



European Patent Institute · Bayerstrasse 83 · 80335 Munich · Germany

Administrative Committee of Unified Patent Court

Attn: Johannes Karcher

Unified Patent Court

Attn: Dr. Klaus Grabinski,
Alexander Ramsay

cc: Pierre-Louis Blerot

17 May 2023

Technical problems with UPC CMS

Dear Mr. Karcher,
Dear Mr. Grabinski,
Dear Mr. Ramsay,

The start of the Unified Patent Court is now only two weeks away and we would like to share with you some serious concerns regarding the functioning of the CMS. These concerns are based on our own observations and on reports received from other users.

1. We appreciate your communication of 12 May 2023 that the Court is working on the capacity issues, however, users are extremely concerned that it may not be possible to make opt-out requests that are effective in the UPC Register by 1 June 2023. Nonetheless, it remains, that the CMS currently has serious difficulties coping with the number of submitted opt-out requests. Many users are reporting that it is extremely difficult to successfully complete their opt-out requests. The reason is seemingly the [lack of] capacity of the system.
 - We hope that the technical issues limiting the capacity of the CMS to process submitted opt-out requests will be quickly addressed.
 - There seems to be a clear risk that the opt-out requests of some users who diligently follow the guidance given by the UPC will not be effectively registered in the register before 1 June 2023.
 - Consequently, we expect some back-up emergency plans to be implemented by the Administrative Committee of the UPC.
 - Patent applicants and proprietors could otherwise try to rely on Rule 4(2) RoP and submit the documents for their opt-out requests in hard-copy form. This would, in our view, not be a suitable solution as this would just increase the workload on the Registrar without giving

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applicants, proprietors and third parties the necessary timely certainty regarding the opt-out status of a particular EP application/patent.

- **epi** is prepared cooperate with the Court and the UPC Administrative Committee for providing a suitable emergency back-up solution, which, for instance, could include a simple possibility to provide opt-out requests outside the CMS before 1st June, but allowing them to be provisionally effective until they can be confirmed by a correct full CMS entry within a certain period after 1st June 2023. Transparency for third parties would also need to be part of such a solution.
- 2. In earlier conversations, we discussed the possibility for the Registrar to indicate a particular date before 1 June 2023 by which opt-out requests should be submitted in order to be safely processed in order to be on the register on 1 June 2023. Under the present circumstances, do you now have plans to communicate such a date?
- 3. We have realized that the test period for the full functionalities of the CMS will now start only 2 days before the UPC will be fully operational. As already pointed out at our bilateral meetings with the UPC IT Team and the Registrar since last November, as well as at the 5th meeting of the Administrative Committee on 24 April 2023, we believe that any testing period shorter than two months is sub-optimal, it is too short and is insufficient for users to make themselves and their support staff familiar with all the features of the CMS. On the other hand, we understand that in the present situation the Court needs to give priority to ensuring that the version of the CMS which will be operative from 1 June 2023 is fully functional. Apparently it is not possible any more to extend the test period, which we nevertheless regret and see as an additional burden on users for the start of the UPC.
- 4. Another aspect that appears to deserve clarification by the Registrar concerns the electronic signatures of documents submitted to the registry. It has been reported that the CMS has accepted documents that were electronically signed with an authentication certificate (which is not necessarily in conformity with the eIDAS EU Regulation 910/2014) and occasionally not by the e-signature eIDAS compliant certificate which may be located on the same smartcard or token. Will the UPC accept that such documents have full legal effect and, if not, provide a possibility to correct the format of the signature without amending the date of entry into the register [Rule 5(5) RoP]? Many documents submitted to the UPC during the sunrise period in connection with opt-out requests and applications to be registered as representatives could be affected and we see a need for an urgent clarification in order to give parties the possibility to correct a possible deficiency before 1 June 2023.

As we approach the end of the sunrise period and the start of the UPC system, it is from our view essential for gaining and maintaining trust in the Court and the Unitary Patent system that the UPC continues to improve user communication and to ensure that patent proprietors, third parties and potential litigation parties can use all the possibilities that are foreseen in the UPCA.



Institut der beim Europäischen Patentamt zugelassenen Vertreter
Institute of Professional Representatives before the European Patent Office
Institut des mandataires agréés près l'Office européen des brevets

epi looks forward to continued cooperation with the UPC and its Administrative Committee and would offer, possibly together with other user associations, any assistance deemed useful to the Court and the Administrative Committee to find suitable solutions for the urgent issues around the end of the sunrise period and the start of a new era in the European Patent System.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Peter R. Thomsen', written in a cursive style.

Peter R. Thomsen
President