
Kluwer Patent Blog

Milan wants central division branch Unified Patent Court if it has to move from London

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The future of the Unified Patent Court and the Unitary Patent system may be uncertain, it hasn't stopped Milan from promoting its ambition to become the seat of London branch of the UPC's central division, in case this will be relocated due to the Brexit. Later this month Milanese representatives will have a meeting with the Italian Minister of Foreign Affairs to discuss matters. Kluwer IP Law asked [Matteo Pes](#), European and Italian Patent Attorney at Biesse in Brescia, what's going on.

“Following the outcome of the so-called Brexit referendum in UK, Italy ratified the UPC agreement in November 2016 and immediately several groups started to promote Milan's ambition to host the central division instead of London. Among them the [Order of Italian IP practitioners](#), the Court of Milan and the Milan bar association. They organized a roundtable to discuss the matter and come up with a shared, coordinated position for the national authorities in Rome.

The ambition of Milan appeared to be even more reasonable following the decision to relocate the European Medicines Agency (EMA) to Amsterdam (see [this](#) and [this](#) article, in Italian). Milan applied also for hosting the EMA but, as you probably know, Amsterdam won by drawing lots. This event somehow awakened the pride of the local and national authorities, because before the drawing took place, there was general confidence that Milan could get the EMA. Losing the EMA was, indeed, a cold shower for many.

From that moment, the groups named above started to cooperate even closer to vigorously lobby the application of Milan before the national authorities, and Milan was considered the natural, most logic location of the UPC division.



But as you know, in March 2018 general elections took place in Italy, and in June a new government was formed, which comprises parties (Lega and the 5 Stars Movement) of the opposite side of the party (PD) of the mayor of Milan. On 9 April a vote (motion) took place at the Italian Chamber of Deputies, one of the two houses of Parliament, to approve relocating the UPC Division from London to Italy, without clearly mentioning Milan in the bill (see [this](#) and [this](#) article, for instance, in Italian).

The fact that Milan was not mentioned in the motion has been perceived, by those who have made efforts for some years to promote Milan, as a sort of political game aimed to weaken the mayor of Milan and, in general, to thwart his political party which had submitted the proposal wherein Milan was named. This is the reason for the recent rumors in social media.

To me, it seems much ado about nothing. As you know, the Italian Minister of Foreign Affairs, [Enzo Moavero](#), will now meet with both the President of the Lombardy district, [Attilio Fontana](#), and the mayor of Milan [Giuseppe Sala](#) to discuss the matter further. Both Sala and Fontana have declared they will confirm their full support for Milan's ambition (see [here](#) and [here](#)). Officials of government parties already took position in favor of Milan, as well (see [here](#)), and I heard political leaders over the radio assuring Milan is and will be considered the best candidate of our country. So, I expect no surprises, even if, on a personal note, I would welcome the UPC division in the city of Verona."

Are other Italian cities interested?

"To my knowledge, no other cities submitted an application, formally or informally. Milan remains the only candidate."

Is a discussion at such a high level about the candidacy of Milan not very premature? Many people think the UK can stay in the UP system post-Brexit and London can keep its part of the central division. Do people in Milan see this differently? Apart from this, there is the German

constitutional complaint hanging as a dark cloud over the UP system.

“Organizing everything in advance is the right move. Even if one may consider that chances to get the UPC division are low, it is better to remain on the safe side and prepare in advance, also considering that the government coalition is heterogeneous and its parties often have different positions on the same issues. Also, the city of Milan will need time to finalize the premises and organize proper housing for staff. Many players and stakeholders are involved, so it’s better to move as quickly as possible.

Some believe that London will be able to keep the UPC division, because it is legally possible under a certain interpretation of the UPC Agreement. Others believe the opposite: that such interpretation of the Agreement is far-fetched and keeping the division in London is impossible.

Yet others, like me, believe that even if keeping the division would be legally possible, it would not be a defensible choice from a political point of view: the UK would have to recognize the supremacy of the European Court of Justice (ECJ) (for any referral regarding interpretation of the law) and decisions of the ECJ would have effect in UK. The Brexit and also the outcome of the May EU elections make me think that the British would not be happy to recognize supremacy of the ECJ. For instance, what would happen if a controversial decision by the ECJ is issued which involves drugs and affects marketing and pricing of a certain drug also in the UK?

The German constitutional complaint by Mr. Ingve Stjerna basically put the entire UPC system on hold. Stjerna has studied the exact proper moment to file the complaint in order to torpedo the system once for all. I’ve not studied the complaint, and therefore, I cannot express an opinion on its content/merit.

I can say from my side that I like the idea of specialized IP courts and judges having jurisdiction over the entire EU free-trade zone, and expedite proceedings.

Nevertheless, I have concerns about the UPC system, because it might turn to be too expensive for SMEs. SMEs form the backbone of the Italian industry and are the majority of my clients. Litigating a case before the UPC might simply not be an option for many Italian SMEs, because of the court fees (the defendant has to pay for the counterclaims for nullity of the patent, for instance) and the attorneys’ fees, which can be very high at international level. I fear that many SMEs will be out of the game automatically if a large enterprise starts a lawsuit; and knowing this, the large enterprise may start litigation even with a poor case in hands.”

Italy may not be the only candidate to get the central division in case the London branch will have to move. In the past The Hague and Brussels have been mentioned, for instance. Maybe this is also the reason for the meeting later this month? That Italy cannot be divided if it aspires to have the central division within its borders?

“I don’t think we can say Italy is divided even if there had been applications from different Italian cities (there aren’t any). Internal political games disappear when representatives are on the EU stage: Italy is asking for the division, regardless of the city. Formally an application must be submitted, of course, and it was, but everyone knows that in politics everything must be negotiated. Perhaps, but this is only a conjecture, the meeting was summoned to clarify what compensation Milan and Italy may offer in a *do ut des*-negotiation with other EU countries.”

What is your personal feeling about the UP system, after all the delay and the ongoing

uncertainty? Are you confident, or skeptical the system will see the light of day?

“I’m skeptical, but failure may be the prelude of a rethink of the reform. I believe we could get a better one. As anticipated above, I fear that the UPC may put large enterprises in a stronger position with respect to SMEs. Basically, I think that the UPC is a top-down reform. I hope that, in case of abandonment of this project, a new reform is prepared that takes in great consideration SMEs: court fees, linguistic regime, forum shopping, etc.”

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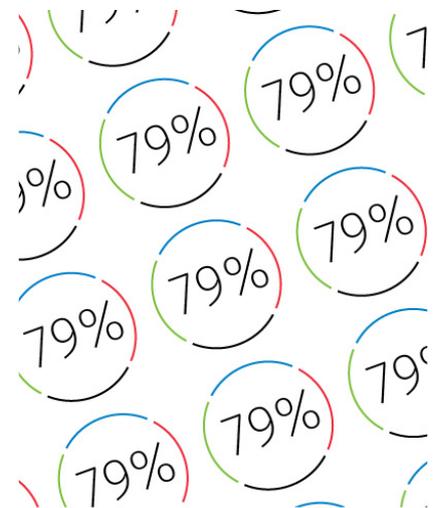
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