now can join later.

Enhanced cooperation is a possibility ensured by the Treaties that can only be adopted by the Council as a last resort, when it has established that the objectives of such cooperation cannot be attained within a reasonable period by the Union as a whole, and that at least nine Member States participate in it.

### **10. How can an applicant apply for a 'unitary patent'?**

Applicants will have to file an application for a European patent with the EPO the same way as they do today. The new element is that, no later than one month from the date on which the grant of the European patent has become effective, the patentee can request the EPO to register the unitary effect in the European Patent Register. In the case of such a request made after the grant, the patent will take effect retroactively (from the mention of the grant) in the 25 participating Member States without any additional validation requirement. It will provide equal protection through the territories of these countries. The patent owner will have the choice of whether or not to request unitary effect for their European patents.

Inventors may therefore choose between unitary patents, the 'classical' European patents (to be validated in the Member States) or national patents (to be filed in all the Member States). The new reform package just provides an additional tool in the toolbox.

## **11. How much will it cost to obtain a 'unitary patent' and how much does a similar protection cost today?**

After the transitional period (in which certain additional translations will be required), the cost to obtain a European Patent with unitary effect will be around 5 000 euro. This covers the procedural fees of the EPO as well as the cost of the translation of the claims to the two other procedural languages of the EPO.

During the transitional period of maximum 12 years, the cost will be slightly higher, about 6 500 euro. This includes the cost of the additional translation required during the transitional period: in order to facilitate the access to patent information until high-quality machine translations become available, European patents with unitary effect that were granted in French or German will need to be translated to English and the ones granted in English will need to be translated to another official language of the EU.

Obtaining patent protection in the territory of the 27 Member States by means of a European patent costs today about 36 000 euro (the majority of which goes on translation and other costs linked to validation, such as fees of local patent offices and costs for local patent agents).

By comparison, in the US, a patent costs about 2 000 euros, in China about 600 euros.

## **12. Do patent applications and patent specifications have to be translated?**

Applications for European patents can be filed in any language. Yet applicants have to provide a translation of the application into English, French or German which are the official languages of the EPO (if the application was not filed in one of the official languages).

Under the new translation regime applicable to the creation of the unitary patent protection, SMEs, natural persons, non-profit organisations, universities and public research organisations having their residence or principal place of business within any of the 27 EU Member States will get a compensation of all translation costs up to a ceiling if the application was filed in one of the official languages of the European Union that is not an official language of the EPO.

The European patent is granted in one of the three EPO languages. Before the grant, the applicant is required to provide a translation of the claims (which define the scope of the subject-matter for which patent protection is sought) into the other two official EPO languages.

Moreover, for a transitional period of maximum 12 years, European patents with unitary effect that were granted in French or German will need to be translated into English and the ones granted in English will need to be translated to another official language of the EU. These translations will be required until high-quality machine translations into all the official languages of the Union are made available to ensure the availability of patent information.

High-quality machine translations – on-line and free of charge - will soon be available in all languages. The European Patent Office (EPO) is already providing a machine translation service for 13 languages (between English and Danish, Dutch, German, Finnish, French, Greek, Hungarian, Italian, Norwegian, Polish, Portuguese, Spanish and Swedish). By the end of 2014 the service is expected to cover 32 languages, including all languages of the European Union, plus important non-European languages such as Chinese, Japanese, Korean and Russian.

The machine translation service "Patent Translate" can be accessed via the following website: <http://www.epo.org/searching/free/patent-translate.html>

### **13. How can SMEs be certain not to infringe a patent if the patent is not translated into their language?**

The information on patents will be available in all EU languages due to high-quality machine translations. The European Patent Office (EPO) is already providing a machine translation service for 13 languages (between English and Danish, Dutch, German, Finnish, French, Greek, Hungarian, Italian, Norwegian, Polish, Portuguese, Spanish and Swedish). By the end of 2014 the service is expected to cover 32 languages, including all languages of the European Union. This will ensure that everyone can obtain information on all European patents – and not only on those validated in the respective country - in his own language and free of charge.

The machine translation service "Patent Translate" can be accessed via the following website: <http://www.epo.org/searching/free/patent-translate.html>

To ensure that the information is available before the quality of the machine translations has been established, the regulation provides that, for a transitional period of maximum 12 years, a manual translation into English will in any case have to be provided

### **14. What will be the role of the Unified Patent Court?**

The Unified Patent Court (UPC) will be the future centralised patent jurisdiction of the participating Member States. It will be a court common to the participating Member States and thus subject to the same obligations under Union law as any national court of the participating Member States, in particular refer, where necessary, questions on the interpretation of European Union law to the Court of Justice of the European Union.

The UPC will have exclusive jurisdiction especially in respect of civil litigation related to infringement and validity for both the "classical" European patents and the European patents with unitary effect. It will also have competence in respect of supplementary protection certificates issued for a product protected by a European patent with or without unitary effect.<sup>1</sup>

During a transitional period of 7 years, actions concerning "classical" European patents without unitary effect can still be brought before the national court if those patents have been opted-out before an action has been brought before the UPC. This period may be prolonged up to a further 7 years by the Administrative Committee (decision making body within the court system composed of one representative per Contracting Member State). In addition, persons who have filed applications for European patents within this transitional period can decide to opt these patents out of the jurisdiction of the Unified Patent Court.

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<sup>1</sup> A supplementary protection certificate is a sui generis intellectual property right that extends the exclusive right after expiration of the patent upon which it is based.



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. All panels of the new jurisdiction 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. All judges will ensure the highest standards of competence and shall have proven experience in the field of patent litigation.

### **15. What will court fees be?**

The Court fees will be fixed by the Administrative Committee, once the Unified Patent Court has been set up. Member States are politically committed that the level be such as to ensure a right balance between the principle of fair access to justice and the objective of a self-financing Court with balanced finances. The fee system will provide specific tools to ensure proper access for e.g. SMEs to the Unified Patent Court. In addition, natural persons may be eligible for legal aid, if they do not have sufficient financial resources.

### **16. Will cases be split between the local/regional and central division of the Court of First Instance?**

In principle, cases will be brought either before the local division hosted by the Member State where the actual or threatened infringement has occurred or may occur (or the regional division in which this Member State participates); or the local division hosted by the Member State where the defendant has his residence or place of business (or the regional division in which this Member State participates).

However, in some instances, cases have to be brought before the central division, e.g. (direct) revocation actions, infringement actions if the Member State does not host a local division nor participates in a regional division, actions for declaration of non-infringement and actions concerning administrative decisions of the EPO.

In other cases, the case may be brought or referred by a local/regional division to the central division, e.g. in cases in which the defendant has his residence in a third country, in cases in which both parties agree, in cases of counterclaims for revocation of patents or in cases in which a (direct) action for revocation is already pending before the central division.

## **17. Will the new system lead to fragmentation?**

The unitary patent package will reduce fragmentation.

25 Member States take part in the creation of the unitary patent protection (all except IT and ES) and potentially 26 Member States in the creation of the uniform patent jurisdiction (in December 2011 Italy signalled its intention to join; ES does not participate). It is evident that we would have preferred to have all Member States on board, but this was unfortunately not possible in the light of divergent views amongst the Member States.

However the situation of today is that, in order to get Europe-wide protection, it is necessary to validate the European patent in all 27 Member States. Patent litigation may theoretically occur in all those 27 Member States in parallel, even if the patent, the parties and the cause for the dispute (e.g. the allegedly infringing product or a prior art which was not yet taken into consideration) were the same.

Under the forthcoming unitary patent system, only one 'validation' (the request of the unitary effect with the EPO) will be necessary for obtaining patent protection in the 25 Member States. The system is of course available for all applicants, regardless of their nationality or domicile.

Furthermore, instead of a multiplication of potentially parallel patent litigation, only one court case will have to take place. This case will be centrally decided by the Unified Patent Court which is a court common to the participating Member States. This is a major step towards reducing fragmentation.

## **18. What will be the role of the Court of Justice of the European Union?**

The Court of Justice of the European Union interprets the law of the European Union as highest instance. This remains unchanged.

The Unified Patent Court is a court common to the Contracting Member States and will ensure the correct application and uniform interpretation of Union law, as any national court, in particular in accordance with Article 267 TFEU. Decisions of the Court of Justice of the European Union shall be binding on the UPC.

This means that the UPC is obliged to refer questions to the Court of Justice of the European Union on the interpretation of, in particular, the two new Regulations creating the unitary protection and the Directive on the legal protection of biotechnological inventions.

### **19. Will the new unitary patent regime facilitate the patenting of plants or of conventional breeding techniques?**

The patentability requirements for European patents with unitary effect are identical to those of 'classical' European patents. The envisaged regulation on unitary patent protection does not change these patentability conditions.

The Directive on the legal protection of biotechnological inventions (Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998, 'Biotechnology-Directive') harmonises the national laws of the Member States notably in the area of patenting biotechnological inventions. The Biotechnology-Directive has been fully integrated in the legal framework of the European Patent Organisation ("EPO") in 1999, before the expiry of the transposition period. This means that, as of that time, the European Patent Office which is the central authority responsible for the examination and, if the legal requirements are fulfilled, the granting of European patents follows the standard as laid down in the Biotechnology-Directive.

The Biotechnology-Directive, in particular, clarifies that biotechnological inventions are, as a general rule, patentable, provided that they meet the patentability criteria of novelty, inventive step and industrial applicability. However, the Directive clearly provides that plant and animal varieties and essentially biological processes for the production of plants or animals (i.e. conventional breeding methods based on crossing and selection) are not patentable.

### **20. Will the new unitary patent regime facilitate the patenting of inventions whose commercial exploitation could create moral or public concerns?**

The patentability requirements for European patents with unitary effect are identical to those of 'classical' European patents. The envisaged regulation on unitary patent protection does not change these patentability conditions.

The Biotechnology-Directive which has been fully integrated in the legal framework of the European Patent Organisation, also confirms the principle that inventions whose commercial exploitation offends against *ordre public* (eg. a process for cloning human beings) or morality cannot be patented. In particular, it provides an illustrative list of inventions which are excluded from patentability for these reasons. The non-exhaustive list comprises (1) processes for cloning human beings, (2) processes for modifying the germ line genetic identity of human beings, (3) the use of human embryos for industrial or commercial purposes and (4) processes for modifying the genetic identity of animals which are likely to cause them suffering without any substantial medical benefit to man or animals, and also animals resulting from such processes.

Up until now, the Court of Justice of the European Union was asked to interpret one of these categories, namely the use of human embryos for industrial and commercial purposes. The case is known as *Brüstle-judgement* (C-34/10). The judgement is binding on the courts of the Member States, and, of course also to the future Unified Patent Court. The CJEU-ruling has also been implemented in the practice of the European Patent Office.

## **21. Will the new unitary patent regime facilitate the patenting of computer programmes?**

The patentability requirements for European patents with unitary effect are identical to those of "classical" European patents. The envisaged regulation on unitary patent protection does not contain any particular disposition or derogation on the patentability conditions for inventions.

As to the patentability of software, Article 52(2) of the European Patent Convention provides that programs for computers do not constitute a patentable invention. However, patentability is only excluded for programs for computers 'as such'.

An invention which involves the use of a computer, a computer network or other programmable apparatus, where one or more features are realised wholly or partly by means of a computer program (so called computer-implemented inventions, "CII") can be patented if it fulfils the strict patentability requirements, in particular, it must have a technical character, be new and make an inventive technical contribution to the knowledge available at the date on which the application was first filed.

### **III. Legislative process**

## **22. What is the current state of play?**

Progress on the unitary patent package has been interrupted since June this year when the Heads of States and Governments reached a political agreement on the remaining major political issues, in particular the seat of the Central Division of the Unified Patent Court. As part of the final deal, the Heads of States and Governments suggested an amendment to the Regulation on the unitary patent. This suggestion made it necessary to reopen the discussions between the co-legislators – the European Parliament and the Council.

The Member States were seeking to delete three articles from the proposed Regulation (Articles 6-8) which defined the scope of the unitary patent (definition of what constitutes a direct and indirect infringement of the right as well as the applicable limitations). The European Parliament and its Legal Affairs Committee, on the other hand, considered these provisions necessary and did not support this deletion.

The compromise suggested by the Member States to the European Parliament on 19 November 2012 which was found acceptable by the JURI Committee, includes the replacement of Articles 6-8 by a new Article 5 which reaffirms the principle of the uniformity of the scope of the unitary patent and replaces the definition of this scope and its limitations by a reference to an applicable national law. At the same time, the corresponding provisions which were contained in the draft Agreement on the Unified Patent Court (UPC) have been extended to apply both to the current "classical" European patents and the future unitary patents. The UPC Agreement, once ratified, would be incorporated into the national laws of the Member States and would therefore provide a uniform scope of the rights conferred by a unitary patent as well as the applicable limitations.

### **23. What are the next steps?**

Concerning the creation of unitary patent protection, the legislative procedures for the two proposals for regulations (see [IP/11/470](#) and [MEMO/11/240](#)) will need to be finalised. The next step in the procedure – the final confirmation of the political agreement on the regulations should take place on 10 December at the Competitiveness Council. The discussion and vote in the plenary of the European Parliament (EP) would follow the day after, on 11 December. The regulations would be formally adopted upon the signature of the Presidents of the European Parliament and the Council of the EU.

### **24. When will the provisions governing the procedures for obtaining 'unitary patents' be established, and by whom?**

The Member States participating in the enhanced cooperation in the area of the creation of the unitary patent protection will commonly implement the two Regulations (on the unitary patent and on the language regime). For these purposes, they will form a special committee within the framework of the European Patent Organisation (the so-called Select Committee) which will adopt new Rules according to which the European Patent Office will, in particular, register the unitary effect for European patents, administer these European patents with unitary effect and apply the language regime.

The preparation of these new Rules will take place within the framework of the EPO and will start as soon as the two Regulations have been adopted.

### **25. When will the first 'unitary patent' (European patent with unitary effect) be granted?**

The Commission hopes that the first European patent with unitary effect can be granted in April 2014.

The date of application of the two regulations on the creation of unitary patent protection is conditional on the entry into force of the Agreement on the Unified Patent Court.

Thus, for a unitary patent being issued in early 2014, it would be necessary that, by November 2013, at least 13 Member States (including the three States with the highest number of European patents in force, i.e. France, Germany and the United Kingdom) have ratified the draft agreement on the Unified Patent Court. The Agreement between the Member States is expected to be signed in early 2013. This will be the starting point of the ratification process in the Member States.

## **26. When will the Agreement on the Unified Patent Court enter into force?**

The agreement on the UPC is expected to be signed in early 2013 under the Irish Presidency. This will be the starting point of the ratification process in the Member States. In addition, the preparatory work for the setting up of the Unified Patent Court and of the new procedures dealing with the unitary patent within the European Patent Office will start.

It will then enter into force once 13 Member States, including the three States with the highest number of European Patents in force (France, Germany and the United Kingdom), have ratified the agreement.

If, initially, not all 25 Member States (participating in the enhanced cooperation) ratify the court agreement, the agreement will only enter into force amongst the ratifying Member States. In addition, the unitary effect of a European Patent will only extend to those Member States which have ratified the Court agreement.

## **27. When will the Rules of Procedure for the Unified Patent Court be established, and by whom?**

The Preparatory Committee that will be established after the signature of the draft agreement on the Unified Patent Court and take care of the setting up of the new court system will draw up a complete and detailed set of Rules of Procedure before the entry into force of the Agreement. In this work, the input of expert judges, lawyers and industry representatives will be required and a broad consultation with stakeholders carried out. The Rules of Procedure will be adopted by the Administrative Committee created under the Agreement on the UPC.

Currently, a very first draft for the Rules of Procedure is being elaborated by a committee of expert patent judges and lawyers from the Member States with the highest patent litigation activity. A stakeholder consultation is planned after finalisation of the first draft Rules.

More information:

[http://ec.europa.eu/internal\\_market/indprop/patent/index\\_en.htm](http://ec.europa.eu/internal_market/indprop/patent/index_en.htm)