

GULDE & PARTNER

NEWSLETTER
Patents

2nd Quarter 2026

UP – No UP for Malta?

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GULDE – Among Top 10 EP filers



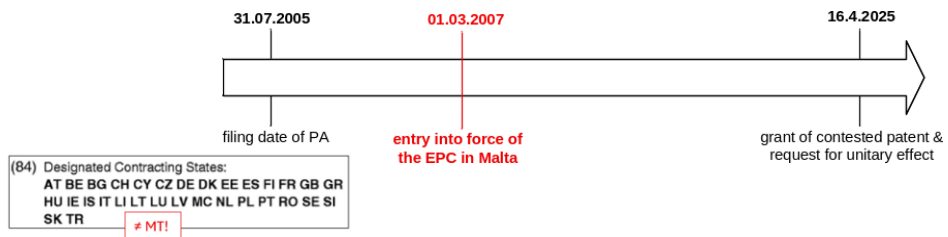
UNITARY PATENT

No UP for Malta?

A recent decision by the Boards of Appeal (CoA) of the Unified Patent Court (UPC) gives rise to take a closer look at the regional conflict between the designation system under the EPC, on the one hand, and the European Union member states participating in the UP system, on the other.

Facts

Decision UPC_CoA_8/2026 concerned an EP patent granted in 2025 (a second-generation divisional application) whose filing date predated Malta's accession to the EPC, which is why Malta was not among the designated states. Consequently, the EP patent was not granted with effect for Malta (MT).



Decision

The patent owner's request for unitary effect under the UP system was rejected by the Central Chamber in Paris on the grounds that, due to the lack of grant in Malta, **the patent had not been granted with the same patent claims for all 25 participating member states of the UP system**, as required by Art. 3(1) of the EPatVO:

Article 3(1) of Regulation (EU) No. 1257/2012:

*A European patent **granted with the same claims for all participating Member States** [of the UP system] shall have unitary effect in the participating Member States, provided that its unitary effect has been recorded in the Register for Unitary Patent Protection. A European patent **granted with different sets of claims** for different participating Member States **shall not benefit from unitary effect**.*

The Court argued that “Article 3(1) cannot be interpreted as permitting the registration of unitary effect for a **granted European patent that does not designate one of the participating Member States**.”

The decision reveals a structural conflict between the designation system of the EPC and the requirements of the EPatVO.

Consequences

The significance of the decision may seem minor given that Malta's accession to the EPC took place nearly 20 years ago. But what are the implications for other European states that acceded to the EPC at later dates than Malta?

The following states have acceded to the EPC since 2008:

2008: Croatia and Norway

2009: North Macedonia and San Marino

2010: Albania and Serbia

2022: Montenegro

The “Malta conflict” can only arise with countries that acceded to the EPC after the EP filing date and that **are simultaneously EU member states AND participate in the unitary patent system**. Although Croatia also joined the EU in 2013, it has not yet participated in the UP system. All other countries cannot participate in the UP system simply because they are not currently EU member states. Therefore, the “Malta conflict” won't arise for these states.

The problem would become particularly acute if **Montenegro** joins the EU and participates in the UP system, since the EPC did not enter into force there until October 2022. Under the leadership of Prime Minister Milojko Spajic, who has been in office since 2023, Montenegro has further accelerated its EU accession process. Spajic hopes that his country will be admitted to the EU by 2028.

EPO CASE LAW

Post Grant Divisional?

Filing of a European Divisional Application (DivA) is possible as long as the European parent application (ParA) is pending (Rule 36 EPC). In case of grant of the ParA this means one day before mention of the grant in the European Patent Bulletin (EPB). However, the question of whether it is admissible to file a divisional application after grant if the applicant has filed an appeal against the grant of the parent application has once again been the subject of consideration by the EPO's Boards of Appeal.

Decision J 01/24

In the case underlying Decision J 01/24, the applicant filed a divisional application after filing an appeal against the decision to grant of the parent application and later withdrew the appeal. The EPO had considered the divisional application to be invalid, basing its reasoning on the earlier Decision J 28/03.

The applicant's appeal challenged this decision, leading the Board of Appeal to set aside the contested decision and treat the application as an admissible divisional application. In its reasoning, the Board emphasized, on the one hand, that in the case at hand, the applicant's appeal against the decision to grant had suspended the publication date of the mention of grant, with the result that the parent application (unlike in J 28/03) was still pending on the date the divisional application was filed. However, the Board also took a clear stance against parts of decision J 28/03.

In J 28/03, the Board had distinguished between appeals directed against the grant of an application and those directed against its rejection. This distinction is criticized by the Board in J 01/24, which instead relies on legal principles set forth in G 01/09. The even later decision T 700/25 contradicts J 01/24.

Even though the case in question had a favorable outcome for the applicant, the conflicting decisions create significant legal uncertainty for applicants, who should not rely on filing an appeal against grant in order to still be able to file a divisional application.

Takeaways

- Filing Divisional after Mention of Grant is **possible** by appealing the Decision to Grant. **However:** High degree of legal uncertainty!
- Appeal against Grant should be the **last resort**
- **Best practice:** Filing Divisionals before publication of the Mention of Grant
- **Delaying the Mention of Grant of Parent Application**
 - Disagreeing with the text proposed in the Rule 71(3) EPC communication
 - Missing the deadline for responding to the Rule 71(3) EPC communication and restore the rights (Art. 121 EPC)

Timeline

17.09.2020	Intention to Grant (R. 71(3) EPC)
30.12.2020	Approval + Fee Payment by Applicant
18.02.2021	Decision to Grant
17.03.2021	Mention of Grant in EPB
16.04.2021	Appeal against Decision to Grant – Date of Mention of Grant deleted
24.05.2021	Filing Divisional Application
07.04.2022	Withdrawal of Appeal
14.09.2023	Decision of EPO (based on J 28/03) – DivA invalid
14.11.2023	Appeal against Decision
16.04.2024	Decision by BoA (based on G 1/09) – DivA valid!

STATISTICS

Patent Filing Statistics 2025

Both the German Patent and Trademark Office (GPTO) and the European Patent Office (EPO) have published their latest figures for 2025. According to these figures, both offices – the GPTO and the EPO – reported an increase in the number of new patent applications filed compared to the previous year (GPTO: +4.7%, EPO: +1.4%).

Unsurprisingly, the technology fields with the strongest increases at both offices are computer technology, digital communications, and electronics. While German automakers and their suppliers still clearly dominate the top 10 filers at the German Office, electronics heavyweights from South Korea, China, and the United States are locked in a race at the European Authority.

Patent Applications at the GPTO

Year	Applications
2021	58.579
2022	57.213
2023	58.662
2024	59.261
2025	62.050 (+ 4,7 %)

Patent Applications & Granted Patents at the EPO

Year	Applications	Grants
2021	188 809	108 799
2022	193 627	81 754
2023	199 452	104 609
2024	199 264	109 524
2025	201 974 (+1.4%)	119 756 (+9.3%)

Top Applicants at the GPTO in 2025

Rank	Applicant	Business Site	Applications
1	Robert Bosch GmbH	Germany	4.109
2	Mercedes-Benz Group AG	Germany	2.726
3	Bayerische Motoren Werke AG	Germany	2.553
4	AUDI AG	Germany	1.912
5	VOLKSWAGEN AG	Germany	1.627
6	Dr. Ing. h.c. F. Porsche AG	Germany	1.437
7	Schaeffler Technologies AG & Co. KG	Germany	1.338
8	GM Global Technology Operations LLC	USA	1.193
9	Ford Global Technologies, LLC	USA	859
10	ZF Friedrichshafen AG	Germany	697

Top Applicants at the EPO in 2025

Rank	Applicant	Applications	Change (%)
1	Samsung	5 337	+4.5%
2	Huawei	4 744	+9.8%
3	LG	4 464	+23.2%
4	Qualcomm	2 939	-2.5%
5	Nokia	2 242	+89.0%
6	Siemens	1 653	-9.7%
7	Ericsson	1 418	-3.5%
8	BASF	1 372	-14.2%
9	Microsoft	1 363	+20.5%
10	CATL	1 305	+12.2%

Top Technology Fields at the GPTO in 2025

Technology Field (Sector)	2024	2025	Change (%)
Transport (Mechanical Engineering)	11.172	11.604	+ 3,9
Electric Machines and Devices, Electric Energy (Electrical Engineering)	8.285	8.908	+ 7,5
Measurement Technology (Instruments)	4.727	4.848	+ 2,6
Computer technology	3.316	3.679	+ 10,9
Machine Components (Mechanical Engineering)	3.417	3.298	- 3,5

Top Technology Fields at the EPO in 2025

Technology Field	Applications	Change (%)
Computer technology	17 844	+6.1%
Digital communication	17 802	+11.4%
Electrical machinery, apparatus, energy	16 997	+5.3%
Medical technology	15 905	+1.3%
Transport	9 846	-1.8%
Measurement	9 487	-1.2%
Biotechnology	8 203	-3.3%
Pharmaceuticals	7 833	-6.3%

Sources:

<https://www.dpma.de/dpma/veroeffentlichungen/statistiken/patente/index.html>

<https://link.epo.org/web/about-us/statistics/en-technology-dashboard-2025-infographic.pdf>

GULDE & PARTNER

Among the Top 10 EP Filers

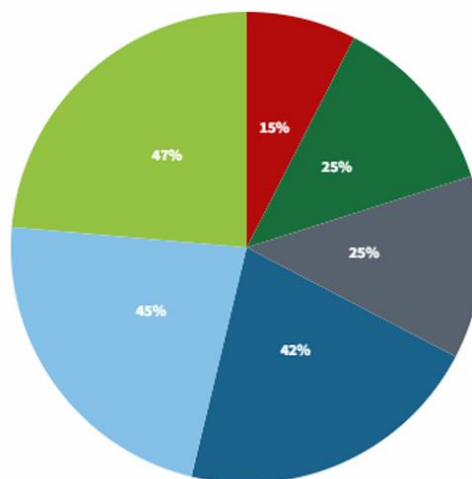
According to a press release by IP Pilot, Gulde & Partner is among the Top 10 of EPO law firms with respect to EP filings in the period of 2023 to 2025. This is what they say about us:

GULDE & PARTNER PATENT- UND RECHTSANWALTSKANZLEI MBB rounds out the top 10 with 6,260 total filings and [...] is one of the report's standout growth stories. The firm recorded a +35.0% increase in filings from 2023 to 2025, the joint highest growth rate across the top 50. This exceptional trajectory places Gulde & Partner as one to watch, signalling a period of rapid expansion and client acquisition that is reshaping the upper tier of the EP prosecution market.

Looking at the country breakdown, Germany – closely followed by the United Kingdom – dominates the top 50 with 22 firms, collectively filing the largest share of EP applications. German firms benefit from the country's position as Europe's largest economy and most prolific innovator, with deep roots in automotive, chemical, and engineering sectors that remain among the heaviest patent filers at the EPO.

Top 50 EPO firms Country Breakdown 2023-2025

Germany UK France Sweden Italy Netherlands



Source: <https://www.ip-pilot.com/en/top-50-firms-epo-25/>



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