



Three Years UPC – Perspectives from the Sidelines

The project of a truly unitary European patent is not something recent. It has been a development that spans several decades. Three years ago, it finally came into existence. Preliminary data on the adoption of the Unitary Patent and anecdotal evidence on the satisfaction with the Unified Patent Court seem to prove wrong the critical voices that have been raised for years.

However, there are a few caveats. The biggest one is possibly that the UK, post Brexit, is no longer part of the project. This leaves one of the main forces behind the UPC project and its underlying agreement as a competitor in close proximity to the EU. Second, two large EU member states decided to stay outside of the system: Spain and Poland. Both did not join. But in both member states we see comparatively high levels of uptake of the UP by patent holders. Projections show that particularly Poland's economic growth will bring it to the same level as countries like France in only a few years. And Poland has also recently reformed its IP enforcement system. Economic growth combined with a more efficient patent enforcement system may create a pull-effect for patent cases and reduce the long-term perspective of Poland to join the UPC. This may also be a possible path for Spain with a similar economic trajectory. Furthermore, other countries within the UPC framework have signed the agreement but seem reluctant to ratify it, making the protection and enforcement incomplete. Still, indirect coverage of non-UPC countries through UPC long-arm jurisdiction could be a reason for them to reconsider staying out of the system. Finally, one prediction about the UPC did come true: it is strongly dominated by the local chambers in Germany raising the question whether this is a truly European project after all. The reasons for the reluctance of patent holders to file infringement actions at non-German local chambers should be further investigated.

This overall picture asks to take an outside perspective on the UP and UPC and reflect on its interaction with neighbouring – and competing – jurisdictions.



Fostering Openness and Diversity in AI Innovation and Competition

Artificial intelligence is a multi-purpose technology that promises significant economic and social benefits. Its broad applicability makes preserving a diverse AI landscape essential for resilience, choice and downstream innovation and competition. However, the resource-intensive nature of developing AI models poses risks to these goals and path dependencies threaten the ability of subsequent developments and specialised applications to build on existing advances.

Under the currently prevailing innovation paradigm, the AI stack connects upstream and downstream layers – from compute and data to foundation models and their application. Stakeholders across the AI stack include vertically integrated big tech firms that supply inputs and develop models, as well as smaller AI start-ups and companies that fine-tune models for specific needs.

Competition authorities and policymakers have expressed competition-related concerns resulting from high costs, economies of scale and scope, and network and platform effects. These concerns are reinforced by the use of proprietary data and feedback loops. The G7 highlight the importance of access to critical inputs and how dependencies on these inputs shape downstream innovation incentives and bargaining power throughout the AI stack.

The concept of open-source is well established in software development. Other open licensing standards, such as Creative Commons, are used for other types of copyright-protected works. These open licensing concepts are widely associated with lowering barriers to market entry, providing transparency, enabling broader experimentation and downstream adaptation, and thereby promoting innovation. Many established AI companies already pursue open licensing strategies, while others follow a mixed approach of open and proprietary practices. This raises the question of whether applying established principles of openness, in particular open-source, to AI could help to build a more diverse AI landscape, limit dependencies and foster innovation. However, openness is not a panacea. Claims that applying open-source and other open-licensing principles increases innovation and limits dependencies are context-sensitive. Open approaches can be leveraged by incumbents within broader ecosystems, and the risk of 'openwashing' complicates policy choices.

Panel I will explore the role of open-source and other open licensing models in AI development and commercialisation strategies across the AI stack, as well as its potential to reduce entry barriers.

Panel II will focus on diversity in AI innovation and competition as its central theme, examining whether and to what extent open licensing models can function as an enabling factor for a diverse AI landscape. It will consider diversity in a broad sense, including the variety of modelling approaches (large-scale foundation models and lightweight or specialized models) as well as the plurality of actors and innovation paths across the AI value chain. The panel will further explore how competition law and policy can protect innovation, preserve diverse approaches, support open and competitive markets, and reduce dependencies for AI implementers and society. In particular, it will consider the potential of open licensing principles to meet these goals, address cooperation agreements and access conditions involving critical inputs, and discuss how theories of harm could better reflect competition in the area of AI development.