

Protocol to the Agreement on a Unified Patent Court on provisional application

The undersigning Signatory States of the Agreement on a Unified Patent Court, hereinafter referred to as the Parties,

CONSIDERING that the Unified Patent Court should become fully operational upon the entry into force of the Agreement on a Unified Patent Court;

CONSIDERING the need to provide a smooth transition into the operational phase and ensure the proper functioning of the Unified Patent Court before the entry into force of the Agreement on a Unified Patent Court;

ACKNOWLEDGING that the provisional application of a treaty is an instrument suitable to ensure such a smooth transition;

ACKNOWLEDGING that the use of provisional application is in accordance with customary international law;

ACKNOWLEDGING that such provisional application can be limited to certain parts of a treaty where the negotiating States have in some manner so agreed;

CONSIDERING that provisional application should only come into force when 13 Signatory States of the Agreement on a Unified Patent Court have approved this protocol and only among those Signatory States where the Governments have received parliamentary approval to ratify the Agreement on a Unified Patent Court.

CONSIDERING that the provisional application should concern only the institutional, organisational and financial provisions of the Agreement on a Unified Patent Court and should be limited to what is strictly necessary to ensure the smooth transition into the operational phase.

HAVE AGREED AS FOLLOWS:

Article 1 – Provisional application of the Unified Patent Court Agreement

Article 1-2, 4-5, 6(1), 7, 10-19, 35(1, 3 and 4), 36-41 and 71(3) of the Agreement on a Unified Patent Court and Article 1-7(1), 7(5), 9-18, 20(1), 22-28, 30, 32 and 33 of the Statute of the Unified Patent Court shall enter into provisional application among the Parties that have completed the requisite procedure referred to under Article 3(1), upon the entry into force of this Protocol.

Article 2 – Signature and consent to be bound

- (1) This Protocol shall be open for signature from October 1 2015 by any Signatory State of the Agreement on a Unified Patent Court.
- (2) Consent to be bound by this Protocol may be expressed, without prejudice to paragraph 3 and Article 3(1)b, by
 - a. signature; or
 - b. signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval.
- (3) Consent to be bound by the provisional application of the articles of the Agreement on a Unified Patent Court mentioned under Article 1 of this Protocol may be expressed by a unilateral declaration.
- (4) Instruments of ratification, acceptance or approval of this Protocol or the unilateral declaration mentioned in paragraph 3 shall be deposited with the General Secretariat of the Council of the European Union, hereinafter referred to as the depositary.

Article 3 – Entry into force

- (1) This Protocol shall enter into force the day after 13 Signatory States of the Agreement on a Unified Patent Court including Germany, France and the United Kingdom, have either ratified, or informed the depositary that they have received parliamentary approval to ratify, the Agreement on a Unified Patent Court and have
 - a. signed in accordance with Article 2(2)a. or signed, and ratified, accepted or approved this Protocol in accordance with Article 2(2)b.; or
 - b. declared by means of a unilateral declaration or in any other manner that they consider themselves bound by the provisional application of the articles of the Unified Patent Court Agreement mentioned under Article 1 of this Protocol.
- (2) In respect of any Party which subsequently after the entry into force of this Protocol completes the procedure referred to in (1), this Protocol shall have effect on that Party from the date when the Party has completed the said procedure.
- (3) This Protocol and the provisional application it prescribes shall have effect only with regard to Parties having completed the requisite procedure referred to in (1).

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Protocol.

Done at Luxembourg, October 1st 2015 in the English, French and German languages, all three texts being equally authentic, in a single copy, which shall be deposited with the depositary who shall transmit a certified true copy to all Signatory States of the Agreement on a Unified Patent Court.