

Plans for training of judges Unified Patent Court are ready

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Despite the uncertainty about what will happen in Germany with the Unified Patent Court Agreement, the UK is heading for ratification of the UPCA and preparations for the court are going on. In the UK, the legislative steps have been completed and it is expected the UK will complete all formalities by depositing its instrument of ratification with the General Secretariat of the EU Council in March or April; it will be the 16th member state of the Unitary Patent system to do so.

The Unified Patent Court Agreement will enter into force once the UK and Germany have completed the ratification process. In Germany both chambers of parliament gave their support to the UPCA last year, but the ratification process was suspended after a constitutional challenge was filed against the UP system.

The German Federal Constitutional Court (FCC) is yet to decide whether to hear the case. If it does, this could considerably delay and even block the start of the Unitary Patent system. At the Unitary Patent Package conference last week in The Hague however, several observers showed optimism that the complaint will be dismissed, or rejected as unfounded. They based this on reports of several organizations which were requested by the FCC in the case. In these, experts in constitutional law point at jurisprudence that an individual cannot complain before the FCC about (in)compatibility of EU law with constitutional law, among others; they are convinced the other elements of the challenge are inadmissible or unfounded as well.

At the conference, chairman Alexander Ramsay of the UPC Preparatory Committee said work to prepare for the UP system is going on. 'We are trying to use the time that we have to make sure the system works when we're starting.'

A detailed planning has been made, among others, for the recruitment, training and appointment of UPC judges. Simmons & Simmons partner Kevin Mooney, chairman of the Drafting Committee and of the Expert Group of the UPC, explained this is linked to the start of the period of provisional application (PPA) of the UPCA. This period, during which practical preparations of the Court will be finalized, will last about 8 months in which, to begin with, UPC judges will be appointed.

According to Mooney, four to six months after the start of the PPA there will be a three-day training at the CEPI in Paris for technically qualified judges, who need 'to be introduced into the ethics of being a judge'. In the Budapest based training centre of the UPC, 95 appointed judges (45 legally and 50 technically qualified) will have a four-day training on the Rules of Procedure, including a mock trial of two days. The training will be in mixed groups of around 30 people.

In month six and seven, all 95 judges and registry staff will be trained three to four days to use the content management system of the Court, again in mixed groups. After this, in month eight, the UPC can start functioning.

In 2015, a group of 36 judges from smaller IP countries such as Bulgaria, Malta, Greece, Romania and Slovenia, were trained already in Budapest. In the past, some observers have questioned the quality of judges from countries with little experience in patent cases, but Kevin Mooney was impressed with the judges he trained.

He also said that, because of the delays the UPC has been facing, there might be a new, limited round of recruitment of UPC judges, once it is clear what the timetable for the start of the UPC will be. A final decision on this has not been made.

Preferably before the decision of the FCC on the German complaint is known, the UPC Preparatory Committee will have to solve a crucial issue. Support from at least three member states for the Protocol on provisional application of the UPCA, including Germany, is necessary before the PPA - and the UPC - can start.

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