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Brexit: scenario discussed to save the Unitary Patent system

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How to save the Unitary Patent project? As soon as the outcome of the UK referendum on a Brexit was known, discussions started behind the scenes about ways to adapt the Unitary Patent system so the UK can stay in.

According to Wouter Pors of Bird & Bird, a new scenario has come up to enable the UK to participate in the Unified Patent Court and even in the Unitary Patent: ‘If the UK ratifies the UPC Agreement, they can continue to be a participant even if they leave the EU. This only requires a small change of the Agreement by the Administrative Committee to open up accession for former EU Member States, being the UK.’

The obligation to apply Union law, which is in the Agreement, needs to be met by the Court, but is not imposed on a non-EU Member State. The UK wants to participate in some kind of European Economic Area Agreement anyway, and in that case the CJEU would also have jurisdiction over legal issues relating to the internal market, so this is not much different. Besides, during the first 14 years the UK Courts would of course have jurisdiction over traditional European patents anyway, next to the UPC.

A further idea is that participation in the Unitary Patent could be achieved through an extension agreement based on [article 142 EPC](#). This agreement would extend the uniform protection to the UK.

For now, the UK would just need to ratify the UPC Agreement, so that the Court and the Unitary Patent can start as planned. There will be a two-year time interval to negotiate the UK withdrawal agreement under [article 50 of the Lisbon Treaty](#) (Treaty on European Union) anyway, so that provides for enough time to also develop the necessary provisions for access to the UPC and the Unitary Patent. This would be crucial for effective protection of innovation in Europe, so let’s make every effort to make this a success.’



The Preparatory Committee of the UPC has not yet reacted to the Brexit vote. EPO president Benoît Battistelli issued a statement last Friday: ‘The Office underlines that the outcome of the referendum has no consequence on the membership of the UK to the European Patent Organisation, nor on the effect of the European Patents in the UK. Concerning the Unitary Patent and the Unified Patent Court, the Office expects that the UK and the participating Member States

will find a solution as soon as possible which will allow a full implementation of these so-long awaited achievements.'

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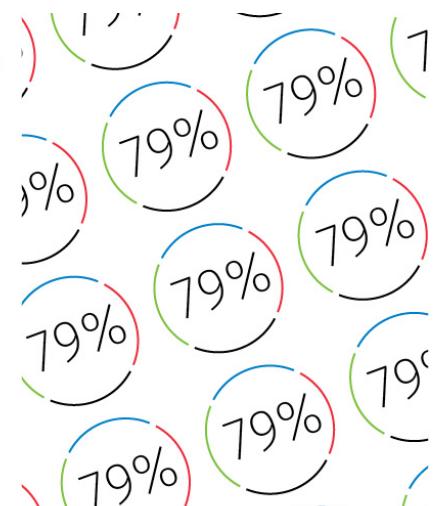
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