

## Unified Patent Court System is knocking on the door.

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The establishment of the Unified Patent Court ("UPC") is a subject that currently occupies the agenda of patent systems in Europe. Seventeen members of the European Union ("EU") have signed the Agreement on a Unified Patent Court on 20.06.2013 and internal harmonization of signatory countries has been initiated as of signature date.

Since Türkiye is not an EU member state, it is safe to assume that the UPC will not affect its patent system directly. Moreover, Türkiye's membership of the European Patent Convention will not alter this situation. Although Türkiye is not within the jurisdiction of the UPC, this system is closely followed by parties that originate from Türkiye and hold a European patent.

Another attempt at strengthening the existing patent granting system in Europe is the establishment of Unitary Patent. In the current system, following the granting of a European patent, individual applications must be filed in the selected European countries for patent validation. However, in the Unitary Patent system, it is possible to get protection in the countries that have ratified the agreement with only one application and the patent-related cases will be heard before a single court.

This practice aims to eliminate hefty fees for application, representation, translation, and renewal that must be paid during the validation stage in each country.

In addition, with the Agreement on a Unified Patent Court, a common court with jurisdiction in all signatory countries will be established, and as such, the decisions of this court will be applicable in all these countries.

Despite the simplification of the current patent system and the reduction of expenses, the system has several disadvantages:

- In case of conflict of rights, if a right holder takes legal action against another patent holder and succeeds, the restriction or the entire invalidation of the patent will be effective in all countries party to the system. Even if the opponent's infringement claim is only limited to a single country, due to the Unitary Patent framework, its result will impact all countries. However, in the current system, cases are heard by the national courts of the relevant country and the results are binding only there.
- In the current system, it is possible to limit the patent claims in one country and refrain from applying in certain countries to avoid any conflict of rights with a patent holder. In contrast, the unitary nature of the new system will not provide such flexibility.
- Once a Unitary Patent is granted, it will have protection in countries that are party to the agreement on the granting date. To get protection in countries that become a party to the agreement afterwards, a national application may be required.

The existing European patents will be automatically transferred to the Unitary Patent system as of June 1, 2023. It is possible to opt out of this system until the specified date. Otherwise, possible actions can be taken by the right owners in countries where the patent does not benefit from protection. The right owners shall also have an opportunity to withdraw in seven years from the specified date.

European patent holders in Turkey do not seem to be willing to join the upcoming system and prefer to remain within the scope of the classic patent framework. The new system will entail disputes and uncertainties, and the parties will need to closely follow the development of case law over time.

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