

Kluwer Patent Blog

Opening ceremony local division Unified Patent Court in The Hague

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Around 200 judges, patent litigators, patent attorneys, other patent experts, representatives of scientific institutions and companies, government officials, The Hague mayor Jan van Zanen and Dutch minister of Economic Affairs and Climate, Micky Adriaansens, attended the opening ceremony of the Dutch local division of the Unified Patent Court today in The Hague.

Minister Adriaansens stressed the activities of the (local division of the) UPC, which will officially open its doors on the first of June, are very important for Dutch economy and for businesses – ‘the motor of the society’ – in their endeavours to innovate, develop and protect their inventions. She pointed out that efforts to unify the patent regime in Europe date back to 1948 and that language issues blocked many earlier initiatives. According to Adriaansens, it was thanks to the very active role of the Netherlands, together with Sweden and Belgium, that the Unitary Patent system will see the light of day, covering – for now – 17 countries and a market of 350 million people. ‘This gives our economy an excellent position. We have some of the best IP judges in the world and we have specialized and highly regarded lawyers. Just like the office of the EPO in Rijswijk, the local UPC division will stimulate innovation and that is very good news for the Netherlands.’



Mayor Jan van Zanen said The Hague is a city of peace, law and security, including security of intellectual property. He is delighted that after the European Medicines Agency in Amsterdam, the EPO office in Rijswijk and the Benelux Office for Intellectual Property in The Hague, the IP activities in the Netherlands will now also include the local UPC division. It took years to realize and work remains to be done, he said, as only 17 and not all member states of the Unitary Patent system have so far ratified the Unified Patent Court Agreement.

Rian Kalden, who is member of the UPC’s presidium and will be presiding judge of the second panel of the Court of Appeal, described the long and difficult process towards the creation of the Unified Patent Court. She recalled how judges could apply for a post at the court for the first time in 2013. ‘They asked whether I would be available for interviews in the summer, but I wasn’t, I was on holiday, far away from the Netherlands.’

As Kalden said, the German constitutional complaints caused long delays, whereas the Brexit vote caused a lot of confusion. The latter ended abruptly with Boris Johnson who, contrary to declarations of the government of Theresa May that the Brexit would not change the UK's position regarding the Unitary Patent system, pulled the plug in 2020. The last two complaints against German ratification of the UPCA were dealt with faster than expected, so in July 2021, unexpectedly for many, the road to the creation of the UPC reopened.



According to Kalden, many compromises had to be found, leading among others to a quite complex UPC structure. She praised the efforts and endurance of the people who were involved and predicted interesting, challenging times. It is inevitable that sometimes things will go wrong, but with flexibility and a positive mindset these can be overcome. Remarkably Kalden hesitated when she was asked whether anything could still prevent the start of the UPC on the first of June. Encouraged by some spectators, she finally said 'no'.

After her speech Rian Kalden, her colleague Edger Brinkman, Jan van Zanen en Micky Adriaansens 'opened' the local division by jointly using a special UPC hammer for the first time.

In a panel discussion, positivity about the UPC was the recurring theme. IP director Roelie Kingma's explanation that her company Nutreco has chosen a wait and see approach concerning the UPC and has opted out most patents, was received with some disappointment and criticism. Contrary to the statement of Leo Steenbeek of Philips, who said his company has chosen not to opt out, unless there are very good reasons, because the



UPC, with its efficiency, quality and rulings which have effect in 17 member states, has enormous advantages. Philips will apply for a Unitary Patent if it seeks patent protection in more than three UP member states.

Discussion leader Wouter Pors, Bird & Bird partner and a long-time advocate of the UP system, stressed the quality of the UPC judges, and the unfounded concerns about unpredictability of decisions at unexperienced local divisions. Besides a local judge, two more experienced judges will always be involved and of course, there is always the option of appeal, he pointed out.

Pors and judge Edger Brinkman (to the right on the top photo), among others, agreed that the local UPC division in The Hague could become a popular venue, as the Dutch were closely involved in drawing up the Rules of Procedure, Dutch IP judges have a reputation for issuing quality decisions at relatively low costs and English as process language is no problem at all for them. Edger Brinkman explained that as there are different national traditions it has to be seen how some decisions in UPC cases will turn out. Rian Kalden expects some changes in decision making in patent cases in the Netherlands as well. ‘Think UPC’, is the mission.



Will UPC litigation become dominant to the detriment of national patent litigation? The majority of the audience didn't think that is realistic. The general feeling seemed to be that a period of four to five years is more likely.

(Photo on top: Elena Kamphuis, other photos: Kluwer Patent Blogger)

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