

# Do the Unitary Patent (UP) and Unified Patent Court (UPC) offer advantages for SMEs?

As discussed in our previous article, the Unitary Patent (UP) will, for the first time, offer patent proprietors the option to have a single patent covering multiple EU member states (17 at the time of writing, likely to be more in the future) as an alternative to the current validation route in different countries (which will continue).

Whilst the UP potentially brings certain advantages to patent proprietors, it also brings risks and uncertainty. If the UP and the UPC are to be a success, it seems essential that the new systems are used by a whole range of patent proprietors once they become available.

In order to incentivise SMEs to opt for the UP, the new system has introduced the possibility of financial compensation for these proprietors in certain circumstances.

## Translations

During a transitional period (of 6 years, which period may be extended to 12 years), any patent proprietor wishing to request a UP will have to file a translation of the patent specification:

- into English if the language of the proceedings before the EPO was French or German; or
- into any other official language of an EU member state if the language of the proceedings was English.

This may be perceived as costly, especially if patent specifications are lengthy. Translation costs may be reduced for some patent proprietors by re-using translations obtained for filing in other non-EU countries, for example when entering the national/regional phase of a PCT application. However, this option may not be available for proprietors such as SMEs who file in a small number of countries.

For SMEs (and also natural persons, non-profit organisations, universities, and public research organisations), cost reductions by means of compensation may be available for the translation costs if they:

- have their residence or principal place of business in an EU member state; and

- filed the European patent application leading to the UP in an official EU language other than English, French or German.

A request for compensation must be filed with the request for a UP along with a declaration that the eligibility requirements are met. Evidence that the eligibility requirements are fulfilled may be requested.

The compensation shall be paid in the form of a lump-sum. It is currently understood that the compensation amount will be set at €500.

In order to try to prevent abuse of the system, if there are multiple patent proprietors, compensation will only be awarded if all proprietors fulfil the eligibility requirements.

## Renewal Fees

There will be a single renewal fee payable for a UP. The single fee is based on a fee proposal called the “true TOP4”, which tracks the sum of the post-grant renewal fees that would be payable in the four most commonly validated countries over the entire patent term.

For patent proprietors who validate their European patents in a large number of countries, it will be cheaper to maintain a UP than to maintain many national patents. However, the renewal fees for a UP will be more expensive for patent proprietors who only validate their European patents in a few countries (or who typically trim down the number of countries after a few years).

For proprietors such as SMEs, who may have limited funds, then the UP may offer a way of obtaining patent protection in a larger number of countries at lower costs than would be the case via the current route of national validations.

## Enforcing a Patent

The possibility of enforcing a UP centrally at the UPC, as an alternative to multi-jurisdictional litigation in several EU countries, will be more cost effective and may make enforcing patents more accessible to proprietors such as SMEs who could not afford the multi-jurisdictional litigation.

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