

# Kluwer Patent Blog

## Chairman Preparatory Committee is hopeful start Unified Patent Court will not be delayed by Brexit complications

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Recruitment of judges and top officials of the Unified Patent Court, training of staff and work on the CMS are some of the tasks that lay ahead now that the Period of Provisional Application of the UPC is approaching. Alexander Ramsay, chairman of the UPC Preparatory Committee, has said this in an interview with Kluwer IP Law. Ramsay said that the problems which have risen due to the Brexit need to be dealt with by the State Parties in accordance with international law. He is “hopeful that this can be done in a pragmatic way that will avoid any further delay.”

### What is your reaction to the developments in Germany? And what are the latest developments?

“The decision of the German Constitutional Court was of course much welcome and means that Germany now can progress with its ratification of first the Protocol on Provisional Application and then the UPC Agreement.



I expect Germany to ratify the Protocol in the near future. When the two additional ratifications that are needed are completed the Protocol will enter into force and the provisional application of certain parts of the UPC Agreement will start.

Germany will wait to deposit its ratification instrument for the UPC Agreement until the State Parties are confident that the preparations that need to be done during the Provisional Application Period (PAP) are concluded in a manner that will render the Court functional. Once Germany deposit its ratification instruments for the UPC Agreement the Agreement will enter into force and the Court be operational in accordance with Article 89.”

**In order for the PPA to start, two other member states will have to ratify or give their support to the protocol. Which member states are you hoping for? Any when do you expect to gain their support and the PPA to enter into force?**

“First; I have full respect for the ongoing national procedures in individual Member States. It is up to each Government and Parliament to take the necessary decisions. Having said that I am aware that the national process in Austria is almost concluded and I am therefore hopeful that Austria will be one of the two. When it comes to the last missing piece I do not want to prejudge any of the ongoing discussions. I am however very hopeful that the last missing Member State will ratify later this year.”

**I understand a budget becomes available when the PPA enters into force. How high is this budget and what is it used for exactly?**

“I will not go into any details on the budget of the Court. However, once the Protocol on Provisional Application enters into force the Court will gain legal personality and will be established as an international organisation. This means that its members need to contribute to the budget that has been decided for the PAP. The budget will be used to the remaining preparatory work that needs to be done during the PAP. For example the finalisation of the Case Management System and the recruitment of the judges.”

**The recruitment of judges had already started, but that was years ago. Will the procedure be done all over? How many people will you be recruiting?**

“The recruitment procedure was opened up in 2016 and attracted approximately 850 applications. Another window to apply was opened up in 2019 and attracted an additional 100-150 applications.

The procedure will not be done all over but will build on the candidates that we have. The recruitment process will be concluded during the PAP. During this period interviews will be conducted and the judges will thereafter finally be appointed. There are currently no plans to open up the recruitment before the entry into force.

We will recruit approximately 50 legally qualified judges and approximately 50 technically qualified judges. The Member States will provide the administrative support staff including the clerks. In addition to the judges, the Registrar, the Deputy Registrar and the personnel for the PMA- and training-centres will be recruited during the PAP.”

**What is the state of affairs concerning the IT system?**

“The IT system is complex and the developing work has been constantly ongoing in the team that we have established for this purpose. The team are working closely with our supplier, Netservice, to fine-tune the system and make it compatible with the different rules that will govern the workflows of the Court.

During the delay caused by the processes before the German Constitutional Court we have, out of budgetary reason, been forced to put some of the developments at a lower speed. This needs to be understood against the background that it has been impossible to foresee the length of the delay. Once the time-plan clears the efforts to conclude can and will be ramped up. The last preparations will be done during the PAP.

We will the also intensify our cooperation with our ERP-providers. That is Enterprise Recourse Planning, meaning payroll, accountancy, HR etc.”

**What other practical issues will be dealt with during the PPA?**

“The most time consuming work to be done during the Provisional Application Period is the finalisation of the recruitment of the judges and the top officials of the Court, the Registrar and the Deputy Registrar.

Another major block is the training that the staff and the judges of the Court will undergo. There will be quite an extensive training program (Rules of Procedure, CMS, judge craft etc). In parallel there will be work on the CMS and the corporate functions of the Court. We haven't been able to conclude some of the work on the corporate functions before due to the lack of legal personality of the Court. This problem will be lifted once the PAP starts."

**On a more fundamental level: in what way will the Preparatory Committee deal with the consequences of the Brexit, especially the fact that London and the UK are expressly mentioned in the UPCA and the PPA, respectively? Will the member states decide about this? Will the UPCA have to be adapted?**

"This is a question that needs to be dealt with by the State Parties in accordance with international law. I am hopeful that this can be done in a pragmatic way that will avoid any further delay."

**The story goes that there are plans to temporarily divide UPC cases which were planned to go to the London central division, between Munich and Paris as long as there is no permanent solution. Is this indeed the idea?**

"See my reply on the question before this one."

**The Preparatory Committee expects the UPCA to open its doors in the middle of next year. Isn't that very optimistic, taking into account the many issues that lay ahead?**

"There is a certain amount of tasks that we haven't had the opportunity to do yet since it needs to be done during the PAP, when the Court has gained legal personality. We have a good grasp of what these tasks are and we deem that they can be concluded in a period of eight months. If the PAP starts, let's say, in December 2021 it is thereby possible that the work can be concluded early fall 2022. This is of course an estimation and if things take a little bit longer due to unforeseen events there will be a delay. Germany will not deposit its ratification until we are confident that the Court will be functional."

**Is it correct that 15 member states will probably participate from the start?**

"The 15 MS that up until now have ratified will of course participate. I am hopeful that additional MS will see the benefit of being in the project from the beginning, which will mean that the number will increase before the entry into force."

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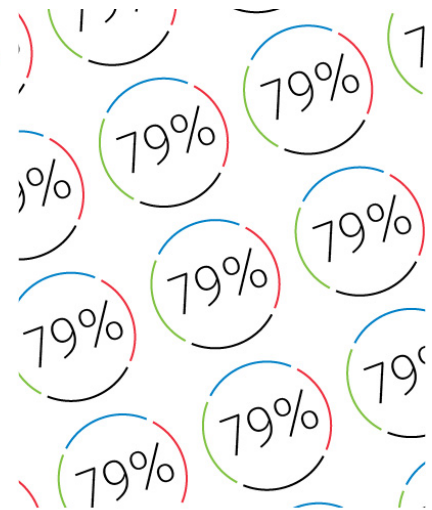
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