

December 1, 2022

### **Coming Soon to the EU - the Unitary Patent and Unified Patent Court**

The most significant change since 1977 is about to occur in European Patent Law. Currently, there are two options for obtaining a patent in a European Country: a national route or a “classic” European Patent (EP). A granted EP can take effect in 44 countries when the EP is validated at the respective national patent office for each country. Once the granted EP is validated in the respective country, the patent owner can enforce the EP against infringers in the respective country. In the next 3-4 months, the patent system in Europe will launch the Unified Patent Court (UPC) and the Unitary Patent (UP) as an additional option to the traditional validation enforcement path of an EP.

The aim of the UP and UPC system is to improve access to the patent system in Europe by reducing the cost and complexity of obtaining and enforcing patent protection in the participating European Union (EU) member countries. The UP is an extension of the existing European Patent System which will offer applicants an option to validate a granted EP as a single unitary patent right that is effective in all EU member countries that participate in the new system as opposed to validating the granted EP in each EU member country as is the process now. In participating EU countries, a single validation of the UP at the European Patent Office will have unitary effect. Seventeen EU countries will be covered by the UP when the system starts and others could be added over time. A UP can be requested for any EP granted on or after the day when the Unitary Patent System becomes operational. Electing a UP does not preclude protection for additional countries via a classic EP, as it is possible to have a combination of UP and classic EP patent rights.

The UPC will be a forum for hearing infringement and validity disputes relating to UPs and classic EPs, with the power to deliver judgements that will be effective in all of the participating EU member countries. An owner of a granted EP can “opt-out” of the UPC system during a transitional period of at least 7 years. If “opt-out” is elected, it will be each national court of justice in the country where the EP is validated which will have jurisdiction over infringement and validity claims. An “opt-out” decision is reversible for an EP. There is no possibility to “opt-out” of the UPC for a UP.

A sunrise period for “opt-out” will begin March 1, 2023, and will last for the three months before the UPC becomes fully operational. Opting-out in the sunrise period is important for EP patent owners wanting to avoid the jurisdiction of the UPC. If an “opt-out” is not filed in the sunrise period and an action is started in the UPC when it becomes fully operational, it is not possible to then “opt-out”. We can advise you as to the best course of action during this sunrise period and going forward.