

UPC Update

Young EPLAW Congress
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UPC Update

Contents

- Key Timetable
- Interim Administration
- Entry into force of UPC
- Status of Rules of Procedure
- Current status of divisions/languages of proceedings
- Judicial selection and training
- Urgent actions for you
- Final opt-out provisions
- The Cost Management System (CMS)

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Timetable – Key provisional dates

- Provisional Application Phase starts – end May to December 2017
 - Recruitment and Training of LQJs and TQJs
 - Appointment of Administrative Committee
 - Elections for President of CFI and Court of Appeal
 - Election for Presidium
 - Appointment of Registrar and Deputy Registrar
- Sunrise Period (following UK and German ratifications) – September to December 2017
 - Applications to opt out
 - Applications for registration as a representative
- Entry into force of the Court - December 2017

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Interim administration of UPC

- Final Preparatory Committee meeting – 15th March
- Administrative Committee to be appointed – end May
- Interim Teams
 - HR Team
 - IT Team
 - Registry Team
 - Finance Team
 - Corporate Function

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- Article 89 UPCA - Entry into force

This Agreement shall enter into force ... on the first day of the fourth month after the deposit of the thirteenth instrument of ratification ... 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...

- Ratifications

Of the 25 EU Member States who signed the Agreement on 19 February 2013 the following 12 have ratified so far:

Austria	France	Portugal	
Belgium	Luxembourg	Sweden	Pending
Bulgaria	Malta	Finland	Germany + UK
Denmark	Netherlands	Italy	

- UK will now probably ratify in []
- Germany is expected to formally ratify in August.

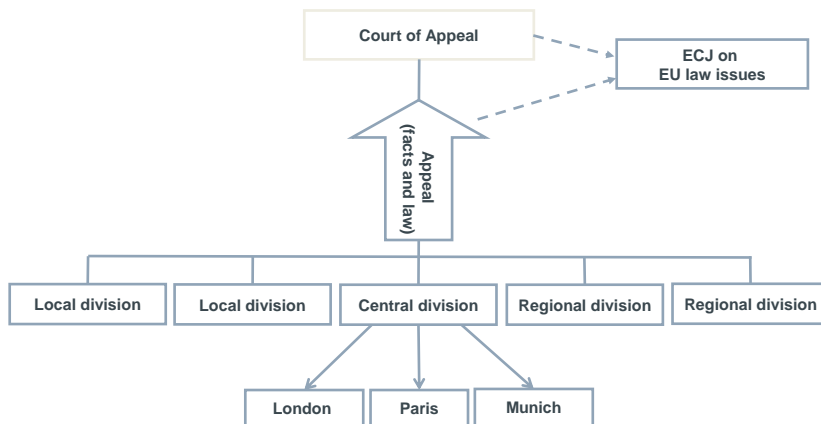
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Rules of Procedure

- Final Draft adopted by Preparatory Committee on 15 March 2015 and now on UPC website
- Changes since 18th draft
 - Rules 370 and 371 relating to fees have been incorporated
 - Rule 5 (Opt-out) amendments (see later)
 - Minor redrafting and corrections
- Further changes to come

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The UPC Structure



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6 / L_LIVE_EMEA1:36216169v1

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Current state of play with divisions and choice of language(s)

- Anticipated local divisions (language(s))
 - Italy (Italian and English), England and Wales (English), The Netherlands (Dutch and English), France (French and English), German x 4 (German and English), Belgium (Dutch, French, German and English), Finland (Finnish, Swedish and English), Denmark (Danish and English), Austria (German and English), Hungary (?), Portugal (?), Slovenia (?) and Greece (?).
- Regional Divisions (languages(s))
 - Sweden, Estonia, Latvia and Lithuania (English only)
- No participation in either a local or regional division
 - Malta and Luxembourg [Bulgaria and Romania] – results in donation of jurisdiction to the Central Division (language of grant)
- Undecided
 - Poland (has not yet signed Agreement), Slovakia, Cyprus and Ireland

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Judicial Selection and Training

- Recruitment of Judges
 - Application process closed 04 July 2016
 - 840 applicants
 - 40% DE, 16% FR, 13% IT, 7% UK
 - 17% female, 83% male
 - 33% LQJ, 62% TQJ, 5% both
 - Pre-screening is ongoing to interview and appoint 90 LQJ (including 45 on a reserve list) candidates and 50 TQJ candidates for advanced training in September/October 2017
 - Appointment of CFI and CofA Presidents in late September
- Service Regulations for Judges
 - Age limit for appointment – 67
 - Mandatory retirement – 70
 - CFI salary Euros 11,000 net per month
 - CofA salary Euros 12,000 net per month
 - Allowances/Pension/Medical plan

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Urgent Actions

- The opt-out
 - Opportunity to register begins with the sunrise period (September 2017)
 - Revised provisions relating to the opt-out, withdrawal of the opt-out and correction are in RofP Rule 5
- Registration as a representative
 - Opportunity to register begins with the sunrise period
 - Only a registered representative can represent a party before the UPC
 - Detailed provisions relating to the qualification of a representative are contained in RofP Rule 286 and the draft EPLC decision to be adopted by the Administrative Committee when appointed

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Urgent Actions cont.../

- Art. 48(1) UPCA: “parties shall be represented by lawyers authorised to practise before a court of a Contracting Member State”
- “Lawyer” is defined by reference to Directive 98/5 EC (Rule 286 Rules of Procedure)
- Lawyers wishing to be representatives must lodge a “certificate” of his/her authority at the Registry
- This certificate must be uploaded on the CMS starting from the sunrise period (September 2017)
- Prior to uploading the lawyer must obtain identity authentication (essentially a digital signature) – details to be provided in [April] 2017. See for example VERISEC in the UK

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Final Opt-Out Provisions

- Rule 5 of the Rules of Procedure set out the opt-out provisions. Essentially a granted European bundle patent may only opt out by the “proprietor” (and an SPC by the “holder” of the SPC) during the 7 year transitional period
- Rule 8 – Who is the “Proprietor”?
- Rule 8.5 makes clear that the “proprietor” of a European patent is the person entitled to be recorded as proprietor in each country where the patent has been validated even if not in fact registered. This also applies to an applicant for a patent as well i.e. the person entitled to be granted the patent even if not the original applicant
- Rule 5 provides
 - An application to opt out must be filed at the Registry (a standard electronic form will be available on the Case Management System and details of an API for multiple opt-outs can be found at <https://www.unified-patent-court.org/development>)
 - All proprietors of all designations and the holders of all existing SPCs must make the application

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The Opt-Out Provisions

- The opt-out will last for the life of the patent/SPC unless withdrawn
- An opt out may be withdrawn by all proprietors and holders
- The application form will take 15 to 60 seconds to complete depending on the extent of information to be inputted
- SPCs granted following the opt-out of the basic patent will be automatically opted out
- There must be certification that the person lodging the application is authorised by all "proprietors" etc. and a mandate must be uploaded if this person is not a "representative" registered with the UPC. A representative is not required to lodge a mandate but all users (including representatives) will need identity authentication
- There must also be given a declaration that no action has been commenced which would prevent the opt-out (ie a UPC action) or withdrawal of the opt-out (ie a national court action)

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- Restrictions on applications to opt-out
 - a Unitary Patent cannot be opted out and if an application has been opted out but is subsequently granted as a unitary patent the opt-out is automatically withdrawn
 - a European Patent cannot be opted out if there has been any proceeding in the UP Court prior to the date of application
 - an opt-out cannot be withdrawn if there has been any proceeding in any national court in respect of any member of the patent family (or any granted SPC) before the date of the application


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- Incorrect Opt-out Details – Rule 5.6
 - If certain details required for opting out (Rule 5.3) are missing or incorrect the opt-out is ineffective until corrected. The details in question are essentially the names of all proprietors/applicants/holders
- Sunrise procedure – Rule 5.13
 - This will now be operated by the Registry of the UPC as part of the Provisional Application Phase of the UPCA before the Agreement and the Court comes into effect ie from September 2017

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The Case Management System

- Accessible via the UPC website for testing
- Aim is to finalise for UAT testing to begin end April 2017
- Training
 - Judges / Registry Staff – November 2017
 - Users?
- Go live?
 - September 2017 for registration of op-outs and representatives
 - Fully when UPC opens in [December 2017]



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