

Kluwer Patent Blog

‘Restricting competencies Milan as third seat central division Unified Patent Court is unacceptable’

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It is totally unacceptable to strip the competencies of the third seat of the central division of the Unified Patent Court now that it will not go to London but most likely to Milan. Lorenzo Montanari, executive director of the Property Rights Alliance (PRA), has said this in an interview with Kluwer IP Law. Last week, during the meetings of the IMF and the World Bank in Washington DC, Montanari delivered an open letter signed by Italian academics and lawyers to the Italian minister of economy and finance, underlining the importance of a UPC central division seat in Milan.

A few weeks ago, it became clear that Milan is now the only remaining candidate to host the seat originally designated for London. But apparently France and Germany want to withhold part of the London competencies. For Munich the chemistry and metallurgy cases have been claimed reportedly, and Paris apparently wants jurisdiction over pharmaceutical patents with SPCs. Is this also what you’ve heard?

‘Yes, unfortunately, this is true. Paris is demanding to restrict the original court jurisdiction guaranteed to London, and is claiming jurisdiction concerning pharmaceutical SPC patents. If this is to happen, it will be impossible for Milan to fulfill its duty as the third UPC seat.’



Is it acceptable, in your view, to transfer part of the competencies to Paris and Munich? For instance in view of the fact that the UK/London has traditionally had a more central role than Italy and Milan in the creation of the UPC or/and in life sciences activities?

‘No, it is not, as transferring the responsibilities assigned to London to Paris or Munich is backtracking and undermining Milan’s competency as a part of the Unified Patent Court. Even if Italy did not play a central role in the creation of the UPC, as you describe. A void has been created since the UK left the European Union. The first step in filling this void is to grant privileges to other states and EU member states, and Italy is the only country vocally advocating to fill the void.’

Italy, as a nation, also makes sense, as it is currently ranked 2nd in Europe for brand protection and

9th for intellectual patent protection, which is essential in creating the appropriate environment for SPC pharmaceutical patents.’

Last month, a high-level conference was held in Milan completely focused on securing the seat of the central division. What was the outcome of the conference?

‘Together with Prof. Pietro Paganini, founder and president of the free market think tank [Competere](#) and our longtime partner in Italy, we felt the need to organize a policy event with high-end academics, lawyers, and representatives of the trade association such as [Farmindustria](#) and [Federmeccanica](#) to highlight the importance a UPC headquarter in Milan will have for innovation in Italy. Moreover, we had the pleasure to host, as a special guest, the undersecretary of economy and finance MP Lucia Albano. She confirmed how strongly the Italian government is negotiating with France and Germany to secure the seat for Milan, including all the competencies that were assigned to the London seat.

Once in Milan, the UPC’s headquarters will transform Italy into a vital innovation hub in Europe and the whole Mediterranean region, with a direct consequence of increasing foreign direct investment in Italy. During the conference, we discussed intellectual property rights and how anti-innovation proposals such as the ‘TRIPS waiver’ on Covid 19 vaccines have negative repercussions for protecting intellectual property rights and innovation, which has adverse consequences on health.

During the conference, we discussed the idea of sending an [Open Letter](#) – organized by [Competere](#) and the Property Rights Alliance, and writing the Italian government about the important role of the UPC in strengthening intellectual property rights and innovation in Italy.’

A month ago, a spokeswoman of the Germany ministry of justice said a decision about Milan and a possible redistribution of competencies was expected ‘shortly’. Do you know whether the negotiations are still going on?

‘I am currently unaware of the progress of ongoing negotiations, but hopefully the decision will come out soon. And that decision will hopefully result in Milan hosting the headquarters for the UPC. Italy is the only public candidate and granting this seat to another country unwilling to advocate for itself publicly will be a disservice to the European Union as a project.’

In a [Managing IP](#) article, the Milan issue was described as ‘the elephant in the room’ of the UPC. Among others, because an amendment to the UPCA is necessary, which would require approval from all contracting member states and could be legally challenged. What is your view on this?

For every member state, the ultimate goal is to finally establish the Unified Patent Court, which has been in discussion for the past two decades.

There is a procedure for changing the location

of a UPC seat. Under Article 87 of the treaty which established the UPC, the Agreement can be modified without requiring a new ratification process to address a change in the EU Treaties. Instead, changing the matters to be dealt with in the former London seat by dividing them among Paris, Munich, and Milan is illegal and dangerous to the stability of the UPC. It risks multiplying the proceedings connected to chemical and pharma patents, increasing costs, uncertainty, and



bureaucratic bloat.’

The Managing IP article also describes the political sensitivity of the negotiations: ‘Would Italy formally challenge a decision to move more responsibilities to Paris? Could Milan pull out, or be shunted out, from hosting a central division? (...) the relationship between the three main seats – if indeed there are to be three – is a major question that all interested parties will want answers to before they start bringing their disputes to the court.’ Do you expect an acceptable outcome for all parties is possible?

‘We should challenge this arbitrary proposal to elevate Paris’s role over other members. And the data don’t support France as an alternative. As I mentioned above, according to the [International Property Rights Index](#) released last year, Italy ranked 9th globally for intellectual patent protection, 4th in brand protection, and 2nd in Europe amongst these categories. Italy, from an objective view, is the perfect nation to host the third seat of the Unified Patent Court.

The European Union and its member states have a great history of collaboration on complex issues, settling these through debate. An acceptable outcome can be achieved. However, not through a French-German partnership for dominance of European institutions, but ensuring that each participant in this European project can advocate for itself within the system. In case Milan being set aside of hosting the central division of the UPC will be a breakdown of trust between EU members.’

How important is the seat of the UPC central division for Milan and Italy?

‘On April 13, I had the pleasure of delivering, during the spring meetings of the International Monetary Fund and the World Bank in Washington DC, [our open letter](#) to MP Giancarlo Giorgetti, the current Italian minister of economy and finance, on the importance of having the third UPC’s headquarter in Milan.

With this open letter, which was signed by important academics and lawyers as well as a think tank, we want to reemphasize we support the Italian government and why a third UPC headquarter in Milan will be of paramount importance and transform Italy into an important international hub for innovation and intellectual property rights.

“The candidacy of Milan”, the open letter says, “for one of the three central seats of the Unified Patent Court, is an excellent opportunity for Italy to acquire not only a central role in the European patent protection system, but also to create greater awareness of the central role of intellectual property in the country’s economic and productive system. (...) Milan is the manufacturing capital of Italy, an international pole of fashion and design, and home to ten universities. This is why the city has all the right cards to become one of the three headquarters of the Unified Patent Court, especially of the life sciences cluster. A survey by [Assolombarda](#) shows that 30% of the 250-billion-euro turnover is achieved in Lombardy. The innovation sector is already a European benchmark in terms of production and the quality of services, and would become an even more important driving force for the entire economy of the city and the country with a legal seat such as that of the unified court”.’

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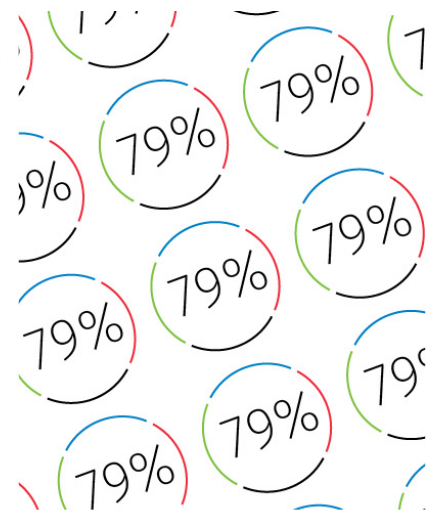
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