

# IP Federation expresses concerns about Unified Patent Court

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In a position paper published on 23 December 2020, the IP Federation in the UK has expressed concern about the uncertainties surrounding the Unified Patent Court. According to Scott Roberts, president of the IP Federation, the value of the project has diminished considerably for its members. Kluwer IP Law interviewed Roberts.

**The position paper states “Whilst it appears there are prospects for the UPC to come into force despite the UK’s withdrawal, there are many open questions which bear on whether, when, and in what form that might happen. The IP Federation would like to see these resolved in the near future. In view of the degree of uncertainty presently surrounding the project, the IP Federation is awaiting further developments with interest and looks forward to commenting in more detail when the final form of the project is clear.” Could you explain what the ‘open questions’ are the IP Federation would like to see resolved? And what ‘the degree of uncertainty presently surrounding the project’ refers to?**

“The IP Federation has long been a keen advocate for the UPC package, and always with the UK in it.

Our members recognise the considerable erosion in value since the withdrawal of the UK’s ratification. The withdrawal of the UK ratification was a real blow and was a political decision in the context of Brexit where the UK removes itself from the jurisdiction of the CJEU.

There are two sources of considerable uncertainty that we believe need to be resolved:

Firstly, the uncertainty surrounding the potential for any future participation of the UK, should political-will evolve.

Secondly, the uncertainty following the [constitutional complaints filed on Friday 18/12](#). In this respect it is noted that the previous complaint by Ingve Stjerna consumed 3 years of the Bundesverfassungsgericht’s time. While these complaints may be summarily dismissed if the Court finds that appropriate (and that is a question for the BVerfG, certainly not the IP Federation), if the complaints are heard they could constitute a test of resilience for the enthusiasm of current and prospective UPCA signatories. That test of resilience is further compounded by the possibility of success of the complaints – which could serve to fundamentally undermine the very existence of the UPC.”

**‘When the final form of the project is clear’; when do you expect that to be?**

“We must wait to see the outcome of the constitutional complaints. If they are dismissed, then the UPC may proceed and we encourage the door for future UK participation is kept ajar – though we acknowledge that there would need to be a new political will in the UK and a political will to accommodate the UK in other UPCA states.

On the other hand, if the complaints are not dismissed, then a revisiting of the UPCA may be required and, again, we strongly encourage that the door for future UK participation in any future unified patent court is kept ajar.”

**Is it a coincidence the position paper has been published on the day the news broke about the two new constitutional complaints in Germany against ratification of the UPCA? It has been speculated that the political will to persevere with the Unitary Patent project may disappear if there are new long delays due to these complaints.**

“The timing is coincidental though the issues and uncertainty remain fundamentally the same. The prospect of constitutional complaint was well-known before Friday.”

**Is the publication of the position statement linked to the Brexit?**

“Not directly, no.”

**Whom is the position paper addressed to? Who must provide the answer to the IP Federation’s questions? The European Commission? The UPC Preparatory Committee? The patent industry in the UK and/or in Europe?**

“The IP Federation seeks to keep governments, patent granting authorities and patent users apprised of its position on important issues through its published policy positions. In addition to that, we represent our views more directly to those stakeholders.”

**Is the position paper perhaps a cautious way to say that the IP Federation thinks “a cost effective, high quality and balanced IPR framework is a critical component in industry’s present and future successes in the global economy and in social progress”, but this framework is not necessarily the Unitary Patent system anymore, now that the UK is out, there are legal uncertainties and perhaps new delays?**

“The Unitary Patent system has value even without the UK in it, though without the participation of the UK it is considerably devalued.

Whereas the UPCA dramatically simplifies enforcing rights consistently across European economies, the absence of the significant economy of the UK has a huge impact for rights-holders and third-parties. There are also disadvantages for the UPC itself: the loss of the close involvement and influence of the UK’s judiciary (which is acknowledged to be among the most respected in the world) will have consequences for the quality of UPC decision making. Further, the UK will no longer be part of a system that will inevitably exert influence on other international and domestic arrangements. Landmark decisions of the Unified Court will exert some influence on judicial decisions and policy at the EPO, for example, and there will be a dearth of UK judicial influence in those Unified Court decisions.

It is the compounded effect of the uncertainties I described earlier, the prospect of prolonged delay due to the BVerfG complaints, and these sources of erosion of value that cause us to question whether, when and in what form the UPC might come into force.”

**Wouldn’t it be more logical for the IP Federation to support a European patent system including non-EU-member states, in the framework of the EPC?**

“IP Federation members are hugely supportive of the inclusive European patent system constituted under the EPC and the Strasbourg Patent Convention and we see this system as a basis for the high-quality and balanced patent framework critical to the success of industry operating in Europe. The UPC is an adjunct to that and we support the UPC being available to non-EU member states including the UK where political will allows.”