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things you need to after the start of the UPC

Intro

A new era in patent litigation: five things you need to know about the start of the UPC Europe has kicked off a new era in patent litigation when the Unified Patent Court (UPC) opened its digital doors. After sharing the [‘5 things you need to know about the UPC’](#), we now provide an update on recent developments and identify the key things you need to know on the new system that has now made its historic entry into force.

#1 Germany leads the way in number of filed proceedings

#2 Sunrise period ends, transition period starts

#3 Milan to replace London as the third central division seat of the UPC

#4 Local UPC divisions offer English as an optional language of proceedings

#5 Concerns about potential judiciary conflicts of interest addressed

#1



As of 26 June, 23 cases had been filed: 6 protective measures, 3 revocation actions and 14 infringement actions.

Germany leads the way in number of filed proceedings

After decades in the making, the UPC became a reality on 1 June 2023. As a result, it is possible to enforce or attack a European patent before [one single court](#) in one single infringement or revocation action. The UPC Administrative Committee [confirmed](#) that, as of 26 June 2023, 23 cases had been filed, consisting of six protective measures, three revocation actions and 14 infringement actions. Most of the infringement actions that were filed are pending before German local divisions: ten in total, with six being filed in Munich. Two cases were filed before the Nordic-Baltic regional division as well as the local division in Milan. Germany is also the frontrunner in revocation actions, since all three cases appear to be pending in Munich's central division now (with two cases originally filed in Paris having been transferred).

#2



We have now entered the transition period of seven years, which may be prolonged with a further seven years.

Sunrise period ends, transition period starts

The start of the UPC means that the three-month sunrise period kick-off has come to an end, during which traditional European patents could be opted out of the exclusive jurisdiction of the UPC. We have now entered the transition period of seven years, which may be prolonged with a further seven years. During this period, it is still possible to opt out (unless action is already pending before the UPC) and national courts have shared jurisdiction with the UPC over European patents that are not opted out. After the transition period, the UPC will have exclusive jurisdiction for these not-opted out European patents. According to some sources, around 500,000 opt-outs were filed before the end of the sunrise period. The UPC itself reported an [acceleration of the pace of opt-outs](#) being filed, putting its Case Management System "under considerable pressure".

#3



Milan will replace London as the third central division seat of the UPC, alongside Munich and Paris.

Milan to replace London as the third central division seat of the UPC

Following Brexit and the UK's withdrawal from the UPC Agreement, it was announced that Milan will replace London as the third central division seat of the UPC, alongside Munich and Paris. Italy, France and Germany have subsequently [proposed](#) a division of the competences between their three central division seats. The proposal assigns IPC Section A patents (human necessities) to Milan, IPC Section C patents (chemistry and metallurgy) to Munich and SPCs from Sections A and C to Paris. Milan could start taking cases around July next year. Until a final solution is implemented, the provisional allocation of the London

competences remains in force, i.e. Paris for all IPC Section A cases and Munich for all IPC Section C cases.

#4



A judge may still use the local official language in the oral proceedings and for orders and decisions.

Local UPC divisions offer English as an optional language of proceedings

In addition to the local official language(s), all local UPC divisions now offer English as an optional [language of proceedings](#).

Despite English being the chosen language for proceedings in a local division in Germany, France, Belgium or Italy, the judge-rapporteur may order in the interest of the panel that judges may use the local official language both in the oral proceedings and for orders and/or decisions (together with a certified English translation). In other words, a German judge is free to respond in German during an oral hearing or render a decision in German, even though the language of the proceedings is English. However, this regime does not apply to the local division in the Netherlands.

#5



The UPC has published a update on the list of judges as well as a Code of Conduct of Judges.

Concerns about potential judiciary conflicts of interest addressed

In addition to an [update on the list of appointed judges](#), the UPC has published a [Code of Conduct of Judges](#). Of note is Article 4(3) of the Code of Conduct, stipulating that that a part-time technically qualified judge “may not act as a representative before the Court [...] in any matter and may not give legal or technical advice in any capacity on a case pending before the Court or after being instructed to prepare therefor.” Concerns about potential conflicts of interest because of simultaneous roles have thus been addressed. Three technically qualified judges have resigned prior to the start of the operations of the court: Mr Maksymiw from Germany, Mr Desrousseaux from France and Ms Etuaho from Finland.

Any questions?

Do you have any questions, or would you like to review your patent strategy? Please do not hesitate to reach out to our Intellectual Property team. We work nationally and internationally and are happy to help you navigate the new landscape effectively, while protecting your intellectual property.

About the team

The UPC task force of our Benelux IP team has a strong presence in all three Benelux countries and is dedicated to guide you through the upcoming changes in the European patent landscape. The team advises domestic and international clients, from innovative start-ups to leading multinationals, on patents and other technology-oriented matters, spanning a variety of fields including pharma, biotech and telecoms. Their work encompasses (cross-border) disputes as well as advisory work (including strategies, licensing and due diligence). The team's experienced litigators represent clients in our national courts, at the European Court of Justice in Luxembourg, and before the Unified Patent Court.

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