

Kluwer Patent Blog

Delays for UK ratification Unified Patent Court Agreement and start Unitary Patent system

Kluwer Patent blogger · Friday, April 28th, 2017

The UK Parliament closed down for business yesterday, preceding the general elections of 8 June 2017. It means parliamentary approval of legislation which is necessary for UK ratification of the Unified Patent Court Agreement will be delayed. Inevitably, this will lead to postponement of the start of the Unitary Patent system as well.

After earlier delays caused by the Brexit vote in the UK, the Unitary Patent system was envisaged to launch in December 2017, with a Provisional Application Phase (PPA, which allows for the practical set-up of the UPC, for instance the appointment of judges) starting at the end of May. All this 'subject to change given the reliance on national governments to accede to the Protocol on Provisional Application', according to a [press release of the UPC Preparatory Committee last March](#).

The early general elections in the UK, called by prime minister Theresa May, are exactly such a game changer. In order for the PPA to start, UK Parliaments in Westminster and Holyrood (Scotland) would have had – and were expected – to approve remaining legislation which was necessary for UK ratification of the UPCA by the end of May. Due to the dissolution of Parliament, this is no longer possible.

As James Thomson of the UK IPO explained to Kluwer IP Law: 'The UK Government confirmed its intention to proceed with preparations to ratify the Unified Patent Court Agreement (UPCA) at the Competitiveness Council in November 2016. We need to ensure UK law complies with the UPC Agreement before we ratify. Future steps will be for the next Government to take, subject to factors including the Parliamentary timetable.'

It isn't clear how much delay there will be in the UK and if, for instance, Parliament will finalize its part of the UPCA ratification before or after the summer recess (20 July to 5 September). According to Thomson, it is very difficult to say anything about this: 'It depends on the new Government's priorities, on where the Unitary Patent project will stand in the queue.' He declined to speculate on the question whether a new UK Government could change its mind regarding the Unitary Patent project and decide not to ratify at all, or on the possibility that UK ratification could be drawn into the Brexit negotiations between the UK and the European Union.



Even if no such things happen, it is inevitable developments in the UK will delay the start of the Unified Patent Court and Unitary Patent system by at least one and more likely several months. They could also influence the German ratification process. Germany – just like the UK one of the mandatory ratifying member states of the UPCA – was expected to trigger the start of the UP system by depositing its instrument of ratification with the secretariat of the European Council in August (this is the final formal step in the procedure), after the UK's deposit. But if the UK hasn't finalized the ratification procedure by August, Germany may postpone the deposit as well. General elections in Germany, on 24 September 2017, might further complicate matters.

The only remaining piece of legislation that still needs to be approved by UK Parliament is the Privileges and Immunities Protocol. As Thomson declared: 'The UK has already made the necessary changes to the Patents Act 1977 through secondary legislation (March 2016). The legislation implements the UPC Agreement and also recognises the territory of the Unitary Patent. The Government signed the Protocol on Provisional Application, and the Privileges and Immunities Protocol was laid in Parliament on 20 January, in accordance with the requirements of the Constitutional Reform and Governance Act 2010.

This Protocol is necessary to give the UPC the privileges and immunities it needs to operate. Secondary legislation in the form of Orders on Privileges and Immunities for the Unified Patent Court still needs to be laid in Westminster/ Holyrood. The Orders are needed to implement the Protocol on Privileges & Immunities which the UK signed in December 2016 and to give the court its legal personality. Two orders are required: one to be laid in Parliament at Westminster, and one in Holyrood where they will be subject to the scrutiny usual of statutory instruments. They must also be approved by Privy Council. Once this legislation has been passed we will be able to formally ratify the UPC Agreement.'

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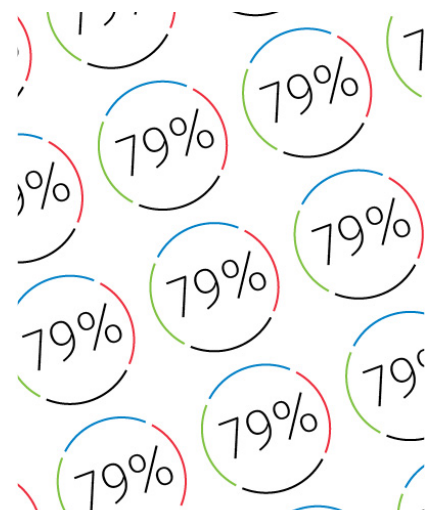
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