



Europe's Unified Patent Court has finally arrived!

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On January 19, 2022, Austria became the 13th Member State to ratify the Protocol on Provisional Application of the Unified Patent Court Agreement. The addition of Austria's ratification establishes the Unified Patent Court (UPC) and triggers the Provisional Application Period (PAP).^[1]

The Unified Patent Court Agreement (UPCA) itself will come into force on the first day of the fourth month following Germany's ratification of the UPCA^[2]. The PAP is expected to last at least eight months, during which time final preparations in establishing the court will take place. Such preparations include inaugural meetings of various governing bodies, finalizing budgets and IT systems, and recruiting and training judges who will be sitting on the UPC^[3]

Unitary Patents (UPs) and the UPC will further centralize the European patent system. UPs will be a single right having unitary effect and will provide patentees with coverage in some 17 EU countries, including Austria, Belgium, Bulgaria, Denmark, Estonia, Finland, France, Germany, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Slovenia and Sweden. These rights, along with nationally validated European patents, will fall under the jurisdiction of the UPC, which will provide patentees with the benefit of central enforcement, as well as the risk of central revocation.

What does this mean for Canadian applicants?

Once the UPCA comes into force, applicants will continue to file and prosecute patents before the EPO as they do now. Upon allowance of their applications however, applicants will be asked to choose whether to validate their European patent in a number of member states, to obtain a Unitary Patent, or to pursue a combination of these routes.

There will also be a seven-year transition period during which patentees can choose to "opt-out" of having their nationally validated European patents fall under the jurisdiction of the Unified Patent Court. The "opt-out" is a mechanism aimed at avoiding the risk of bundles of existing nationally validated European patents being centrally revoked by an untested court system.

Patentees should therefore familiarize themselves with their European patent portfolios to better understand how they expect to use their rights in Europe. For more information regarding any of the above, or for guidance on IP strategy and planning given the upcoming changes, please get in touch with a member of the [Bereskin & Parr Patent team](#).

[1]

<https://www.unified-patent-court.org/news/austria-closes-loop-protocol-provisional-application-upc-agreement-has-entered-forc>

[2] <https://www.epo.org/news-events/news/2022/20220117.html>>

[3]



<https://www.unified-patent-court.org/news/austria-closes-loop-protocol-provisional-application-upc-agreement-has-entered-force>
<https://www.unified-patent-court.org/news/what-decision-german-federal-constitutional-court-means-unified-patent-courts-time>

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