

## EU taking further steps towards UPC – Court expected to become operational in December 2017

Following our last update from December 2016 about UK's expected ratification of the upcoming Unitary Patent Court (UPC) system, the Brexit vote was (and still is) sending shockwaves through the EU economy with the UPC seemingly at stake despite years of negotiations between the participating EU Member States and legal battles before the Court of Justice of the EU. However, given that the UK might ratify the UPC soon, the Preparatory Committee announced on 16 January 2017 that the UPC might become operational in December 2017.

With only a few weeks into the new year, 2017 already seems to be promising for the introduction of the long awaited Unitary patent system and the UPC despite the political and legal challenges in the wake of the Brexit vote in June 2016.

On 16 January 2017, the Preparatory Committee of the UPC announced that it is now working under the assumption that the Provisional Application Phase (PAP) will start end of spring 2017, presumably in May, and that the Agreement on the Unified Patent Court (UPCA) can enter into force and the Court become operational in December 2017.

The PAP is the final phase before the start of the UPC, establishing the organization as such and the start of operation of the UPC's formal governing bodies. Also, judicial interviews may begin and the appointments of judges will be confirmed.

For current owners and applicants of European patents this means that they will have a minimum of three months to beginning in early September 2017 to decide whether they want to opt-out the UPC system before the Court becomes operational (so called "sunrise-period"). The opt-out provides current owners with the choice to litigate existing patents under the current proven regime of national patent courts rather than relying on still-to-be-developed UPC case law.

However, given that the UK and Germany still need to ratify the Unitary Patent Court Agreement and the accession to the Protocol on Provisional Application (expected for March 2017), the envisaged time-plan is anything than secure. According to the UPC, a final Preparatory Committee meeting in early March 2017 will provide more specific details of the Committee's work programme.

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