EIP

How does the opt-out work in the transitional period of the UPC Agreement?

The Unified Patent Court (UPC) will ultimately be responsible for all litigation in participating member states relating to patents granted by the European Patent Office (EPO); national courts in those countries will only retain jurisdiction over national patents.

However, for 7 years after the UPC opens, cases in relation to classical validations of European patents in the participating member states may be litigated in national courts or the UPC. The transitional period may be extended by a further 7 years (i.e. to 14 years after court opening).

During the transitional period, it is possible to opt classical (i.e. non-unitary) European patents and applications out of the competence of the UPC (provided that no action has commenced at the UPC in respect of that patent). The opt-out lasts for the lifetime of the patent.

Once opted out, it will be possible to withdraw opt-out (provided no national litigation has started) so as to take advantage of the UPC system. Note that opt-out (and withdrawal) can only be effected once per patent.

For existing, granted cases where a decision is made to opt-out, this should be done during the sunrise period (3-month period before the court opens). For pending and future applications, opting out is best done before grant. These timings avoid a situation where a third party initiates an action in the UPC before the opt-out is in place (thereby preventing opt-out for that patent).

Interested in learning more about the UPC? This is one of a series of short explainers

about the Unitary Patent and Unified Patent Court. The full list of articles is: