

The European Patent Lawyers' Association (EPLAW) Reports on Another Successful Year and Provides Update on Unified Patent Court (UPC) Progress

Brussels – EPLAW held its annual general meeting and congress on 24 November, 2017. The President reported on the continued growth of the membership, which is open only to European lawyers having well established patent litigation experience, now standing at over 340 members. The successful “out-reach” activities of the organisation over the past year were reported, including participation in the Federal Circuit Bar Association Global Series conference and the Venice European Patent Judges’ Forum.

Awards were presented for the best contributions in the patent moot held in Brussels, on 23 April 2017, as part of the Young EPLAW congress.

The AGM voted on a number of Board changes and recognised the outstanding contributions of Kevin Mooney.

Congress debated issues of comparative patent litigation practice, under national and UPC procedures, and discussed progress towards the UPC.

Board Changes

Thanks were given to retiring Board members, and Vice Presidents, József Tálas (HU) and Jonas Westerberg (SE). Thierry Calame (CH) and Giovanni Casucci (IT) were appointed as Vice Presidents and the Congress elected Eszter Szakács (HU) and Sture Rygaard (DK) to the Board. Kevin Mooney (UK) was awarded the title of Honorary Member in recognition of his work towards the development of the UPC and his role as an ambassador for EPLAW.

Young EPLAW

This year’s Young EPLAW congress was held in April and attended by over 120 young lawyers from the firms of EPLAW members. The event continues to be a great success and in the “plead a case” patent moot Katie Rooth (Bristows, UK) and Moritz Schumacher (Hoyng Rokh Monegier, Germany) were judged to have made the best contributions. Both were invited to attend the AGM and Annual Congress and each presented with a prize.

Report on UPC Progress

- **UK** – the parliamentary process is expected to be completed in the coming weeks, so that the ratification instrument could be lodged early next year. UK ratification will permit work to begin on amendments of the UPC Agreement and Rules of Procedure to accommodate the UK’s continuing role in the new system after Brexit.
- **Germany** – a complaint is pending before the Constitutional court, halting the process of ratification. EPLAW has responded to a request from the Court to file submissions and has provided background context to the issues raised. Timing for conclusion of the proceedings is unknown. In the meantime, the start of the UPC / unitary patent system is delayed pending German ratification.
- **Hungary** – A constitutional question has been raised by the Government for review prior to ratification.

- **Slovakia** – Concerns have been raised recently about proceeding with ratification.
- **Provisional Application Period** – After ratification by the UK and Germany, the sunrise periods for opt –outs can begin and process for recruitment of judges can continue. Detailed work continues on the Case Management and IT systems
- **Rules of Procedure** – further revisions of the current draft are being developed to, address confidentiality provisions, amongst other matters.

Comparative Patent Litigation Practice

The Congress received reports on, and debated, a number of topics including:

- Assessment of infringement and damages
- Discretion on the grant of injunctions
- Update on Standard Essential Patent / FRAND litigation in 2017

Anthony Trideco of Finnegan Henderson provided an update on key US patent litigation developments over the past year, drawing analogies with the pending constitutional complaint against US IPR procedures (*Oil States*) due to be considered by the US Supreme Court on Monday 27 November, and explaining the potential for a “*Zombie Apocalypse*” of dead patents that might be resuscitated if the IPR system is found to have been unconstitutional.

Marcus Muller, Chairman of the Boards of Appeal of the European Patent Office, reported on policy developments in the operation of the Boards of Appeal and changes in the rules of procedure which will come into effect in 2019.

Forthcoming dates

Young EPLAW will be held on 15-16 April, 2018 and the next EPLAW Congress will take place on 30 November 2018, in Brussels.