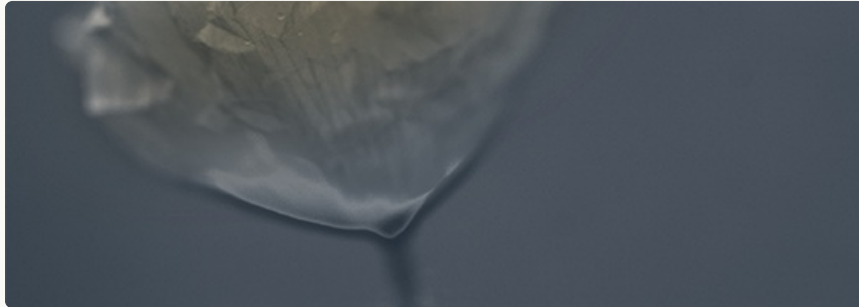


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IMPORTANT INFORMATION RELATING TO THE ENTRY INTO FORCE OF THE UNITARY PATENT SYSTEM

POSSIBILITY OF REMOVING A EUROPEAN PATENT FROM THE COMPETENCE OF THE NEW UNIFIED PATENT COURT DURING THE “SUNRISE PERIOD” (1 MARCH 2023 – 31 MAY 2023)

The following information refers to the **forthcoming entry into force of the Unitary Patent system and is especially interesting to the owners or applicants of a European Patent** (a granted European Patent or a pending European Patent application).

In particular, as explained below, **during the “Sunrise Period” extending from 1 March 2023 to 31 May 2023, the owners or applicants of European Patents have the possibility of lodging an “opt-out” application to remove a European Patent from the competence of the new Unified Patent Court before the Unitary Patent system enters into force.**



Context

On 1 June 2023, the Unitary Patent system will enter into force in Europe. Further information may be found in the following news article published on our website:

[The Unitary Patent and the Unified Patent Court are just around the corner](#)

The main features of Unitary Patent system are the following:

- **The Unitary Patent**, which may optionally be requested after the granting of a European Patent, and which will have unitary effects in all the countries of the European Union (EU) participating in the system.
- **The Unified Patent Court**, which is a newly created international court, common to the EU Member States participating in the Unitary Patent system. The Unified Patent Court will have **exclusive competence over infringement and invalidity for Unitary Patents, and also for European Patents in the EU countries participating in the system.**

Currently, the countries participating in the Unitary Patent system are the following: Austria, Belgium, Bulgaria, Denmark, Estonia, Finland, France, Germany, Italy, Latvia, Lithuania, Luxemburg, Malta, the Netherlands, Portugal, Slovenia, and Sweden (17 countries).

A transitional period of 7 years (extendable for 7 more years) is foreseen. During said period, the competence of the Unified Patent Court for European Patents will not be exclusive and, moreover, it can be avoided. More specifically, during the transitional period:

- The national Courts of the EU States participating in the system will continue to have competence, together with the Unified Patent Court, for infringement and invalidity of European Patents; and
- **The owner or applicant of a European Patent may use an “opt-out” mechanism to remove it from the competence of the Unified Patent Court. In this case, only national Courts will have competence for this European Patent.**

The “opt-out” can be applied for:

- At any time from the beginning of the transitional period of 7 years (1 June 2023) until one month before the end of this period.
- And also, **within a launching period (“Sunrise Period”) of 3 months, between 1 March 2023 and 31 May 2023, before the date of entry into force of the Unitary Patent system.**

Within the “Sunrise Period”, the “opt-out” can validly be requested in all cases.

But, after the “Sunrise Period”, an action brought before the Unified Patent Court for a European Patent (for example, an invalidity action filed by a third party) will definitely block the “opt-out” for said European Patent.

Decision to apply for an "opt-out" during the "Sunrise Period between 1 March 2023 and 31 May 2023

If the owner or applicant of a European Patent plans to “opt-out”, it is advisable to do so within the “Sunrise Period” between 1 March 2023 and 31 May 2023, since in this period it is not possible for a third party to bring an action before the Unified Patent Court and definitively block the “opt-out”.

The main reasons that have been invoked to carry out an “opt-out” for a European Patent are the following:

- Eliminating the possibility of a European Patent to be invalidated as a whole for each and all the States of the Unitary Patent system, through an invalidity action before the Unified Patent Court. This fear may be justified in some specific fields, such as the pharmaceutical industry. However, in our opinion and in general, it is unlikely that the entry into force of the Unitary Patent system will cause a significant increase in preventive invalidity actions filed by third parties.
- The high costs of the actions brought before the Unitary Patent Court in comparison with the cost of the same action before the national Courts. Nevertheless, in general, this cost difference may only be relevant when the actions shall be initiated in a very small number of EU countries (for example, when the European Patent is in force in only one or two EU countries participating in the Unitary Patent system).
- The lack of confidence in the proper functioning of the newly created Unified Patent Court. In this regard, we consider that there are no objective reasons to foresee a malfunction of the system. The Unified Patent Court has been established with sufficient resources and will have legally qualified judges specialized in patents and, in some cases, also technically qualified judges.

It must be taken into account that, after a first “opt-out” for a European Patent, it is possible to withdraw it (“opt-in”) to restore the competence of the Unified Patent Court. But, in that case, another “opt-out” will no longer be possible for the same European Patent. In other words, the “opt-out” can only be carried out once for each European Patent.

From our point of view, there are no reasons to lodge an indiscriminate “opt-out” application for each and all European Patents during the “Sunrise Period”.

Regarding the cost, we inform you that our fee for lodging an “opt-out” application is 150 EUR for each European Patent or European Patent application.

If you wish that we lodge an “opt-out” application for any of your European Patents or European Patent applications during the “Sunrise Period”, please let us know before 15 May 2023.

We remain at your disposal to provide you with all the support that you might need regarding the “opt-out” and, in general, the Unitary Patent System.

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