

# Developments towards a unitary European patent system

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# The European patent system in a nutshell

- The European Patent Convention (**EPC**)
  - provides the legal framework for the granting of European patents via a centralised procedure
  - establishes the European Patent Organisation
- a European patent has the same effect, and is subject to the same conditions, as a national patent granted in the relevant state ("**bundle of European patents**")
- **post-grant phase** mainly governed by **national law**

# The European patent system in a nutshell

## CHALLENGES

- Around 1 000 000 patents granted by EPO so far
  - subject to national law in the post-grant phase
  - infringement and revocation actions dealt with by national courts
- **Fragmentation** of the current European patent system
  - lack of unitary title and absence of unified patent litigation system
  - complex and **costly**, hampers effective enforcement
- **Multi-forum and parallel litigation**
  - disproportionate costs, delays, *forum shopping*
  - conflicting judgments, unpredictability, legal uncertainty
  - different qualification & experience of judges
  - effect of decisions territorially limited: cross-border injunctions?

# Unitary patent and Unified Patent Court

## Gaps in the European Patent system:

- a European patent granted by the EPO must still be validated in the different member states where its owner seeks protection  
**= formalities and costs**
- to defend the European patent in different member states, the owner must litigate in each of them. The result of these multiple proceedings involving the same patent can be contradictory in different member states  
**= legal uncertainty**

## Way forward:

- ▶ creation of a **single patent** covering the territory of multiple member states via a single proceeding (70% reduction of costs)  
**= Unitary patent**
- ▶ creation of a **single patent court** covering the territory of multiple member states with the same set of rules and a single proceeding  
**= Unified Patent Court**

# Unitary patent and Unified Patent Court

## Recent decisions:

- ❑ **27.06.2011**: two regulations aiming at the creation of the unitary patent supported by 25 EU member states
- ❑ **29.06.2012**: European Council's decision on the Central Division of the Unified Patent Court

The EPO does not take part in the negotiations at EU level but will have to deliver the unitary patent and to perform some **additional tasks** requested by the 25 participant states

- administration of requests for unitary effect
- setting up and maintaining a Register for unitary patents
- receiving and registering statements on licensing
- collection/distribution common renewal fees
- reception/publication of post-grant translations during transitional period
- administration of compensation scheme of translation costs (pre-grant phase)

# The Unitary patent

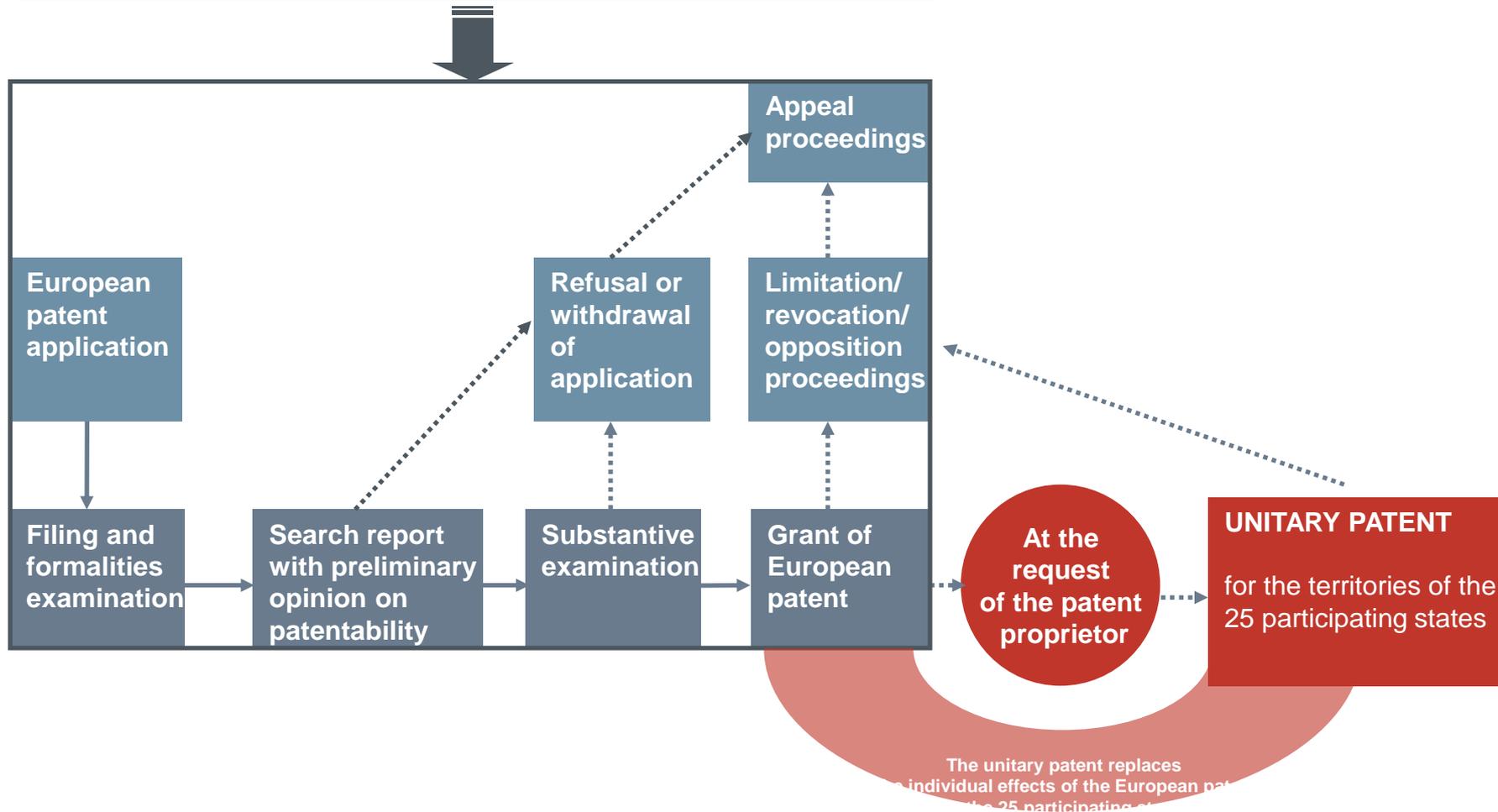
## Key facts

- **Basic principles**
  - a European patent **granted under the EPC**
  - **unitary effect** for the territories of the 25 EU member states currently participating, at the applicant's request
  - **co-existence with the existing European patent and national patents**
  - **validated in one single administrative step by the EPO** for all the participating states in the language in which it was granted
  - **language regime being finalised**; transition measures foreseen
- **Objective**

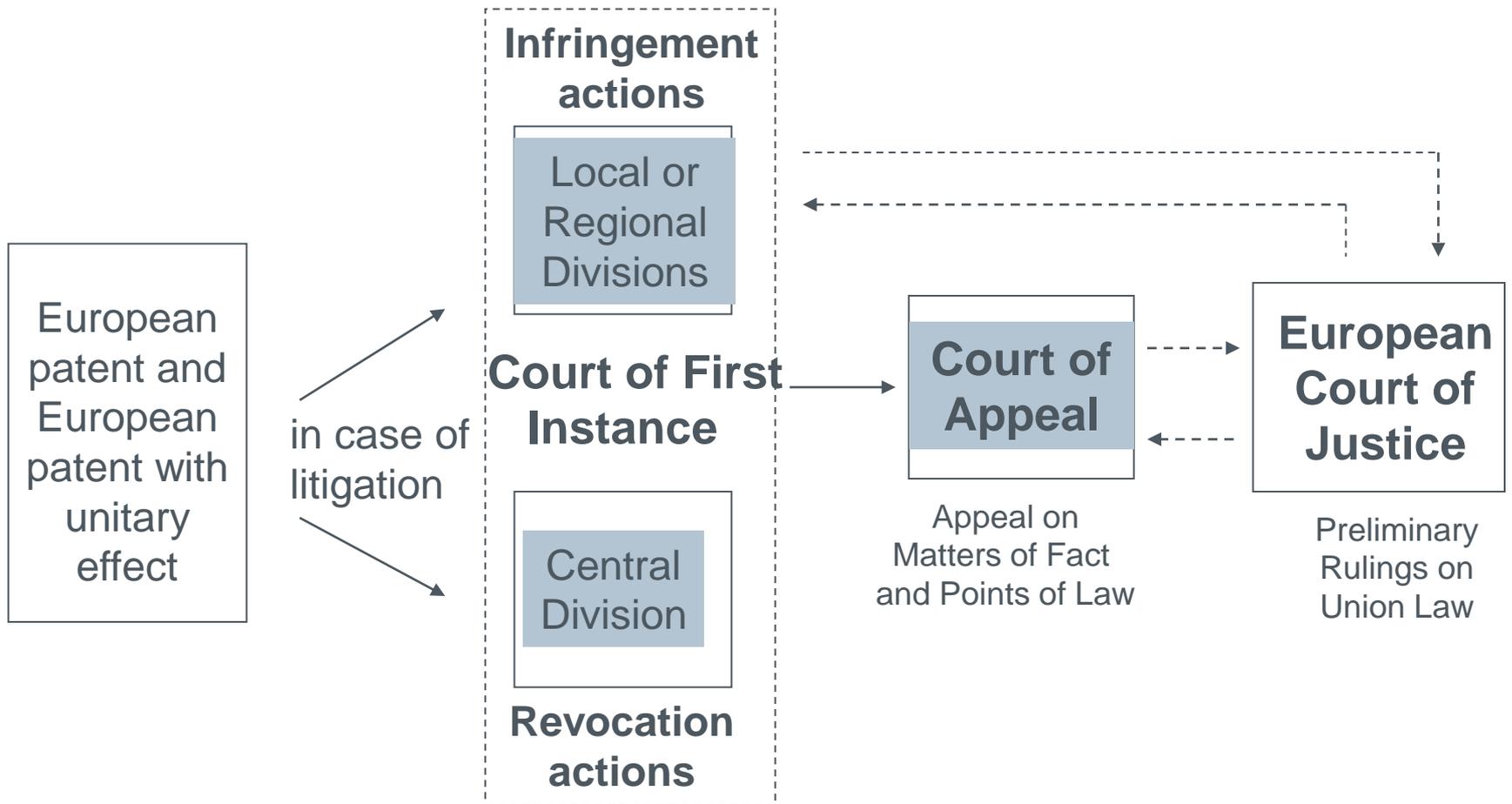
European Council Presidency and EU Commission intend to have **the first unitary patent granted in 2014**

# The unitary patent as a European patent

Same grant procedure as for classic European patent



# Unified Patent Court: litigation



# The Unitary Patent: Advantages

- **For inventors**
  - protection in **one single step for the 25 states** currently participating
  - **significant cost savings** (translation, validation, administration)
  - **simplified validation procedure** (instead of up to 25 different procedures)
  - **simplified and more cost-efficient renewal** procedure
  - **increased legal certainty** due to uniform litigation system
- **For Europe**
  - **optimal protection** in the participating states as a whole
  - better framework **conditions for innovative companies** and organisations
  - **simplified European protection mechanism** for companies from outside Europe
  - **improved competitiveness** of the European patent system

# The Unitary Patent: Challenges

- **Opponents to the Unitary Patent**
  - complexity, persistent forum shopping, co-existing national patents, etc..
- **A full evaluation of benefits can only be obtained in the long term (after transitional period):**
  - Dynamics of the patent system in Europe
  - Evaluation of efficiency and effectiveness
  - Assessment of external costs
  - Need for data analysis on patent litigation across Europe
  - Analysis of patent application strategies (adverse selection?)
  - Success of Unitary Patent and its effect on litigation
  - Effects on SMEs
  - etc...
- **Sustainability of the European Patent System can only be achieved via a commitment to high quality patents.**

**THANK YOU FOR YOUR ATTENTION**

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