

Update on the unitary patent

The first unitary patents are expected to be granted in 2015. Haseltine Lake's **Michelle Claydon** explores the challenges

The 19 February 2014 represented the one-year anniversary of signing the Unified Patent Court (UPC) Agreement, which had followed hot on the heels of the entry into force of the two regulations¹ underpinning the European unitary patent. Consequently, this time last year, the IP community was busy trying to digest the dramatic new developments, and it is fair to say that some greeted the news with scepticism as to whether the proposed system could (or would) actually be implemented (at least within a reasonable time scale). Is the picture any clearer a year later? Yes, and it is possible that the first unitary patents could be granted as soon as 2015. The following article focuses solely on progress relating to the unitary patent.

Legal hurdles

There are two outstanding legal issues standing in the way of the unitary patent system. The first is the need for ratification of the UPC Agreement by a minimum of 13 states.² So far, three countries – Austria, Malta, and France – have ratified (or are in the process of ratifying). Denmark will hold a referendum on the issue on 25 May 2014, and current public opinion there seems to favour ratification.

In the UK, the first steps towards ratification have been taken. Here, the Intellectual Property Bill must become law to enable ratification, and this is expected to happen in the next few months. Consequently, UK ratification is likely to be completed in early 2015. Given the lengthy legal processes that must be completed in many countries to enable ratification, three ratifications having already occurred is encouraging for the prospects of the UPC Agreement entering into force sometime next year.

The second outstanding legal hurdle is Spain's legal challenges to the 'closer cooperation' on which the unitary patent regulations are based. These actions are still pending with the Court of Justice of the European Union, and if successful, will severely

impact the introduction of the new system. However, decisions on these cases are not expected until early 2015, and the (probably slim) possibility that Spain will succeed does not appear to be affecting the ongoing work to put in place the procedural framework for the unitary patent.

Procedural aspects

It is clear that significant work on the procedural aspects of the unitary patent has indeed been taking place. The Select Committee of the Administrative Council, formed in March 2013 to deal with the unitary patent, met seven times that year. According to the president of the European Patent Office (EPO), Benoît Battistelli,³ work was carried out on the drafting of the legal texts for implementing the unitary patent, and discussions were had concerning the practical implementation of the compensation scheme for translation costs and the procedure for setting fee levels.

No decisions on these matters have yet been reached, but the Select Committee's timetable⁴ indicates that it intends to reach a final decision on these legal texts by June 2014. The next meeting will have been held on 26 March 2014, after which it is hoped that the implementing regulations on unitary patent protection and the arrangements for the Select Committee's supervision of the administrative tasks to be carried out by the EPO will have been adopted, and that the rules relating to renewal fees will have been finalised.

The level of the renewal fees is, of course, one of the aspects of the unitary patent that is of most interest to potential users of the patent, and it could have a significant impact on the uptake of the new system. By contrast; this appears to be a relatively low priority for the EPO. Battistelli commented at the IP Summit in Paris in December 2013, "We are very relaxed about it. I don't see the first patents being granted until the middle or end of 2015, so... I don't feel we need to set fees that soon either, given that timeframe."⁵

Comment

So, it appears that the preparatory work for implementing the unitary patent is well under way, and if all goes to plan, should be completed this year. Furthermore, there appears to be the political will to get on with ratification in many of the participating states. Of course, the UPC also needs to be up and running before the first unitary patents can be granted, and in this respect, there is still significant work to be done.⁶ Nevertheless, the stated aim is still for the first unitary patents to be granted next year. Given the developments so far, achieving that aim does not seem quite as preposterous as it did (at least to some of us!) a year ago.

Footnotes

1. Regulation (EU) No 1257/2012 of the European Parliament and of the Council implementing enhanced co-operation in the area of the creation of unitary patent protection and Council Regulation (EU) No 1260/2012 implementing enhanced co-operation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements.
2. Which must include the UK, Germany and France.
3. Writing on the EPO Blog on 16 December 2013. See bit.ly/1IDbkf8.
4. A copy of this timetable can be found at bit.ly/1i99yS7.
5. In an interview with *Managing IP*. A report of the interview can be read at bit.ly/1nTXZUn.
6. See Haseltine Lake's recent article on the UPC by Nikki Powell, published in the April 2014 edition of *Intellectual Property Magazine*.

Author



Michelle Claydon is a UK and European patent attorney at Haseltine Lake. She mainly practises in the electronics and telecommunications fields.