

Kluwer Patent Blog

Speedy ratification of Unified Patent Court Agreement unlikely in Slovakia and Czech Republic

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It remains open whether the Czech Republic and Slovakia will ratify the UPC Agreement anytime soon, according to [Martin Husovec](#), a Slovak-born lawyer & academic and Doctoral Research Fellow at the Max Planck Institute in Munich. He has been following UPC developments in particularly these two EU Member States. Apart from economic reasons, language and constitutional issues are at stake. Kluwer IP Law interviewed Husovec, who as of October 2015 will be an assistant professor at Tilburg University, and asked him why enthusiasm about the UP system has withered in the two countries.



‘The Czech Republic, Slovakia and their IPOs have always been [Martin Husovec](#) supporters of the idea of the Unitary Patent system. But their support isn’t blind. The renewal fees for the Unitary Patent and the proposals concerning court fees and reimbursement of representation make the system far less attractive for the two countries.

Try to imagine you are in the shoes of Visegrad countries like the Czech Republic and Slovakia. They have already accepted that they will face a sky-rocketing increase in the number of valid patents on their territory. This means that many activities that have been open to free competition will now need to be licensed and paid for. The cost of doing business will thus increase. Ironically, although there will be more valid patents, it is possible that in the meantime the fiscal income from patent registrations for them will even decrease.

Also, it is likely that in the future UPC cases involving Czech or Slovak companies, they will most often be the defending party. For them, the proposed UPC fees, sometimes more than hundred times higher than currently at national courts, is not going to be good news. The cap of 3.000.000 EUR on legal representation costs, as suggested by the UPC Preparatory Committee, is completely out of touch with local reality. I believe that the system is meant to serve companies from all the countries, not only those that are used to exorbitant legal costs.’

Last month, the Czech IPO criticized the potential costs of the UP system. Have other organizations voiced concerns as well?

‘The Czech IPO actually generally supports the EPO’s “True TOP 4” level for renewal fees. It has

criticized the inflation of court fees and potential costs of legal representation and has the support of the Confederation of Industry, the Czech Chamber of Commerce and the Czech Bar Association, which all issued statements.

The Chamber of Commerce, for instance, participated in the public consultation on the UPC fees and recoverable costs and wrote: “(...) the proposed fixed fee for infringement action is 11.000 EURO, in comparison with a national fee which is approximately 75 EURO (...). The proposed fees are incredibly high and a majority of SMEs will not be able to pay such fees for infringement proceedings.”

The Confederation of Industry [stated](#): “The consequence of the introduction of high fees will not be better accessibility of the protection of the rights of our inventors, but rather creation of an arena for the ‘activities’ of economically stronger multinational corporations.” And “The proposed scale of fees practically constraints subjects from less economically developed EU member states from the effective defense of their rights. Their access to the judicial system for patents would be significantly hampered. It is not only the concern for small and medium sized enterprises, but also for bigger corporations in the Czech Republic, which do not have sufficient financial resources.”

Similar voices can be heard in Slovakia, although they are less explicit.’

Last year, the Czech IPO showed concern about the poor quality of the Czech – English machine translations of Patent Translate (see [here](#) and [here](#)). Is this still an issue?

‘The translations into small Slavic languages like Slovak and Czech are still of very low quality. Given the fact that local entrepreneurs will have to rely on them in order to prevent high costs of infringing other people’s patents, it is not very encouraging for the governments and the IPOs to see little if any improvement on this front over the last few years. Low quality of the translations is surely one of the factors that the governments will consider before ratification. Slovak and Czech IPOs point out to this problem regularly, without any relevant improvement so far.’

Does this all mean ratification cannot be expected any time soon in Slovakia and the Czech Republic?

‘Today, Slovakia and the Czech Republic signal that if certain changes to the proposed rules are not made, there might be very little incentive for them to join the system. If they ratified the UPC Agreement now, they would basically buy a pig in a poke. Why would they do so? No sensible statesman or businessman would do it. A clear estimation of economic costs for the local market is one of the preconditions of the ratification process. Today, no one can make such estimation. But if nothing changes in the proposed rules and fees, there will be very little positive to report on to the legislator who should approve it.’

Will there be postponement only, or do you think the two countries may end up deciding they will not ratify the UPC Agreement at all?

‘That is difficult to predict. It will all depend on the outcome of the current negotiations.’

Is the situation in the Czech Republic similar to Poland, which decided not to ratify the UPC agreement after it became clear from a [Deloitte report](#) that the economic consequences would be disastrous?

‘Although I have read the study, I don’t think I have enough information to answer that question. But I would imagine that smaller Central and Eastern European countries might face similar cost and benefits analysis.’

You’ve said that, apart from the arguments mentioned above, in Slovakia the Constitution may be an obstacle for ratification of the UPC Agreement. Can you explain?

‘The Constitution of the Slovak Republic provides for transfer of sovereignty only to the European Union and its institutions. Hence it is debatable whether the UPC Agreement can be ratified without first amending the Constitution. Also, given the poor drafting of the human rights safeguards in the UPC Agreement and its position outside Union law (at least to a great extent), one may wonder what kind of conditions for this transfer of judicial powers will be stipulated by the Constitutional Court, in particular because of the proposed high costs to get access the UPC and because of the persisting language barriers.’

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