

Parliamentary committee asks UK government to clarify position on Unified Patent Court

Kluwer Patent Blog
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A parliamentary committee in the UK has asked the government to clarify its position on the Unified Patent Court (UPC).

Although late February the office of Prime Minister Boris Johnson confirmed to several media that the UK "will no longer seek to participate in the Unitary Patent project", an official statement has not been issued.

Yesterday the EU Justice Sub-Committee of the House of Lords in the UK heard evidence from Julia Florence, past president of the UK Chartered Institute of Patent Attorneys (CIPA) and barrister Daniel Alexander QC to examine what impact this will have both on businesses and inventors in the UK and on the Court.



After the hearing, chairman Lord Morris of Aberavon of the Sub-Committee sent a letter to IP minister Amanda Solloway with a simple question: "Can you confirm recent media reports that the 'UK will not be seeking involvement' in the UPC and the associated unitary patent?"

Tuesday's hearing made clear both Daniel Alexander and Julia Florence hope there will still be a way to keep the UK in the Unitary Patent project. Alexander said: "Is the government paying enough attention, do they understand it, I am convinced they can be made to understand it. I think there is an element of shallowness of thinking that says: 'Look at this, the EU is involved, right, we strike this out.' But a discussion of this with reasonable people, I think actually can make genuine progress. (...) I'm prepared to talk to anyone who will listen on this and actually try and not have sort of silly things become obstacles. (...) For kind of pointless things to stand in the way I think that's just, at this stage in the country's history, that's not where we should be."

German complaint

The UK's announcement has reinvigorated the debate about changes to and the feasibility of the Unitary Patent project now that this important member state seems on its way to the exit. Last week, the UPC Preparatory Committee announced it will not undertake any initiatives to deal with the UK's planned withdrawal until another crucial issue is clear: the outcome of the German constitutional complaint against the UPCA.

"Following the UK government's decision not to pursue remaining in the Unified Patent Court and in the Unitary Patent, work on the implementation of the Unified Patent Court continues. Once Germany will be in a position to ratify the UPC Agreement and the Protocol on the Provisional Application, arrangements will be made to deal with the practical implications of the UK's departure. These will be published in due course", a message from chairman Alexander Ramsay of the Preparatory Committee read.

The two chambers of German parliament had already ratified the UPCA, when a complaint against the agreement was filed by Düsseldorf lawyer Ingve Stjerna in March 2017 with the Federal Constitutional Court (FCC). Because of this, the Court asked German president Frank-Walter Steinmeier to delay the only remaining step to complete the ratification formalities (apart from the deposit of Germany's instrument of ratification with the EU Council): signing the UPC legislation into law.

The FCC ruling in the case is expected within the next few months and the PrepCom's decision to wait for it is a logical choice. If the complaint is (partially) upheld, this will lead to delays or could even mean the end of the UP system. If the complaint is dismissed, this could open the way for German ratification and the start of the Unitary Patent system later this year although, due to the UK's decision to withdraw, amendments will have to be made to the Agreement.

The expression 'be in a position to ratify' in Ramsey's message, however, raises the question whether he has taken into account possible political doubts in Germany about proceeding with the UP project without the UK.

In answer to questions of Parliament the German Justice Ministry made clear last year that the government would reconsider the UP project at some point: "The issue of the withdrawal of the United Kingdom from the European Union (so-called Brexit) and its implications for European patent reform play an important role in the further implementation process of the Unified Patent Court Agreement. The real and legal implications of withdrawing must be examined with regard to the Agreement and agreed at European level. This opinion forming is currently not finalized, not least because significant factors of the expected exit are not yet known." (Drucksache 19/12106)