

IP sector UK presses for action government in key areas, including Unitary Patent, in light of Brexit

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IP organisations in the UK have requested the UK government for action in five key areas in light of the upcoming Brexit. In a note published late December, they make recommendations on 'the biggest areas where Government action is necessary to ensure continuity and certainty of IP law and to prevent disruption both to undertakings which use IP services and IP service providers'. The five areas are: the continuation of EU-derived IP rights, the exhaustion of rights, the rights of representation, mutual recognition of judgments and also the Unitary Patent system.

According to the note, there 'has been international cooperation in the development of IP laws since long before the EU and its predecessors came into existence, as in the case of the 1886 Berne Convention for copyright. Some of the newer forms of cooperation take place outside the EU institutions, as in the case of the European Patent Convention, whose member states include those of the EU as well as many others. But EU laws are at the heart of the European (including UK) IP system.'



Regarding the continuation of EU-derived IP rights, the document says: 'The UK has played a pivotal role over many years in the creation of a robust and harmonised IP regime across Europe (...). These rights include EU trade marks, registered Community designs, (...) supplementary protection certificates (...) and plant breeders' rights. (...) The UK government should make arrangements to ensure that owners' property interests and the interests of those affected by them are not lost or prejudiced by Brexit, and that there is a minimum of cost and disruption to the IP system. Specifically:

(a) The Government should seek to negotiate a package of rights to secure the continuation of all existing substantive and procedural pan-European rights and defences to them. (...) We note that there are provisions on harmonisation of IP rights in the EU/EFTA treaties, which could provide a model.

(b) If (a) is not achievable, the government should legislate for the automatic continuation in the UK of EU rights. (...)

The document of the IP organisations also stresses the importance of the Unitary Patent and Unified Patent Court Agreement: 'The UPC is one of the most significant developments in IP dispute resolution of recent years. The UK is central to it and has devoted significant financial and human resources to its development. Participation of UK judges and lawyers is widely regarded as critical to the UPC.'

Partly as a result of British initiatives, the UPCA provides that the section of the Central Division dealing with, inter alia, life sciences and chemistry, will be based in London. This is of benefit both to UK industries operating in this sector and to the UK legal profession. The Court will commence operating three months after the UK and Germany have deposited their instruments of ratification; subject to that, the court could be ready to open in 2018.

In light of the UK declaring its intention to ratify the UPCA nearly a year ago, and the UK triggering Article 50 in March this year, the Government should provide legal certainty regarding the UPC, and now do the following:

(a) confirm that it is the UK's intention to stay in the UPC, and that the UK is prepared to abide by the terms of the UPC Agreement, following Brexit;

(b) work towards the coming into effect of the UPC as soon as reasonably practicable in collaboration with other UPC Member States; and

(c) work with other UPC Member States and EU institutions to ensure there are no legal or practical obstacles to UK participation in the UPC and the Unitary Patent, following Brexit, on equal terms with other Member States.

The objectives should be (i) continuation of the Court in London; (ii) continued involvement of UK national judges; and (iii) continued rights of participation of legal professionals qualified and based in the UK in all parts of the Court's procedures on the same terms.'

The note 'has been written or supported by (...) organisations that represent the main UK IP professions, including IP solicitors, IP barristers, chartered patent attorneys, and chartered trade mark attorneys. Between them, the IP professionals represented by these organisations have experience of advising, either as employees or as external advisers, the full range of clients for whom IP is important, including individuals, SMEs, major companies, universities, NHS Trusts, government agencies and others; and including both UK-registered companies and overseas companies that make the UK the base of their European operations. They represent clients in all sectors, including IT, engineering, life sciences, industrial design, fashion, and consumer goods.'

Over the last months of 2017, the UPCA ratification procedure in the UK progressed considerably. The last remaining piece of legislation that must be passed in order for the UK to be able to ratify the UPC Agreement, the draft Unified Patent Court (Immunities and Privileges) Order 2017, is expected to be on the agenda of the Privy Council meeting of February 2018. If the Privy Council approves it, the UK will be in a position to ratify the UPCA.

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