

Kluwer Patent Blog

‘Current level of transparency at the Unified Patent Court is far below standard’

Kluwer Patent blogger · Friday, September 1st, 2023

The level of transparency at the Unified Patent Court is far below what would normally be considered acceptable in civil court proceedings in most of the EU member states, says UK, Dutch and European patent attorney Joeri Beetz of law firm Keltie. He decided to build a [UPC search site](#) himself. Kluwer IP Law interviewed Beetz about his initiative, and asked the UPC for a reaction.

‘It was part hobby, part frustration. I have been building websites since the mid-90s for sports clubs, friends, student organisations, a band, and others. About five years ago, I built a website with EQE statistics that may already have been used by many European Patent Attorneys. When I see a nice data set that may be of interest to more people than just me, I start coding.



Joeri Beetz

I had already been looking at the EPO API for a bit and was looking for a useful website to build based on that. At that point, the UPC finally started. As an early UPC enthusiast (I went to Strasbourg in 2013 to get my UPC certificate before there even was a grandfather provision), I closely followed and participated in all the discussions about opt outs and the UPC CMS.

When the first cases were filed, it was clear that the UPC website and the UPC public API were highly dysfunctional. This immediately gave me the sense of purpose that I had been looking for and I started building a website that could make the limitedly available public UPC information easily accessible to everyone.’

How has the response been?

‘The response has been great. It’s a very niche website of course, but there are about 100 unique visitors every day and many of them have contacted me just to thank me, to report bugs (please keep doing this!), or suggest improvements. Some people tell me they use it not just out of

curiosity, but also in their daily work. Mainly for quickly checking opt out and UP validation information for specific patents.’

Do you think the UPC should improve the availability of information?

‘Yes. Certainly. Personally, I may be happy to say that I can show information not available via the official UPC website. But for the first proper supranational patent court, it is important that there is full transparency in the cases that are pending, the decision that are made, and the case law that is formed.

The official UPC website has improved a little bit in recent weeks, but it is still very difficult to see what cases are pending, and impossible to see what they are about. Only some decisions are partly published, but certainly not in a structured way that allows for proper analysis by the general public. Authorised and registered representatives can see a bit more by entering the non-public CMS, but also for them 99% of the documents submitted to the Court are inaccessible.

The current level of transparency at the UPC is far below what would normally be considered acceptable in civil court proceedings in most of the EU member states. What I would like to see is an EPO register style online dossier where all relevant documents can be easily accessed by any interested person. If the UPC does not offer this, I’d be happy to build this myself, but the current version of the public API does not make that possible yet.’

Have you been in contact with the UPC about this?

‘I have submitted two or three requests about technical problems with the public API, but I’ve never got any substantive answers to those questions. Just a few very late responses indicating that the questions would be forwarded to the relevant departments.’

More in general, what is your first impression of the court? Has the start been promising?

‘The launch of the CMS and the first weeks of opt out practice were dramatic and not very promising. That part of the system appears to be functioning somewhat acceptably now, but it still has the look and feel of a software application built in the final years of the previous century.

From what has been made available to the public and reported by some of the attorneys involved in the limited number of hearings so far, the actual court itself looks more promising. The first published orders and decisions are clear and appear well-reasoned. But we’ll have to wait for the first proper conclusions in a few infringement and revocation cases to really get an idea of what to expect from this new court.

Interestingly, none of the defendants appear to have challenged the legality of the court itself and the distribution of cases over the different branches of the Central Division yet. In the years running up to the start of the UPC, this has been a popular topic of discussion on some patent-related websites. The European legal profession appears to be happy to embrace the new court and use it to defend the interests of their clients.’

Have you or your firm already filed any cases?

‘Not really yet. We’ve filed, corrected, and withdrawn opt outs and requested unitary effect for granted European patents, but we haven’t filed any infringement or revocation actions. Some of the patents currently litigated at the UPC have, however, been prosecuted at the EPO by our attorneys. So, we are following those cases closely.’

You’re based in London. How does the start of the UPC influence the activities of you and your

colleagues? Is the position of the UK outside the UP system a (dis)advantage?

‘It would be difficult to argue that having lost the London branch of the Central Division and not having our own Local Division is an advantage. But the position of UK patent attorneys in Europe is certainly not a bad one.

After Germany, we have the largest number of EPO qualified patent attorneys and UK patent attorneys with UPC qualifications have the additional advantage that many of the British patent lawyers need to team up with a UPC representative to be able to represent their clients at the UPC.

For many companies, the UK market is too important to ignore and many UPC cases will see parallel litigation on the same European patents in the UK courts. For a coordinated approach, it will certainly not be a bad idea to use a UK firm to take the lead in the legal proceedings at both sides of the Channel.’

Your firm Keltie is also active in Ireland. Any chance it will join the UP system soon, you think?

‘Keltie has offices in Dublin and Galway with local European and Irish attorneys. At the moment, however, we are still waiting for the Irish government to announce a date for a referendum on the ratification of the UPC agreement. May 2024 could be the first option, but I haven’t seen any confirmation of the referendum going ahead by that date. If and when the referendum is successful, it is likely that there will be a Local Division in Dublin soon.’

Kluwer IP Law asked the UPC for a reaction and received the following message from the court’s Registrar, Alexander Ramsay: *‘During the sunrise period and the following months after the entry into force of the Agreement the staff and judges of the Court have worked hard to implement and improve the different processes necessary for the Court’s functionality. In particular a lot of effort has been put into the Courts Case Management System. When doing so we have had to do a strict prioritization and focus first on the issues directly relevant to our core business. The issue of transparency is very important and I assure you it is something we take very seriously. In the coming weeks and months we will further improve the search functionality on the Court’s website as well as the system for displaying orders, decisions and timing of court hearings.’*

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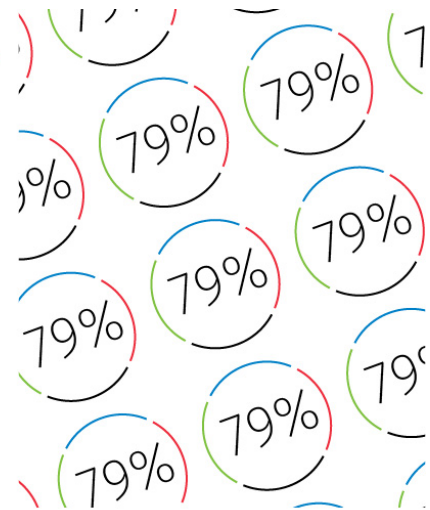
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