

Procedure leading to UK ratification Unified Patent Court Agreement progressing steadily

Kluwer Patent Blog

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Despite uncertainty about the UK's post-Brexit position in the Unitary Patent (UP) system and the German constitutional complaint against the Unified Patent Court Agreement (UPCA), several steps leading towards UK ratification of the UPCA have been taken over the last weeks.

The House of Commons approved the draft Unified Patent Court (Immunities and Privileges) Order 2017 on 4 December, after the Sixth Delegated Legislation Committee of the House had discussed and approved it on 29 November 2017. The draft Order will be discussed today by a 'Grand Committee' of the House of Lords. In the upcoming weeks, the House of Lords is expected to approve the Order without debate as well.



The Immunities and Privileges Order and a similar Scottish Order will confer legal status on the Unified Patent Court, as well as providing a limited set of privileges and immunities to the court, its judges and staff. The Orders are the last pieces of draft legislation which must be passed before the UK can ratify the Unified Patent Court

Agreement. Legislation to amend the UK Patents Act 1977, to give effect to the UPCA and EU legislation on the Unitary Patent, were already approved by both Houses of Parliament in 2016.

The similar Scottish Order (The International Organisations (Immunities and Privileges) (Scotland) Amendment (No. 2) Order 2017), was approved by the Parliament at Holyrood last October. Both Orders will have to be put before the Privy Council for final approval. According to a Bristows report, this may happen at the last meeting of this year, scheduled for mid-December, but more probably at a meeting in January 2018. 'After that the UK will be in a position to ratify the UPC Agreement.'

In the Sixth Delegated Legislation Committee, Jo Johnson, Minister for Universities, Science, Research and innovation explained last week that his government thinks the UP system is important: 'The Unified Patent Court will offer a way for innovative businesses to enforce or challenge patents in up to 26 European countries with a single court action. The ability to obtain a single judgment is significant and valuable for patent-intensive industries. Independent research shows that approximately a quarter of all patent cases heard in UK courts were litigated between the same parties in other European jurisdictions, so a single unified patent court is welcome. An important division of the court, dealing with disputes in the field of pharmaceuticals and life sciences, will be based here in the UK, cementing our global reputation as a place to resolve commercial legal disputes.'

Johnson stressed the UK definitely wants to stay in the UP system post-Brexit: 'To be clear, the UPC itself (...) is not an EU institution, but currently all participating member states are EU member states. Our position is that while the UK remains a member of the



EU, we will and should complete all necessary legislation, so that we are in a position to ratify the agreement.' (...) 'After we leave the European Union in March 2019, we understand that we will have to negotiate a new relationship with the UPC. We want to do that as seamlessly as possible so that businesses can continue

to take advantage of the provisions that the UPC makes possible.'

'We do not want any cliff edges. We want minimum disruption for businesses, and we want to minimise threats to stability as we develop the deep and special relationship with the rest of the EU that we have set out as our objective for the negotiation. Of course we will take into account the need to protect intellectual property rights as part of the process of considering the options for the UK's intellectual property regime after our exit, but as I have said on a number of occasions, our future relationship with the UPC will be a matter for negotiation. It would not be appropriate for me to set out unilaterally what the UK's position will be in advance of those negotiations.'

In answer to a question about the German constitutional complaint, which could delay by years or even derail the creation of the Unitary Patent system, Johnson said: 'We understand that there are issues in other countries whose ratification is necessary; we hope that they can be overcome so that this court can come into existence and do the job we all want it to do.'

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