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I. INTRODUCTION

The unitary patent package, agreed in 2012, comprises two Regulations¹ implementing an enhanced cooperation in the area of unitary patent protection, currently involving 25 Member States, and an intergovernmental agreement, currently involving 24 EU Member States, to set up the Unified Patent Court (UPC)², a common specialised patent jurisdiction.³

The unitary patent system will make access to the patent system easier, less costly and improve the level of patent protection by making it possible to obtain uniform patent protection in the participating Member States. The Unified Patent Court will provide a centralised jurisdiction for litigation relating to the infringement and the validity of European patents and European patents with unitary effect, with a view to enhancing legal certainty in relation to the enforcement of these patents, and the defence against unfounded claims or against patents that should be revoked.

¹ Regulation (EU) 1257/2012 (OJ L 361, 31.12.2012, pp. 1-8);
Council Regulation (EU) 1260/2012 (OJ L 361, 31.12.2012, pp. 89-92).

² OJ C 175, 20.06.2013, p. 1.

³ A table illustrating the latest state of play is set out in the Annex to this note.

II. STATE OF PLAY

The launch of the unitary patent system is conditional on the ratification of the UPC Agreement (UPCA) by at least 13 Member States, amongst whom must figure the three Member States in which the highest number of European patents was in effect in 2012.

The ratification of the UPCA by Germany, being one of those three Member States, is the main legal requirement still outstanding for the UPCA to come into force. Until recently, the ratification process in Germany was subject to constitutional challenges. In July 2021, the German Federal Constitutional Court rendered a decision allowing Germany to proceed with ratification. The German law for the ratification of the UPCA and its Protocols was signed by the President and published in August 2021. The deposit of the German ratification instrument for the UPCA with the General Secretariat of the Council of the European Union, will trigger the countdown for the entry into operation of the whole unitary patent system. This step will not be made immediately, but only during the provisional application period of the UPCA, in order to allow for the preparatory work establishing the UPC to be completed by the day of the entry into force of the UPCA.

These developments pave the way for the launch of the unitary patent system for participating Member States. If the remaining steps (as set out in section III below) are completed in due time, the launch of the unitary patent system could be expected to take place in the second half of 2022.

III. NEXT STEPS

(a) Launching the provisional application period

An essential step in ensuring an efficient and effective launch of the unitary patent system is the triggering of the provisional application of the UPCA, as provided for by the Protocol to the Agreement on a Unified Patent Court on Provisional Application (PPA).

During the provisional application period – which the Preparatory Committee of the UPC expects to last from six to ten months – important operational preparations will take place, such as the adoption of the secondary legislation of the UPC including its Rules of Procedure, the establishment of the Court's budget, the final configuration and testing of the electronic case management system, the recruitment of judges and administrative staff, including staff for the Patent Mediation and Arbitration Centre.

Germany envisages to deposit its ratification instrument for the PPA by the end of September 2021.

On 16 September 2021, the Government of Slovenia issued a decree on the ratification of the PPA. Slovenia envisages to deposit the ratification instrument for the PPA together with its ratification instrument for the UPCA.

Austria, which was the first Member State to ratify the UPCA, has submitted a draft law for the ratification of the PPA to the national parliament in July 2021.

Once the ratifications of the PPA by Germany, Slovenia and one other participating Member State are completed, the provisional application phase will start.

(b) Maximising the coverage of the unitary patent system

Upon the deposit of the ratification of the UPCA by Germany and Slovenia, 17 Member States will have confirmed their participation in the UPCA. On this basis, additional Member may decide to accelerate their ratification procedures over the period ahead.

(c) Remaining preparatory work in the relevant bodies

In view of the entry into operation of the unitary patent system, the relevant preparatory bodies, namely the Select Committee of the Administrative Council of the European Patent Organisation⁴ and the UPC Preparatory Committee⁵, stand ready to resume their activities to ensure that still-outstanding preparatory work is concluded in a timely manner. To that end, the next meeting of the Select Committee is foreseen for 14 October 2021.

The legal framework governing the unitary patent system also requires the Commission to complete certain preparatory steps, namely:

- issue an opinion on the Rules of Procedure of the UPC⁶, upon a formal request from the UPC Administrative Committee (a Committee that itself will become operational during the provisional application period), and
- conclude a working agreement with the European Patent Office⁷.

⁴ Established under Article 9(2) of Regulation (EU) No 1257/2012 and Article 145 of the European Patent Convention.

⁵ The Preparatory Committee is composed of all the Signatory States to the UPCA and will exist until the UPC is established.

⁶ As required by Article 41(2) of the UPCA.

⁷ As required by Article 14 of Regulation (EU) 1257/2012.

IV. CONCLUSION

At the Competitiveness Council on 29 September 2021, the Presidency will give an overview of the state of play of preparations for the entry into effect of the unitary patent package, and will thereafter invite Ministers to inform the Council of recent or upcoming developments in their respective Member States.

Overview of UPCA and PPA ratifications

MS	UPCA ratification	Ratification of/Consent to the PPA
BE, BG, DK, EE, FI, FR, IT, LU, NL, SE	Completed (15 MSs)	Completed (10 MS)
AT, LT, LV, MT, PT		Not completed
DE	Deposit of the ratification instrument planned during the provisional application period (to allow for completion of the set-up of the UPC before entry into force of the UPCA)	Deposit of the ratification instrument expected shortly
SI	Deposit of the ratification instruments for UPCA and PPA expected shortly	
CZ, IE, EL, CY, HU, RO, SK	Ratification of the UPCA not completed	
PL	Part of enhanced cooperation, but not a signatory to the UPCA	
HR, ES	Not part of the enhanced cooperation and not a signatory to the UPCA	