



Delayed Start Date for the Unified Patent Court and the Unitary Patent

Unified Patent Court (UPC)

December 2022

The start date for the Unified Patent Court (UPC) has been delayed for two more months. The court is now scheduled to open on 1 June 2023 rather than 1 April 2023. The delay also moves the start date of the “sunrise” period when patentees can start opting rights out from the jurisdiction of the court and the date when Unitary Patents will start being granted.

The UPC court system is supposed to be fully digital. One of the cornerstones of the court is therefore its Case Management System (CMS) – the digital platform which enables users to file documents with the court, including filing opt-out declarations for European bundle patents which can start to be filed during a “sunrise period” three months in advance of the court’s official launch date. Filing opt-outs will be an early test for the CMS, and it is of utmost importance that anyone who wants to do so is able to access the CMS as soon as the sunrise period starts.

There has been much discussion on the technical functionality of the CMS in recent weeks, in particular in relation to the difficulties users are having obtaining the technical equipment required to access the system. Access to the CMS is via smart cards issued through EU Trust Service Providers. The UPC website provides a link to a list of organizations issuing the required smart cards. However, it seems that there have been problems with providers issuing the necessary technical equipment for accessing the CMS. In view of these problems, the launch of the UPC has been delayed in order to give users more time to obtain the required access tools.

The UPC **sunrise period** is therefore now scheduled to **commence on 1 March 2023** instead of 1 January 2023 as originally intended. As noted earlier, the court is now expected to open its doors for business on 1 June 2023.

In a statement the UPC confirmed that all other aspects of the preparatory work (e.g., appointment and training of the UPC Judges, etc.) were all proceeding to schedule, and would not cause the opening of the court to be delayed. Clearly the court is of the view that the two month delay will be sufficient for the remaining issues with the CMS to be resolved and is optimistic that it will not be necessary to put the start date for the new court back any further.

Although further delays in the opening of the UPC are unwelcome, evidently the court was of the view that announcing a two month delay was essential to ensure that the CMS is fully accessible on day one of the sunrise period. On a positive note, the delay does provide patent right holders and potential litigants a further two months to prepare for the opening of the new court.

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