

October 2022

**Survey of Irish  
business**

**The Unitary  
Patent  
System**

## Contents

<b>Key findings</b> .....	2
<b>Section One: Introduction</b> .....	3
Respondent profile .....	3
Sectoral overview .....	3
Breakdown of clients of enterprise agencies .....	4
<b>Section Two: Overview of IP activities within companies</b> .....	5
IP Strategy .....	5
Patent activity within companies .....	5
Patents owned or licenced .....	5
<b>Section Three: The Unitary Patent System</b> .....	8
Company awareness of the Unitary Patent System .....	8
Impact of Unitary Patent System on future patenting activity .....	8
Advantages of the new Unitary Patent to companies .....	10
Advantages of the new Unified Patent Court to companies .....	11
Disadvantages of the Unitary Patent System to companies .....	12
Benefits of the Unitary Patent System to Irish business sectors .....	13
Timing of the Irish referendum to ratify the Unified Patent Court Agreement .....	14
<b>Appendix One: Questionnaire on the Unitary Patent System (September 2022)</b> .....	17

---

### For further information:

**Aidan Sweeney**  
Head of Enterprise  
& Regulatory Affairs  
Ibec  
T: +353 (01) 6051642  
E: aidan.sweeney@ibec.ie

**Triona Walsh**  
Chair of the UPC Committee  
Association of Patent and  
Trade Mark Attorneys (APTMA)  
T: +353 (87) 2242523  
E: triona.walsh@jameshardie.com

## Key findings

### In relation to IP, specifically patents and the connection to growth and innovation:

- > 94% of all respondents stated that their company has an IP strategy in place, indicating the increasing recognition of IP as part of the enterprise toolbox for innovation.
- > Patenting is a key element of IP strategies for start-up and scaling enterprise, with several respondents indicating that patenting will be part of their growth strategy. Some respondents indicated that it is too early in their endeavours to start the process of patenting their innovation.
- > 89% of firms that had an IP strategy in place increased their IP activity in the past five years, and plan to increase these activities further in the coming five years.
- > Approximately 80% of companies surveyed owned or licensed patents.
- > Companies that don't own or licence patents felt the current system was too expensive and that they lacked the necessary expertise.

### In relation to the Unitary Patent and the Unified Patent Court:

- > 87% of the companies with an IP strategy in place stated they were aware of the new Unitary Patent System.
- > Over three quarters (78%) of respondents indicated that they were likely to increase their patenting activity due to Ireland's participation in the Unitary Patent and the Unified Patent Court.
- > Approximately 83% small and micro enterprises said they were very likely to increase their patenting activity on the back of the new system.
- > Approximately 70% of respondents stated that the referendum ratifying the UPCA should take place in the first half of 2023. In fact, four out of five said it must be held next year, with almost half of all respondents indicated their preference to be held in Q1 2023.
- > May 2024 is the absolute latest date that a referendum should be held, and even then, there could be a significant opportunity cost to Irish companies.
- > Activities to raise awareness of, and to educate companies across the Irish enterprise base on, the new Unitary Patent System will be required.

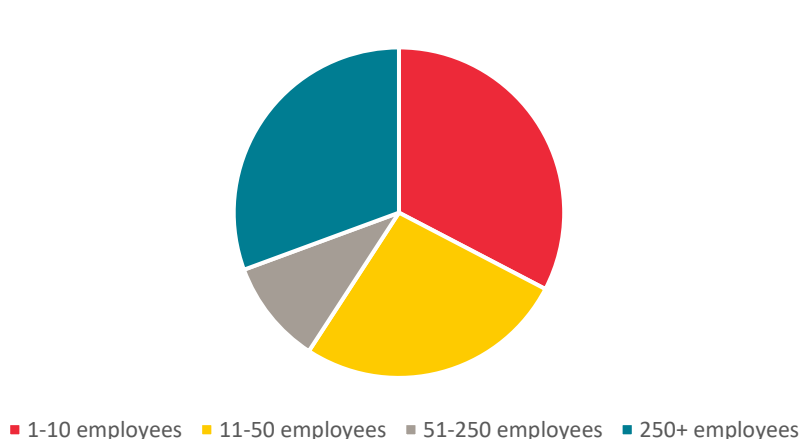
## Section One: Introduction

Ibec and the Association of Patent and Trade Mark Attorneys (APTMA) conducted a joint survey during the period **20th September 2022 to 29th September 2022**. The objective was to obtain the views of business across the spectrum, from indigenous industries including individual innovators (micro-entities) and SMEs to larger multinational enterprises located in Ireland. Views were sought on intellectual property and the Unitary Patent System, which comprises the Unitary Patent and the Unified Patent Court.

### Respondent profile

A total of 49 responses were received by the deadline. To achieve this, the survey was sent to Ibec members and the client lists of APTMA members. It was also shared with Enterprise Ireland's IP Division, to allow sharing with EI's IP Client list, the Law Society and Technology Transfer Officer across the Higher Education Sector.

**Fig. 1: Share of respondents by company size**



59% of respondents were small and micro enterprises. These respondents were not clustered towards any sector. They were representative of sectoral profile of the all the companies who participated in this survey. A further 10% classified themselves as medium-sized firms (50 to 249 employees). Finally, 30% of respondents stated that according to employee numbers they would be classified as large enterprise. This is a combination of large indigenous and multinational companies operating from Ireland.

### Sectoral overview

Responses were received from a diverse collection of technology-based industries in Ireland, including FinTech, MedTech, Pharma, Healthcare, Agritech, Building Services, Consumer Electronics, AI, Software, SemiConductor Devices, Oil and Gas. This is reflective of Ireland's innovative enterprise base, especially in medical devices, pharmaceuticals, and digital technologies. Ireland has an established concentration of these firms, which is built on being a global export hub. It also reflects the national profile of patent applications by technology field before the European Patent Office (EPO).

**Table 1: European patent applications ranked by top technology field – Ireland (2021)**

Technology Field	
1.	Medical technology
2.	Electrical machinery, apparatus, energy
3.	Pharmaceuticals
4.	Computer technology
5.	Measurement
6.	Organic fine chemistry
7.	Biotechnology
8.	Engines, pumps, turbines
9.	IT methods for management
10.	Other special machines
11.	Basic communication processes
12.	Chemical engineering
13.	Digital communication
14.	Mechanical elements
15.	Control

## Breakdown of clients of enterprise agencies

Approximately three quarters of respondents identified themselves as clients of a state agency. The options given were Enterprise Ireland, IDA Ireland, Údarás na Gaeltachta, Local Enterprise Office, or other. 70% of respondents listed Enterprise Ireland, which reflects the emergence, development, and growth of indigenous enterprise base across IP-intensive sectors. In terms of company size, Enterprise Ireland clients surveyed ranged from High Potential Start-ups (HPSU Start Clients) through to established large companies, each employing over 250 people. Only one company selected Local Enterprise Office. Ten clients of IDA Ireland completed the survey. These were primarily in the technology, pharmaceutical, medical technology, and life sciences sectors.

**Table 2: Responses from clients of a state enterprise agency**

Enterprise Agency	Number of Respondents
Enterprise Ireland	26
IDA Ireland	10
Local Enterprise Office	1

## Section Two: Overview of IP activities within companies

### IP Strategy

All companies need to protect their assets and patents are key to the protection of an organisation’s commercial advantage resulting from technical or scientific innovation. An IP strategy covers the processes and structures that help a business utilise its IP assets to drive commercial success by increasing revenues, mitigating commercial risks, and supporting their product innovation roadmap. It should be aligned to the overall business strategy for the company. An IP strategy can cover patents for inventions, trade marks, registered and unregistered designs, trade-secrets, and copyright.

94% of all respondents stated that their company has an IP strategy in place. It is indication of IP being increasingly recognised as part of the enterprise toolbox for innovation. 86% of companies work with a professional patent attorney in Ireland. Most professional patent attorneys in Ireland are members of APTMA. Only three respondents stated that their company does not have an IP strategy. Yet, two of them increased their IP activity in the past five years, and plan to increase these activities further in the coming five years.

### Patent activity within companies

IP rights, and patent rights especially, are an important consideration for companies of all size. All companies need to protect their assets. IP activity is an indicator of innovation performance of a company and the economy. 89% of firms that had an IP strategy in place increased their IP activity in the past five years, and plan to increase these activities further in the coming five years.

Fig. 2: IP activities in companies with IP strategy in place



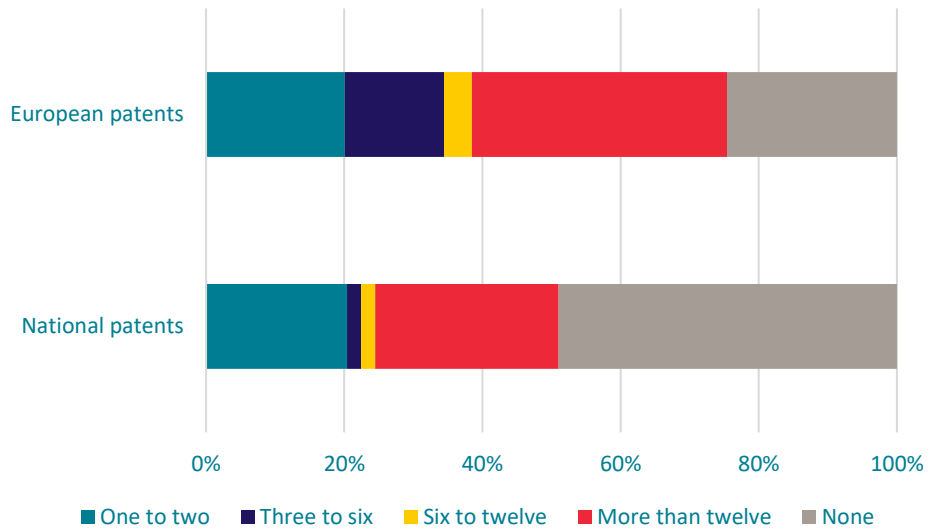
While all companies need to protect their assets and patents are key to the protection of an organisation’s commercial advantage resulting from technical or scientific innovation, there are significant differences on patenting activities by firm size.

### Patents owned or licenced

Patent-ownership can have a significant impact on company performance, depending on the business sector and other variables. Patent-owning firms, including SMEs, are not only larger; they are more profitable, generate greater revenue and pay higher wages than non-patent owning firms. Respondents were asked if their company owned or licenced patents, to indicate the number of patents owned or licensed, and whether they were European patents/patent applications via the European Patent Office or national patents.

Approximately 80% of companies surveyed owned or licensed patents. A quarter of these owned or licensed at least one-to-two European Patents/European Patent Applications whilst at least approximately 50% owned or licensed at least one-to-two national patents. Approximately half of the respondents owned or licensed 12+ European Patents/European Patent Applications, and 12+ national patents.

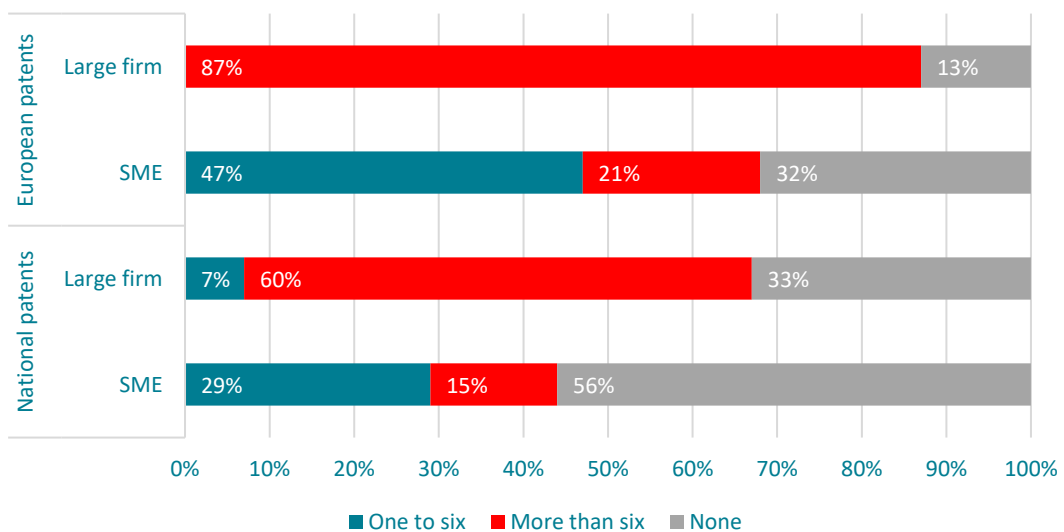
**Fig. 3: Patents owned or licensed by patent type**



Economic and legal factors will influence a company's decision to protect their innovation via a European patent or a national patent. Companies will protect their innovation in countries where they have a market that supports the presence of patent protection.

68% of SME's protected their innovation by filing and obtaining European patents. This indicates that Irish SMEs are increasingly looking to the European route over the national route. This is a question of strategy. Applicants via the European route benefit from a high-quality search done by the EPO, which provides an indication of patentability. This is not readily available through the national route. While the current European patent system is costly and fragmented, Irish SMEs opt for this over the national system for more robust protection and to capture future value from their IP assets.

**Fig. 4: Patent type owned or licensed by company size**



As varying degrees of expense are associated with obtaining patents, larger companies are more likely to include both the current European and national routes in their IP strategy. 87% of large companies owned/licensed six or more European patents, and 67% owned/licensed patents through the national route. Half of these respondents stated that they own or license twelve or more patents by both the European and national routes. These companies are clustered in the pharmaceutical, medical technology and life science sectors. However, a fifth of large companies own, or licence more than twelve patents granted via the European route only. These companies are in the technology sector.

Approximately 20% of respondents stated that they do not own or licence patents. They were asked to provide reasons for their answer. The responses received provide interesting insights. Three companies cited the costs associated with the current system for patent protection was too “expensive”. Another stated a “lack of expertise” was the principal reason for it not owning/licensing patents.

IP strategy influences patent ownership and licensing activities. Three companies stated they were in the “process of applying for EU patent”; “pending submission” because it was a start-up; or “not ready yet - need some final details sorted”. Patenting is to be a key element of their individual IP strategies. Two large multinational companies stated that while their groups owned/licensed patents, these activities were not managed from Ireland (i.e. “patent decisions taken elsewhere”). Finally, two other companies responded that patent ownership and/or licensing was not directly relevant to their business strategy. For example, one company is building a platform based on open-source, rather than patent-based, third-party software.



## Section Three: The Unitary Patent System

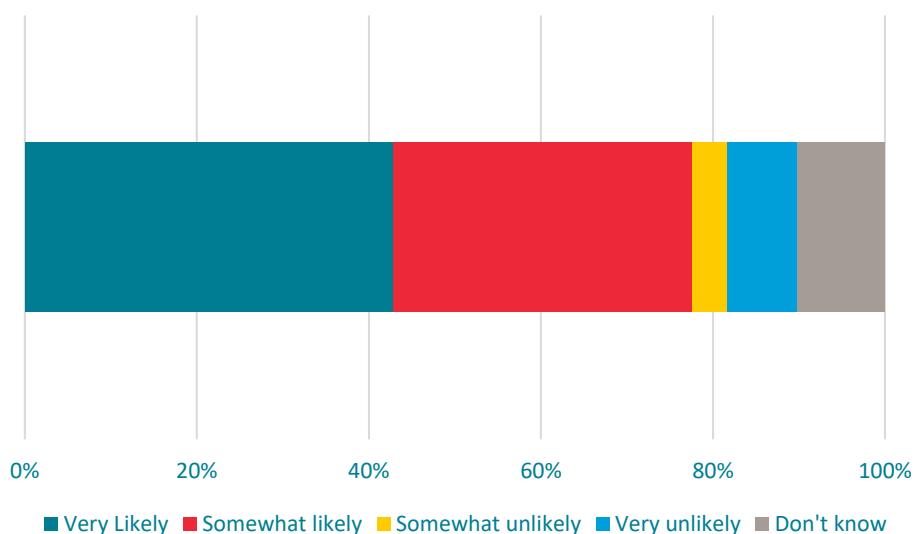
### Company awareness of the Unitary Patent System

Awareness of the proposed Unitary Patent and the Unified Patent Court (UPC) is high amongst the companies surveyed. 87% of the companies with an IP strategy in place stated they were aware of the new pan-European system for patenting and enforcement. Six companies or 13% were unaware, and these companies are all small and micro enterprises. Of course, the three companies without an IP strategy stated they were unaware of the new system. It will be appreciated that while companies that are sufficiently 'IP literate' to have an IP strategy in place might be aware of the UPC and this contributes to the high level of awareness amongst survey participants, such a high level of IP literacy is not necessarily representative of the Irish business landscape generally. Activities to raise awareness of, and to educate companies on, the new Unitary Patent System will be required. This was captured in some of the additional comments provided by companies responding to this survey.

### Impact of Unitary Patent System on future patenting activity

Respondents were asked for their opinion on the impact the new Unitary Patent System would have on the future patenting activity by their company. Over three quarters (78%) of respondents indicated that they were likely to increase their patenting activity due to Ireland's participation in the new UP and the UPC system.

**Fig. 5: Likelihood of companies to increase their level of patenting activity due to Ireland's participation in the new Unitary Patent and the Unified Patent Court system**



Four out of ten companies indicated that their company was very likely to increase its patenting activity due to Ireland's participation in the new pan-European patent system. It should be noted that it would have an extremely positive impact on Ireland's SMEs in patent-intensive sectors. Approximately 83% of respondents from small and micro enterprise indicated that they were very likely to increase their patenting activity on the back of the new system. All respondents from medium-sized companies (51-250 employees) stated their patenting activity would be expected to increase under the new system. Four out of five companies stated they were very likely to increase their level of patenting activity if Ireland was to participate in the system.

In terms of large enterprise, 60% of respondents indicated that participation by Ireland would have a positive impact on patent activity by their respective companies. However, 20% of respondents reported that it would be very unlikely to have an impact. This is not to say they see no benefit to their companies from the new system. It is worthwhile to examine the comments accompanying these specific responses. One respondent stated: “we want to increase our patenting activity regardless of Unitary Patents”. Another said the “introduction of the Unitary Patent is not considered a prompt to increase our patent activity - this will continue irrespective”. Patent filing strategies of these companies have influenced such responses. A further respondent added that the “Unitary Patent System will not have an impact on our patent filing strategies”, but “if we would want broader geographical coverage than we typically seek, a unitary patent may be worthwhile”.

It should be noted that four of the five companies who answered ‘don’t know’ were micro-enterprises, employing less than ten people. The remaining response came from a single large enterprise, which stated that its “patent strategy does not depend on Ireland participating” in the new system.

#### **Selected comments on impact of Unitary Patent System on future patenting activity:**

- > *“Ireland’s participation in the UP/UPC could provide my company with a significant advantage.”*
- > *“The cost saving from the application costs under the UP system would increase the possibility of more company filings, especially in markets where we would previously shy away because of a cost/benefit analysis.”*
- > *“If it makes it simpler and cheaper to get patent protection in the EU, then it would increase our likelihood to apply.”*
- > *“Having a UPC would make it more attractive to file and protect patents.”*
- > *“The European patent system is too fragmented, too expensive, too inflexible, and not inventor friendly. Any steps that address these issues are welcome.”*
- > *“Current process is too expensive, slow, and complicated.”*
- > *“The main barrier to patenting is overall cost... the overall process will be simpler and more cost effective.”*
- > *“Anything that would simplify and reduce the time and expenditure involved in patenting would be a great help in increasing our patenting activity particularly as much of our business is exported to the EU.”*
- > *“Would be a massive help to a small company and for the industry in general making it much more attractive to integrate in overall strategy.”*
- > *“Ease of access - workload on individual submission and payment reduced.”*
- > *“The Unitary Patent System will make patenting across Europe simpler and hence more worthwhile.”*
- > *“It is a ‘must have’ to offer competitive protection against duplication.”*
- > *“The driver for patenting is and will still be product development, but the Unitary Patent system will certainly facilitate and encourage European applications.”*
- > *“Irish site would like to get design control and IP in Ireland in the future.”*
- > *“This would simplify the process for small start-ups.”*
- > *“We have one idea we would like to patent. The UPC may make that somewhat more valuable if the patent grants. So, we have some increased interest in securing a patent or few patents.”*
- > *“Patents are valuable & the more efficient the registration & enforcement process the better.”*
- > *“Ireland’s participation in the UP/UPC system will be a welcome opportunity for us to revisit our global patenting strategy.”*

## Advantages of the new Unitary Patent to companies

The Unitary Patent is a proposed new single European patent right with unitary legal effect that will enable inventors and applicants to obtain uniform patent protection for their inventions across the particular European member states that are participating in the Unitary Patent system. This differs from the current European system, in which patents are granted centrally but then must be validated nationally to be brought into force as a bundle of individual national patents which need to be maintained separately, in each country.

Respondents were asked for their opinion on the likely advantages of the new Unitary Patent to their company. Over half of responses referenced cost savings associated with the new system for obtaining patents will be the biggest benefit for business. One respondent stated it will be a “cheaper option for wider European patent protection”. Another added, “reducing the costs of patenting would increase the value of innovation in the company as it would be easier to protect and therefore increase the justification for investment in R&D”.

The new system will create a “simpler”, “faster” and more “efficient” mechanism for obtaining and managing patents in Europe. Respondents frequently referred to the “ease of application” to “less administration” as extremely positive aspects of the new system. eliminate the need for multiple national validations. One large indigenous company stated that the “streamlined approach to European patents” would enable “better financial decisions in relation of which projects to invest in”.

The impact the new system will have on Irish SMEs was frequently cited. One respondent said the Unitary Patent “would be a massive help to a small company and for the industry in general making it much more attractive to integrate into an overall strategy”. It would help “build stronger indigenous companies”. According to one small enterprise, the new system “would encourage us to apply for more patents on our products”. Another respondent said his small enterprise would be “more likely to file patents” because of it. It was also noted that lower costs will make “IP protection more attainable for start-ups”. Direct savings to companies would be put into productive use, with one respondent remarking, “as an SME on a limited budget, any reduction in cost of protection would allow us to stretch our IP budget further”.

Unitary Patents will have immediate effect across Europe. Under the new system, Unitary Patents will cover a market that effectively accounts for 360 million consumers and 17.3 million small and medium-sized enterprises (SMEs). Several respondents called this out as a specific benefit such as the “opportunity to obtain unitary protection for a large portion of the EU and the associated cost savings”. This includes “more protection in peripheral territories”. The net result is “easier management” of patent portfolios. One respondent put it succinctly as “broad coverage for reduced fee”.

Larger companies will also benefit from the “opportunity to obtain unitary protection for a large portion of the EU and the associated cost savings”. It would further strengthen Ireland’s proposition for securing new foreign direct investment. One respondent stated, “many USA multinationals may centralize patenting in one location if Ireland was a member of the system, we would therefore be more likely to be the chosen location”, which “would provide valuable back-office jobs and further anchor sites to Ireland”. Another company added, the new system “makes Ireland stronger as a based for holding IP”, but only if “we have the Unitary Patent system in place ahead of other territories”. Timely participation by Ireland in the new system is required.

## Advantages of the new Unified Patent Court to companies

The Unified Patent Court is a new court that is being established under an International Treaty. The new court will provide a uniform specialised forum for reaching decisions on patent litigation for businesses in those member states that are participating in the Unitary Patent System. This court will be centralised, and therefore will remove the need to conduct parallel litigation for the same patent in different countries. The objective is that this court will reduce cost and enhance legal certainty by removing the risk of having varied and conflicting decisions being issued from a number of national courts in respect of the same patent.

Respondents were asked for their opinion on the likely advantages of the new Unified Patent Court (UPC) to their company. One company stated the UPC will be “a fair and independent and expert system” so it should be “regarded as good for business, and good for patent owners, who want to enforce their patent rights”. Another added that the new system makes it easier to do business with the added benefits of reduced “risk mitigation for future investment” and “value addition on market entry” through “faster access and reduced legal costs for enforcement of patent license and rights”.

Europe’s system for patent enforcement is highly fragmented. It is expensive, cumbersome, and slow. The new “centralised” system will be “more convenient”, “faster and better regulated”, with “efficiency gains and consistency” across participating countries. One respondent stated, the UPC will offer “faster litigation proceedings, especially when seeking injunctions”. Another added that “it will be an advantage for our company by giving a streamlined and low-cost enforcement option giving a cross border injunction”. Several respondents cited the associated cost savings for users of the new system as extremely welcome, along with the “ability to negotiate disputes in a more certain manner across territories”.

Litigating across multiple European jurisdictions is extremely resource intensive, which can itself put off companies enforcing their rights. A “centralised procedure” has been long needed. The UPC “avoids a country-by-country battle”. One company said, the UPC, as part of the Unitary Patent System, would “force us to rethink the company’s strategy and understand if Europe was becoming a more important patent territory”. Companies will benefit from “modern, accessible, and fast judicial processes” and have “more access to specialised patent judges”.

The fragmented and decentralised approach currently can result in different enforcement outcomes on the same issue in different countries. This is concerning for business, as it can result in different enforcement outcomes on the same issue in different countries. Business has a “high interest in court proceedings with predictable outcomes” and the “UPC seems to be a step in the right direction”. One company stated:

*“We have some experience of dealing with courts in different jurisdictions and found a wide variation in clarity and efficiency. A single court should reduce the risk of working in different national markets within the EU.”*

It is acknowledged that the UPC will “help avoid conflicting decisions regarding patent validity in participating countries”, which “would be useful” for companies.

Hosting a Local Division of the UPC in Ireland is significant because it “lets you bring a suit in Ireland”. For the first time, according to one respondent, companies will have the ability to “play at home” in bringing infringement cases through an Irish-based court “if enforcement is necessary”. Another stated that this “would be a massive help to a small company and for the industry in general”. It would make it “easier to defend a patent” for companies of all size “if needed”. Ireland’s participation in the UPC would support further expansion of patent-intensive sectors across the country, with one company adding that it would “strengthen our ability to continue scaling our business based out of Ireland”.

SMEs will benefit from the existence of this centralised enforcement mechanism. It offers better access to enforcement for companies that currently cannot afford to litigate in multiple jurisdictions. A respondent from a small enterprise stated Ireland’s future participation in the UPC “strengthens our

ability to defend patent infringement cases”. One micro enterprise stated that the new system offers a “levelling of the playing field in Europe somewhat between small companies and large ones with deep pockets”. The establishment of the Local Division here would provide Irish SMEs a degree of familiarity with the operating environment of the court and “access to local expertise in the event of legal or litigation actions”.

Several respondents state the ability to litigate on a pan-European basis before a court with native English proficiency and common law experience is a big deal for their companies, particularly for those from countries with a “common law” tradition. Ireland would be able to take advantage of a marketplace the size of the EU and combine it with the fact that the country is a hub of patent-intensive industries. One respondent said:

*“Ireland is the only EU state with English as its primary language. It is arguably the technology/biotech gateway to Europe with many US companies being headquartered in Ireland. A local UPC division in Ireland with judges and local attorneys having English as their primary language would be an extremely attractive venue for US companies asserting patents written in English. It should be a priority for the Republic of Ireland to ratify the UPC as soon as possible.”*

Another respondent added that it “would be no brainer for US companies to use a local division in Ireland where English is the primary language and with potentially more sympathetic Irish judges”, whilst “recognising that a UPC panel would still include judges from other EU states”. Internal conversations are already underway in many companies to select one location to establish their base for patent enforcement, and a variety of other corporate functions will co-locate to this base.

Companies recognise that Ireland needs to establish a well-run and attractive Local Division of the UPC. An Irish Local Division would offer “increased practical options to pursue patent infringements in UPC states that are very slow or otherwise anti-patentee”. One respondent stated:

*“Irish participation in the UPC makes certain patent-based opportunities more likely to go through my company. What these opportunities will actually be is somewhat dependent on how the court operates in practice. However, it is certain that these UPC-based opportunities will not go to any Irish company, if Ireland does not participate.”*

Ireland’s participation in new system would result in “increased interest in the Irish IP sector”, with the UPC “helping to bring in money, and to protect and grow Ireland’s knowledge-based economy”. Participation must also be done in a timely manner to enable Ireland to make the fullest use of the potential of the new system. Ireland must be seen to play a full role in getting the UPC started and in influencing key decisions regarding the court because it would support our enterprise base. Enhancing Ireland’s position as an IP hub would growth of key patent-intensive sectors through attracting new companies to Ireland and expanding the existing firm base here.

## Disadvantages of the Unitary Patent System to companies

Respondents were asked for their opinions on the likely disadvantages of both the new Unitary Patent and the UPC system to their companies. Only 60% of participants provided a response to this question. Over half of these stated there was “none that we can identify”, “cannot see any”, “none to my knowledge”, “not sure”, or simply “do not know”. One company stated there was “none”, with “all upside” and “at least the option would be available” to multinational companies operating from Ireland. Another respondent went further, “since we see the European patent system today as weak for technology companies, we do not see any significant disadvantages”, so “this is only one step in the right direction for Europe”.

Geographic scope was cited by a few companies as somewhat negative. Currently, 25 EU Member States have signalled their intention to be part of the new Unitary Patent System. One company stated that it “doesn’t cover the full EU area, still may need to acquire multiple patents for necessary coverage”. Another added, “it is frustrating that the UK has left the EU, and it is frustrating that some EU countries such as Spain, are refusing to sign up to accept jurisdiction of the EU Patent Court”. It

was also noted that Switzerland is excluded from participating in the new system. It is only open to members of the European Union and is a key part of completing the Single Market.

Two risks were commonly raised at European level during the process to agree and establish the UPC. These are the revocation risk, and the injunction risk. These are not unique to Ireland and concern the system itself. Central revocation or “lose one, lose all” was referenced by four companies as a potential downside. Companies could be exposed from “centralised attack by third parties”, with one respondent adding “because of the lower costs and faster procedures a third party might be more likely to take an action at the UPC against a patent”. Forum shopping could lead to the “rise of Non-Practising Entities (NPEs) getting European injunctions”, with preferred locations for seeking injunctive relief emerging.

There is a degree of uncertainty with anything new of course. Certain companies will elect for the “wait and see” approach, based on their initial assessment of the Unitary Patent System. Another stated that the Unitary Patent System is “not in line with our patent filing strategies in Europe” and will opt for the national route for the time being, but “will follow the maturation of the UPC to determine when to elect to participate”. Another stated that the “transition period will likely lead to additional costs as we all grapple with dealing with two systems operating in parallel”, which will require “simple and understandable messaging on the pros and cons of using each” thereby “directing entities one way or the other. The “ability to opt in or out” of the new system was highlighted as an important safeguard for companies.

The UPC is being developed at the crossroads of civil and common law traditions. One respondent stated concern at the potential of there being “too heavy German influence” in the new court, which will require Ireland’s participation from the common law tradition to avoid making the “system one-sided and less robust”. This new pan-European court is “new and will need to establish precedence”, but according to one respondent, “there is a degree of uncertainty about how the law will be interpreted by the court”. Another remarked that there is “unknown risk due to unknown case law”. It was noted that the new system is “confronted with high expectations” and in terms of UPC proceedings, the “strict timelines for court dockets might be set too ambitious, particularly, at the launch of the UPC system”, which “could impair the quality of the judgements”.

Transitioning to a new system is complicated. One respondent expressed “concern” that a “pan-European patent system with central administration would be quickly overburdened with work” and might not be able to avoid the “backlogs and delays affecting other pan-European agencies”. The capacity of the system to cope with the workload in the early days is a potential area for concern according to one respondent, “it is hard to know if there will be a higher level of bureaucracy involved in such a system and whether it is sufficiently resourced to cope with all of suits that might lead to delays”. Finally, a respondent from a micro-enterprise stated that companies will need to familiarise themselves with the new system and this could have cost-considerations: “There will be some new learning to get up to speed with the new systems and we will have to get external help on this”. Irish companies may need specific support and guidance in transitioning to the new system.

## **Benefits of the Unitary Patent System to Irish business sectors**

Ireland’s participation in the Unitary Patent System will support the further expansion of the patent-intensive sectors across the country, creating jobs, benefitting SMEs, and boosting Ireland’s innovation performance. Respondents were asked for their opinion on which sector of Irish business would benefit the most.

Participation will spark further expansion of the pharmaceutical, medical technology, and life science sectors, according to most respondents. It is also expected to benefit Ireland’s technology sector, with specific opportunities for companies involved in machine learning, artificial intelligence, data analytics, semiconductors, telecoms, and consumer electronics. Engineering industries will gain from Ireland’s involvement in the new pan-European system.

The harmonisation of patent protection will support companies involved in research, development, and innovation. One respondent said, “any company with innovation as a strategic element in its growth plans will benefit”. In terms of “sectors that have strong RD&I potential”, it must be viewed that benefits will extend to “not just current sectors but emerging technologies”. Energy technology, “like wind and batteries”, was called out. According to one respondent, Ireland’s patenting performance is likely to increase in the following emerging technologies:

*“Renewable Energy is a vast new high growth sector which Ireland should be a leader in, and I can see that areas such as Floating Offshore Wind, Green Hydrogen, Green Ammonia, Energy Storage, Wave Energy, Carbon Capture, Renewable Energy Exports through Interconnector Cables, Green Data Centres and Vertical Farming are going to be huge sectors, which will all need to register many new Patents.”*

Construction and agriculture are not currently strong innovative sectors, but the potential is there if supported by investment. “Industries that are not IP intensive”, such as retail or “commodity-based manufactures” can be expected to benefit the least. In short, Ireland’s participating in the Unitary Patent System will boost “any sector currently innovating or with plans to innovate and wishing to protect its IP in Europe”.

According to one respondent, “we hope it will be of most benefit to SME's that are trying to innovate on limited resources”. This includes “all start-ups with innovative products”. The “greatest benefit” from the UPC will be to “SMEs because typically they lack the means to fight patent infringement cases across multiple jurisdictions”. There will be spill-over benefits too. SMEs generally will gain from “local input” to down-stream or supply-chain activities of a general expansion patent-intensive sectors across the country. Hospitality, travel, retail, and hotels would indirectly benefit from Ireland hosting an attractive and well-marketed UPC Local Division. In addition, one respondent added that it would also grow legal, professional, and other technical advisory services in Ireland.

## Timing of the Irish referendum to ratify the Unified Patent Court Agreement

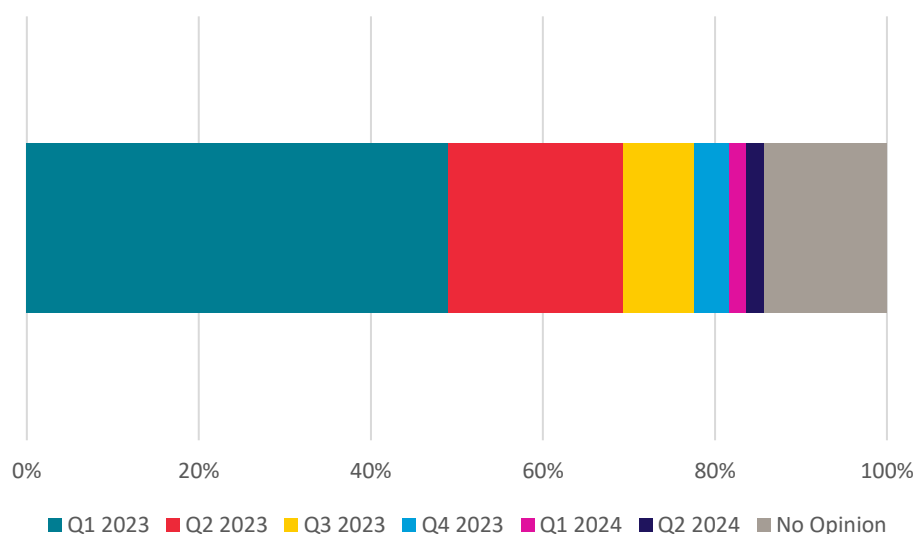
Ratification of the Unified Patent Court Agreement (UPCA) allowing Ireland to participate in this new court structure will require a referendum. The timing for such a referendum is political decision. On 28 June 2022, Government reconfirmed Ireland’s commitment to the UPC. It sent an important message to other countries, as well as international investors, that Ireland is determined to be fully involved in the new system. Government stated that the UPCA referendum could be held in 2023 or concurrent with the Local and European Elections in 2024. It would not be held this year.

Companies were asked for their opinion on when the referendum should be held. Using the timeframe set out by Government, respondents were given options in 2023 and for the first half of 2024 only. This is because Government has stated that it would not be held this year, and the fact that Local and European Elections will take place in the Q2 of 2024.

Approximately 70% of respondents stated that the referendum ratifying the UPCA should take place in the first half of 2023. In fact, almost half of all respondents indicated their preference to be held in Q1 2023. Four out of five companies feel that the referendum should be held sometime next year with only 4% of respondents listing either Q1 or Q2 2024. No opinion on the preferred timing was provided by 14% of respondents.

The responses to this part of the survey reflects the urgency at stake. May 2024 is the absolute latest date that a referendum should be held, and even then, there could be a significant opportunity cost to Irish companies. They want prompt action on this matter. One company stated that “SMEs will be materially disadvantaged by Ireland's delay in ratifying” and “this disadvantage will increase the greater the delay”.

**Fig. 6: Opinion of companies on when the Irish referendum to ratify the Unified Patent Court Agreement (UPCA) should be held**



Time is clearly of the essence, with one company stressing that the “referendum should be as soon as possible”. One respondent stated, “this is a huge opportunity for advancing STEM industries in Ireland but only if the matter is progressed with appropriate urgency”. Another added, “there are compelling arguments for Ireland to participate in the UPC and this should be addressed without delay”. Progress is “frustratingly slow and gives impression that Ireland is not IP-progressive”.

Across Europe, preparations for the new Unitary Patent system are at an advanced stage. The UPC is on track to open its doors on 1<sup>st</sup> April 2023, with or without Ireland. One company stated that it is “essential” that Ireland participates in the UPC “as early as possible”. Another stated, “If it is the right thing for Ireland to do, then we should be participating from the beginning”.

Companies wish to ensure that the country does not miss out on the substantial opportunities for economic growth the UPC presents. One remarked that “this an opportunity for Ireland to increase its influence as a home of IP”, whilst another said, “not having a UPC will be disadvantageous in the medium term as investment cycles in innovation will likely pick up once this cost-of-living crisis dissipates”. One respondent stated, “it is imperative that Ireland is part of the Unified Patent system so that all Irish businesses can avail of a level playing field when it comes to protecting IP”.

Ireland’s perceived advantages of being English-speaking and common law were called out in several responses. It was observed that “Ireland will be the only common law country to participate in the UPC”, which will enhance the case for an Irish Local Division. Being able to litigate on a pan-European basis before a court with native English proficiency and common law experience is a big deal for companies. One respondent said, “I would rather be in a court in Ireland rather than a German or French court”. While the UPC is to be grounded in the best of common and civil law traditions, some concern was voiced over the ability to shape the direction of the court:

*“If Ireland does not join soon, inevitably the common-law provisions of the UPC (for which the pre-Brexit UK and Ireland fought) will be washed out in practice by the larger civil-law UPC states. Joining several years in the future has thus a very significant opportunity cost. Late-joining is therefore not cautious but needlessly wasteful.”*



It was noted that “It is always good to be there from the start” because “there is reduced opportunity to influence developments if joining later”. Others added that Ireland would have a strong case to make in determining the future location of the London-part of the Central Division because the “UK cannot host the court” and would “provide jobs and enhance key industrial sectors [chemical, pharmaceutical, medical technology, and life sciences sectors]”. A slow pace of ratification puts this further out of reach whereas “it would be much more preferable to be ambitious: aiming to join quickly and pressing hard to be the third central division”.

Failure to ratify the agreement through not holding the referendum or losing said referendum would have negative consequences on Ireland’s competitiveness and attractiveness as a location to do business. One respondent stressed, “Failure to ratify both the Unitary Patent and UPC will negatively impact Ireland’s position as a place to do business relative to other countries with whom we compete for FDI”, adding that “it would also undermine our R&D environment by making it more difficult for Irish businesses to fully exploit patents arising from their research”. Another added that there would be “huge commercial disadvantage to the nation should we not join this initiative”.

Several responses noted that the UPC is a niche area, which may cause problems in terms of low public interest during a referendum campaign. One response stated:

*“Ireland needs to move quickly on the referendum and needs to make a strong effort to give that referendum the best chance of success bearing in mind that it is a complex and esoteric subject for the public to consume. We are punching well about our weight as a small nation in the technology, pharma and biotech space. We absolutely need to progress the UPC quickly to continue to be taken seriously by international markets in this space. The positive effects of this will be significant for many sectors including the product owners, users, servicers, legal, patent etc.”*

One respondent stated that “Government needs to do more to raise the level of public awareness, and to motivate the public to want to turn out and vote in the Referendum”. There will also be a role for civil society groups to advocate for a positive outcome. Another added, “it will be a significant dropped ball for any government if the referendum is not held in an efficient and well communicated manner” because the “situating of the UPC in Ireland offers us the opportunity to further substantiate our claims of global impact in terms of product and process development”.

# Appendix One:

## Questionnaire on the Unitary Patent System (September 2022)



# Ibec and APTMA Survey on the Unitary Patent System (September 2022)

The survey will take approximately 6 minutes to complete.

## The Unitary Patent System

The Unitary Patent is a proposed new single European patent right with unitary legal effect that will enable inventors and applicants to obtain uniform patent protection for their inventions across the particular European member states that are participating in the Unitary Patent system. This differs from the current European system, in which patents are granted centrally but then must be validated nationally to be brought into force as a bundle of individual national patents which need to be maintained separately, in each country.

The proposed Unified Patent Court is a new court that is being established under an International Treaty. The new court will provide a uniform specialised forum for reaching decisions on patent litigation for businesses in those member states that are participating in the Unitary Patent System. This court will be centralised, and therefore will remove the need to conduct parallel litigation for the same patent in different countries. The objective is that this court will reduce cost and enhance legal certainty by removing the risk of having varied and conflicting decisions being issued from a number of national courts in respect of the same patent.

Section 1

## Introduction

1. Your company (for internal reference only)

Enter your answer

2. Your name (for internal reference only)

Enter your answer

3. Your job title (for internal reference only)

Enter your answer

4. What sector does your company operate in?

Enter your answer

5. Total employees

Tick one

1-10 employees	
11-50 employees	
51-250 employees	
250+ employees	

6. Is your company a client of a state enterprise agency?

- Yes
- No

7. If the answer to Q6 is yes, please tick which agency

Enterprise Ireland	
IDA Ireland	
Údarás na Gaeltachta	
Local Enterprise Office	
Other (State)	

8. Does your company work with a Professional Patent Attorney? Most Professional Patent Attorneys in Ireland are members of the Association of Patent and Trade Mark Attorneys (APTMA).

- Yes
- No

Section 2

## General IP/Patent Questions

9. Does your company have an IP strategy in place?

Yes  
No

10. Are you aware of the proposed Unitary Patent and/or The Unified Patent Court?

Yes  
No

11. Does your company own or licence patents?

Yes (Go to Q12)  
No (Go to Q13)

12. If yes to Q11, please indicate the number of patents owned or licensed by your company

	1-2 patents owned or licenced	3-6 patents owned or licenced	6-12 patents owned or licenced	12+ patents owned or licenced
European patents or patent applications via European Patent Office				
National patents				

13. If no to Q11, please tick all the reasons that apply for your company not owning/licensing patents

Patent decisions taken elsewhere	
Not applicable to my business	
Too expensive	
Too time extensive/not enough time	
Lack of expertise	
Other (State)	

14. Has your company increased its IP activities, including resources, in the past 5 years?

- Yes
- No

15. Is your company planning to increase its IP activities, including resources, in the next 5 years?

- Yes
- No

Section 3

## Protection & Enforcement - The Unitary Patent System

### The Unitary Patent and the Unified Patent Court

16. Would your company be likely to increase its level of patenting activity due to Ireland's participation in the new Unitary Patent and the Unified Patent Court system?

	Very Likely	Somewhat likely	Somewhat unlikely	Very unlikely	Don't know
Please tick one	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

17. Please comment on your response to Q16

Enter your answer

18. What, in your opinion, would be the likely advantages of the new Unitary Patent to your company?

Enter your answer

19. What, in your opinion, would be the likely advantages of the new Unified Patent Court system to your company?

Enter your answer

20. What, in your opinion, are the likely disadvantages of both the new Unitary Patent and the Unified Patent Court system to your company?

Enter your answer

21. Which sector of Irish business e.g. pharma, engineering, technology do you think will benefit the most from the new system?

Enter your answer

22. Which sector of Irish business do you think will benefit the least?

Enter your answer

23. The Unitary Patent and Unified Patent Court is on track to start in early 2023 with or without Ireland as a participating member state. The Irish Government has committed to holding a referendum on Ireland’s participation in the Unitary Patent and Unified Patent Court by May 2024. Do you have an opinion on when the referendum should be held?

	Q1 2023	Q2 2023	Q3 2023	Q4 2023	Q1 2024	Q2 2024	No Opinion
Please tick one							

24. Is there anything else you would like to add concerning Ireland’s future participation in the new Unitary Patent and the Unified Patent Court system?

Enter your answer

### Please note

*The information contained within this survey is of a general nature and is not intended to address the circumstances of any particular individual or entity. All data collected will be treated in the strictest confidence and will be reported on a consolidated basis only (i.e. no individual company data will be identifiable within the results). Information contained within this survey is not a substitute for specialist intellectual property, tax, payroll, employment law or other legal advices. No one should act on such information without appropriate professional advice.*

