



The UPC

Current status



EUROPEAN PATENT ATTORNEYS

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The UPC is (almost) here

- Germany ratified the UPC Agreement on 17 February 2023. This triggered Art. 89 of the UPC Agreement setting the start date for the UPC to 1 June 2023.
- On 1 March 2023, the so-called sunrise period started..

Sunrise period

- **Main events during sunrise period**
 - Appointment/training of judges and other UPC staff
 - Launch of the CMS
 - Registration of representatives
 - In particular under Art. 48(2) UPCA
 - Filing of opt-out requests

The judges...

- Appointed technically qualified judges are typically European Patent Attorneys with court experience
- Problem have become apparent
 - Conflicts of interest
 - No advertising
 - No activity as representative before the UPC

CMS

- System originally to be developed in the UK
- After Brexit, moved to Luxembourg
- Currently suffers some drawbacks
 - Smart-card login and document signature only possible with few means
 - Generally an outdated technology
 - Lack of case sharing features, making op-out procedure cumbersome for UPC representatives

Registration of representatives

- After a very slow start, the registration of representatives has been uncomplicated
- As of today, 3215 Representatives have been registered before the UPC, of which 2839 are European Patent Attorneys registered under Art. 48(2).

Opt-outs

- **Filing of opt-outs has been hampered by technical difficulties.**
 - CMS not stable...
- **Our experience**
 - In 25% of cases, where we have asked for instructions, clients have decided to opt out and 54% not to opt out
 - We still have 21% undecided cases
 - In addition, some clients have at various stages informed us that they will themselves attend to the process of opting out. Here, we do not know the percentage of opt-outs.
- **But based on our own experience: about 1/3 of granted patents are opted out, and about 2/3 are not opted out.**

The missing central division seat

- After Brexit, the London branch of the Court's central division became orphaned...
- Milan has for some time been in play as the substitute location of the branch.
 - On 18 May 2023, Italy announced that Milan will be the seat of the missing 3rd branch of the UPC
- But for an unknown period after 1 June 2023, the duties of the lost London seat will be distributed between Paris and Munich

Thank you for your attention

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