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Brexit – A Personal View from a UK Patent Litigator

Brian Cordery (Bristows) · Friday, June 17th, 2016

This author began his career in patent litigation in 1996. In those days, a solicitor's role was confined largely to the preparation of trials in the English Patents Court. Huge amounts of time were spent on discovery – searching and reviewing a client's documents, followed by reviewing the opponent's documents and invariably complaining to the Court that the other side had not fulfilled its obligations and should disclose more.

The introduction of the Civil Procedure Rules in 2000 streamlined a lot of procedural steps in the interests of saving legal costs. However, it is fair to note that these streamlining processes had already begun in the English Patents Court under the stewardship of Jacob, Laddie and Pumfrey JJ several years before the implementation of the CPR. These judges and those that followed in their footsteps also recognised that valuable lessons could be learned from the patent litigation systems in other European countries and so began to increase the amount of interaction with their counterparts across the Channel. Regular events such as the EPLAW Judges' annual conference in Venice (which began in 2005) have led to an increased level of cooperation and recognition of the strengths and weakness of each other's national systems. Whilst consensus is not always reached, few would disagree that the patent litigation systems of all major countries have been enriched by this interaction.

The reshaping of UK patent litigation by the Judges coincided with the decision by many multinational companies in all sectors to coordinate their European patent litigation more and more – to devise, stress-test and implement strategies in key cases. Many UK law firms were chosen to assist their clients in this process which enabled these firms to gain a wider perspective and provide more joined-up advice to their clients.

It seems to the author that in the microcosm of patent litigation, sharing views and learning from each other has led to improved practices across the continent. Now we are of course on the brink of the most exciting development in European patent litigation for nearly half a century. The Unified Patent Court represents an enormous challenge – and an enormous opportunity – to all UK patent litigators. If the UK votes to leave the EU next week, the future of the UPC is uncertain although the future of the UK's part in the UPC will be clear enough. What would this mean for UK patent litigation? Maybe not so much in the short to medium term – it is not unreasonable to suppose that the English Patents Court might become akin to its counterparts in Canada or Australia – still a venue for patent cases of high value and/or strategic importance. But how much more exciting would it be to shape the UPC which surely has the potential to become the world's most attractive forum for patent litigation by the end of the next decade?

The Brexit issue will not be decided on patent litigation. Ultimately issues such as immigration and the economy will be in the collective mind of the British electorate next Thursday. The official policy of the author's firm is rightly that employees should vote freely according to their own personal preferences. Nevertheless this author feels deeply that his firm, the patent profession and the whole of the UK have much more to gain by staying in than getting out.

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