

EIP

What is the Unified Patent Court?

The Unified Patent Court (“UPC”) is a new pan-European court expected to open for business some time after October 2022. It will adjudicate disputes relating to the new Unitary Patents and also to existing and future European patents (unless they have been opted out).

The UPC Court of First Instance (CFI) consists of both a central division and local / regional divisions. Revocation actions (and declarations of non-infringement) are to be commenced in the central division, while infringement actions will normally be heard by the local/regional divisions.

The central division has its main seat in Paris, and a section in Munich; the location of a planned further section is now unclear since the UK left the EU and no longer participates in the UPC. The seat which will be responsible for a case is determined by the field of technology of the patent concerned as follows:

- Chemical and life sciences cases (location to be decided)
- Mechanical cases (Munich)
- Everything else, including IT and telecoms (Paris)

Which local / regional division may be competent to hear an infringement case is determined by the place where the alleged infringement occurred, or by the place of residence, or principal place of business, of the defendant.

If a counterclaim for revocation is made in infringement proceedings the counterclaim may also be heard in that local/regional division. However, at the discretion of the local/regional division and having heard the parties, it may instead refer the counterclaim to the central division, and pending the decision from the central division on the counterclaim for revocation, the local/regional court may either proceed with or suspend

the infringement proceedings. With the agreement of the parties the local/regional division may refer the whole case to the central division.

Any participating Member State can set up a local division and two or more may join together to form a regional division. A list of participating member states and confirmed locations for the local / regional divisions can be found [here](#).

Appeals from the CFI will be to a Court of Appeal in Luxembourg.

Amongst other things, the UPC will be able to decide:

- Infringement claims (and defences such as invalidity);
- Declarations of non-infringement;
- Revocation actions.

The UPC will not have jurisdiction to decide patent entitlement disputes which will remain a matter for national courts.

Cases in the local/regional divisions will be heard by a panel of three legally qualified judges (optionally one technically qualified judge may be requested). The panels in the central division will consist of two legally qualified and one technically qualified judge. The panels will be multinational.

Decisions of the UPC will take effect across all participating Member States in which the European patent (unitary patent or classical as the case may be) has effect.

Although heavily involved in the drawing up of its draft procedural rules, the UK is not now participating in the UPC. Decisions of the UPC will not have direct effect on European patents (UK).

Interested in learning more about the UPC? This is one of a series of short explainers about the Unitary Patent and Unified Patent Court. The full list of articles is:

- [What is the Unitary Patent, and how do I get one?](#)
- [What is the Unified Patent Court?](#)
- [What is the likely timing of the UPC and UP coming into being?](#)
- [How does the opt-out work in the transitional period of the UPC Agreement?](#)
- [What are the options if you want to be able to use the UPC?](#)
- [What are the options if you want to avoid the UPC?](#)
- [What languages does the UPC use?](#)
- [Member States participating in UPC](#)