

Patenting in Europe

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PATENT 42

IP is about Protecting the Intellectual Capital

IP Rights

Intellectual Property (IP) gives companies legal tools to obtain a **monopoly** of exploitation on their innovations thanks to the different IP titles.

Intellectual Property

LITERARY AND
ARTISTIC
PROPERTY

INDUSTRIAL PROPERTY

Copyright

Trademark
Design

Patent

IP as a property

- Can be sold
- Can be bought
- Can be leased / rented (license - royalties)
- Can pass under a will (= transferred to inheritors)
- Can be assigned/allocation (company)

Patent

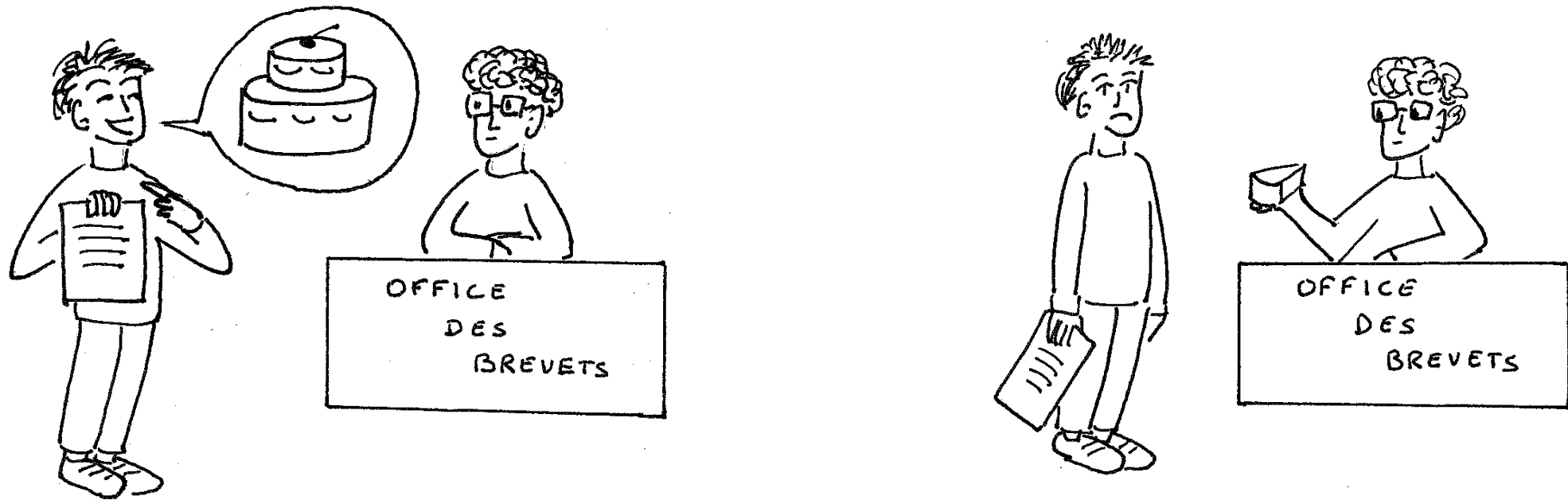
- The patent is an industrial property title conferring a **monopoly of exploitation** for a maximum period of **20 years** (except exception for pharmaceutical patents).
- It protects an invention that is defined as a technical response to a technical problem.
 - The patent is a title deed
 - That is not a right to exploit invention, but a **right to prohibit third parties** from exploiting your inventions/ innovations
 - in a **given territory** for a **fixed period**
- In return :
 - The patentee must pay **administrative fees** during the life of his patent
 - **Disclosure of the invention to the public**

Patentability

- To be patentable, the technical invention must meet 3 conditions:
 - Be **new** (not be in the public domain)
 - Show an **inventive step** (must not be obvious from the state of the art known by the "skilled person")
 - Have an **industrial character** (must be feasible and not consist in the statement of an abstract principle)
- What is not patentable as such:
 - **Computer** software and programs, considered as elements of language as such
 - **Ideas, concepts and methods** (scientific discoveries)
 - What is contrary to **good morals**
 - aesthetic creations

THE PROTECTION GIVEN BY THE PATENT IS DEFINED BY THE GRANTED CLAIMS

- The claims as granted may differ from the claims as filed.
- The claims of the patent application express the wish of the Applicant.
- The claims of the patent reflect what the Patent Office believes the Applicant is entitled to.



How to Obtain a Patent ?

1. Drafting and filing of the patent application
 2. The Office checks formalities and establishes a search report on patentability. The applicant shall reply to the search report to prove novelty and inventive step in most cases.
 3. The application is published 18 months after filing.
 4. Registration or Substantive examination (=> communication with the Office until grant)
- The alternative to the filing of a patent is keeping the invention secret

Patent Strategy in Europe

- 1- The National Patent
- 2- The European Patent
- 3- The European Patent with unitary effect

*Imagine you want a patent coverage in 5 countries, for example
LU, BE, NL, FR, and DE*

The National Patent

It is possible to file a patent application in each country of interest in Europe

In some countries, there is no substantive examination, the responsibility that the invention complies with the patentability requirement is left to the Applicant. This is the case, for example, in Luxembourg, Belgium and the Netherlands wherein a patent is granted at the time or soon after it is published.

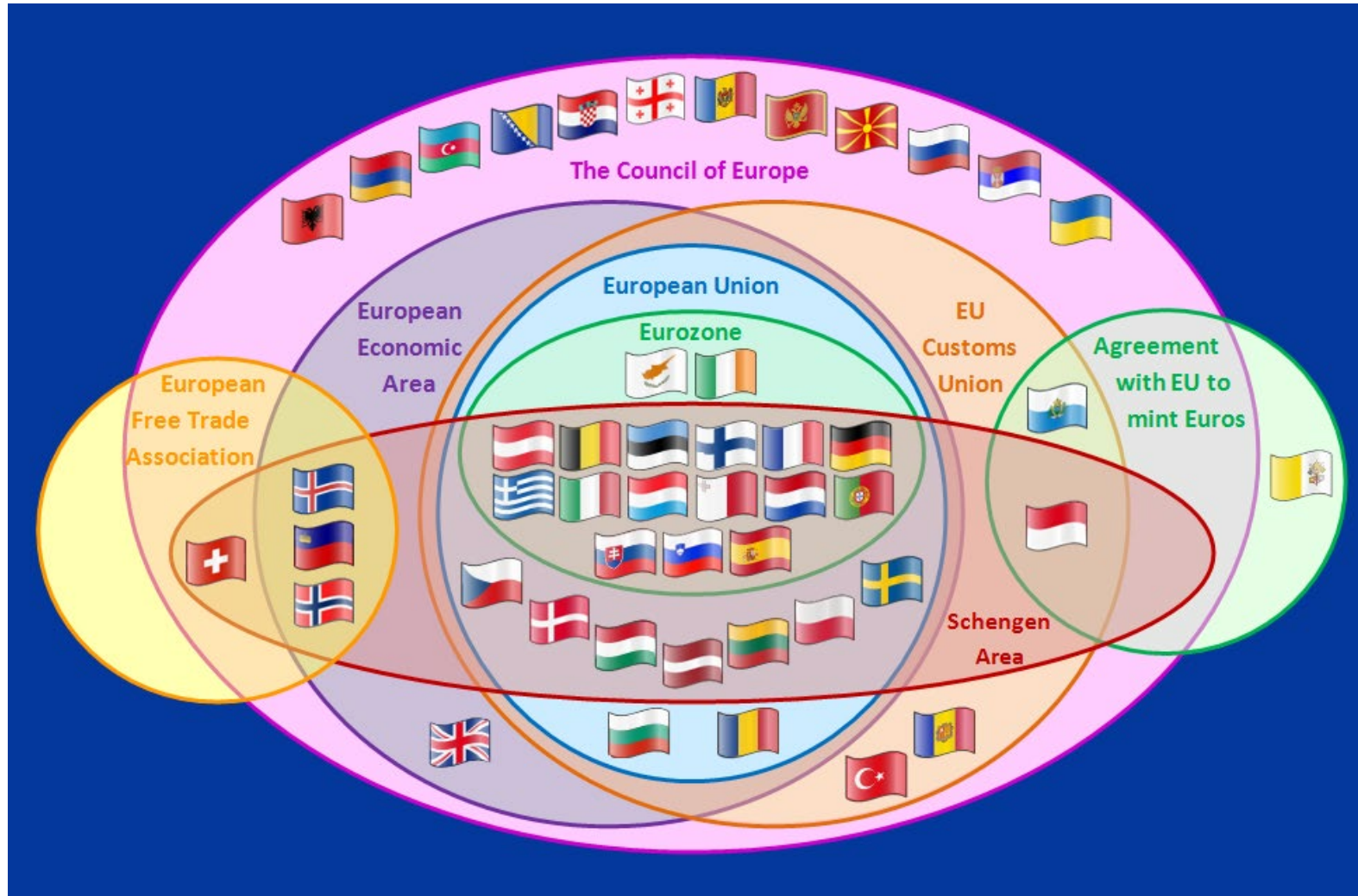
In other countries, a substantive Examination is performed wherein the patentability of the invention (as defined in the claims). This is the case in France and Germany, wherein novelty and inventive step are to be assessed.

A patent coverage in LU, BE, NL, FR and DE means :

- *5 patent applications (including 2 with a substantive examination),*
- *resulting in 5 patents*

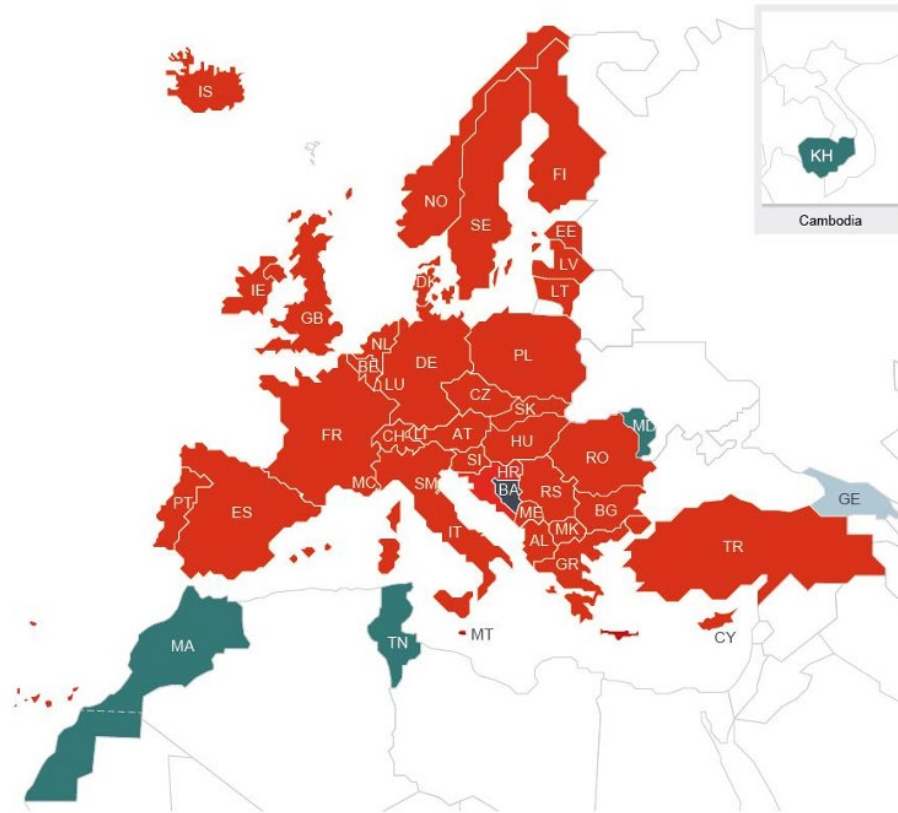
What « Europe » means?

Source of the image Wikipedia



The European Patent

(source of the image: European Patent Guide)



Member states of the European Patent Organisation (39)

AL	Albania	IT	Italy
AT	Austria	LI	Liechtenstein
BE	Belgium	LT	Lithuania
BG	Bulgaria	LU	Luxembourg
CH	Switzerland	LV	Latvia
CY	Cyprus	MC	Monaco
CZ	Czech Republic	ME	Montenegro
DE	Germany	MK	North Macedonia
DK	Denmark	MT	Malta
EE	Estonia	NL	Netherlands
ES	Spain	NO	Norway
FI	Finland	PL	Poland
FR	France	PT	Portugal
GB	United Kingdom	RO	Romania
GR	Greece	RS	Serbia
HR	Croatia	SE	Sweden
HU	Hungary	SI	Slovenia
IE	Ireland	SK	Slovakia
IS	Iceland	SM	San Marino
		TR	Türkiye

Extension states (1)

BA Bosnia and Herzegovina

Validation states (4)

KH Cambodia
MA Morocco
MD Republic of Moldova
TN Tunisia

Future validation states (1)

Agreement signed but not in force yet

GE Georgia

The European Patent

- The European is a granting system with a substantive examination and after grant the possibility of opposition by third parties
- Once the European patent is granted it is converted in a bundle of national patents

A patent coverage in LU, BE, NL, FR, and DE means :

- *A single patent application granted after a substantive examination,*
- *resulting in 5 patents.*

The European Patent with unitary effect

- The Unitary Patent (UP) is a European Patent wherein a unitary effect is requested
- There are 18 European States that participate :

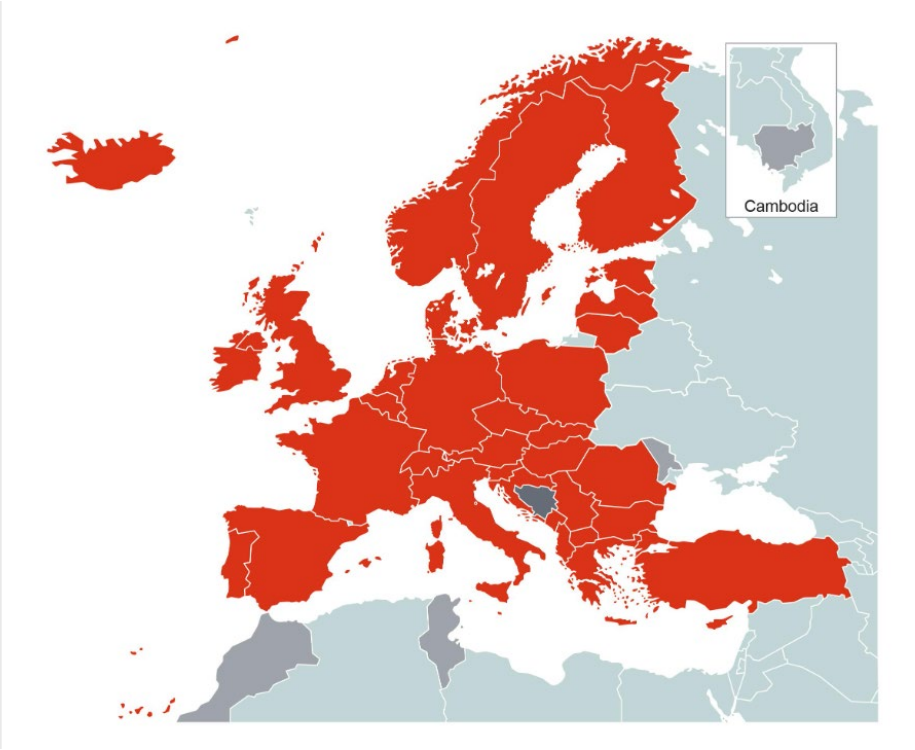
Austria, Belgium, Bulgaria, Denmark, Estonia, Finland, France, Germany, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Romania, Slovenia, Sweden.

A patent coverage in LU, BE, NL, FR, and DE through UP means :

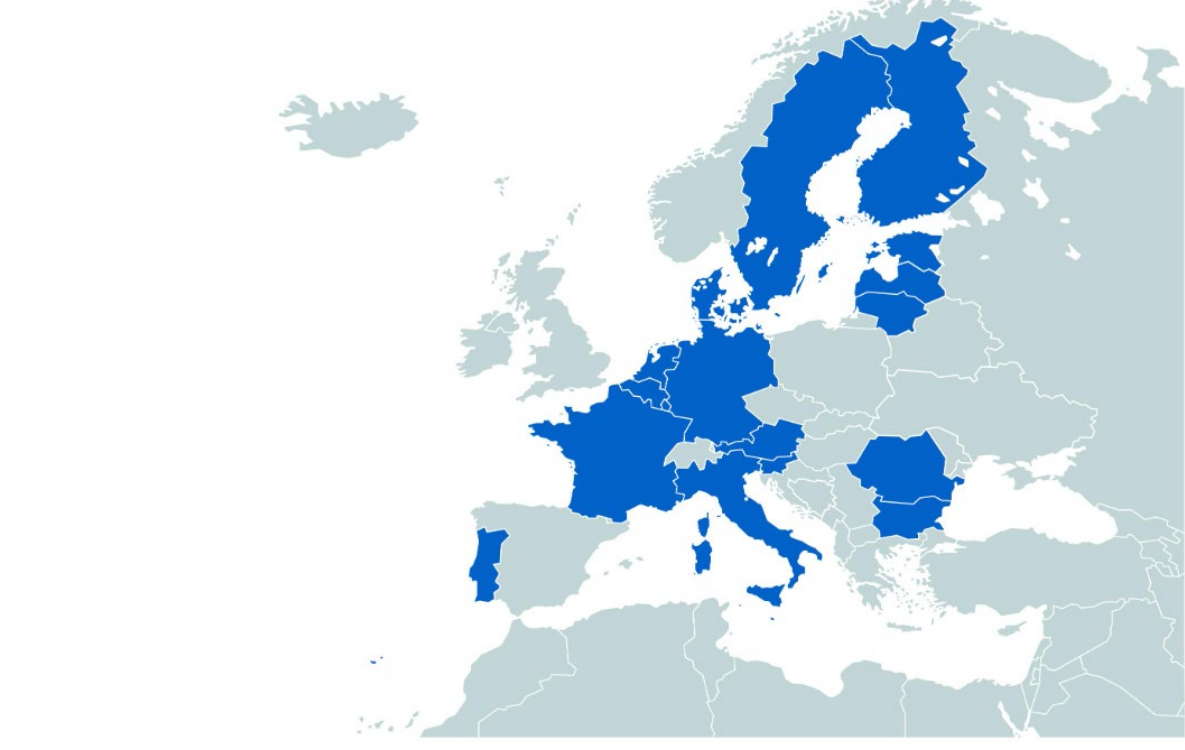
- *A single patent application granted after a substantive examination,*
- *resulting in a single patent (covering 18 states).*

The European Patent with unitary effect

- European patent



European Patent with Unitary Effect



Possible to Combine UP with EP Validations

Imagine you want a patent coverage in 6 countries, for example LU, BE, NL, FR, DE and ES, but taking advantage of the UP

- *A single patent application granted after a substantive examination, resulting in 2 patents:
 - 1- a single patent (covering 18 states) i.e. the UP
 - 2- the Spain branch of the granted EP*

THANK YOU !

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