

# Kluwer Patent Blog

## UPC Committee decides to establish central division seat in Milan

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**The Administrative Committee of the Unified Patent Court (UPC) has unanimously decided to establish a section of the UPC's Central Division in Milan, as a replacement for London.**



As the UPC reported: ‘Based on article 87(2) of the Unified Patent Court Agreement the Committee took a decision to amend the Agreement with a view to bringing it in line with European Union law. As a consequence a section of the central division of the Court of First Instance will be created in Milan.’

According to the Italian deputy prime minister and minister of foreign affairs Antonio Tajani, this ‘is a significant result for Italy. It is an absolutely unexpected result that confirms the central role played by Italy, Lombardy and Milan in the promotion and protection of innovation and intellectual property in Europe and worldwide.’

The technology areas of competence of the Milan section will be less than those originally assigned to the London section. Milan will be for IPC Section A patents (human necessities), without supplementary protection certificates. The Munich section will be competent for chemistry, metallurgy (Section C), without supplementary protection certificates and (F) mechanical engineering, lighting, heating, weapons, blasting.

The Paris seat, which will also be the president’s office, will be in charge of: (B) Performing operations, transporting, (D) Textiles, paper, (E) Fixed constructions (G) Physics (H) Electricity and supplementary protection certificates.

The Milan seat will start functioning in June 2024.

### Basis of the decision

In its [decision of 26 June 2023](#), the Administrative Committee explains the basis of the redivision of competences among Paris, Munich and Milan:

‘The United Kingdom decided to withdraw from the European Union invoking Article 50 of the

Treaty on the European Union in March 2017. The withdrawal happened on 1 February 2020, and took full effect on 31 December 2020, at the end of the transition period provided for by the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union. As a consequence, the United Kingdom also left the Agreement on a Unified Patent Court, withdrawing its ratification instrument on 20 July 2020.

All Member States of the Preparatory Committee for the UPC, in view of Brexit and the withdrawal of the UK from the UPCA, confirmed on 10 September 2020 the following common understanding of Article 7(2) the UPC Agreement (PC/01/Sept2020, paragraph 50):

*Since the allocation of cases to a section of the Central Division of the Court of First Instance in London has to be interpreted as having no effect there is no need to proceed at this stage with a modification of the wording of Article 7 of the Agreement. (...)*

(...)

## 2. Amendment of the UPC Agreement

All Member States have agreed at the same meeting of the Preparatory Committee on 10 September 2020, that the creation of a new section should be discussed and dealt with as soon as possible once the UPC Agreement has entered into force.

A permanent solution is needed to bring the UPCA into line with the consequences of Brexit and the withdrawal of the United Kingdom from the UPCA. As envisioned by Contracting States, the preferred solution is the creation of a new section of the Central Division and the reallocation of the competences of the former London section between the seat and the two sections of the Central Division.

The creation of a new section of the Central Division and the reallocation of the competences of the former London section can only take place by way of amending the UPCA.

Accordingly, the UPCA will be revised to deal with the references to the United Kingdom and London in Article 7(2) and Annex II of the UPCA. To that end, the UPC Agreement provides for a simplified revision procedure. According to Article 87(2), the Administrative Committee may amend the Agreement to bring it into line with an international treaty relating to patents or Union law. The withdrawal of the United Kingdom from the European Union and as a consequence from the UPCA constitutes a change in Union law which allows the recourse to such simplified revision procedure.

Article 87(3) UPCA provides that a decision of the Administrative Committee taken under Article 87(2) shall not take effect if, within twelve months from the date of the decision, a Contracting Member State declares on the basis of its relevant national decision-making procedures that it does not wish to be bound by the decision. In order to provide legal certainty, any change by way of the simplified procedure, should therefore, only take effect twelve months after the decision. In *bona fide* and without prejudice to Article 87(3) of the Agreement, preparatory work will start upon the adoption of this decision to ensure that the amendments that are the subject matter of the decision are fully and immediately operational at the moment of its entry into effect.

Italy presented its candidacy to host a new section of the Central Division in the city of Milan at the abovementioned meeting of the Preparatory Committee on 10 September 2020.

The proposed decision is drafted in accordance with the abovementioned architecture: creation of a new section of the Central Division and the reallocation of the competences of the former London section to the seat and the two sections of the Central Division.’

It is likely that the simplified revision procedure of the UPCA, which has been chosen will be challenged in (European) court sooner or later. Not everybody agrees with the statement that ‘The withdrawal of the United Kingdom from the European Union and as a consequence from the UPCA constitutes a change in Union law (...) allows the recourse to such simplified revision procedure’.

### **23 UPC cases, 236 protective letters**

The Administrative Committee has also reported that up to 26 June 2023, ‘the Court has 23 cases, consisting of 6 protective measures (more specifically, 4 applications for provisional measures; 2 applications to preserve evidence), 3 Revocation actions and 14 Infringement actions. The Court also received 236 protective letters. It should be noted that due to the dynamic character of the Court’s caseload figures are likely to be rapidly outdated.’

Apparently a ‘proposal for providing legal aid, to be decided upon in the near future’ lays on the table. What this refers to, isn’t entirely clear. About the CMS – an important source of trouble and concern over the last half year – the Administrative Committee wrote: ‘The UPC’s IT department is working hard to maintaining the CMS’s robustness while gradually implementing improvements to the system for the benefit of both internal and external users.’

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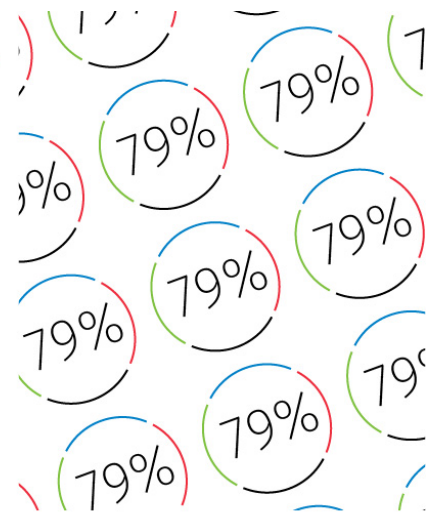
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