

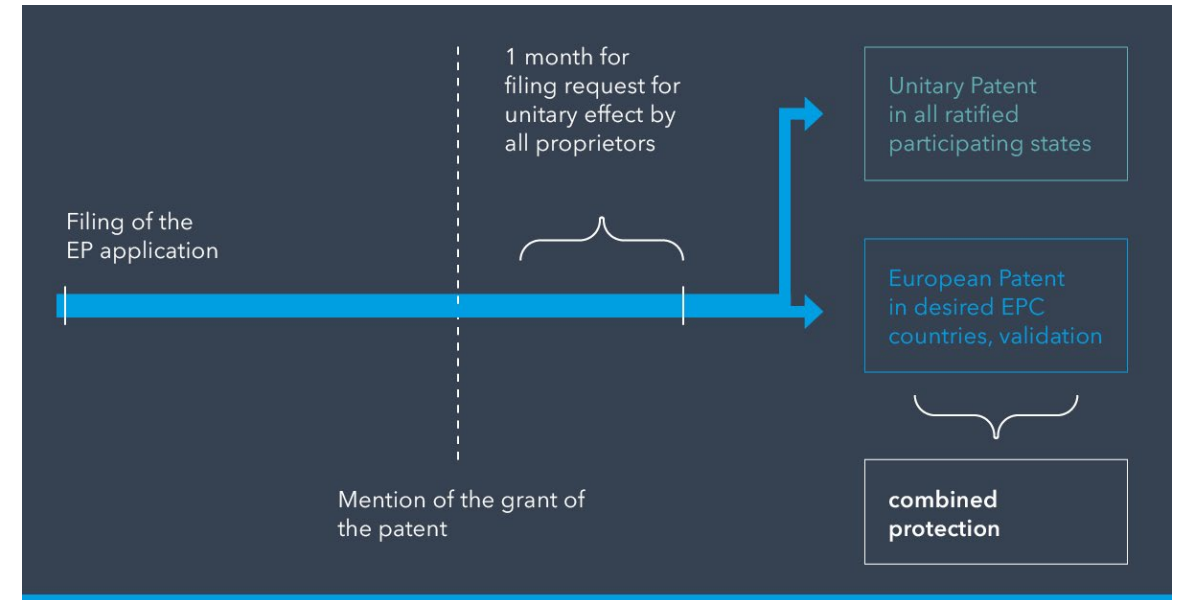


THE UNIFIED PATENT COURT AND THE UNITARY PATENT



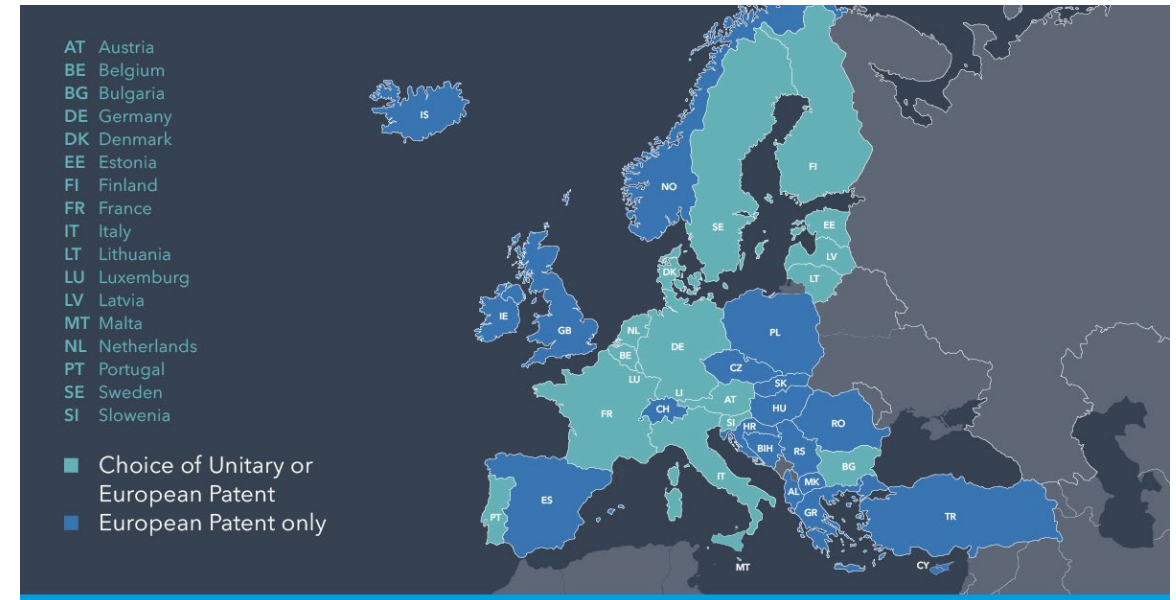
IN 2023, A NEW COURT SYSTEM AND A NEW PATENT WILL BEGIN

- The new **Unified Patent Court** will handle infringement or revocation for all participating EU member states at once. The Unified Patent Court will work alongside the existing national courts, which currently handle infringement and revocation only for their respective state.
- The new **Unitary Patent** is an EP patent with unitary effect in all participating EU member states. This means infringement and revocation will be handled for all participating member states together at the Unified Patent Court.
- The filing and examination of an EP patent application will remain the same. To obtain a Unitary Patent, a **request for unitary effect** must be filed within one month of the mention of the grant of the EP patent. There will then be a combined protection of a Unitary Patent in some states and the conventional national parts of the EP patent in the other states.



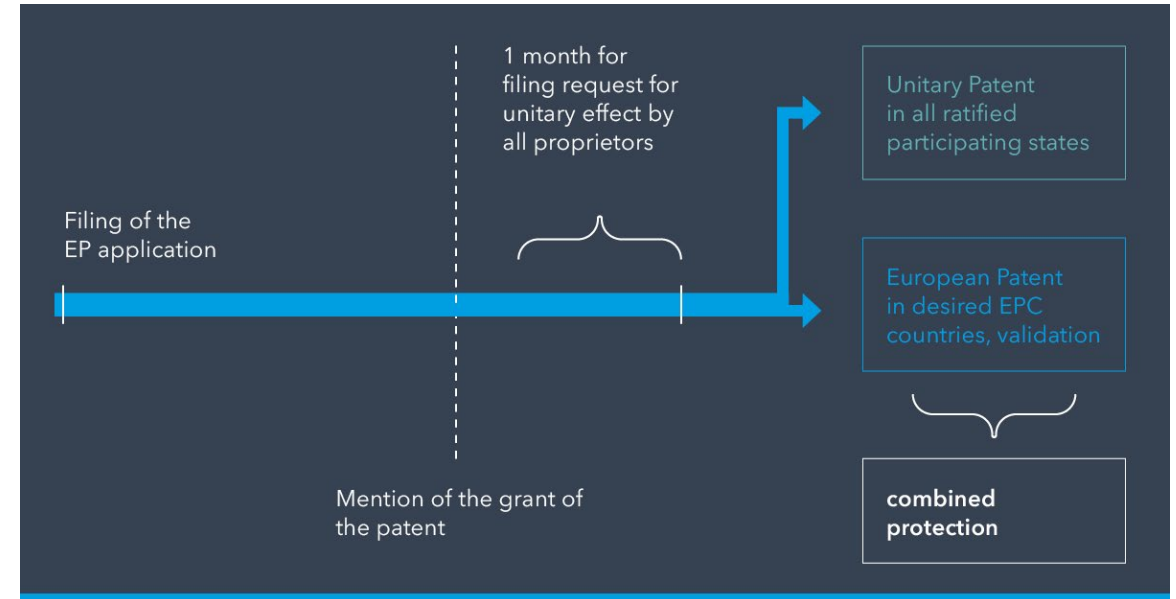
THE UNITARY PATENT

- This means that for the states marked in blue, only an EP patent will be available, while for the currently participating EU member states, marked in green, there will be a choice between a Unitary Patent or an EP patent.
- **The applicant must decide whether** to have an EP application automatically granted as an EP Patent or whether a request for unitary effect to obtain a Unitary Patent in the available states (green).



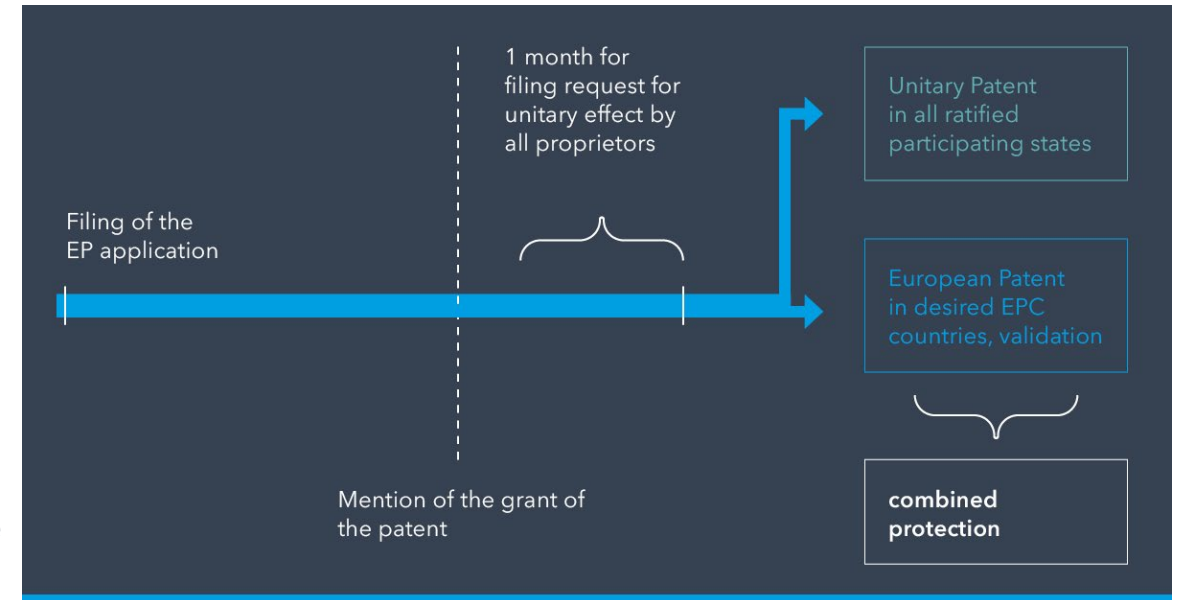
DECISION BETWEEN A UNITARY PATENT AND AN EP PATENT

- The **decision** can be based on how the patents would be effected: For the **Unitary Patent**, infringement or revocation will be decided for **all states at once** at the Unified Patent Court. For example, a positive infringement decision with a unitary effect in all states can be a great win for the applicant, while a revocation decision with a unitary effect in all states would be a great loss for the applicant, the patent would be lost in all states at once. The applicant might choose the **Unitary Patent only for very strong patents**.
- The **decision** between **EP patent** and **Unitary Patent** can also be based on the different **annuity costs**.
 - If the EP patent is to be validated in three or fewer countries, the **EP patent is more cost effective**.
 - If the EP patent is to be validated in four or more countries, the **Unitary Patent is more cost effective**.



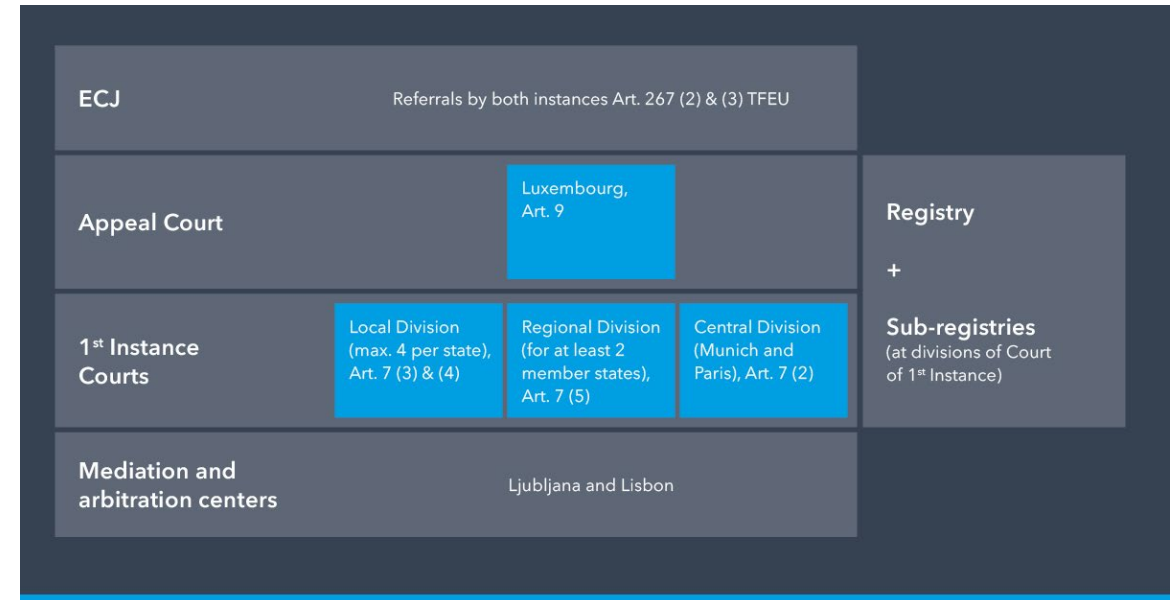
HOW TO GET A UNITARY PATENT?

- If the applicant decides on an EP patent, nothing needs to be done. If the applicant decides on a Unitary Patent, a request for unitary effect must be filed. **Please let us know for all your pending EP patent applications if you wish to request a Unitary Patent.**
- For cases in which the applicant decides on a Unitary Patent, but the grant of the patent might occur before the Unitary Patent is available, a **delay** of the grant of the patent and/or an **early request** for the unitary effect may be possible.



THE UNIFIED PATENT COURT

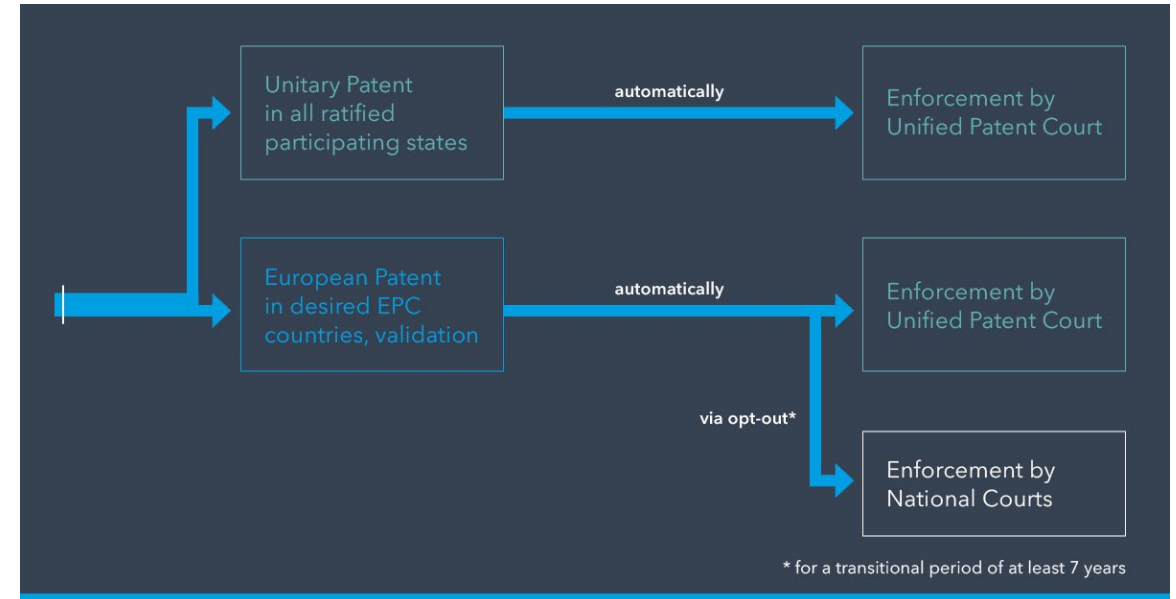
- **The Unified Patent Court** will handle infringement or revocation for all participating EU member states at once. The Unified Patent Court will work alongside the present national courts, which currently handle infringement and revocation only for their respective state.
- **The applicant will have to make a decision** regarding whether the Unified Patent Court will be automatically competent for all their pending EP patent applications or whether an **Opt out request** will be filed, so that the national courts remain competent for infringement and revocation in each state.



DECISION BETWEEN THE UNIFIED PATENT COURT OR AN OPT OUT

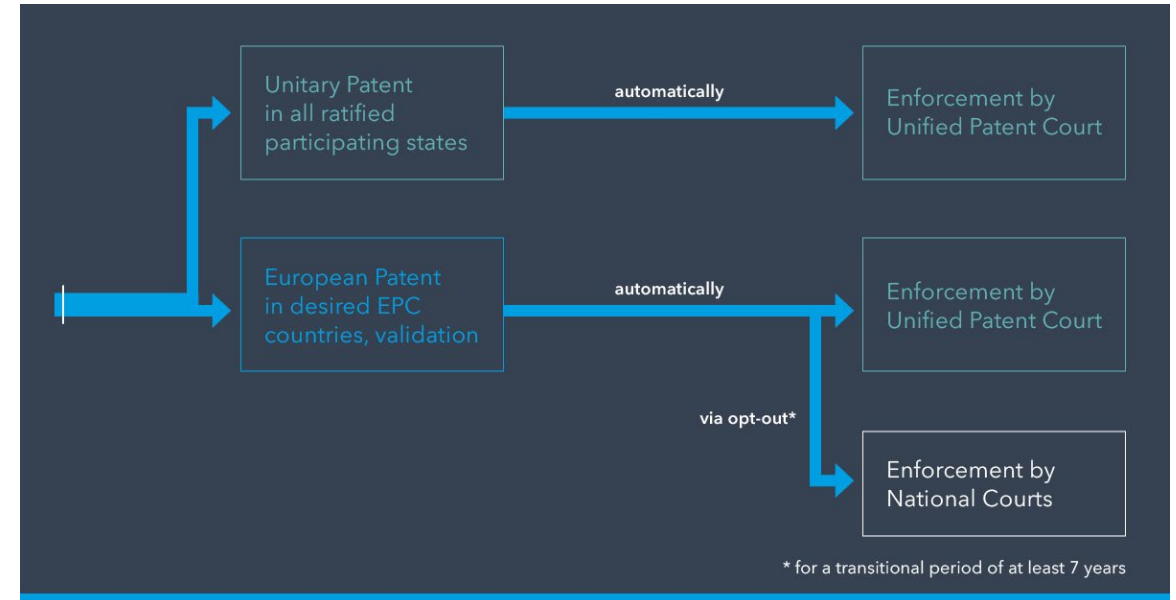
This **decision** can again be based on the **different factors**:

- If the **Unified Patent Court is competent**, infringement or revocation will be decided for all states at once. Such an infringement decision with unitary effect in all states can be a great win for the applicant, while such a revocation decision with a unitary effect in all states can be a great loss for the applicant.
- If the **Opt out is requested**, the individual national courts remain competent for each country. This means an infringement decision for a single state is not as powerful, while a revocation decision for a single state is not as dangerous. The applicant might choose the Unified Patent Court for only very strong patents, and Opt out all other patent applications and patents.



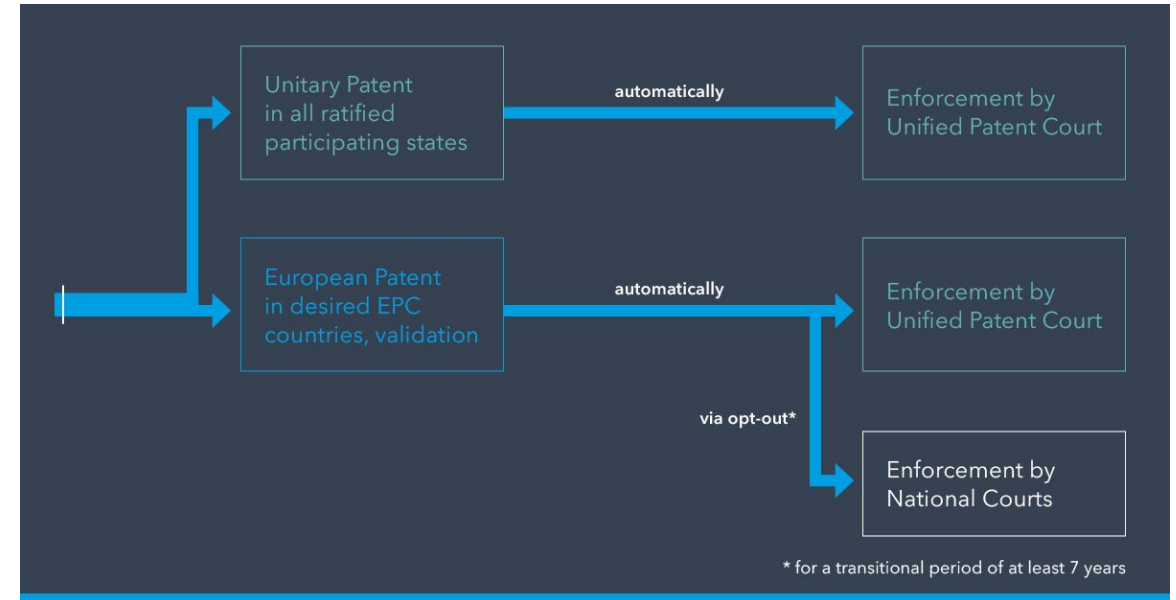
DECISION BETWEEN THE UNIFIED PATENT COURT OR AN OPT OUT

- The **decision** between the automatic authority of the Unified Patent Court or an Opt out to the authority of the national courts can also be based on the different **litigation costs**.
 - If a litigation is planned or expected in **one or two states**, the national courts would most likely be more cost effective.
 - If litigation is planned or expected in **three or more countries**, the Unified Patent Court would most likely be more cost effective.
- It should also be taken into account that the **Opt out is reversible**. After an Opt out, an Opt in is possible. However, it is not possible to opt out a second time.



HOW TO GET TO THE UNIFIED PATENT COURT?

- If the applicant decides for the **authority of the Unified Patent Court, nothing needs to be done.**
- If the applicant decides for the **authority of the national courts, an Opt out request needs to be filed.**
- **Please let us know which court system you would prefer for all your EP patent applications and EP patents.** For cases in which the applicant decides for an Opt out, this request must be filed during the so-called Sunrise Period, which will take place shortly before the start of the Unified Patent Court.
- Once proceedings before the Unified Patent Court have already begun, the Opt out will no longer be possible.



WHEN DOES EVERYTHING START?

- The official start date for the new system is June 1, 2023.
- The begin of the Sunrise Period for the **Opt outs** will probably start three months before the start date for the Unified Patent Court and the Unitary Patent, thus on **March 1, 2023**.*

* The April 1/January 1, 2023 schedule published on the UPC website in October 2022 has been postponed by 2 months.



The time has come to prepare your EP patent portfolio for the Unitary Patent and the Unified Patent Court!



MAIWALD
INTELLECTUAL
PROPERTY

Maiwald GmbH

Elisenhof, Elisenstraße 3 | 80335 München
T +49 (0)89 747 266 0 | info@maiwald.eu

www.maiwald.eu

Grünstraße 25 | 40212 Düsseldorf
T +49 (0)211 301 257 0 | mail@maiwald.eu