



# The Unified Patent Court: expect the unexpected

25-08-2021

Leythem Wall



After many stumbling blocks, it appears as if the Unified Patent Court will finally materialise, but Leythem Wall of Oxon IP explains that more surprises could be in store.

We've been here before. More than once. The Unified Patent Court (UPC) is coming. Or is it?

Earlier this month [Germany published its legislation for ratification](#) of the [UPC Agreement](#). According to Article 89 of the UPC Agreement, all that remains now for the UPC to legally come into force is the deposit of Germany's instrument of ratification with the General Secretariat of the European Union (EU) Council.

Italy, which will replace the UK as one of “the [mandatory] three member states”, and France (along with more than ten other EU states) have already ratified the agreement.

Before the latest developments, the UPC has faced and seemingly overcome [many obstacles](#) since the UPC Agreement was signed by 27 countries on February 19 2013.

### **The Brexit effect**

While the UK is no longer a mandatory ratifying state for the UPC Agreement in the wake of Brexit, London is still explicitly mentioned in Article 7 of the agreement as hosting a section of the central division.

The UPC central division is assigned to handle central revocation actions. Annex II of the agreement confirms that this London-based division would have handled cases relating to “human necessities”, chemistry and metallurgy, which include pharmaceutical, chemical and medical device technologies.

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Speculation is rife as to what, and where, is next. Cities such as The Hague, already host to a branch of the European Patent Office (EPO) as well as other international courts, and Milan, with Italy being a mandatory ratifier of the agreement, have been mentioned as [possible replacements for London](#). It has also been suggested that at least in the interim, the “London cases” would be distributed between the Paris and Munich divisions.

[In an interview last year](#), Alexander Ramsey, president of the UPC preparatory committee, resisted being drawn into the speculation and stated that: “a possible relocation would have minimal consequences for the UPC budget”.

More fundamentally, some [commentators have expressed concern](#) about the legality of such a change. Will the UPC Agreement need to be amended, will this require further signatures, and will this lead to further delays? Question marks have also been raised about the mechanism for such a revision with respect to Article 87 of the UPC Agreement and the Vienna Convention on the Law of Treaties.

With regard to the legal services industry, UK based European patent attorneys will still be able to represent parties before the UPC (according to Article 48 (2) of the agreement), unlike UK solicitors and barristers unless they are also authorised to practise before a court of an EU member state (Article 48 (1) UPC Agreement).

UK based European patent attorneys will have to be wary of Article 48(4) of the UPC Agreement in conjunction with Rule 292 of the [UPC Rules of Procedure](#). This makes clear that European patent attorneys who are not practising in an EU member state will not have rights of audience before the UPC if they are not the UPC representative.

### **Next steps**

Aside from ‘the London issue’, the UPC preparatory committee as always is looking positively ahead and estimates the [UPC will start operations around mid-2022](#). At the time of writing, we are still waiting for two additional states to consent to the [Protocol to the Agreement on a Unified Patent Court on provisional application \(PPA\)](#) before further UPC preparations can begin.

After all the setbacks and everything that has been overcome, it appears the will for the project to succeed is there. Equally, given the number of twists and turns it is hard to believe there won't be another surprise along the way.

**Leythem Wall** is director of Oxon IP and president of the European Patent Litigator's Association. He can be contacted at: [leythem.wall@oxonip.com](mailto:leythem.wall@oxonip.com)

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