

Confidentiality of Communication between Clients and their Patent Advisors

Unitary Patent Court (UPC) Agreement

The Agreement on the Unified Patent Court (UPC) signed by 25 Member States of the European Union (EU) on February 19, 2013 provides for creating a specialized patent court with exclusive jurisdiction for litigation relating to European patents and European patents with unitary effect. After having been ratified by the required minimum amount of Member States in accordance with Article 89 UPC Agreement, it entered into force on June 1, 2023.

The Agreement on the UPC and its proposed Rules of Procedure provide for a protection of confidentiality of communications between clients and their patent advisors. While Article 53 UPC Agreement provides for “discovery” proceedings with regard to requests for information, production of documents and inspection, Article 48 UPC Agreement states that the communication with representatives of clients, namely lawyers or European Patent Attorneys (see Article 134 EPC), are privileged. Rules 287 and 288 of the Rules of Procedure for the UPC, as adopted by decision of the Administrative Committee on 8 July 2022, provide for an attorney–client and a litigation privilege for communications between a client and a lawyer and a client and a patent attorney in a professional capacity to advise on patent matters.