

Kluwer Patent Blog

Sunrise hiccups at the Unified Patent Court

Kluwer Patent blogger · Thursday, April 6th, 2023

The Unified Patent Court is struggling once more with technical issues. In the meantime, the registrar has stated he cannot give legal advice on the UPC's opt-out procedure.

Two days ago, the court announced that technical maintenance was needed due to technical difficulties, and that the CMS would not be available for three days – starting almost immediately.



‘This maintenance is necessary, amongst other things, to provide a new hosting infrastructure for the CMS. (...) We acknowledge that this communication has been released on very short notice but unexpected technical difficulties force us to take appropriate action in such a swift way.’

According to the UPC, the maintenance period, which is supposed to end tomorrow, will not have impact ‘on the current data or actions that you have performed in the CMS’.

Last month, issues came to the surface as well. Users complained that early applications to become a Representative before the UPC had not been processed. Problems with the secure access to the CMS have earlier led to a two months’ delay of the start of the sunrise period, which had originally been planned for the first of January 2023.

In reaction to the large number of inquiries the court received, a document ‘[Information from the registrar](#)’ was published on 24 March 2023, commenting on and explaining the most currently addressed issues since the start of the sunrise period.

Apparently the document left some issues unanswered, particularly concerning the opt-out procedure. On 4 April the follow-up report ‘[Further information from the registrar](#)’ was published. But whoever hoped this document would end all remaining doubts was in for an unpleasant surprise: the interpretation of the opt-out procedure up to the UPC, not to me, the registrar wrote.

Any legal interpretation of the UPC Agreement and the Rules of Procedure are ultimately for the Court to make

‘After the news item published March 24 I have received comments and questions as regards some of the guidance provided in this news item and the FAQs, primarily concerning the way of filling in the European patent details’ section of the opt-out template, in particular the country abbreviation section. In view of these comments I am now making it very clear that the requirements of an opt-out are prescribed in Article 5 of the [Rules of Procedure](#). It is up to each and every applicant to make his/her own assessment of these requirements and act accordingly when filling in an opt-out application.

As the Registrar I cannot give any legal advice on the interpretation of Article 5 of the Rules of Procedure. Any legal interpretation of the UPC Agreement and the Rules of Procedure are ultimately for the Court to make.’

Tomorrow evening 8 pm CET the access to the UPC’s CMS should be restored again.

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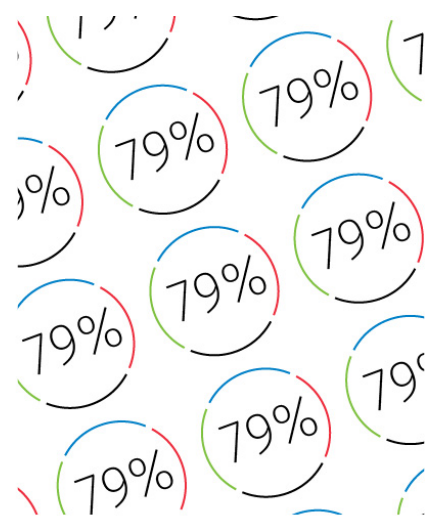
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