

Europe's Unified Patent Court: opt-out?

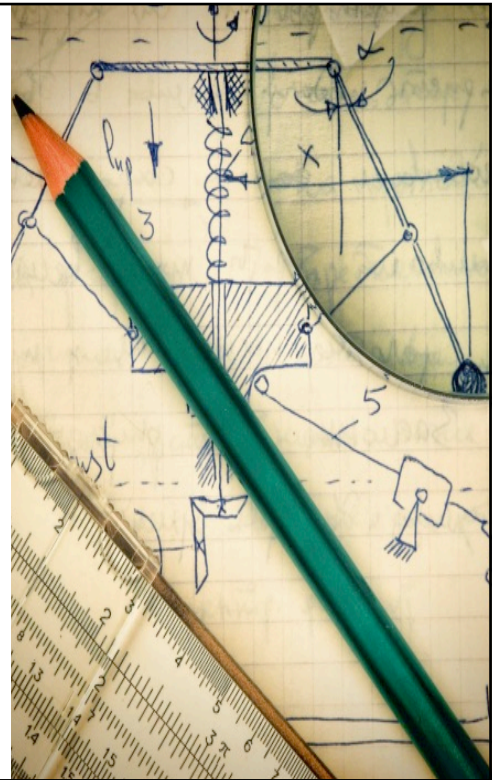
The University of Texas School of Law
27th Annual Advanced Patent Law Institute

Clemens Rübel
Partner, Munich

Jonathan Ball
Partner, London

20-21 October 2022

Norton Rose Fulbright LLP



1

Current Regime

Patent Prosecution 

**Patents Sought in Specific,
Individual Jurisdictions**

**European
Patent (EP)
Bundle of Patent Rights in
Designated States**

Litigation 

**Assertion is Handled by
Each Designated Nation's
Court Systems**

2

New Regime Beginning April 1, 2023

Patent Prosecution



Litigation



Patents Sought in Specific,
Individual Jurisdictions

European Patent (EP)
Bundle of Patent Rights in
Designated States

Unitary Patent



Cases Handled by
Each Designated
Nation's Court System
– Results in Multiple
Parallel Litigations

Unified Patent Court



3

Unified Patent Court System

EP

Opt-out UPC System

**“Sunrise
period”**
Jan.-Mar.
2023

Risk for patentees facing
**multinational invalidation
actions** on the first day
against “crown-jewel patents”



New system **co-exists with national court system**
during the transitional period of 7 (or 14) years



4

Introduction

Opt-out decision

- Opt-out decision requires knowing what you opt in or out and what are the pros and cons of the new system
- Opt-out decision only concerns EPs; different decision whether to seek UPs in the future for which the UPC is compulsory
- This presentation does not cover the topic of whether to seek a UP instead of EPs or national patents

5



5

Introduction

Coverage

- One decision for many countries instead of enforcement country by country
- But the UPC does not cover all European countries, only those countries that are:
 - EPC member states
 - EU member states
 - Participate in the enhanced cooperation and
 - Ratified the UPC agreement

6



6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Europe's Unified Patent Court: opt-out?

Also available as part of the eCourse

[Patent Practice Internationally: The Coming of the UPC; plus Foreign Service and Foreign Discovery](#)

First appeared as part of the conference materials for the
27th Annual Advanced Patent Law Institute session
"To Opt-Out or Not to Opt-Out of the UPC in Europe?"