

Kluwer Patent Blog

UK government urged to make Unitary Patent system come true

Kluwer Patent blogger · Friday, May 26th, 2017

(UPDATED) Industry organization Eurochambres and the British Chambers of Commerce (BCC) have written a joint letter to UK Business Secretary Greg Clark, calling on the UK government to help ensure that the Unitary Patent system becomes a reality as soon as possible.

The [letter](#) was sent earlier this week, prior to the meeting of the EU Competitiveness Council of 29 and 30 May 2017. According to the letter, Eurochambres and the BCC ‘welcomed the statement of the UK at the November 2016 Competitiveness Council that it would proceed with the ratification of the Unified Patent Court (UPC) Agreement’, despite the Brexit vote of 23 June 2016.

‘This, in turn, led to the encouraging forecast of the UPC Preparatory Committee that the Court, and consequently also the Unitary Patent, would materialize by the end of 2017.

However, it has now come to our attention that the UK will not be in a position to deposit its ratification of the UPC Agreement until after the forthcoming general election due to the dissolution of the Parliament. It is also (...) possible that the deposition process might thereafter be further delayed for procedural reasons.

Without entering into the constitutional and political machinations, our message is simple: we encourage the UK Government, both before and after the election, to continue to play a constructive and active role in ensuring that the Unitary Patent becomes a reality as soon as possible. Whether the UK is an EU member state or not and regardless of the terms agreed for future EU-UK relations, British businesses and the British economy can enjoy the benefits of a new, unified patent system.’



In the last paragraph, the letter refers to uncertainty about the UK’s role in the Unitary Patent system post-Brexit. There are no signs that a new UK Government will not proceed with UPCA ratification, but it is a possibility. The issue could also become part of the Brexit negotiations,

which would mean the ratification could be delayed by two years. Both if a post-Brexit UK stays or doesn't stay in the UP system, the agreements concerning the UP and UPC will have to be adapted.

UK Parliament was expected to finalize its part of the ratification process of the Unified Patent Court Agreement (UPCA) this month. The early general elections led to the dissolution of Parliament however, and the procedure can now only be completed just before or otherwise after the summer break of Parliament.

Once it is clear if and when the UK ratification process in Parliament will be completed, the Preparatory Committee is likely to review the time schedule. It is widely expected the start of the UP system will be delayed until somewhere in the first months of 2018.

The UK's participation is indispensable for the start of the UP and UPC. With France and Germany, the UK is one of three member states that have to ratify the PPA and UPCA before the system can launch. France has already done this, in Germany the ratification process has been progressing according to plan.

Apart from the delay in the UK, there is yet another issue that will have to be resolved: the Protocol on Provisional Application has not yet been ratified by the required number of member states. As Eileen Tottle, head of the secretariat of the Preparatory Committee [explained earlier this year](#): 'We need 13 UPC member states, including France, Germany and the UK, that have 1) ratified or received parliamentary approval to ratify the UPCA and 2) approved or declared to be bound by the PPA. Apart from Germany and the UK (...), we need two more member states to qualify for this.' Tottle said she expected Greece to ratify both the UPCA and the Provisional Protocol after the Easter recess, but so far this hasn't happened.

In a [separate letter](#) with 'comments on some of the key elements due to be discussed at the Competitiveness Council on 29-30 May', Eurochambers – representing over 20 million enterprises in Europe, mostly SMEs, according to its website – points at this problem: '(...) we urge those member states that still need to take measures to allow for the entry into provisional application of the UPC Agreement to proceed with these as quickly as possible in order to avoid any delay. There are clearly legal and procedural constraints in several member states, but we trust and hope that these can be overcome if there is the political will to finally allow European Business to benefit from this important and long overdue reform.'

It's worth mentioning that in a [post on this blog yesterday](#), Thorsten Bausch of Hoffmann Eitle points out that the real problem for the UP system may not be the UK, nor the lack of ratifications of the PPA, but the German Federal Constitutional Court. Later this year, the *Bundesverfassungsgericht* intends to hear four constitutional appeals, in which the basic framework of the EPC will be challenged as not being compatible with the German Constitution. 'If the UPCA were to be ratified in, say, September and if two months later the European Patent Convention were to be declared unconstitutional, this might also pull the rug out from under the UPCA. The resulting mess could have epic dimensions.'

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This article was updated to correct and delete the mistake Wouter Pors refers to in his comment hereunder: UK approval of the Protocol on Provisional Application is not missing.

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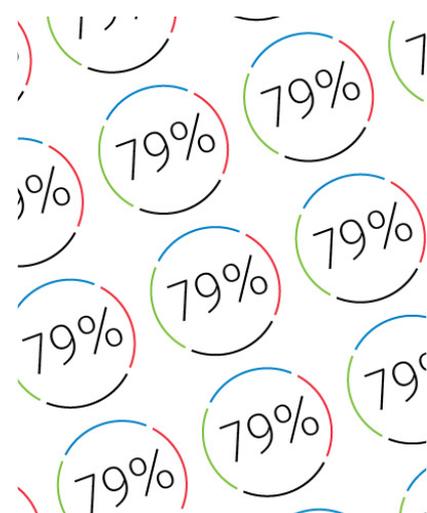
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