

## EUROPEAN PATENT ATTORNEYS WORKING TOGETHER ON UPC PREPARATIONS.

The Annual Meeting of the European Patent Litigator's Association (EPLIT) took place in Amsterdam on 11 April and the **headline news** to report is that the Association will be holding a **mock UPC trial in London on 14 October next**, using the court premises in Aldgate Tower and having a panel of judges that is scheduled to include both **Birss J.** and **Carr J.**

Part of the day was spent on receiving reports on the activities of the Association's various working groups, each concentrating on a different aspect of the UPC preparations. This has included co-operative efforts with the EPI and EPLaw to prepare and present to the UPC Preparatory Committee a draft Code of Conduct for those representing clients before the new court. This also included the announcement of the mock trial referred to above.

Half of the day was devoted to improving familiarity with UPC procedures and the practical and tactical issues that patent attorneys and their clients are likely to face in practice. The speakers will, I hope, forgive me for limiting this report on their contribution to recording that Leythem Wall (Finnegan, London) covered the potential role of Patent Attorneys before the UPC, that Thorsten Bausch (Hoffmann Eitle) demonstrated the differences between Opposition Proceedings before the EPO and a Revocation claim before the UPC and that Ettie-Ann Alder (Ericsson) and Beat Weibel (Siemens) shared with the audience their perception of industry's preparations for the UPC system.

My reason for reporting on those sessions in limited detail is that a significant part of the morning was taken up by a review of the likely timetable against which litigators must complete their preparations. This was provided by Eileen Tottle who operates the Secretariat of the Preparatory Committee and has been immersed in planning the UPC since 2013. The following were the points from her presentation which resonated most with this member of the audience:

1. The Preparatory Committee will hold its last meeting in the last week of June (originally scheduled to be in London, but now switched to Sweden – work it out yourselves) and at that stage the preparations stage will be treated as having come to an end and the Provisional Application phase will proceed.
2. This phase will be governed by the Protocol on Provisional Application, which was signed in October 2015 and is designed to ensure that all the necessary organisational arrangements are made in good time. This will include the creation of the court's organisational structure, the recruitment of judges and support personnel and the handover of responsibility from the Preparatory Committee to the court's secretariat in Luxembourg.
3. The whole process of Provisional Application is itself dependent on national ratification, which Eileen said had been a little slower than had been hoped but had not, so far, undermined the expectation that the phase would commence in October or November and the court would be in operation by Spring 2017.
4. Part of the Provisional Application process will be the handover of the IT system from the UK-based team that had developed it to the court secretariat. This will include the case management system, the email system and the court's official website. On this aspect of the preparations Eileen invited contributions from the floor, which led to a lively debate on issues of security, concerning both potential loss of highly sensitive data and potential attacks from mischief makers bent on undermining the credibility of the whole of the Unitary Patent system.

In particular, concern was expressed that anyone could access the Opt Out facility, pretending to be an authorised representative of a patent proprietor and purporting to effect opt out (or opt-back-in) against the proprietor's wishes. It was even suggested that reversing the decision that no fee should be payable for an Opt Out might be acceptable if the additional income were spent on increasing security levels.

5. Eileen also sought views on the appropriate training facilities for the case management system, having received feedback elsewhere to the effect that electronic training would not be welcomed by attorneys. She was able to confirm that personal training would be carried out through a process of "training the trainers" – using enthusiasts within Member States to carry the message to their colleagues – and through training videos published on YouTube.

Eileen Tottle had started her presentation by emphasising the Preparatory Committee's determination to be as open as possible with UPC stakeholders. She certainly demonstrated that openness in both her presentation and her engagement with the audience during questions. She was clearly very well aware of the vulnerability of all systems to security breach and was open in revealing that the trial case management system had already been the subject of a number of external attacks. Let us hope that steps being taken at this stage will preserve its reliability and security once the court opens for business and it goes live.

A personal footnote. The issue of BREXIT imposed itself on several topics during the days. I wonder if the other UK attendees shared my sense of embarrassment at finding the habitual equivocation of the British over their role in Europe distracting their ever patient colleagues from Continental Europe from their own preparations to handle UPC litigation.

Chris Ryan