

ENTRY INTO FORCE OF THE PROTOCOL FOR THE PROVISIONAL APPLICATION OF THE AGREEMENT ON THE UNIFIED PATENT COURT

The unitary patent system looks set to finally be launched. This system will allow European patent holders to enforce their patents before a single, newly created international court, the Unified Patent Court (as opposed to the current need to resort, in most cases, to court proceedings in each of the Member States where the patent is being infringed).

On 18 January 2022, Austria became the 130th Member State of the Agreement on the Unified Patent Court (UPCA) to sign or deposit its instrument of ratification of the Protocol of Provisional Application (PPA) of the UPCA. As provided for in Article 3 of the said Protocol, this means that on 19 January 2022 the PPA entered into force. This represents the establishment of the Unified Patent Court as an international organisation and the provisional entry into force of various provisions of the UPC and the Statute of the UPC. This will allow the completion of the preparatory work necessary for the effective launch of the Court, including the recruitment and training of the judges who will serve on the Court.

The UPCA will enter into force definitively four months (*sunrise period*) after Germany deposits its instrument of ratification of the UPCA. Although Germany has already ratified the PPA, and already enjoys both the approval of its Constitutional Court and parliamentary approval to ratify the UPCA, it has not yet deposited the instrument of ratification of the latter. It is expected to do so in 2022, when the preparatory work is at an advanced stage, to ensure that the Court is effectively operational by the time the UPCA is due to enter into force at the end of the *sunrise period*.

The entry into force of the UPCA will entail the entry into force of the unitary patent system on the same day. For the time being, Spain and Croatia will remain outside the system, as they have not signed the UPCA, nor have they participated in the enhanced cooperation system established by Regulations 1257/2012 and 1260/2012 establishing the unitary patent. Therefore, for the time being, Spanish courts will maintain their exclusive jurisdiction to hear the validity of Spanish patents, and the Spanish parts of European patents validated in Spain.

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Poland and the UK will also remain outside the system. Poland participated in the enhanced cooperation system but not in the UPCA, and the UK withdrew its instrument of ratification as a result of *Brexit*. The remaining EU member states will join the system as they ratify the agreement; currently, 17 member states have done so.

This Legal Update was prepared by Álvaro de Castro, Counsel of the Intellectual Property and Technology practice area.

The information contained in this Legal Update is of a general nature and does not constitute legal advice. This Legal Update was prepared on 26 January 2022 and Pérez-Llorca does not undertake any commitment whatsoever to update or review its content.

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