

# Kluwer Patent Blog

## Experts analyse participation post-Brexit UK in Unitary Patent system

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Analysing whether, if the UK ratifies the UPC, further participation in the Unitary Patent system might be possible and on what legal basis. That is the main objective of a group of patent professionals in the UK, which has been convened by Simmons partner [Kevin Mooney](#) after the Brexit vote of 23 June 2016. Mooney is also chairman of the Committee that prepared the draft Rules of Procedure for the UPC. In reaction to questions by Kluwer IP Law about the initiative, he declined providing too much detail ‘which may be a hostage to fortune and compromise subsequent contacts with UK Government’. Instead he issued the following memorandum.

‘An ad hoc group of lawyers and patent attorneys broadly representing the professions and industry in the UK have been meeting to discuss the possible future of the UK in the UPC project after the Referendum. The UK remains a Contracting Member State of the UPC Agreement and a member of the EU pending the service of an Article 50 notice and Brexit negotiations but the UK has not yet ratified the Agreement and such ratification is a condition precedent for the Agreement to come into effect.



Kevin Mooney

There has in the past been a widespread view that the effect of the opinion of the CJEU (01/09) is that a non-Member State of the EU would not be able to participate in the project, hence the withdrawal of Switzerland after the Opinion was given. If this view of the Opinion is correct future participation of the UK will not be possible but more recent legal opinions have questioned whether this view is in fact correct.

The ad hoc group is therefore planning to prepare a detailed analysis to clarify whether, if the UK ratified the UPC Agreement, future participation might be possible and on what legal basis. Of course if such analysis shows that participation in the long term is possible there remains the need

for a political decision whether to ratify or not. The professions and industry in the UK broadly support participation and believe that if the analysis under preparation does provide assurance that future participation is possible then it is hoped that this will assist the UK Government in its political decision on ratification.

The attitude of other Contracting Member States will also be influential in the Government's decision. It is believed that there is strong support for UK participation.

An early decision on UK ratification is felt by most to be preferable to avoid continuing uncertainty and delays in the project moving forward. With that in mind the work on the legal analysis is being expedited.'

Since the Brexit vote of 23 June 2016, there has been a lot of discussion about the possibilities for the UK to stay in the Unitary Patent system. An earlier report on this issue can be found [here](#).

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