



Brexit

All change for the EU patent landscape

With the vote to leave the EU there are changes to the likely timescale for the new unitary patent system and different considerations to weigh up.

Effect on timing

- Only member states of the EU are able to participate in the unitary patent system.
- Although the unitary patent system may go ahead without the UK, both the provisional period and the launch are likely to be delayed.
- Until the UK is no longer a member state, or the UPC Agreement is amended, the UK's ratification remains mandatory (along with Germany and France)
- In theory, the UK could ratify the UPC agreement during the phase of exit negotiations (likely to be at least two years), knowing it would need to ultimately leave, but this is very unlikely.
- A unitary patent system without the UK may be less attractive to other participating states and efforts may be made during the negotiations to keep the UK in the fold.
- Once the UK is no longer a member state, Italy will replace the UK as the third country whose ratification is mandatory.

Other effects

- The life sciences seat of the central division of the UPC, currently located in London, could in theory remain in the UK, but it seems unlikely participating states would want this.
- The UPC Agreement would need to be amended to change the seat from London, and possibly ratified again.
- There will be no UK judges in the UPC, although there is unlikely to be much impact on the language of proceedings.

Patent filing and litigation

- In terms of patent registration and enforcement in the UK as currently practised there will be little impact.
- Unitary patents whose scope of protection excludes the UK may be less attractive, requiring separate patent protection to be sought in the UK.
- Organisations operating in the UK could obtain unitary patents and may find themselves drawn into the UPC (European patents which have not been 'opted out' could be challenged there) and will have new choices and decisions to make about patent filing and litigation strategies.
- In a few areas where patent law is harmonised across the EU, during the negotiations phase, the UK could seek to limit uncertainty by repatriating these laws, where necessary, into UK law.

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What to do

Following the referendum decision these action points are worth considering:

- **Review patent filing and commercialisation strategies** in the light of new patent choices and forums for enforcement under the unitary patent system. The risk-benefit of one choice over another may have changed for your business in light of the referendum decision.
- **Ensure access to information** on progress of negotiations.
- **Put in place contingency plans** around the different referendum scenarios that take account the varying permutations. Review and adjust these as more information becomes available.
- **Review and build flexibility into existing and future contractual arrangements** to protect key contracts and consider how contracts may be affected by different referendum and renegotiation scenarios.

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