



PATENTS MATTER – THE EUROPEAN PATENT SYSTEM

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WHAT IS A PATENT

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(12) **EUROPEAN PATENT SPECIFICATION**

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PCT/US2003/015459

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(87) International publication number:
WO 2003/100563 (04.12.2003 Gazette 2003/48)

(54) **SYSTEM AND METHOD FOR AUTOMATICALLY SETTING UP A UNIVERSAL REMOTE CONTROL.**
SYSTEM UND VERFAHREN ZUM AUTOMATISCHEN EINRICHTEN EINER UNIVERSELLEN FERNBEDIENUNG
SYSTEME ET PROCEDE PERMETTANT DE REGLER AUTOMATIQUEMENT UNE TELECOMMANDE UNIVERSELLE

(84) Designated Contracting States:
AT BE BG CH CY CZ DE DK EE ES FI FR GB GR HU IE IT LI LU MC NL PT RO SE SI SK TR

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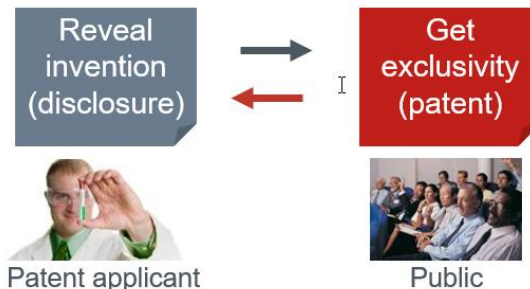
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(56) References cited:
EP-A- 1 198 069 EP-A2- 0 780 990
WO-A-00/17738 WO-A-01/39150
WO-A-01/69567 US-A- 5 410 326
US-A- 5 646 608 US-A- 5 742 730
US-A- 6 104 234

Note: Within nine months of the publication of the mention of the grant of the European patent in the European Patent Bulletin, any person may give notice to the European Patent Office of opposition to that patent, in accordance with the implementing Regulations. Notice of opposition shall not be deemed to have been filed until the opposition fee has been paid. (Art. 99(1) European Patent Convention).

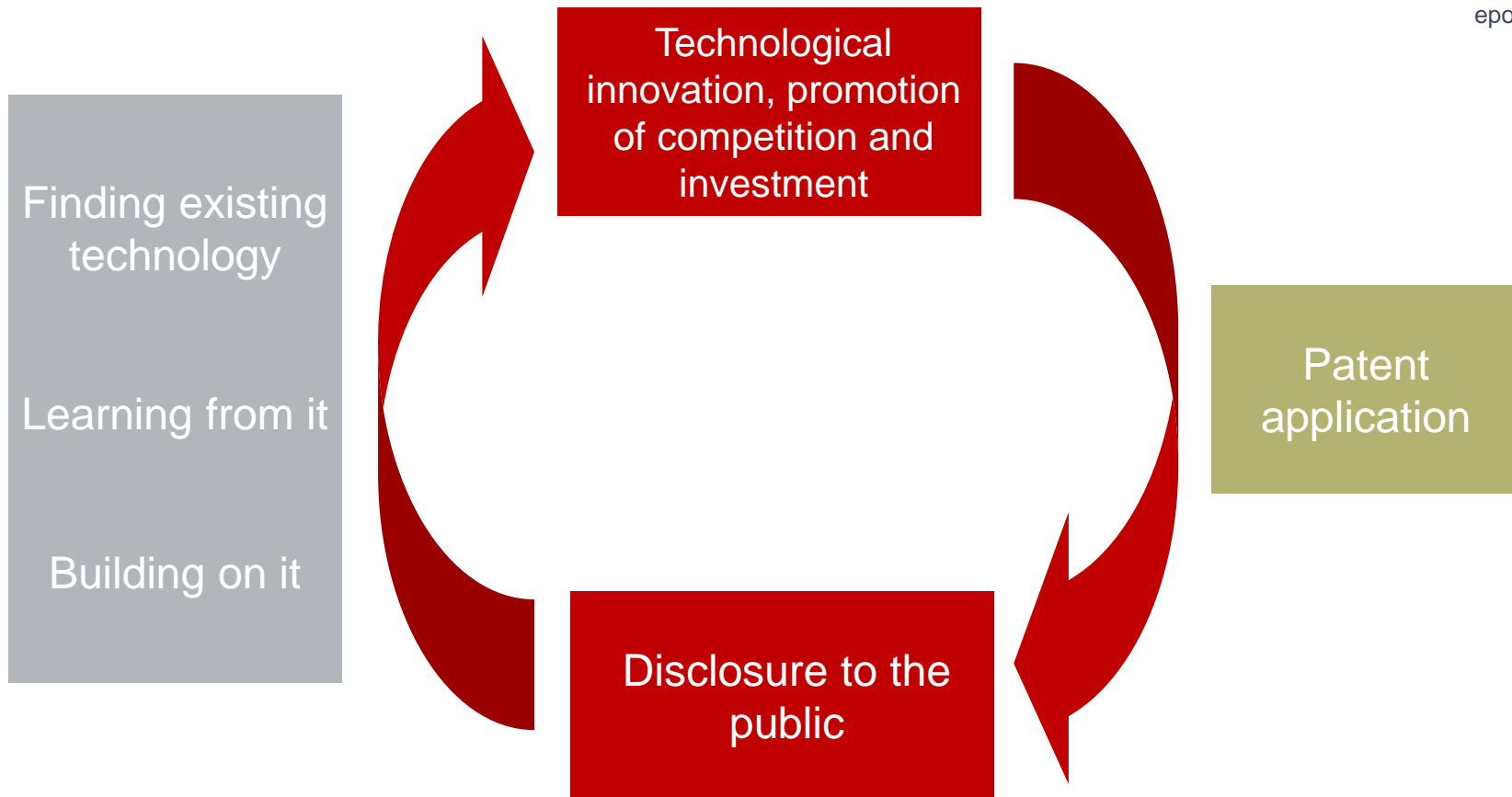
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- A legal title which grants the holder
 - the exclusive right to prevent others from making, using or offering for sale, selling or importing a product that infringes his patent without his authorisation
 - in countries for which the patent was granted
 - for a limited time
- In return for this protection, the holder has to disclose the invention to the public.



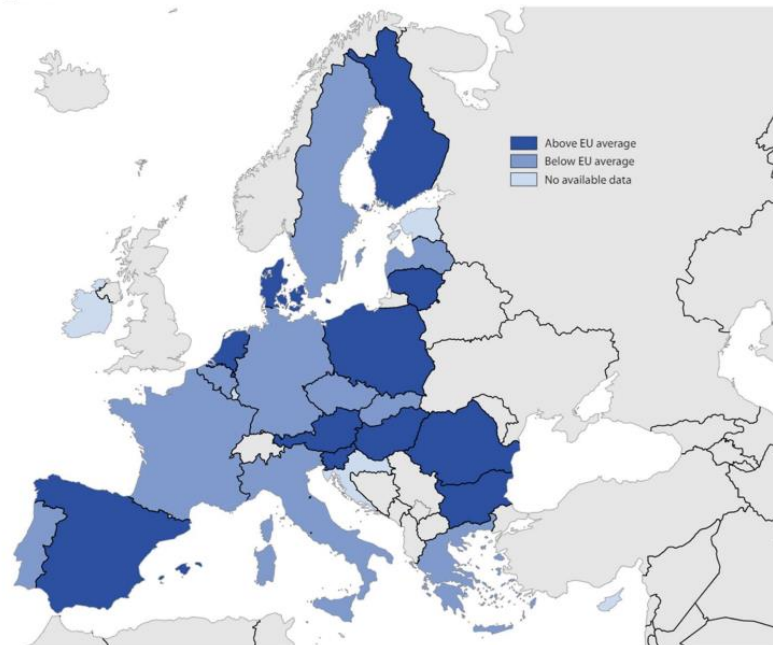
- Patent protection is not automatic. You have to file an application describing the invention in technical terms and in a form that meets certain requirements,

WHAT IS THE PURPOSE OF PATENTS



- IPR-intensive industries
 - directly and indirectly supported the creation of 82 million jobs in the EU between 2017-19 (39% of total EU jobs)
 - contributed 47% of the EU's GDP
 - generated 80.1% of EU exports
- IPR-intensive industries pay significantly higher wages than other industries, with a wage premium of 41% over other industries

IPR indicators for selected EU Member States
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WHAT CAN AND CAN'T BE PATENTED

Patents protect technical inventions which solve technical problems:

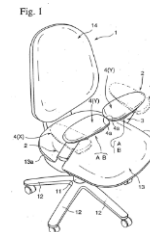


- Chemical substances, pharmaceuticals

- Processes, methods, uses



- Products, devices, systems



For an invention to be patentable, it must usually be

- ✓ **new** to the world (i.e. not available to the public anywhere in the world)
- ✓ **inventive** (i.e. not an "obvious" solution), and
- ✓ susceptible of **industrial application**

In most countries, patents are not granted for mere business methods or rules of games, or for methods of treatment, diagnostics and surgery of the human or animal body, or for inventions that are contrary to *ordre public* or morality, or for plant and animal varieties.



WHEN IS AN INVENTION "NEW"?

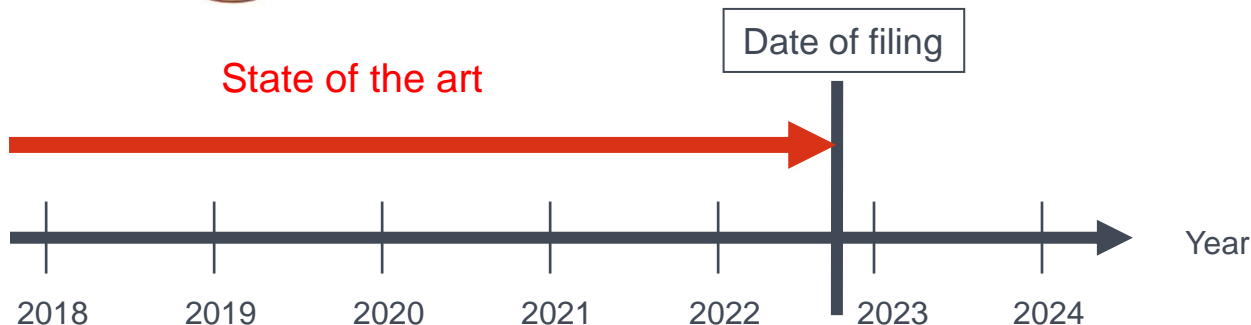
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- When it is not part of the state of the art
- State of the art = everything made available to the public before the date of filing

Keep your invention confidential until you have filed your patent application!



Patent application



DO'S AND DON'TS FOR SAFEGUARDING NOVELTY



■ Don'ts

- Do not publish any articles, press releases, conference presentations, posters, proceedings, lectures or blog posts, etc. before you file your patent application
- Do not sell any products incorporating the invention before you file your patent application



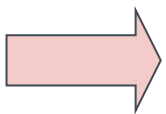
■ Do's

- Request signature of a non-disclosure agreement (NDA)
- Seek professional advice at an early stage
- File before anyone else does!



WHEN IS AN INVENTION "INVENTIVE"?

- When it is not obvious to the person skilled in the art in view of the state of the art
- The person skilled in the art
 - is a skilled practitioner in the relevant technical field
 - has access to the entire state of the art
 - is aware of general technical knowledge
 - is capable of routine work



He knows EVERYTHING,
but has ZERO imagination!



WHAT RIGHTS DOES A PATENT CONFER?

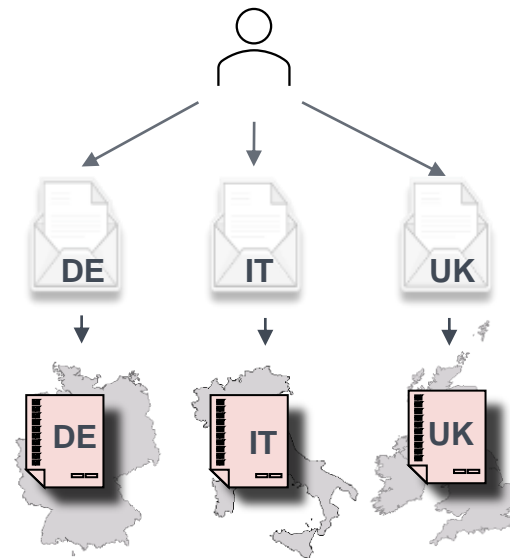
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- Right to prevent others from making, using, offering for sale, selling or importing infringing products in the country where patent protection is granted
 - Exception: non-commercial purposes (private use, academic research)
- Right to assign, sell or license these rights
- Protection is limited in time: max. 20 years



HOW TO OBTAIN PATENT PROTECTION

- Option 1: The national route
 - Filing with a national patent office for protection in that particular country
 - To obtain patents in several countries, separate applications must be filed for each country
 - Separate procedures are required for each state
 - Procedures differ according to national law



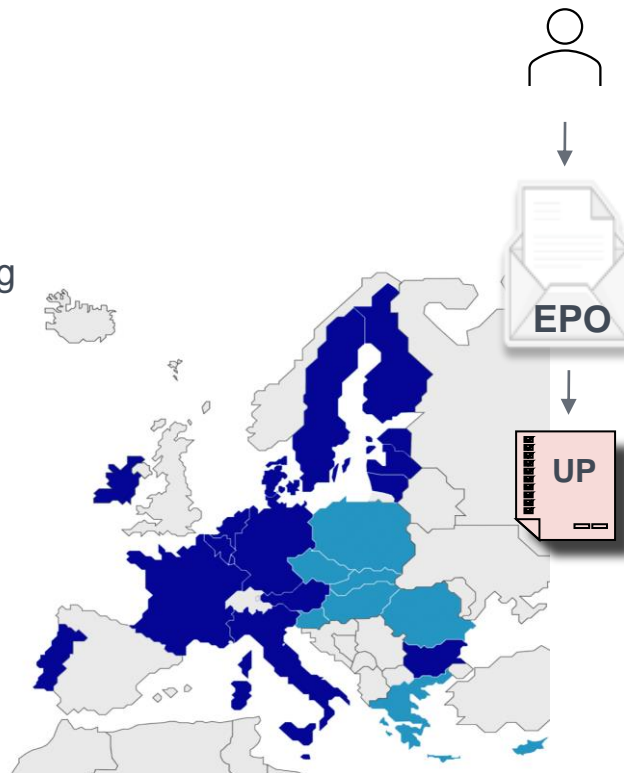
HOW TO OBTAIN PATENT PROTECTION

- Option 2: The European route
 - One patent application filed at one office, i.e. the EPO
 - One single grant procedure at the EPO
 - Protection available for up to 44 states
 - Once granted the applicant needs to validated the European patent in the states where protection is desired
 - The European patent validated in one state has the same effects as a national patent
 - Results in a bundle of national patents



HOW TO OBTAIN PATENT PROTECTION

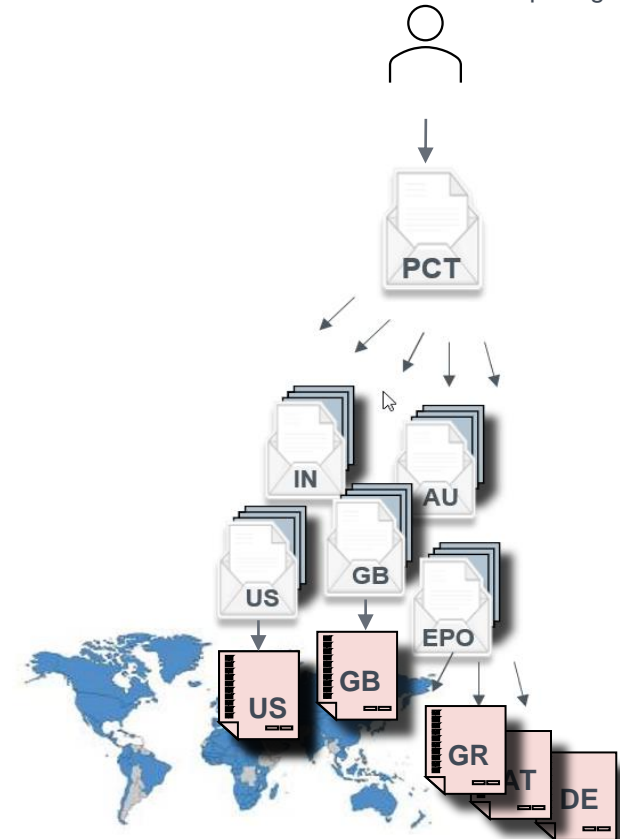
- Option 2bis: The Unitary Patent
 - A European patent with unitary effect
 - Unitary effect can be registered by the patentee after the grant of the European patent
 - Protection in a single step for up to 25 participating EU member states with no more need for national validations
 - One-stop shop with centralised post-grant administration by the EPO (single renewal fee, register entries, etc.)
 - Unitary character: limitation, transfer, revocation, lapse in respect of all participating member states



HOW TO OBTAIN PATENT PROTECTION

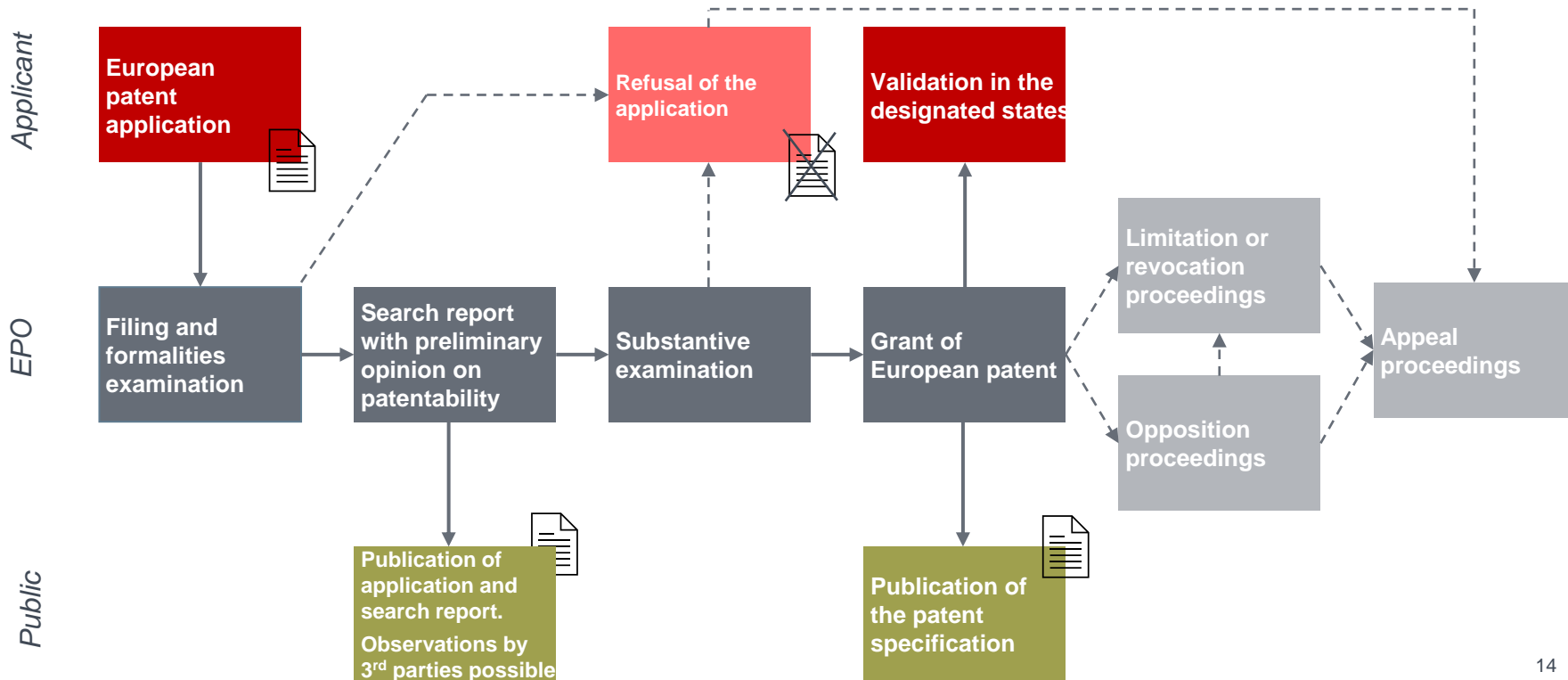
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- Option 3: The international route
 - One single application for up to 157 countries
 - Search report and opinion on patentability
 - PCT applications do not lead to "international" patents
 - After 30-31 months, decision by applicant on which countries to proceed in with the application
 - Patent granting procedure is then carried out by the relevant national or regional patent offices, for example the EPO



THE GRANT PROCEDURE AT THE EPO AT A GLANCE

Centralised granting procedure for European patents



WHAT CAN HAPPEN AFTER GRANT OF A EUROPEAN PATENT ?

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- Opposition
- Limitation/revocation
- Renewal fees
- Invalidity proceedings
(before a competent national court or the Unified Patent Court)
- Infringement proceedings
(before a competent national court or the Unified Patent Court)



WHAT DOES A EUROPEAN PATENT COST?

- The cost of a European patent depends on
 - the number of designated states and
 - the planned term of the patent
- It costs approx. EUR 5 700 to take a European patent application to the grant stage
 - Fee reductions are available for small entities (SMEs, individuals, universities, or public research organisations)
- Annual renewal fees are payable to the national patent offices of the designated states after grant in order to maintain the patent. The costs of the renewal fees depend on the rates charged in each state
- Overall cost of obtaining a European patent will generally include fees for the services of a patent attorneys and service providers



OBJECTIVES OF THE UNITARY PATENT PACKAGE

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**Cost-effective
option for broader
patent protection
and dispute
settlement
across Europe**



Providing better value with reduced complexity



Facilitating access to patent protection for SMEs, universities and public research centres



Making Europe more attractive for innovation and investors



Boosting Europe's competitiveness

EU Regulations

- EU Regulation No. 1257/2012 of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection ([OJ EPO 2013, 111](#))
- EU Regulation No. 1260/2012 of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements ([OJ EPO 2013, 132](#))

Rules relating to Unitary Patent Protection

- Rules relating to Unitary Patent Protection ([OJ EPO 2022, A41](#))
- Rules relating to Fees for Unitary Patent Protection ([OJ EPO 2022, A42](#))

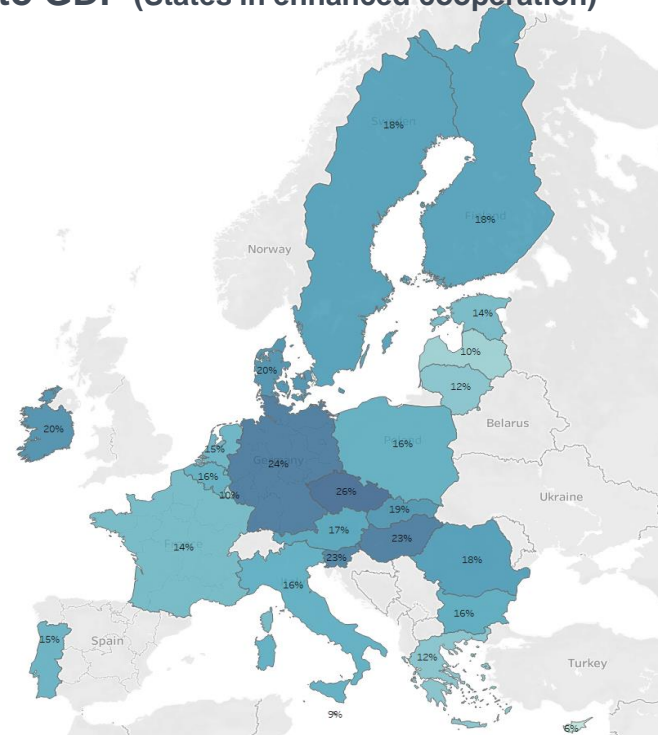


BUILDING A SINGLE MARKET FOR INNOVATION IN THE EU

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- The Unitary Patent will protect innovators in EU member states where they are currently active without seeking local patent protection.
- Protection in a broader market will allow European innovators to derive the full benefits of their technology, thereby further incentivising investment in innovation.
- Patent-intensive industries that will most benefit from such enhanced protection represent 17,4% of the EU's GDP and employment.

Patent-intensive industries contribution to GDP (States in enhanced cooperation)



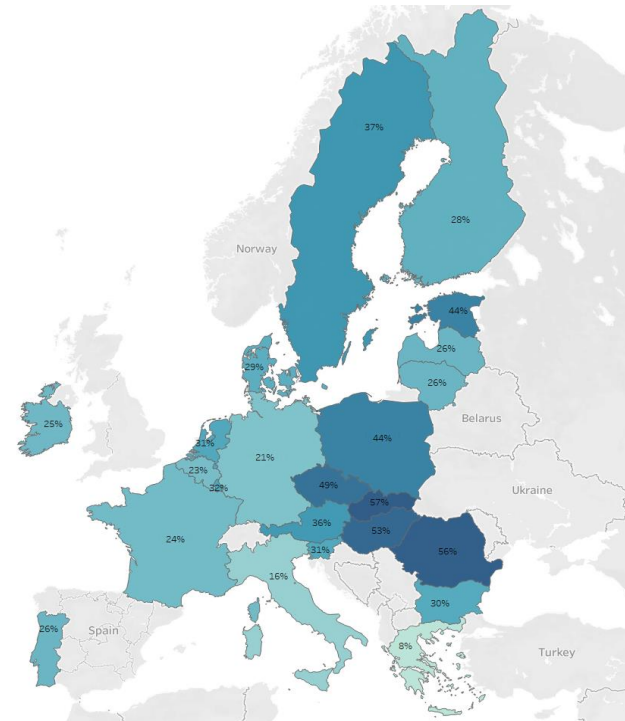
Source: IPR-intensive industries and economic performance in the European Union – Joint Report 2022 from the EPO and EUIPO- Data 2017-2019.

SUPPORTING ECONOMIC AND TECHNOLOGY CONVERGENCE

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- More than a quarter of jobs in European patent-intensive industries are generated by foreign companies that invest in EU countries.
- The Unitary Patent will encourage those companies to transfer advanced technology in participating countries, thereby increasing local productivity and creating high-salary jobs.
- Harmonization of patent protection in Europe can foster foreign direct investment (FDI) and trade in high technology sectors by an estimated 15% (1.8 bn EUR) and 2% (14.6 bn EUR), respectively.
- EU countries that have a high proportion of FDI jobs and where European patents are currently seldom validated are expected to benefit most.

Share of FDI jobs in patent-intensive industries (States in enhanced cooperation)

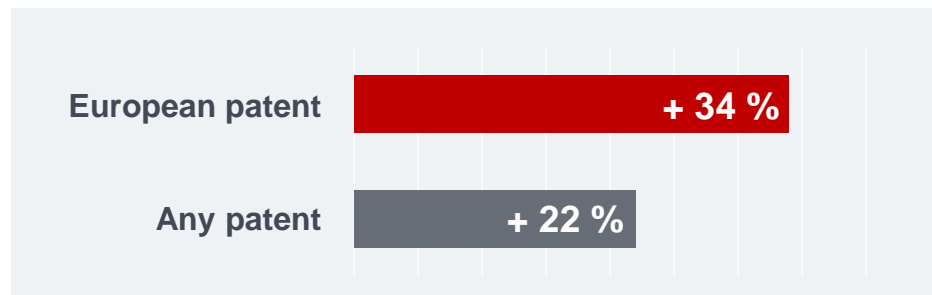


Sources: IPR-intensive industries and economic performance in the European Union – Joint Report 2022 from the EPO and EUIPO- Data 2017-2019. EPO-EUIPO (2017) Patents, trade and foreign direct investment in the European Union

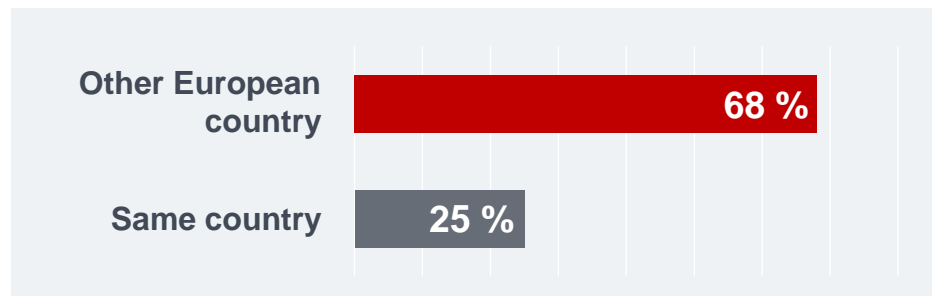
A BOOST FOR INNOVATIVE SMEs IN THE EU

- Innovative SMEs and universities already benefit of European patents, but still validate these patents only in a small number of countries.
- Access to unitary protection in up to 25 member states will:
 - create enhanced flexibility for SMEs and universities to enter national markets and commercialise their technology on a broad geographical scale,
 - enable them to set up collaborations with a broader variety of partners to commercialise inventions across the EU,
 - constitute a strong signal of economic value to attract venture capitalists and other sources of funding.

Odds of growth of SMEs with prior patent use



SMEs' preferred partner location for patent commercialisation



Sources: EPO-EUIPO (2019) High-growth firms and intellectual property rights: the IPR profile of high-potential SMEs in Europe. EPO (2019) Patent commercialisation scoreboard: European SMEs

BASIC CONCEPT OF THE UNITARY PATENT



! Based on a European patent, granted by the EPO under the EPC

! Same application and examination procedure

! Same quality

! Registered in one single step at the EPO

! Uniform protection in up to 25 Member States

! No more national validations, i.e. no need for multiple parallel national translation, validation and renewal procedures

! EPO acts as one-stop shop for all subsequent transactions

HOW TO OBTAIN A UNITARY PATENT

Substantive requirements

Unitary effect can be requested for European patents that were granted

- in respect of all 25 participating Member States, and
- with the same set of claims for all of them.

Some of the main procedural requirements

Filing of the request by the patent owner

- in writing, in the language of the proceedings, and
- no later than one month after the mention of the grant is published.
- Translations only during a transition period

COST EFFICIENCY

- No fees are charged by the EPO for the purpose of obtaining a Unitary Patent.
- Maintaining a Unitary Patent for ten years – the current average lifetime of a European patent – will amount to less than EUR 5 000.

Classic European patent

Fragmented post-grant administration
procedure at national level

National patent offices
with their own:



- Translation requirements
- National validation fees
- Procedures, particularly deadlines
- Renewal fees
- Currencies
- Requiring own local attorney



Unitary Patent

One-stop-shop at the EPO
for all post-grant administration

One office



- No more translations¹
- No additional fee for obtaining a Unitary Patent
- One procedure, particularly deadline
- One renewal fee
- One currency (€)

¹ after an initial transition period when translations will be required, but for information purposes only with no legal effect.

THE UNIFIED PATENT COURT IN A NUTSHELL



Newly created international court common to the Contracting States and thus part of their judicial system



Decisions will be issued by internationally composed panels comprising both legally and technically qualified judges meeting highest standards of competence



The UPC will apply its own procedural law and enhance legal certainty through harmonised case law in the area of patent infringement and validity



Exclusive jurisdiction for litigation relating to Unitary Patents and European patents (subject to certain exceptions during a transitional period), as well as in respect of actions concerning decisions of the EPO relating to Unitary Patents

LEGAL FRAMEWORK OF THE UPC AND RELEVANT LEGAL TEXTS

[Agreement on a Unified Patent Court](#)

[Protocol to the Agreement on a Unified Patent Court on
provisional application](#)

[Protocol on Privileges and Immunities of the Unified Patent Court](#)

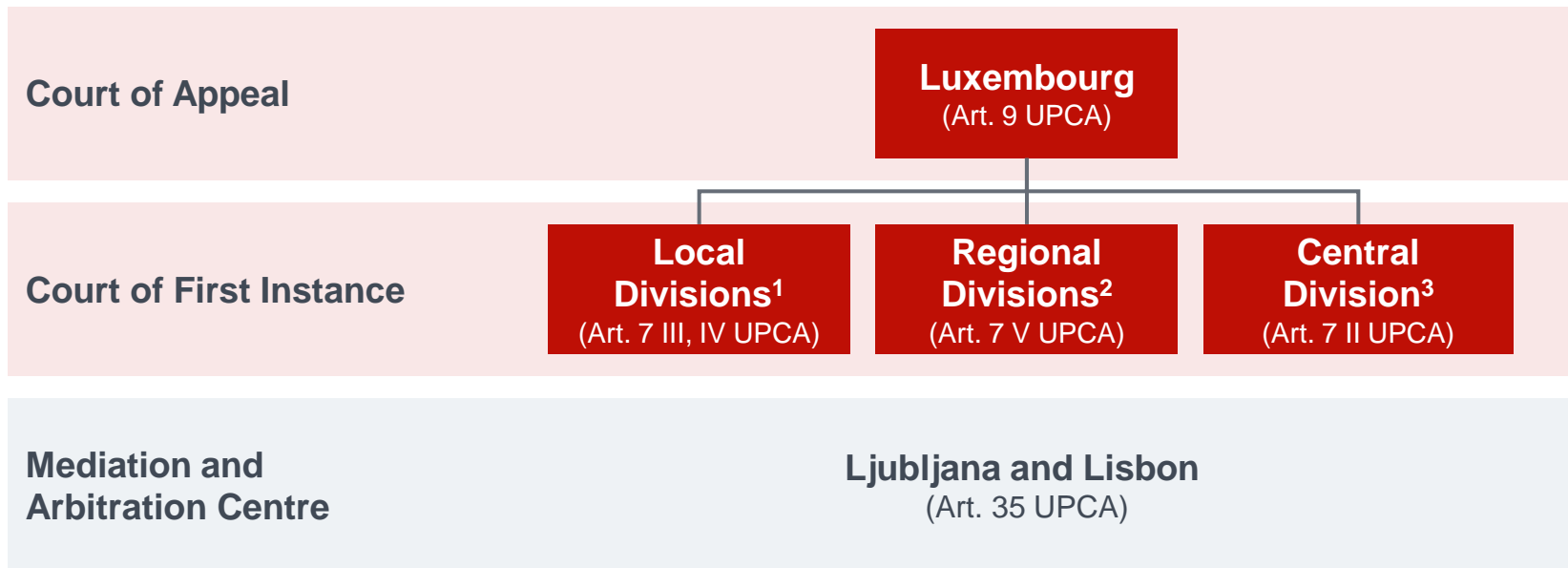
[Rules of Procedure of the Unified Patent Court](#)

[Table of Court Fees](#)

[Organisational Rules of the Patent Mediation and Arbitration Centre](#)



STRUCTURE OF THE UPC



¹ Up to 4 LDs/Member State. LDs Confirmed so far: AT (Vienna), BE (Brussels), DE (Düsseldorf, Mannheim, Munich, Hamburg) DK (Copenhagen), FI (Helsinki), FR (Paris), NL (The Hague), PT (Lisbon), SI (Ljubljana)

² RD regrouping at least 2 Member States. Confirmed so far: 1 RD with seat in Stockholm (founded by Estonia, Latvia, Lithuania and Sweden)

³ Seat in Paris with a section in Munich. The UPCA Contracting States will discuss and decide in due course whether and, if so, where to reassign the former London section of the Central Division.

1. Can anyone apply for a patent?
2. Who is the inventor?
3. What is the difference between patent holders and inventors?
4. What can you get a patent for?
5. What are the requirements for obtaining a patent?
6. What is the term of a patent?
7. What routes are there for obtaining a patent in Europe?
8. What is the difference between a patent application and a patent?
9. Even if an invention is patentable, is it always wise to apply for a patent?
10. What is the Unitary Patent and the Unified Patent Court?





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