POSITION PAPER
14/07/2026 – POS/26/LL/39779

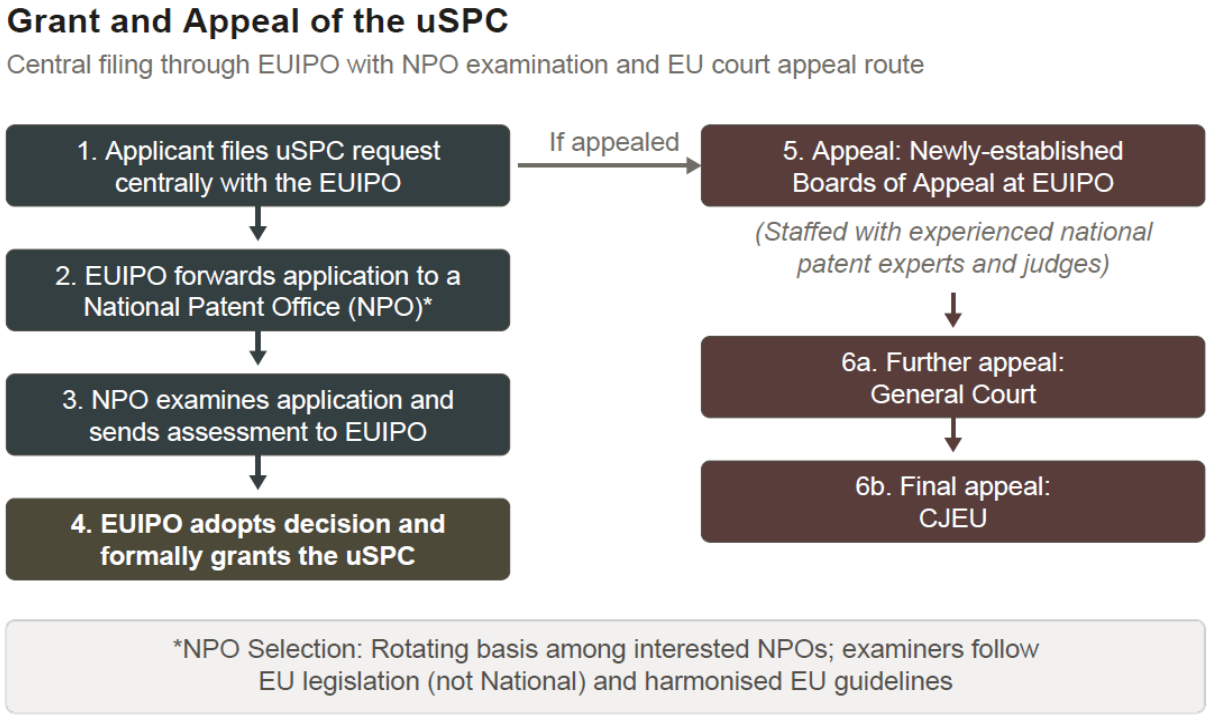
Unitary SPC: Bifurcation model

CropLife Europe supports further consideration of a bifurcated model for unitary SPCs (uSPCs) that combines central administration by the EUIPO, drawing on the technical expertise of national patent offices (NPO), while maintaining a clear distinction between patent-law and EU-law matters. Under this bifurcated approach, patent-law questions would fall within the jurisdiction of the Unified Patent Court (UPC), whereas EU-law issues would remain subject to review by the EUIPO and, ultimately, the EU courts.

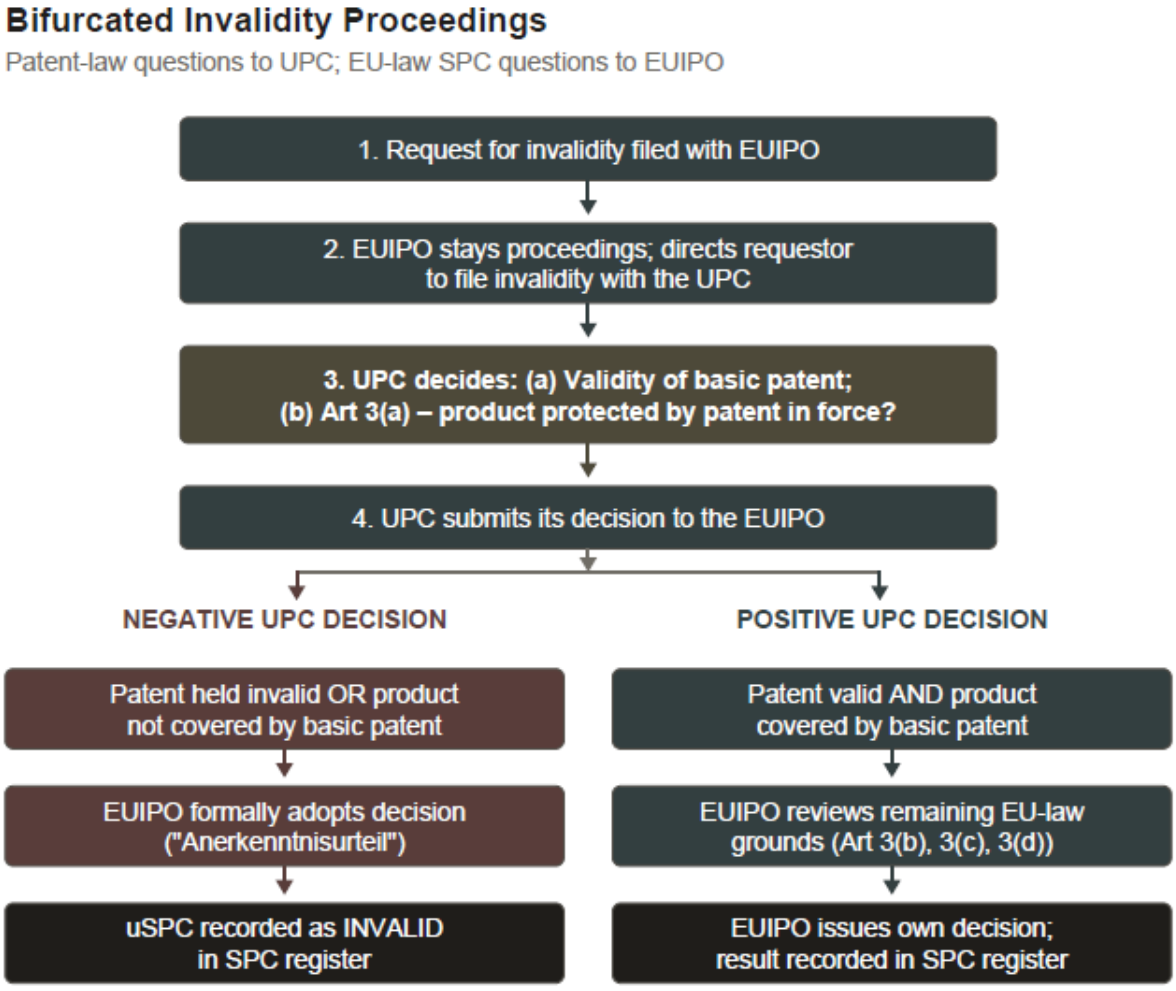
This model preserves the existing allocation of institutional competences, avoids the need to amend the UPC Agreement and could be implemented in a timely and pragmatic manner. This procedure has the advantage that recast provisions can be included as well and avoids legal concerns.

GRANTING PROCEDURE

- **Filing**: Applications for a uSPC would be filed centrally with the EUIPO.
- **Assessment by a National Patent Office (NPO)**: The EUIPO would delegate the substantive examination of the application to a NPO of a Member State participating in the enhanced cooperation for the unitary patent system. The designated NPO would examine the application on behalf of the EUIPO and submit its assessment to the Office. The examining NPO would be selected on a rotating basis from a pool of interested offices. While examiners would remain employed by their respective NPOs, examinations would be conducted in accordance with EU uSPC legislation and harmonised EU guidelines to ensure consistency across the system.
- **Decision**: The EUIPO would adopt the decision and formally grant the uSPC.
- **Appeals**: Appeals against grant decisions would be heard by a dedicated Board of Appeal established within the EUIPO and composed of experienced patent experts and judges. Further appeal would be directed to the General Court and ultimately to the CJEU.



CropLife Europe aisbl | 9 Rue Guimard | 1040 Brussels | Belgium | BE 0447 618 871 Register of Legal Persons
Francophone Section of the Business Court of Brussels | croplifeeurope@croplifeeurope.eu | www.croplifeeurope.eu
Tel: +32 2 663 15 50 | EU Transparency Register ID No.0711626572-26

INVALIDITY PROCEDURE (BIFURCATED)

- **Initiation of proceedings**: Where an application for invalidity is filed before the EUIPO and raises patent-law questions, the EUIPO would suspend its proceedings and direct the applicant to initiate proceedings before the Unified Patent Court (UPC).
- **Assessment of patent-law issues**: The UPC would determine the validity of the basic patent and assess compliance with Article 3(a), namely whether the product covered by the uSPC is protected by a basic patent in force. The UPC's findings would then be communicated to the EUIPO.
- **Negative UPC decision**: If the UPC finds that the basic patent is invalid or that the product is not protected by the basic patent, the EUIPO would formally adopt the invalidity of the uSPC ("*Anerkenntnisurteil*") and update the SPC register accordingly.
- **Positive UPC decision**: If the UPC confirms both the validity of the basic patent and compliance with Article 3(a), the EUIPO would proceed to assess any remaining grounds of invalidity arising under EU law, including compliance with Articles 3(b), 3(c) and 3(d). The outcome of that assessment would be reflected in the SPC register.