

The Private Cost of Legal Uncertainty: Evidence from the Unified Patent Court

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“Legal certainty” signifies certainty of economic agents about the meaning and enforceability of legal rules and the procedures of resolving legal disputes. It has been considered a cornerstone of market economies for centuries, yet it remains difficult to quantify. This paper leverages the introduction of the Unitary Patent (UP) system in the European Union as an exogenous shock that exposed patentees to uncertainty about the new Unified Patent Court (UPC). While the reform aims to reduce the cost of maintaining patents across multiple European countries, the established system of national validations (EP) remains available. Patentees can thus “pay” to avoid UPC jurisdiction by opting for national validations. I calculate that patentees who retained the national route despite possible savings forfeited approximately EUR 100 million, while those who accepted simultaneous UPC jurisdiction left EUR 65 million in savings on the table. On a per-patent basis, this equates to around EUR 10,000 per grant and EUR 25,000 per patentee. For patentees with a long history of maintaining European patents, I estimate that the average patentee requires fee savings of EUR 4,000-6,000 per patent to be indifferent between the UP and EP routes. I disaggregate part of these costs of the UPC route into expectations about litigation costs, litigation outcomes, and the importance of patent licensing, and find considerable heterogeneity in the remaining baseline cost between patentees from different UP member countries.