

# Unitary Patents & The Unified Patent Court

The what, the how, the when?

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# Agenda

- **Introduction**
- **European Patent with unitary effect**
  - Current and coming grant procedures
  - Timing and participants
  - Costs
  - Considerations and to dos
- **Unified Patent Court**
  - Structure of the UPC
  - Competence of the UPC
  - Costs
  - Procedure before the UPC
  - Considerations and to dos
- **Thank you!**

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# Basis for the EPUE and UPC

EP patent with unitary effect

## **Regulation 1257/2012**

Enhanced cooperation in the area of the creation of unitary patent protection

## **Regulation 1260/2012**

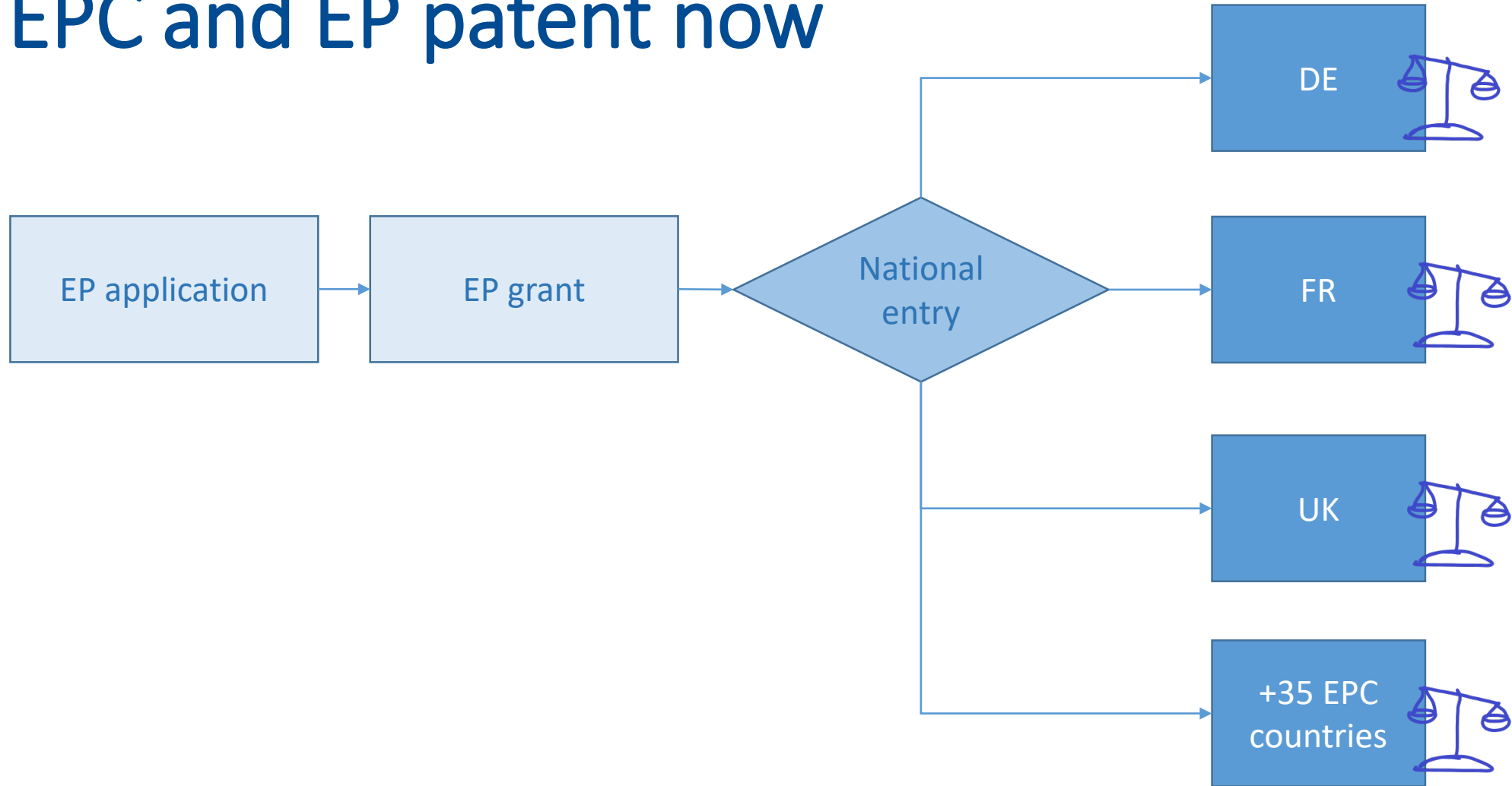
Enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements

**Agreement  
on a  
Unified Patent Court**

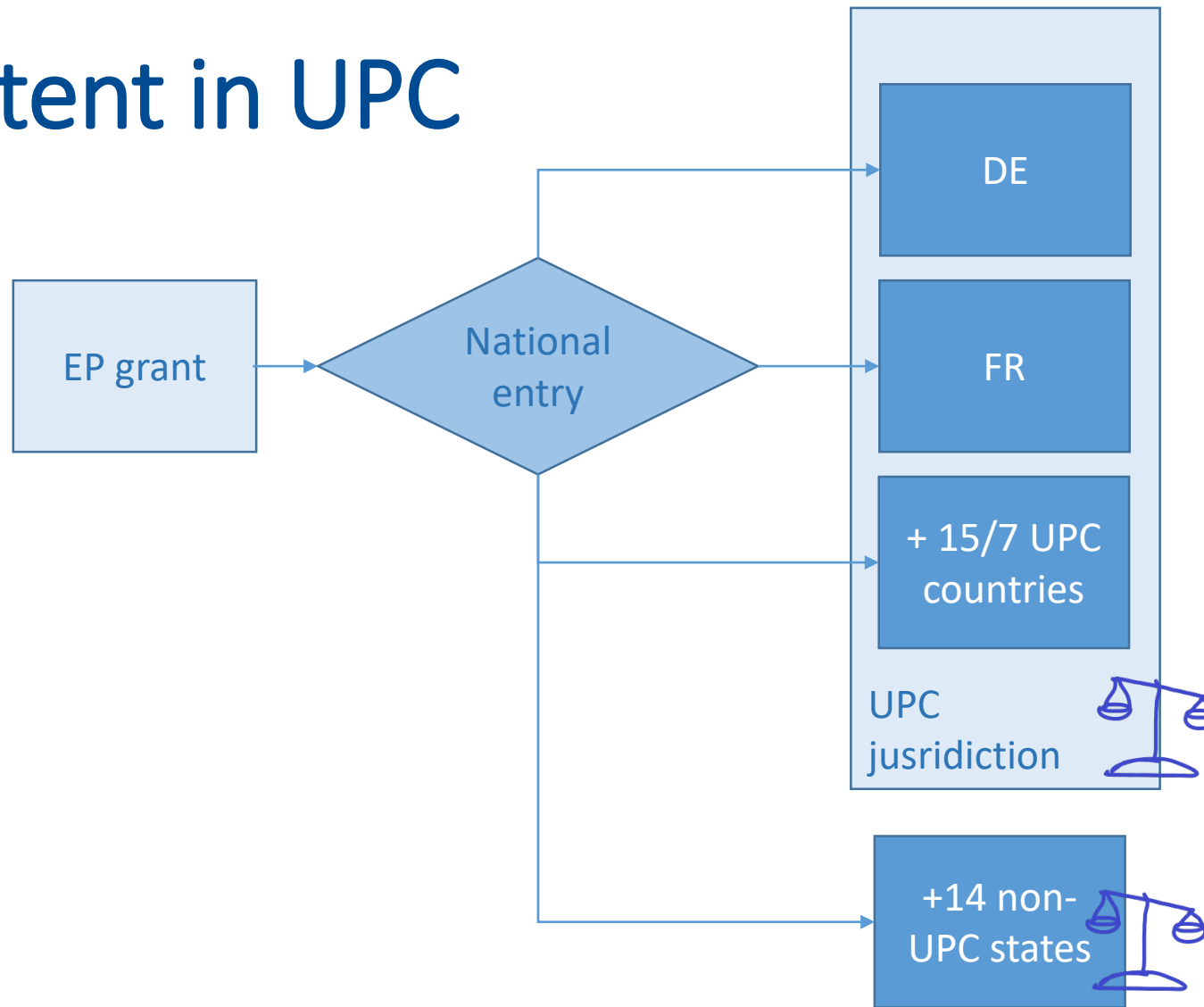
A microscopic view of a grid-like structure, possibly a microchip or a biological sample, with a red circle highlighting a specific cell. The grid is composed of small, dark, rectangular cells arranged in a regular pattern. The background is a soft, out-of-focus blue and purple. A white curved shape is visible in the top left corner.

# European Patent with unitary effect

# EPC and EP patent now

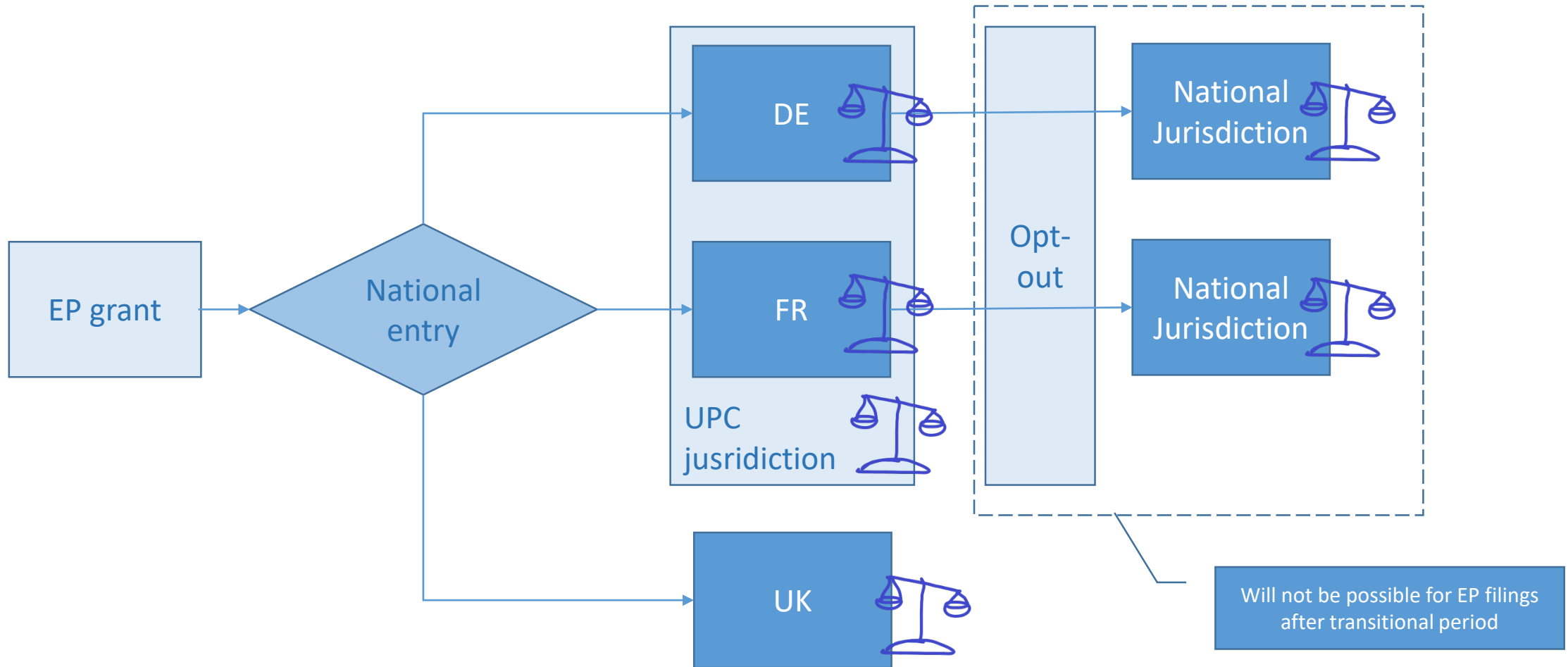


# EP patent in UPC

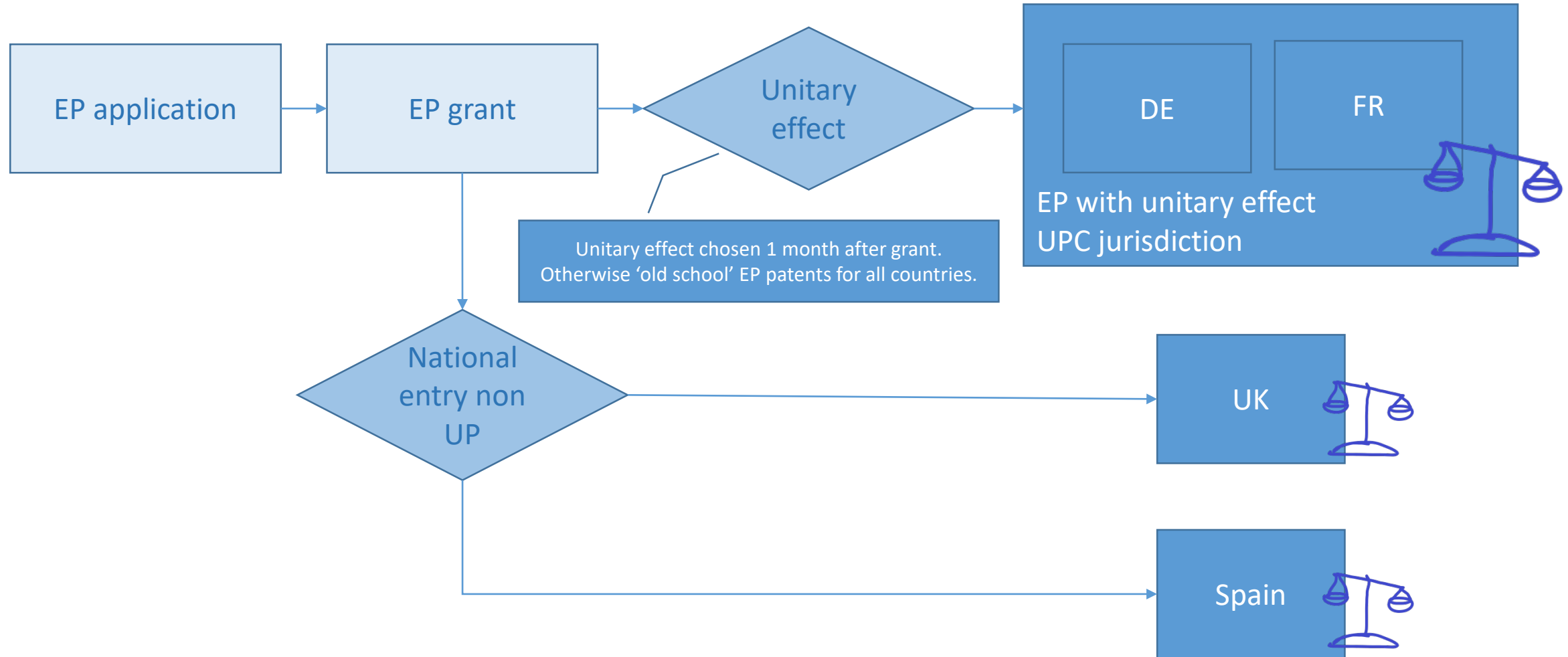




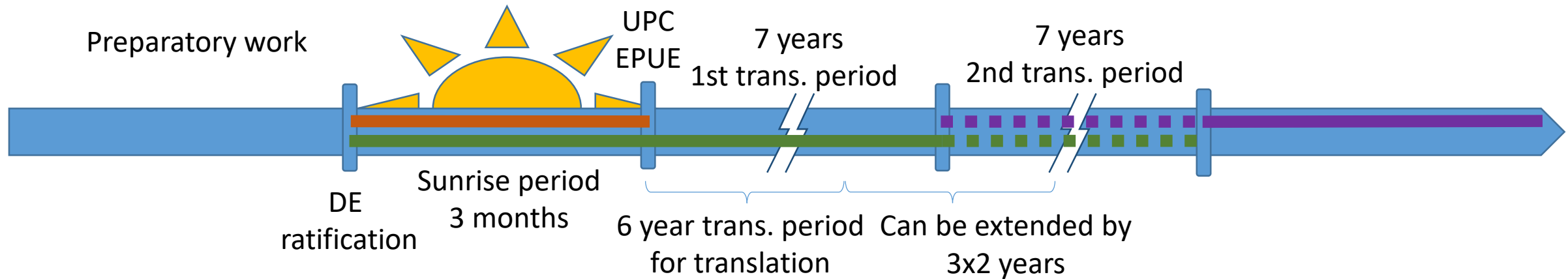
# EP patent in transitional period 7 or 14 years



# EPC and EP patent with unitary effect (UP)



# Timing / When will it start



Early request for unitary effect or delay of grant possible during sunrise period

Opt-out for EP patents (and SPC's) possible from start of sunrise period until end of transitional period(s).

- Opt-in only possible once



Transitional period over, both EP and EPUE before UPC

# Choices for EP Patents

**Current EP patents: opt out or stay within UPC**

**Future EP Patents: EP patent with Unitary Effect or regular EP validation**

**If regular EP validation: opt out or stay within UPC**

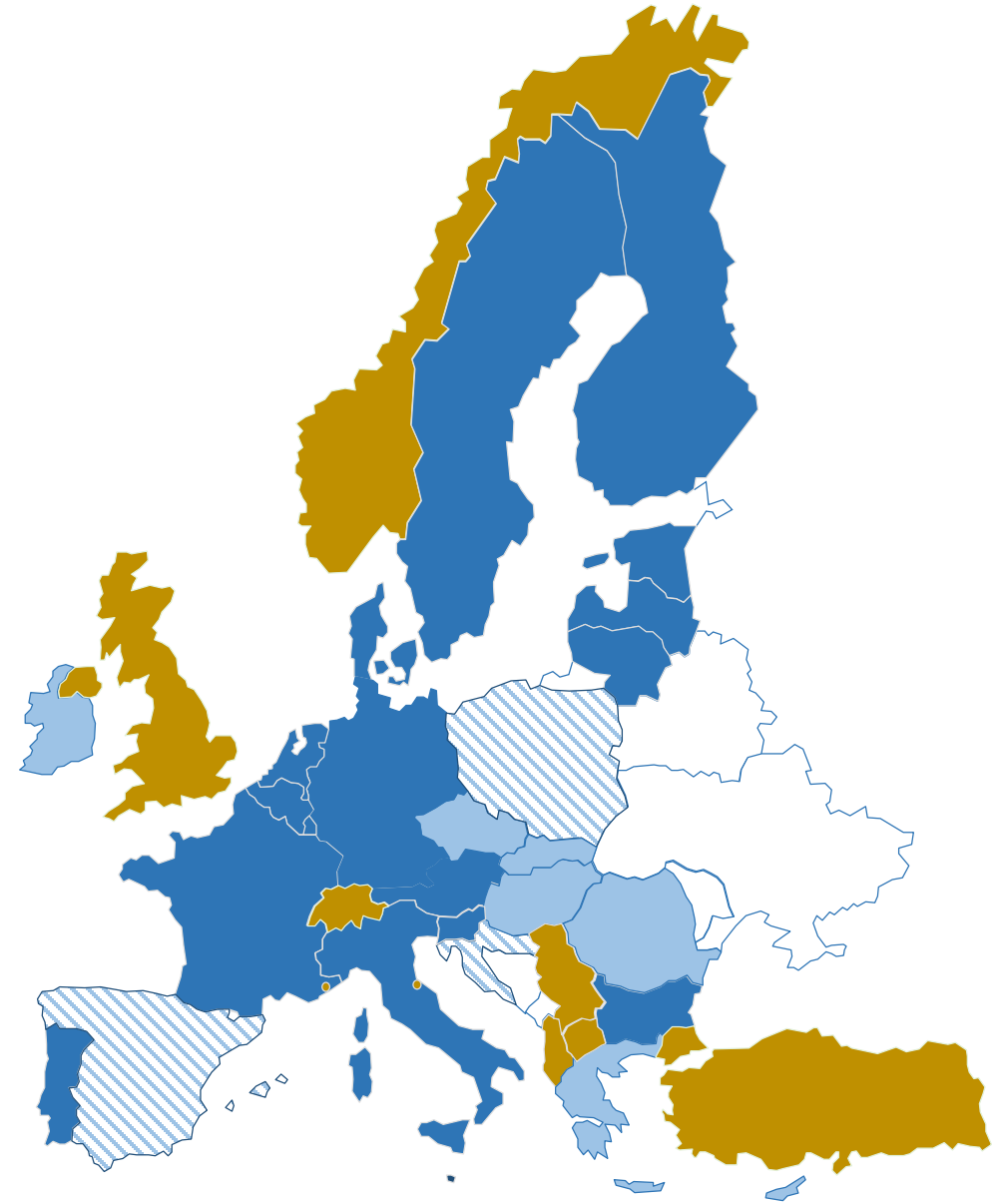
# Who are in?

17 states will be part of the UPC at start

7 states will join

3 EU states outside UPC

11 additional EPC member states



# Costs European Patent with Unitary effect

**Prosecution:** The prosecution process is the same, so no cost differences

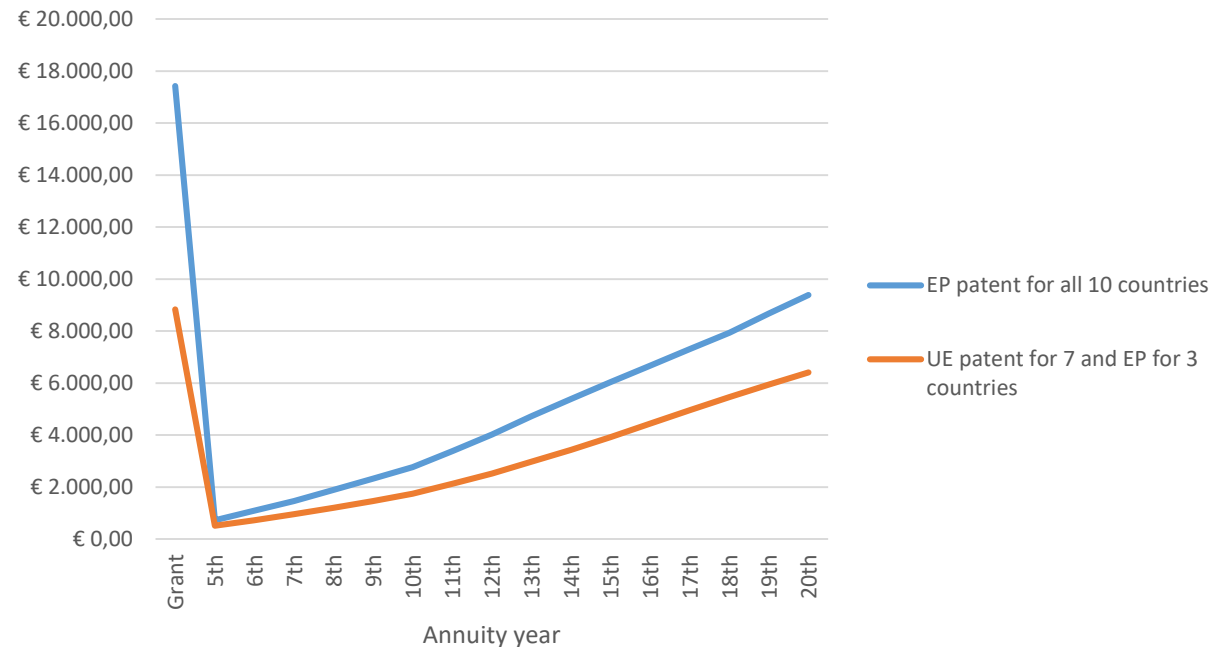
**Translation:** EPUE requires translation into one other EU language (no legal effect). EP countries have different translation requirements. Break even if one EP country with full translation is required.

**Renewal:** EPUE breaks even on renewal fees with regular EP at ~4+ EP countries

# Patent cost example for UP

Overview generated for 10 EPC countries where seven have ratified the UPC.

**Austria**  
**Belgium**  
**Germany**  
Spain  
**France**  
United Kingdom  
**Italy**  
**Netherlands**  
Poland  
**Sweden**



Total costs for EP is € 91.190 and total cost for UP is € 57.578

# So, what should I consider/do now?

Postpone grant?

Yes, unless quick grant is needed, or if you are not interested in UP

Opt-out with current EP portfolio, or some of them?

Individual considerations

Factors:

- Costs
- All eggs in one basket
- Competences of the courts
- Case law

Check contracts, patent ownership agreements and licenses.

Are there any requirements, unclear positions or responsibilities?



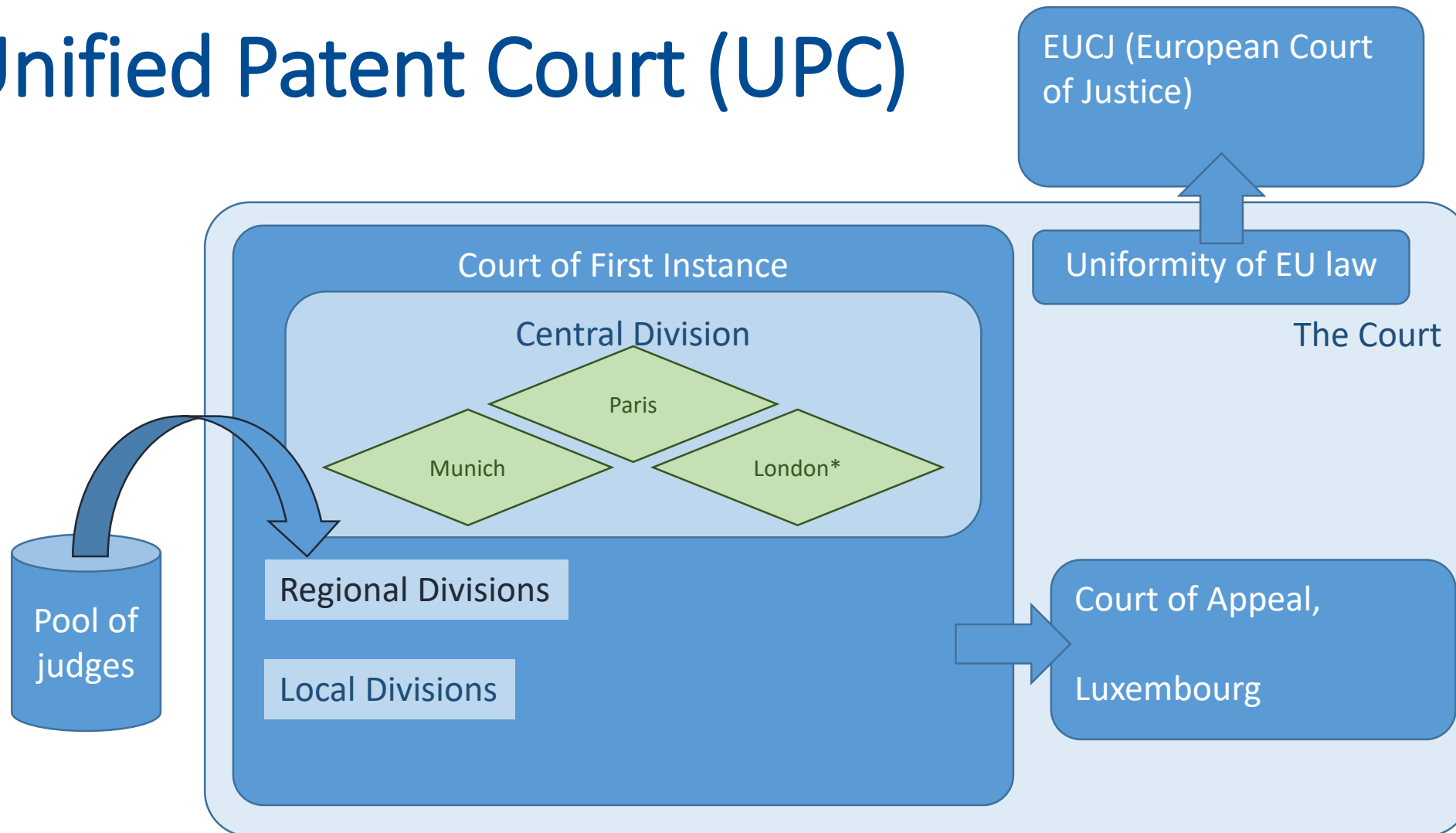
# What about SPC's?

Nothing in place on SPC's for unitary patents.



# Unified Patent Court (UPC)

# Unified Patent Court (UPC)



# Actions that can be brought before the UPC

**Infringement** and damages

Provisional and protective **measures** and **injunctions**

**Provisional protection**, damages and compensation

Compensation for **licenses of right**

Decisions of the **EPO** related to Unitary Patents

Patentee

**Revocation** and **invalidity**

**Declarations of non-Infringement**

**Prior use**

Third party

# Actions before the national courts

Inventorship

Employee inventions

License disputes

# Litigation costs at the UPC

National litigation cost estimates:

NL & FR €100 - 200.000

DE €100 - 250.000

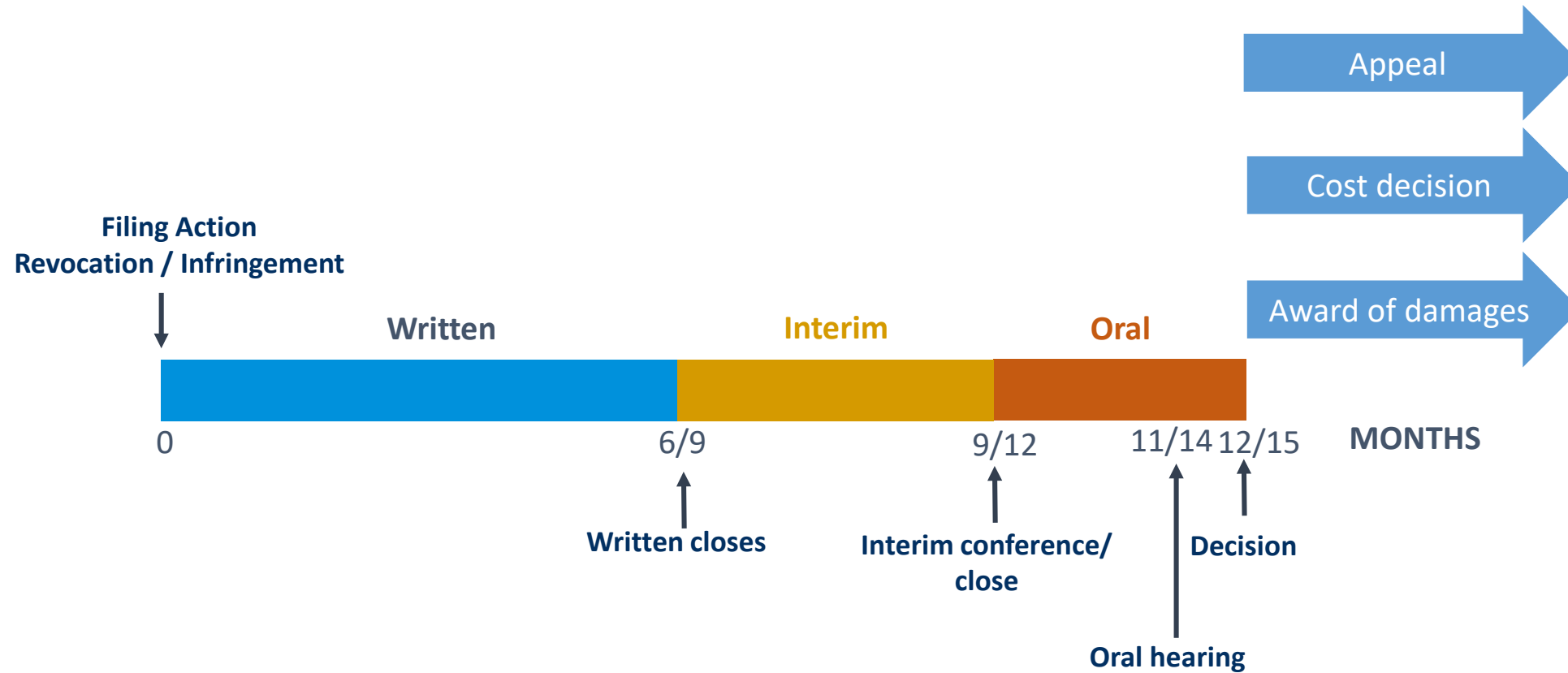
UK €1.500.000 ++

UPC litigation 1-2x cost of an EU national trial?

Considerations:

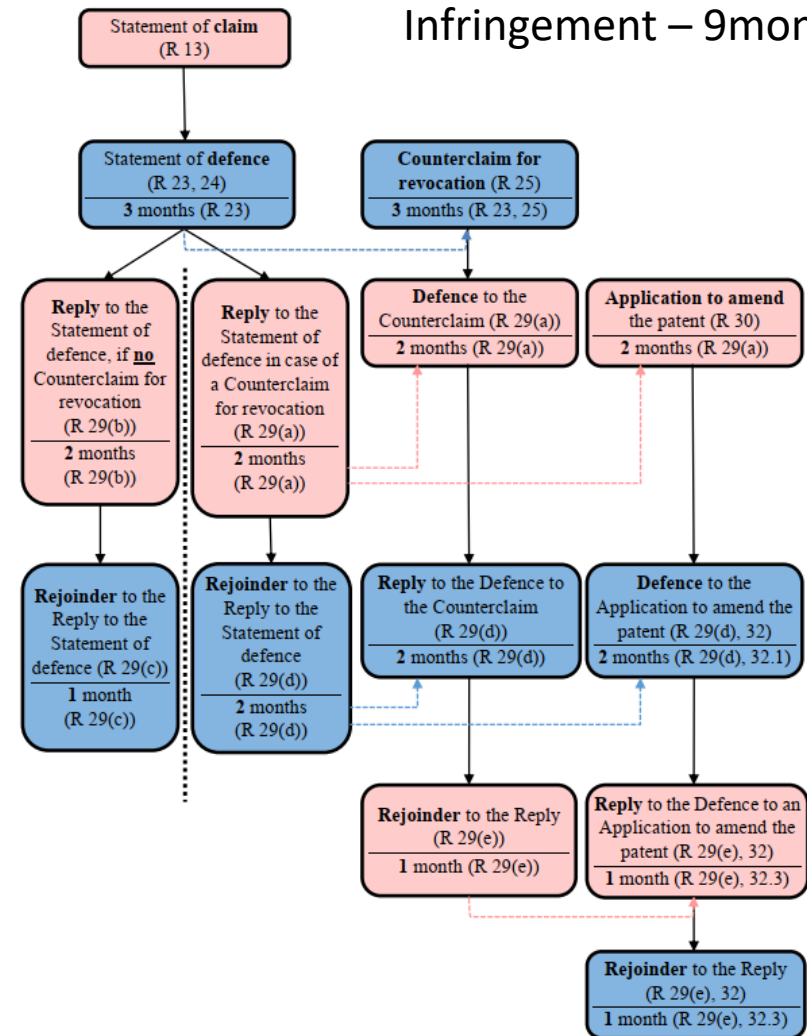
- Internal resources focused
- Specialised court
- Value based compensation

# UPC Proceedings



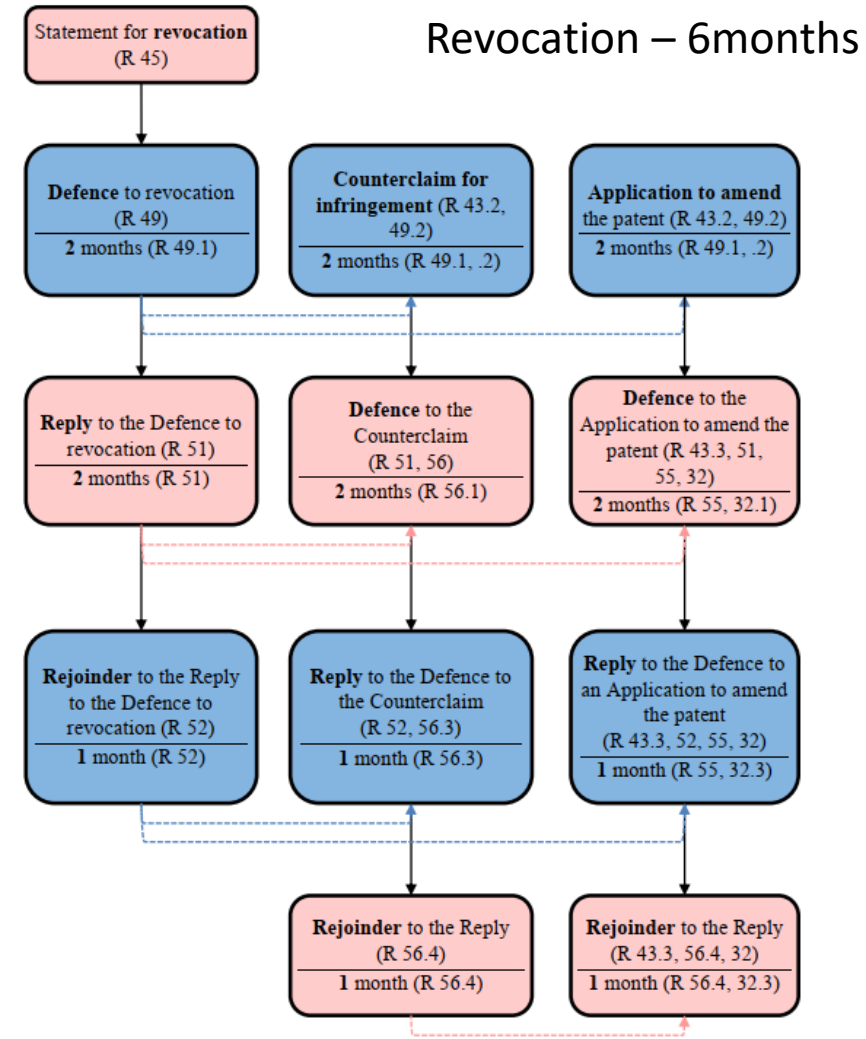
# UPC Proceedings

## Infringement – 9months





# UPC Proceedings



# Litigation precaution

File protective letter?

Are there competitor activities that warrant filing a protective letter?

# Pros & Cons?

## Current EP portfolio

Stay in*	Opt out*
All eggs in one basket * Strength of patent?	Separate national decisions
Cheaper litigation	Expensive litigation
Unknown case law	Known national case law
May opt out/in later	May opt in later

\* Locked in choice if litigation is initiated

## Future EP portfolio (next 7/7 years)

Unitary effect	Regular EP*
All eggs in one basket * Strength of patent?	Separate national decisions
Cheaper litigation	Expensive litigation
Unknown case law	Known national case law
Locked in UPC	Option to opt out /in
Cheaper broad protection	Expensive broad protection
Changes in one place	Changes nationally

# Other thoughts?

Forum shopping?

Legal challenges to the validity of EPUE and UPC?

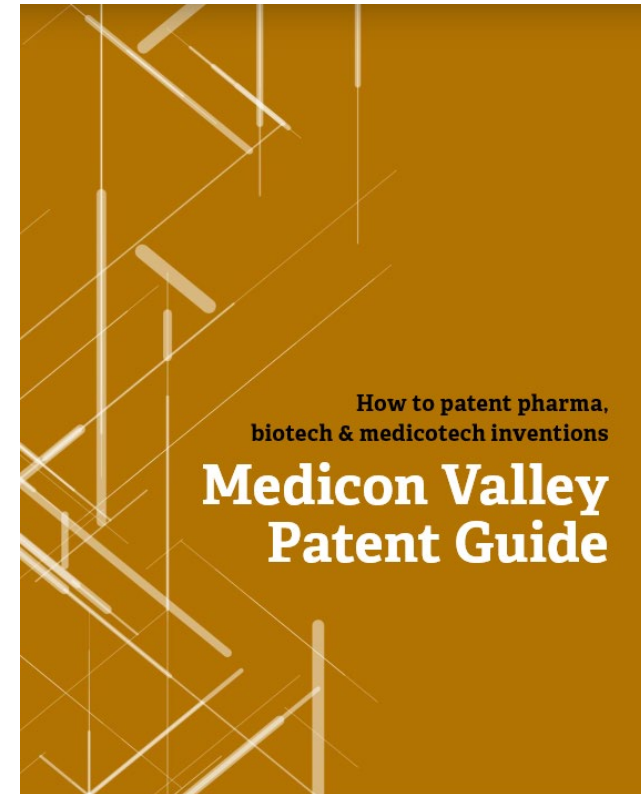
EU influence?

Trolls?

Thank you  
for your  
attention



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