

Kluwer Patent Blog

UK Government guidance on Unitary Patent system in case there is no Brexit deal

Kluwer Patent blogger · Monday, September 24th, 2018

The UK Government issued guidance today on patent issues to allow businesses and citizens to understand what to do in a ‘no Brexit deal’ scenario.

The so-called [Technical Notice](#) includes information about the Unitary Patent and Unified Patent Court, and explains that it is unclear whether the UP system will start before the Brexit date of 29 March 2019, ‘with the start date being dependent on ratification of the Unified Patent Court Agreement by Germany’.

This means, according to the notice, that ‘there are two different scenarios for the Unified Patent Court after 29 March:

- The Unified Patent Court does not come into force. The UK has ratified the Unified Patent Court Agreement but ratification by Germany is still outstanding. If the Unified Patent Court is never fully ratified, the domestic legislation to bring it into force will never take effect in the UK. In this scenario, there will be no changes for UK and EU businesses at the point that the UK exits the EU.
- Unified Patent Court comes into force. If the Unified Patent Court is ratified and comes into force, there will be actions that UK and EU businesses, organisations and individuals may need to consider. The UK will explore whether it would be possible to remain within the Unified Patent Court and unitary patent systems in a ‘no deal’ scenario. (...)

‘If the Unified Patent Court comes into force before March 2019 and the UK needs to withdraw from the Unified Patent Court and unitary patent:

- ‘UK, EU and third country businesses will still be able to use the Unified Patent Court and unitary patent to protect their inventions within the EU
- any existing unitary patents (UPs) will give rise to patent protection within the UK with no action required by the right holder. The UP system will only come into force when the Unified Patent Court is operational. UPs will not be available to businesses until this point
- provision will be made regarding the status of any pending cases before the Unified Patent Court at exit
- UK, EU and third country businesses seeking protection in the UK for their inventions will need to use national patents (including patents available from the non-EU European Patent Office) and the UK court system’

The government's Technical Notice does not say anything about other aspects of the Unitary Patent system, which are uncertain in the case the UK doesn't join or has to leave the system post-Brexit. One of them is what will happen with the London branch of the Unified Patent Court, which was envisaged to will deal with cases in the chemical, pharmaceutical and life science and for which space has already been reserved for years in Aldgate Tower in London.

Apart from the UP system, the Technical Notice also includes information on the UK patent system and SPCs and correspondence addresses and confidentiality for UK patents. As is stressed: 'A scenario in which the UK leaves the EU without agreement (a 'no deal' scenario) remains unlikely given the mutual interests of the UK and the EU in securing a negotiated outcome. (...) It has always been the case that as we get nearer to March 2019, preparations for a no deal scenario would have to be accelerated. Such an acceleration does not reflect an increased likelihood of a 'no deal' outcome. Rather it is about ensuring our plans are in place in the unlikely scenario that they need to be relied upon.'

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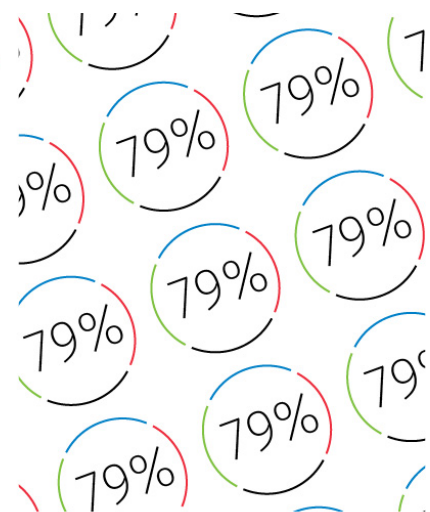
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