

# 5

# things you need to know about the Unified Patent Court

## Intro

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After a great deal of discussion and years of preparation, the European patent landscape will soon change significantly with the introduction of the Unified Patent Court (UPC). The Benelux countries, all part of the participating EU Member States, are expected to play a major role in this new system. Much has been said, and can be said, about this new court system but our UPC Task Force has identified five things you really need to know, not only about the system in general but also pertaining to the Benelux countries in particular:

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**#1** Enforcement in participating EU member states with one single stroke

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**#3** Final version Rules of Procedure now available

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**#5** A strong footprint in the Benelux

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**#2** Entry into force UPC Agreement expected 1 April 2023, start Sunrise Period 1 January 2023

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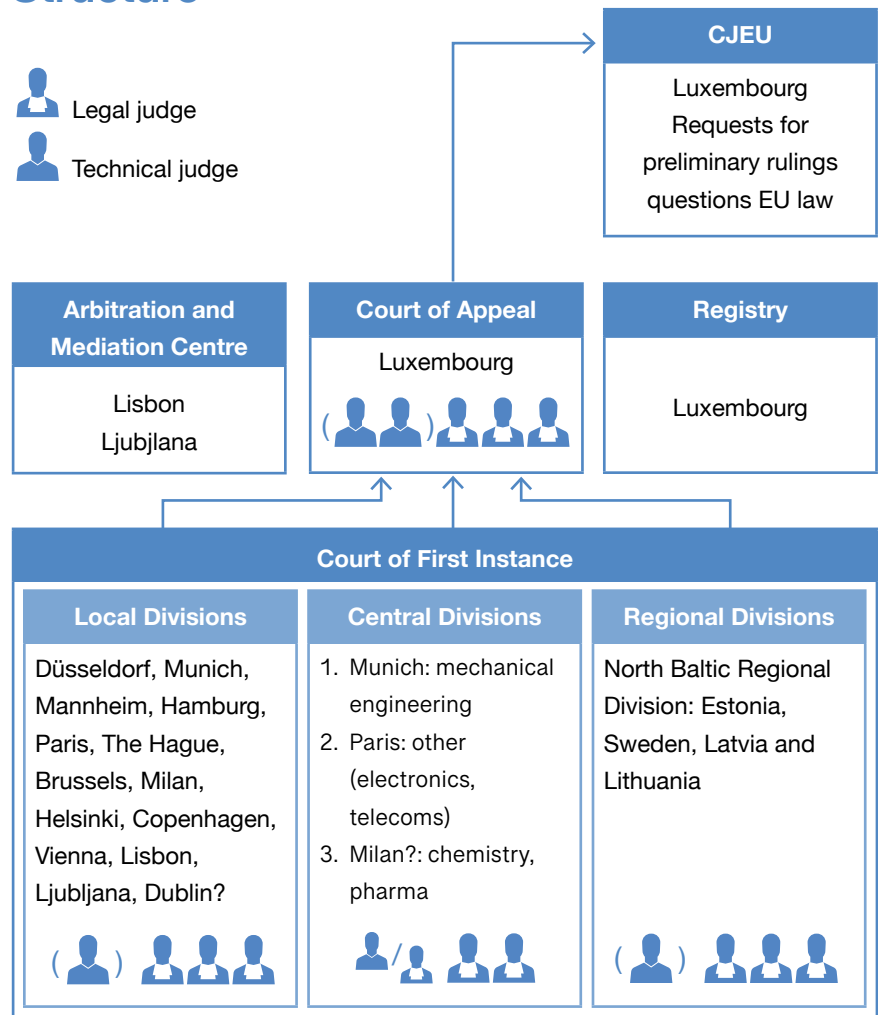
**#4** Action needed: review existing and new agreements

# #1

## Enforcement in participating EU member states with one single stroke

The UPC system will provide the opportunity to have a patent enforced or invalidated with one single stroke in all participating EU Member States. Basically, two fundamental changes will take place in the European patent landscape with the [UPC Agreement](#) entering into force. First, a European Patent with unitary effect (Unitary Patent) across all participating EU Member States will be introduced. The Unitary Patent will be available as an alternative to the traditional bundle of national rights known as “European Patent”. Secondly, and most notably, the UPC will be established as the specialised central patent court (with Central, Regional and Local Divisions) common to the participating EU Member States. The UPC will not only have exclusive jurisdiction for Unitary Patents, but eventually also for all traditional European Patents that are not opted-out from the system (see further below under #2).

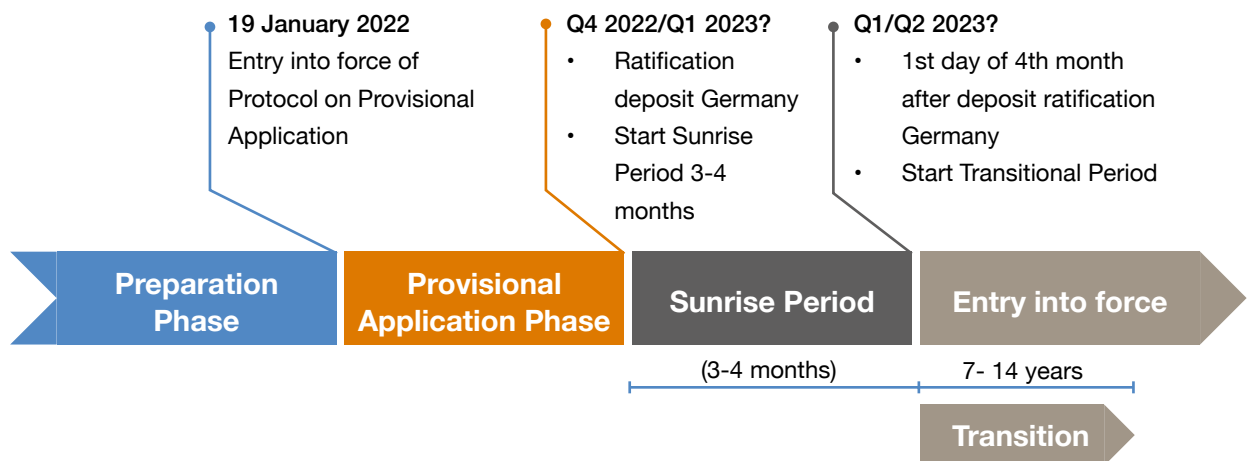
### Structure



## #2

### Entry into force UPC Agreement expected 1 April 2023, start Sunrise Period 1 January 2023

As of January 2022, the UPC is in the Provisional Application Phase during which final preparations are being made before the UPC can finally open its doors. It is expected that these preparations will take a few more months to complete and that Germany will then deposit its ratification of the UPC Agreement. This deposit will trigger the start of the so-called “Sunrise Period” of 3-4 months, during which traditional European Patents can be opted-out from the system if patentees wish to avoid the exclusive jurisdiction of the UPC. The UPC agreement will automatically enter into force after the Sunrise Period, which will mark the start of the so-called “Transition Period” of 7 years (which may be extended by up to 7 years). During the Transition Period, patentees can still opt-out from the system if not yet done so (but, importantly: only if no action is pending yet before the UPC) and there will be shared competence between the national courts and the UPC for European Patents not opted-out. After the Transition Period, the UPC will have exclusive jurisdiction for European Patents not-opted out. The just published [implementation roadmap](#) indicates that the start of the Sunrise Period is currently planned for 1 January 2023 and the entry into force of the UPC Agreement for 1 April 2023.



## #3

### Final version Rules of Procedure now available

An important milestone in the final preparations is the entry into force on 1 September 2022 of the Unified Patent Court's Rules of Procedure. Following the last revision in July 2022, a consolidated version of these Rules of Procedure has been published on the [UPC website](#). The Rules of Procedure explain the formalities of the proceedings in the new system: how to start, defend and end proceedings and much more. Compared to the previous version of the Rules of Procedure, the new version among others contains an updated rule on opting-out, on videoconferencing and on the public access to documents.

## #4

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### Action needed: review existing and new agreements

With the UPC start date fast approaching, businesses need to get prepared already at this stage. An important action point is to review existing agreements that involve patents and consider the potential impact of the UPC on those agreements. Additionally, when negotiating new agreements the UPC should be addressed. Examples of agreements that may be affected are licences, collaboration agreements, co-ownership agreements, R&D agreements, security documentation and other agreements or clauses involving patents. Examples of topics to be considered are the decision to opt-out or not, who will control litigation and decisions in this respect and within the context of the new system, and more generally whether definitions used also cover the new Unitary Patent.

## #5

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### A strong footprint in the Benelux

The UPC will have a strong footprint in the Benelux, which includes major patent jurisdiction the Netherlands with a long established cross-border practice, Belgium with its central location within Europe and Luxembourg which will have a special place in the new system. Both the Netherlands (The Hague) and Belgium (Brussels) will have a Local Division of the court, while Luxembourg is the seat of not only the existing Court of Justice of the EU (from which the UPC may request preliminary rulings regarding EU law) but also of both the Court of Appeal and the Registry. Furthermore, Benelux judges are expected to be well represented on the bench. And of course, the NautaDutilh team and its UPC Task Force – with a strong presence in all three Benelux countries – are ready to continue to serve their clients.

## About the team

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The UPC Task Force of our Benelux IP team has a strong presence in all three Benelux countries and is dedicated to guide you through the upcoming changes in the European patent landscape. The team advises domestic and international clients, from innovative start-ups to leading multinationals, on patents and other technology-oriented matters, spanning a variety of fields including pharma, biotech and telecoms. Their work encompasses (cross-border) disputes as well as advisory work (including strategies, licensing and due diligence). The team's experienced litigators represent clients in our national courts, at the European Court of Justice in Luxembourg, and of course – once it enters into force – before the Unified Patent Court.

## Contact

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