

# Kluwer Patent Blog

## Hard copy opt-outs accepted in case CMS Unified Patent Court ceases to function

Kluwer Patent blogger · Thursday, May 25th, 2023

**In view of the problems with opting out patents from the Unified Patent Court's jurisdiction, the court will temporarily accept opt out applications in hard copy in case the CMS ceases to function.**

Just six days before the Unified Patent Court opens its doors, the court has announced that taking into account the 'sharp increase of requests on the Court's CMS, the UPC is taking measures to ensure as far as possible the possibility to file opt-out applications' during the last days of the sunrise period, and has advised users who wish to lodge an application for an opt-out by hard copy to follow a specific process.



'A party may lodge a document in hard copy for the reason that the electronic case management system (CMS) has ceased to function (Rule 4.2 UPC Rules of Procedure) only after the Court has established such a situation. This is currently not at hand. If the Court, however, will establish such a situation due to an overstressing of the system or any other reason during the remaining last days of the sunrise period, users who wish to lodge an application for an opt-out by hard copy are advised to follow a specific process described in this communication.'

'The UPC will temporary accept the filing of opt out applications in hard copy only after the Court has established that the CMS has ceased to function. If the Court establishes such a situation due to an overstressing of the system or for any other reason, users will be immediately notified thereof on the UPC website. Such situation is currently not at hand and the CMS is operational. It needs to be made clear that already communicated periods during which the CMS will be down due to maintenance reasons do not give rise to this scenario, including the maintenance of the 31st May to promote entry into force functionalities.

If the Court establishes that the CMS is not functional, this will be notified on the UPC website. Following such notification, opt-out applications may be lodged in hard copy form. The reception of such physical opt-outs will however only be accepted when the following process is strictly observed:

1. The opt-out applications shall be lodged at the Registry of the UPC Court of Appeal, Nouvel Hémicycle, 1, rue du Fort Thüngen, L-1499 Luxembourg, during opening hours (Monday – Friday: 09-12 and 14-16 CEST),
2. All opt-out applications will have to be lodged in an USB stick hardware. The USB stick will contain:
  - a) all the PDF documents (including mandate if applicable) of an opt-out applications for all targeted patents, published applications and supplementary protection certificates (SPCs). Each application should contain, as file name, the EP patent number (or first patent listed, in case of multiple patents opted-out within the same application form), as follows: APP\_EPXXXXXXXXX.pdf.
  - b) an excel file where the specific information of the opt-outs are recorded (see attached PDF file with instructions on what your Excel should contain);
3. You shall provide, together with the USB stick, a print out with an overview of all patents, published applications and supplementary protection certificates (SPCs) which are the subject of the opt-out application (you may use a print-out of the excel sheet under point 2(b) above). This print-out will be used together with the receipt, which will be issued by the Court, for the acknowledgment of the receipt of the hard-copy filing;
4. You shall provide an e-mail address to which the receipt of the hard-copy filing is to be sent.

If the above conditions are not met, opt-out applications filed in hard copy may be considered to not have been lodged at the Registry of the UPC or only at a point of time when these conditions have been met.

Opt-outs lodged in hard copy form through the above temporary solution may only be considered to have been lodged when they are subsequently filed electronically in the CMS, after it has been communicated by the Court on the UPC website that the CMS is functional again.’

### **epi concerns**

On its website, the [epi announced today](#) that it ‘has voiced concerns with the Administrative Committee of the UPC about the problems encountered by CMS users struggling to successfully complete opt-out requests.

‘The take-away messages from the UPC are as follows:

- The first technical feedback received after an opt-out via the API answer is a sufficient proof of successful opt-out;
- To the extent possible, users should limit the use of APIs as much as they can by avoiding multiple requests of statuses;
- APIs should ideally be processed at night (avoiding the potential maintenance window 8-10 pm);
- The UPC Presidium will treat opt-outs that are signed in electronic form as validly filed, regardless of the certificate used;
- The possibility to lodge opt-outs in the form of a „paper copy“ can be activated only if the Court establishes that the CMS system is down (not slow).’

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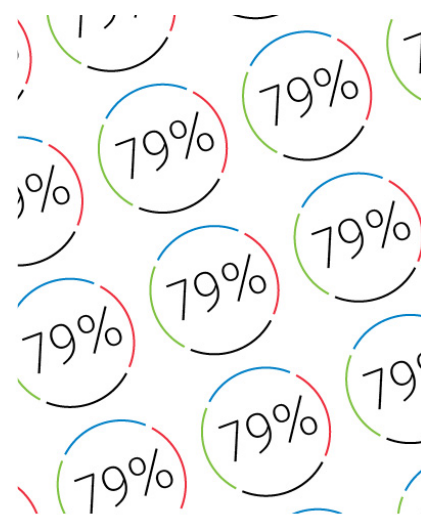
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