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## The Future European Patent System: Latest News

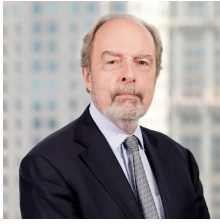
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With the ninth Contracting State having ratified the EU Unified Patent Court Agreement, the commencement of the Unified Patent Court is approaching. We report on the latest news and discuss the preparations that holders of European patents should be making, if they have not already done so, in order to ensure that they are able to take advantage of the opt-out sunrise period. In particular, we recommend

- Identifying which European patents are to be opted out (and also which European patent applications should be designated as unitary patents). Each patentee will need to develop its own strategy, however our recommendation is to consider leaving at least some patents in the UPC system in order to benefit from the possibility of obtaining a pan-European injunction, and also to engage with the court and help shape its jurisprudence. On the other hand, patents left in will be vulnerable to a pan-European revocation. One possibility is to make use of divisional applications, leaving in some patents and opting out others that are for almost the same invention (national patents could also be used to hedge in this way).
- Conducting due diligence now to establish the identity of all of those entitled to be registered as proprietors or applicants of each patent/application that is to be opted out, and of all Supplementary Protection Certificate (SPC) holders. (For a given European patent or patent application, all proprietors in each country and all holders of SPCs must apply for an opt-out).
- Arranging execution of any necessary assignments.
- Ensuring that future agreements transferring SPCs address the need for both the SPC holder and the holder of the basic patent to join the application.
- Ensuring that future license and collaboration agreements address the opt-out issue, and checking existing license agreements to establish whether consultation or consent is required.

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### *Authors*



## Trevor Cook

RETIRED SENIOR  
COUNSEL

✉ [trevor.cook@wilmerhale.com](mailto:trevor.cook@wilmerhale.com)

☎ +1 212 230 8826



## Anthony Trenton

PARTNER

✉ [anthony.trenton@wilmerhale.com](mailto:anthony.trenton@wilmerhale.com)

☎ +44 (0)20 7872 1005