

Defence, Security & Space Group | 25 February 2026

Patent Strategy and Governance in the Defence & Security Sector

9 Strategic Points

Recently, the European patent landscape has changed fundamentally. A European patent (EP) no longer (necessarily) splits into a bundle of national rights; following the creation of the EP 'with unitary effect', and the start of the Unified Patent Court (UPC) in 2023, EP enforcement can now happen at the supranational level. This increases the importance of strategic patent governance. In the defence and security sector specifically, patents play a strategic, commercial and geopolitically sensitive role, covering technologies ranging from military and security equipment to dual-use innovations (microchips, drones, software and AI applications, ...). This new reality requires informed decisions on exposure, enforcement, and security objectives.

1. Why the UPC is specifically relevant to the defence and security sector

For defence and security companies, patents often protect innovation with commercial, strategic and security relevance. In the UPC, a single procedure can lead to an enforcement or invalidity decision with effect in several EU countries. This increases the impact of proceedings, both positive and negative. Strong patents can become a powerful enforcement tool, while vulnerable rights can be lost in one fell

swoop. Explicitly determining which patents one wishes to expose to these centralised risks becomes a necessity.

2. Structure of the UPC: impact on forum choice

The UPC consists of a Court of First Instance with central, local and regional divisions, and a Court of Appeal. This structure creates options in terms of forum, but also uncertainties about procedural dynamics and speed. For defence and security companies, the choice of forum is not merely a tactical issue, but can also determine the language used, the composition of the chamber and the handling of technical information.

3. Material jurisdiction of the UPC and the need for a targeted portfolio analysis

The UPC has exclusive jurisdiction over the substance of patent disputes concerning EPs with unitary effect and classic EPs (without unitary effect), except in case of an opt-out of the latter (see point 6.). In essence, patents without opt-out will fall within the UPC system. A nullity action can therefore lead to a centralised revocation with broad territorial consequences. Conversely, the UPC also offers the possibility of obtaining an injunction covering all or several participating States (17) in a single procedure. Whether and when to use this central lever strategically, should be determined in advance through an active and differentiated portfolio analysis: identify crucial rights, rights relevant for specific contracts, and rights of a more supportive or replaceable nature. Robustness of patents and their exposure to invalidity arguments must also be taken into account.

4. The UPC's internal competence and bifurcation: thinking ahead about process dynamics

Within the UPC, infringement and invalidity claims can be dealt with together, but they can also be split between different divisions. This 'bifurcation' may

result in a ruling on infringement first, while the validity of the patent is still under discussion. For defence and security operators, this can have a particularly serious impact, for example when provisional measures jeopardise the delivery of critical systems.

5. International dimension: non-EU actors and geopolitical sensitivity

Defence and security companies often operate in international value chains, collaborating with non-EU suppliers, partners and customers. Under certain conditions, the UPC may have jurisdiction over non-EU actors, which could again make it an attractive strategic forum. Simultaneously, this raises questions about the international enforceability of decisions. Geopolitical and diplomatic sensitivities also play a role. International litigation must be aligned with broader policy and compliance considerations.

6. The UPC's transitional period and opt-out

During the transitional period (2023-2030), jurisdiction over classic EPs is shared between the UPC and national courts through the opt-out, available to patent holders. Conversely, if no opt-out has been filed, the choice of forum lies with a third party. This could lead to undesirable exposure to centralised UPC proceedings. Therefore, postponing the decision is no neutral option, but an implicit choice with potentially far-reaching consequences. Timely and informed decision-making during the transitional period is crucial. A notification of an opt-out must be filed with the UPC secretariat. A later opt-in remains possible, but is irreversible.

7. Limits to enforcement: Article 27(f), (g) and (h) of the UPC Agreement (UPCA)

EPs are no absolute rights, but subject to a number of limitations set out in Article 27 UPCA. For the defence and security sector, the exceptions under (f), (g) and (h) are particularly relevant, as they relate to the use of patented inventions in or on board foreign ships, aircraft and land vehicles that are temporarily or accidentally present in the territory of the UPC. In such cases, the patent holder cannot prohibit the use of the invention, as long as this use is exclusively for the operation of the means of transport itself. These limitations can be particularly relevant in the context of military (NATO) operations and international defence logistics.

8. Further limits: national security restrictions (Act of 10 January 1955)

For Belgian actors, the Act of 10 January 1955 on the disclosure and use of inventions and trade secrets relevant to national security is of particular relevance. It empowers ministers to prohibit or restrict the disclosure, exploitation, or transfer of certain inventions when required for national security. Under this regime, patent applications may be kept confidential, reserved for State use, or subject to mandatory knowledge transfer in exchange for compensation. Additionally, Article XI.82 of the Belgian Economic Law Code requires Belgian applicants to file their EP application with the Belgian IP Office – rather than the EPO – when the invention's content may affect national security. In such cases, the provisions of the Act of 10 January 1955 apply accordingly. Similar provisions exist in other NATO Member States (e.g. the US Invention Secrecy Act of 1951).

Inventions falling under such secrecy regimes may nevertheless be exchanged with other Member States' governments, signatory of the NATO Agreement of 21 September 1960 for the mutual safeguarding of secrecy of inventions relating to defence and for which applications for patents have been made.

9. Contractual and operational implications for defence and security companies

The UPC system necessitates a review of licence, cooperation, R&D and consortium agreements, as well as enforcement clauses. For defence and security companies, close coordination between IP, legal, compliance and business teams is essential to ensure that legal choices are consistent with security and policy objectives. The UPC forces companies to structurally integrate IP strategy into their governance.

The advent of the UPC increases both the opportunities and risks for defence and security companies with EPs. This necessitates a **proactive and differentiated portfolio analysis**, followed by **conscious choices for each patent** (UPC, opt-out or national route). Process strategy, confidentiality and contractual agreements must be coordinated in advance. In the defence and security sector in particular, postponement or indecision is not a neutral option, but has strategic consequences in itself.

For any questions or assistance, please contact the authors:

Eric De Gryse | edg@simontbraun.eu

Emmanuel Cornu | ec@simontbraun.eu

Arnaud Bouten | arnaud.bouten@simontbraun.eu

This newsletter is not a legal advice or a legal opinion. You should seek advice from a legal counsel of your choice before acting upon any of the information in this newsletter.