The Current Status of the Unitary Patent Package

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Legal sources

- 17 December 2012
  Regulation 1257/2012 enhanced cooperation in the creation of unitary patent protection

- 17 December 2012
  Regulation 1260/2012 (translation arrangements)

- 19 February 2013
  Agreement on a Unified Patent Court and draft Statute

- 19 October 2015 (15 March 2017)
  Draft Rules of Procedure Unified Patent Court (V18)

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Signature of the Unitary Patent Regulations on 17 December 2012

by the Presidents of the Council and of the European Parliament
Signature of the Unified Patent Court Agreement on 19 February 2013

by the representatives of 25 Contracting Member States

The main publicly available documents can be found on www.upc.documents.eu.com
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UPC’s FAQ

News

Final Preparatory Committee Signals State of Readiness – 15 March 2017

The Preparatory Committee met in The Hague on 15 March 2017 for the last time before the next phase of the Court’s commencement.

UPC – Provisional Application

15 January 2017

The Preparatory Committee is now working under the assumption that the Provisional Application Phase (PA) will start end of spring 2017, presumably in May, and that the Agreement on the Unified Patent Court (UPCA) will enter into force and the Court become operational in December 2017.

Update on UPC ratifications – UK signals green light

30 November 2016

As previously reported, the UPC Preparatory Committee has largely completed all the work required in preparation for the Court to become fully operational.

https://www.unified-patent-court.org/faq

The last months

* https://secure.unified-patent-court.org/login
Ratifications

- Entering into force when 13 Contracting States including "the three Member States in which the highest number of European patents had effect in the year preceding the year in which the signature of the Agreement takes place (= 2012)", i.e. DE, FR and UK have ratified

- 12 ratifications so far (chronological order): AT, FR, SE, BE, DK, MT, LU, PT, FI, BG, NL and IT

- 2 ratifications still needed: DE and UK

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Ratifications

12 ratifications so far (chronological order): AT, FR, SE, BE, DK, MT, LU, PT, FI, BG, NL and IT
The Preparatory Committee

- Composed of all the Contracting Member States of the Unified Patent Court Agreement
- www.unified-patent-court.org
- 5 major work streams
  - Legal framework
  - Financial aspects
  - IT
  - Facilities
  - Human resources & Training

1 October 2015

Protocol for the provisional application of the UPCA

The protocol for the provisional application of the Unified Patent Court Agreement allows for the provisional application of the institutional, organisational and financial provisions of the UPCA and Statute during a period of approximately six months before the UPCA enters into force.

This will allow all legal texts and all decisions and appointments to be adopted in accordance with the relevant procedures.

The Current Status of the Unitary Patent Package

The Unified Patent Court

The Court of appeal (Luxembourg)

Court of Appeal

Luxembourg
Hemicycle
Kirchberg

Article 7 and Annex II
The Court of first instance: central division’s seat and sections

London
Paris
Munich

SECTION A — HUMAN NEEDS
SECTION B — PERFORMING OPERATIONS TRANSPORTING
SECTION C — CHEMISTRY METALLURGY
SECTION D — TEXTILES PAPER
SECTION E — FIXED CONSTRUCTIONS
SECTION G — PHYSICS
SECTION H — ELECTRICITY

SECTION F — MECHANICAL ENGINEERING LIGHTING HEATING WEAPONS BLEISING
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The Unified Patent Court

Court of First Instance

London
Aldgate Tower (City)

Paris
Palais de Justice

Munich
Bundespatentgericht

https://www.unified-patent-court.org/locations

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IT System

- Unified Patent Court Case Management System is ready and can be tested
  https://secure.unified-patent-court.org/login
- Case Management System mailing list
  http://unified-patent-court.us9.list-manage.com/subscribe?u=ce522772fa2293932d95a6e0f&id=a1f94756ea

The next 12 months (tentative)

- 15/03/2017: End Preparatory Work
- 01/06/2017: Beginning Provisional Application Phase (PAP)
- 01/12/2017: Court starts operations
- 31/03/2017 - 31/07/2017: Notifications needed
- 01/06/2017 - 30/11/2017: Sanction Period
- 01/06/2017 - 30/09/2017: Provisional application phase

The Unified Patent Court

The aftermath of the UK referendum of 23 June 2016 (contents)

- The UK is still a EU Member State for several months or years
- UK may ratify the UPC Agreement notwithstanding the Brexit notification
- Legal questions and political uncertainties

EU law background

The UK is still a EU Member State for several months or years

- The 23 June 2016 referendum on Brexit had no legal effect in itself
- Only the formal notification in accordance with Art. 50 Lisbon Treaty on 29 March 2017 triggered the process by which the UK will withdraw from the EU
- the UK remains in the Union until "the date of entry into force of the withdrawal agreement or, failing that, two years after the notification"
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The Unified Patent Court

Referendum and UPC Agreement

- On 28 November 2016, the UK government announced its intention to ratify the UPC notwithstanding the referendum result to leave the EU
- This announcement is a major step towards the entry into operation of the UPC
- Some people, however, voice concern that the UK position (inside the UPC, but outside the EU) may raise legal questions

The Unified Patent Court

Influence of a possible Brexit on the UPC Agreement

- UPC Agreement refers only to “EU Member States” (Art. 2, Art. 84): a non-EU Member State could not accede the Agreement
- UPC Agreement does not envisage the withdrawal from the EU of a EU Member State thereby becoming a non-EU Member State
- UPC Agreement does not envisage either the withdrawal of a Member State (nothing like Art. 50 Lisbon Treaty in the UPC Agreement)
Legal questions

- Assuming the UPC Agreement enters into force and assuming UK withdrawal from the EU become effective, would such withdrawal make the UPC incompatible with EU law?

- In other words: is it possible that a State which was a EU Member State when the UPC Agreement entered into force remain in the UPC system after its withdrawal from the EU?

Optimistic interpretation of the CJEU’s legal opinion 1-09 of 3 March 2011

- The CJEU’s legal opinion does not exclude the participation of non-EU Member States

- "A court common to a number of Member States, situated, consequently, within the judicial system of the European Union" may also be a court common to EU and non-EU Member States without violating EU law as long as the UPC Agreement provides that the Contracting Member States are jointly and severally liable for damage resulting from an infringement of Union law by the Court of Appeal
Prepare for entry into force

- Before entry into force
- Transitional period
- After entry into force

Prepare before entry into force

- Unitary patent? Both (national + EP)?
- Language of filing?
- Order of applicants in the patent application?
- Review collaboration or joint research agreements
- Review co-ownership and licence agreements
Prepare for transitional period

- To opt out or to stay in?
- If no opt-out, concurrent jurisdiction of UPC and national courts (claimant’s choice)
- Applicable law may be different before the UPC and before national courts?
- Time matters: UPC has only jurisdiction for infringement facts subsequent to the entry into force of the Agreement

Prepare for entry into force

- Superfast proceedings
- Fully electronic proceedings
- All statements and documents immediately available to the public unless specific request
Thank you