

Kluwer Patent Blog

Start Unified Patent Court postponed due to IT issues

Kluwer Patent blogger · Monday, December 5th, 2022

UPDATED 6/12/22. The start of the Unified Patent Court, which was planned for 1 April next year, has been postponed to 1 June 2023, due to the problems with the access of the UPC's content management system.

A the UPC [announced on its website](#), the 'start of the Sunrise Period is postponed for two months. The initial roadmap foresaw 1 January 2023 as the beginning of the Sunrise Period with an entry into force of the UPCA on 1 April 2023. The additional time is intended to allow future users to prepare themselves for the strong authentication which will be required to access the Case Management System (CMS) and to sign documents. Users will need to equip themselves with both, a client authentication (hard device) and a qualified electronic signature. Further detailed information on the authentication is published on this website. Included is [a list of providers](#) who have informed the Court that they meet the required technical standards. This is an open ended list which will be amended as additional providers communicate their readiness to the UPC. As strong authentication is required already for the Sunrise Period the initial timeline seems insufficient in view of the legitimate interests of users who have to find a provider and acquire the required authentication tools. As a consequence, the Sunrise Period will start on 1 March 2023 followed by the entry into force of the UPCA on 1 June 2023.'

Over the last months, stakeholders have warned and complained on several platforms they couldn't secure a functioning access to the UPC's new Case Management System (CMS).

As Thorsten Bausch [wrote on this blog last week](#): 'At present, we are far away from such a paradisiacal state; we are still in purgatory or even lower. The current procedure for even getting simple access to the UPC's CMS is simply a nightmare.'

Bausch pointed out that it is very difficult to acquire the Client Authentication Certificate, needed to access the UPC's CMS: 'The [trust service providers](#) shown (...) offer a "QCert for ESig", i.e. a qualified certificate for electronic signature and other certificates, yet NONE of them seems to offer a "Client Authentication Certificate" as required by the UPC. (...) As far as I have been informed, there is exactly one service provider – from Luxembourg! – that seems to offer both certificates required by the UPC to Germans.'

The difficulties in trying to get access to the UPC's CMS were also discussed in many comments below posts on this blog about the [Data exchange agreement between UPC and EPO](#) (Does anyone know how to get a UPC smart card and reader if you are an EPA in one of the non-EU, EPO countries. The list of smartcard providers seems very long and complex, hard to decipher and hard

to engage with from outside the EU ,and even inside the EU. Any thoughts? Might this agreement solve this problem for EPAs?), The [UPC conference and mock-trial](#) (why is it that the UPC’s IT team has not published a list of the secure devices that they have tested and have confirmed meet their requirements? I am sure that the hundreds of attorney firms across Europe that have been working their way through the list of (more than 200) potential suppliers will be more than a little bit miffed to learn that the IT team that set them the task of searching for needles in a haystack had already located some of the needles ... but had chosen not to share that information.’), [UPC: More information about access to new CMS](#) (‘This “extra information” is still extremely vague and still places the onus on the users and the providers to figure out how to comply. This is reinforced by the extraordinarily unhelpful and vague “answers” provided on the FAQ page that is linked to from the new document (...)’)

The launch of the UPC is triggered by the German deposit of its formal instrument of ratification of the UPC Agreement with the secretariat of the European Council. The court will open its doors on the first day of the fourth month after this ([art 89 UPCA](#)). The deposit was due to happen this month, but the German government had already told Managing IP that [the process was under review](#).

When the court’s preparatory team [published the UPC roadmap](#) at the start of October, it stressed ‘that this roadmap reflect the current state of the UPC project and therefore, might be subject to change.’ Still, the postponement of the entry into force is quite an embarrassment, especially in view of the major issues with accessing the UPC’s CMS, which have apparently not been foreseen.

Half November, the EPO announced that: ‘Aligning with the recently published implementation roadmap published by the Unified Patent Court (UPC)’, transitional measures enabling patent applicants to file early requests for unitary effect and requests for a delay in issuing the decision to grant a European patent, would enter into force on 1 January 2023. This will have to be postponed now as well. (**UPDATE:** On 6 December, [the EPO announced the entry into force will not be changed](#))

So after years of major political and legal setbacks, such as the German constitutional complaints and the Brexit, the bumpy road to the launch of the Unitary Patent system has now been delayed by IT issues.

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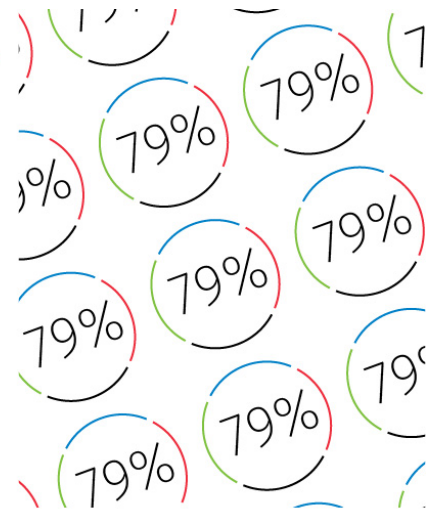
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