

Patent goal

Passion, patience and perseverance are the key aims of the UPC, but after more delays, could it become a political kicking ball? **Catherine White** reports from Munich

Germany being knocked out, Belgium going through, star players and wonder games were just some of the football themes being kicked about at a July conference hosted in Munich, Germany.

You would be forgiven for thinking that the meeting was a discussion of the FIFA World Cup. Instead, the conference studied a whole different kind of ball game: the unitary patent (UP) and the high-profile Unified Patent Court (UPC).

Hosted at the European Patent Office's (EPO) expansive headquarters next to the River Isar, the event, launched by Premier Cercle, examined the UP and UPC's progress and challenges, with football puns galore assessing the situation.

One speaker urged the UK not to be sidelined because it's a "star player" of the UPC regime, while another said that with over 40 years in the making, the EU must bring its "A game" and launch the court otherwise it faces being outrun by competitors.

New president and challenges

Undoubtedly, the key player at this year's event was, the office's new president António Campinos. Heralding a "new era", Hoyng Rokh Monegier's co-founder Willem Hoyng gave a foreword welcoming Campinos who takes over from Benoît Battistelli after eight years in the post. In his opening address, the new president said that the office is standing "on the cusp" of a fully operating UP for the EU and that the EPO is "ready to deliver the first UP and has been for quite some time".

Specifically, the UPC is a dedicated court for patents, hearing cases of validity and infringement related to unitary patents – and later also European patents – granted by the EPO.

The court forms part of the UP package and is based on an international treaty which needs to be ratified in parliament by the EU

EPO president António Campinos speaking during his opening ceremony.

EPO's principal director for the unitary patent, Margot Fröhlinger.

UPC's judges mock trial with Belgium's Eric Mille, the UK's Mr Justice Henry Carr, Germany's Matthias Zigann and France's Camille Lignières.

Photos provided by Premier Cercle

member states, while the patent itself is the result of two EU regulations adopted in 2012.

For the unitary patent to enter into force, the UPC Agreement needs to be ratified by 13 of the 26 participating EU member states, including France, Germany and the UK as the countries with the largest numbers of European patents in force.

Acknowledging that ratification is a "long and complicated process", Campinos explained that he is "confident" of the court's implementation.

"We're all aware of the court's advantages. The new system will bring more effective and uniformed patent enforcement. The UP and UPC is a positive change," he commented.

He concluded that at the launch of the UPC, the EPO anticipates "20 participating countries".

Representing the biggest change to patent law in the EU for 40 years, the UPC was scheduled to launch in 2017. However, ratification challenges have stalled the process. After the 2016 vote for the UK to leave the EU, the country's involvement in the court looked in jeopardy, especially as the UK is one of the three countries needed for the regime to go ahead.

However, in April, the UK announced that it deposited the instruments of ratification of the agreement relating to the UPC. The UK Intellectual Property Office's Liz Coleman reassured that the leased space in Aldgate Tower acting as London's Central Division is "ready to be used at any time" and is currently being used for "tribunal and domestic trials".

Offering hope to the situation, the EPO's Margot Fröhlinger explained that the UK's long-term participation in the court "is possible" though amendments will be needed

to the rules, "but it could happen if there is the political will".

She added that the UPC will be "more attractive" if the UK participates as this will create "trust and confidence in the system if UK judges participate".

Douglas Campell QC said that a way will be found to have the UK as an "active player" in the system, but warned that there is likely to be a legal challenge from other member states surrounding this. "It will be unusual to have no challenge," he commented. "If there is, it might not be resolved for some time".

Meanwhile, Germany is awaiting ratification until it resolves a constitutional challenge against the UPC's legislation. The dispute will be decided by the Second Senate, with Justice Peter M Huber as rapporteur, after the Federal Constitutional Court (FCC) agreed to hear in challenge earlier this year.

Fraunhofer Gesellschaft's Stefanie Mielert explained that no one is certain when the FCC will pass its decision but hopefully it will be this year. "Once the decision is rendered we will then have to deal with the verdict", she commented.

What next?

With uncertainty abounding due to the ongoing challenges, chairman of the Select Committee of the EPO and head of the Belgium Intellectual Property Office, Jérôme Debrulle, warned that if the UP and UPC fails, it will be a "political and economic failure for the EU".

However, ever the optimist, Fröhlinger urged the IP community to stay strong in the face of adversity. "The main aims of the UPC is passion, patience and perseverance" she stated. Commenting that "it doesn't matter how slow you move on", she concluded in an upbeat outlook that "all that matters is that you keep moving on and every day the UPC becomes more real and full of life".

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