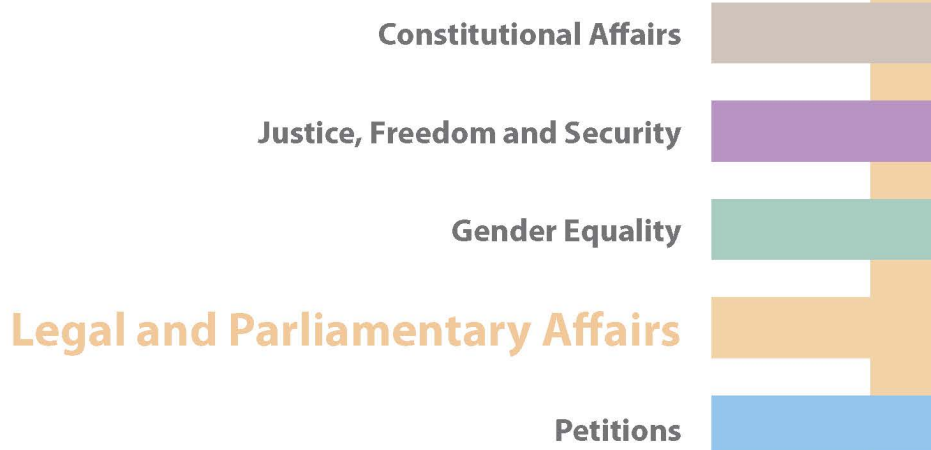


DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT **C**
CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS



**The European Patent
Office
State of Play**

In-Depth Analysis for the JURI Committee





DIRECTORATE GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT C: CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS

LEGAL AFFAIRS

The European Patent Office State of Play

IN-DEPTH ANALYSIS

Abstract

On invitation of its president, the JURI Committee, on 4-5 May 2015 has visited the **European Patent Offices seat in Munich** and discussed the state of play of implementation of the new unitary patent, ethical questions of patentability, as well as technical issues deriving from the new challenges after the agreement on a European unitary Patent and in view of ongoing negotiations on international trade partnership agreements.

This In-Depth analysis gives some background information on the economic importance and nature of patents, of the new Unitary patent, the legal foundation of the Office, as well as the ways of protecting this **intellectual property right**.

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LIST OF ABBREVIATIONS

CJEU	Court of Justice of the European Union
ECHR	European Convention on Human Rights
EP	European Parliament
EPC	European Patent Convention of 1973
EPOff	European Patent Office
EPOrg	European Patent Organisation
EPpatent	“European Patent” under the European Patent Convention of 1973
ILO	International Labour Organisation
NPO	National Patent Office
UPC	Unified Patent Court
UPCtA	Agreement on a Unified Patent Court
UPP	Unitary Patent Protection (European patent with unitary effect)

1. THE EUROPEAN PATENT ORGANISATION¹

It is an international organization created in 1977 by its then seven and today **38 contracting states**: Albania, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malta, Monaco, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, and the United Kingdom, **but not the EU itself**.

The EPOrg has being established under the European Patent Convention (EPC) of 1973². Its seat is at **Munich, Germany**. The power to revise the EPC lies with the Contracting States themselves when meeting at a **Conference of the Contracting States**.

The EPOrg is an intergovernmental organisation that was set up on the basis of that convention. The organisation has two bodies, the European Patent Office (EPOff) and the Administrative Council of the EPOrg, which supervises the EPOff's activities:

- The **Administrative Council of the EPOrg**, made up of representatives of each of the contracting states, exercises legislative powers on behalf of the EPOrg and is also responsible for policy issues relating to the EPOrg.
- The **European Patent Office is** the executive body of the European Patent Organization.

The EPOrg is in no way legally bound to the European Union and has **ten Member states which are not EU member states**: Albania, Iceland, Liechtenstein, Macedonia, Macedonia, Norway, San Marino, Serbia, Switzerland, Turkey.

Applicants can apply at the EPOffice for a "European Patent" which, in fact, constitutes a **bundle of national patents** because it has to be validated by each state in which the applicant wishes protection. Where disputes arise, litigation has to be heard before relevant **national courts**.

1.1. European Patent Convention³

The EPOrg as an intergovernmental organisation was set up on 7 October 1977 on the basis of the European Patent Convention (EPC), signed in Munich on 5 October 1973. It has two bodies, the European Patent Office and the Administrative Council of the EPOrg. Only a **Conference of the Contracting States may** revise the EPC.

1.2. Administrative Council of the European Patent Organisation

As a rule, the Administrative Council meets four times a year. Its languages are English, French and German. The Council acts as the Office's supervisory body and is composed of the representatives of the EPO member states.

¹ <http://www.epo.org/index.html>

² Übereinkommen über die Erteilung europäischer Patente (Europäisches Patentübereinkommen)-Convention on the Grant of European Patents (European Patent Convention) - Convention sur la délivrance de brevets européens (Convention sur le brevet européen).

³ Text of the Convention, the Implementing Regulations, the Protocol on the Interpretation of Article 69 EPC, the Protocol on Centralisation, the Protocol on Recognition, the Protocol on Privileges and Immunities, the Protocol on Staff Complement and the Rules relating to Fees: [http://documents.epo.org/projects/babylon/eponet.nsf/0/00E0CD7FD461C0D5C1257C060050C376/\\$File/EPC_15th_edition_2013.pdf](http://documents.epo.org/projects/babylon/eponet.nsf/0/00E0CD7FD461C0D5C1257C060050C376/$File/EPC_15th_edition_2013.pdf)

Composition

The Administrative Council is set up under Article 4, paragraph 2(b), EPC. Detailed provisions relating to the Council: Articles 26 to 36 EPC.

Chairman: Jesper KONGSTAD, Director General, Danish Patent and Trademark Office (DK)

Deputy Chairman: Miklós BENDZSEL, President, Hungarian Intellectual Property Office (HU)

Honorary Chairman: Roland GROSSENBACHER, Direktor, Eidgenössisches Institut für Geistiges Eigentum (CH)

Participants

1. 38 Representatives of the member states (Art. 26 par. I EPC)
2. President of the Office supported by EPO staff
3. Board of Auditors (members: Frédéric ANGERMANN (FR), Ola HOLLUM (NO) and Hannes SCHUH (AT))
4. Staff Committee

Observers

- Observer states: Bosnia & Herzegovina and Montenegro
- Intergovernmental organisations: European Union (EU), World Intellectual Property Organization (WIPO), Office for Harmonization in the Internal Market (OHIM), Nordic Patent Institute (NPI)
- Non-governmental organisations: Institute of Professional Representatives before the European Patent Office (epi), BUSINESSEUROPE

Often, representatives of member states in the Administrative Council are at the same time directors of the national patent office. This has been criticised as jeopardizing the work of the EPOff:

*"The (...) member countries frequently have divergent – and sometimes conflicting – interests to those of the EPO. But it is these same members that elect the president of the EPO and the five vice-presidents. In order to ensure smooth decision-making and proper representation, the EPO administrative council should include representatives of major stakeholders of the patent system and a reduced number of NPO members acting as representatives of all NPOs. This arrangement would not preclude holding an annual EPO general assembly which all NPOs could attend."*⁴

Tasks

The Competences of the Administrative Council are described in Article 33 EPC. The Administrative Council shall be competent to amend issues like the time limits laid down in the EPC, the Implementing Regulations, the EPOffs Financial Regulation, the Service Regulations for permanent employees and the conditions of employment of other employees of the European Patent Office, the salary scales etc., the Rules relating to Fees. Also, the Administrative Council shall be competent to authorise the President of the European Patent Office to negotiate and, subject to its approval, to conclude agreements on behalf of the EPOrg States, with intergovernmental organisations.

1.3. The European Patent Office

The current **President of the EPOff** is **Benoît Battistelli** of France (since 2010). The President, the five Vice-Presidents and five other members make up the EPO's Management Committee.

⁴ Bruno van Pottelsberghe, Lost property: The European patent system and why it doesn't work - BRUEGEL BLUEPRINT SERIES-BRUEGEL Think Tank, page 45.

The EPOff has branches in Rijswijk (Den Haag), Berlin und Vienna and a liaison office in Brussels: **7.075 staff is working in the EPOff**, of which roughly 3.900 work in Munich, and in Rijswijk 2.900, the others being dispersed over Berlin, Vienna and Brussels.

The Management of the EPOff has recently come under strong criticism by trade unions⁵ and public opinion⁶ concerning the respect of internationally acknowledged workers' rights of EPOff staff. Due to the international status of the EPOff, its staff has no possibility to get an external independent appeal against the EPOff internal Boards of Appeal decisions by a national, European or International Court. Appeals to the **International Labour Organisation (ILO)** (its Administrative Tribunal) in Geneva are considered too cumbersome for claimants due to lengthy proceedings (up to seven years). Also, staff recruitment procedures are opaque and when external candidates apply for a job vacancy at the EPO, no procedure is foreseen during the selection process.

In a recent case, however, EPOff staff unions had filed suit with the Tribunal of the Hague (one of its official seats in the Netherlands), seeking to set aside newly introduced strike regulations of the Administrative Council of the EPO. The trade unions of EPOff argued that the strike regulations violated a fundamental right protected by the European Charter on Fundamental Rights (ECHR) as well as by International Labour Organisation treaties and that - again in violation of the ECHR - they had no practical recourse to justice in view of a dysfunction of both the EPO internal appeal procedure and of the Administrative Tribunal at ILO. Hence, the immunity of the EPOff could not apply.

In first instance proceedings, the Dutch judge rejected the claims on the ground that Art. 8 EPC protected the **organizational integrity of the office** and having different rules for different sites was not an acceptable outcome.

At the appeal procedure at the Court of Appeal of the Hague, seeking the annulment of the first instance decision and the repeal of the strike regulations at least insofar they apply to the personnel in the Hague, EPOff cross-appealed requesting the first instance decision to be set aside insofar as it considered that the EPO did not enjoy immunity.

The Dutch Court considered that if immunity did not apply, then the judicial authority had to decide the claims on their merits so that the first instance decision was set aside. The Court finally went on to assess the claims exclusively on the basis of ECHR and the case law of Administrative Tribunal of ILO itself, and allowed them for the most part.⁷

On 26 March, the Chairman of the Administrative Council and the President of the Office launched new initiatives to **restore social peace** and called for a renewed social dialogue. In particular, formal recognition of trade unions within the EPO's legal framework would create the conditions to overcome some longstanding issues.⁸

⁵ <http://www.suepo.org/public/news>

⁶ <http://www.fosspatents.com/2015/01/pressure-mounts-on-epo-president-and.html>; <http://www.nrc.nl/handelsblad/van/2015/maart/21/ik-ben-geen-zonnekoning-1477227>; <http://www.sueddeutsche.de/muenchen/europaeisches-patentamt-beschaefigte-begehren-auf-1.1826233>; <http://www.sueddeutsche.de/wirtschaft/europaeisches-patentamt-aufstand-gegen-den-sonnenkoenig-1.2229665>; <http://www.managingip.com/Article/3412098/Managing-Patents-Archive/Battistelli-and-Kongstad-respond-to-EPO-criticisms.html>;

⁷ <https://docs.google.com/viewer?a=v&pid=sites&srcid=ZGVmYXVsdGRvbWFpbXxwYWxpZGNhc2VzfGd4OjJlYzhkYjFjZTNjODNlMmY>

⁸ Joint statement from the Chairman of the Administrative Council and the President of the Office: <http://www.epo.org/news-issues/news/2015/20150326.html>.

2. GRANTING OF PATENTS

A patent gives the owner the right to prevent others from making, using or selling the invention without permission. Patents encourage companies to make the necessary investment for innovation, and provide the incentive for individuals and companies to devote resources to research and development.

As the task of the EPOrg shall be to grant European patents (Art 4 par.3 EPC), this shall be carried out by the European Patent Office (supervised by the Administrative Council, see above 1.2).

On an annual basis, the EPOff publishes statistics on:

- the number of **European patent applications filed** per technical domain and origin
- the number of **European patents granted** per technical domain and origin
- the most active patent filers

In 2014, patent **filings** grew for the fifth year in a row to reach 274 174 in 2014, an increase of 3.1% over 2013, and the highest number ever. Roughly a third of the filings came from EPOrg member states and two-thirds from outside Europe. Looking at growth rates, patent filings from European countries rose slightly, with the performance of individual countries quite varying. Among large economies, China showed the biggest increase (with +18%), followed by the US, which was up nearly +7%, and Korea +2%.

EPOff granted 66 700 patents in 2013 and 64 613 patents in 2014. The latter figure means **3.1% less than in 2013**, after three years of growth, but is above the 2011 level.

EPOff offers a system of internal legal remedies to review procedures and safeguard the quality of patents. Anyone may oppose a EPpatent within a period of 9 months from the mention of its grant. In 2013 the opposition rate was 4.5 %, compared to 4.7 % in 2012. The EPOff issued close to 2 200 opposition decisions in 2013.

In these cases, some 70 % of the patents were upheld either as granted or in an amended form. Decisions reached in examination and opposition procedures may be appealed. Decisions on appeals are taken by the **boards of appeal** -in 2013, EPOff boards of appeal settled approximately 2 100 cases. The boards of appeal (and associated administrative services) are independent, but are integrated into the organisational structure of EPOff.

2.1. Current legal situation

The EPOff, as **the patent granting authority for Europe**, processes patent applications from filing up to grant (or refusal). After an EPpatent has been granted, it may be opposed by third parties – usually the applicant's competitors – if they believe that it should not have been granted.

The EPpatent can be obtained in one of two ways (see Annex, Figure 2):

- (a) **European route:** Direct European patent application (EPC application granted for some or all of the contracting states to the European Patent Convention)
- (b) **International route:** European patent application filed under the Patent Cooperation Treaty (PCT). Applicants seeking worldwide patent protection may use the services of the EPOff which files, searches and examines under the PCT.

The EPC does not represent a single “community patent” because shortly after the grant of a European patent, the patent owner is obliged to choose which European countries he wishes to validate his

granted European patent in. The process of validation therefore creates a **bundle of national patents** and furthermore requires, in certain countries, translations of the granted patent to be filed. Enforcement of the bundle of national rights then takes place under national law such that enforcement of a granted EPpatent in multiple territories requires multiple court cases to be initiated. Currently, national courts and authorities of the contracting states of the EPC are competent to decide on the infringement and validity of EPpatents. In practice, this gives rise to a number of difficulties when a patent proprietor wishes to enforce a EPpatent - or when a third party seeks the revocation of it- in several countries: high costs, risk of diverging decisions and lack of legal certainty.

Forum shopping is also inevitable as parties seek to take advantage of differences in national courts' interpretation of harmonised European patent law and in procedural laws, as well as differences in speed of courts and in the level of damages awarded.

The creation of a "**community patent**" has been a long-held desire within the EU, with efforts to implement such a system stretching back a number of decades. However, the process has always floundered, usually over the differing language requirements of the different countries involved. This European patent regime was seen e.g. as being "a tax on innovation" (Raffaele Baldassarre (MEP, IT).

The then Legal Affairs Committee Chair Klaus-Heiner Lehne (DE), said: "People in China are telling us that we cannot have a single market without a unitary patent". The European Commission had calculated that with a new Unitary patent system an EU patent may cost **just EUR 4 725.- compared to an average of EUR 36 000.-** needed today.

2.2. Granting of a UPP - Future legal situation

Since the entry into force of the Treaty on the Functioning of the European Union 2009, The EU is explicitly competent for Intellectual Property, i.e. also for legislation in the field of patents:

Article 118 TFEU

In the context of the establishment and functioning of the internal market, EP and Council, acting in accordance with the ordinary legislative procedure, shall establish measures for the creation of European intellectual property rights to provide uniform protection of intellectual property rights throughout the Union and for the setting up of centralised Union-wide authorisation, coordination and supervision arrangements.

The Council, acting in accordance with a special legislative procedure, shall by means of regulations establish language arrangements for the European intellectual property rights. The Council shall act unanimously after consulting the European Parliament.

Already before 2009, with the aim of cutting the cost of an EU patent by up to 80%, making it more competitive vis-à-vis the US and Japan, a reform of the EPpatent was sought between Council and EP. Since the Treaty of Lisbon, despite that clear legal basis at hand, EU Member States could not find a compromise with Italy and Spain on the language regime, **so most EU Member States opted for enhanced cooperation.**

The European Commission subsequently proposed a package of two regulations seeking to implement the mandate of Article 118 TFEU.

A first reading agreement on the package⁹ was reached in December 2011 (pending a decision on the seat of the court). In June 2012, the European Council agreed the central division of the future court

⁹ That 'package' comprises Regulation (EU) No 1257/2012 of the European Parliament and of the Council of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection (OJ 2012 L 361, p. 1), Council Regulation (EU) No 1260/2012 of

would be in **Paris**, and specialised sections in **London** and **Munich**. But the European Council also called for provisions relating to the CJEU's competence to be deleted from the draft unitary patent regulation. A compromise with the EP, whereby these provisions move to a separate court agreement, with references in the Regulation, was reached on 19 November 2012. After over 30 years of talks, the new regime was established on 11 December 2012, when the European Parliament in three separate voting sessions approved the "**EU patent package**" (**unitary patent, language regime and unified patent court**): The Rapkay report was approved by 484 votes to 164 (35 abstentions), the Baldassarre resolution on the language regime by 481 votes to 152 (49 abstentions), the Lehne report on the Court agreement (UPCtA) by 483 votes to 161 (38 abstentions).¹⁰

2.2.1. Unitary patent protection regulation

Under this regulation (EU) No 1257/2012 an application for a "European patent with unitary effect" would be filed at the EPOff as with the current procedure. Once such a patent is granted, and registered in the European Patent Register, it takes effect in the participating Member States of the EU.

2.2.2. Translation arrangements regulation

Regulation (EU) No 1260/2012 would allow patent applications in any language, with a translation into one of the EPO's official languages (EN, FR and DE). Translation costs would be covered for certain EU residents filing in another EU language. The applicant has to translate the patent claims (defining the scope of the invention) into the two remaining EPO languages. No further translation is needed unless required in a specific case of litigation.

The EP helped to reduce costs by ensuring that translation costs will be fully reimbursed for EU-based small and medium-sized enterprises, non-profit organisations, universities and public research organisations. It also ensured that renewal fees, which account for a large share of total costs, will be set at a level that takes account of the special needs of small firms, so that they can benefit fully from lower costs. A compensation scheme will be available making it possible to receive reimbursement for all translation costs up to a ceiling for patent applications filed at the EPOff in one of the official languages of the Union that is not an official language of the EPO.

2.2.3. Agreement on the Unified Patent Court

The Agreement on the Unified Patent Court (UPCtA) is an international treaty ("Agreement") which creates a specialised patent court ("Unified Patent Court"- UPC) with exclusive jurisdiction for litigation relating to **European patents and European patents with unitary effect** (unitary patents). It was finally signed on 19 February 2013 by only 25 out of the 27 EU Member States and will enter into force as soon as 13 states, including France, Germany and the United Kingdom, have ratified it. The state of the ratification process can be found in the Annex, Table 2.

The UPC will comprise a Court of First Instance, a Court of Appeal and a Registry. The Court of First Instance will be composed of a central division (with seat in Paris and two sections in London and Munich) and by several local and regional divisions in the Contracting Member States to the UPCtA.

17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements (OJ 2012 L 361, p. 89) and the Agreement on a Unified Patent Court signed on 29 February 2013.

¹⁰ European Parliament legislative resolutions of 11 December 2012 on the proposal for a Council regulation implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements (COM(2011)0216 – C7-0145/2011– 2011/0094(CNS)), on the proposal for a regulation of the European Parliament and of the Council implementing enhanced cooperation in the area of the creation of unitary patent protection (COM(2011)0215 – C7-0099/2011 – 2011/0093(COD)) and on jurisdictional system for patent disputes (2011/2176(INI)).

The Court of Appeal will be located in Luxembourg. In the preparatory phase until taking up of the work of the UPC, a Preparatory Committee has been established, composed of all Signatory States to the UPCtA. The Preparatory Committee's function is to oversee the various preparation works: Legal framework, Financial aspects, IT, Facilities and Human resources & Training. The Preparatory Committee will exist until the UPC will be established.

2.2.4. Levying of Fees

After a EPpatent has been granted, renewal fees for subsequent years during its term are payable to the designated Contracting States. Under Article 39 EPC, each Contracting State pays to the Organisation, for each European patent maintained in that state, a proportion of its national renewal fee fixed by the Administrative Council and which may not exceed 75% and is the same for all Contracting States (this proportion has been 50% since 1984). If that proportion is less than a uniform minimum amount fixed by the Administrative Council, the Contracting State has to pay that minimum to the EPOrg. The structure and level of national renewal fees are fixed by the Contracting States. The national patent offices of the Contracting States make these payments to the EPOrg on a quarterly basis.

3. THE UNITARY PATENT PROTECTION (UPP)

The UPP builds on the EPC. This means that nothing changes in the pre-grant phase. As usual, the applicant applies for the a EPpatent at the EPOff which handles the application in accordance with the EPC and, if all relevant criteria are met, eventually grants a European patent. The proprietor of a European patent will, after grant, have the opportunity to file a **request for unitary effect**. If the formal requirements are met the European patent shall then benefit from unitary effect – uniform protection and equal effect – in all the participating Member States.

The UPC will be a new specialist patents court common to participating states. It will have competence to hear disputes regarding the validity and infringement of the new unitary patent as well as European bundle patents granted by the EPOff. It will also have competence over actions concerning infringement and validity of Supplementary Protection Certificates, for pharmaceutical and plant protection products, based on European bundle patents and unitary patents. **The UPC will not have competence over national patent rights such as those granted by national patent offices.**

Any ruling by the court on a patent will be simultaneously valid in all countries in which that patent has been validated and will be enforced under procedures governed by the law of the country or countries where enforcement takes place.

The signatory states of the UPCTA are working together to ensure that the UPC will be fully operational by the time the agreement comes into force, to this end they have formed the preparatory committee, see above 2.2.3.

The UPC shall base its decisions on EU law, the agreement, the EPC, other international agreements applicable to patents which are binding on all the participating states (e.g. the TRIPs agreement and the PCT) and national law.

The agreement sets out the infringement provisions (the acts that a patent allows its owner to prevent others from doing) for European bundle patents and unitary patents. Currently, infringement of European bundle patents is a matter for national law.

The UPC will be formed of a **Court of First Instance** (CFI) and a **Court of Appeal**. The CFI comprises of

- local and regional divisions, which will primarily hear patent infringement cases
- a central division, which will hear cases relating to the validity of patents

Member states can either host a local division or participate in a regional division with other member states. **States may also choose not to have a local or regional division.** In this instance, all cases for infringement in their territory will be heard in the central division.

The **central division will have its seat in Paris** and will have **two specialist sections in London and Munich.**

Cases will be allocated to each section of the central division according to technology sectors as defined by the International Patent Classification applied to the patent.

London will hear cases relating to chemistry, including pharmaceuticals and the life sciences (patents classified under IPC classes A and C), **Munich** will hear cases relating to mechanical engineering (IPC class F). All other cases will be heard by the **Paris** central division. The Court of Appeal is based in **Luxembourg.**

Concerning the applicable translation arrangements, the Court acknowledges that the regulation differentiates between the official languages of the EU. However, it emphasises that the regulation has a legitimate objective, namely the creation of a uniform and simple translation regime for the EPUE so as to facilitate access to patent protection, particularly for small and medium-sized enterprises. The complexity and particularly high costs of the current European patent protection system constitute an obstacle to patent protection within the EU and affect adversely the capacity to innovate and compete of European businesses, particularly small and medium-sized enterprises.

The Court also holds that the second paragraph of Article 118 TFEU constitutes the correct legal basis for the regulation, as that regulation establishes the language arrangements for a European intellectual property right (namely, the EPUE), defined by reference to the EPC.

3.3. Fees

The fees for the UPP are yet to be decided due to the delay caused by the action against the regulations before the ECJ, the decision of the amounts shall be taken only end of 2015.

The criteria for setting the fees can be found at Article 12 of the unitary patent regulation. The process will need to take into account administration costs, the size of the market and the level of fees paid for current European bundle patents.

4. BUDGET¹⁵

It is self-financing, covering all its operating and capital expenditure from the fees paid by users for its services. The 2015 budget is EUR 2 billion. Article 37(c) EPC provides that the budget of the Organisation is financed, where necessary, by financial contributions from the Contracting States. If the Organisation is unable to balance its budget in accordance with Article 40(1) EPC, then under Article 40(2) to (7) EPC the Contracting States must remit special financial contributions to the Organisation, the amount of which is determined by the Administrative Council for the accounting period concerned. As an intergovernmental organisation, the EPO cannot become insolvent because the Contracting States are obliged to finance any deficit.

The EPoff is self-financing from the procedural fees and from the annual fees for pending patent applications. After grant of a EPpatent renewal fees are paid, however, by the patentees to the national patent offices of those States in which these patents have been validated (Art. 86 and Art. 141 EPC). Only a fraction of these renewal fees must be returned to the EPO by the Member States to finance. This proportion in 2009 was about 300 million euros, which is half of the 600 million euros which the Contracting States earn annually with granted EPpatents. Traditionally, the annual fees for applications and patents the largest share of the fees of the EPA budget of around one billion euros annually.

Concerning **Revenues**, procedural fees related to the patent grant process 2013: EUR 1,5 billion, comprising EUR 0,4 billion for National renewal fees for granted patents and EUR 1,1 billion for Procedural fees for examination, filing and grant. Other revenue includes revenue from searches for national offices, third-party searches, patent information services and sales of patent information products: EUR 69 million.

Expenses comprise staff costs (salaries, social security, school and day-care centres etc.): The expenses in 2013 were EUR 1,37 billion.

¹⁵ Figures in this chapter stem from Financial statements period 2013:

[http://documents.epo.org/projects/babylon/eponet.nsf/0/094DF1067B07003EC1257D040040A402/\\$File/financial_statements_2013_en.pdf](http://documents.epo.org/projects/babylon/eponet.nsf/0/094DF1067B07003EC1257D040040A402/$File/financial_statements_2013_en.pdf)

5. CONCLUSION

In the non-EU patent system as it stands today, and at least until the ratification of the UPCtA there is no single European patent. Instead, inventors must maintain individual patents in each country in which they wish to do business.

These patents must also be litigated separately in the national courts of each country.

After years of discussions between the European Union Members State, in 2012, EP and Council approved two regulations that create a European patent with unitary effect (unitary patent). Through the 'unitary patent package', the EU legislature seeks to confer unitary protection on the EP patent and establish a unified court in this area.

After the confirmation of the "Patent package" by the Court of Justice in its judgement of 5 May 2015, the traditional regime of European patent will still co-exist with the future new system until the Unified Patent Court with its branches in Paris, London and Munich will be finally established.

A unitary patent, once granted by the EPO, will provide uniform protection with equal effect in all of the participating countries, businesses will have the choice of protecting their inventions in EU countries with a single unitary patent. This will streamline the system and save on translation costs.

The unitary patent will be available once 13 member states including the UK, France and Germany have ratified the UPC agreement, though this is not expected to occur before 2016. Businesses will be able to challenge and defend unitary patents in a single court action through the Unified Patent Court. The UPC will begin operations three months after 13 member states including the UK, France and Germany have ratified the Agreement.

Unlike the bundle of European rights, a unitary patent will not require validation in each individual member state. The translation requirements for the unitary patent will also be significantly simpler and cheaper. The unitary patent will also be subject to a single set of renewal fees. The amount of fees is currently under discussion.

As the unitary regime fast approaches – and Europe wants to play a more important role in the patent world – it was already time for the governance of the European patent system to embrace the modern age.

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ANNEX - TABLES AND FIGURES

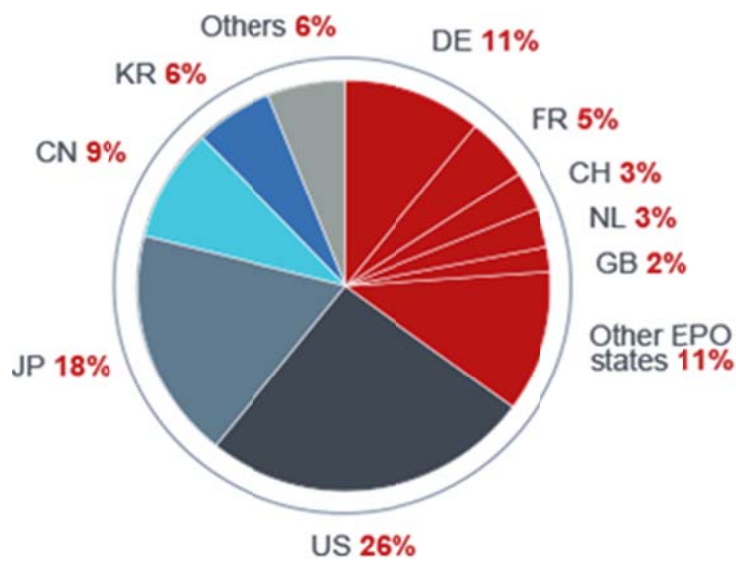
Table 1 : Contracting states with date of accession

Member State	Since	Member State	Since
Belgium	07-Oct-77	Turkey	01-Nov-00
(West) Germany	07-Oct-77	Bulgaria	01-Jul-02
France	07-Oct-77	Czech Republic	01-Jul-02
Luxembourg	07-Oct-77	Slovakia	01-Jul-02
Netherlands	07-Oct-77	Estonia	01-Jul-02
Switzerland	07-Oct-77	Slovenia	01-Dec-02
United Kingdom	07-Oct-77	Hungary	01-Jan-03
Sweden	01-May-78	Romania	01-Mar-03
Italy	01-Dec-78	Poland	01-Mar-04
Austria	01-May-79	Iceland	01-Nov-04
Liechtenstein	01-Apr-80	Lithuania	01-Dec-04
Greece	01-Oct-86	Latvia	01-Jul-05
Spain	01-Oct-86	Malta	01-Mar-07
Denmark	01-Jan-90	Norway	01-Jan-08
Monaco	01-Dec-91	Croatia	01-Jan-08
Portugal	01-Jan-92	Former Yugoslav Republic of Macedonia	01-Jan-09
Ireland	01-Aug-92	San Marino	01-Jan-09
Finland	01-Mar-96	Albania	01-May-10
Cyprus	01-Apr-98	Serbia	01-Oct-10

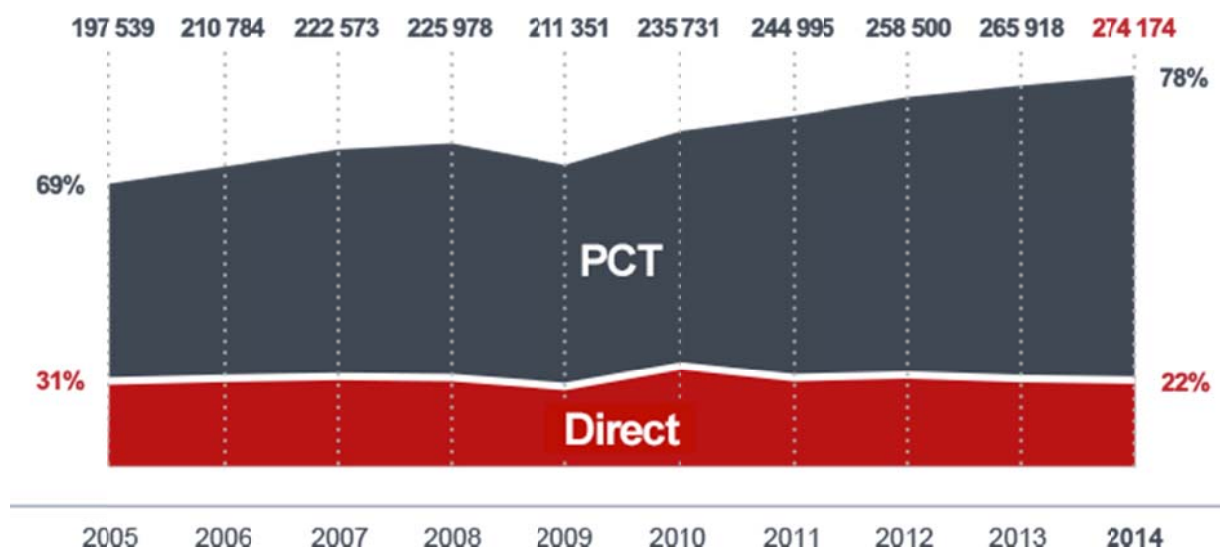
Table 2 Ratification Details of Agreement on a Unified Patent Court¹⁶

Party	Notification	Party	Notification
Austria	06-Aug-13	Ireland	
Belgium	06-Jun-13	Lithuania	
Bulgaria		Luxembourg	
Cyprus		Latvia	
Czech Republic		Malta	09-Dec-14
Germany		Netherlands	
Denmark	20-Jun-14	Portugal	
Estonia		Romania	
France	14-Mar-14	Sweden	05-Jun-14
United Kingdom		Finland	
Greece		Slovenia	
Hungary		Slovakia	
Italy		(Croatia)	EU accession after agreement

¹⁶ as of 2 December 2014, see <http://www.consilium.europa.eu/en/documents-publications/agreements-conventions/agreement/?aid=2013001>

Figure 1 - European patent filings per country of origin

Source: <http://www.epo.org/about-us/annual-reports-statistics/annual-report/2014/statistics/patent-filings.html> - Analysis based on the European patent filings 2013-2014, filings have been allocated to the country of residence of the first-named applicant.

Figure 2 - Filing routes

The share of international filings under the Patent Cooperation Treaty (PCT) has increased significantly over the past 10 years. In 2014, total filings at the EPO included close to 60 000 direct Europe in filings under the European Patent Convention and 214 000 international filings under the PCT.

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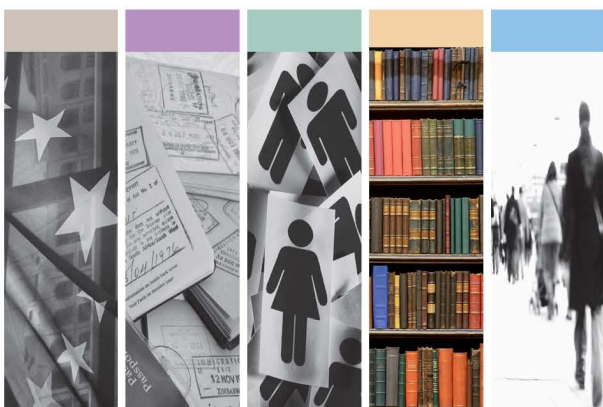
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