

THE JURISDICTION OF THE UNIFIED PATENT COURT AND TURKEY'S POSITION: A LEGAL PERSPECTIVE ON EUROPEAN PATENT INTEGRATION

Canan Küçükali, page 115-136

ABSTRACT

The long-discussed reform process in the European patent system gained concrete form with the "Unified Patent Court Agreement" signed in 2013. This system aims to ensure that patents granted by the European Patent Office are valid and enforceable by a single court in participating countries. This aims to provide a more predictable, swift, and cost-effective litigation process for both patent holders and third parties. The Unified Patent Court has exclusive jurisdiction over disputes concerning the infringement and invalidity of unified patents valid in member states of the European Union that have ratified the agreement. The court has a centralized structure and regional headquarters in Paris, Munich, and Milan. However, the United Kingdom's withdrawal from the system following Brexit has necessitated a reassessment of the court's structure and jurisdiction. For Turkey, however, this system is a direct consequence of this has no effect, as Turkey is neither a member of the European Union nor a party to the Unified Patent Court Agreement. However, as a party to the European Patent Convention, Turkey recognizes the validity of classical European patents obtained through the EPO at the national level. This situation, because patent holders in Turkey cannot participate in the unified patent system, leads to a division in terms of both legal protection and jurisdiction. This paper examines the jurisdictional structure, functioning, and role of the Unified Patent Court in the European patent system, and discusses the legal and practical consequences of Turkey's non-participation in this system. Issues such as conflict of jurisdiction, forum selection, and recognition of decisions, particularly in international patent disputes, are considered significant problems for Turkey. Consequently, Turkey's non-participation in the unified patent system creates certain limitations in terms of international patent protection; this may affect both the rights of domestic patent holders in Europe and the rights of foreign patent holders in Turkey. In this context, Turkey's future policy choices and international integration strategies are of critical importance for the development of patent law.

Keywords: Patent Law, Unified Patent Court, Jurisdiction

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I. Introduction

The protection of inventions as technical solutions that satisfy the criteria of novelty, inventive step, and industrial applicability has long been the subject of extensive debate both within national legal systems and at the international level.

The new Unified Patent Court (UPC)¹ became operational on June 1, 2023 – and it is fundamentally reshaping the European patent landscape. The UPC aims to eliminate this fragmentation by providing a unified and coherent judicial model.²

The purpose of this article is to examine the scope of the UPC's jurisdiction, its temporal and geographical effects, its relationship with the case law of the Court of Justice of the European Union (CJEU), and its legal implications particularly in relation to Türkiye. This study further evaluates how the establishment of the UPC reshapes the European Patent Convention (EPC) framework and assesses Türkiye's position within this evolving system. The research draws on UPC decisions, CJEU jurisprudence, relevant provisions of the EPC and the Brussels Ibis Regulation, as well as key academic commentary.

However, the jurisdiction of the UPC has acquired particular significance in practice and in legal scholarship. The question of the circumstances under which the Court may exercise jurisdiction over patent infringements that occurred prior to its establishment constitutes a central field of debate, both in terms of delineating the boundaries of its jurisdiction and determining whether retroactive claims can be brought within a single action.

Below, the case law of the UPC on jurisdiction, the legal bases of this jurisdiction, and the criticisms raised in the doctrine will be examined systematically; this will be followed by an assessment of the possible implications for Turkey.

¹ [The Unified Patent Court \(unified-patent-court.org\)](https://www.unified-patent-court.org).

² Richard Arnold, Harmonization of European Patent Law, *Journal of Intellectual Property Law & Practice*, Volume 14, Issue 9, September 2019, Pages 657–658,

II. Methodology

This study adopts a qualitative research methodology. The analysis is based on three main sources: (1) international and EU legislation (including the UPCA, EPC and Brussels Ibis Regulation), (2) judicial decisions (particularly UPC decisions and the CJEU's ruling in BSH/Electrolux), and (3) comparative legal scholarship and doctrinal sources. The study employs doctrinal interpretation, case-law comparison, and normative assessment. In evaluating the implications for Türkiye, the relevant provisions of the Turkish Code of Private International Law (MÖHUK), the Turkish Code of Civil Procedure (HMK), and the Constitution of Türkiye are also taken into account.

Methodologically, the study consists of four stages: first, the nature and justification of the patent system are outlined; second, the historical development of European patent protection and the establishment of the UPC are analysed; third, the normative framework and case law regarding the UPC's jurisdiction are examined; and finally, the legal consequences for Türkiye are assessed.

III. Conceptual and Institutional Foundations of Patent Protection

The patent system grants inventor time-limited exclusive rights in return for the public disclosure of technical knowledge.³ Its justification lies in fostering innovation by encouraging investment in research and development while preventing the under-production of socially valuable information.⁴ Since patent rights are confined by duration, scope, and legal limitations, their legitimacy depends on maintaining a balance between private exclusivity and the public interest.⁵ By limiting unrestricted access to and use of technical information, the patent system

³ Machlup, Fritz, *An Economic Review of the Patent System*, Study of the Subcommittee on Patents, Trademarks and Copyrights of the Committee on the Judiciary, United States Senate, 85th Congress, 2nd Session (Washington D.C., 1958), pp. 1–6, 33–35.

⁴ Landes, William M. and Richard A. Posner, *The Economic Structure of Intellectual Property Law* (Harvard University Press, 2003), pp. 294–301.

⁵ Cornish, William; Llewelyn, David; Aplin, Tanya, *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights*, 9th edn (Sweet & Maxwell, 2019), pp. 1–9, 225–227.

enables inventors to capture, at least in part, the economic value created by their innovative activities.⁶

1. The Nature and Justification of the Patent System

Patent protection was developed to balance the dissemination effects arising from the public-good nature of technical knowledge, and has become standardised at the international level. While it incentivises innovation by offering time-limited exclusivity, it also restricts access and may impede technology diffusion.

A patent, as a form of intellectual property, is an official title conferred on inventions that offer a technical solution to a specific problem. By means of a patent, the inventor – or those to whom the inventor's rights have been assigned – acquires exclusive rights to manufacture, use and commercialise the patented invention. In exchange for these exclusive prerogatives, the invention must be fully disclosed to the public. However, due to its public good nature, in the absence of legal protection, once disclosed, information becomes openly accessible to everyone. This situation leaves inventions unprotected and freely reproducible, thereby significantly limiting their economic value to the creator.⁷

In order for patent holders to focus more on research, development, and innovation, they need to adopt new methods that enable them to stay away from disputes, lengthy negotiations, and litigation processes.⁸

As in other branches of intellectual property law, the principle of territoriality applies in the field of patents. Because patent rights are conferred on a country-by-country basis, an inventor seeking protection in multiple jurisdictions is required to submit separate applications to the patent offices of each state concerned.

⁶ Fritz Machlup and Edith Penrose, "The Patent Controversy in the Nineteenth Century," *Journal of Economic History* 10, no. 1 (1950): 1–29. Edwin C. Hettinger, "Justifying Intellectual Property," *Philosophy & Public Affairs* 18, no. 1 (1989): 31–52.

⁷ Kenneth J. Arrow, "Economic Welfare and the Allocation of Resources for Invention," in *The Rate and Direction of Inventive Activity* (Princeton University Press, 1962), p. 616, 617 (pp. 609–626); Abbe Brown, smita Kheria, Jane Cornwell, Marta Iljadica, *Contemporary Intellectual Property*, 5th Edition, Oxford University Press, 2019, p. 366.

⁸ [https://www.europarl.europa.eu/RegData/etudes/ATAG/2020/649575/IPOL_ATA\(2020\)649575_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2020/649575/IPOL_ATA(2020)649575_EN.pdf)

2. An Overview of the Unified Patent Court and the European Patent Protection Framework

Throughout the 20th century, efforts to construct a more harmonised international patent regime intensified worldwide. Alongside the objective of substantive harmonisation, the practical drawbacks and costs of having to file separate patent applications in multiple states prompted initiatives aimed at unifying aspects of patent filing and registration.

The European Patent Organisation's international patent system was established in 1973. It allows patent applicants to obtain a bundle of patent rights for the designated Contracting States following one common application procedure⁹.

Whereas the PCT (1970) and the EPC (1973) introduced centralised application procedures, the patents granted under the EPC retain a national character. Türkiye's accession to the EPC ensures that classical European patents validated in Türkiye have the same legal effect as national patents.¹⁰ Every Contracting State, even within the EU, remains free to demand a Translation of the patent specification.¹¹ Türkiye became a party to the Patent Cooperation Treaty on 1 January 1996.¹² In Turkey, the authorized office for patent registration is the Turkish Patent and Trademark Office (Türkpatent).¹³

The European Patent Convention (EPC) is a multilateral treaty signed by 39 countries: it provides a centralized system for searching, examination, and granting at the European Patent Office (EPO) in patent registration in the countries covered by the convention, providing a framework for

⁹ Art. 1, 3, 52ff EPC; *Katharina Kaesling* The European Patent With Unitary Effect –A Unitary Patent Protection For A Unitary Market? Article in *Journal of Law and Jurisprudence* January 2013 (pp 86-111)

¹⁰ EPC (1973) Art 3; see also C Küçükali, *Patent Hukuku ve Birleşik Patent Mahkemesi* (2025).

¹¹ Lionel Bently, Brad Sherman Dev Gangjee, Philip Jhonson, *Intellectual Property Law*, Oxford University Press, 5th edition 2018, s. 393, p. 416; Nikolaos Athanasios Anagnostopoulos, Exploring the Complicated Relationship Between Patents and Standards, With a Particular Focus on the Telecommunications Sector, https://www.researchgate.net/publication/348803442_Exploring_the_Complicated_Relationship_Between_Patents_and_Standards_With_a_Particular_Focus_on_the_Telecommunications_Sector

¹² Uğur Çolak, *Türk Patent Hukuku*, Adalet Ankara 2022, p. 58

¹³ <https://www.turkpatent.gov.tr/TURKPATENT/commonContent/History>

harmonization of substantive law.¹⁴ A European patent is essentially a group of independent, nationally enforceable, nationally revocable patents. Turkey became a party to the convention on 1 November 2000. The rights granted to validated, verified/expanded European patents are the same as national patents in these states. However, the extension of a European patent or patent application to these states "is not subject to the jurisdiction of the [EPO] appellate boards."¹⁵

Article 52(1) of the Convention states that "European patents shall be granted for any inventions, in all fields of technology, provided that they are new, involve an inventive step, and are susceptible of industrial application. There is also a provision that further specifies the types of subject matter which are not regarded as inventions within the meaning of this article."

Although patents granted under the EPC are referred to as "European patents" due to the fact that the application and infringement of patents are purely national, they are not unitary in character. Once granted, national verifications result in becoming enforceable like a national patent.¹⁶

3. Establishment of the Unified Patent Court

On February 19, 2013, 25 Member States of the European Union signed the Agreement on the Unified Patent Court (UPC), aiming to establish a centralized judicial system for patent disputes.¹⁷ The UPC was designed to have exclusive authority over legal actions involving European patents and unitary patents. After reaching the required number of ratifications as outlined in Article 89 of the Agreement, the system entered into force on

¹⁴ Ullrich H. The Impact of Brexit on Unitary Patent Protection and its Court, p. 33 ,Max Planck Institute for Innovation and Competition Research Paper No. 18-20; Bently, Sherman, Gangjee, Johnson, p. 401, 403;

¹⁵ https://www.epo.org/en/legal/case-law/2019/clr_vii_2_2.html

¹⁶ https://www.researchgate.net/publication/348803442_Exploring_the_Complicated_Relationship_Between_Patents_and_Standards_With_a_Particular_Focus_on_the_Telecommunications_Sector [erişim tarihi: 28 Ekim 2025].

¹⁷ <https://www.unifiedpatentcourt.org/en>

June 1, 2023, marking a major milestone in the unification of patent litigation in Europe.¹⁸

Following *Opinion 1/09*, the UPC was redesigned as a “common court” compatible with EU law. Paragraphs 74–89 of *Opinion 1/09* are particularly significant, as the CJEU explained the conditions under which a supranational court can remain consistent with the EU Treaties.¹⁹

With regard to patents, Article 27 of the TRIPS²⁰ Agreement provides that “patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step, and are capable of industrial application.” This provision closely mirrors the formulation found in Article 52 of the European Patent Convention (EPC).²¹

The newly established Unified Patent Court, which commenced its operations on June 1, 2023, marks a transformative development in the European patent system.²² UPC has established itself as a new, solution-oriented forum with comprehensive jurisdiction and effective mechanisms for resolving patent disputes.²³

A unitary patent ensures that an invention has a single form of protection that produces effects simultaneously in multiple states (Art. 3(2) UPRR). However, a request for unitary effect must be filed within one month after the publication of the grant of the patent in the European Patent Bulletin. It is not possible to request unitary effect before the patent is published in the Bulletin or after the expiry of the one-month period. Once a timely

¹⁸ Confidentiality of Communication between Clients and their Patent Advisors Unitary Patent Court (UPC) Agreement https://www.wipo.int/documents/d/scp/docs-en-confidentiality-advisors-clients-docs-03_upc.pdf

¹⁹ Matthias Lamping, Hanns Ullrich The Impact of Brexit on Unitary Patent Protection and its Court, p. 125, Max Planck Institute for Innovation and Competition Research Paper No. 18-20

²⁰ TRIPS is an international agreement that encompasses all types of intellectual property rights and establishes minimum standards of protection, Carlos Correa, Intellectual Property Rights, WTO and Developing Countries: The TRIPS Agreement and Policy Options, New York 2000, p. 1

²¹ The history and justification of patent the system

²² <https://www.wipo.int/en/web/patents>

²³ Jacop Carls/ Leoni König, The UPC: The new forum defines its jurisdictional boundaries; Matthias Lamping, M, Hanns Ullrich H. The Impact of Brexit on Unitary Patent Protection and its Court, Max Planck Institute for Innovation and Competition Research Paper No. 18-20

request is approved, the invention becomes unitary and is simultaneously protected in all states that are parties to the UPCA.²⁴

Lawsuits concerning alleged patent infringements are filed before the Local Divisions of the Unified Patent Court (UPC), which are located in Düsseldorf, Munich, Hamburg, Mannheim, Paris, Vienna, Brussels, Copenhagen, Helsinki, Milan, The Hague, Lisbon, and Ljubljana. In addition, the Nordic-Baltic Local Division, with several seats in Stockholm, Riga, Tallinn, and Vilnius, also hears such cases.

In contrast, revocation actions—typically brought by competitors seeking to have a patent declared invalid—are handled by the UPC's Central Divisions. These are based in Paris, Munich, and, since the summer of 2024, Milan. The appropriate Central Division for a given case is determined according to the technological field of the patent in question.²⁵

The Court of Appeal, which serves as the second-instance judicial body, is located in Luxembourg. Its panels consist of legally and technically qualified judges specializing in various scientific fields, and they are structured in a multinational manner with judges from different Member States.²⁶

The Unified Patent Court (UPC) provides a single, centralized judicial forum for both Unitary Patents and classic European patents within the Member States that are parties to the Agreement on a Unified Patent Court (UPCA). The Court exercises exclusive jurisdiction over Unitary Patents and those classic European patents that fall under the UPCA's scope. Owing to the possibility of enforcing a single judgment in numerous member states and the centralisation of disputes, the Court grants the patent holder a broad sphere of influence.

During the transitional period (2023–2030), classical European patents may be litigated either before national courts or the UPC; however, where an opt-out is withdrawn, the UPC assumes full jurisdiction over the patent, including acts of infringement committed both before and during the opt-

²⁴ Stefan Luginbuehl, "An Institutional Perspective I: The Role of EPO in the Unitary (EU) Patent System", *The Unitary EU Patent System*, Justine Pila ve Christopher Wadlow (ed.) (Oxford: Hart, 2015) 48.

²⁵ Woll, Laura, *The Unified Patent Court – a New International Court based on an Enhanced Cooperation between EU Member States*, jean-monnet-saar 2024

²⁶ Woll, Laura, *The Unified Patent Court – a New International Court based on an Enhanced Cooperation between EU Member States*, jean-monnet-saar 2024

out period, in order to prevent jurisdictional fragmentation and promote harmonisation under the UPCA.²⁷

4. Jurisdiction Under the Brussels Ibis Regulation

Article 24(4) of Brussels Ibis grants exclusive jurisdiction over registration and validity. However, because the UPC qualifies as a “common court” under Articles 71a–71d, it may exercise extended jurisdiction over cross-border infringement claims.

The Brussels Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, which entered into force on 1 February 1973, was later codified in 2000 as Regulation (EC) No. 44/2001, commonly referred to as the Brussels I Regulation.

After the Treaty of Lisbon, which entered into force on 01.01.2009²⁸, the Brussels I Regulation was also reconsidered.²⁹

Under the Brussels Ibis Regulation, which introduced amendments regarding jurisdiction agreements, it is no longer required that at least one of the parties be domiciled in a Member State for a jurisdiction agreement to fall within the Regulation’s scope.

In disputes concerning the registration or validity of patents, trademarks, designs, or other intellectual property rights requiring deposit or registration, the courts of the Member States that are authorized under European Union law or an international agreement shall have exclusive jurisdiction over cases in which such rights are requested or have been deposited or registered. However, without prejudice to the jurisdiction of the European Patent Office under the Convention on the Grant of European Patents, signed in Munich on 5 October 1973, the courts of each Member State shall exercise exclusive jurisdiction—regardless of the parties’ domicile—over proceedings relating to the registration or validity of any European patent granted in that Member State.

This framework aims to ensure legal certainty and uniformity in the protection of intellectual property rights, while maintaining a clear balance of authority between the European Patent Office and national

²⁷ UPCA, Arts 32 and 83; B Luginbühl, ‘The Unified Patent Court and Its Temporal Jurisdiction’ (2024) *Journal of Intellectual Property Law & Practice*.

²⁸ bkz., <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:306:FULL:EN>

²⁹ Işıl ÖZKAN, “Avrupa Birliği Hukukunun Üye Devletlerin Devletler Özel Hukukuna Etkisi”, (ed.: Işıl ÖZKAN/Ceyda SÜRAL/Uğur TÛTÛNCÛBAŞI), *Avrupa Birliği Devletler Özel Hukuku, Adalet Yayınları*, 2016, s. 1-23, s. 4-7.

judicial bodies. The case law of the Court of Justice of the European Union (CJEU) has, by reinterpreting certain national and international jurisdictional boundaries, indirectly influenced the role of the UPC; in practice, this has produced broad and complex implications for the application of the UPC's jurisdiction.³⁰

Through its rulings and the development of its case law, the UPC seems to assert jurisdiction even over disputes involving infringing acts committed prior to the UPCA's entry into force, giving rise to a perception of an expanded jurisdictional scope.

In particular, the CJEU's judgment in Case C-339/22 has clarified key aspects of jurisdictional interaction between EU law and the UPC system, reinforcing the principle that the UPC must operate in conformity with the general framework of EU judicial cooperation and fundamental procedural guarantees.³¹

This ruling constitutes a turning point in cross-border infringement litigation. In **paras 56–72**, the CJEU held that: validity remains subject to the exclusive jurisdiction of national courts;

however, infringement and damages claims relating to validations in other Member States may be heard by a single court under certain conditions; refusing such claims as “foreign validations” is incompatible with Article 4(1) Brussels Ibis. This interpretation laid the doctrinal groundwork for the UPC's emerging “long-arm jurisdiction”.

5. CJEU (BSH v Electrolux) and Article 24(4): Implications for the UPC and Third-Country Patent Validations

In its earlier rulings,³² the CJEU had held that interim measures could not be granted beyond challenges to the validity of the patent at issue. The Court has now departed from that position. With this decision, Swedish courts have been recognized as having jurisdiction to rule on infringement even with respect to parts of European patents that do not belong to Sweden. However, in the case of central revocation actions brought before the UPC against European patents of third countries, the UPC does not

³⁰ Michael Rüberg/Victor V. Fetscher/Lars Eggendorfer/Micheline Verwohlt, <https://www.boehmert.de/en/update-on-ecj-ruling-c-339-22/?utm>

³¹ Judgment of the Court (Grand Chamber) of 5 September 2024, C-339/22, EU:C:2024:XXX; see also Agreement on a Unified Patent Court (UPCA), OJ C 175, 20.6.2013, p. 1–40.

³² Judgment of the Court (First Chamber) of 13 July 2006, GAT-Luk, <https://curia.europa.eu/juris/liste.jsf?num=C-4/03>

have jurisdiction. In its judgment in Case C-339/22, *BSH Hausgeräte GmbH v Electrolux AB*, the Court of Justice of the European Union (CJEU) clarified the scope of Article 24(4) of the Brussels Ibis Regulation, which confers exclusive jurisdiction on the courts of the Member State in which a patent is registered. The Court held that this provision applies only to proceedings that directly concern the validity or existence of a patent, such as revocation actions or declarations of invalidity.³³

By contrast, patent infringement actions, even where questions of validity arise incidentally, do not fall within the exclusive jurisdiction rule of Article 24(4). Consequently, courts may adjudicate infringement disputes relating to foreign patent validations, provided that patent validity is not the principal subject of the proceedings. This interpretation marks a significant departure from the traditional “mosaic” approach to European patent litigation, under which infringement claims were fragmented along national validation lines.

The factual background of the case illustrates this shift. BSH brought infringement proceedings in Sweden concerning its European patent EP 1 434 512, validated in multiple jurisdictions, including Germany, Austria, France, Italy, the Netherlands, and Türkiye. While Electrolux had initiated revocation actions in certain countries, the Swedish proceedings focused on infringement claims and damages. Relying on Article 4(1) of the Brussels Ibis Regulation (actor sequitur forum rei), BSH sought damages not only for infringements committed in Sweden but also for acts occurring in other countries where the patent was validated.³⁴

The CJEU confirmed that such claims are admissible, as long as the court seised does not rule on the validity of the foreign patent validations. This approach enhances procedural efficiency, strengthens legal certainty, and reduces jurisdictional fragmentation in cross-border patent disputes.

³³ CJEU, *BSH Hausgeräte GmbH v. Electrolux AB*, C-339/22, Andrew Wells Rachel Montagnon Monika Klajn Eren Ozenir, 25.02.2025, <https://www.hsfkramer.com/notes/ip/2025-02/invalidity-counterclaims-will-not-interfere-with-eu-courts-ability-to-determine-multi-jurisdiction-infringements-holds-the-cjeu-in-bsh-hausgerate-v-electrolux>

³⁴ Magnus / Mankowski/ Calvo Caravaca, 2011, s. 78; Özkan, Işıl/ Süral, Ceyda/ Tütüncübaşı, Uğur, Avrupa Birliği Devletler Özel Hukuku, Adalet Yayınevi, Ankara, 2016, s. 34-35; Küçükyalçın, Arzu, “Brüksel I. Tüzüğü’nde Tüketici Akitlerine İlişkin Milletlerarası Yetki Kuralları”, TBB Dergisi, Sayı 55, 2004, s. 346; Cansu Akgün Tekgül, Brüksel Ibis Tüzüğü ile Avrupa Birliği Genel Veri Koruma Tüzüğü Çerçevesinde Kişisel Verilerin İhlaline İlişkin Özel Hukuk Uyuşmazlıklarında Milletlerarası Yetki Kuralları, s. 242 <https://dergipark.org.tr/tr/download/article-file/728837>

The decision is particularly relevant for the Unified Patent Court (UPC). It supports the UPC's ability to hear infringement actions concerning European patents validated in multiple UPC Contracting Member States, without encroaching upon the exclusive competence of national courts over patent validity. At the same time, the judgment underscores a crucial limitation: the UPC has no jurisdiction over central revocation actions relating to patent validations in third countries, such as Türkiye.

Nevertheless, the *BSH v Electrolux* ruling demonstrates that infringement disputes involving foreign validations, including Turkish validations of European patents, may still be indirectly affected by UPC and EU-based proceedings. While Türkiye is not a party to the UPCA, infringement findings rendered by the UPC or by Member State courts may exert persuasive authority in subsequent Turkish litigation, particularly where the factual and technical assessments overlap.

Accordingly, the judgment strengthens the UPC's role as a central forum for cross-border infringement litigation, while simultaneously delineating the jurisdictional boundaries vis-à-vis third countries. This nuanced balance aligns with the broader objectives of harmonisation, efficiency, and coherence underpinning the European patent litigation framework, while leaving national courts — including Turkish courts — with exclusive authority over the validity and enforcement of patent rights within their respective territories.

The Swedish Court of First Instance ruled that the patent lacked jurisdiction over validations from countries other than Sweden and did not consider infringement and compensation claims for foreign validations. BSH appealed the first-instance decision. The Swedish Court of Cassation appealed to the Court of Justice of the European Union in May 2022 for a preliminary ruling on the jurisdiction of a single Member State court over foreign patent validations under the Brussels-Ibis Regulation. BSH Hausgeräte ruled in the Grand Chamber of the Court of Justice of the European Union (CJEU) that, based on Article 24 of the Brussels-Ibis Regulation, courts in EU Member States have jurisdiction over infringement of parts of European patents not granted in Sweden. However, this article does not apply to non-EU patents. It held that Article 24(4) of the Brussels-Ibis Regulation allows courts in the EU Member State where the defendant is domiciled to hear infringement cases, even if the patent was granted in another Member State and the defendant

contested the patent's validity. However, national courts have exclusive jurisdiction over patent validity.

5. Precautionary measures in the UPC

In order to preserve the Union legal order and its autonomy, the Treaties have established a judicial system designed to ensure consistency and uniformity in the interpretation of EU law.³⁵ Pursuant to Article 19 TEU, the courts and tribunals of the Member States, together with the Court of Justice of the European Union (CJEU), are entrusted with ensuring the application of Union law and the provision of effective judicial protection to individuals. Within this framework, the Unified Patent Court (UPC), as a court common to the participating Member States, constitutes an integral element of the Union's judicial architecture. Pursuant to Article 20 of the Agreement on a Unified Patent Court (UPCA), the UPC is fully bound by Union law and is required to respect the principle of the primacy of EU law. In this context, the preliminary ruling procedure laid down in Article 267 TFEU functions as a binding "instrument of cooperation" between the UPC and the CJEU in patent disputes falling within the UPC's jurisdiction, enabling authoritative guidance on the interpretation of Union law to be obtained.³⁶

Preliminary injunctions, which constitute a form of provisional legal protection aimed at safeguarding the interest that the claimant would obtain if the action is successful—whether sought before or during the proceedings—serve to prevent the diminution of the effectiveness of the final outcome to be obtained through adjudication.³⁷ In Turkish law, Article 159 of the Industrial Property Code regulates preliminary injunctions. Preliminary injunction decisions rendered under Turkish law are enforceable within the territory of Türkiye.

UPC decisions have a wide scope of effect due to the accession of European Union member states that are parties to the UPCA to this new system. This situation is highly attractive for claimants, since a single

³⁵ Opinion of the Court of 18 December 2014, *Accession of the European Union to the ECHR*, 2/13, ECLI:EU:C:2014:2454, para. 174 [

³⁶ Matthias Lamping, Hanns Ullrich The Impact of Brexit on Unitary Patent Protection and its Court, p. 133, Max Planck Institute for Innovation and Competition Research Paper Series.

³⁷ Fülürya Yusufoglu(2015) Patent Davalarında İhtiyati Tedbirler, p. 537, Fikri Mülkiyet Hukuku Yıllığı, 2013,Ed. Tekin Memiş, İstanbul Yetkin.

application can lead to a decision covering several countries at the same time and make it possible to obtain a preliminary injunction.³⁸

The court's broad territorial jurisdiction and promise of speedy trials have pleased applicants in the UPC. The court quickly adjudicates cases. If judges deem a potential patent infringement to pose an irreparable risk of economic harm, they can issue preliminary injunctions on the same day without even hearing the opposing party.³⁹ For example The UPC German Local Division unilaterally issued an injunction in the case of myStromer AG v. Revolt Zycling AG on June 22, 2023.⁴⁰

6. Cross-Border Patent Infringement and Jurisdiction

The CJEU's jurisprudence, which has influenced national courts' definitions of extraterritorial jurisdiction on the subject, has also been reflected in the UPC's jurisprudence, leading to jurisdictional disputes between the UPC and national courts. These CJEU decisions have had a direct or indirect impact on how the UPC's geographical jurisdiction is implemented.

The CJEU's case law on the matter has influenced certain "long-arm" practices and the definitions of cross-border jurisdiction by national courts; this has been reflected in the UPC's jurisprudence and has triggered debates over jurisdictional competition between the UPC and national courts. These rulings have had a direct or indirect impact on how the UPC's geographical jurisdiction is to be applied.⁴¹

In case CFI_712/2025 before the UPC Düsseldorf Local Division, the court extended the preliminary injunction to cover the act of manufacturing, holding that such an extension was necessary to ensure the effective enforcement of the patent proprietor's rights. The court also granted injunctive relief in respect of products manufactured by a third party in China.

³⁸ Antje Brambrink, 2023, <https://www.finnegan.com/en/insights/articles/5-takeaways-for-litigants-from-early-eu-patent-court-ruling.html>

³⁹ Ansgar Ohly, 'Cross-Border Patent Injunctions in the European Union' (2022) 53 *IIC*.

⁴⁰ Application number 525740/2023, file number UPC_CFI_177/2023

⁴¹ Michael Rüberg/Victor V. Fetscher/Lars Eggersdorfer/Micheline Verwohlt, <https://www.boehmert.de/en/update-on-ecj-ruling-c-339-22/?utm>

The decision sets out both how the limits of the patent's scope of protection should be assessed and the criteria governing the applicability of such provisional measures.⁴²

BSH, in turn, filed an infringement action in Sweden. Relying on Article 4(1) of the Brussels Ibis Regulation, BSH sought damages for past infringements that had occurred not only in Sweden but also in the other nine countries where the patent had been validated. Electrolux contested the validity of EP 1 434 512.

More specifically, the Court interpreted Article 24(4) of the Brussels Ibis Regulation as allowing the courts of the Member State where the defendant is domiciled to hear infringement actions even where: the patent has been granted and validated in another Member State, and the defendant has challenged the validity of that patent.

At the same time, the Court confirmed that national courts retain exclusive jurisdiction over questions of patent validity.

Companies from countries that are not parties to the UPCA, such as Türkiye, may still be indirectly affected by UPC decisions due to enforcement and damages mechanisms.

Turkish companies engaged in cross-border trade may face legal risks, as their assets or commercial activities located within a Member State could become subject to enforcement proceedings.⁴³

For companies engaged in cross-border operations, security, insurance, and risk management plans should be reviewed; analyses of compensation and enforcement risks should be conducted on a country-by-country basis.

The decision of the UPC's Düsseldorf Local Division represents a landmark ruling on the issue of "long-arm jurisdiction." Through its preliminary injunction in the *Fujifilm v. Kodak* cases, the court introduced a uniquely UPC-based form of relief that builds upon and further develops the guiding principles established by the CJEU. This decision establishes a new framework for cross-border patent litigation both within Europe and beyond.⁴⁴

⁴² <https://upc-legal.eu/>

⁴³ ÜSTÜN/ERCIYAS, DOES THE 'LONG ARM' OF THE UPC REACH TURKEY?
<https://gun.av.tr/insights/updates/does-the-long-arm-of-the-upc-reach-turkey>

⁴⁴ Michael Rüberg/Victor V. Fetscher/Lars Eggersdorfer/Micheline Verwohlt,
<https://www.boehmert.de/en/update-on-ecj-ruling-c-339-22/?utm>

The Court held that Article 24(4) of the Brussels Ibis Regulation allows the courts of the EU Member State where the defendant is domiciled to hear infringement actions, even if the patent was granted in another Member State and the defendant has challenged its validity. Although the case primarily concerned a European patent validated in several EPO Member States, the judges made it clear that exclusive jurisdiction over patent validity lies with national courts.⁴⁵

The term “centre of interest” emerged as a judicial criterion developed by the Court of Justice of the European Union (CJEU) to determine jurisdiction in cases involving online infringements of personality rights.

The "centre of interest" is important in the interpretation of Article 7(2) of the Brussels Regulation Ibis (Regulation 1215/2012), which states that in torts there is jurisdiction "in the courts of the place where the harmful event occurred or may occur".⁴⁶

In online tort cases, when it is difficult to determine where the damage occurred or where its effects were felt, the CJEU introduced the concept of "centre of interest", which allows litigation to be brought not only in the Member State where the harmful content was uploaded, but also in the Member State where its interests are most closely linked.⁴⁷

Although the concept of "center of interest" is not applied in Turkish law, similar effects are obtained with Article 43 of the Private International Law and Procedural Law (IPPL) and Article 16 of the Turkish Code of Civil Procedure (HMK) regarding the place where the tort occurred. Rather than just the geographical location of the damage, the EU more flexibly takes into account the essential centre of the injured party's personal or professional life.

⁴⁵ Magnus, Ulrich / Mankowski, Peter/ Calvo Caravaca Alfonso-Luis, Brussels I Regulation, European Commentaries on Private International Law, Sellier - European Law Publishers GmbH, 2. Ed., 2011., p. 78; Özkan, Işıl/ Süral, Ceyda/ Tütüncübaşı, Uğur, Avrupa Birliği Devletler Özel Hukuku, Adalet Yayınevi, Ankara, 2016, s. 34-35; Küçükyağcı, Arzu, “Brüksel I. Tüzüğü’nde Tüketici Akitlerine İlişkin Milletlerarası Yetki Kuralları”, TBB Dergisi, Sayı 55, 2004, s. 346; Cansu Akgün Tekgül, Brüksel IBis Tüzüğü ile Avrupa Birliği Genel Veri Koruma Tüzüğü Çerçevesinde Kişisel Verilerin İhlaline İlişkin Özel Hukuk Uyuşmazlıklarında Milletlerarası Yetki Kuralları, s. 242 <https://dergipark.org.tr/tr/download/article-file/728837>

⁴⁶ Magnus / Mankowski/ Calvo Caravaca, 2011, s. 231-233.

⁴⁷ Ibid., para. 45.

In Europe, particularly in cases involving cross-border infringements, various issues of jurisdiction may arise. Under the principle of territoriality, each country adjudicates patent disputes according to its own legal system. Following a patent application in Europe, the competent courts in the respective countries may differ in their jurisdictional approach. This divergence can create significant complexity during the enforcement process, especially in large-scale patent litigation.

Constitutional Limits on Türkiye's Participation in the Unified Patent Court

One of the most distinctive aspects of Türkiye's position vis-à-vis the Unified Patent Court lies in the constitutional constraints governing the exercise and transfer of judicial power. Article 9 of the Constitution of the Republic of Türkiye explicitly provides that judicial power shall be exercised by independent and impartial courts on behalf of the Turkish nation. This provision has consistently been interpreted as enshrining a core element of state sovereignty, namely the exclusive competence of national courts to adjudicate disputes falling within the domestic legal order.

Accession to the Unified Patent Court system would entail the transfer of adjudicatory authority over patent disputes to a supranational judicial body situated outside the Turkish constitutional framework. Unlike international arbitration mechanisms—where jurisdiction is derived from party autonomy—the UPC exercises compulsory jurisdiction based on treaty membership and operates as a permanent court with binding authority over participating states. This structural characteristic raises serious constitutional concerns under Turkish law, as it involves a direct and irreversible delegation of judicial power.

In the Turkish constitutional system, the transfer of judicial authority to an external court is not merely a matter of international commitment but one that directly implicates constitutional identity and the separation of powers. Unlike some European constitutions that explicitly permit the delegation of sovereign powers to supranational institutions, the Turkish Constitution does not contain a general clause authorising the transfer of judicial competence to international courts beyond narrowly defined exceptions. Consequently, accession to the UPCA would require either a constitutional amendment or a fundamental reinterpretation of Article 9—both of which present significant legal and political obstacles.

This constitutional limitation distinguishes Türkiye's situation from that of EU Member States participating in the UPC. For those states, the legitimacy of the UPC's jurisdiction is anchored in EU membership and the primacy of EU law, as recognised by their constitutional courts. In Türkiye's case, however, neither EU membership nor the constitutional acceptance of supranational judicial authority exists.

Importantly, this constitutional barrier also explains why Türkiye's relationship with the UPC must be analysed primarily through the lens of indirect and external effects rather than formal jurisdictional integration. While UPC decisions cannot produce direct legal effects within the Turkish legal order, their influence may nevertheless be felt through comparative reasoning, persuasive authority, and the harmonising impact of European patent jurisprudence. Turkish courts, particularly specialised intellectual property courts, may engage with UPC case law as a source of interpretative guidance, without thereby relinquishing their constitutionally guaranteed jurisdiction.

Accordingly, the constitutional constraints imposed by Article 9 operate both as a legal boundary and as a defining feature of Türkiye's interaction with the UPC system. They preclude formal accession under the current constitutional framework, while simultaneously shaping a model of selective engagement in which UPC jurisprudence exerts influence without binding force. This duality underscores the uniqueness of Türkiye's position: constitutionally excluded from the UPC's jurisdictional structure, yet increasingly exposed to its normative and practical effects within the broader European patent landscape.

Conclusion

The establishment of the Unified Patent Court constitutes a structural turning point in European patent adjudication. By introducing a centralised judicial forum characterised by cross-border enforceability and a close institutional and doctrinal connection with EU law and the jurisprudence of the Court of Justice of the European Union, the UPC has transformed not only the procedural architecture of patent litigation in Europe but also the normative environment in which patent rights are interpreted and enforced. This development signals a gradual shift from fragmented national enforcement towards an increasingly integrated and harmonised model of patent adjudication.

Although Türkiye is not a contracting party to the UPCA, and although constitutional constraints prevent the transfer of judicial authority to a supranational patent court under the current constitutional framework, the influence of the UPC cannot be assessed solely through the prism of formal jurisdiction. As this study has demonstrated, the UPC operates as a normative centre of gravity within the European patent system, generating interpretative standards whose effects extend beyond the territorial limits of the UPCA.

The indirect influence of the UPC on Turkish patent law manifests itself through several mutually reinforcing channels. First, the growing body of UPC case law is likely to inform the examination, opposition, and appeal practices of the European Patent Office. Any convergence between UPC jurisprudence and EPO standards—especially with regard to inventive step, sufficiency of disclosure, and claim interpretation—inevitably affects all EPC contracting states, including Türkiye, where European patents take effect as national rights. Second, UPC decisions increasingly function as persuasive authority in comparative patent adjudication. While lacking formal binding force, they may shape judicial reasoning in third states by providing structured, technically sophisticated solutions to recurring doctrinal problems, notably in the assessment of inventive step under the problem–solution approach, the interpretation of functional claims, and infringement analysis by equivalence.

A further theoretical dimension of this influence can be captured through the concept of the UPC’s so-called long-arm effect. This effect should not be understood as an exercise of extraterritorial jurisdiction. Rather, it reflects a form of normative spillover generated by procedural concentration, institutional visibility, and market integration within the European patent system. The amendments to the Brussels I Regulation introduced by Articles 71a–71d, which formally recognise the UPC as a “common court,” play a crucial role in this respect. Although these provisions do not extend the territorial scope of UPC judgments to third states, they embed the UPC within the architecture of European private international law and enhance the systemic resonance of its decisions. By consolidating jurisdiction and clarifying rules on international competence for common courts, the Regulation amplifies the normative weight of UPC adjudication beyond the circle of UPCA contracting states.

Within this framework, the influence of the UPC is best explained through the lenses of judicial dialogue and persuasive authority. The literature on transnational judicial interaction emphasises that courts operating within

overlapping normative systems often converge through mutual reference and argumentative borrowing rather than through formal hierarchy. Patent law, marked by technical complexity and functional harmonisation, is particularly conducive to such dialogical interaction. UPC jurisprudence, developed under conditions of centralised adjudication and cross-border perspective, is therefore likely to structure the argumentative horizon of national courts, including those in Türkiye, without undermining judicial autonomy or constitutional sovereignty.

Finally, the long-arm effect of the UPC is reinforced by changes in market behaviour and litigation strategy. Multinational companies increasingly align their filing, enforcement, and licensing strategies with the procedural dynamics and interpretative tendencies of the UPC. These strategic adjustments inevitably spill over into non-UPCA jurisdictions, including Türkiye, shaping expectations, risk assessments, and commercial practices. As a result, UPC-derived approaches may gradually crystallise into de facto standards influencing Turkish patent litigation and transactional practice.

In this evolving environment, the challenge for Türkiye is not whether to accede to the UPC system, but how to respond to its growing normative gravity while remaining faithful to constitutional principles. Rather than formal integration, a model of selective and constitutionally compliant engagement appears both realistic and normatively sound. Such an approach allows Turkish courts and practitioners to remain responsive to developments in European patent jurisprudence while preserving national judicial sovereignty. Ultimately, the UPC should be understood not merely as a new court, but as a transformative force in European patent law whose influence extends beyond its formal jurisdiction and whose impact on Türkiye will continue to shape the future alignment of Turkish patent adjudication with the European patent landscape.

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