

Kluwer Patent Blog

Unified Patent Court: progress and practical issues concerning the opt-out process

Kluwer Patent blogger · Tuesday, July 11th, 2017

Preparations for the launch of the Unitary Patent system are progressing, despite the uncertainties and delays in the ratification process in Germany and the UK. The Case Management System (CMS) of the Unified Patent Court (UPC) will be ready 'as of August 2017 and until the opening of the Court', and tailored to prepare for the so-called sunrise period, in which patents can be opted out from the jurisdiction of the UPC.

According to the UPC's IP Working Group, this '[major milestone](#)' was achieved after gathering 'feedback from attorneys, lawyers and judges by means of more than 25 interactive workshops across Europe. As a result, the IT team proposed 39 different evolutions of the CMS in less than two years and at present, the system counts over 2000 registered users.' The IT team has promised 'there will be a platform of stability for the coming months'.

IP Federation

In the meantime, chairman Alexander Ramsay of the UPC Preparatory Committee replied to concerns about the opt out process of the IP Federation, the UK's industry IP trade association. On 13 June 2017, the IP Federation had written it was 'concerned with the current lack of clarity around how the opt out process will work during the sunrise period at a practical level, including how our member companies will be able to register their staff both as official UPC Representatives and as users of the CMS for the opt-out process.'

In response to the IP Federation, chairman Ramsey wrote a letter as well. He appreciates 'how important it is for industry that the processes to be made available on the CMS during the sunrise period will operate efficiently and that

the procedures to be followed are as clear as possible. (...) As a general matter (...), we appreciate



that administrative actions such as the opt-out are very likely to be performed by formalities staff who are neither qualified lawyers or EPA with additional qualifications. We have therefore tried to ensure that such staff will have access as users for the opt-out applications subject to the safeguards which are set out below.’

In answer to specific matters that the IP Federation raised, he explained, among others:

- ‘We do not read Rule 12 of the draft Decision of the Administrative Committee as preventing an EPA with an existing alternative qualification from registering during the sunrise period. (..)
- (...) applications to opt out and to register as a representative will only be possible when the sunrise period opens. We do indeed expect a large number of applications to register as a representative during this period and we have put in hand practical arrangements to deal with these applications efficiently.
- All users, including formalities staff who are appointed to make applications to opt out, will need to register as users on the CMS. All users will need to have an individual user ID and the proposal is that there shall be a strong authentication procedure. We propose to communicate details of this procedure on the UPC website in a near future (...). All users must just register with an ID before then registering as a representative.
- It will be perfectly possible for formalities staff to prepare applications to opt out for a qualifying EPA or representative. However it is the user (staff or EPA or representative) who is actually lodging the application who will be responsible for its content and who must provide user identity. Further of course if the user is not a qualifying EPA or representative then a mandate will also be required.
- It is not intended that a natural person who is a proprietor of a patent will need a mandate. (...) If the proprietor is a company then any member of staff who is not a UPC representative will need to file a mandate. (...) we believe that it will be possible to have a general mandate (...) and therefore avoid mandates to be continually signed.’

In an article on this blog, questions have also been raised by two experts from Bristows about ‘[the challenges of challenging a Unified Patent Court opt-out](#)’. So far this issue has not yet been picked up by the UPC Preparatory Committee.

Ratification in the UK and Germany

And then back to Germany and the UK. On 7 July 2017, the latter gave its official [consent](#) to the start of the UPC provisional application phase, being the ninth member state to do so.

Support of four more member states, including Germany, is needed. In the provisional period (based on the [Protocol on Provisional Application](#), PPA), practical preparations for the start of the UPC, including the recruitment of judges, can be finalized. The German ratification procedure of both the PPA and the Unified Patent Court Agreement (UPCA) is on hold due to a complaint (2 BvR 739/17) lodged at the Constitutional Court, the *Bundesverfassungsgericht* of Germany, however. It is not clear when the Constitutional Court will decide on the case, about which [very little is known](#).



Das Bundesverfassungsgericht

The UK’s ratification of the UPCA has been postponed due to the elections of 8 June. According to [research of IP Kat](#), and ‘if there are no further delays or unexpected hurdles, (...) it may be that the

UK may have ratified the UPC by end of November/early December 2017’.

In a ‘[message from the Chairman](#)’, Alexander Ramsay wrote on 27 June 2017 ‘I am hopeful the situation regarding the constitutional complaint in Germany will be resolved rather quickly and therefore I am hopeful that the period of provisional application can start during the autumn 2017 which would mean that the sunrise period for the opt out procedure would start early 2018 followed by the entry into force of the UPCA and the UPC becoming operational.’

During the [Premier Cercle conference in Munich](#) on 5 July, EPO president Benoît Battistelli expressed his confidence in seeing the opening of the UPC and the first Unitary Patent delivered in early 2018.

For regular updates on the Unitary Patent and the Unified Patent Court, subscribe to this [blog](#) and the free [Kluwer IP Law Newsletter](#).

To make sure you do not miss out on regular updates from the Kluwer Patent Blog, please subscribe [here](#).

Kluwer IP Law

The **2022 Future Ready Lawyer survey** showed that 79% of lawyers think that the importance of legal technology will increase for next year. With Kluwer IP Law you can navigate the increasingly global practice of IP law with specialized, local and cross-border information and tools from every preferred location. Are you, as an IP professional, ready for the future?

Learn how [Kluwer IP Law](#) can support you.

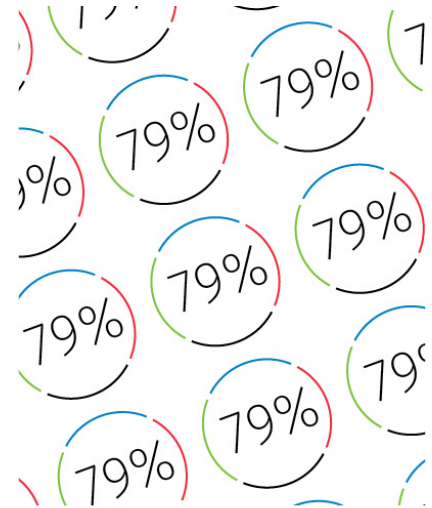
79% of the lawyers think that the importance of legal technology will increase for next year.

Drive change with Kluwer IP Law.

The master resource for Intellectual Property rights and registration.



2022 SURVEY REPORT
The Wolters Kluwer Future Ready Lawyer
Leading change



This entry was posted on Tuesday, July 11th, 2017 at 11:30 am and is filed under [European Union](#), [Germany](#), [Unitary Patent](#), [United Kingdom](#), [UPC](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. Both comments and pings are currently closed.