



UK participation in UPC confirmed

The UK intends to participate in the Unitary Patent (UP) and Unified Patent Court (UPC)

The UK has [announced](#) that it intends to participate in the Unitary Patent (UP) and Unified Patent Court (UPC) despite the recent vote to leave the European Union (EU). The UK plans to ratify the UPC agreement, so both the UP and UPC are likely to become a reality in the near future, perhaps during 2017.

UPs and the UPC will together form a new system for granting and litigating patents in Europe. A UP will be a patent that has unitary effect across all participating member states of the EU. The UP will be granted by the European Patent Office as an alternative to existing European Patents (EPs) which will remain possible alone or in combination with a UP, for example to provide protection in non-participating member states. The UP may significantly reduce costs for patentees (via a reduced translation burden and a single renewal fee). The UPC will have exclusive jurisdiction over UPs and EPs granted by the EPO, including those already granted (subject to transitional provisions). The UPC's rulings will be enforceable across all of the participating member states. Its powers will extend to revoking UPs and EPs across all of those states. One significant benefit of the UPC for a patentee is central enforcement. However, this is balanced against the significant risk of central revocation.

Participation in the UP and UPC system is currently limited to EU member states. Following the Brexit vote it seems that the UK will leave the EU in a few years' time. As a result, there has been uncertainty regarding whether the UK is willing to ratify now and whether it can remain in the UP and UPC post-Brexit. The UK is one of three countries that must ratify before the UP and UPC can come into effect, so the UK is currently delaying the arrival of the new system for all of Europe. A legal opinion commissioned by a consortium of IP legal professionals (including Carpmaels) concluded that the UK could remain part of the UP and UPC system following the Brexit vote (as reported [here](#)). The opinion identified the amendments to the agreement required for the UK to remain in both the UP and UPC.

The major beneficiaries of a UP and UPC system that includes the UK are likely to be patentees and litigants who will enjoy the increased efficiency and geographical coverage for patent protection, enforcement and revocation. The next steps are likely to be ratification by the UK, followed by Germany, which will trigger a final period of four months after which the new system will finally enter into force.





There are some decisions that need to be made by patentees before the UP and UPC arrive, so now is a good time to start considering your options. During an initial transitional period it will be possible to opt out existing EPs from the UPC's jurisdiction. There are advantages and disadvantages associated with opting out existing patents from the UPC, which patentees will need to weigh up as part of their overall strategy. Most decisions will be based on the risks and benefits that come with the possibility of central revocation and central enforcement under the UPC. The opt-out strategy should be finalised well before the new system starts functioning, as an opt-out cannot be filed after an action has started at the UPC. It is also a good idea to review current licences to consider how staying in/opting out will affect the licences and whether they are suitable for the new system. For future European patents granted once the new system has arrived, patentees will need to decide whether to choose a UP (which is in the jurisdiction of the UPC) or an EP (either opted out from or left in the jurisdiction of the UPC), which may be a complex decision given the cost savings offered by the UP vs the certainty of relying on conventional EPs.

Our [guide](#) provides more detail on the decisions that need to be made as well as further advice on how the UP and UPC are expected to work in practice. After over 40 years, it seems Europe is finally moving towards a single patent and a single specialist patent court, with all the new risks and opportunities that entails.

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“The political will demonstrated in today’s announcement means that we can expect the UP and UPC to be up and running in the near future, and possibly as soon as 2017, despite the future legal obstacles regarding how things will change when the UK eventually leaves the EU.”

Need advice?

For more information, please contact:
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