

Future European Patent Protection Package

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The concept of a Community patent originated several years ago with the bedrock principle of the EU Single Market allowing free movement of money, people and businesses across borders. The European Single Market now regroups 500 million people with 28 Member States, and despite criticisms, has been proven to be very successful and is completely integrated in way of life of the European citizens. It was thus logical to create a unified patent system for the whole European Union, similar to the Community Trade Mark (CTM) and the Community Designs.

Numerous initiatives have been made for the creation of such a Community patent, but none of them received unanimous votes among the EU Member States, nor could they compete with the existing European Patent system. This current European patent system has proven to be very efficient upvery the stage of grant, but faced serious limitations after grant. Indeed, it is well known that once the European patent is granted, it breaks into a bundle of national patents, which are governed by national laws, and this situation leads to disharmonized national enforcements throughout Europe.

It certainly required lots of creative thinking and political determination to renew the reform of the European patent system allowing moving forward to the now called unified patent system. This was achieved in early 2011, when twelve EU Member States proposed to use the “enhanced cooperation” provision of the Lisbon Treaty to support the unified EU patent system. End of 2012 marked significant historical steps when EU Member States (except Croatia, Poland, and Spain who have reserved their rights to join) endorsed the European Council draft proposals for establishing the Unitary Patent Protection (UPP) package. The international Agreement for the creation of a single court with pan-European effect was then signed on February 19, 2013. The UPP package creates a unified patent protection system in Europe for all Signatory States, and thus comprises a Unitary Patent (UP) and a Unitary Patent Court (UPC).

The Unitary Patent provides one single patent right which is issued and enforced with unitary effect in all Signatory States as a whole, rather than on a national level. It can be granted, maintained, transferred, enforced, and/or invalidated as a single right for whole territory, and thus any legal actions will affect the UP in all Signatory States as a whole.

The Unitary Patent Court will be composed by a court of first instance, with three central divisions, local and regional divisions, a court of appeal and a registry. The UPC will hear all questions of infringements, injunctions, revocations, validity of the unitary patents.

The UPP package is expected to come into effect around 2015, *i.e.*, after it is ratified by 13 Signatory States (including France, Germany and the UK). The new regime is expected to dramatically decrease the cost of the EU patenting and make it more competitive vis-à-vis US patenting. It is thus now crucial to understand the internal mechanics of the new regime and strategies regarding the opting in/out, forum shopping, bifurcations, injunctions, appeals, etc...