

# Kluwer Patent Blog

## Agreement on Milan as seat central division UPC, competencies under debate

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**France, Germany and Italy are holding trilateral talks on redistribution of the competencies that were originally allocated to the London seat of the UPC's central division among Paris, Munich and Milan.**

According to the German Ministry of Justice, a decision is expected shortly. A spokesperson told Kluwer IP Law: 'Once an agreement has been reached, the intention is first to inform the other member states of the outcome of the deliberations and to start negotiations among all member states in the competent body.' She added that the 'establishment of another central division of the UPC in Milan requires an amendment to the UPCA. The contracting member states jointly decide on amendments to the Convention. Whether and when such a decision will be made is currently not certain.'



Earlier, the Italian newspaper *Il Sole 24 Ore* reported agreement had been reached between the three countries that the third seat of the UPC's central division would go to Milan, but only on the condition that many of the competencies originally designated for London, would be allocated to Munich and Paris.

According to the Agreement on a Unified Patent Court ([see annex II](#)), Paris has jurisdiction over cases involving performing operations, transporting, textiles, paper, fixed constructions, physics and electricity. Munich is the competent section for mechanical engineering, lighting, heating, weapons, and blasting, and London for human necessities (pharmaceuticals), chemistry and metallurgy.

After the Brexit, the UK withdrew from the UP system and London had to be replaced as seat of the central division. For years, Italy has been claiming the seat for Milan, and after the Netherlands [withdrew their candidacy last year](#), it was the only remaining candidate (as far as is publicly known).

However, Germany and France apparently requested an important share of the London

competencies would be transferred to Munich and Paris and would not go to Milan. Munich claimed the chemistry and metallurgy cases and Paris wanted jurisdiction over pharmaceutical patents with SPCs – at least 90% of the drugs that have been successful on the market, according to *Il Sole 24 Ore*. It would leave Milan with economically much less attractive pharmaceutical patents without SPCs and non-pharmaceutical biotech.

As could be expected, this didn't go down well in Italy. Questions were asked in Parliament, last week a [seminar](#) was organised on the issue. Apparently, a compromise is now being discussed in which Milan keeps chemistry and Paris will only be competent for pharmaceutical patents with SPC where the validity or infringement of the corresponding basic patent is not in question.

There has been a lot of debate whether the London seat of the UPC's central division could be moved to another city without renegotiating the UPCA, as London is expressly mentioned in the agreement. The same discussion has now surfaced about the reshuffle of competencies among the three seats of the central division.

[Luke McDonagh](#), assistant professor at the LSE Law School and specialist in IP and constitutional law, thinks Milan is a viable option for a division. 'There is lots of IP expertise in Milan. However, it would be far from ideal for the court seat to be moved and competences potentially being rearranged without amending the UPC agreement. An amendment to the agreement would clarify matters.'

McDonagh told Kluwer IP Law: 'From a constitutional perspective the main issue for national jurisdictions is the creation of the UPC structure itself – the recognition of supra-national judicial authority i.e. a shift from the national level to the UPC. One could argue that a redrafting of internal competence *within* the UPC structure does not change the core national recognition of the UPC's supra-national authority. As such, the Milan amendments would not change that core issue, as the amendments would only change the internal UPC structure not its supra-national competence. Nonetheless for legal clarity there is reason for making the amendments.'

The plan seems to be to get the UPC up and running and then to make the amendment(s). This would mean that any national ratifications of the amendments, to e.g. set up the Milan division, would come late this year at the earliest.'

Asked whether McDonagh thinks the creation of the UPC is a positive development, he said: 'The usefulness of the UPC without the UK as a member is in some doubt. The most likely short-term scenario is a gradual shift of litigation from Germany to the UPC. I am concerned that the UPC will end up simply making the patent litigation system more fragmented. Given the initial aim of the UPC was to 'unify' this would be a frustrating outcome.'

Rumours that the new Milan seat will start functioning from the very start of the UPC's functioning on 1 June 2023, were not confirmed by the German Ministry of Justice: 'This depends on when an agreement is reached. In any case, the UPC will take up its work on June 1, 2023 with the entry into force of the agreement. The responsibilities of the central chamber department that was formerly supposed to be seated in London will be temporarily assumed by the central chambers in Paris and Munich until a final regulation is reached.'

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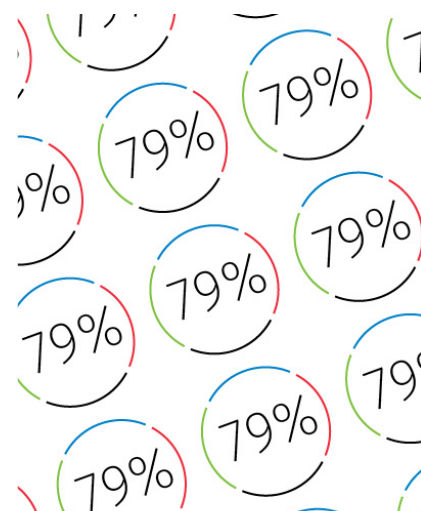
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