

Update on The Unified Patent Court

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Update on the Unified Patent Court

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 - Where we are with ratifications
 - Key provisional dates
 - Interim administration

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Entry into force

- Article 89 UPCA

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	Lithuania	<u>Pending</u>
Belgium	Luxembourg	Sweden	Estonia	Germany
Bulgaria	Malta	Finland		UK
Denmark	Netherlands	Italy		

- UK will now probably ratify in [December 2017]

- Germany?

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- The German Constitutional complaint
 - Approvals of the 2 laws required for ratification of the UPCA were obtained on 9th March 2017 (Bundestag) and 31 March 2017 (Bundesrat)
 - What remained were purely formal steps including certification by the Federal President
 - In March 2017 the complaint was filed by Dr Inge Stjerna
 - The grounds of complaint:
 - failure to obtain the required majority (2/3)
 - lack of independence of the UPC judges
 - breach of Union law in several respects
 - democratic deficits with the adoption of Rules of Procedure
 - the complaint also requested provisional measures and references to the CJEU in respect of alleged breaches of Union law
 - June 2017 – The Constitutional Court “requests” the President to suspend certification of the ratification
 - 27 bodies (institutions) were invited to submit comments (amicus briefs) before 31 October (now 31 December)
 - Date of decision? Unknown

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Timetable – Key provisional dates to entry into force

- Provisional Application Phase starts – [May 2018] assuming Germany and 2 more Member States sign or decide to be bound by the Protocol (? BG, RU, MT, EL, AT)
 - Recruitment and Training of Legally Qualified Judges and Technically Qualified Judges
 - Appointment of Administrative Committee
 - Elections for President of Court of First Instance and Court of Appeal
 - Election for Presidium
 - Appointment of Registrar and Deputy Registrar

- Sunrise Period (following UK and German ratifications) – [September 2018]
 - Applications to opt out
 - Applications for registration as a representative

- Entry into force of the Court - [December 2018/2019]

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Interim administration of UPC

- Last Preparatory Committee meeting – 15th March 2017
- Administrative Committee to be appointed at start of PAP – [April 2018]
- Interim Teams
 - HR Team (including training)
 - IT Team (including CMS)
 - Registry Team
 - Finance Team
 - Corporate Function

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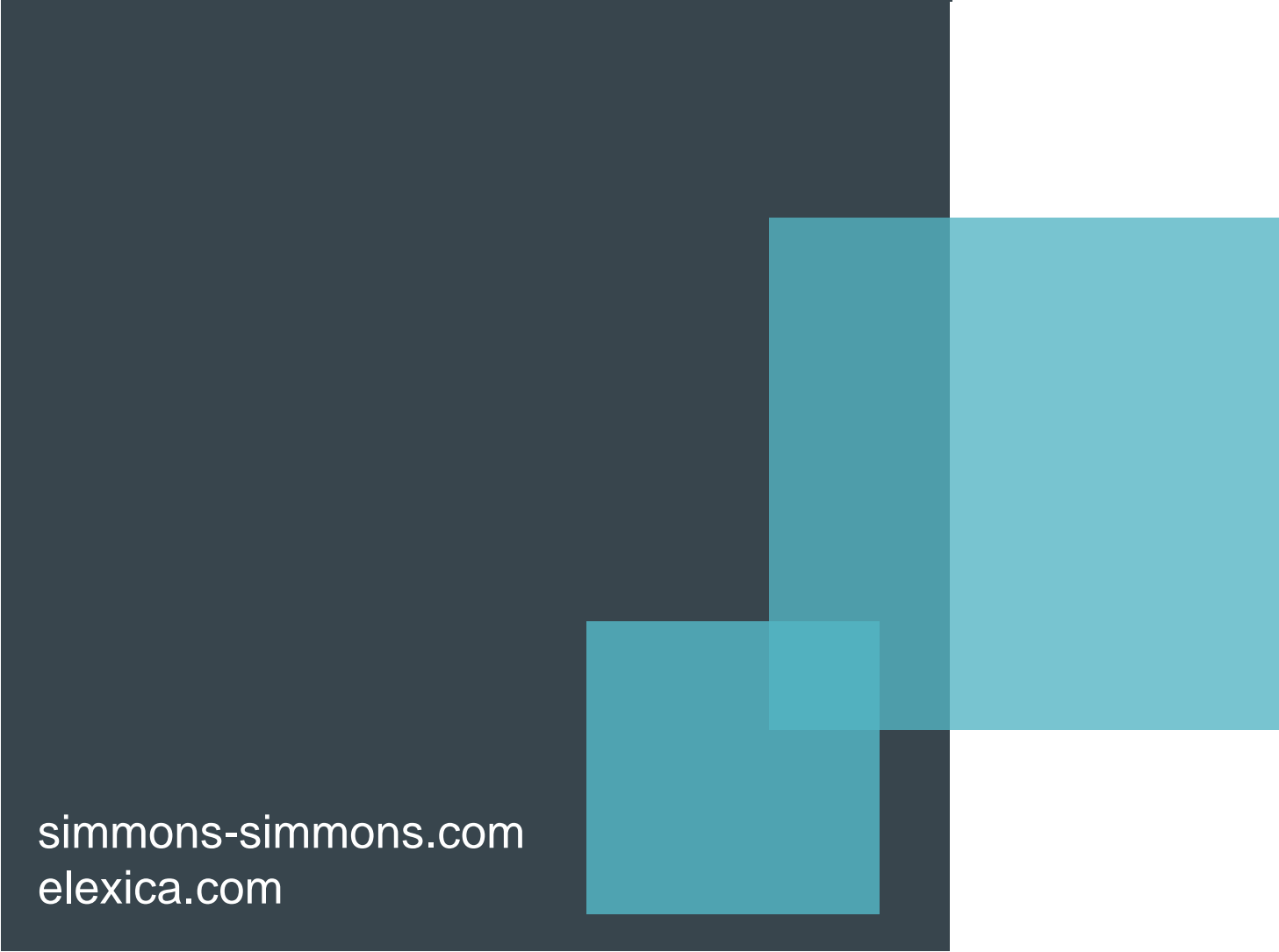
Rules of Procedure - Update

- “Final Draft” adopted by Preparatory Committee on 15 March 2017 and now on UPC website
- Changes since 18th draft
 - Rules 370 and 371 relating to fees have been incorporated
 - Rule 5 (Opt-out) amendments
 - Minor redrafting and corrections
- But further changes still to come – principally new Rule 262A relating to confidentiality clubs
- Adoption by Administrative Committee – [May 2018]

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Current state of play re divisions and choice of language(s) for proceedings

- 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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