



# EUROPE'S UNIFIED PATENT COURT

## WHAT YOU OUGHTA KNOW AFTER 2 YEARS' EXPERIENCE

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# Patent Litigation Through the Unified Patent Court and German Courts

An International Handbook

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01

# THE UNIFIED PATENT COURT: PART I: THE STRUCTURE OF THE UPC

## ⑤ I. BASICS: EXCITEMENT OR FEAR OF THE UNCERTAIN?

- **UPCA** is in force since **June 1, 2023**
- **The Unified Patent Court has jurisdiction over:**
  - **All existing/future European patents** granted by the EPO  
(which have not been opted out);
  - **Unitary patents**
- **System is fully established**
- **Case law emerges quickly**

## ② I. BASICS: WHAT REMAINS UNCHANGED?

- European Patent Office continues to grant European Patents for 39 countries (**European Patent Convention countries**)
  - Whole European Union
  - UK, Turkey, Switzerland, Norway, etc.
  - 570 million inhabitants
- National patent offices continue to grant national patents
- National courts continue to have jurisdiction over all cases based on European patents or national patents



## ② I. BASICS: SWISS CHEESE (WITHOUT THE SWISS)

- **Unified Patent Court (UPC)**

- 18 EU countries

- without:

- UK, Spain, Turkey, Poland,  
Switzerland, Norway, etc.

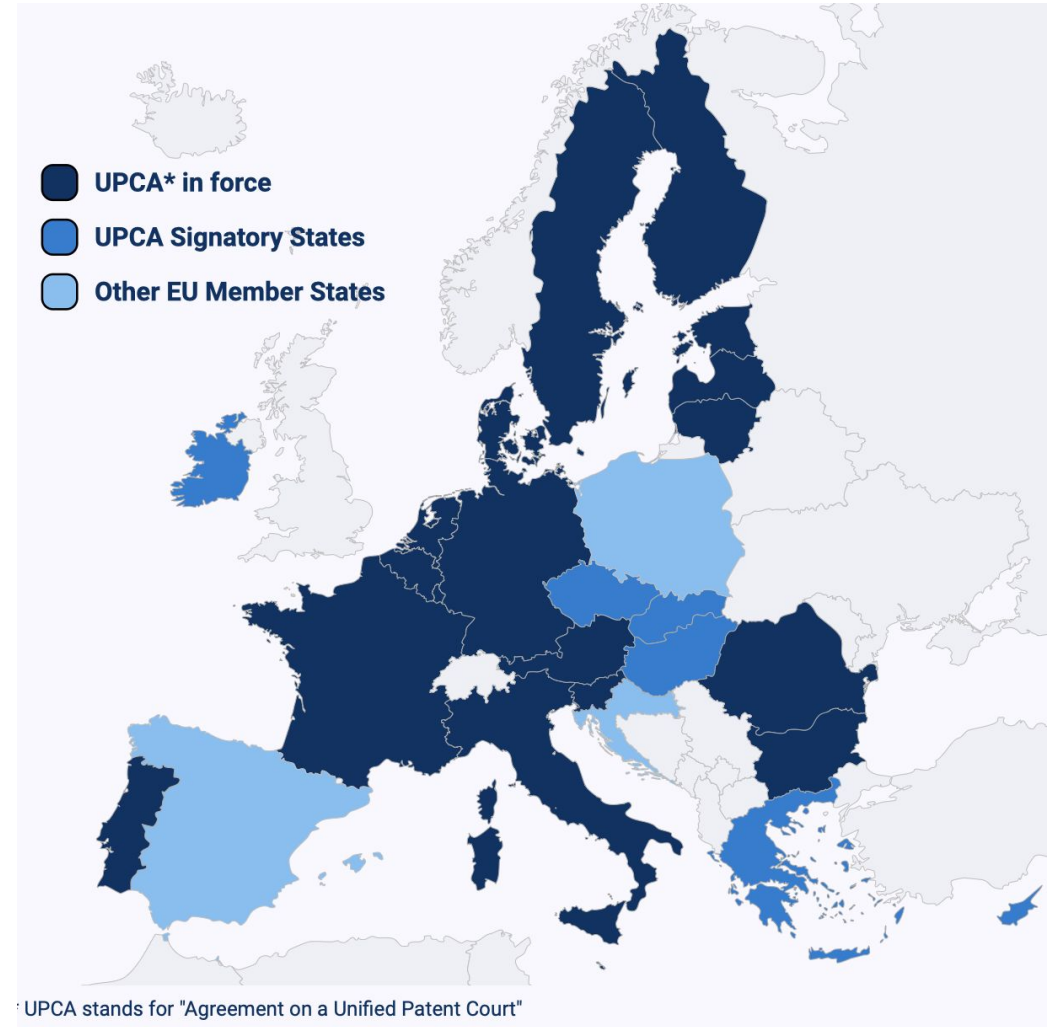
- **Unitary Patent (UP)**

European Patent with unitary effect

**70,000 (UPs)** as of October 2025:

25% of all newly granted EPs are UPs

(Uptake rate in the EU: 34%)



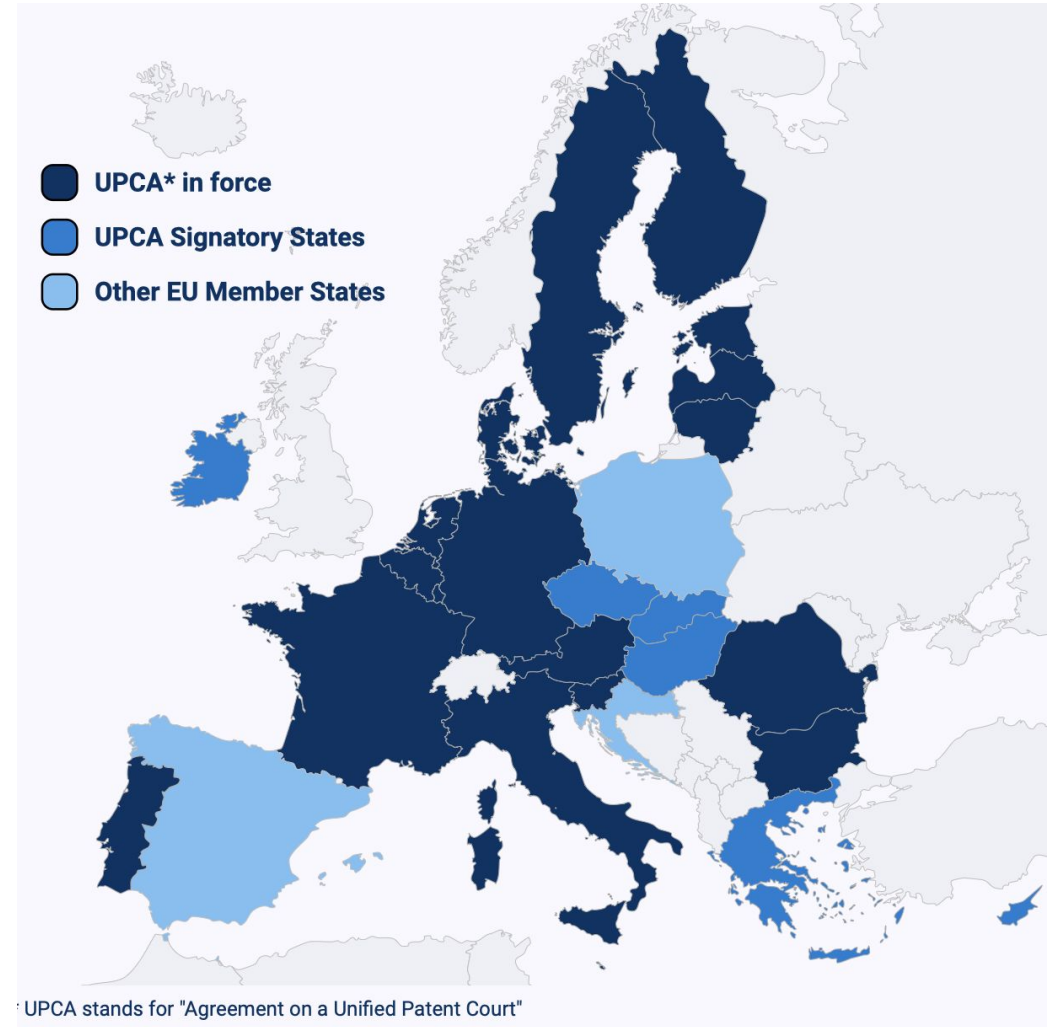
## ② I. BASICS: WHAT IS A **UNITARY PATENT** AND HOW TO GET IT?

- European patent granted by the EPO
- Deadline to request unitary status is one month after grant; use it or lose it
- Available for patents granted since June 1, 2023

**Dark-blue:** Already in!  
(**315M inhabitants**)

**Normal blue:** Eligible but not yet in!

**Light blue:** Undecided, may be later



## ② I. BASICS: DIFFERENT TERRITORIAL COVERAGE OF UPCA AND EPC

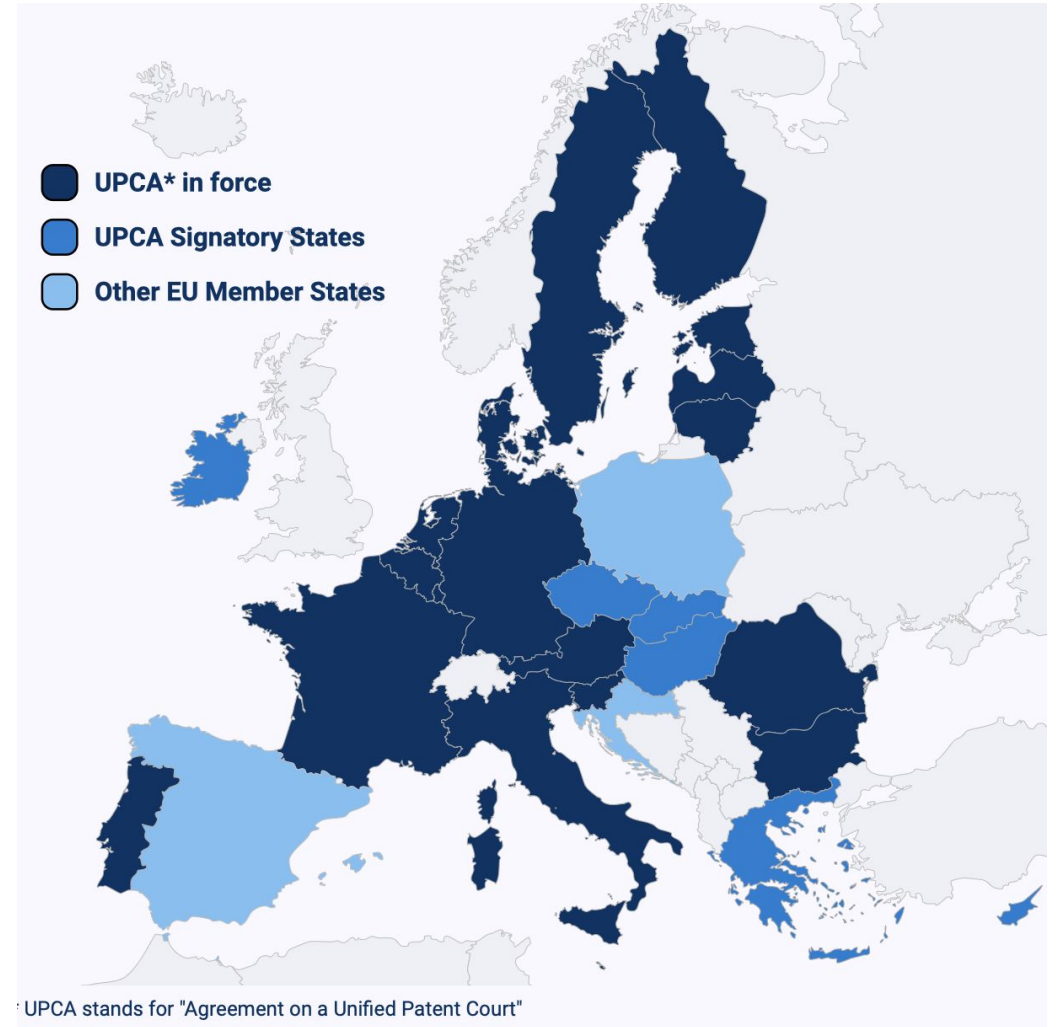
**UPC has jurisdiction for**

- **Unitary patents**
- European patents (unless opted-out)
- European patent applications
- Supplementary protection certificates

**No jurisdiction** for EPC states not participating in the UPCA

- *i.e.*, UK, Switzerland, Turkey, Norway, Iceland, etc.
  - Spain, Croatia, Poland

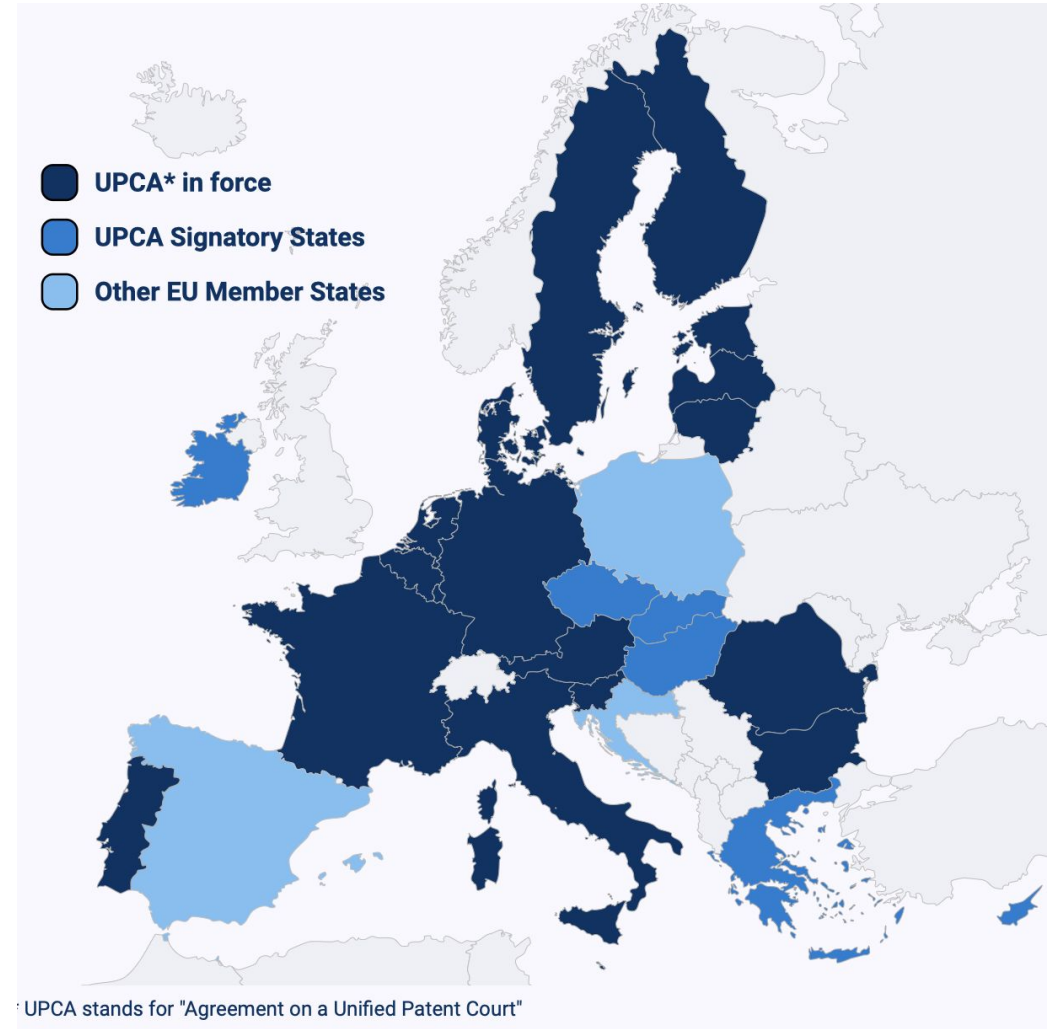
For these countries, the traditional EP “bundle patent” remains unchanged



# ② I. BASICS: WHAT IS A UNITARY PATENT AND HOW TO GET IT?

## IP rights that are not enforced in the UPC:

- Opted-out European Patents
- National Patents
- Utility Models



# ① I. BASICS: FUNCTIONAL ROLES OF LOCAL AND CENTRAL DIVISIONS

## **Local/Regional Divisions**

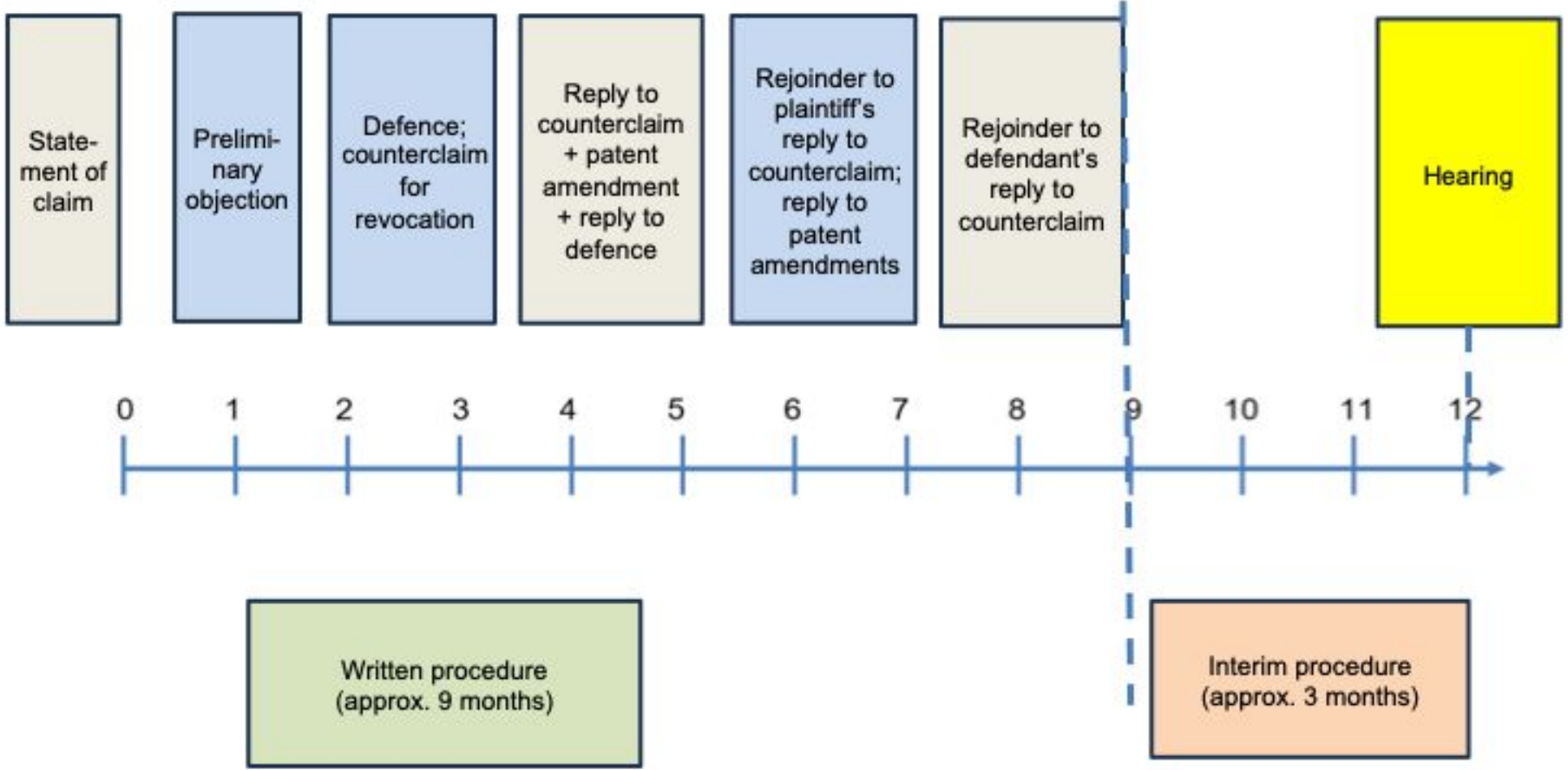
- Patent infringement actions
- Preliminary injunctions
- Counterclaims for revocations
- Evidence preservation

## **Central Division**

- Actions for revocation
- Patent infringement (including counterclaims for revocation) in certain situations
  - Foreign (e.g., US) companies can always be sued in the Central Division for patent infringement
- Declarations of non-infringement
  - Unless infringement action already pending

# TIMELINE: INFRINGEMENT ACTIONS (INCLUDING COUNTERCLAIMS)

**Course of the Proceedings (with counterclaim for revocation)**



- No off-ramp for defendants prior to trial (no MTD, Markman, SJ, etc.)

## ② II. OPT-OUT VS. STAY-IN

### Key Advantages of the Unified Patent Court:

- The UPC has jurisdiction over all countries where the EP is validated and in force, whereas national courts only have jurisdiction over one country
- Improved “forum shopping” options
- Two-instance system is faster
- Predictable calendar (~15 months to trial)
- Lessened burden of multinational coordination
- Improved discovery options through evidentiary seizures
- Combined infringement + validity

□ **1 UPC action replaces a plurality of national actions**  
(European Patents are usually validated in 2 to 4 countries)

## ② II. OPT-OUT VS. STAY-IN: FILING STRATEGIES

Three layers of patent rights:

- 1. Unitary Patents:** Large territorial scope; uniform enforcement through UPC only, good EU border protection; reduced administration work and costs, reduced translation costs; improved ability to forum-shop for enforcement
- 2. Traditional European patents**
  - Consider whether to opt out
  - If opted out, whether to opt back in
- 3. National patents:** parallel national rights (national patents and utility models)
  - Germany and France now allow duplicate protection over European patents

**You can mix and match**

## ② II. OPT-OUT VS. STAY-IN? – PROS/CONS OF OPTING-OUT

### **If the European Patent is opted-out:**

- Then the UPC has no jurisdiction for actions relating to the EP
- The opt-out can be withdrawn even after end of transitional period, provided that no action is or was pending in relation to that EP
- **Advantages of opting out?**
  - Avoid revocation at UPC that would invalidate rights across all participating countries
- **Disadvantages of opting out?**
  - **Enforcement:** Have to enforce country-by-country, with risk of divergent rulings; less ability to obtain evidence preservation
  - **Costs:** UPC infringement and revocation actions are cheaper than country-by-country enforcement
  - **Blocking effect:** “Opt-back-in” only possible if EP has not yet encountered national court proceedings

# III. COSTS: COURT FEES FOR INFRINGEMENT PROCEEDINGS - UPC VS. GERMANY

Dispute Value (ViD)	Fee for ViD (+ fixed fee)	Germany
< 500.000 €	11.000 €	11 703 €
< 750.000 €	13.500 €	14 673 €
< 1.000.000 €	15.000 €	17 643 €
< 1.500.000 €	19.000 €	23 583 €
< 2.000.000 €	24.000 €	29 523 €
< 5.000.000 €	43.000 €	65 163 €
< 7.000.000 €	57.000 €	88 923 €
< 10.000.000 €	76.000 €	124 563 €
< 15.000.000 €	86.000 €	183 963 €
< 25.000.000 €	136.000	302 763 €
< 30.000.000 €	161.000 €	362 163 €
< 50.000.000 €	261.000 €	362 163 €
< 50.000.000 €	336.000 €	362 163 €

Appeal: Same costs

Appeal: + 33%  
Supreme Court: + 67%

**Take-away (I):** Court fees (infringement) of the UPC are lower than those charged in German proceedings

② III. COSTS: COURT FEES FOR REVOCATION – UPC VS. GERMANY

**UNIFIED PATENT COURT**

- Court costs for actions as well as counterclaims for revocation consist only of
  - **Fixed fee 20.000 euros**                      **1<sup>st</sup> instance**
  - But in any case no more than court fee of the infringement proceedings

□ **Formula: Fixed**                      ■ **2<sup>nd</sup> instance**

**Germany**

**1<sup>st</sup> instance**

Value in dispute	
500.000 €	17.554 €
1.000.000 €	26.464 €
2.500.000 €	53.194 €
5.000.000 €	97.744 €

**2<sup>nd</sup> instance**

Value in dispute	
500.000 €	23.406 €
1.000.000 €	35.286 €
2.500.000 €	70.925 €
5.000.000 €	130.326 €

**Take-away (II): Court fees for revocations in the UPC are aggressively lower than Germany**

# III. COSTS: REIMBURSEMENT RISK/CHANCE - UPC VS. GERMANY

## UPC

Value in dispute	Maximum reimbursement
≤ € 250,000	≤ € 38,000
≤ € 500,000	≤ € 56,000
≤ € 1,000,000	≤ € 112,000
≤ € 2,000,000	≤ € 200,000
≤ € 4,000,000	≤ € 400,000
≤ € 8,000,000	≤ € 600,000
≤ € 16,000,000	≤ € 800,000
≤ € 30,000,000	≤ € 1,200,000
≤ € 50,000,000	≤ € 1,500,000
More than € 50,000,000	≤ € 2,000,000

## Germany

Infringement	Nullity
12.500 €	12.500 €
18.000 €	18.000 €
26.000 €	26.000 €
43.000 €	43.000 €
76.000 €	76.000 €
142.000€	142.000€
272.000€	272.000€
<u>505.000€</u>	<u>505.000€</u>

2nd instance like first instance

**Take-away (III): “Loser pays” risk is not necessarily higher at the UPC**

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# THE UNIFIED PATENT COURT: PART II: THE UPC IN PRACTICE

## Ⓑ OPT-OUTS: STAMPEDE TO THE EXITS?

- Today, about 34% of European patents have been opted out of the Unified Patent Court system
- Once opted out, a patent can be opted back in to the UPC system, insofar as it is not the subject of a revocation challenge
- This is a technique of “wait and see”



## ② UPC OPEN FOR BUSINESS: EVIDENCE SEIZURES

- The UPC allows for stand-alone actions for evidentiary seizures
- This is an expansion of discovery tools from pre-UPC litigation
- Modeled on French-style *saisie contrafaçon*
- Court appoints an expert to accompany a bailiff and seize specified materials
  - OrthoApnea S.L. (Brussels): UPC granting request for seizure of dental products at upcoming symposium. Low bar stated for warranting relief: “The applicant has made it plausible that it holds a valid patent and that the defendant is threatening to infringe it in Belgium with the NOA products.”
  - Oerlikon Textile v. Himson Eng’g (Milan) (approving expedited ex parte proceedings to allow preservation of evidence in connection with trade show)
  - Primetals Technologies v. Danieli (Milan): (approving expedited ex parte proceedings to allow preservation of evidence regarding the involvement of the Italian company in a US sale)

## ② FIRST PRACTICAL EXPERIENCES

**Preservation of evidence** (Milan, June 13, 2023): The prerequisites for ordering a preservation of evidence are low: *"The appellant party has documented that he is the exclusive owner of the [...] patent, supported by a presumption of validity. The appellant party has acknowledged that no opposition has been filed to the European Patent Office."*

- Waiver of hearing:
  - Urgency (trade fair)
  - Risk of loss of evidence (opponent abroad, evidence easy to destroy)
- Content of the order
  - Preservation of evidence by expert ordered, also bailiffs and lawyers and consultants of the applicant; party itself was excluded.
  - Only issue expert opinions to two lawyers and trustworthy technical experts.
  - Visits should preferably take place outside trade fair opening hours.

## ② UPC OPEN FOR BUSINESS: PRELIMINARY INJUNCTIONS

- The UPC allows for preliminary injunctive relief
- Early decisions from the UPC show a willingness to grant preliminary injunctions
- 10x Genomics v. NanoString Technologies (Munich)
  - Granting preliminary injunction after 2-day hearing
  - Complex biotechnology patents
  - No security required to be paid
- PI however lifted in 2<sup>nd</sup> instance
  - Court of Appeal was not convinced that patent will survive a nullity attack

## ② UPC OPEN FOR BUSINESS: PRELIMINARY INJUNCTIONS

### Boehringer v Zentiva (LD Lisbon)

- No PI was granted for lack of imminent infringement

### Boehriner v Zentiva (Court of Appeal Luxemburg)

- Set aside first instance decision and granted the PI for all UPC countries in which the EP is in force
- Imminent risk of infringement in Portugal, since Zentiva had completed the Prior Evaluation Procedure (PEP), a step mandatory in Portugal
- “Infringement is only a matter of starting the action”
- Injunction granted for other UPC countries based on Article 34 UPCA; CoA does not decide on a country-by-country basis if there is an imminent risk of infringement
- Pragmatic approach on urgency requirement: 6 weeks after having all information was ok

## ② THE GERMANY OPTION: UPC V. NATIONAL COURTS

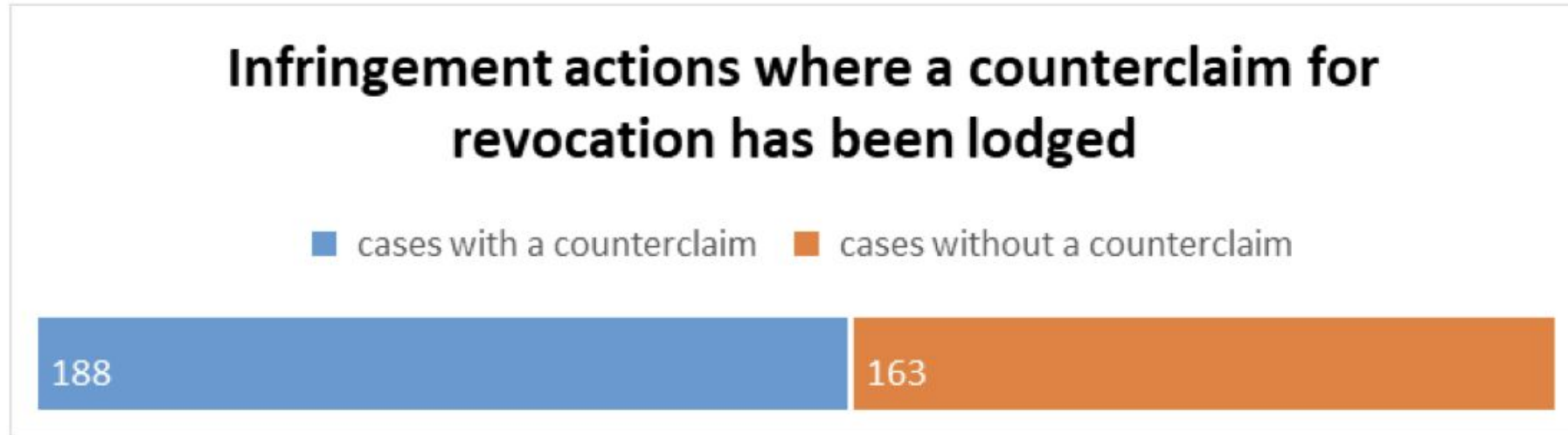
- Will Germany continue to dominate?
- Highly trained judges, large body of established law
- Will litigants choose to file in Germany through the UPC?
  - Broader scope of enforcement
  - Infringement and validity tried together
  - Quicker final resolution
  - Lesser bonding requirement
- Or through national courts?
  - “Split system” of trying infringement and validity separately
  - “Injunction gap” with injunction possible before validity ruling
  - High bonding requirement
  - Brain drain: No more part time UPC judges remain in the national court system



## ② INFRINGEMENT PROCEEDINGS

- **351 infringement** actions are filed as follows:
  - 123 infringement actions have been filed in **Munich** local division, 71 in **Düsseldorf**, 52 in **Mannheim** and 26 in **Hamburg**. 22 infringement actions have been received in the **Hague**, 21 in **Paris local division** and 15 in **Milan local division**. The **Nordic Baltic regional division** has received 7 infringement actions, **Copenhagen** 4 and **Brussels** 3, **Paris central division** and **Vienna local division** 2 each, whereas **Helsinki**, **Lisbon** and **Milan central division** have received 1 infringement action each.
- 80% of all infringement cases are filed in Germany
- New judges have been appointed for the German Local Divisions, part-time judges have been raised to full-time judges
- No end of German predominance in sight, despite good quality all over the divisions

## ② INFRINGEMENT PROCEEDINGS



- 80% of all counterclaims for revocation are filed in Germany
- Only 68 stand-alone revocation actions have been filed within the first 25 months

## ② THE GERMANY OPTION: RETREAT TO NATIONAL PATENTS?

- To avoid the UPC, option to get patents through German Patent Office
- German patents will never be subject to the UPC
- Ensures access to favorable Germany procedural rules (split system, etc.)
- Double patenting rules relaxed, to allow duplicate patents from EPO and GPO
- Will German national courts “compete” with UPC for filings?
- Good advice to mirror portfolio through GPO?
- More than 200 new cases in 2025 only in the (National) District Court Munich



## ② RISE OF NPE LITIGATION IN EUROPE?

- More litigation by non-practicing entities in Europe?
- The German system has structural impediments to non-practicing entities
  - Expensive bonding requirement if win infringement
  - Nullity actions are slow (2 years or more)
- Will the UPC be more favorable?
  - Fast time to trial and resolution
  - Combined infringement and invalidity proceedings
  - Threat of pan-European exclusion
  - Increased forum shopping ability
  - Higher monetary damages

## ② IMPACT OF NON-SIGNATORY COUNTRIES



- Patchwork quilt of countries in the UPC system
- UK pulled out of UPCA (Brexit)
- Other countries (*e.g.*, Spain and Poland) have not agreed to join
- How get “unified” enforcement if UK, Spain outside of Unitary Patent, Unified Patent Court?

## ② IMPACT OF NON-SIGNATORY COUNTRIES



- Landscape about to change following the *BSH Hausgeräte v Electrolux* decision from the CJEU in February 2025 (C-339/2022)
- UPC has jurisdiction for all countries in which the EP is in force, including those outside the UPC system
- Applies to UK, Spain, Switzerland, etc
- Only possible if defendant (or at least one of them) is domiciled in a UPC Member State

## ② IMPACT OF NON-SIGNATORY COUNTRIES



### **Case example: *IMC Créations vs. Mul-T-Lock France and Mul-T-Lock Switzerland***

- IMC Créations sues in LD Paris against Mul-T-Lock France and Mul-T-Lock Suisse
- The lawsuit covers Switzerland, Spain, and the United Kingdom (UK)
- LD Paris has jurisdiction for the entire case  
(including the Swiss company for infringing acts in Switzerland!)



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