



KEY ISSUES OF BREXIT ON PATENT LAW

The status quo of European patent law and patent litigation post-Brexit would remain unchanged for the time being. However, the UK's Brexit vote has already added to the delay of the implementation of a major reform project in European patent law. The UK was to play a key part in the setup of a Unified Patent Court, one of the pillars of the reform, and Brexit might further call that into question.

STATUS QUO

If and when the UK is going to leave the European Union, there will be no substantial impact on the current practice of European patent law and patent litigation. Application for and prosecution of European patents would continue to be handled by the European Patent Office (EPO). The EPO operates on the basis of the European Patent Convention (EPC), which is not limited to EU members. There are currently 38 EPC member states, including non-EU members such as Switzerland, Turkey and Norway. Hence, the UK could continue to participate in the EPC regime in the same fashion even after leaving the EU.

National validation, enforcement and possible invalidation would continue to be subject to the respective procedures in the individual jurisdictions on a national level, as they are today. Infringement and invalidity of the respective national part of a European patent would continue to be dealt with by the respective national courts. Brexit therefore does not have a major impact on the status quo of European patent law and patent litigation.

POTENTIAL IMPACT ON UPC

However, the UK leaving the EU would most likely have substantial implications for the biggest reform in the history of European patent law: the long-awaited introduction of the European patent with unitary effect and the Unified Patent Court (UPC), which was anticipated to come into effect in 2017. This system would enable a patentee to enforce their patent across Europe with just one action before the UPC. All decisions taken by the UPC, including remedies such as injunctions and damages, as well as decisions on the validity of a patent would have pan-European effect.

The UK was to play a vital role in this ambitious project, inter alia by hosting a branch of the court's central division in London. As the underlying agreements currently stand, as a non-EU member the UK could not participate in the UPC.

The new system can only enter into force upon ratification by 13 member states, including the UK. As of October 2017, the UK is yet to complete their ratification process. Even if the UK completed its ratification before leaving the EU, it appears doubtful whether the UK could continue to participate in the UPC system as a non-EU member.

Nonetheless, the Brexit vote does not necessarily mean the end for the UPC and the entire reform project. There are ways, e.g. through bilateral agreements, by which the UK may conceivably still participate. This could potentially take years to implement, causing a significant delay.

The other member states may also decide to go ahead without the UK. However, in view of the fact that at least Spain and possibly Poland currently do not intend to participate, the attractiveness, efficiency and economic benefits of the UPC would be further reduced without the UK's participation.

FURTHER CONSIDERATIONS

The UK's Brexit vote came at a time when most preparations for the implementation of the UPC had already been completed or were close to being completed with a view to a launch in 2017. After many years of preparations and a very significant investment of time and effort, the UK's potential exit from the EU now poses another hurdle on this path.

ACTIONS

No immediate action required with respect to the continuing status quo of European patent law and patent litigation. Existing European patent rights remain unaffected for the time being.

Continue to observe the ongoing discussions on the future of the UPC project. Even though Brexit has led to (further) delays, the UPC may still be implemented in the foreseeable future. Please consult [our dedicated UPC web pages](#) for regular updates and further information.

CONTACT



Dr. Markus Gampp LL.M.
Partner | Patent Litigation
Co-Chair Global Patent Practice
T +49 89 23 23 72 261
M +49 162 24 929 75
markus.gampp@dlapiper.com