

Unified Patent Court operational in Austria and Slovenia starting June 2023

19 January 2023

The Unified Patent Court ("UPC") will have local divisions of the Court of First Instance in two Wolf Theiss jurisdictions: Austria and Slovenia. In Ljubljana, Slovenia there will also be a seat of the patent mediation and arbitration centre.

Austria and Slovenia have both signed the Agreement on a Unified Patent Court¹ ("UPCA") and each opted to set up a local division of the Court of First Instance of the UPC in their territory. According to the UPCA, the majority of actions can be brought to the local divisions, but parties' choice is not excluded. However, having a case heard before a local division can be beneficial to patent proprietors from a cost and language perspective.

In the following sections, we provide information about the competences, judicial composition, language of proceedings and applicable law before the local divisions.

Competences of local divisions

The local divisions have the exclusive competence to hear most of the actions which can be pursued before the UPC, including:

- actions for actual or threatened infringements of patents and supplementary protection certificates as well as related defences, including counterclaims concerning licences;
- actions for provisional and protective measures and injunctions;
- actions for damages or compensation derived from the provisional protection conferred by a published European patent application; and
- actions relating to the use of the invention prior to the granting of the patent or to the right based on prior use of the invention.

These actions can be filed either with the local division where the actual or threatened infringement took place or with the local division where the defendant has its residence or place of business. Regardless of this and subject to parties' agreement, the majority of actions can be brought before the division of their choice, including the central division.

¹ Agreement on a Unified Patent Court, OJ C 175, 20.6.2013, p. 1–40.

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Judicial composition of the local divisions

The local divisions will have a multinational composition of three legally qualified judges, including one or two national judges depending on the number of patent cases in the country of a local division. Upon parties' request, an additional technically qualified judge can be also allocated to the panel.

The table below depicts details of the local divisions in Austria and Slovenia.

Local Division	Seat	Appointed National Judge	Panel Composition ²
Austria	Vienna	Walter Schober ³	1 national judge + 2 judges from other countries
Slovenia	Ljubljana	Mojca Mlakar	1 national judge + 2 judges from other countries

It is expected that the UPC will start operating on **1 June 2023** upon the expiration of the Sunrise Period, a three-month period for patent holders to declare an opt-out from the jurisdiction of the UPC for classic European patents. As the Sunrise Period was recently moved from 01 January 2023 to 1 March 2023, the UPCA will enter into force, and the court and its local divisions will start operating three months later than initially announced.

Language of proceedings before the local divisions

The language of proceedings at the central division is the language in which the patent was granted. A wider selection of languages of proceedings will be available at local divisions.

Generally, the proceedings before local divisions will be held in the official language of the country in which the division has its seat. However, Slovenia and Austria may also designate official languages of the EPO (English, French and German) as the language of proceedings. To date, none of the countries made such a designation.

Furthermore, the language in which the patent was granted (English, French or German) can be determined as the language of proceedings at the local divisions in the following cases:

- agreement between the parties, which is approved by the competent panel;
- decision of the competent panel made in agreement with the parties on grounds of convenience and fairness;
- decision of the president of the Court of First Instance, which is made at the request of one of the parties and taking into account all relevant circumstances, including the position the parties, in particular the position of the defendant.

² If subsequent to the entry into force of the UPCA, fifty or more patent cases per calendar year on average have been commenced, the panel shall consist of 2 legally qualified national judges and one legally qualified judge from another country (Art. 8(3) of the UPCA).

³ Walter Schober is currently judge at the Vienna Higher Regional Court and deputy chair of Senate 33, the senate that deals – amongst other things – with all second-instance patent matters in Austria.

Sources of law used by the local divisions

Based on the UPCA, the local divisions must base their decisions on EU law, the UPCA (including the Rules of Procedure and various decisions of the UPC Administrative Committee), European Patent Convention, other international treaties and national law with due consideration of the primacy of EU law. The actual applicable law will depend on the legal issue at hand. It is expected that national laws will only play a minor role in UPC proceedings.

Patent mediation and arbitration centre

The UPCA also establishes a patent mediation and arbitration centre with two seats – one in Lisbon, Portugal and the other in Ljubljana, Slovenia. The patent mediation and arbitration centre will have competence to hear all patent disputes under the scope of the UPCA; however, it will not be possible to revoke or limit a patent in the mediation or arbitration proceedings. The parties may choose to seek settlement of a dispute in mediation at any stage of the proceedings at the UPC.

Details of the operation of the patent mediation and arbitration centre are determined in the Mediation and Arbitration Rules.

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Before the UPC, it is required to be represented by a lawyer authorised to practice before a court of a contracting member state of the UPCA. Wolf Theiss offices in Austria and Slovenia have established IP teams which have substantial experience in patent matters and client representation in various courts.

About Wolf Theiss

Wolf Theiss is one of the leading European law firms in Central, Eastern and South-Eastern Europe with a focus on international business law. With more than 360 lawyers in 13 countries, over 80% of the firm's work involves cross-border representation of international clients. Combining expertise in law and business, Wolf Theiss develops innovative solutions that integrate legal, financial and business know-how.

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