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Update

Intellectual Property

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The Unified Patent Court – UPC

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In December 2012, the Council of the European Union and the European Parliament approved two European Regulations that defined the bases of unified patent protection in the European Union.

On the 28th of August 2015, Portugal ratified the Unified Patent Court Agreement (“UPCA”), which has been signed by every member-state of the European Union, except for Spain, Poland, and Croatia. This Agreement committed the signatory member states to establish a common court with exclusive jurisdiction regarding future European patents, with unitary effect (Unitary Patent Protection – “UPP”), and existing European patents (“classic” European patents – “EP”).

This reform provides companies with an alternative that simplifies the existing system, and supports a cost-effective system for patent protection and dispute resolution.

Initially, the UPC’s “sunrise period” (the initial period, before the entering into force of the UPCA) was planned to start on the 1st of January 2023, and the UPCA was supposed to come into force on the 4th of April 2023. However, on 5th December 2022, the UPC announced the postponement of these dates, so that the sunrise period will now begin on 1st March 2023, and the UPCA will come into force on 1st June 2023. This extra time is required to enable future users to be prepared for the strong authentication arrangements that will be necessary in order to access the Case Management System (“CMS”) and sign documents.

With the postponement of the coming into force of the UPCA, the date on which unitary effect of a patent can be applied for is also postponed to 1st June 2023. To counter any potential prejudice this might cause, two alternatives have been created for applicants for European patents, who have already been informed that their patent has been granted, and may wish to apply for unitary effect:

- If the grant decision was communicated before the 1st of January 2023: it is possible to request a delay to grant of the patent, to ensure that the grant is only published once the UPCA is in force, so the application for unitary effect can be submitted within one month;
- If the grant decision was communicated after the 1st of January 2023: it is possible to file an application for unitary effect prior to the coming into force of the UPCA, which will only take effect once the UPCA is in force.

Like the Portuguese Courts, this court will be a fully digitalized, so that communication with the court's users will be via the Case Management System ("CMS").

This system will be accessed via strong authentication system, which involves an electronic identity authentication certificate stored on a physical device, plus a qualified e-signature. Both the identity certificate and the qualified e-signature may only be issued by entities that fulfil the technical requirements required by the European Union.

The UPC will have jurisdiction regarding European Patents with Unitary Effect in all the signatory member states, and, with some exceptions, regarding European patent that do not have unitary effect. The decisions of the UPC will be binding in all contracting member states.