



Progress for the UPC Agreement

The UK moves forwards with the biggest update to European patent law in 40 years

The UK parliament has moved closer to ratification of the Unified Patent Court (UPC) Agreement with parliament's approval of the remaining UK legislation required for ratification.

The UPC will become a new pan-European court where, for the first time, European patents can be enforced and revoked across multiple European states in a single sitting, as discussed in more detail [here](#). The UK Government confirmed that it planned to continue with this new international agreement shortly after the Brexit referendum in 2016 ([see our briefing note](#)) and remains a keen advocate for the UPC.

The House of Commons approved the draft Statutory Instrument (The Unified Patent Court (Immunities and privileges) Order 2017) on Monday 4th December and this was then approved by the House of Lords Grand Committee on Wednesday 6th December. A few formalities remain, but we expect the UK to be in a position to ratify the UPC agreement in the near future. The UPC Agreement is also awaiting German ratification before the new system comes into effect.

Germany is currently facing a constitutional challenge to its participation in the UPC. This challenge was filed at the last minute so is still making its way through the German constitutional court, [as we reported earlier this year](#). As the German parliament has already approved all the required legislation, permission from the constitutional court would be the last step before German ratification is possible. It is unknown how long the constitutional court will take to consider the pending challenge. The deadline for parties to file observations regarding the challenge is the end of 2017, so we expect further news in early or mid 2018. As a result, the earliest realistic start date for the UPC is mid to late 2018.

Once in place, the UPC will provide significant new options for both patentees and those seeking to challenge patent validity. The overriding intention of the UPC is to provide a cost-effective and efficient mechanism for patents to be enforced or revoked across the whole UPC territory in a single action, with the aim of reducing costs and providing businesses with earlier commercial certainty across Europe.



The UPC's jurisdiction will extend to all patents granted by the EPO, unless an opt out is filed. A 3-4 month "sunrise period" will precede the opening of the UPC, and this will be the best time to file opt outs (see our [briefing note](#)).

The new unitary patent will become available following the start of the new system. This will be a single patent available from the EPO that automatically covers all the states that have ratified the UPC Agreement. This new patent will provide a range of potential savings, as discussed [here](#).

The UPC is based on an international agreement, but does involve aspects of EU law. Therefore, the UK's final status within the UPC framework will be one of the points clarified in the on-going Brexit negotiations, with various options available for the UK to remain in the UPC after Brexit.

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