

Brexit & the Unified Patent Court

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Legal sources



- 
17 December 2012
Regulation 1257/2012 enhanced cooperation in the creation of unitary patent protection
- 
17 December 2012
Regulation 1260/2012 (translation arrangements)
- 
19 February 2013
Agreement on a Unified Patent Court and draft Statute
- 
19 October 2015
Draft **Rules of Procedure** Unified Patent Court (V18)




http://www.upc.documents.eu.com/PDFs/2015-10-19_Agreement_UPC_DE-EN-FR_and_Rules_Procedure_UPC_DE-EN-FR_Draft_18.pdf


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The main publicly available documents can be found on www.upc.documents.eu.com




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UPC's FAQ

<https://www.unified-patent-court.org/faq>

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The last months

* <https://secure.unified-patent-court.org/login>


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Ratifications

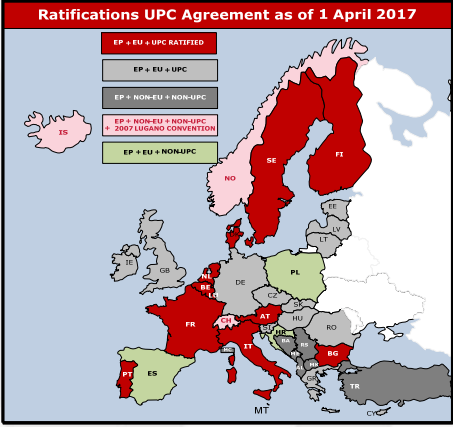
- Entering into force when 13 Contracting States including “the three Member States in which the highest number of European patents had effect in the year preceding the year in which the signature of the Agreement takes place (= 2012)”, i.e. **DE, FR** and **UK** have ratified
- 12 ratifications so far (chronological order):
AT, **FR**, SE, BE, DK, MT, LU, PT, FI, BG, NL and IT
- 2 ratifications still needed : **DE** and **UK**



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Ratifications



Ratifications UPC Agreement as of 1 April 2017

12 ratifications so far (chronological order):
AT, FR, SE, BE, DK, MT, LU, PT, FI, BG, NL and IT




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The Unified Patent Court

Article 7 and Annex II


The Court of first instance: central division's seat and sections



London

SECTION A — HUMAN NECESSITIES

SECTION C — CHEMISTRY; METALLURGY



Paris

PRESIDENT'S OFFICE


SECTION B — PERFORMING OPERATIONS; TRANSPORTING

SECTION D — TEXTILES; PAPER

SECTION E — FIXED CONSTRUCTIONS

SECTION G — PHYSICS

SECTION H — ELECTRICITY



Munich

SECTION F — MECHANICAL ENGINEERING; LIGHTING; HEATING; WEAPONS; BLASTING

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The Unified Patent Court

The Court of appeal (Luxembourg)

Court of Appeal



Luxembourg
Hemicycle
Kirchberg



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The Unified Patent Court

Court of First Instance



London
Aldgate Tower (City)

?



Paris
Palais de Justice

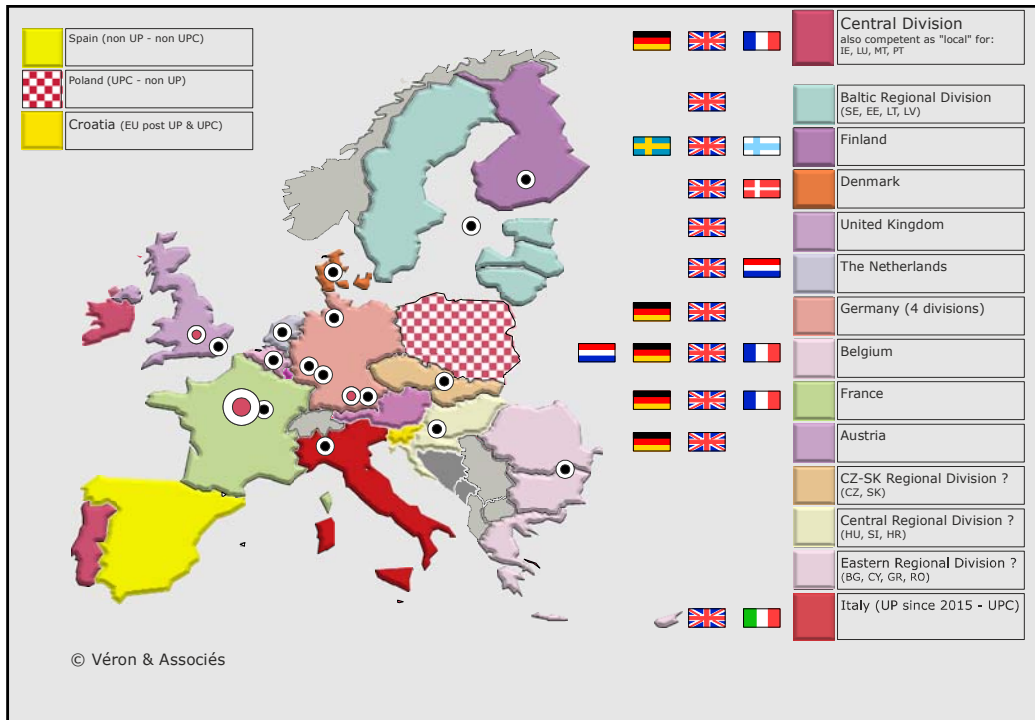


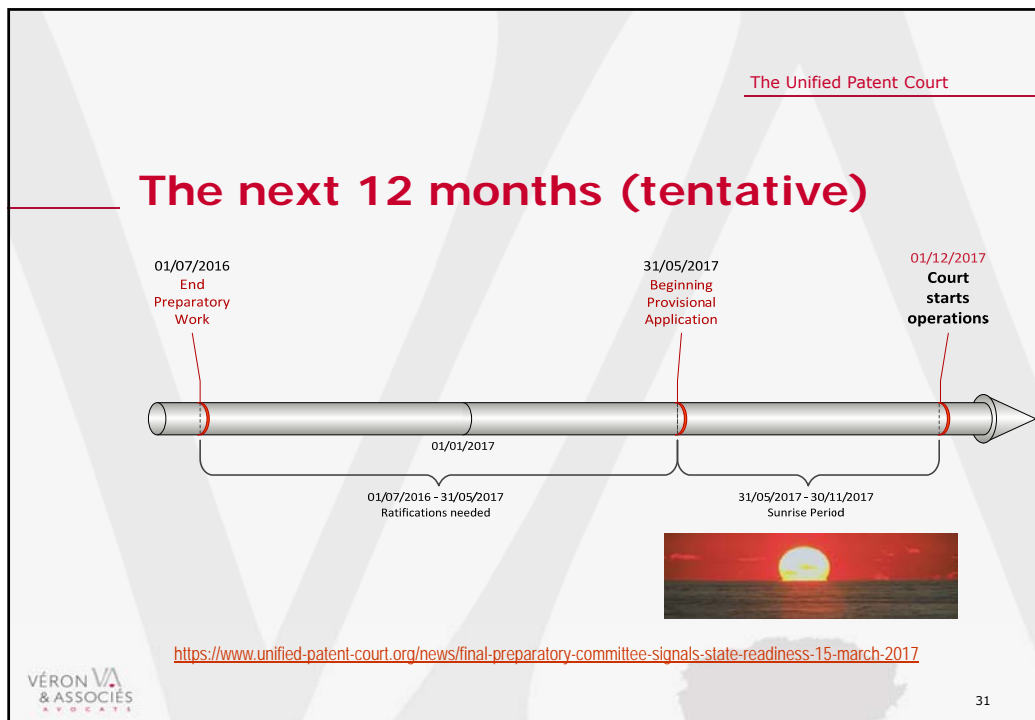
Munich
Bundespatentgericht

<https://www.unified-patent-court.org/locations>

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The aftermath of the UK referendum of 23 June 2016 (contents)

- The UK is still a EU Member State for several months or years
- UK may ratify the UPC Agreement notwithstanding the outcome of the Brexit referendum
- Legal questions and political uncertainties

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EU law background

The UK is still a EU Member State for several months or years

- The 23 June 2016 referendum on Brexit had no legal effect in itself
- Only the formal notification in accordance with Art. 50 Lisbon Treaty on 29 March 2017 triggered the process by which the UK will withdraw from the EU
- the UK remains in the Union until *"the date of entry into force of the withdrawal agreement or, failing that, two years after the notification"*

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Referendum and UPC Agreement

- On 28 November 2016, the UK government announced its intention to ratify the UPC notwithstanding the referendum result to leave the EU
- This announcement is a major step towards the entry into operation of the UPC
- Some people, however, voice concern that the UK position (inside the UPC, but outside the EU) may raise legal questions

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Influence of a possible Brexit on the UPC Agreement

- UPC Agreement refers only to “*EU Member States*” (Art. 2, Art. 84): a non-EU Member State could not **accede** the Agreement
- UPC Agreement does not envisage the withdrawal from the EU of a EU Member State thereby becoming a non-EU Member State
- UPC Agreement does not envisage either the withdrawal of a Member State (nothing like Art. 50 Lisbon Treaty in the UPC Agreement)

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Legal questions

- Assuming the UPC Agreement enters into force **and** assuming UK withdrawal from the EU becomes effective, would such withdrawal make the UPC incompatible with EU law?
- In other words: is it possible that a State which was a EU Member State when the UPC Agreement entered into force remain in the UPC system after its withdrawal from the EU?

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The CJEU's legal opinion 1-09 of 3 March 2011

- The CJEU did **not** say that only EU Member States could participate in the UPC system
- It only answered the specific question: *'Is the envisaged agreement creating a Unified Patent Litigation System (currently named European and Community Patents Court) compatible with the provisions of the Treaty establishing the European Community?'*

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The CJEU's legal opinion 1-09 of 3 March 2011

- The question submitted to the CJEU related to a system
 - ▶ in which non EU Member States (like Switzerland) could participate; and
 - ▶ which would have created a "European and Community Patents Court (*'the PC'*)" which was an independent court, **not** "a court common to a number of Member States, situated, consequently, within the judicial system of the European Union"
- The CJEU's opinion is only based on the second point: it does not directly address the first one

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The CJEU's legal opinion 1-09 of 3 March 2011

The CJEU's opinion is also based on the following remark: *"if a decision of the Patents Court were to be in breach of European Union law, that decision could not be the subject of infringement proceedings* nor could it give rise to any financial liability on the part of one or more Member States"*

* In this context *"infringement proceedings"* refer to EU law proceedings whereby a party would argue that a Member State or another legal body has infringed EU law (nothing to do with *"patent infringement proceedings"*)

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The CJEU's legal opinion 1-09 of 3 March 2011

This failure noted by the CJEU's opinion has been overcome in the UPC Agreement:

- Art. 1 *"The Unified Patent Court shall be a court common to the Contracting Member States and thus subject to the same obligations under Union law as any national court of the Contracting Member States"*
- Art. 22 "1) *The Contracting Member States are jointly and severally liable for damage resulting from an infringement of Union law by the Court of Appeal, in accordance with Union law concerning non-contractual liability of Member States for damage caused by their national courts breaching Union law"*

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Optimistic interpretation of the CJEU's legal opinion 1-09 of 3 March 2011

- The CJEU's legal opinion does not exclude the participation of non-EU Member States
- "A court common to a number of Member States, situated, consequently, within the judicial system of the European Union" may also be a court common to EU and non-EU Member States without violating EU law as long as the UPC Agreement provides that the Contracting Member States are jointly and severally liable for damage resulting from an infringement of Union law by the Court of Appeal

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