

IP Federation E-notice 144/23

Date: 17 May 2023
To: COUNCIL & COMMITTEES (PATENTS)
Subject: UPC Code of Conduct for judges



Further to E-notice [143/23](#), the latest UPC updates from Bristows follow:

UPC Code of Conduct for judges - 16.05.2023

The Unified Patent Court (UPC) has published the [Code of Conduct of Judges](#). This supplements the provisions on judicial independence and impartiality in the UPC Agreement (art. 17 Agreement and art. 7 UPC Statute). There having been some public debate as to potential conflicts of interest arising from part-time technically qualified judges simultaneously acting in and advising upon the new system, art. 4(3) Code of Conduct appears to be aimed at addressing these concerns, providing that such a 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.”*

The UPC has published the profiles of the [technically qualified court members](#). While there have been reports that some appointed technically qualified judges are not happy with the restrictions in the Code of Conduct and may resign, it appears that the UPC is still recruiting for technical judges and presumably, therefore, does not anticipate a problem at the start up of the Court.

In other judicial news, the UPC has [announced](#) that, for the purpose of art. 6 UPC Statute (which requires the judges to take an oath in open court as to the performance of their duties), court sessions will be held on 1 June in Paris for all legally qualified judges of the Court of First Instance and all technically qualified judges, and on 5 June in Luxembourg for all legally qualified judges of the Court of Appeal. Judges may, by prior arrangement, join in by video conference.

Some problems filing UPC opt-outs - 16.05.2023

The Unified Patent Court (UPC) [reported](#) on Friday that the number of opt-outs being filed recently has slowed down CMS functionalities, sometimes even impeding the filing of opt-outs. As the Court will open on 1 June, if a patent is not opted out by then it will be subject to the Court’s jurisdiction, at least until an opt-out has been filed, and therefore this capacity issue has clearly caused some concern among users (although it has been possible to file opt-outs since 1 March). The Court has reported that the issue is being worked on and there will be further communication as soon as possible..

I am attaching a [note](#) dated 15 May 2023 from the Council of the European Union:

Celebration of the Unitary Patent System and the Single Market at 30 -
Information from the Presidency

Best wishes

David England
Patent Attorney
Secretary, IP Federation



Brussels, 15 May 2023
(OR. en)

9361/23

PI 68
MI 399
COMPET 433

NOTE

From: Presidency
To: Council

Subject: Celebration of the Unitary Patent System and the Single Market at 30
- Information from the Presidency

1. On the occasion of the entry into effect of the Unitary Patent System on 1 June 2023 and the 30th anniversary of the Internal Market which entered into operation on 1 January 1993, the Swedish Presidency are inviting the ministers to celebrate together.
2. Competitiveness, including the deepening of the Single Market is one of the priorities for the Swedish Presidency. 2023 also marks the 30 years anniversary for the Single Market. It is a good moment to take stock of what has been achieved and how to further deepen and extend the Single Market.
3. The Unitary Patent System, agreed on 17/12/2012, consists of two Regulations, on unitary patent protection and on translation arrangements (Regulation No 1257/2012 and No 1260/2012). These are completed by an intergovernmental agreement between EU Member States setting up the Unified Patent Court (the UPC Agreement), signed on 19/2/2013.
4. The UPC Agreement was signed by 24 Member States. For the Unitary Patent System to come into effect, the UPC Agreement had to be ratified by at least 13 Member States, amongst whom had to figure the three where the highest number of European patents were in effect in 2012. One Member State's deposit of its ratification of the UPC Agreement with the

Council on 17/02/2023 completed this process, allowing the UPC Agreement to enter into force on 1 June 2023. The Regulations enter into effect on the same day.

5. Ministers are invited to listen to a few key speeches including by Mr Campinos, the President of the European Patent Organisation.
6. Key players behind the preparatory work of the Unitary Patent System are invited to this AOB including representatives from the European Commission:
 - Senator Mario Monti, Senator, Professor and former Prime Minister and European Commissioner for the Internal Market
 - Mr Antonio Campinos, President of the European Patent Office (EPO)
 - Mr Fabrice Claireau, Affaires Juridiques at the Secrétariat général des affaires européennes, French Prime Minister’s Office
 - Mr Jérôme Debrulle, Director General, Directorate General for Economic Regulation, Belgium, chairman of the Select Committee of the Administrative Council of the European Patent Organisation
 - Ms Margot Froehlinger, former Principal Director for Patent Law, EPO, and former Director, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, European Commission
 - Ms Kerstin Jorna, Director-General, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, European Commission
 - Mr Johannes Karcher, Head of Division for Patent Law, German Ministry of Justice, and chairman of the Administrative Committee of the UPC
 - Mr Alexander Ramsay, Registrar of the UPC and former chairman of the Preparatory Committee and of the Administrative Committee of the UPC
 - Ms Åsa Webber, Head of Cabinet of Commissioner Ylva Johansson and former Ambassador, Deputy Permanent Representative of Sweden to the EU