



No-deal Brexit: Impact on patents

1 September 2019

Por: Dr Markus Gampp LL.M.

While a range of outcomes, including [a departure under the terms of the current Withdrawal Agreement](#), remains possible, it is important for businesses to plan for a no-deal Brexit, in which the UK leaves the EU without a withdrawal agreement or other deal. Here we look at the potential impact of a no-deal Brexit on European patent law and patent litigation.

Key issues

For the time being, the status quo of European patent law and patent litigation post-Brexit will remain unchanged.

Application for and prosecution of European patents will continue to be handled by the European Patent Office (EPO), on the basis of the European Patent Convention (EPC), which is not limited to EU members. There are currently 38 EPC member states, including non-EU members such as Switzerland, Turkey and Norway. Therefore, the UK can continue to participate in the EPC regime after leaving the EU.

As they are currently, national validation, enforcement and possible invalidation will continue to be subject to the respective procedures in the individual jurisdictions on a national level. Infringement and invalidity of the respective national part of a European patent will continue to be dealt with by the respective national courts. Brexit therefore does not have a major impact on the status quo of European patent law and patent litigation.

Potential impact

However, the UK leaving the EU will likely have substantial impact on the biggest reform in the history of European patent law: the long-awaited introduction of the European patent with unitary effect and the Unified Patent Court (UPC). This system would enable a patentee to enforce their patent across Europe with just one action before the UPC. All decisions taken by the UPC, including injunctions, damages and decisions on the validity of a patent would have pan-European effect.

The UK was to play a vital role in this ambitious project, inter alia by hosting a branch of the court's central division in London. As the underlying agreements currently stand, as a non-EU member the UK can not participate in the UPC. The new system can only enter into force upon ratification by 13 member states, including the UK and Germany. The German ratification is currently on hold pending resolution of a constitutional challenge against the national legislation implementing the UPC. While some have advocated this possibility, it appears highly doubtful whether the UK could participate in the UPC system as a non-EU member when it comes into force.

Nonetheless, Brexit does not necessarily mean the end for the UPC and the entire reform project. There are ways (eg through bilateral agreements) by which the UK may conceivably still participate. However, this could potentially take years to implement, causing a significant delay.

The other member states may also decide to go ahead without the UK. However, in view of the fact that at least Spain and possibly Poland currently do not intend to participate, the attractiveness, efficiency and economic benefits of the UPC would be further reduced without the UK's participation.

Actions

- No immediate action required with respect to the continuing status quo of European patent law and patent litigation. Existing European patent rights remain unaffected for the time being.
- Continue to observe the ongoing discussions on the future of the UPC project. Even though Brexit has led to further delays, the UPC may still be implemented in the foreseeable future.

Please consult our dedicated UPC web pages for regular updates and further information, and continue to check latest Brexit advice from the UK Government and the European Commission.

How DLA Piper can help

For a more detailed analysis on Brexit patents impact, please contact the author or your usual DLA Piper contact.

AUTHORS



Dr Markus Gampp LL.M.

Sócio

Munich | T: +49 89 23 23 72 0

markus.gampp@dlapiper.com
