Opt Out Guide

Authorising UPC Opt Out

If a patent or patent application is to be opted out of the Unified Patent Court (UPC), we need authorisation from the current legal owner. Further details of what the UPC is and the pros and cons of opting out can be found in our Unitary Patent and Unified Patent Court handout.

We will provide you with one of two authorisation forms:

1. A Power of Attorney for an enduring mandate
2. An Opt Out Reply Sheet

These forms ensure that we obtain the necessary information and authorisation to request the opt out. Examples of both forms and details on how they should be completed are provided below.

General requirements

The current owner must request the opt out of the patent or application. The current owner may not be the patentee as recorded on the European Patent Register, so please check any information we provide against your records – an opt out can be found invalid if it is not made in the current owner's name. Of course, if there is a difference between the details on the register and the current owner, please let us know – we will update our records accordingly and advise on the need for any assignment.

The opt out must be authorised by a suitable representative for the client, similar to obtaining a suitable signature for an assignment. Where the current owner is a company, this may be a CEO, Director, Head of IP or Head of Legal, for example.

Where there are multiple owners, each owner must authorise the request. Multiple owners may arise where there are different owners in one or more European Patent Convention states where the patent is or shall be granted.

Multiple owners may also arise where a Supplementary Protection Certificate (SPC) is held by one or more parties different from the patent owner. SPCs are an additional Intellectual Property form that applies to pharmaceutical and plant protection products only.

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1) Power of Attorney for an enduring mandate

We will provide you with an enduring mandate or Power of Attorney for performing opt outs where possible. The enduring mandate will enable us to opt out of all of the client's current and future patents/applications that meet the following criteria:

1) The client is the proprietor or applicant
2) The owner is the same for all states in which the patent was granted
3) There is no SPC

Criteria 1 means that the mandate only applies to patents or applications for the clients signing the form - the same mandate cannot be used as opt out authorisation for another party.

Criteria 2 and 3 ensures that no other owners may invalidate the opt out.

Although this is a general mandate, this does not mean that all future patents/applications Must necessarily be opted out. If a client would prefer that one or more patents remain in the UPC, despite having signed the Power of Attorney, we can simply not request opt out for those patents. We will always ensure that we receive confirmation before requesting any opt out.

When using this form, please follow the steps below. An example form is provided for reference.

1) The power of Attorney will be filled in with the relevant information that we have for the client (highlighted yellow). Please check that these details are correct for the current owner. In this case, ABC Corp. of New York details have been provided
2) Assuming that the details are correct, the Power of Attorney simply needs signing in the table at the bottom of the mandate (shown in green). The Power of Attorney must be signed by or on behalf of the current owner
3) Return the completed Power of Attorney to us with your instructions to proceed with opt out for one or more cases

2) Opt Out Reply Sheet

Where necessary, we may provide you with an Opt Out Reply Sheet to obtain authorisation for a specific case. This may be required where there are multiple current owners that we need authorisation from (which may mean an existing mandate from just one of the owners is not sufficient).

When using this form, please follow the steps below. An example form is provided for reference, in which the patent has two owners.

1. The Reply Sheet will be filled in with the relevant information we have for the client(s) (highlighted yellow). Please check that these details are correct for the current owner(s). In this case, ABC Corp. and XYZ Inc. details have been provided

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2. Fill out the relevant opt out details listed in the table (green in the example)

Opt Out? Please insert "X" if yes	X to confirm opt out
Current owner same as patentee Y(es)/N(o)?	Are the patentee details provided at the start of Reply Sheet those of the current owner? As before, it is the *current owner* that must sign the form, which may not be the registered patentee.
If (N)o please give current owner name and address details.	If the current owner details are different to the patentee, please provide them here. Else, leave blank.
Current owner same for all states in which patent has granted Y(es)/N(o)?	If there are multiple owners for any rights, please provide details above for those. All owners must authorise the opt out.
Are you aware of any SPC on this patent Y(es)/N(o)?	As explained above, Supplementary Protection Certificates (SPCs) only apply to pharmaceutical and plant protection products.
If Y(es) please detail current SPC owner name and address.	If there are SPCs, please provide details of the owner(s). Else, leave blank.

3. Once the details have been checked and the opt out instructions provided, the Reply Sheet must be signed by or on behalf of the current owner(s). There are two owners in this example (shown in green), so the Reply Sheet must be signed by or on behalf of both ABC Corp. and XYZ Inc

4. Return the completed Reply Sheet to us and we will proceed with the opt out for the instructed case

Power of Attorney

Whereas ABC Corp. a New York corporation having a principal place of business at 1 Times Square, New York, NY 12345, USA ("ABC"), would like to, from time to time, opt out of patents and patent applications that it owns from the competence of the Unitary Patent Court ("UPC"), according to Rule 5 of the Rules of Procedure ("RoP") of the Unitary Patent Court.

Whereas ABC intends to instruct representatives from Barker Brettell LLP of 100 Hagley Road, Edgbaston, Birmingham, B16 8QQ, UK ("Barker Brettell") to opt out of patents and patent applications in which:

1. ABC is the proprietor or applicant (entitled to be recorded as the proprietor or applicant in the registers referred to in Rule 8.5(a) and (b) RoP, respectively)

2. The owner is the same for all states in which the parent was granted

3. There is no supplementary protection certificate

WHEREAS ABC intend to provide instructions to Barker Brettell via outside counsel acting at the instructions of ABC.

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ABC hereby authorise the following persons, being European Patent Attorneys at Barker Brettell and Representatives pursuant to Article 48 of the Agreement on a Unified Patent Court ("persons authorised"), to lodge Applications to opt out of their patents and patent applications from the competence of the UPC.

Persons authorised:

Amy Bishton, Andrew Tranter, Carrie Johnson, Daniel Gaughan, David Combes, David Harris, David Pearce, Jennifer Atkinson, John Lawrence, Jonathan Myers, Katie Howe, Lucy Hill, Nicholas Braddon, Richard Abel, Scott King, Simon Robinson, Yvonne Johnson.

The Power of Attorney is valid from the date of signature until **31 May 2030.**

Authorised by, on behalf of: ABC Corp.

Name	Joe Bloggs
Signature	*J Bloggs*
Position	CEO (or Director, Head of IP, Head of Legal, etc.)
Date	1 August 2023

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BB Ref:	AA123456P.EPP
Patentee (s):and address	ABC Corp. 1 Times Square New York NY 12345 USA XYZ Inc. 2 Times Square New York NY 12345 USA
BB Ref:	AA123456P.EPP
Application no:	12345678.9
Application date:	01/01/2018
Grant no:	
Grant date:	
States available for validation at grant of EP:	AL AT BE BG CH+LI CY CZ DE DK EE ES FI FR GB GR HR HU IE IS IT LT LU LV MC MK MT NL NO PL PT RO RS SE SI SK SM TR
Opt out? Please insert "**X**" if yes	X
Current owner same as patentee Y(es)/N(o)?	Yes
If (N)o please give current owner name and address details.	
Current owner same for all states in which patent has granted Y(es)/N(o)?	Yes
Are you aware of any SPC on this patent Y(es)/N(o)?	No
If Y(es) please detail current SPC owner name and address.	

This mandate is valid from the date of signature until **31 May 2030.**
Patent/application number: See the above table
Any granted supplementary protection certificate (SPC): **See the above table**

The following person is authorised to lodge an Application to opt out of the UPC in respect of the applications/patents/SPCs referred to above on behalf of the above-mentioned applicants/proprietors/holders.

Persons Authorised:

- Amy Bishton
- Andrew Tranter
- Carrie Johnson
- Daniel Gaughan
- David Combes
- David Harris
- David Pearce
- Jennifer Atkinson
- John Lawrence
- Jonathan Myers
- Katie Howe
- Lucy Hill
- Nicholas Braddon
- Richard Abel
- Scott King
- Simon Robinson
- Yvonne Johnson

All our European Patent Attorneys at Barker Brettell

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Opt Out Reply Sheet

Authorised by:

Name	Joe Bloggs
Position	CEO – ABC Corp.
Signature	*J Bloggs*
Date	1 August 2023

Name	Jane Bloggs
Position	CEO – XYZ Inc.
Signature	*J Bloggs*
Date	1 August 2023

Name	
Position	
Signature	
Date	

What next?

If you would like more information, then please get in touch.
You can email us **info@barkerbrettell.co.uk** or call us on **+44 (0)121 456 0000.**

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