

Industry call on member states to join the Unified Patent Court

Kluwer Patent Blog

November 23, 2017

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Please refer tot his post as: Kluwer Patent blogger, 'Industry call on member states to join the Unified Patent Court ', Kluwer Patent Blog, November 23 2017, <http://patentblog.kluweriplaw.com/2017/11/23/industry-call-member-states-join-unified-patent-court/>

Ahead of the meeting of the EU Competitiveness Council, 30 November and 1 December 2017 in Brussels, a group of European companies and associations have sent a letter to EU member states urging them to ratify the Unified Patent Court Agreement and join the Protocol on Provisional Application (PPA) as soon as possible, if they haven't done so yet.

According to the letter, the Unitary Patent system will 'encourage investment, spur growth and create new jobs across Europe. The patent reform will substantially contribute to increased European competitiveness.

European industry has invested considerable time and effort to prepare for the patent reform, the launch of which is long overdue. (...) In signing up to the Protocol on Provisional Application, any given Member State will not only contribute to the collective realization of this crucial reform, but also provide positive signals to investors and enable itself to participate in early decision-making on Court matters. (...)

Since the advantages of the reform increase with the number of participating Member States, the broadest possible territorial coverage is desirable. Thus we also have a preference for long-term UK participation', according to the letter **(update: complete text below this blogpost)**.

Kluwer IP Law was in contact with Fredrik Egrelus, director of the Patent Unit in the UK of Ericsson and one of the people behind the initiative. Egrelus hopes the

Unitary Patent package will start as soon as possible. 'By sending the letters to responsible ministers before their Competitive Council meeting, we want to signal again that the package is important for European industry and must not be forgotten by the participating member states.'

He doesn't see any reason for other countries to wait with their ratifications until there is more clarity about the situation in Germany, where a constitutional complaint has been filed against ratification of the UPCA which can lead to considerable delays - possibly up to 2020; and about Britain. In the UK the ratification procedure is well on its way, but there is uncertainty about its role in the UP system post-Brexit. Without ratification of the UPCA in both the UK and Germany, the system cannot enter into force (Article 89 UPCA).

Egrelius: 'What we in practice want to achieve is for all participating member states to see to that they ratify the UPCA and confirm that they are bound by the Protocol on Provisional application as soon as possible. Because if other countries would wait for UK and Germany before they finalize their own national legislative process, then we would have further delays.'

Even if many of the companies which have put their logo on the letters have stated essentially the same thing before, for example in the spring this year, we shall not forget that we have had recent elections in a number of EU countries this year, so we also have a number of new ministers who see the joining companies view for the first time.'

According to Egrelius, the letter is not directed at the president and/or Federal Constitutional Court in Germany, where the court asked the president not to ratify the UPCA pending its decision on the constitutional complaint: 'I firmly want to stress that we did not at all have such an intention. On the contrary, we wanted to make clear that we respect and definitely do not want to disturb the handling of the complaint by the Constitutional Court.'

As to UK participation in the Unitary Patent system post-Brexit, Fredrik Egrelius has no doubts: 'Of course it is feasible. If there is a will, there is a way. At Ericsson, we are working hard for UK participation. However, we still believe that the Unitary Patent system would be worthwhile without the UK, but that is clearly plan B for us.'

The letter to the EU ministers (with the exception of the ministers of Croatia,

Poland and Spain, which don't participate in the UP system) is signed by ABB, Air Liquide, Alfa Laval, BASF, Bayer, Bracco, Electrolux, Ericsson, Michelin, Novo Nordisk, Philips, Pirelli, SAP, Scania, Stora Enso, Syngenta, Technicolor, ThyssenKrupp, UCB, Unilever, Volvo Group Trucks Technology and the associations CEFIC (European chemical industry), Essenscia (Belgian Federation for Chemistry and Life Sciences industries), LIF (Swedish Association of the Pharmaceutical Industry), VCI (German chemical industry) and VDMA (German mechanical and plant engineering).

The EU presidency published a document earlier this week, which makes clear that so far 14 member states have completed the ratification procedure by depositing their ratification instrument with the secretariat of the EU Council: AT, BE, BG, DK, EE, FI, FR, IT, LT, LU, MT, NL, PT, SE. Another four member states have received parliamentary approval to ratify: DE, LV, SI, UK.

Out of the 18 member states which have ratified or received parliamentary approval to ratify the UPCA, 10 member states have expressed consent to be bound by the PPA (by signature, ratification or declaration): BE, DK, EE, FI, FR, IT, LU, NL, SE, UK.

Other than Germany (DE), two more member states which have ratified the UPCA or received parliamentary approval to ratify the UPCA must express consent to be bound by the PPA before the provisional application can start (Article 3 PPA). During the PPA, preparations for the start of the court, including for instance the appointment of judges, can be completed.

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The complete text of the letter:

17 November 2017

*To: Ms Helène Fritzon
Minister for Migration, Vice Minister for Justice*

*cc: Ms Åsa Webber
Ambassador, Deputy Permanent Representative (Coreper 1)*

Joint Industry call on Member States to join the Unified Patent Court

Dear Minister for Migration, Vice Minister for Justice,

The introduction of the Unitary Patent and the Unified Patent Court, “the Patent Package”, is a patent reform that significantly will reduce costs and simplify procedures for obtaining, maintaining and enforcing patent protection in Europe.

These improvements will encourage investment, spur growth and create new jobs across Europe. The patent reform will substantially contribute to increased European competitiveness.

European industry has invested considerable time and effort to prepare for the patent reform, the launch of which is long overdue.

Indeed, many Member States have signed up to the Unified Patent Court. However, in order to give life to the Patent Package, a few more Member States need to join the Protocol on Provisional Application.

In signing up to the Protocol on Provisional Application, any given Member State will not only contribute to the collective realization of this crucial reform, but also provide positive signals to investors and enable itself to participate in early decision-making on Court matters.

Thus, we the undersigned companies and associations have come together to urge outstanding Member States to join the Protocol on Provisional Application as soon as possible.

Since the advantages of the reform increase with the number of participating Member States, the broadest possible territorial coverage is desirable.

Thus we also have a preference for long-term UK participation. Consequently, we also call upon outstanding Member States to ratify the Agreement on the Unified Patent Court as soon as possible.