



The unitary patent system

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Patents in Europe

- **National patents** granted by NPOs
- **European patents** granted by the European Patent Office (EPO)
(centralised examination → bundles of national patents) (38 ctg states)
- Possibly: initial filing of 'international application' under the **Patent Cooperation Treaty** (PCT)
(preliminary search and examination; no centralised grant)
- **Unitary patents** ('European patents with unitary effect')
*launch expected in **early 2023** (initially for certain EU MSs only)*

Patent package: two main pillars

UPP

(unitary patent protection)

- Two EU Regulations
- Eur. Patent Office
(+ Boards of Appeal)
- EPOrg's **Select Committee**
(under the Admin. Council)
- → Unitary patents

UPC

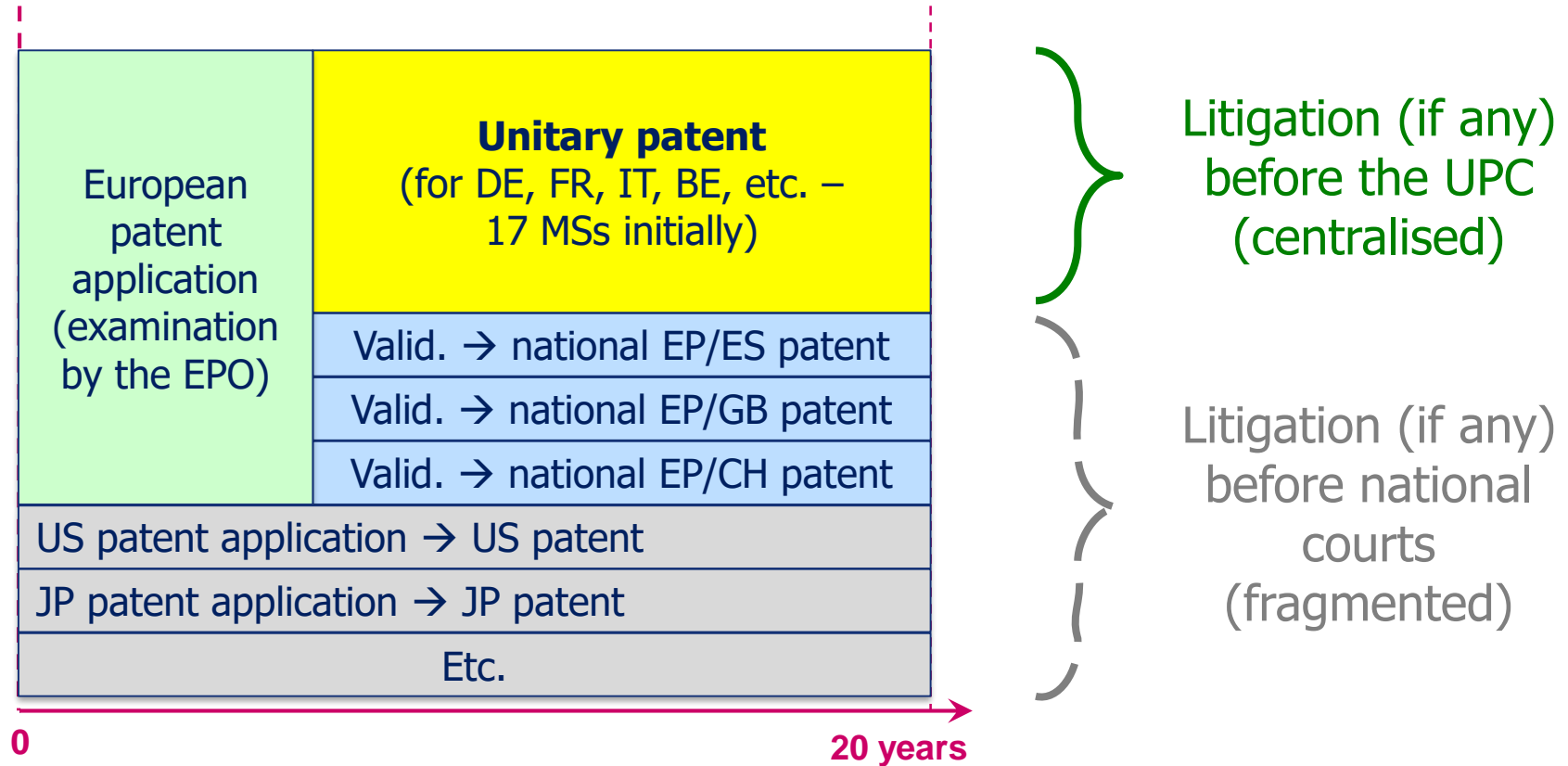
(Unified Patent Court)

- UPC Agreement
- Court of First Instance,
Court of Appeal, Registry
- **Admin. Committee**,
Budget Cttee., Advisory Cttee.
- Also for the litigation of non-unitary
European patents (and related SPCs)

Unitary patent protection – Main features

- A “European patent with unitary effect” will be a **European patent granted by the EPO** under the rules and procedures of the EPC to which, **after grant, unitary effect is attributed** for the territory of the participating MSs, at its proprietor's request
- A Unitary Patent has **unitary character** → it provides uniform protection and has equal effect in all participating MSs. It may only be limited, transferred or revoked, or lapse, in respect of all the participating MSs.
- One-stop shop procedure **cutting costs** (esp. validation/translation/renewal costs) **and administrative burden** – esp. regarding litigation

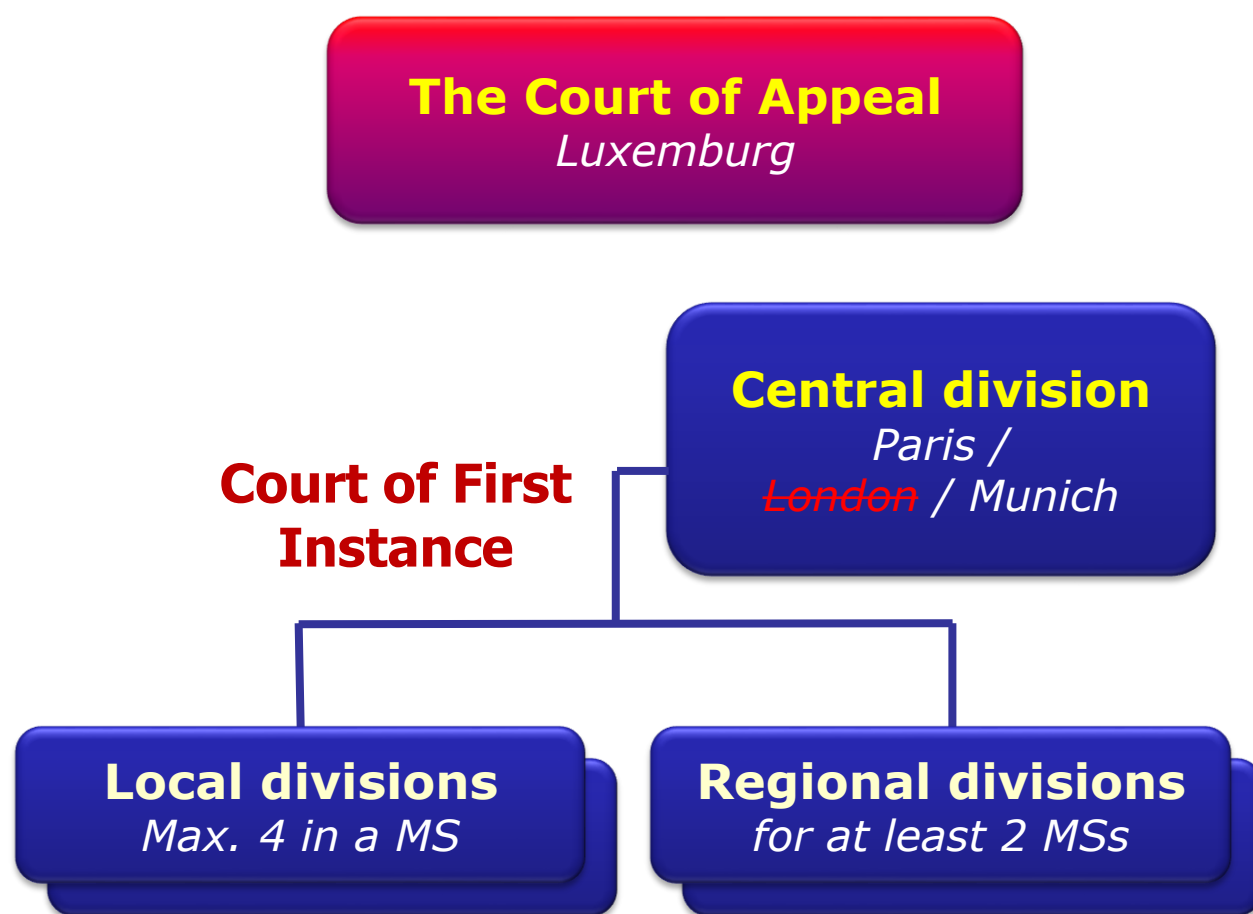
Practical example



Unitary patent – Geographical coverage

- A Unitary Patent covers the territories of those participating MSs **in which the UPCA has taken effect** at the date of registration of unitary effect by the EPO.
(at least 17 initially, covering about 75 % of the EU's GDP)
- As the outstanding ratifications of the UPCA will not take place all at once, there will be **different 'generations' of unitary patents with different territorial coverage**. The territorial coverage of a given generation of unitary patents will stay the same for their entire lifetime, irrespective of any subsequent ratifications of the UPCA after the date of registration of unitary effect.

Unified Patent Court – Structure



**Arbitration
and
Mediation
Centre**
*Ljubljana,
Lisbon*

**Training
centre for
judges**
Budapest

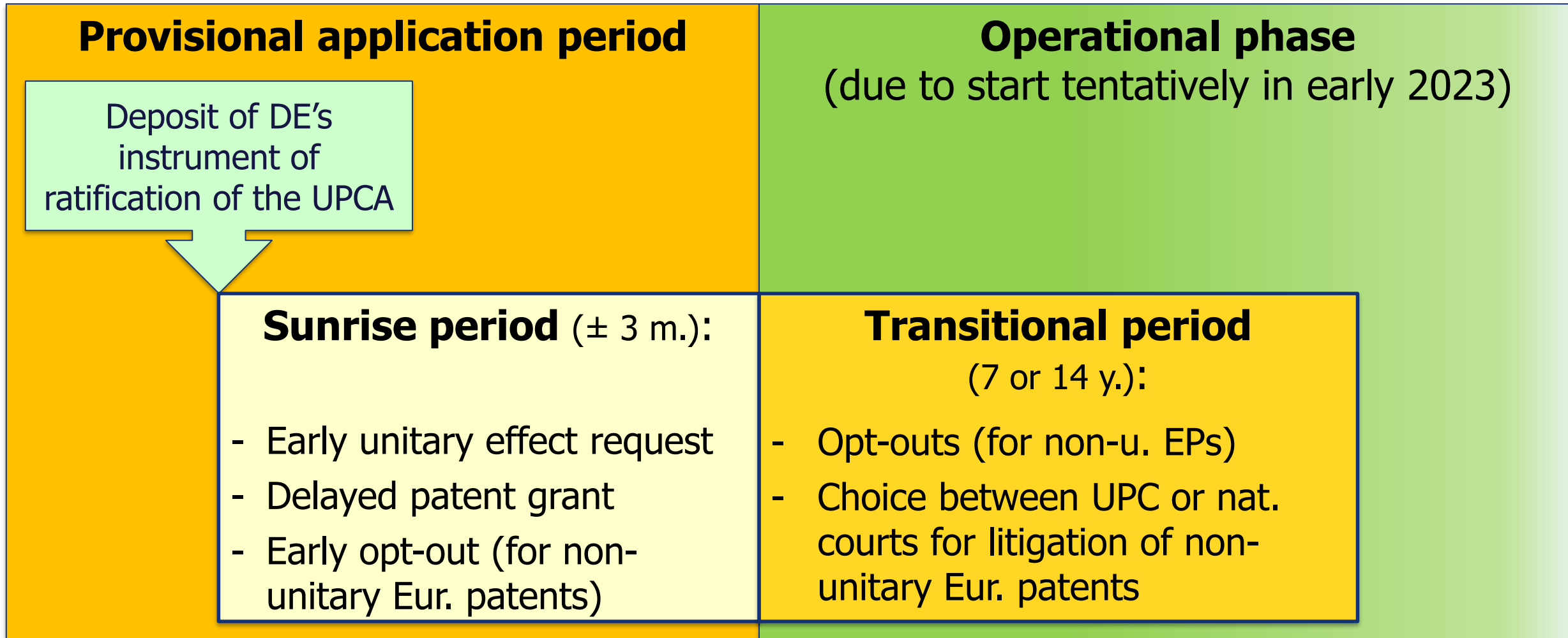
Summary of UP benefits

	Filing and examination	Validation/ translation requirements	Renewal fees	Litigation (if any)
Today: (non-unitary) European patent (available since 1978)	Centralised (EPO)	Heavy and costly requirements in several MSs (though not in all)	To be paid in each designated country (expensive total fees)	Before national courts only (i.e. fragmented, thus costly and with risks of discrepancies in decisions)
Future unitary patent (only for those MSs having ratified the UPCA – probably 17 initially)	(the procedure and the related fees will not change)	No such requirements anymore (except light ones during a transitional period)	To be paid centrally to the EPO (easier, cheaper)	Centralised (new UPC) (also for regular Eur. patents, and SPCs) (note: transitional period / nat. courts)

Benefits for SMEs at the UPC

- **UPCA Art. 36.3:** “The level of the Court fees shall be reviewed periodically by the Administrative Committee.
Targeted support measures for small and medium-sized enterprises and micro entities may be considered.”
- **UPCA Art. 71.1:** “A party who is a natural person and who is unable to meet the costs of the proceedings, either wholly or in part, may at any time apply for legal aid. The conditions for granting of legal aid shall be laid down in the Rules of Procedure.”
- **Excerpt from the Rules on Court fees and recoverable costs:**
« Micro and small enterprises will be entitled to a 40% reduction on all Court Fees (fixed and value-based) which are incurred at the Court of First Instance as well as at the Court of Appeal. »

Time line



During the 'sunrise period'

- **Early unitary effect requests**: The EPO will allow applicants to file early requests for unitary effect, so that unitary effect can be registered immediately at the start of the system.
- **Delayed granting**: The EPO will provide the possibility for applicants to request a delay in issuing the decision to grant a European patent, so that users do not miss the opportunity to obtain a Unitary Patent.
- **Early opt-out requests**: For a transitional period of 7 years (possibly 14), the proprietor of (or applicant for) a European patent will be able to opt out of the UPC's jurisdiction in respect of that European patent or application (for its entire lifetime), unless an action has already been brought before the UPC.

For more information

- https://ec.europa.eu/growth/industry/policy/intellectual-property/patents/unitary-patent_en
- <https://www.epo.org/law-practice/unitary/unitary-patent.html>
- <https://www.unified-patent-court.org/sites/default/files/enhanced-european-patent-system.pdf>