

# Patent Protection: Europe



## ▪ **Currently available options:**

- National Patent
- European Patent (EP)
  - Centralised registration procedure (bundle of nationally enforceable patents)
  - Applicant designates the states for validation
  - Different rules for national validations (e.g. translation requirements)

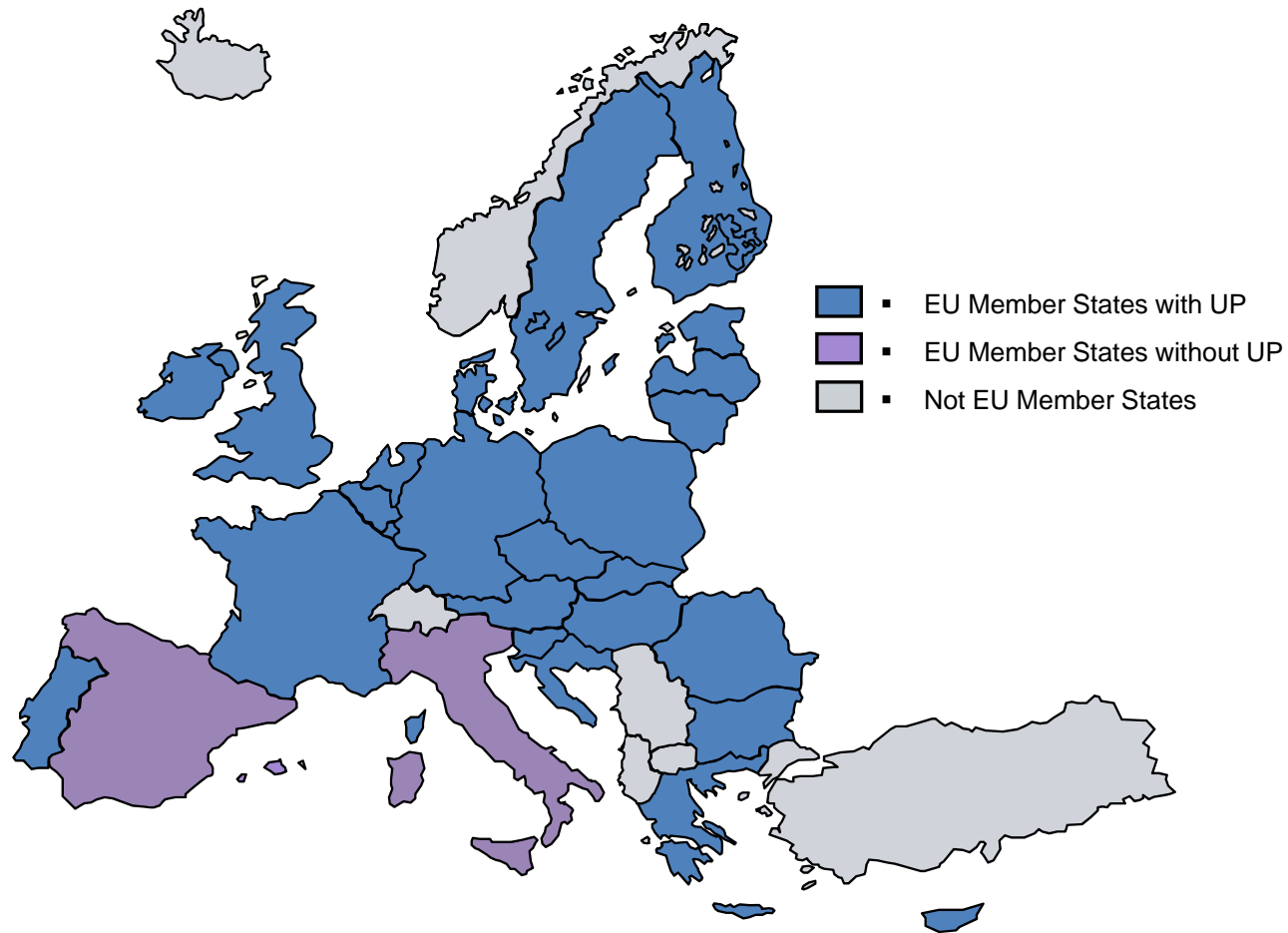
## ▪ **New option:**

- Unitary Patent (UP)
  - Will be available in addition to the other two options
  - Uniform effect (= one patent) for all EU Member States (excluding Italy and Spain) based on a new system



# Unitary Patent Protection in Europe

- > Enhanced Cooperation on Unitary Patent (UP) and
- > Translation arrangements



# EP v. Unitary Patents in Europe

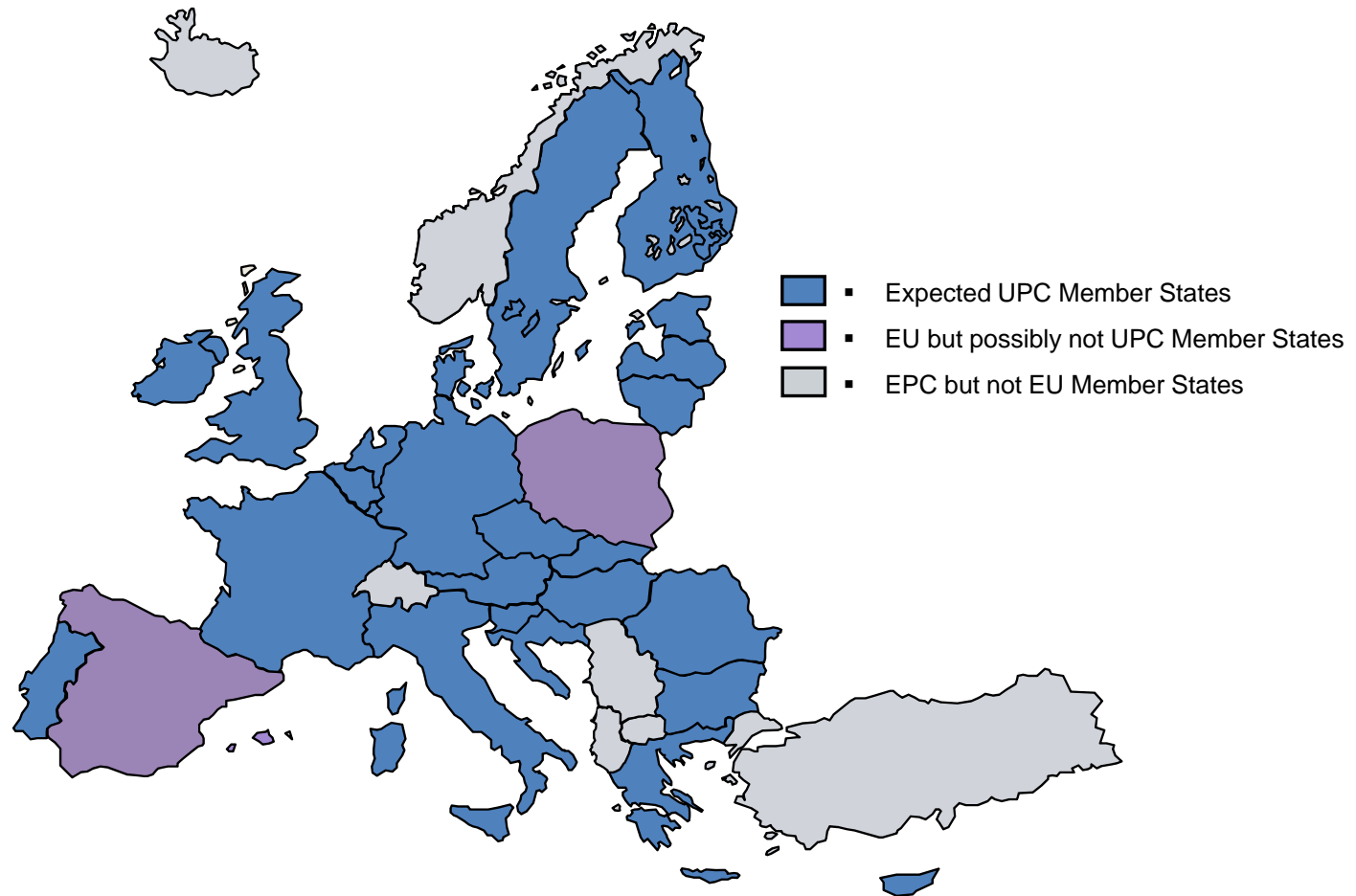


	European Patent (EP)	Unitary Patent (UP)
Registration authority	> EPO	> EPO
Registration fees	> Different, depending on the designated EPC states	> Uniform fee, the amount is not determined yet.
Language of filing	> German, English, or French > If the application is filed in another language, a translation into German, English or French is necessary (within two months).	> German, English, or French
Required translations	> Different, depending on the designated EPC states (London Protocol)	> Planned: Machine translation into all languages of the member states > Transition time (max.12 years): <ul style="list-style-type: none"> <li>• German or French filing -&gt; + English translation</li> <li>• English filing -&gt; + translation into one of the Member States' languages</li> </ul>
Validation	> National rules of the designated EPC states (= bundle of rights)	> Directly with the grant of the patent in all EU Member States (= one patent)

# Unified Patent Court (UPC) – Where?



> UPC Agreement signed but not yet fully ratified



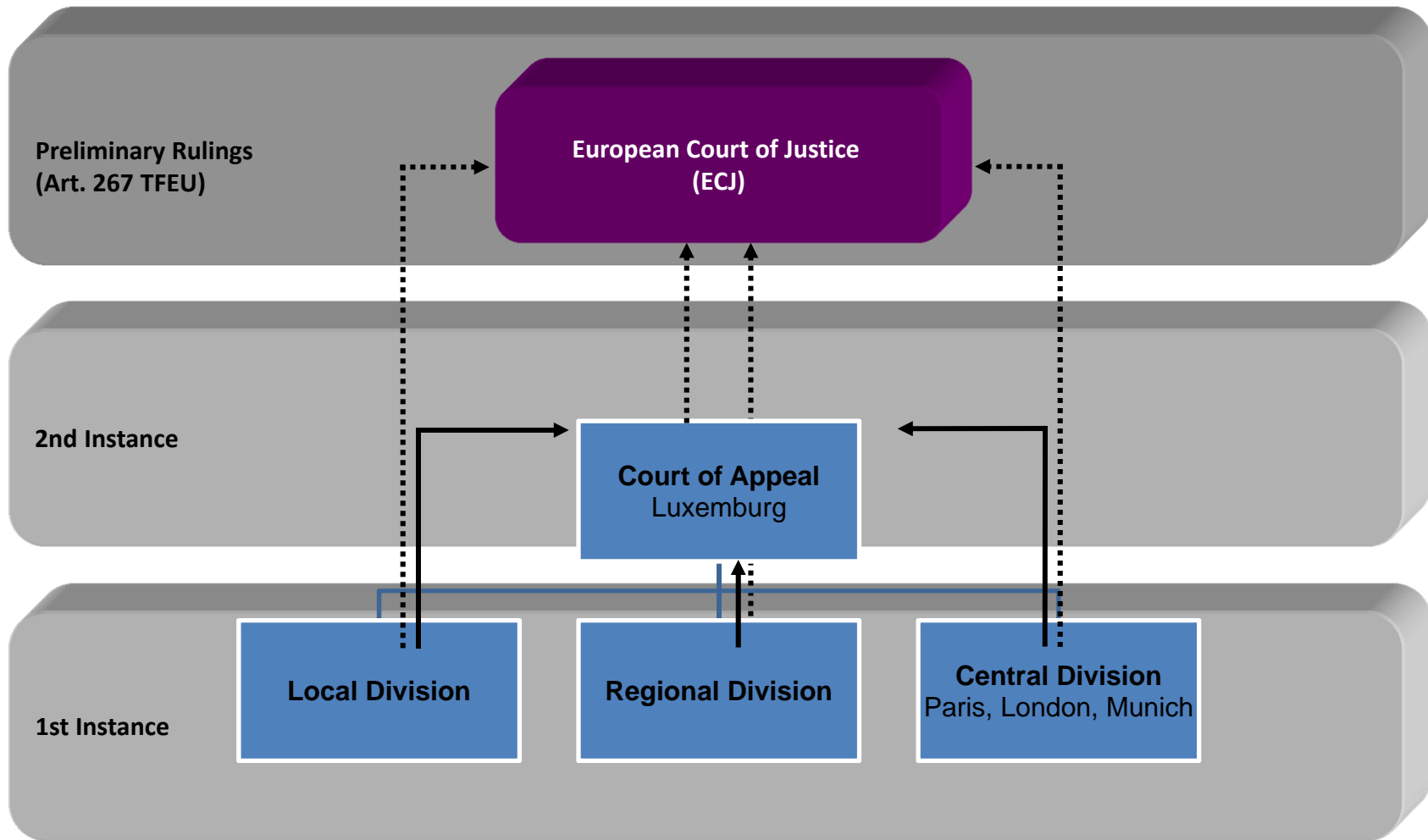
# UPC – Rulings on UPs and EPs



- > UPC will have ruling on both UPs and EPs
- > Decisions of UPC shall cover:
  - In case of UPs, the territory of UPC Member States
  - In case of EPs, the territory of UPC Member States for which the asserted EP has taken effect

EP can be revoked by UPC for UPC Member States and remain in force in other EPC Member States for which it was validated

# UPC – Court Structure



# UPC Central Division – Competence



## Paris

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**Performing operations,  
transporting (B)**

**Textiles, paper (D)**

**Fixed constructions (E)**

**Physics (G)**

**Electricity (H)**

## London

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**Human necessities (A)**

**Chemistry, metallurgy (C)**

## Munich

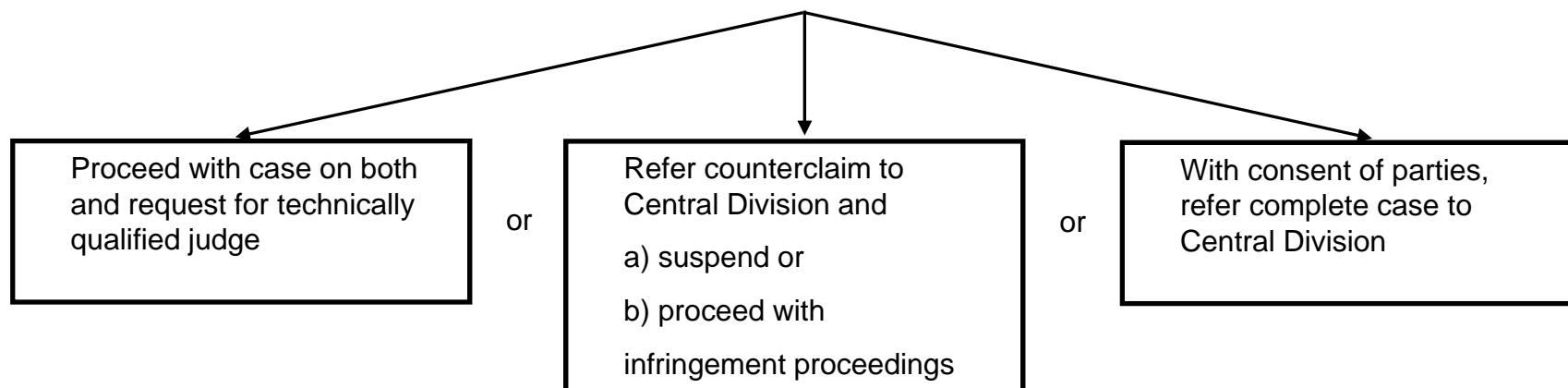
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**Mechanical engineering,  
lighting, heating,  
weapons, blasting (F)**

# UPC Local/Regional Divisions – Options



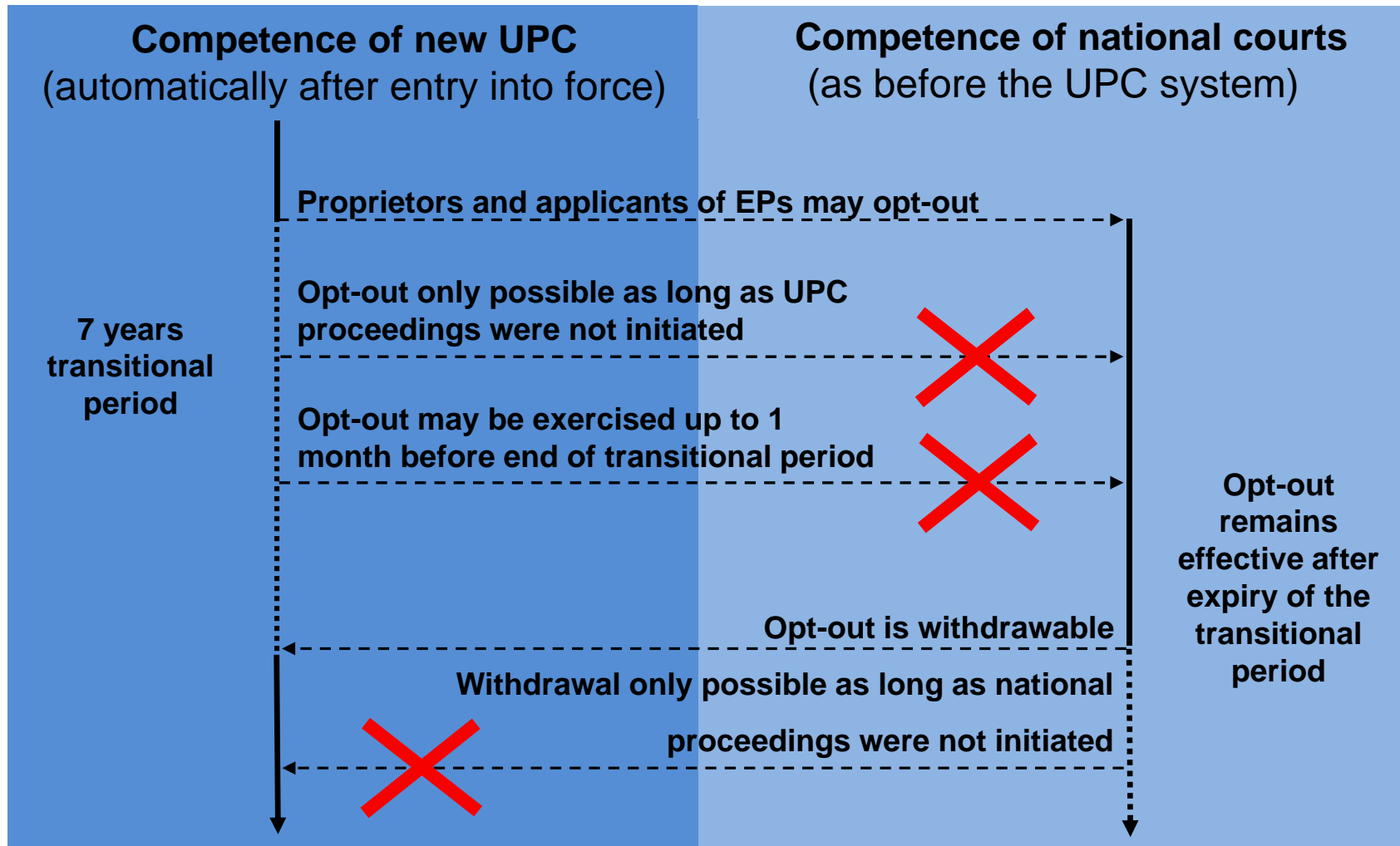
- If an **infringement action** is pending before Local/Regional Division and counterclaim for revocation is filed, the Local/Regional Division has the following options (Art. 33 (3) UPC Agreement):



- If a **revocation action** is pending before the Central Division and action for infringement between the same parties on the same patent is brought in (any) Local/Regional Division, this Local/Regional Division may act on infringement action as above.



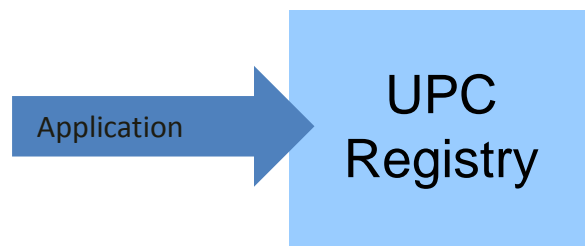
# UPC – Transitional Period & Opt-Out



# UPC – Opt-out for EPs



- > Opt-out application must be lodged with the UPC Registry, containing:
  - > details of the patent/application (and any SPC)
  - > name and address of proprietor/applicant
- > One fee is payable in respect of all designations
- > Opt-out is effective from the date of entry in the UPC Register



# UPC – Opt-out for EPs



- > “Sunrise” provision (Rule 5.13 of 16<sup>th</sup> draft Rules of Procedure) allows proprietors to opt-out European patents at the EPO before the UPC doors open
- > EPO will transfer all sunrise opt-out applications to the Registry on the first day of the UPC, preventing pre-emptive actions



# Unitary Patent and UPC – Unknown



- > Date of the new regime to come into force (no earlier than late 2015?)
- > Fees associated with the Unitary Patent and the UPC
- > Number of countries that will ratify the UPC Agreement and when
- > Variations in speed and approach between UPC divisions