

Unified Patent Court: planning for a completely new business

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If reaction from business to the Unified Patent Court is good, it will definitely be a challenge for the new management of the Court. Eileen Tottle, Head of the Secretariat of the UPC Preparatory Committee, said this in an interview with Kluwer IP Law.

'Setting up a completely new business, which is of course is what we are doing, is a huge challenge. We're basing everything on assumptions,' Tottle told Kluwer in the fringes of the [3d annual EPLIT meeting in Amsterdam](#), where she was one of the speakers.

'We're trying to take a middle line, but we don't know what will happen until the Court starts functioning', Tottle said. 'The Court has to be scalable and be able to grow rapidly to react to business demand, and we'll have to make sure we balance that, as the system has the aim to be self-financing.'

'It feels a bit similar to the pre-selection exercise for UPC judges, back in 2013. We were completely caught out with the amount of applications we received. We thought we might receive around 300 to 400 applications, but in the end we had over a thousand. Still, for us it was fantastic news, as we realized for the first time that a lot of people wanted to be part of this.'

Tottle has been involved in setting up the Court since conception of the Preparatory Committee in February 2013, working closely with the Chairman and the co-ordinators on their plans. A key workstream is the UPC IT system. At the EPLIT meeting she explained four different suppliers now work on the overall IT infrastructure, one for the website, one for the e-mail, one for the case management system and finally one for the host, which is provided by T-systems, part of Deutsche Telecom.

Although the development of the IT infrastructure has been a success to date, IT systems more generally have a reputation of high unreliability, and at the EPLIT meeting several attendants questioned the security. Will confidential information be safe? Many showed concern about the opt-out functionality: anyone can opt-out patents maliciously. 'The UPC does not just have friends only', 'the system shouldn't have this open door', critics commented. 'This will undermine the credibility of the UP system.'

Tottle told Kluwer IP Law the Preparatory Committee has been hearing this from lots of people and is on top of it. 'If business and their representatives are concerned about the security and the fact that there could be mischievous behaviour of people opting out without being entitled to do so, we'll have to address that. However the security aspect needs to be balanced against costs and reasonable access.'



On aspect of this is actually showing how secure the system is. We have had several attacks on the system so far. We don't want this of course, although use of any IT system will always involve some risk. The more we stress test the system this year, while we're waiting for the ratifications to stack up, the more we can flush out the risks. At the moment we can't say that we have done that.'

A great deal of the future testing, Tottle said, will now be overseen by a team based in Luxembourg, that has recently taken over from the UK and will be in charge of further developing the IT system and handling the technical side once the UPC has started taking cases. 'The CMS and the Rules of Procedure will go hand in hand', as Eileen Tottle puts it. 'As with any new business, in five or six years its IT system will probably look completely different from what it is now.'

The Preparatory Committee hopes to finalize its work by mid-2016, with a view to the court opening its doors in early 2017. During a provisional application period, hopefully starting in the autumn of this year, the UPC structure will begin to take shape including appointment of judges. [Recruitment will start in the next few weeks.](#)

Nine countries have so far [deposited their instrument of ratification](#) of the UPC with the EU Council. At the time of going to press it is understood that Bulgaria will have also ratified bringing the total number up to ten. The Committee hopes to have considerably more than the minimum of 13 signatories, including France, the UK and Germany.

Tottle: 'We would have liked a few more ratifications by now, to be honest. Our Chairman, Alexander Ramsay is very keen to encourage Signatory States to ratify. Many Member States are keen to have more details of the financial implications in order to present a complete picture to their respective parliaments. The expected draft budget for the first years is now emerging providing more details in this area; we hope this will facilitate member states ratifications.'

A major issue not discussed by the UPC Preparatory Committee, at least not officially, is the UK referendum on the EU and the consequences for the Unitary Patent system if the British vote for a Brexit. 'We're not doing any scenario planning. The UK PM's objective is to campaign for us to remain in Europe and that's what we'll do. For the UK, for the UK IPO team, for my role on the Preparatory Committee, it is business as usual.'

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