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## Does the effect of an opt-out under Article 83(3) UPCA last only for the duration of the transitional period or for the whole life of the patent?

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Is the opt-out from the jurisdiction of the UPC for a classic European patent effective only during the transitional period under Article 83(1) UPCA or whether, once it has been notified during the transitional period, it is effective for the whole life of the patent?

It was the legislator's objective when providing for the possibility to opt-out, to give the patent holder the possibility to remove his European patent from the jurisdiction of the UPC for the whole life of that patent. This follows clearly from the fact that an opt-out can be notified until the very last day of the transitional period. The latter would make no sense and would not have been foreseen if the effect of an opt-out was to expire on the last day of the transitional period.

## Does an opt-out under Article 83(3) UPCA affect only the exclusivity of jurisdiction, so that the UPC in fact retains a non-exclusive jurisdiction with regard to the opted-out patent?

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Article 83(3) UPCA stipulates that "a proprietor ... shall have the possibility to opt out from the exclusive competence of the Court." In this regard the question has been raised whether the provision must be interpreted such that the opt-out refers only to the exclusive competence of the UPC, and whether in fact the opt-out results in shared competence of the UPC and national courts.

If the effect of an opt-out was limited to removing the exclusivity of the UPC's jurisdiction, Article 83(3) UPCA would, at least during the transitional period, have exactly the same effect as Article 83(1) UPCA, i.e. result in shared jurisdiction of the UPC and national courts and a choice of forum for the parties. Thus there would be no need for two different provisions in Article 83 (1) and (3). Therefore it was the legislator's intent with the opt-out to give an alternative to patent holders, allowing them to remove their patents entirely from any jurisdiction of the UPC.

## What are the arrangements for the transitional period (opt-out scheme and choice of forum)?

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During a transitional period the following options will be possible regarding European patents without unitary effect:

- During the transitional period, actions for infringement or for revocation may still be brought before national courts (Article 83.1 of the UPC Agreement).
- During the transitional period a proprietor of - or an applicant for - a European patent granted or applied for prior to the end of the transitional period will have the possibility to opt out the patent/application, unless an action has already been brought before the UPC. To this end they shall notify their opt-out to the Registry. The opt-out shall take effect upon its entry into the register. It will be possible to withdraw such an opt-out at any time (Article 83.3 of the UPC Agreement).

There will be no possibility to opt-out a European patent with unitary effect.

The transitional period is seven years but may be prolonged up to a further seven years by the Administrative Committee on the basis of a broad consultation with the users of the patent system and an opinion of the Court.

## Opt-out scheme

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- Will it be possible to opt out a European patent for one or more of the States where it has been validated or must every patent derived from the same European patent be opted out at the same time?  
Pursuant to Article 83.3 of the UPC Agreement the possibility to opt out concerns a European patent granted or applied for before the end of the transitional period. That means that the opt-out once notified and registered takes effect for the entire European bundled patent for all Contracting Member States where this patent has been validated. There is no need to notify the opt-out separately for the relevant Contracting Member States.
- Where a European patent application or a European patent has several applicants or patent proprietors, must all applicants or patent proprietors agree to lodge the application for opt-out?  
The unity of an application and of the patent in case of several applicants or several proprietors is a basic principle of patent law, as reflected in particular in Article 118 of the European Patent Convention. This means that applicants or proprietors of one single application for a European patent or one single European patent will have to act in common to exercise the opt-out.
- Does an opt-out exclude all jurisdiction of the UPC?  
Once an opt-out has been notified and registered the UPC does not have any jurisdiction any more with respect to the European patent or the application for the European patent concerned. The patent or application will be subject only to the jurisdiction of the competent national courts.
- When an opt-out is registered for a European patent application, will it also apply to the European patent later granted?  
If an opt-out has been notified and registered with respect for an application for a European patent, the opt-out continues to apply to the relevant European patent, once granted.
- Does an opt-out remain in force for the entire life-time of a European patent?  
An opt-out once notified and registered normally remains in force for the entire life-time of a European patent, unless the proprietor withdraws the opt-out pursuant to Article 83.4 of the UPC-agreement.

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- [Registration of opt-out by the UPC's Registry](#)
- [Can a patent proprietor initiate proceedings in the national courts of a Contracting Member State without filing an opt-out?](#)
- [Will it be possible to initiate a revocation action in the UPC if someone else has already initiated an infringement action before the national courts?](#)

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