

Kluwer Patent Blog

EPO and EU Member States call for speedy implementation Unitary Patent and UPC

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President António Campinos of the European Patent Office, the Chair of the EPO Unitary Patent Select Committee and members of the UPC Preparatory Committee met today to discuss the implementation of the Unitary Patent package.

According to an [EPO report](#), the meeting “came after the judge in charge of a complaint that had been lodged by an individual against German ratification of the UPC Agreement with the German Federal Constitutional Court [FCC] indicated in a recent interview that it was the intention of the Court to render a decision in the first quarter of 2020”. The judge who is referred to is Peter Huber of the FCC. He told the website [Managing IP](#) in an interview last November that case 2 BvR 739/17 would probably be decided within months. “It is quite a detailed process that we follow because we have to look at every detail of how we formulate and word the [ruling],” he said according to [Managing IP](#). “But it is likely that we will get along with it.”

As the EPO reports: “The EPO President and representatives from EU Member States expressed their optimism that the Court will render its judgment as announced and their hope that the Court will clear the way for German ratification. They emphasised that the UPC and Unitary Patent are of paramount importance to competitiveness, growth and innovation in Europe and called for the speedy implementation of the system.

The meeting made it clear that the EPO is ready to register the first Unitary Patents and that the Preparatory Committee has advanced its work as far as possible. However several key steps in establishing the UPC cannot be taken until the phase of provisional application is underway and therefore some work still needs to be done. EPO President Antonio Campinos said: ‘We are confident that the necessary steps can be accomplished in time for the Unitary Patent package to become operational at the end of 2020.’

The Chairs of the two committees, Alexander Ramsay and Jérôme Debrulle, added: ‘We are all waiting for this reform, which is the most significant one since the creation of the European patent system almost 50 years ago, to finally become a reality. Our users – and in particular SMEs – will strongly benefit from it because it will make Europe more competitive in relation to the United States and Asia.’”, according to the

EPO report.

Remarkably, there is no reference whatsoever to the situation in the UK. The Brexit is imminent and creates great uncertainty about the future participation of the UK in the Unitary Patent project, in which it had a prominent role. A central division of the Unified Patent Court is envisaged in London, for instance. A crucial issue is whether this court with the UK as a member could still refer matters of Union law to the CJEU.

Earlier this week, Downing Street issued a statement on the UK's future relationship with the EU, ruling out any jurisdiction of the CJEU in the UK. According to [this tweet of IAM Magazine](#), "that would seem to kill off hopes that the UK might be a member of any future Unified Patent Court system". Below the tweet, however, Russell Barton (of Rogers and Withers?) points out that "People made exactly the same conclusion from statements by Theresa May - and she went on to approve the ratification of the UPCA."

Reading the EPO report, one also wonders whether really nothing has been said during the meeting about the impact of the Brexit on Germany's willingness to complete the ratification procedure of the UPCA. The Ministry of Justice of Germany has made clear that, even if the Federal Constitutional Court dismisses the constitutional complaint of Dr. Ingve Björn Stjerna, the government will not proceed with ratification of the UPCA until the consequences of the Brexit [are entirely clear](#).

Maybe Campinos, Ramsay, Debrülle wanted to convey a message of hope to supporters of the UP system, but leaving out any reference to these two elephants in the room will not help to convince that the Unitary Patent and Unified Patent Court will really start functioning at the end of this year.

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