

INTRODUCTION TO THE UNITARY PATENT AND THE UNIFIED PATENT COURT

The legislation on the Unitary Patent (UP) and the new Unified Patent Court (UPC), scheduled to enter into force at the beginning of 2023, introduces significant changes in the management of innovation in the patent landscape of the European Union by establishing a single patent which is effective in 25 (in the initial phase only 17) countries of the European Union and delegating patent disputes based on both the Unitary patent and, in perspective, on all European patents to the new Court (UPC).

Current system

Today, to protect an invention in several European countries, two routes can be followed: either the national route in order to obtain national patents valid in the respective countries or the European Patent which, once granted, is converted to a bundle of patents in the countries selected from the contracting states of the European Patent Convention.

According to the present situation, therefore, there are only patents that are effective at the national level, regardless of the process that led them to grant. Disputes based on national patents fall within the jurisdiction of national courts, although Regulation (EU) no. 1215/2012 (Brussels recast)¹ provides for some exceptions (cross-border) to this general principle.

The new unitary system

The first important point of the new system is that the UP, or rather European patent with unitary effect, is an indivisible supranational right that produces the same effects in the 25 participating member states of the EU (at the time of the launch only 17 countries). The unitary patent was originally intended to cover the entire territory of the European Union and be called a community patent, but the veto by a few European countries prevented the project from being accomplished as such. The remaining member states of the Union have therefore given life to the so-called enhanced cooperation to create a single title valid in the territories of the participating countries.² It is therefore clear that the Unitary patent provides a more limited territorial coverage than the European Trademark and the Community Design, which are effective in the entire territory of the European Union.

The Unitary Patent is a European patent granted by the classic prosecution route of the EPO. The only difference is it has unitary effect, meaning that the same European patent can be converted into a bundle of national patents or assume a unitary effect at the applicant's choice.

In practice, the member states of the European Union are Austria, Belgium, Bulgaria, Cyprus, Croatia, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, countries Netherlands, Poland, Portugal, Czech Republic, Romania, Slovakia, Slovenia Spain, Sweden and Hungary.

¹ EU Regulation 1215/2012 concerning jurisdiction, recognition and enforcement of decisions in civil and commercial matters

² EU Regulation 1257/2012 on the implementation of enhanced cooperation in the sector of the establishment of unitary patent protection; EU Regulation 1260/2012 on the implementation of enhanced cooperation in the sector of the establishment of unitary patent protection with reference to the applicable translation regime. Poland finally joined the cooperation strengthens but stated that it does not intend to ratify the agreement by taking an ambiguous position.



The first necessary condition for a country to be part of the Unitary patent system to be a member of both the European Union and the European Patent Convention.

The other necessary condition is to ratify the agreement called "Agreement on a Unified Patent Court" (UPCA), i.e. to adapt national law to the agreement with the necessary parliamentary steps. The agreement includes administrative, jurisdictional and substantive law in industrial property to which the member countries that ratify the agreement must necessarily adapt their national laws, in order to delegate the administration of justice for European patents and related supplementary certificates of protection to the new UPC Court.

Spain is out of the system as it has not joined the enhanced cooperation. Croatia is also out because it joined the European Union when enhanced cooperation had already begun. The United Kingdom is not part of the system because, despite having promoted the enhanced cooperation, it has left the European Union.

Eight countries – Cyprus, Greece, Ireland, Poland, the Czech Republic, Romania, Slovakia and Hungary – have not ratified the agreement, yet.

Today the system is ready to enter into force because the minimum number of countries foreseen by the agreement has been reached and will be operational in the following seventeen countries: Austria, Belgium, Bulgaria, Denmark, Estonia, Finland, France, Germany, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Slovenia and Sweden.

Countries that have not yet ratified will be able to join in the system successively. Countries that ratify the agreement at a later date will not be added subsequently to the geographical scope of protection of an existing European patent with unitary effect. It follows that the accession of countries in subsequent times will mean that European patents with unitary effect will have a different geographical extension depending on the date of issue.

In summary, once a European patent application is granted, the holder will be able to choose the unitary patent to obtain a single patent title valid in all 17 countries identified above or a bundle of national patents.

For the countries adhering to the European patent convention other than these 17 countries, there is the only option to choose the bundle of national patents in accordance with the usual practice.

As an example, an individual interested in protecting his invention in Italy, France, Sweden, Germany, Switzerland and the United Kingdom can choose to validate the patent into national patents in each of these countries or alternatively choose the Unitary patent to cover Italy, France, Sweden and Germany and necessarily all other countries currently within the system and validate the European patent into national patents in the UK and Switzerland.

The Unitary Patent does not provide for the validation mechanism in the countries in which it exerts its effect and therefore for the translation³, where required for traditional European patents according to the so-called London Agreement⁴. The countries that have joined therefore accept that, on their territory, a right is asserted in a language other than their official language. In the event of a dispute, the owner must provide a translation into the language of the country if required, if an alleged infringement is found or if infringement proceedings are initiated.⁵

However, for a transitional period, if the language of the proceedings is French or German, the holder of the European patent with unitary effect must provide a full English translation of the European patent file or, if the language of the proceedings is English, a full translation of the European patent file into another official language of the Union⁶.

It should also be emphasized that the Unitary Patent, precisely because of its indivisible nature, must be renewed for the whole territory in which it exerts its effects. Despite this, it can be li-

3 REGULATION (EU) No. 1260/2012 OF THE COUNCIL of 17 December 2012 on the implementation of enhanced cooperation in the field of the establishment of unitary patent protection with reference to the applicable translation regime

4 The Agreement on the Application of Article 65 EPC - the London Agreement - is an optional agreement which aims to reduce costs related to the translation of European patents. It is the fruit of long-standing efforts to provide a cost-effective post-grant translation regime, which began in the 1990s within the European Patent Organization and which gained momentum at the Intergovernmental Conference in Paris on 24 and 25 June 1999 (see OJ EPO 1999, 545). It was concluded by the Intergovernmental Conference held in London on 17 October 2000 (see OJ EPO 2001, 549).

5 Art. 4 REGULATION (EU) N. 1260/2012.

6 Art. 6 REGULATION (EU) N. 1260/2012.



censed for parts of the territory.

The choice of the Unitary Patent automatically determines two consequences: the joint maintenance of the patent in all the acceding countries and the choice of the new Court (UPC).

As already mentioned, cases relating to a national patent fall within the exclusive competence of the respective national court. Therefore, the choice of the traditional European patent in the acceding countries, i.e. validation of the granted European patent as currently occurs, allows to select the national courts and, if necessary, the new centralized court (UPC), at least for a period of seven years, also allowing the so-called “selective pruning”, i.e. to abandon the European in some countries and maintain it in others.

Competence of the courts

Disputes concerning the Unitary Patent, with the exception of claims for ownership of the patent, will be the exclusive competence of the unified court (UPC).

This Court will also have exclusive jurisdiction over “traditional” European patents, but for the latter there is a minimum transitional period of seven years during which the owner can remove his patent from the exclusive jurisdiction of the new Court by filing a request (so-called opt-out). The patentee also has the possibility to withdraw the opt-out, but not to request the opt-out again once it has been withdrawn.

According to the agreement, the UPC has jurisdiction over the following titles: a European patent with unitary effect; a supplementary protection certificate issued for a product protected by a patent; a European patent that has not yet expired on the date of entry into force of the agreement; a European patent application that is pending on the date of entry into force of the agreement.

Structure and operation of the UPC

The centralized court includes a court of first instance, a court of appeal and a registry. Once fully operational, it will have the objective of self-financing and, consequently, it will bring about the payment of relatively high court fees for the parties, at least compared to the usual standards of the Italian system, for actions before this Court. Another goal of the new Court is to conclude the first instance of judgment within a year.

The basic principles of operation of the Court (UPC) are established in the agreement (Agreement on a Unified Patent Court) and in the Rules of Procedure.

The agreement provides that the Court of First Instance includes a central division based in Paris with two branches in London and Munich, local divisions and regional divisions. The seat of the Court of Appeal is in Luxembourg. The distribution of the cases in the various sections will take place according to the class of the International Classification of the patent at issue.

Although the agreement has not been updated following Brexit, it is clear that London can no longer be one of the sections of the central division. At the moment it has been decided to provisionally distribute the competences of London between Paris and Munich, despite the pending candidacy of Milan which, according to the criteria followed at the time of selecting London, would be an obligatory choice. A practical problem with this replacement is that it would be necessary to amend the agreement and ratify the agreement again with the parliamentary processes in each country.

However, there is still some hope that Milan will become a section of the central division. One way to achieve this is that member countries sign an interpretative protocol to the agreement, which indicates that London is to be read Milan and United Kingdom is to be read Italy.

The participating countries can have a local division or join together to form a regional section of first instance, in particular for countries for which it is not expected there will be a large number of cases.

Any court of first instance will have a panel of three judges with a multinational composition, which in the local courts may vary according to the number of cases: one professional judge of the nationality of the local division, if the cases are less than 50 per year, and two professional judges of nationality of the local division, if the cases are more than 50 per year.

Any judging panel of the Court of Appeal will have a multinational composition of five judges, three of whom are certified and nationals of different contracting countries and two of which are



technical judges with qualifications and experience in the field of technology on which the case is concerned.

Another important aspect is the hierarchy of sources of law:

- 1) The law of the European Union including Regulations (EU) No 1257/2012 and (EU) No 1260/2012;
- 2) The UPCA agreement;
- 3) The European Patent Convention (EPC);
- 4) Other international agreements applicable to patents and binding on the contracting countries;
- 5) National law, even of non-contracting countries, the application of which is however limited to particular circumstances.

In terms of substantive law, the agreement specifically regulates direct infringement, indirect infringement, legitimate uses, i.e. the limitation of the patent right, prior use and exhaustion of the right.

The agreement also equates the supplementary protection certificates on which the UPC has competence but to date there is still no community supplementary protection certificate.

The UPC has exclusive jurisdiction over the following cases:

- (a) actions for infringement, even if only threatened, of patents and supplementary protection certificates and related defense, including counterclaims concerning licenses;
- (b) negative ascertainment of infringement of patents and supplementary protection certificates;
- (c) actions for provisional and protective measures;
- (d) actions for the revocation of patents and declaration of invalidity of supplementary protection certificates;
- (e) counterclaims for revocation of patents and declaration of invalidity of supplementary protection certificates;
- (f) actions for damages or compensation deriving from provisional protections conferred by a published European patent application;
- (g) actions relating to the use of the invention prior to the grant of the patent or the right of prior use;
- (h) actions for compensations of licenses; and
- (i) actions relating to decisions of the European Patent Office in the execution of tasks relating to the management of the Unitary Patent.

Although the term “unified” is present in the acronym UPC, there are many local and regional divisions confirmed to date: Germany, Italy, France, Holland, Belgium, Finland, Denmark, Austria, Portugal, Slovenia, Nordic Baltic Regional competent for the territory of Sweden, Estonia, Latvia and Lithuania.

In addition, the Central Court is divided between Paris and Munich and, hopefully, Milan.

Concerning infringement actions, the principles of jurisdictional competence are the classic ones: *forum commissi delicti* (place where the alleged infringement takes place) or *forum rei* (domicile of the alleged infringer). In the absence of the *forum rei* in the contracting countries, the options are the *forum commissi delicti* and the central division.

The central division (Paris and Munich) is competent for direct and counterclaiming actions for invalidity and negative ascertainment of infringement.

Invalidity and infringement actions can be dealt with separately by two sections of the Court or they can be joined in the local/regional section or at the central division. The intertwining of territorial jurisdiction and substantive jurisdiction, the requests of the parties and the discretion of the local/regional courts determine the competent Court or courts for the discussion of the case. Regardless of which court decides the case, the decision will have an effect on the whole territory in which the patent is effective: for the European patent with unitary effect, in all countries that have ratified the agreement (17 countries to date), whereas for the traditional European patent, in all countries that have ratified the agreement and where such patent has been validated and is in force.

The agreement, alongside the judicial system, also regulates the alternative resolution of disputes



and provides a mediation center and an arbitration center to which the judging panel can advise the parties to refer to if it considers that the dispute is mature for an alternative solution.

As anticipated, the objective of the new Court is to finance itself, so the fees that the parties must pay to access the services offered by the Court are high, at least compared to the standards of the Italian system which is financed at public expense.

Direct infringement, counterclaim and negative ascertainment actions have fixed costs of € 11,000 and variable costs depending on the value of the case, varying between a minimum of € 2,500 for cases with a value between € 750.00 and € 1,000,000 and a maximum of € 325,000 for cases the value of which exceeds € 50,000,000.

Actions for revocation of patents only have a fixed cost of € 20,000, both as a direct action and as a counterclaim.

There are also several costs for each specific ancillary action and costs for the appeal⁷.

The value of the case that determines the applicable fee for infringement actions is decided by the Court on the basis of the proposals of the parties.

Active legitimacy is given to the owner of the patent, to the owner of the exclusive license, unless the license agreement provides otherwise and provided that the owner of the patent has been informed in advance, and to the owner of a non-exclusive license, only in the case where this is expressly provided for in the license agreement and the owner is informed in advance.

If it is the licensee who acts, the owner has the right to form an active joinder.

The validity of the patent cannot be contested in an infringement action by the licensee in the event that the owner is not a party to the procedure.

A firm point is that the patent invalidity action must have the patent owner as the counterpart.

Any natural or legal person affected by the patent is entitled to act.

The parties must be represented by a lawyer entitled to act in one of the contracting countries or, alternatively, by European patent attorneys who have obtained the European Patent Litigation Certificate.

Representatives of the parties enjoy the privilege of keeping communications between client and representative secret in the performance of their duties.

In the first instance, the language of the proceedings before the local or regional section is the official language of the contracting country hosting the division or one of the official languages of the countries sharing the regional division.

However, the contracting countries have the possibility to designate one or more available languages of the European Union and the parties can agree to use the language of the European patent if the judging panel allows it. If the panel does not allow it, the parties have the option of transferring the case to the central division.

In the central division, the language of the proceedings is the language in which the patent is granted.

On appeal, the language of the proceedings is that of first instance or, if the parties agree, the language in which the European patent was granted or, exceptionally, another official language of the contracting countries.

The first instance procedure includes a written phase, an intermediate phase and a hearing.

In the intermediate phase, the judge has the task of exploring a possibility of conciliation including the possibilities of mediation and arbitration.

The investigative tools available to the Court are the classic ones such as hearing the parties, requests for information or production of documents, hearing witnesses, opinions by experts, inspection, comparative tests or experiments, sworn statements in writing.

⁷ February 25th, 2016 FINAL – subject to legal scrubbing Preparatory Committee for the Unified Patent Court Rules on Court fees and recoverable costs



The agreement delegates to the Court several powers typical of national courts which include restrictive measures, remedies, protection of confidential information, production orders, conservation of evidence, judicial descriptions, provisional and protective measures.

Once the infringement has been ascertained, the Court has the power to issue permanent injunctions against both the infringer and the intermediaries involved in the offense and to establish applicable penalties in case of violation of the injunction.

The Court, taking into account the importance of the infringement and the interests of the parties, also has the power to order corrective measures in infringement proceedings such as recalling products from trade channels, depriving the products of infringed properties, permanently removing the products from trade channels and destroying products.

Generally, these measures must be implemented at the expense of the infringer.

The Court has the power to revoke the European patent, maintain the European patent as granted, and maintain the European patent in amended form, as in an opposition procedure before the EPO.

The Court has the power to order the infringer to provide information on the origin and distribution channels of the products or processes; the quantities produced, delivered, received or ordered; the prices of infringed products; the identity of any third person involved in the production or distribution of products or in the use of infringed processes.

The Court also has the power to determine the damage which, although not punitive as in the US, will have to be quantified to an extent that compensates for the damage suffered as if the infringement had not taken place.

Among the various methods of determination that the Court must take into account for the determination of the damage, there are the loss of profit but also elements that go beyond an economic analysis such as the moral damage caused by infringement.

As an alternative to loss of profit, the Court can refer to a sum calculated on the basis of royalties as if the infringer had requested a license from the owner of the patent.

The losing party reimburses reasonable legal costs and expenses incurred by the winning party up to a limit established by the procedural rules unless the principle of fairness requires different choices. The recoverable costs are established according to the value of the case and range from a minimum of € 38,000 for a case with a value of less than € 250,000 up to a maximum of € 2,000,000 for a case with a value greater than € 50,000,000⁸.

The value of the lawsuit is central in determining the fee to be paid to the UPC in infringement actions and in defining the ceiling on the reimbursement of costs incurred by the winning party. In Italy, the value of the patent case is identified in the claim for compensation which is often not indicated, thus the maximum value of € 520,000 is established, which provides for a unified contribution (court fee) of € 1,686.

Each party must bear all unnecessary costs it has caused to the Court or to another party.

At the request of the defendant, the Court may order the plaintiff to provide adequate security for the legal costs and other expenses incurred by the defendant that should be borne by the plaintiff.

The agreement also provides financial support for individuals who are unable to meet legal costs. The decision whether and to what extent to provide the financial aid rests with the Court.

Any financial compensation cannot go beyond five years from the date on which the plaintiff became aware of the fact that justifies the action.

An appeal may be filed against any decision of the Court of First Instance by any party whose requests have not been granted in whole or in part within two months of notification of the decision.

⁸ 8 June 16th 2016 Preparatory Committee for the Unified Patent Court DRAFT Decision of the Administrative Committee of the Unified Patent Court on the scale of recoverable cost ceilings



Ordinances can also be appealed within 15 days of notification or together with the final decision where practicable.

An appeal against an order can be based on issues of fact or law. New facts and evidence can only be introduced in accordance with the procedural rules and only if their filing was not possible in the first instance.

The appeal does not have suspensive effect unless the Court decides otherwise following a reasoned request by a party.

If the appeal is well founded, the Court of Appeal will have to revoke the decision of the Court of First Instance and provide a final decision. The Court of Appeal, in exceptional cases, may remit the case to the Court of First Instance which will decide on the basis of the issues of law defined by the decision of the Court of Appeal.

The parties may, at any time during the procedure, settle the case. The settlement will have to be confirmed by a court decision. However, a patent cannot be revoked or limited in a settlement.

At the request of the plaintiff, the Court may order appropriate measures to communicate the decision through public media at the expense of the infringer.

In exceptional cases, a re-examination of the case is permitted, in particular if new facts emerge which are decisive for the case at issue, such as a crime or a fundamental procedural defect. The Court of Appeal in the review phase has the right to cancel all or part of the decision in question and reopen the procedure for a new trial and a new decision.

The execution of decisions and orders is delegated to any contracting member state.

Transitional measures

The agreement also governs the transitional measures, the most important of which consists in the possibility for owners of traditional European patents and the related protection certificates to waive the competence of the UPC.

As already mentioned, this waiver is implemented by filing a request at the registry by electronic means directly by the owner of the patent or through an authorized agent. This request is called opt-out. The request can be withdrawn only once, so that the patent again falls under the competence of the UPC.

The opt-out request must be filed with the UPC Registry online via the CMS (Case Management System)⁹. The opt-out takes effect upon registration in the register. No check is carried out on the validity of the request, no confirmation is sent to the applicant/owner or representative and no fee is required, also because the UPC does not carry out any activity.

It is clear that an incorrect opt-out request is ineffective and does not waive the jurisdiction of the UPC. It is therefore important to emphasize that the opt-out request is an activity involving a great responsibility. If the opt-out is carried out incorrectly, it could expose the patent to a central attack.

The agreement has already entered into force in provisional mode on January 19, 2022 (Provisional Application Period) in order to carry out several operations necessary to make the Court operational. According to Alexander Ramsey, who chairs the UPC Preparation Committee, this phase will last 8 months. However, we point out that Alexander Ramsey has always been overly optimistic about timing.

The agreement will enter into force on the first day of the fourth month following the 13th filing, provided that the contracting member states that will have deposited their instruments of ratification or accession include the three states in which the largest number of European patents were in force in the year preceding the one in which the signing of the Agreement takes place (i.e. Germany).

The ratification of Germany will determine the start date of the so-called sunrise period and the

⁹ The Case Management System is the computer system used by the UPC for the management of cases and for the interface with users. The CMS allows you to file documents, requests (such as the opt-out request) and evidence.



entry into force of the court. The sunrise period is the period within which to file the opt-out for patent applications and patents prior to the entry into force of the system and will therefore have a duration of at least three months.

Ratification in the various countries

One aspect that should be considered is the ratification process because not all countries have adopted the same measures.

If, on the one hand, almost all the acceding countries have adopted or are adopting a safety net in the event that the application for a Unitary Patent is refused, on the other hand, there have been dissimilar implementations concerning the overlap between national and European patents¹⁰.

On the first point, Italy has amended article 56 of the Industrial Property Code and introduced paragraph 4-bis of article 56 as a safety measure that provides three months for filing the translation of the national validation from the date of the final rejection of the application for the European patent with unitary effect¹¹.

On the second point, Italy has chosen the path of the prevalence of the European patent, be it in the traditional form or with unitary effect.

Instead, Denmark, Germany, Estonia, France, Hungary, Austria, Finland and Sweden have chosen the double protection between national patent and European patent with unitary effect. This means that the plaintiff will be able to decide whether to activate the national patent or the Unitary Patent for an infringement that takes place on the national territory and therefore to choose the national court or the UPC.

France and Germany also provide for the possibility of double protection with a national patent and a traditional European patent even if the European patent has not been the subject of an opt-out.

Denmark, Hungary, Poland, Slovenia, Finland and Sweden have chosen double protection with national patent and traditional European patent without any particular conditions apart from Slovenia.

In this chapter, it is still appropriate to illustrate the territorial extension of the European patent with unitary effect for Denmark, France and the Netherlands which have some peculiarities.

The accession of Denmark to the European Patent Convention does not include the Faroe Islands

10 Pursuant to Article 139(3) of the EPC, any Contracting State can prescribe whether and on what terms an invention disclosed in both a European patent application or patent and a national application or patent having the same filing date or, where priority is claimed, the same priority date, may be protected simultaneously by both applications or patents (see also Article 140 of the EPC).

11 Article 56

Rights conferred by the European patent:

1. ((The European patent granted for Italy and the European patent with unitary effect confer on the owner the rights referred to in articles 25 and 26 of the Agreement on a Unified Patent Court, ratified and enforced pursuant to law 3 November 2016, n. 214, and impose the limits referred to in Article 27 of the same Agreement. The European patent granted for Italy and the European patent with unitary effect take effect from the date of publication of the mention of the grant of the European patent in the European Patent Bulletin.)) If the patent is subject to an opposition or limitation procedure, the scope of protection established with the grant or with the decision to maintain in amended form or with the limitation decision is confirmed as from the date of publication of the mention of the decision concerning the opposition or limitation.

2. ((PARAGRAPH ABROGATED BY LEGISLATIVE DECREE 19 FEBRUARY 2019, N. 18)).

3. The owner ((of a European patent granted for Italy)) must provide the Italian Patent and Trademark Office with an Italian translation of the text of the patent granted by the European Office as well as of the text of the patent maintained in amended form following the opposition procedure or limited following the limitation procedure.

4. The translation, declared perfectly compliant with the original text by the owner of the patent or by the agent thereof, must be filed within three months from the date of each of the publications referred to in paragraph 1.

((4-bis. For European patents, for which a request for unitary effect has been filed within the terms provided for in Article 9, paragraph 1, letter g), of Regulation (EU) no. 1257/2012, the term referred to in paragraph 4 starts from the date of receipt of the communication of the final rejection or revocation of the unitary effect or from the date of receipt of the request for withdrawal by the European Office.))

5. In the event of non-compliance with the provisions referred to in paragraphs ((3, 4 and 4-bis)), the European patent is deemed to be, from the outset, without effect in Italy.



and Greenland although they are part of the Kingdom of Denmark so that only the Danish national patent is effective also on those territories, while the European patent validated in Denmark is only effective in the peninsula of Denmark.

Incidentally, the Faroe Islands and Greenland are not members of the European Union and thus, a Unitary Patent is not effective in the Faroe Islands and Greenland.

Concerning France, it should be recalled that according to the rules governing the association of the European Union with overseas countries and territories, the two EU regulations are not directly applicable. However, the State that has the power to legislate on industrial property for those territories can implement the applicable provisions.

On the basis of this faculty, France has decided that a traditional European patent and a European patent with unitary effect will be effective in Martinique, Réunion, Mayotte, Saint Barthélemy, Saint-Pierre and Miquelon, Saint-Martin and the French Southern and Antarctic Lands, as well as in Wallis and Futuna.

France's decision only partially applies to New Caledonia and French Polynesia. These countries have their own powers in the field of industrial property and the French state does not have the authority to legislate on the matter. However, New Caledonia and French Polynesia will soon exercise their powers on this matter and will have to choose whether to join the Unitary Patent or not.

As far as we understand, the Kingdom of the Netherlands has chosen protection in the so-called overseas territories with the exception of Aruba which has its own patent law. Therefore, a Dutch national patent, the validation in the Kingdom of the Netherlands of a traditional European patent and a European patent with unitary effect have effect on the European territory of this country but also in the Caribbean islands of Curaçao, Sint Maarten, Bonaire, Sint Eustatius and Saba.

What will happen, maybe

Predicting the future is always very complicated, however, the orientation of the owners of European patents and patent applications seems to be characterized by prudence. Important patents will be excluded from the new court for fear of receiving a central annulment case, and unimportant patents will be validated in few countries. Therefore, in both cases, the Unitary Patent does not seem to be the preferred option.

National patents will apparently remain marginal and opt-out will be the default choice.

All this suggests that the register and the related CMS will be stormed as soon as they are available to exercise the opt-out, i.e. upon the deposit of the instrument of ratification by Germany.

However, there will certainly be someone who will want to experiment with the new court, will choose the option of the Unitary Patent or will not request or will withdraw the opt-out to start a case before the UPC.

In conclusion, we expect a slow start of the new system but we will observe with interest the initiative of some brave experimenters and, if some brave experimenters want to make use of our services, we will gladly assist them, believing that we have the skills¹² to guide them in this new phase.

It is clear that our services are available to all those who have a prudent attitude and want to file the opt-out as soon as possible.

Mauro Eccetto

12. 28 of the 34 professionals of Studio Torta qualified to act before the European Patent Office have obtained the qualifications that allow them to represent clients before the UPC. Representation is also required to file the opt-out request.