



Luxembourg, 24th May 2023

European Patent Institute

Peter R. Thomsen (President, EPI)

Bayerstrasse 83 – 80335 Munich - Germany

Subject: UPC answer on EPI feedback communicated the 17th May 2023

Dear Mr Thomsen,

We appreciate the feedback received from you, reflecting EPI members' worries and questions.

You will find here under answers on topics you have addressed in your letter.

We hope that this feedback will be helpful and that EPI members will support us to mitigate current CMS performance issues and the ability of the Court to handle all opt-outs logged during the Sunrise period.

1a) CMS performance difficulties and potential mitigating actions

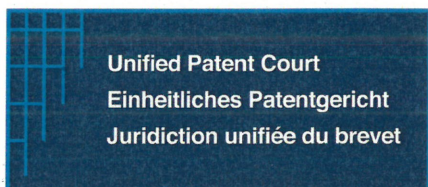
We found that, indeed, there has been a significant increase in the use of the CMS from the beginning of May, especially for the lodging of opt-outs and the usage of APIs. While this to some extent was anticipated, there are nevertheless certain limits to the capacity of the CMS, which is why we early on advised users not to wait until the end of the Sunrise period to perform opt outs.

As you have noticed through our website we have already taken actions to improve the performance of the system. Other additional actions will be taken if required.

For the benefits of the overall community, **we will appreciate if EPI members can limit the usage of APIs as much as they can by avoiding multiple requests of statuses. Please focus on lodging opt-out and take some times (> 30 seconds) before requesting the status of it or the PDF receipt (> 24 hours if possible). If you can schedule some of your processes during the night (CET) (not between the potential maintenance window (8-10pm), it will also spread the usage of the CMS and help to handle all requests.**

To also clarify a point for all users: **the 1st technical feedback received after an opt-out via the API answer is a sufficient proof of successful opt-out.** As a reminder, below the 1st technical message when your request has been properly received and accepted by the CMS:

[Court of Appeal and Registry | Luxembourg | 1, rue du Fort Thüngen, L-1499 Luxembourg]
[Court of First Instance | Local Division Paris | 5 Rue Saint-Germain l'Auxerrois, 75001 Paris, France]



1 {

2 *"message": "Subject only to a check that your application has been signed electronically, your application has been accepted by the Registry and pursuant to Rule 5.12 will be treated as entered on the register on the date the Court enters into force",*

3 *"requestID": "DSDF2474GE122",*

4 *"receptionTime": "2023-01-30 14:15:21"*

5 }

Be sure that we are closely monitoring the performance and processing of the CMS and that we are working hard to ensure that we will be able to handle all requests for opt-outs received during the Sunrise period.

Currently the CMS is running with a good capacity.

1b) Fallback possibility to fill "paper copy"

The possibility to lodge opt-outs in physical form can be activated, but only if the Court establishes that the CMS system is down (not slow). The Court will disclose practical details on this possibility and the conditions that should be met for the Court to activate this option.

2) Latest date to opt-out

It is not possible to provide such date.

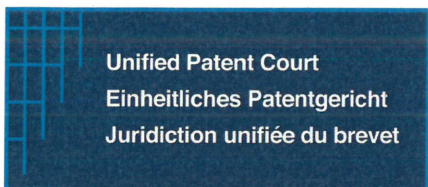
It is the responsibility of the users, as disclosed at the beginning of the Sunrise period, not to introduce their request to opt-out very late, since technical limits then might not allow the Court to process them before the 1st of June. The generation of the confirmation and logging in the Registry takes some time. In this context, it should be underlined that the first step of API process is sufficient from the Court perspective to accept an opt-out request (see information here above).

3) Practice period postponement

It is indeed unfortunate that we have postponed practice period of the CMS. This decision was taken to focus capacities on Sunrise activities.

4) Signature of documents

The Presidium will treat opt-outs that are signed in electronic form as validly filed, regardless of the certificate used.



I hope that you find this information helpful!

Best regards,

Alexander Ramsay

Registrar of the UPC

