Unified Patent Court (UPC)
The start of the UPC is imminent - What do licensees need to know now?
September 2022

Where will it take place?

<table>
<thead>
<tr>
<th>Ratifiers of the Agreement on a Unified Patent Court</th>
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<td>Austria, Belgium, Bulgaria, Denmark, Estonia, Finland, France, Germany, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, United Kingdom</td>
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Where will it take place?

Austria | Germany | Portugal
Belgium | Italy | Slovenia
Bulgaria | Latvia | Sweden
Denmark | Lithuania
Estonia | Luxembourg
Finland | Malta
France | Netherlands

Ratifiers of the Agreement on a Unified Patent Court:

Deposit of German instrument of ratification

Sunrise period (expected to start late 2022/early 2023)

Court opens (expected in Quarter I-II/2023)

What if you are a licensee?

Licensee cannot opt-out or opt-in European bundle patents

Art. 47 UPC-Agreement rules under which conditions a (non-)exclusive licensee can file UPC action

Therefore, licensee should discuss the UPC strategy with the licensor.
What is the biggest threat?
Patent revocation in one single action for all Participating Member States at once.

What do I need to do?
Consider whether the licensed European patent should be opted-out and discuss with licensor.

Opt-out criteria to be discussed between licensee and licensor

- Which patents/SPC are relevant to you?
- Where are competitors seated?
- Where do you want to protect your market position?
- What are the specific needs of the licensee?
- How strong is the validity?
- How likely is a revocation attack?
- Economic impact of a revocation on your business?
- Desire to shape case law in your technical area?
- Split approach to mitigate risks?

Renegotiation and amendment of existing license agreements might be required — consider clauses explicitly indicating licensee’s rights:

- Shall licensee be able to bring UPC infringement action?
- Can licensee select between EP/UP?
- Does licensee have a say regarding opt-out/opt-in of EP?