



## **THE UNIFIED PATENT COURT AND UNITARY PATENT**

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### **Introduction**

Important steps are being taken at the moment in regard to patent rights in the EU. A new type of patent and patent enforcement system is set to commence end of 2022 or early 2023. On 19 January 2022 Austria ratified the legal instruments as the 13<sup>th</sup> Member State to do so. Hereafter enough Member States has ratified the legal instruments, including Denmark. The Unified Patent Court and Unitary Patent will be the main elements of the new system. The purpose is to create a more harmonized system within the EU with one common patent court hearing cases regarding European patents and unitary patents.

After years of debates, elections and preparations, the new system is now near.

## **Background information about the Unified Patent Court and Unitary Patent**

After almost 50 years of discussions and preparations in relation to introducing a Unified Patent Court (“UPC”), a sufficient number of Member States has now ratified the legal instruments and the Provisional Application Phase (PAP) can start. The first part will be to select judges along with technical and practical preparations for the court.

The UPC will have jurisdiction over all unitary patents and some European patents. This means instead of companies having to take their patent cases to different national courts, there will be one unified European court to handle all cases regarding patents. During the transitional period, the patent proprietor will have the option to opt-out. If the opt-out is declared, the UPC will have no jurisdiction to handle the case, such case must be decided by national courts.

It will still be possible to file a national patent instead of a European patent or unitary patent. There are no changes to that, so obtaining a national patent will be done by lodging an application to each national patent office. The national patents will not be under the jurisdiction of the UPC, and any cases related to national patents will still be heard by national courts.

Along with the UPC, the Unitary Patent system is also set to commence. The unitary patent which is also known as a European patent with unitary effect was established under *Regulation 1257/2012 of 17 December 2012*. The unitary patent will make it possible to get patent protection in up to 25 EU Member States through one application.

The United Kingdom will not participate in the UPC agreement or the unitary patent agreement. The United Kingdom had originally signed the UPC agreement but withdrew end of 2020.

The unitary patent is not meant to be a substitute for national patents, European patents, or utility models. Those patent rights will still be available. The difference between the two types of patents is that the unitary system will mean that one set of rules will apply, and the patents will not be governed by national laws for patent protection. The unitary patent will act as a one-stop-shop, and it will allow a simple registration and remove the complicity and costly national validation procedures.

The main goal is to provide a single patent covering all the participating Member States, making it easier for companies to get a patent on an innovation that covers multiple EU countries. The unitary patent will cost less for the companies in renewal fees. The renewal fees are set to cost less than EUR 5,000 in renewal fees over 10 years compared to the current level of around EUR 29,000.

## **Our Comments**

The UPC and unitary patent protection will benefit Danish companies and especially our SMEs. It will give them the right tool to protect their innovations and inventions in the EU.

It will be less expensive which will definitely benefit them too. They will gain wider protection for a smaller cost. With the unitary patent follows a more attractive level of fees, especially renewal fees, if a company wishes to get patent rights in multiple EU countries. Furthermore, the UPC will ensure that one court is handling patent cases instead of different national courts, which will be cheaper for companies too in the long run.

An advantage of the new establishment of the UPC and unitary patent is also that the patent holder will obtain uniform legal protection in all participating countries. It will create a single approach to patent registration and litigation in all participating Member States. It will make filing for multiple countries easier and more appealing.

It is an important step to take to enhance EU innovation and competitiveness as we are seeing an increasing number of patents originating in non-EU countries. The unitary patent is set to reduce the gap between the cost of patent protection in Europe and other third countries, which will hopefully mean that more patents will originate from EU countries.

**If you have any questions or require further information regarding any of the above, please do not hesitate to contact us:**



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