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Welcome to the October edition of our patent newsletter. This month, we explore developments across artificial intelligence, quantum communications, UPC strategy and SPC protection, highlighting both emerging technologies and evolving legal frameworks. We hope you find this edition useful.

We are delighted that we have once again been recognised as a top tier patent firm in the latest Chambers and Legal 500 UK rankings. We are grateful to our clients and colleagues whose continued support and expertise make such recognition possible.

Simon O'Brien, Editor

Events



AIPLA Annual General Meeting
29-31 October 2026, Washington DC USA
Attending: Alan Boyd and Jackie Johnson.

STEM Women Graduate Careers Event
05 November 2026, London, UK
Attending: Elisabeth Bubna-Litic & Tara Fitz Gerald

European Biotech Patent Case Law
10 November 2026, webinar
Speaking: Simon O'Brien & Matthew Caines.

IPBC Asia
17-19 November 2026, Tokyo Japan
Attending: David Al-Khalili & Jonathan DeVile.

CIPA Life Sciences Conference
19-20 November 2026, Brighton UK
Attending: Tamara Milton & Tom Pagdin.

SynbiTECH 2026
01-02 December 2026, London UK
Attending: Elisabeth Bubna-Litic & Matthew Caines.

UPC Case Law Observations & Analysis
20 January 2027, webinar
Speaking: Rachel Bateman & David Al-Khalili.

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UP & UPC / transition period

How to mitigate the risk of central revocation Want to avoid committing to a unitary patent? Here's how to say "it's not UPC, it's me"

The Unified Patent Court (UPC) can be a valuable tool for patent proprietors. A shiny new unitary patent, unlike a classic European patent granted by the European Patent Office (EPO), provides uniform protection rather than a collection of national patent rights.

This is particularly attractive for patents which are likely to be infringed by larger competitors across a multitude of markets, where the "long arm" jurisdiction of the UPC might be helpful for enforcement. However, the sword cuts both ways: the cost of centralised protection is a centralised risk of revocation, meaning patent proprietors litigating before the UPC run the risk of a successful counter-claim for revocation costing them all patent rights in all UPC territories.

Under the UPC agreement all European patents are under the jurisdiction of the UPC, unless, during a transition period, opted out of the UPC. However, this transition period is presently intended to end in 2030 (although it may be extended for another seven years). Patent proprietors who wish to continue avoiding the UPC whilst retaining protection in Europe may be wondering how to do so in a post-transition world.

In this article, we consider several strategic filing options for avoiding the UPC, based on obtaining the national patents for UPC countries, because the UPC only applies to European patents granted by the EPO.

The Patent Cooperation Treaty (PCT)
Administered by the World Intellectual

Property Organization (WIPO), the PCT functions similarly to the EPO's classic European patent, granting an applicant corresponding national applications and rights from a single filing of a PCT application. Applicants can designate any number of the 159 contracting states as designated states for which they would like patent protection, but the national applications must still be prosecuted before the designated offices. A PCT application can be filed at any receiving office, and fees are paid for transmission and international filing (in the order of roughly €1,500, depending on the receiving office. An international search is carried out by an international searching authority (ISA), such as the EPO (which charges €1,885 for an international search).

The EPO can also be a designated office for a regional phase from the PCT application, but if the goal is to avoid getting a unitary patent, then designating the relevant member states' national offices directly from the PCT application may be the approach to take post-transition. However, some territories in Europe will not accept national applications designated from a PCT application: the PCT-EPO guidelines Part A Chapter VI 2.2 recites: "The national law of a number of EPC contracting states stipulates that only a European patent may be obtained for these states on the basis of an international application. The countries which close off the route to a national patent in this way are Belgium (BE), Cyprus (CY), France (FR), Greece (GR), Ireland (IE), Latvia (LV), Lithuania (LT), Monaco (MC), Montenegro (ME), Malta (MT), Netherlands (NL), San Marino (SM) and Slovenia (SI)."

If you were to file an international application and attempt to designate a country such as France, you would instead need to go to the EPO, and post-transition that means you'd end up with a unitary patent.

UPC national application filing fees			
Country	Filing fee (€)	Search fee (€)	Grant fee (€)
BE	50	300	-
CY	100	-	-
FR	26	520	90
GR	50	300	150
IE	125	200	64
LV	120	-	90
LT	86	-	52
MC	30	321	-
ME	50	-	-
MT	116.47	-	-
NL	80 (to file online)	100 (for a national search)	-
SM	170	-	-
SI	110	-	-

Paris Convention (priority)

If national protection in the states with closed national routes is the goal, it would be possible to file a national application individually in those states rather than designate them from an international filing. If you need time to decide where exactly you want the protection, you may want to take advantage of the Paris Convention right to claim priority.

Under the Paris Convention, 181 contracting states agree to provide nationals of other contracting states with the same protection given to the state's own nationals. On the basis of an application filed in one of the contracting states, the applicant can claim priority in other states for a period of 12 months. In other words, any subsequent applications in that period count as being filed on the same date as the priority application.

Fortunately, all of Belgium (BE), Cyprus (CY), France (FR), Greece (GR), Ireland (IE),

Latvia (LV), Lithuania (LT), Monaco (MC), Montenegro (ME), Malta (MT), Netherlands (NL), San Marino (SM) and Slovenia (SI) are signatories to the Paris Convention. However, filing a national application with each national office will have national fees, as outlined by the table above.

For the countries that do not permit national patents to be obtained from a PCT application, the official fees are relatively low compared to other jurisdictions. Note that these countries do not have separate examination fees, and in most cases do not carry out substantive examination prior to grant.

For comparison, the official fees at the EPO include a filing fee of €135, a search fee of €1,595, an examination fee of €2,010 and a grant fee of €1,135 (in addition, there will be pre-grant renewal fees to be paid).

This, of course, overlooks another cost:

your patent attorneys (sadly, not all of us are in it purely for the love of the game). European qualified attorneys are not qualified in the national law of every single contracting state of the EPO, meaning that separate national filings would require the patent proprietor to hire a number of attorneys to cover all jurisdictions of interest, which can quickly add complexity and cost to a multi-country filing strategy. In addition, the European patent system allows proprietors to reduce the costs associated with translation by using the London Agreement, but filing nationally means paying for a complete translation into the relevant national language.

Strategic selection of particular states within the European continent – the largest markets for the relevant patent proprietor, for instance – might be a better approach than attempting to get coverage in every member state.

Having patent protection in only key markets might be sufficient to deny or at least deter competitors. However, if you're relying on one or two national patents, the spectre of revocation does not seem significantly larger than in the UPC. The question for patent proprietors to ask themselves is how many states are national patents needed in for the risk to be preferable to a single unitary patent, and how much is that going to cost?

Further information and support

If you have any queries about UPC strategy, unitary patents or alternative filing routes, please contact us.

Our qualified UPC representatives can draw on extensive EPO and patent prosecution experience to help assess the options and shape a litigation strategy that fits your commercial objectives.

We also offer extensive unitary patent and UPC resources, including webinars and practical guidance, to help you keep pace with this evolving system:
www.dyoung.com/upandupc

Author:

Kara Richards



Patenting trends in generative AI LLMs, filings and the race for protection

Generative AI (GenAI) is an artificial intelligence technique used to create original content. It involves training a model on a very large dataset, which is then queried to generate new content by identifying patterns in the source material. Such models have become prominent over the last few years, primarily in response to the launch of OpenAI's ChatGPT in late 2022. GenAI is becoming a common part of everyday life, assisting users with tasks across work, education and daily life.

The typical 18-month publication delay for filed patent applications means that the increased activity in the space beginning in late 2022/early 2023 is now becoming visible. As a result, there has been a significant and sustained increase in published patent applications within the GenAI space in 2024 and 2025, as noted in WIPO's report on patenting trends in GenAI over 2024/25.

In particular, during 2024 and 2025, over 56,000 new GenAI patent families were published, exceeding the total number of patent families published over the preceding ten years.

In addition to the substantial increase in published patent applications in 2024 and 2025 compared with the previous decade, data from 2025 indicates continued growth from 2024.

In 2025, the number of published patent families in this space increased by 100%, from 18,862 in 2024 to 37,808, far exceeding the long-term average annual growth rate of 43% since 2014.

What is being protected?

GenAI often makes use of large language models (LLMs), which are trained on billions of input sources (books, text and websites) to learn patterns in human language. The

As LLM-related filings gather pace, patent case law continues to evolve



number of published patent families for large language models (LLMs) in 2024/25 has substantially exceeded that of any other GenAI model, indicating a strong preference for this model type that aligns with commercial growth in the sector. LLMs have seen a substantially greater increase in published patent families than other GenAI models. Notably, since 2023 LLMs have overtaken generative adversarial networks (GANs) as the model category with the largest volume of published patent families. From 2023 to 2025, the number of LLM patent families as a percentage of GAN patent families increased from 37% to 270%.

The broad applicability of an underlying architecture to complete a large variety of tasks (compared to GANs, which usually have specific use cases) is a reason why LLMs are so useful but also presents issues with patentability, with patent offices often requiring a technical application to be clearly defined in patent applications. Meanwhile, the output of GenAI may typically be considered a presentation of information and the underlying

process may be considered a mathematical method. These issues can create significant difficulties in patenting innovations in LLMs.

In addition, many patent offices require details of LLM training to be provided to meet sufficiency requirements. While patent offices do not require applicants to provide access to the proprietary dataset (which may be one of the most valuable aspects of the model), applicants must characterise the dataset sufficiently for a skilled person to curate an equivalent dataset, with details of any selection rules used in training and parameters used. The EPO is particularly strict on this sufficiency requirement, requiring high levels of detail to meet the bar, as illustrated in T 0161/18 and T 1669/21.

Within this still-developing field, case law is continuing to evolve, and the large influx of LLM-related published patents may lead to further significant decisions providing clarity on the rules around patenting such inventions.

Applicants must determine whether the

➤ Useful links

WIPO, *Patent Trends Update in Gen AI*, 2026:
dycip.com/wipo-patent-trends-ai-2026

D Young & Co guide to *The Patent Box*:
dycip.com/patent-box

Issues concerning the grant of machine learning patents at the EPO:
dycip.com/epo-ml-t0161-18-t1191-19

EPO legal texts, case law of the Boards of Appeal, 6.1.1 artificial neuronal network:
dycip.com/epo-case-law-ann

EPO decisions of the Boards of Appeal, T 0161/18 (Equivalent aortic pressure/ARC SEIBERSDORF):
dycip.com/epo-t0161-18

EPO decisions of the Boards of Appeal, T 1669/22 of 05.12.2024:
dycip.com/epo-t1669-22

risk of disclosing details of their training dataset is a worthwhile trade-off for gaining patent protection. While LLMs present patentability challenges, with appropriate claim construction, technical features of LLMs may obtain patent protection.

The substantial increase in patent filings from early 2023 indicates that many proprietors consider the risk of disclosure worthwhile.

Who is filing, and where?

Of the top 25 patent owners by number of published patent families between 2014 and 2025:

- three owners are Japanese (including the largest owner SoftBank);
- 15 are from China (including those ranked 2-6);
- five are from the USA;
- one is from the Republic of Korea; and
- one is from Germany (the only European entity in the top 25).

The top 20 owners are responsible for 20% of the patent families published in the 2024/25 period.

Japanese company SoftBank, a significant investor in OpenAI, has substantially increased its published patent families in GenAI from only seven at the end of 2023 to 2,978 at the end of 2025, pushing it into first place as the largest individual owner of published patents in the space.

However, while shareholders of OpenAI such as SoftBank may be focusing heavily on the GenAI patent landscape, OpenAI has yet to publish a meaningful number of patents, with only 35 patent filings globally as of late 2025. This limited patenting activity may be linked to a desire to protect its intellectual property via trade secrets.

The bigger picture

The number of international patent families remains a small proportion of GenAI filings at the end of 2025, with the majority of filings remaining domestic at this stage.

As patents confer negative rights, allowing their owners to prevent competitors from acting, the key jurisdictions to file in are those where competitors are located. With most innovation in GenAI being limited to a small number of countries (namely China, USA, Japan and the Republic of Korea), it is not surprising that filings have mostly been directed at these locations. Filing domestically can be a key part of defensive strategy, ensuring that competitors cannot crowd an existing entity out of the space.

We also note that another motivation for filing domestically can be to take advantage of Patent Box type systems, which can offer tax incentives for entities based in that jurisdiction with granted patents. Since GenAI models can be costly to develop, it may be advantageous to file domestically and benefit from such systems.

Related reading: Patent Box FAQ Guide

From understanding what the Patent Box is to calculating potential tax savings and navigating the application process, our introduction to the UK Patent Box addresses the most common questions businesses ask about the scheme. Learn how patents can support both innovation and tax efficiency, explore the qualifying criteria, understand the typical patenting timeline, and discover how patent-protected inventions can help reduce corporation tax. The guide also explains how our specialists can work alongside accountancy teams to help maximise available benefits.

Read the full Patent Box FAQ guide online:
dycip.com/patent-box

WIPO projects that this filing pattern will shift over the next few years as the field develops and more patentees turn their attention towards international filing

strategies and expansion. This suggests that commercialisation in the GenAI space remains at an early stage, and that further growth and expansion are still to come and may occur rapidly.

The rapid rise of SoftBank to the top of the list of published patent owners indicates that in this young and rapidly evolving field, it is still possible for new competitors to innovate within the market.

For businesses operating in the GenAI field, the rapid growth in patent publications is a clear signal that the competitive landscape is becoming more crowded.

Companies should review whether their GenAI-related implementations might contain differences that they may wish to patent, particularly where those features improve performance, training efficiency, data handling, user interaction, system architecture, security or deployment in a specific technical environment.

Drafting patent applications for such innovations can, however, be challenging, particularly in Europe and the UK.

In practical terms, companies should capture inventions early, before public disclosure; coordinate patent strategy with product roadmaps and target markets; and avoid assuming that GenAI inventions are unpatentable purely because they involve software or AI. The strongest cases are likely to be those framed around a specific technical contribution rather than the mere use of a generative model.

Authors:

Alan Boyd & Jennifer Harvey



Space-based quantum key distribution

Patenting secure communications

Quantum key distribution (QKD) is one of the most promising approaches to secure communications, providing assurance that no-one has been listening in. Fibre-optic cables are generally unsuited for QKD over long distances, however, satellite relay provides a potential solution and Europe's first sovereign system is expected to reach orbit shortly.

Why space matters for QKD

Quantum mechanics means that QKD is inherently protected from eavesdropping. A quantum state encoded on a photon cannot be measured without disturbing it, thereby revealing the presence of an eavesdropper and invalidating the key. Furthermore, the no-cloning theorem of quantum mechanics means that quantum keys cannot be duplicated without similarly disturbing the initial state.

While quantum keys can be distributed using fibre-optic links, the distances over which this can be done are generally limited to hundreds of kilometres. Over larger distances, growing signal losses within the fibre-optic cables mean QKD is impractical for long-distance secure communication.

Transmitting quantum keys in space is therefore seen as a promising possibility for circumventing the limitations of fibre-optic cables. While there are several technical challenges in doing so, China's Micius satellite proved the concept in 2017, distributing quantum-encoded photons to ground stations over 1,200 kilometres apart.

The European Space Agency's EAGLE-1 mission is now set to become Europe's first demonstration of a space-based QKD system, with launch expected in late 2026 or early 2027 at the time of publication. This is a significant step for the European Quantum Communication Infrastructure (EuroQCI) initiative, which aims to build a sovereign, quantum-secure communications network across the European Union.

Jurisdiction

Outer space is famously not subject to national appropriation. Article II of the Outer

Space-based QKD involves a wide range of technologies that are potentially patentable



Space Treaty makes clear that no state can claim sovereignty over any part of it. Article VIII, however, provides that a state retains jurisdiction and control over any object it registers under the 1975 Registration Convention, even once in outer space.

Therefore, it is generally accepted that any satellite used in space-based QKD is subject to the national laws, including intellectual property laws, of the state to which the satellite is registered. While this is straightforward for a satellite registered by a single state, missions such as EAGLE-1, involving collaboration between multiple different states, can raise practical questions over which intellectual property laws apply.

What can be protected

QKD can be implemented using a number of different protocols. The protocols themselves are essentially mathematical methods and are therefore excluded from patentability as such under Article 52(2) and (3) EPC. However, new QKD protocols can be protected by directing patent claims towards a technical arrangement built around such a new protocol. Therefore, while a new protocol is by itself not patentable, a satellite which uses the new protocol to generate and distribute quantum keys is in principle patentable.

Space-based QKD can also be protected beyond technical implementations of new protocols. New satellite or ground-station hardware which more generally enables long-distance QKD, such as single-photon sources and detectors, filtering, timing, and

modulation systems, is patentable, provided it is new and involves an inventive step.

Software for space-based QKD is also potentially patentable. While Article 52(2) and (3) EPC prohibits patents for programs for computers as such, this is not true if the invention provides a technical contribution beyond the underlying computer program. Software that controls a technical system, such as a QKD satellite or ground receiver station, provides such a technical contribution and is therefore patentable. Accordingly, software which handles scheduling, tracking, and handover is also patentable, provided it is new and involves an inventive step.

Space-based QKD therefore involves a wide range of technologies that are potentially patentable, from the underlying hardware through to the software controlling it. Protecting these innovations early is essential to allow free discussions with investors, prevent copying from competitors, and preserve commercial advantage.

Patent protection as the field develops

In the last 10 years, satellite-based QKD has moved from proof of concept to near-term infrastructure, and EAGLE-1 will mark a significant step for European capability in this area. For innovators, a patent strategy that considers hardware, protocol and software contributions will be essential to securing meaningful protection as the field develops.

Author:
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The threshold of synergy

When a combination becomes more than a mere aggregation before the UPC

Two recent decisions from the Unified Patent Court (UPC), *Promosome v BioNTech/Pfizer* and *Maxell v Samsung*, shed light on how the UPC evaluates the inventive step of claims containing multiple distinguishing features. While the UPC has not expressly adopted the European Patent Office (EPO) “partial problem” approach “in exactly the same way”, these decisions reveal a clear convergence in differentiating between a mere aggregation of features and a truly synergistic combination.

The foundation of inventive step at the UPC

Under Article 56 of the European Patent Convention (EPC), an invention involves an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art.

The UPC’s foundational framework for assessing obviousness was established by the Court of Appeal in landmark cases, namely, *Amgen v Sanofi* (UPC_CoA_528/2024/UPC_CoA_529/2024) and *Meril v Edwards* (UPC_CoA_464/2024). This framework requires:

- Identifying the objective problem from the perspective of the skilled person with its common general knowledge, by determining what the invention adds to the state of the art by reading the claim as a whole, in the context of the description and drawings.
- Establishing that the skilled person starting from a realistic point in the state of the art, wishing to solve the objective problem, **would** – not merely **could** – arrive at the claimed solution.

The UPC explicitly states that a claimed solution is not inventive where the prior art contains a pointer or motivation directing the skilled person toward that solution.

The two recent first instance decisions apply these principles directly to claims that involve multiple distinct functionalities.

UPC_CFI_846/2024

In *Promosome v BioNTech/Pfizer*, the patent at issue sought to protect a method for improving full-length protein expression efficiency. The specific combination added in Auxiliary Request 4 introduced two distinct techniques: the mutation of one or more secondary initiation codons; and the mutation of one or more miRNA binding sites.

The decision firstly discusses the EPO’s “partial problem” approach, which assesses each feature or feature groups for inventive step separately when the features are a mere aggregation instead of functionally interdependent. The decision then notes that regardless of whether the court has to adopt the EPO’s exact methodology, it would apply the UPC’s “whole claim” approach.

Ultimately, the court found no explicit or implicit disclosure in the patent specification showing that these two mutation techniques were functionally connected. While both methods could be used in conjunction with each other to increase protein expression efficiency, this coexistence did not amount to functional interdependence. Because no combined effect was produced beyond the ordinary individual contributions, the claim was deemed a mere aggregation lacking an inventive step.

UPC_CFI_251/2025

The Hague Local Division reinforced this UPC approach in a dispute where the patent proprietor, Maxell, alleged that Samsung infringed its patent relating to content relay systems. Specifically, the technology involved transitioning information content from a portable terminal to an information processing apparatus, such as a digital television.

In evaluating Auxiliary Request 7a, the decision reiterates that inventive step cannot be assessed by looking at individual claim features in isolation. Specifically, the court identified four

Case details at a glance

Jurisdiction: UPC
Decision level: Munich Local Division
Parties: Promosome LLC v BioNTech SE and Pfizer Inc
Date: 07 July 2026
Citation: UPC_CFI_846/2024, UPC_CFI_485/2025 & UPC_CFI_535/2025
Decision (PDF): dycip.com/upc-cfi-846

Jurisdiction: UPC
Decision level: The Hague Local Division
Parties: Maxell Ltd v Samsung Electronics Co Ltd
Date: 10 December 2025
Citation: UPC_CFI_251/2025 & UPC_CFI_769/2025
Decision (PDF): dycip.com/upc-cfi-251-2025

groups of allegedly distinguishing features, namely, “handback functionality”, “second history information”, “remote control functionality”, and “internet site content”.

The Hague Local Division explicitly set out the principle for assessing aggregations: an inventive step is absent if each individual distinguishing feature is obvious on its own, and they do not interact functionally to produce an effect that goes beyond a mere juxtaposition. The patentee argued that the features jointly contribute to a smoother and more user-friendly provision of content relay experience. However, the court remained unconvinced, finding that the combination merely provides standard functionalities without any functional interdependencies that establish a synergistic effect.

Key takeaways for patent practice

These decisions highlight a critical reality of UPC litigation: simply combining independently obvious features into a single claim will not defend it from an inventive step challenge. The UPC expects to see functional interdependence that leads to a combined technical effect beyond mere juxtaposition. Crucially, the court in UPC_CFI_846/2024 looked directly to the patent for evidence of this combined effect and found nothing.

For practitioners, this provides useful guidance on strategic patent drafting.

The specification should explicitly describe the technical interactions and combined technical effects between features.

These descriptions of functional interdependence should not be limited to features initially recited in the independent claims, but should also extend to features that may later be combined into the independent claims as fallback positions.

Author:
Nigel Lee



Gaming patents in the digital distribution age

Protecting play when the disc disappears

Recent reports that next-generation consoles may abandon disc drives have caused significant online discussion in the gaming world, with players divided on whether this is a positive development. This includes Sony's announcement that "physical game disc production for all new games releasing on PlayStation consoles will be discontinued starting January 2028" and speculation that future Xbox hardware will not include a disc drive. While much of this discussion has centred on the value of physical media in an increasingly digital world, there are also a number of impacts to consider from an intellectual property perspective.

Of course, these changes are not only related to the hardware; the expected omission of a disc drive in future consoles signals an embracing of the digital distribution models that have been growing significantly in recent years. While digital storefronts have been commonplace for a number of years, these have become the main method of distribution in recent years. Estimates suggest that between 60% and 90% of games are now purchased digitally (varying by platform, game, and region), which has increased sharply over time. As well as this, subscription-based models and cloud gaming have also seen a more mainstream adoption in recent years, and this trend is expected to continue in light of such hardware changes.

It is therefore clear that the gaming industry is undergoing a period of transition, and it is likely that this will be reflected in the approaches to protecting intellectual property.

Hardware changes

A disc drive is typically one of the largest components in a non-portable games console, although in recent years a separate removable disc drive has become a more common option. In either case, this represents a significant design constraint through designing a case to house the disc drive or to design a case that is able to interface with an external disc drive effectively. With the removal of this constraint, the amount of design freedom for games consoles increases significantly.

The design of a console housing typically

comprises two separate aims, with a successful design managing to achieve both. The first of these is good performance, and the second is visual appeal. For instance, heat dissipation is a significant performance challenge in increasingly more powerful devices, and this is highly dependent upon the geometry of the housing. With the visual appeal, this is an important aspect as non-portable games consoles often take centre stage in their owner's living rooms.

The pursuit of the first of these aims may be the source of a number of patent filings, such as generating a housing which offers robust protection for the components inside whilst also providing good airflow for heat dissipation. Other patentable aspects include designs which offer improved protection against dust ingress or noise reduction. By omitting a large component which necessarily interfaces with the housing surface, the amount of design freedom is increased significantly. As a result, the scope for technical innovation regarding the housing design may be reduced. For instance, removing a disc drive can increase airflow within a given housing, while a housing comprising fewer components necessarily has a simplified internal airflow.

The pursuit of the second of these aims typically offers less scope for patent protection, as typically aesthetic features will lack the technical character to be subject to patent protection. The reduced constraints resulting from omitting a disc drive may lead to a significant increase in design freedom – both in terms of the size and shape of devices. This may increase the scope for a console to have a unique design that distinguishes it from other devices. Accordingly, it may be the case that we see an increasing use of design rights rather than patents to protect the shape of consoles going forwards.

Software changes

One of the potential issues for consumers when moving to digital-only game libraries is that of ensuring access to their games on-demand. Recent high-profile server outages have prevented users from accessing their games, even those which are locally downloaded, in a scenario that was not envisaged when physical games were the predominant model. Some games or platforms are more resilient

than others to such issues. For instance, those in which offline play is enabled after an initial online verification, or approaches with a physical authentication paired with the digital distribution of the game content itself (such as the Nintendo Switch's game-key cartridges). The corresponding challenge for distributors is that of digital rights management. Without any authentication it becomes much more challenging to control the distribution of games, and so there may be a desire to maintain control over the use of a player's digital library.

It is therefore expected that the intersection of these competing concerns may be the source of increasing innovation and patent filings as the digital distribution model becomes even more prevalent.

Other aspects of the switch to entirely digital distribution can also be expected to lead to patentable innovation. For instance, by storing game data on a hard drive rather than on an external disc the storage burden upon a device is increased. This is becoming particularly noticeable for some users as the size of AAA games increases substantially, meaning that fewer games can be stored locally. While the amount of storage a console provides may be increased, this comes at a cost and only delays the issue rather than solving it. Therefore it is likely that improvements will be sought to the way in which game data is stored or accessed, changing the operation of consoles through software innovation.

Off-console changes

It can be expected that there will be increasing development in off-console areas, such as server systems to support cloud gaming and digital content distribution. Innovations may be found in a number of different aspects of these systems, such as reducing latency, increasing data and processing efficiency, and managing server loads effectively. While there is scope for hardware improvements to manage this, it can be expected that software and content coding-based solutions will also have a place.

For instance, cloud gaming and new downloads may peak in a given geographical region based upon school and work finishing times, requiring significant computing power

at those times. However, that computing power may be significantly underutilised during the working day or overnight as player counts drop in that region. Managing this disparity is a significant technical and business challenge, particularly as computer component costs (such as RAM) have increased.

In terms of game distribution, compression techniques or otherwise reducing the amount of information that is required to be transmitted (or at least varying the timing) can be good sources of technical improvements. Similarly, efficient management of edge servers, server racks, or other hardware can also lead to patentable inventions.

Such challenges are technical in nature, which offers significant scope for additional patent activity beyond the user's living room.

Looking further into the future

While the above considers a shorter-term view of where patent protection may be found with changes to game distribution models, in the longer term there may be even more significant changes. For instance, as access to increasingly higher-quality (in terms of both speed and latency) internet connections expands it is reasonable to consider whether a user without a physical games library requires a dedicated games console. Instead, cloud gaming may become the go-to method for gaming rather than local processing, thereby removing the need for a dedicated console. In such a scenario the quality of the cloud gaming service becomes even more important. This is likely to drive software-based innovation in particular, for instance to reduce or otherwise mask latency (for example, through predictive methods), or to improve coding efficiency to enable reduced bandwidth and/or improved visual quality.

Another change in the industry, separate to the shift to digital distribution, is that of increasing interest in portable gaming devices. This has been driven by a number of factors, such as hardware advances which allow for a smaller device to provide a more complete gaming experience than previously possible. Such devices may be slower to adapt to the changes described above, as often a stable and

low-latency network connection is not available when a user is gaming away from home, which makes cloud gaming a less attractive option. Of course, portable gaming also comes with its own technical challenges, such as managing battery consumption versus performance, and therefore offers its own scope for innovation.

What this means for gaming patents

It can be expected that the abandoning of physical media will lead to a different approach to patent protection for a platform, leaning more towards software than hardware for the core device and user experience (while the approach to protecting peripherals is unlikely to change). This may be related to the processing and transmission of data in an effective and efficient manner by a server, for instance. From a patenting perspective, this represents a significant change due to the different ways in which hardware and software inventions are treated at different patent offices.

Typically the European Patent Office (EPO) is quite receptive to computer-implemented inventions (such as software), offering a clear framework for patentability. While computer programs are excluded from patentability "as such", there are exceptions if a technical effect resulting from the use of the program is able to be identified. This technical effect must extend beyond the effects associated with the computer running software generally, such as the presence of hardware or the circulation of electrical currents in the hardware. Examples of technical effects provided by the EPO include controlling an anti-lock braking system in a car, determining emissions by an X-ray device, compressing video, restoring a distorted digital image, or encrypting electronic communications. This has allowed a large number of patents for computer-implemented inventions to be obtained in the field of computer gaming, for instance for upscaling of images or the reduction of the effects of input latency.

In contrast, obtaining protection directly at the United Kingdom Intellectual Property Office (UKIPO) has traditionally been rather more challenging due to a difference in approach. The analysis at the UKIPO often led to objections for a lack of patentable subject matter when considering an application

relating to computer-implemented inventions in the field of video games, even if technical effects were identified in the application.

However, the decision of the Supreme Court in February of this year (Comptroller-General of Patents, Designs and Trade Marks v Emotional Perception AI, [2026] UKSC 3) has led to a change of practice at the UKIPO. This decision centred on the prosecution of an application for an artificial neural network, with a more detailed analysis found in our recent article "Artificial neural networks are programs for a computer: UK Supreme Court revisits boundaries of AI patentability".

In this decision, it was indicated that the UKIPO should apply the EPO's approach to computer-implemented inventions. This is expected to significantly reduce the number of excluded matter objections that software applications encounter, although some applications may simply face a corresponding inventive step objection instead if the distinguishing feature is lacking in technical character. One significant positive is an expected increase in alignment with the EPO, so that a more predictable outcome for applicants can be realised.

The decision therefore comes at a good time for the gaming industry, as this is expected to increase the availability of a UK patent for this subject matter without being required to navigate prosecution at the EPO.

Summary

As the gaming industry takes another step closer to a digital-only distribution model, it can be expected that this increases the proportion of software-based patents that are filed with respect to hardware-based patents. This comes at a good time for applicants with an interest in seeking UK protection, as recent case law is expected to lead to an improved likelihood of being able to prosecute software applications to grant. This is particularly welcome news in that the UK represents one of the largest markets for games in the world, and it is still a rapidly growing sector.

Author:

Ryan Lacey



UK High Court refines “product” meaning

Distinction between a medicinal product and the “product” for SPC protection

Accord v Novartis provides important guidance on the distinction between the medicinal product that receives regulatory approval and the “product” for which supplementary protection certificate (SPC) protection is available before the UK Courts.

The UK High Court has handed down its decision on how the relevant “product” should be identified for SPC protection.

In Accord Healthcare Limited v Novartis AG [2026] EWHC 2127 (Pat), the court considered whether the relevant product was the particular crystalline co-complex present in the authorised medicinal product Entresto, or the underlying combination of the active ingredients valsartan and sacubitril.

The decision reinforces an important distinction: the medicinal product which receives regulatory approval and the “product” protected by an SPC are not necessarily the same thing.

What was the issue?

SPCs can provide an additional period of protection for patented medicinal products, compensating, in part, for patent term effectively lost while obtaining regulatory approval.

Entresto is used in the treatment of heart failure and contains valsartan and sacubitril in the form of a crystalline sodium co-complex. Following administration, the co-complex dissociates to release valsartan and sacubitril, which provide the relevant pharmacological effects.

Novartis’s SPC identifies the product as “sacubitril/valsartan, including pharmaceutically acceptable salts thereof”. The court therefore considered whether the “product” under the SPC regulation was the

specific co-complex present in Entresto or the combination of valsartan and sacubitril.

This distinction matters because identifying the product determines how other requirements for SPC protection are assessed, including whether the product is protected by the basic patent under Article 3(a) and has a valid marketing authorisation under Article 3(b).

What did the High Court decide?

Mr Justice Meade concluded that the relevant product was the combination of valsartan and sacubitril, rather than the crystalline co-complex.

Central to the court’s reasoning was the distinction between the authorised “medicinal product” and the “product” for SPC purposes. The former concerns the actual formulation authorised for marketing, whereas the latter concerns the active ingredient or combination of active ingredients.

Moreover, the court considered the marketing authorisation and associated documents, including the summary of product characteristics and European public assessment report, and found that these “overwhelmingly” supported valsartan and sacubitril being the active ingredients.

The court also referred to a “consistent line of decisions” establishing that aspects such as the salt, excipients, adjuvants or formulation do not ordinarily determine the identity of the SPC product.

What about Articles 3(a) and 3(b)?

Having identified the product, the court applied the Court of Justice of the European Union (CJEU) Royalty Pharma (C-650/17) test to determine whether Article 3(a) was satisfied.

The combination of valsartan and sacubitril was repeatedly identified in the basic patent and its claims. Although the particular co-complex was developed later and could not have been identified from the patent, the judge considered this “true

Case details at a glance

Jurisdiction: England & Wales

Decision level: High Court

Parties: Accord Healthcare

Limited and Novartis AG

Date: 13 August 2026

Citation: [2026] EWHC 2127 (Pat)

Decision: dycip.com/2026-ewhc-2127-pat

but irrelevant given that the co-complex is not the product”. The relevant question concerned the combination of valsartan and sacubitril, for which the court found the Article 3(a) requirements satisfied.

The court also rejected the Article 3(b) challenge. Although the marketing authorisation was for Entresto in its co-complex form, this did not mean that the authorised “product” for SPC purposes was limited to that particular form. Having identified the combination of valsartan and sacubitril generally as the “product” under the SPC regulation, the Court considered the marketing authorisation sufficient to satisfy Article 3(b) for that product.

Why is the decision important?

The decision demonstrates why patent, regulatory and SPC concepts should not be conflated. A particular physical or chemical form may be important from a patent or regulatory perspective without necessarily representing a different SPC “product”.

Notably, the court recognised that a simple admixture of valsartan and sacubitril could require different regulatory treatment to that of the Entresto co-complex. The co-complex was also a later development capable of supporting separate patent protection. Neither point meant that it represented a different product for SPC purposes.

For SPC applicants, the decision highlights the importance of identifying the relevant product at the outset.

Careful consideration should be given to how the active ingredient or combination of active ingredients is characterised in the basic patent, marketing authorisation and associated regulatory documentation, particularly for medicinal products involving salts, complexes, co-crystals or other specific physical forms.

Author:
Oliver Cartwright



UK High Court confirms prodrugs qualify for SPC protection

Prodrugs recognised as active ingredients

Aristo v Takeda provides important guidance on identifying the “active ingredient” of a medicinal product and the significance of its regulatory classification in the context of SPC protection in the UK.

The UK High Court has handed down its decision on whether a prodrug can itself constitute the “active ingredient” protected by a supplementary protection certificate (SPC), even where it is pharmacologically inactive before being metabolised in the body.

In *Aristo Pharma GmbH v Takeda Pharmaceuticals USA Inc* [2026] EWHC 2414 (Pat), His Honour Judge Hacon upheld Takeda’s SPC for lisdexamfetamine (LDX).

This decision is particularly relevant to businesses developing prodrugs or other derivatives of previously authorised active substances and provides further guidance on the relationship between the regulatory identification of an active substance and the “product” protected by an SPC.

What was the issue?

Takeda markets LDX under the name Elvanse for the treatment of ADHD.

LDX is a prodrug consisting of lysine covalently bound to dexamfetamine (DEX) that is inactive when administered. In the body, the bond between lysine and DEX is hydrolysed, releasing DEX into the bloodstream. DEX provides the pharmacological activity responsible for treating ADHD.

Importantly, DEX had already been authorised as a medicinal product before Elvanse. The validity of Takeda’s SPC therefore depended on which

substance constituted the relevant “product” under the SPC Regulation.

If the product was LDX, the Elvanse marketing authorisation supported the SPC. If the product was instead DEX, that authorisation was not the first marketing authorisation for the product and the SPC would not meet the requirements of Article 3(d).

What did the High Court decide?

The court concluded that LDX is the relevant “active ingredient” and therefore the “product” for SPC purposes.

A central issue was whether a substance described as pharmacologically inactive could nevertheless constitute an active ingredient. The court considered earlier case law from the Court of Justice of the European Union (CJEU). This included *Forsgren* (C-631/13), which states that an active ingredient must have a pharmacological, immunological or metabolic action of its own. However, the court distinguished a prodrug such as LDX from a known active ingredient combined with a non-active carrier or excipient as was the case in the *Forsgren* decision. LDX is a single new molecule, albeit one which is metabolised after administration to release DEX.

The court also considered the properties of LDX compared with DEX. The slower and more prolonged release of DEX following administration of LDX permits once-daily dosing, whereas DEX requires multiple doses. The court regarded these different pharmacokinetic characteristics and their clinical consequences as relevant to the assessment.

The regulatory treatment of LDX was also particularly significant. HHJ Hacon concluded that the test for an “active substance” under the medicinal products legislation is the same as the test for an “active ingredient” under Article 1(b) of the SPC Regulation. The Elvanse marketing authorisation identified LDX as its active substance.

This also brought the court to the pending referral to the CJEU in the case of *Halozyne*

Case details at a glance

Jurisdiction: England & Wales

Decision level: High Court

Parties: *Aristo Pharma GmbH v Takeda Pharmaceuticals USA Inc and Takeda Pharmaceuticals International AG, and between Stada Arzneimittel AG and Takeda Pharmaceuticals USA Inc*

Date: 24 September 2026

Citation: [2026] EWHC 2414 (Pat)

Decision: dycip.com/2026-ewhc-2414-pat

(C-456/24). In that case, Advocate General Emiliou recently provided their opinion that an SPC authority should follow the classification adopted through the regulatory process rather than independently reassessing whether a substance identified as an excipient should instead be regarded as an active ingredient.

HHJ Hacon described the Advocate General’s reasoning as “compelling”. However, he did not need to determine whether the regulatory classification must always be treated as conclusive, because he considered that LDX qualified as the active ingredient even if the issue were to be reassessed under the existing CJEU case law.

Why is the decision important?

The decision confirms that a prodrug is not excluded from SPC protection simply because it is pharmacologically inactive before metabolism or because it ultimately releases a previously authorised active substance.

It also reinforces the growing importance of the regulatory documentation when assessing SPC validity, which was also considered in the *Accord v Novartis* decision albeit in the context of a product rather than an active ingredient. In particular, how a new molecule is characterised in the marketing authorisation, together with its pharmacological and pharmacokinetic properties, may ultimately be critical to whether additional SPC protection is available. This issue is particularly topical given the pending *Halozyne* judgment, which may provide further CJEU guidance on whether SPC authorities can look beyond the regulator’s classification of a substance.

The decision is also notable because courts and patent offices across Europe have failed to adopt a uniform approach on this issue. In particular, the German Federal Patent Court reached a different conclusion concerning the equivalent German SPC, whereas decisions in a number of other jurisdictions have followed the same approach as the UK High Court and upheld the SPC.

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European Biotech Patent Case Law 9am, noon & 5pm GMT, 10 November 2026

Join European Patent Attorneys Matthew Caines and Simon O'Brien to catch up with the latest EPO biotechnology-related patent case law.

The webinar will run at 9am, 12pm and 5pm (UK time) on Tuesday 10 November 2026. Early booking is advised to secure your webinar seat: dycip.com/webinar-biotech-nov2026

UPC Case Law, Observations & Analysis 1pm GMT, 20 January 2027

As another busy year for the UPC draws to a close, join us for a special end-of-year edition of our UPC Case Law, Observations and Analysis webinar series. Rachel Bateman and David Al-Khalili will explore landmark decisions, recurring themes and what they mean for patent owners, challengers and innovators.

Registration is now open: dycip.com/webinar-upc-jan2027

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