

You are here: [Home](#) > [Q&A's](#) > [Impact of the UPC](#)

## Will the existence of the UPC make it easier for non-practicing entities (patent trolls) to sue innovative companies?

≡ Parent Category: [About the UPC](#)



≡ Category: [Impact of the UPC](#)

No we do not think so. There are several safeguards to prevent such a development. For example, the following aspects of patent litigation in the United States - which are generally referred to as supportive of trolls in the United States - do not appear relevant in the context of the UPC:

1. cost allocation rules in court (both parties bear their own costs);
2. contingency fee payments for lawyers, creating incentives for lawsuits;
3. high damage awards and risk of treble damages in the case of "wilful infringement";
4. pro-patentee posture of US courts and juries. See [Professor Harhoff's Economic Cost-Benefit Analysis of a Unified and Integrated European Patent Litigation System \(2009\)](#), page 49. In addition the UPC will not grant automatic preliminary injunctions. When granting preliminary injunctions the Court shall have the discretion to weigh the interests of the parties. If the patent holder is a non-practising entity this is likely to play a role in such an assessment (Article 62 of the UPC Agreement).

## Will the UPC make it easier to obtain software patents in Europe?

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≡ Category: [Impact of the UPC](#)

No, the UPC Agreement doesn't touch upon the patentability criteria. This will also in the future be governed by the European Patent Convention. According to Article 52 (c) of the EPC software as such are not patentable.

The unitary character of the UPC will make it easier to revoke a patent on software if such a patent is granted by mistake and there will be no need for parallel litigation. A third party will not have to wait for the outcome of opposition procedures at the EPO before bringing a revocation action before the UPC.

## Will the UPC lead to forum shopping between the various local and regional divisions?

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≡ Category: [Impact of the UPC](#)

The panels will have multinational composition and all the judges of the Court shall have the highest standard of competence and thus guarantee that all divisions of the UPC are equally competent. All divisions will be governed by the same rules of procedure and the jurisprudence of the UPC Court of Appeal. This will to as large extent possible minimize the risk of forum shopping.