

Kluwer Patent Blog

Italy completes legal preparations for Unitary Patent system

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In Italy, legislation to adapt the patent system to the Unitary Patent will enter into force on 27 March 2019. This means legislative preparations in Italy for the start of the UP and UPC have been completed.

The [Legislative Decree of 19 February 2019](#) to incorporate the provisions of the Unitary Patent Regulation (EU 1257/2012) and the Unified Patent Court Agreement was published in the [Gazetta Ufficiale](#) of 12 March.



As is explained in a [Bristows report](#), the Decree ‘amends the Industrial Property (IP) Code to introduce unitary patent protection and related provisions. It also amends the IP Code’s provisions on non-infringing acts to reflect those in the UPC Agreement; it introduces new exceptions to infringement (Articles 27(c), (f), (g), (h) and (k) of the UPC Agreement), such as the “plant breeders’ exemption” (...) and the “interoperability exemption” (...).’

The completion of the preparations in Italy will not have any practical consequences for the UP system at this moment. The Unitary Patent and UPC were supposed to start functioning years ago, but this has been delayed and complicated by developments in Germany and the UK.

Ratification of the UPC agreement by Germany is required before the UP system can launch, but in this member state a constitutional complaint was filed against ratification two years ago. A date for a decision on the complaint [has not yet been set](#).

Meanwhile, the Brexit vote has led to great uncertainty and debate whether Britain can remain in the Unitary Patent system after leaving the European Union. In Italy, both regional leaders and legal experts have claimed that the life sciences branch of the UPC’s central division, which is envisaged for London (where a court – already ready for use – has been established in Aldgate Tower) will have to be moved to another city post-Brexit, preferably Milan, where the Italian local division of the UPC will be established as well.

Cesare Galli, president of the Italian law firm IP Law Galli and IP Law professor at the University

of Parma, told [Kluwer IP Law](#) in 2017: ‘(...) the UPC, even if it has been established through an international agreement and is not an EU Court, has been set up within the framework of EU legislation. The CJEU’s power of interpretation of the UPC Agreement has been expressly provided. Therefore it is hard to believe that a central division of a Court established within the framework of EU legislation, according to an Agreement expressly limited to EU members, may have its seat outside the EU. Hence the nomination of Milan as a potential central court seat is still on the table, at least as a fallback solution.’



At a [conference last year](#), the Mayor of Milan emphasized his interest in hosting the central division: ‘The conference was accompanied by a reception by the Mayor of Milano in the historical Palazzo Marino, and it clearly had one overriding goal: To show the European patent community that Milano is ready (“Milano é pronta”) for the UPC and has both the requisite modern facilities and more than sufficient intellectual capabilities to host the central division of the Unified Patent Court, if and when London has to drop out.’

Also last year, Attilio Fontana, governor of the Italian region of Lombardy, made clear he thinks the London based branch of the UPC central division should be assigned to Milan ([see this report](#)).

According to the [Italian press agency Ansa](#), when the European Medicines Agency (EMA) was assigned to Amsterdam (Milan, the other top candidate, lost a decisive draw), Fontana said: “Milan and Lombardy are the best place for the location of the patent court. (...) we must not make the same mistakes as happened with the assignment of the EMA. (...) The seat has to be reviewed immediately after the Brexit, and a joint effort is required of the Lombard government, region and municipality. The conditions for the assignment, I believe, are all there.”

If the Unitary Patent project survives the serious legal and political challenges that it currently faces, it will lead to a patent system common to up to 25 contracting Member States (16 ratified the UPCA so far). After a transitional period, the Unified Patent Court will have exclusive competence in respect of European patents and European patents with unitary effect.

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