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EIP



The Unitary Patent System is on the way

We reported last year that the Unitary Patent and Unified Patent Court (UPC) were progressing. The main hurdle left to clear was sufficient countries ratifying the Protocol on the Provisional Application of the UPC Agreement to allow the provisional application to start. The Preparatory Committee has now announced that Austria has provided the necessary 13th ratification, and so the Protocol is now in force. This allows the institutions of the Court – the Administrative Committee, the Advisory Committee and the Budget Committee – to come into being, and implementing legislation, such as the Rules of Procedure and the regulations governing patent attorney representation at the Court, to be adopted. When preparations are sufficiently advanced, Germany will deposit its instrument of ratification of the UPC Agreement, and the Court will formally begin operations at the beginning of the fourth month after the date of that deposit.

There does remain a constitutional niggles to be addressed, namely whether the UK's mandatory ratification of the Protocol can be replaced by that of Italy now that the UK has withdrawn from the Agreement, together with the related question of where the branch of the Central Division that the Agreement specifies should be in London, should now be located.

The European Patent Office has welcomed this development and has repeated the estimate that around 8 months will be needed before the Court can fully open for cases. In addition, the EPO has announced a pair of measures to allow early uptake of the system. Once Germany has deposited its instrument of ratification, applicants will be able to both request delay grant of their patents (after the Advance Notification of Grant under Rule 71(3) EPC has been issued), and to file requests for unitary effect during this period, which will take legal effect after grant of the patent and once the UPC Agreement has come into force.