

Kluwer Patent Blog

Brexit and EPO unrest in top ten of most popular posts Kluwer Patent Blog in 2016

Kluwer Patent blogger · Sunday, January 1st, 2017

Not surprisingly the Brexit and its consequences for the Unitary Patent system, but also the continuing social unrest at the European Patent Office were among the most popular topics on the Kluwer Patent Blog in 2016. One item in our top ten has a title which can be used again this year without any problem: 'Countdown to the start of the Unified Patent Court'. At the end of 2017, we will know whether the new system has become a reality.

The list: number **10** is the item [T 650/10 and the right to be heard](#), about the fact that parties involved in appeal proceedings before the EPO see a clear trend towards decisions rendered on formal grounds. 'T 650/10 hence represents another decision raising the question whether the current application of the Rules of Procedure (RPBA) by some Board of Appeals can lead to the right to be heard undergoing a fundamental loss of substance.'

Number **9** in the list is the blogpost with first reactions to the Brexit vote of 23 June 2016: [Brexit referendum shock - what will be of the Unitary Patent system?](#) Some commentators were very pessimistic, too pessimistic, it seems since 28 November (when the UK announced it would proceed its preparations for ratification of the UPCA): 'It is theoretically possible that the UK could, while still an EU member, ratify the UPC, enabling it to open in 2017, and it is even possible that the London branch of the Central Division could open its doors, but that all seems politically highly unlikely.'

Number **8**, mentioned earlier in this article, was published almost a year ago. [2016: Countdown to the start of the Unified Patent Court](#), when everybody expected a smooth transition to the UP system. '*What will be the situation a year from now?*' 'The court will be fully operational. The opt-out register will contain many thousands of patents, but nevertheless I expect numerous revocation actions to be filed with the Central Division as soon as it opens.'

Nr **7** concerned the EPO: [Debate in Dutch Parliament about deteriorating social climate at European Patent Office](#). 'The dismissal of SUEPO secretary Laurent Prunier, also a member of the EPO's Central Staff Committee, was the latest development in years of turmoil, protests and conflicts between EPO employees and the authoritarian president Benoit Battistelli, who is accused of creating a climate of

fear, putting workers under intolerable pressure and ignoring the organization's own rules.'

Back to the UK's EU referendum for nr **6: Brexit: scenario discussed to save the Unitary Patent system**, introducing at an early stage some guidance on how the UK could stay in the system even after leaving the EU: '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.'

Number **5, Scary Figures Call for Action by the EPO**, discussed and criticized the number of vacant positions of Board of Appeal members. 'It means that the duration of EPO appeal proceedings, which even now is excessively long (in the order of three years on the average, and in the chemical and biotech fields even more, (...)) will continue to rise in the not too distant future. This author has already been put on notice by one board of appeal that in view of its current backlog of cases, a decision can only be expected in about six years.'

Nr **4: A Look At The U.S. Doctrine of Obviousness-Type Double Patenting**. 'It is important that practitioners and Applicants understand the U.S. doctrine of obviousness-type double patenting, because it is a complex issue of growing importance. Between the evolving doctrine of obviousness and USPTO examination delays that can result in significant awards of Patent Term Adjustment, avoiding OTDP scenarios or at least minimizing their impact can be essential to maximizing the value of a patent portfolio.'

The Rule of Law (Rechtsstaat) is Endangered and Needs to be Defended!, our nr **3** in the list, discusses issues in both the US and the UK but ends with the EPO: 'Given how important an independent and fearless judiciary is for a functioning system of checks and balances, an Office President would, in this author's view, be well advised to exercise utmost restraint in interfering with the Boards of Appeal as the EPO's judiciary. Yet I am afraid that this is not what happened in summer of this year.'

Number **2: Even in case of a Brexit, UK may join Unitary Patent system**. A blogpost published just days before the referendum in the UK, discussing the - at that moment theoretical - option of a Brexit vote and its consequences for the European patent system. The post became highly popular in the days after the shock vote in the UK. 'Parliament is not and was never against ratification of the UPC Agreement. Refusing such ratification while the UK is still a full member of the EU would do political damage and would not improve the UK's position in its withdrawal negotiations with the EU. Besides, the withdrawal negotiations would of course be finalized before the UPC Agreement's (...) transitional period expires, so the Courts of England and Wales in the meantime would retain full jurisdiction on patent cases on traditional European patents, next to the UPC.'

Number **1: Growing pressure on EPO president Benoît Battistelli ahead of AC meeting**. A blogpost describing the increasing tension between the EPO president and the Administrative Council, due to the dismissal or degrading of three SUEPO union leaders. 'As reported by a number of sources, [AC chairman Jesper, ed.] Kongsted wrote a letter to all 38 AC members, accompanied by a Resolution, which proposes

Battistelli to agree to an external review of the disciplinary measures taken against the three and to suspend these pending the outcome of this investigation. The Resolution also asks Battistelli to review other issues which have led to unrest at the EPO: the existence of an investigative unit checking on EPO workers, the failure to recognize EPO's trade unions and the BoA reform. It asks for reinforcement of the AC secretariat itself and clarification of the AC's position in terms of governance as well.'

The blogpost was published on 27 February 2016. Since that date, no real progress seems to have been achieved, however, if one reads the [report of an AC meeting last December](#): 'The Council (...) stressed the need for swift progress in the social agenda and concrete proposals and achievements to come in the next months. (...) Under the heading of General Affairs, the Council had an in depth exchange of views about the future priorities of the EPO (...). Underlining the need to improve the social dialogue, the Council mandated its Chair to work together with the Board 28 and the Office on concrete proposals in the first half of 2017.'

For regular updates on the Unitary Patent and the Unified Patent Court, subscribe to this blog and the free [Kluwer IP Law Newsletter](#).

To make sure you do not miss out on regular updates from the Kluwer Patent Blog, please subscribe [here](#).



Want to improve your IP strategy?

- Manual of Industrial Property
- IP Analytics
- Visser – Annotated European Patent Convention

230+ jurisdictions
36,000+ cases
100+ books
600+ IP law professionals as authors

Request a free demo now
KluwerIPLaw.com

Wolters Kluwer

This entry was posted on Sunday, January 1st, 2017 at 8:23 pm and is filed under [Brexit](#), [EPO](#), [European Union](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. Both comments and pings are currently closed.

