

## Approval of the EU Unitary Patent Package

On December 11, 2012, the European Parliament approved three measures collectively known as the “EU Unitary Patent Package,”<sup>1</sup> consisting of a regulation creating a European patent with unitary effect (the “Unitary Patent”);<sup>2</sup> a regulation establishing a language regime for the Unitary Patent;<sup>3</sup> and an international agreement setting up the “Unified Patent Court.” The EU Unitary Patent Package will create a single European-level patent for 25 EU Member States (all except Spain and Italy) as from January 1, 2014.<sup>4</sup>

The European Unitary Patent, which will be valid in all participating Member States, will be obtained by making a single application in English, French or German to the Munich-based European Patent Office (the “EPO”) with no need for additional national validation. Until now, patents in EU Member States have been national titles granted by the competent national authorities; the current so-called “European patent” is essentially a bundle of national patents valid in the countries selected by the patentee. By contrast, the Unitary Patent will be a European patent providing uniform protection for an invention in the Unitary Patent Member States. The Unitary Patent will be subject to the same international patent conventions as the current European patent, as well as having identical patentability requirements and duration of protection as the European Patent (20 years from the filing date of the patent application).

The Unitary Patent will not replace national patents or the current European patent application process, but obtaining unitary patent protection is expected to be easier and

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<sup>1</sup> *Press release : Parliament approves EU Unitary Patent rules*,  
<http://www.europarl.europa.eu/news/en/pressroom/content/20121210IPR04506/html/Parliament-approves-EU-unitary-patent-rules>.

<sup>2</sup> *Regulation (EU) No 1257/2012 of the European Parliament and Of the Council implementing enhanced cooperation in the area of the creation of unitary patent protection*  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:361:0001:0008:EN:PDF>

<sup>3</sup> *Council Regulation (EU) No 1260/2012 implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements*  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:361:0089:0092:EN:PDF>

<sup>4</sup> Or, if later the date on which the international agreement is ratified by 13 contracting states including the UK, France and Germany.

cheaper than the present system. A European patent valid in all 25 Unitary Patent Member States currently costs €36,000. By contrast, during a transition period whilst the system is being implemented, a Unitary Patent application will cost €6,500.<sup>5</sup> Ultimately, the cost is expected to be €4,725,<sup>6</sup> representing an 80% decrease. The Unitary Patent is also expected to provide broader coverage than the current system, since the expense involved in the national validation of European patents leads patent owners to patent their inventions in only a handful of EU Member States.

The Unified Patent Court (the “UPC”) will have exclusive jurisdiction over litigation relating to infringement and validity of both current European patents and Unitary Patents.<sup>7</sup> It will consist of a Court of First Instance (comprising local and regional divisions as well as a central division), a Court of Appeal and a Registry. The seat of the central division of the Court of First Instance will be in Paris. Specialised clusters of the UPC’s central division will be set up in London (specializing in pharmaceutical and biotechnology cases) and Munich (specializing in automotive and court administrative cases). The Court of Appeal will be located in Luxembourg. The UPC is intended to eliminate the risk of multiple patent lawsuits and possibly inconsistent judgments in different Member States over the same patent and should significantly reduce litigation costs.<sup>8</sup>

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If you have any questions, please feel free to contact any of your regular contacts at the firm or any of our partners and counsel listed on our website at <http://www.clearygottlieb.com>.

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<sup>5</sup> *The new EU Unitary Patent: Q&A*  
<http://www.europarl.europa.eu/news/en/pressroom/content/20121205BKG57397/html/The-new-EU-unitary-patent-QA>

<sup>6</sup> *Press release : Parliament approves EU Unitary Patent rule,*  
<http://www.europarl.europa.eu/news/en/pressroom/content/20121210IPR04506/html/Parliament-approves-EU-unitary-patent-rules.s>

<sup>7</sup> Patent reform package – FAQ question 14 answer.  
[http://europa.eu/rapid/press-release\\_MEMO-12-970\\_en.htm?locale=en](http://europa.eu/rapid/press-release_MEMO-12-970_en.htm?locale=en)

<sup>8</sup> *Consilium: Highlights, EU Unitary Patent: a big boost for innovation*  
[http://www.consilium.europa.eu/homepage/highlights/eu-unitary-patent-a-big-boost-for-innovation?lang=de&utm\\_campaign=europa&utm\\_term=news&utm\\_content=de&utm\\_source=twitterfeed&utm\\_medium=twitter](http://www.consilium.europa.eu/homepage/highlights/eu-unitary-patent-a-big-boost-for-innovation?lang=de&utm_campaign=europa&utm_term=news&utm_content=de&utm_source=twitterfeed&utm_medium=twitter)

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