Cooley

The UPC Three Years In

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The Unified Patent Court (UPC) opened its doors in June 2023 as a single, centralised judicial forum to handle patent disputes across participating EU countries. During a seven-year transitional period, it is possible to opt European patents out of the UPC's jurisdiction, i.e. up to May 2030. This period can potentially be extended once by another seven years, up to May 2037. However, the consultation on whether to extend this period is due to start in June 2028, so we cannot expect to have certainty regarding the possible extension until relatively late in the current period. As such, it is possible that within a few years the UPC could become the mandatory forum for enforcement and revocation of European patents in EU Member States participating in the UPC's system, irrespective of whether a unitary patent is requested upon grant.

In the first six months of the UPC, roughly half of newly granted European patents remained within the system. This has increased as the court has matured and case law has developed and, as of June 2026, about two-thirds of newly granted European patents are not being opted out. Of the patents under the UPC's jurisdiction, about half are unitary patents, with the remainder being European patents validated by the traditional route. This split has been fairly consistent throughout the UPC's lifespan. For example, in 2025, 62% of patents remained under the UPC's jurisdiction and 29% of granted patents were registered as unitary patents. As such, it appears that patentees are becoming more accepting of the UPC and unitary patent system, with the growing use of unitary patents reflecting increasing confidence in the combined UPC/unitary patent framework, including its simplified administration and, in many cases, more cost‑efficient structure (including renewals). This trend may be explained by the UPC's practical advantages, notably the speed of its procedures and the availability of remedies (including injunctions) with effect across multiple EU Member States in a single action.

Perhaps surprisingly, patents in the medical or veterinary science space now have a higher uptake of unitary patents than average for European patents. Whilst the expectation has been that the pharmaceuticals space would be more risk-averse, patentees are choosing strategies that involve unitary patents. That said, the still-evolving unitary supplementary protection certificate framework introduces uncertainty that may continue to influence how life sciences patentees approach unitary patents. Curiously, the smallest proportion of unitary patents is in the electronics space. This space also sees the lowest proportion of opt-outs, so this lack of unitary patents is presumably driven by cost, countries of interest and expected patent lifespan, rather than any concerns about the UPC itself.

One reason patentees may be more willing to make use of the UPC is that the revocation rates at the UPC and European Patent Office (EPO) are broadly comparable. In 2025, 32% of revocation actions or counterclaims for revocation at the UPC resulted in the patent in suit being revoked. At the EPO, there was a revocation rate of 29% at the first instance during opposition in 2025, which rises to 31% on appeal (and to 48% on appeal if dismissed appeals are excluded). The risk of a central revocation of a European patent post-grant, therefore, does not appear to significantly differ between the UPC and EPO systems.

However, it is important to recognise that the nature of this risk differs between the systems. At the UPC, revocation can arise quickly within infringement proceedings and applies across all participating EU Member States in a single decision, whereas EPO opposition follows a different procedural track and typically operates over a longer time frame. As such, the practical commercial impact of revocation risk may be more acute in the UPC context.

The case law of the UPC is developing and there are indications of greater consistency in approach between divisions, as guidance from the Court of Appeal of the UPC emerges. The Court of Appeal has overturned approximately a third of first-instance decisions, whereas the EPO Boards of Appeal at least partially overturned 64% of cases in 2025.

Overall, it appears that the UPC is gaining prominence and credibility as a forum. This may be contributing to the increasing willingness to remain within its jurisdiction.

What does this mean for patentees?

Ultimately, a more nuanced, portfolio-based approach is now appropriate when interacting with the UPC and choosing between traditional European patent validation and the unitary patent system. As UPC case law becomes more settled and the court is used by more patentees, keeping selected cases within the UPC and considering unitary patents rather than national validations potentially becomes more attractive. This is especially true as the end of the initial transition period approaches.

In practice, many patentees are using the UPC, often in conjunction with a unitary patent, alongside the traditional national validation route and opt-outs. This is not purely a question of patent strength or importance, and the sensitivities depend both on subject matter and business model. It is not uncommon to see a blended approach even within the same patent family, for instance with commercially valuable “picture claim” patents opted out and broader offensive patents kept within the UPC’s jurisdiction.

The key balance is therefore between the UPC’s enforcement advantages (including speed and pan-European relief) and the risk of central revocation, with the appropriate approach depending on the strength of the patent, its commercial footprint and the patentee’s risk tolerance.

For patentees with interests in the UK and other significant European markets not participating in the UPC (such as Spain and Poland), a parallel national patent strategy will remain appropriate.

If you wish to discuss any specifics of post-grant patent strategy, especially around staying in or opting out of the UPC’s jurisdiction, please contact a member of the patent counselling and prosecution group’s London team for bespoke advice.

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