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Update

Intellectual Property

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The European Patent with Unitary Effect

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The European Patent with Unitary Effect (Unitary Patent Protection - UPP) is effective in 24 member-states of the European Union (all except Spain, Poland, and Croatia).

Applicants may also opt for a hybrid system in which they can be granted a UPP, and one or several traditional European patents ("EP"), in states that are signatories of the European Patent Convention, but not of the Unified Patent Court Agreement ("UPCA").

Unitary effect may only be applied for to the European Patent Office ("EPO") after the granting of the European Patent.

The formal requirements for a grant of unitary effect are the following:

- The patent may not have been granted with different claims in different member-states;
- The unitary effect application must be made within a month of the publication of the grant at the EPO. There will be a transition period of 6 to 12 years within which an additional translation must be submitted. Accordingly, if the patent granted is in German, or French, a translation into English must be submitted. If the patent granted is in English language, it may be translated to any other official language of the European Union, chosen by the holder.

Compensation arrangements will be available, for some bodies, which will enable them to obtain a reimbursement of the cost of translations into one of the European Union official languages, which is not an official EPO language, which are submitted with patent applications to the EPO.

European Patents with Unitary Effect are subject to the compulsory jurisdiction of the UPC. During a 7-year transition period following the commencement date, proceedings regarding Traditional

European Patent (European Patent - EP) and the Supplementary Protection Certificates ("SPC") issued under an EP, may continue to be brought before national courts, or other competent authorities.

The holders of, or applicants for EPs granted or applied for before the transition period, as and holders of SPCs issued under an EP may opt-out of the UPC's exclusive jurisdiction, unless proceedings have already been brought before the UPC. To do so, they must give notice of the opt-out to the UPC Registry, no later than one month prior to end of the transitional period. The opt-out becomes effective the date it is received by the Registry. The opt-out may be revoked at any time, unless proceedings are already pending before a national Court. This 7-year transition period may be extended for a further 7 years based on a consultation by and opinion of the Administrative Committee regarding the number of cases referred to national jurisdictions and the reasons therefor.

This system will reduce the costs of patent applications and the costs of keeping patents in force. It will also result in a standardisation of industrial property in all contracting member-states. However, opting in to to UPP may have other legal and commercial implications, which makes the choice between a unified patent and a traditional European patent something to be pondered seriously by applicants.