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UPC: TOP START... YES BUT HOW?

Patent Law | 20/01/22 | Océane Millon de La Verteville Lionel Martin



2022 is off to a good start for the UPC with the Austrian ratification of the Protocol on the Provisional Application of the UPC Agreement (PPA)[1] yesterday. This ratification triggers the entry into force of the PPA [2].

Signed in October 2015 by the representatives of the Member States, the PPA allows the institutional, organisational and financial provisions of the UPC Agreement to enter into a provisional application phase. Its purpose is to allow key decisions to be taken so that the UPC can become fully operational as soon as the UPC Agreement enters into force. The provisional application phase will also be used to allow for early registration of requests to opt out of the UPC's jurisdiction[3].

With the PPA entering into force, the entry into force of the UPC Agreement now only depends on a last step in the ratification process: the notification by Germany to the Commission of its ratification of the Agreement, through the deposit of its ratification law. Such ratification law has already been enacted last August after the constitutional appeals were deemed inadmissible in June[4].

Therefore, the entry into force of the PPA marks the start of the provisional application period of the UPC Agreement and the setting up of the UPC. Supporting such setting up is one of the objectives of the French presidency of the Council of the European Union[5].

The UPC website announces that "*During the PAP, the last part of the preparatory work in establishing the Court will be conducted. The practical work will start with the inaugural meetings of the governing bodies of the Court, namely the Administrative Committee, the Advisory Committee and the Budget Committee. Thereafter the crucial work of finalising the recruitment of the judges of the Court will be carried out. It is deemed that the PAP will last at least eight months*".[6]

We are waiting for these inaugural meetings to better understand how the provisional application phase will be carried out concretely and by what means, in practice, the UPC will see the light.

In particular, the "central" issue relating to the relocation of the London branch still mentioned in the Article 7(2) of the UPC[7] Agreement, whose technical field relates in particular to medical inventions, remains to be resolved. Under the impetus of the French Presidency of the EU, one can only hope that this branch will be entrusted to Paris.

[1] https://www.unified-patent-court.org/sites/default/files/Protocol_to_the_Agreement_on_Unified_Patent_Court_on_provisional_application.pdf

[2] <https://www.consilium.europa.eu/de/documents-publications/treaties-agreements/agreement/?id=2015056>

[3] <https://www.epo.org/law-practice/unitary/upc/upc-faq.html>

[4] Article 84 of the Agreement on a Unified Patent Court referring to Article 18(3) of Regulation (EU) No 1257/2012.

[5] https://presidence-francaise.consilium.europa.eu/media/qh4cg0q/en_programme-pfue-v1-2.pdf

[6] <https://www.unified-patent-court.org/news/austria-closes-loop-protocol-provisional-application-upc-agreement-has-entered-force>

[7] <http://patentblog.kluweriplaw.com/2021/10/28/member-states-will-sign-declaration-to-clear-way-for-preparatory-phase-unified-patent-court/>

