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UPC After Brexit: The United Kingdom's Salty Sea Voyage

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Like Corto Maltese charting forgotten seas, the UK now sails through uncertain waters in the shifting landscape of European patent litigation. Brexit did not bring about a complete rupture but rather a complex reconfiguration of balances and strategies. Caught between aspirations for strengthened judicial sovereignty and a European reality structured without it, the UK is striving to redefine its place. As the taciturn sailor once said, "it's not the paths we choose that shape us — it's also the ones we leave behind" (*The Golden House of Samarkand*), the UK searches for its course among the islands of an international law it largely helped to chart. Yet, in this new jurisdictional geography, it is wiser to read the maps than to rely on the winds.

A Legal Legacy on the Outside Looking In

Since January 1, 2021, the European patent landscape has undergone profound changes. For the UK, this transformation raises questions of balance and continuity: how can it maintain a role in a system it historically helped shape, yet from which it is now external?

British law—and more broadly, the common law tradition—significantly informed the very conception of the UPC. Direct illustrations include the front-loaded procedure, the emphasis on expedited written phases, the role of the reporting judge, and the logic of swift preliminary injunctions. These elements are codified in the UPC Agreement, particularly in Articles 43, 52, and 62.

The British Presence: Active, Yet Peripheral

UK firms remain highly present in the initial cases handled by the UPC. British-origin firms are involved in a significant proportion of cases due to their procedural expertise and cross-border litigation experience. Their influence remains visible despite lacking a formal institutional anchor. This presence is accompanied by deliberate strategic choices: several UK firms have opened or strengthened offices in UPC member states such as Ireland, France, and Germany (JUVE Patents – "UK firms secure considerable slice of the UPC cake"). The advantages are manifold: staying authorized to represent clients before the UPC, ensuring operational continuity from an EU member state, accessing local talent, and being close to key divisions. Ireland, in particular, stands out: English-speaking, a UPC member, and with a compatible legal tradition.

From Signatory to Spectator: The UK's Withdrawal

Although the UK signed the UPC Agreement, it withdrew before the Agreement entered into force

and is therefore no longer a participating Member State. As a result, no local division is located in the UK. It finds itself as an engaged observer, yet devoid of direct institutional channels. Could this externality eventually undermine the attractiveness of its own jurisdiction?

The High Court of England and Wales still enjoys a reputation for technical excellence, and its case law remains influential. However, its territorial competence is limited to roughly 67 million consumers, compared to the approximately 297 million citizens covered today by the 17 UPC member states. Moreover, in sectors where territorial scope is pivotal—such as standard-essential patents (SEPs), network technologies, or pharmaceuticals—the UPC offers leverage that British litigation cannot match. Centralized effects, costs, and timelines all favor the new court.

Reasserting Influence: Strategic and Institutional Options

Faced with this reality, the United Kingdom has several concrete levers at its disposal to strengthen its position within the European patent ecosystem.

It could increase the visibility of its case law by systematically publishing High Court decisions in English within European databases, showcasing its litigation model at international intellectual property conferences, and forging partnerships with European bar associations.

It could also facilitate access for European rights-holders to UK courts by concluding technical bilateral agreements with major UPC member states or directly with the European Patent Office. Even without formal treaties, procedural interoperability—similar to the EPO's Patent Prosecution Highway agreements—could suffice, enabling the extension of accelerated examination concepts to cross-border injunctions via mutual recognition protocols.

On the institutional front, the UK might explore either a revival of the original UPC accession process or propose a parallel mechanism of marginal convergence—similar to the relationship between the European Court of Human Rights and EU courts. A "Co-operation Protocol" could, for instance, allow the UK Supreme Court to request advisory opinions from the UPC on compatibility issues. However, such a consultative function is not currently foreseen under the UPC Agreement. The proposal must therefore be understood as a forward-looking idea—an institutional metaphor rather than a legally actionable mechanism.

The High Court could also position itself as the default forum for mixed disputes involving both European and British parties. Through exclusive-jurisdiction clauses in co-ownership or licensing agreements, parties could entrust the UK judiciary with interpretive authority over contractual or substantive legal issues.

Albion's Compass: Between Influence and Isolation

In other words, like Corto Maltese, the UK is now sailing between legal continents without a precise institutional compass. It still possesses its adversarial culture, procedural rigor, and a degree of strategic freedom. The question is whether it will chart a new course or drift further from the system it helped define.

Ultimately, the same conclusion applies: what is needed is a truly integrated European patent system within the EU legal framework. And to achieve this, the UK must be included—not merely symbolically, but strategically and constructively.

Despite Brexit, the UK remains deeply embedded in European legal history—from Magna Carta and Habeas Corpus to the foundational principles of modern procedural law. Even in Strasbourg, fundamental concepts like fair trial and proportionality reflect British influence. European law, in no small part, was built from the shores of Albion.

After all, to borrow Corto's words: *"It's no disaster to get lost. One must only remember to return."* (*The Golden House of Samarkand*)

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