

'If UK leaves Unitary Patent system, London section of UPC Central Division should go to Milan'

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The Kluwer Patent Blog received an interesting contribution from the Italian Trade Union of IP Consultants in Italy (SICPI), concerning the relocation of the London section of the UPC Central Division in case the UK decides to leave the Unitary Patent system. Giovanni Bruni of the SICPI argues there are good arguments for Milan as seat for this part of the Central Division.

By *Giovanni Bruni, SICPI responsible for UPC implementation in Italy*

As Trade Union of the IP Consultants in Italy (SICPI), we would like to reinforce the candidacy of Milan as seat of a section of the UPC Central Division, in case the UK government officially announces its intention to leave the EU, as a consequence of the Brexit vote of June 2016. Moreover, we as SICPI would like to stress that the claim to relocate the London section to Milan is NOT premature [as was argued in [a post on this blog](#), ed.] because the start of the Unitary Patent (UP) and Unified Patent Court (UPC) is very urgent. Indeed any delay at this stage could be kill the new system.



Facts

According to Art. 89.1 UPCA, 'This Agreement shall enter into force on 1 January 2014 or on the first day of the fourth month after the deposit of the thirteenth instrument of ratification or accession in accordance with Article 84, including the three Member States in which the highest number of European patents had effect in the year preceding the year in which the signature of the Agreement takes place...'. That is to say, for the UPC to enter into force thirteen instruments of ratification are needed, among them the ones of Germany, France and UK (if still a Member State).

At the time being, eleven instruments of ratification have been submitted (including the French one). The Italian Parliament has approved the UPCA ratification law and the official act to submit the instrument of ratification will come soon. Among other countries, Germany is also quite ready to ratify the UPCA.

In order not to delay anymore the entry into force of the Unitary Patent Package (UPP), we have to consider the UK, *de facto*, as out of the EU and consequently no longer part of the UP and the UPCA. According to the mentioned Art. 89 UPCA, Italy would become the third country with the highest number of validated European patents in the year (i.e. 2012) preceding the year in which the signature of the Agreement took place. In other words, the submission of the Italian instrument of ratification would be mandatory (together with the German and French ones) for the UPC to enter into force. Moreover, the London section of the UPC Central Division has to be relocated outside the UK.

Italian position

As is known, Italy joined the Unitary Patent on 30 Sept 2015 and became the 26th member of the enhanced cooperation on Unitary Patent protection. After approval by the Government, the Italian Parliament, consisting of the Chamber of Deputies and the Senate, approved the UPCA ratification instrument (October 2016).

Also, the [Industrial Property Consultants Institute has requested in a letter](#) to the Italian prime minister and various other ministers and regional leaders in Lombardy that they bid for Milan to replace London, as a seat of the Central Division. We, as SICPI, would like to reinforce the position of our Institute for the following reasons:

- according to the UPCA (Art. 7.2), 'The central division shall have its seat in Paris, with sections in London and Munich...' That is to say, the central division shall have its seat in the three countries with the highest number of validated European patents in 2012. Considering UK out of the UPCA, Italy would become one of these three countries and Milan sponsorship is absolutely reasonable.
- As pointed out by our Institute, Italy is among the first EU countries in the number of European patent, trademarks and designs applications and is therefore paying a high contribution to the system. 'Nevertheless, our country doesn't host any European institution in the field of Industrial Property. The relocation of the London seat of the central division to Milan would repair the current imbalance.'
- Milan represents the Italian Court having the highest number of IP lawsuits and therefore Milan Court has a wide experience in the IP field, more than other Italian (and foreign) courts.

It appears clear that prejudices against the Italian justice proceedings still exist: the article published recently by the Kluwer Patent Blog affirms that the 'Italian judicial system (although much improvement can be noticed) is still not an example for efficient court proceedings. Court cases tend to be lengthy and slow. And although the Central Division is of course not an Italian court, I think there may be concerns that Italian habits will be imported into the UPC system'.

To this and similar prejudices, we can strongly argue that this is not the case. In fact, figures coming from the Milan court concerning IP lawsuits say that:

- in the first half of 2016, 213 new cases were started and 229 cases were closed. This means the workload is decreasing;
- the average length of IP lawsuits has been about 800 days in the last three years (2013-2015), that is to say a bit more than two years;
- during the same last three years, actions for provisional and protective measures and injunctions took as an average about 100 days, which is in our view a very short time period.

Although specific data for patent cases are not yet available, we suppose the trends are the same for these cases.

In conclusion, Milan candidacy as seat of a section of the UPC Central Division appears to be really appropriate and urgent.

Giovanni Bruni

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