

EIP

What is the likely timing of the UPC and UP coming into being?

The Unified Patent Court (UPC) is currently completing preparations to be open for business (under the Protocol on the Provisional Application of the UPC Agreement (the 'PAP-Protocol')). The Preparatory Committee initially indicated that the preparations for opening will require a provisional application period (PAP) of approximately eight months which, if accurate, would mean the Court should open in October 2022. Since then, however, the Preparatory Committee has stated that the Court is expected to open in last quarter of 2022 or first quarter of 2023, and so the October date is likely too ambitious. The option to elect for a unitary patent (UP) will be available for all patents granted on or after the date that the court opens.

The UPC will come into existence 4 months after German ratification of the main UPC Agreement. Germany has passed the required domestic legislation, and simply need to deposit their instrument of ratification. Germany will do this when the Preparatory Committee have indicated that they are ready to open 4 months later. If the October start date were to be kept, then Germany would have to ratify the main agreement in June 2022, but this date is expected to slip as there are no indications that preparations are yet close to the necessary degree of completion.

The European Patent Office (EPO) has announced transitional measures which may slow grant and allow election of conversion to a unitary patent. After the date of German ratification, for any case where a R71(3) EPC communication (a notice of allowance) has been issued but the patent has not yet granted, it will be possible to request delay of grant until after the Unitary Patent system is live, and also to file an early request for unitary effect.

If unitary protection is of interest to you in relation to any pending application, it may be worth considering using strategies to delay prosecution (e.g. deadline extensions, further processing). Your usual EIP contact can advise on these if of interest.

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:

- [What is the Unitary Patent, and how do I get one?](#)
- [What is the Unified Patent Court?](#)
- [What is the likely timing of the UPC and UP coming into being?](#)
- [How does the opt-out work in the transitional period of the UPC Agreement?](#)
- [What are the options if you want to be able to use the UPC?](#)
- [What are the options if you want to avoid the UPC?](#)
- [What languages does the UPC use?](#)
- [Member States participating in UPC](#)