

Kluwer Patent Blog

Slovenia expected to ratify Unified Patent Court Agreement despite Brexit uncertainty

Kluwer Patent blogger · Thursday, October 6th, 2016

Slovenia is expected to deposit its instrument of ratification of the Unified Patent Court Agreement with the Council of the European Union soon, bringing the number of ratifying countries to twelve. However, due to the Brexit vote and recent statements of UK prime minister Theresa May about what this vote should mean for the UK, it seems ever more doubtful the Unitary Patent system and the UPC will launch.

According to a [report by Bristows](#), Slovenia's UPCA ratification bill was approved by the two chambers of Parliament and signed into law by the president last month. Soon after publication of the text of the law in the Official Journal, 'which may take place this Friday, 7 October 2016', the Slovenian government intends to deposit its instrument of ratification with the EU Council, according to the report.



Is it of any use? Dark clouds have been looming above the Unitary Patent system since the UK voted to leave the European Union in a referendum on 23 June 2016. The UPC and UP system were supposed to start functioning in the first half of 2017, but the UK's ratification is required for this. The consequences of the Brexit for the UP system have been broadly discussed over the last months; legal and political obstacles for a continued presence of a post-Brexit UK in the system analysed.

The conclusion of a recent UPC opinion of Brick Court Chambers, commissioned by the IP Federation, the Chartered Institute of Patent Attorneys and the Intellectual Property Lawyers Association, was there are [no legal obstacles for a post-Brexit UK to participate in the Unitary Patent system](#). Still, a number of criteria would have to be met, according to the authors of the opinion. Among others, they say:

'(...) it is important to note that the UK would be required to accept the supremacy of EU law in its entirety as regards all such disputes as fall within the jurisdiction of the UPC. This would include, for example, competition law, fundamental rights arising under the Charter and general principles of EU law, as well as the specific patent rules contained, for example, in the Biotechnology

Directive, as well as possible future EU legislation.'

✖ If the opinion led to any optimism the UK could be kept in the UP system – which the EPO, the UPC Preparatory Committee, [EPLIT](#), [CIPA](#), [BusinessEurope](#), [a number of companies](#) and many others hope – this positive mood was probably destroyed by the Great Repeal Bill speech of UK prime minister Theresa May at the Conservative Party conference on 2 October 2016, where she announced that article 50, setting in motion the UK's departure from the EU, would be triggered by the end of March 2017. Particularly the remark [cited yesterday on this blog](#) by Thorsten Bausch of Hoffmann Eitle:

'We are not leaving the European Union only to give up control of immigration again. And we are not leaving only to return to the jurisdiction of the European Court of Justice.'

By refusing to submit to the EU court, May rules out precisely what according to the UPC opinion would be required for a continued UK membership of the UP system. For Thorsten Bausch it is obvious: 'Time for last goodbyes'. Others (see for instance reactions on [IP Copy](#) and [WIPR](#)) have drawn similar conclusions.

The UPC Preparatory Committee and the EPO Select Committee have so far declined to comment on the Brexit vote, other than that 'pending more clarity about different possible scenarios (...) the work dedicated to the technical implementation should continue to progress as envisaged' ([link](#)). Their [progress report](#) for the EU Competitiveness Council, published on 19 September 2016, ignores the Brexit problem, apart from this one phrase: 'The outcome of the UK referendum has had consequences on the UK ratification process. The time-plan, therefore may have to be revisited.'

On Monday 10 October 2016, the UPC Preparatory Committee will have a meeting. It will be interesting to see whether this time steps will be announced to tackle the fundamental problems that have risen for the new European patent system due to the Brexit vote.

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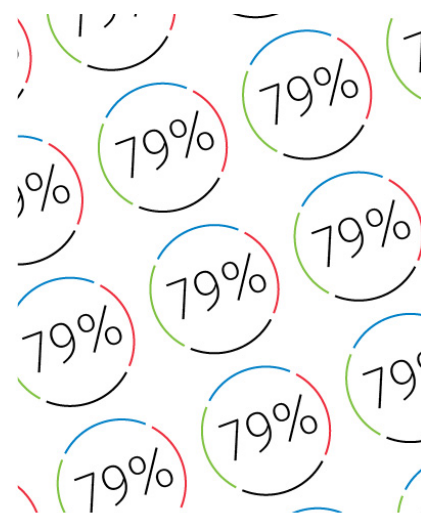
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