

Unified Patent Court

The arrival of Europe's new Unified Patent Court (UPC) is approaching with only the UK and Germany now required to ratify the UPC Agreement (UPCA) in order for the UPC to open for business. The new Court had been on track to start in December 2017, with a sunrise period for opting out patents from its jurisdiction starting in September 2017. This was delayed by the UK general election called in June 2017 and a private challenge to the UPC system before the German Constitutional Court.

The UPC is now expected to open and the first unitary patents expected to be granted in 2018. When it opens the UPC will have jurisdiction not only over new unitary patents but also over existing European patents which have not been opted out of its jurisdiction. Despite the delays, businesses should continue with their preparations for the UPC and, in particular, should consider their future patent filing and litigation strategies in light of the UPC's forthcoming arrival.

UK

Following the referendum vote last year discussions took place as to whether the UK could participate in the UPC and Unitary Patent system post Brexit. Rowan Freeland, head of Simmons & Simmons' London Intellectual Property Group organised a consortium of the IP Federation, the Chartered Institute of Patent Attorneys, and several law firms, to seek an Opinion from EU Constitutional law experts, Richard Gordon QC and Tom Pascoe on whether the UK would be able to continue to play a part in the UPC after leaving the EU. For reasons set out in that Opinion, provided certain steps are taken, it seems that UK should not have to leave the UPC upon Brexit.

The UK Government announced in November 2016 that it will ratify the UPC Agreement (the UPCA) despite the Brexit vote. The UK had been expected to ratify the UPCA shortly after Easter 2017, but this was delayed by the snap general election called for 08 June 2017. In the event, the legislation was laid before parliament on 26 June 2017. It is expected that this legislation will pass after the summer recess with UK ratification expected to take place in late 2017.

Germany

In March 2017 Germany approved the draft legislation required for it to ratify the UPCA. This legislation will not come into force until it is signed by the German President and published in the Federal Law Gazette, the Bundesgesetzblatt, which was expected to happen in August 2017. On 13 June Germany's Constitutional Court is reported to have asked the German President to hold off signing the legislation implementing the UPCA until the Court has reached a decision in an action challenging the ratification. The challenge was made in April 2017 by an unnamed individual and concerns the constitutionality of the legislation enabling ratification. The Court made the request to the President on the basis that the challenge was found not to be totally without merit at the outset. The next step is for the Court to assess the admissibility of the challenge: if the challenge is inadmissible, this should not significantly delay the start of the UPC. However, if the challenge is admissible, the procedure to a decision on the merits is likely to take about a year.

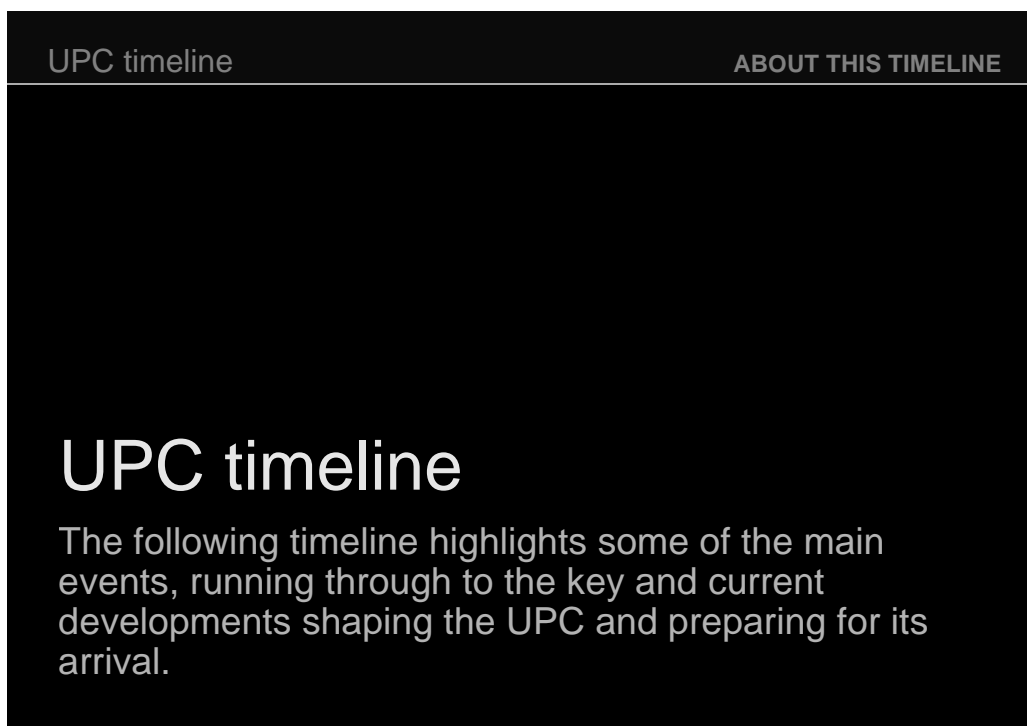
Provisional application phase

The Preparatory Committee of the UPC announced in June 2017 that the timetable for the start of the provisional application phase, previously planned for May 2017, has been delayed. This is because some Member States still need to agree to be bound by the Protocol on Provisional Application (PPA). The provisional application phase is a period of six months during which practical preparations for the opening of the UPC, including the recruitment of judges and court staff, and testing the IT and case management systems, can be completed. The phase also includes a sunrise period that begins three months before the UPC opens for business and during which it will be possible for patentees to request that any of their existing European Patents be opted out of the new UPC system.

The Preparatory Committee has stated that it is continuously monitoring the progress of national procedures concerning the ratification of the UPCA and the Protocol on Provisional Application (PPA) with a view to publishing a new timetable as soon as possible. The UK gave its consent to be bound by the PPA on 07 July 2017.

Timeline

Keep an eye on the latest news and navigate the historical events leading up to the UPC using the interactive timeline below :



The image shows a screenshot of a webpage titled "UPC timeline". At the top, there are two navigation links: "UPC timeline" and "ABOUT THIS TIMELINE". Below the navigation, the main heading "UPC timeline" is displayed in a large, bold font. Underneath the heading, there is a paragraph of text: "The following timeline highlights some of the main events, running through to the key and current developments shaping the UPC and preparing for its arrival."

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