

Kluwer Patent Blog

‘A Brexit will not necessarily delay the start of the Unitary Patent system’

Kluwer Patent blogger · Tuesday, April 5th, 2016

Hopefully the United Kingdom won't jeopardize the Unitary Patent project with a vote to withdraw from the European Union, says Jane Lambert, barrister from [4-5 Gray's Inn Square](#) in London. 'However, it could still continue without us', Lambert told Kluwer IP Law in an interview.

Lambert, who recently published a series of articles ([1](#), [2](#), [3](#), [4](#), [5](#), [6](#)) on the new Unitary Patent system, feels it will be an enormous improvement for British IP intensive companies. 'A Brexit would be a problem for us but not for the remaining states', she said. 'If Germany and two other member states hurry up and ratify the UPC Agreement, the court and the Unitary Patent could be up and running before the UK could leave the EU.'



Under art 50 of the Treaty of European Union we would have to give two years notice of our departure, which is more than enough time for the UPC to come into force. Whether we stay in the EU or leave it, it is in our interests to see the Unitary Patent come into force for the remaining member states, so we are unlikely to obstruct it. The problem for us is that after a 'leave' vote in the EU referendum, we would then have to leave the UP system, as membership is restricted to EU member states.'

For Lambert, this would be a nightmare scenario. 'I have been waiting all my professional life for a patent that will cover the territories of the major EU members. No country will benefit from the UPC more than the UK. This is why it was backed so enthusiastically by Ian Hargreaves, Professor of the Digital Economy at Cardiff University who was commissioned in 2010 by the British government to review our IP laws.'

In 2003 the Intellectual Property Advisory Committee in the UK reported that the average cost of an infringement action in the Patents Court was 1.25 million euro and between 187,000 and 312,000 euro in the Patents County Court, whereas the average cost in France, Germany and the Netherlands was 50,000 euro or less. The UPC puts British companies on a level playing field with their continental competitors. That can only benefit my clients and IP practitioners in the long run.'

According to Jane Lambert, all big businesses that can afford in-house legal advisers and patent agents have heard of Unitary Patents. 'Most see the initiative as advantageous, though some worry

about giving up a court with specialist patent judges, such as Sir Henry Carr and Sir Richard Arnold, for whatever may emerge from the judicial training programme in Budapest.’



In other parts of the business community however, there is widespread ignorance, and even among some lawyers, she adds. ‘I am doing my best through my blog and talks to inventors clubs and other audiences to spread the word. Still, many do not know that there is no such thing as a world or even EU patent and are surprised to learn that the European Patent Office has nothing to do with the European Union. Also, people know that patent prosecution is expensive, but some spend vast

amount sums of money that they do not have on patents that they do not need. There is massive disillusionment when they discover that the royalties fail to roll in.’

Lambert is not concerned the new system and particularly the Unified Patent Court will have problems combining the legal traditions of the 26 member states, which have a [different approach to interim injunctions](#), for instance. ‘Once we have some case law, uncertainties will quickly be dispelled. Moreover, each division will have judges from different countries on its panel.’

It doesn’t mean Lambert thinks the system is flawless: ‘The draft rules of procedure are far too complex and voluminous. The 18th draft is 142 pages long and contains 382 rules, an annexe and tables. Compare that to the 13 pages of [Part 63 of the Civil Procedure Rules](#), which governs all IP litigation in the civil courts of England and Wales. One obvious example of complexity is that there are different sets of rules and pleadings for infringement, revocation, declarations of non-infringement and other actions.’

Still, she would definitely advice her clients to use the UPC. ‘Even for disputes between two Englishmen over the infringement or validity of a European patent (UK).’

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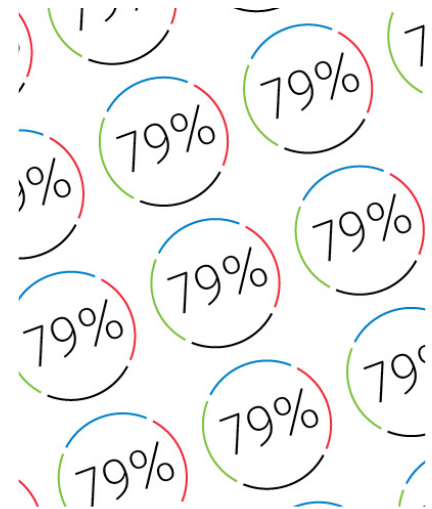
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