

EPLIT

EUROPEAN PATENT LITIGATORS ASSOCIATION



*EPLIT – c/o Multiburo Paris Chatelet 52,
Boulevard Sébastopol, F- 75 003 Paris*

To Baroness Neville-Rolfe

Parliamentary Under Secretary of State
and Minister for Intellectual Property
of the United Kingdom

11 July 2016

Re: The future of the Unified Patent Court after the Brexit referendum

Dear Baroness Neville-Rolfe,

Summary

EPLIT is of the view that the creation of the Unified Patent Court (UPC) is in the interests of inventors and businesses, both within the UK and outside it. Being able to enforce a patent covering a large number of countries before a single court reduces the costs of doing business and increases certainty for both claimants and defendants. This does not change if the UK leaves the EU. Moreover, if the UPC were to become operational without participation of the UK, British European Patent Attorneys are still allowed to represent their clients before the UPC. It is therefore in the interest of the UK patent profession for the system to go ahead. For these reasons, EPLIT would like to encourage the government of the UK to take the necessary steps to ratify the UPC Agreement as soon as possible.

EPLIT

EPLIT was founded in 2013 in view of the fact that the UPC Agreement provides for representation of parties by European Patent Attorneys having an appropriate qualification in patent litigation. It is one of the main objectives of our association to promote the participation of European Patent Attorneys in proceedings before the UPC. Most of EPLIT's members are European Patent Attorneys. However, other practitioners who are qualified to participate in proceedings before the UPC pursuant to Article 48(1) or (4) can join as associate members. A significant number of our association's members are practitioners, both European Patent Attorneys and solicitors, from the UK.

The UPC

Until the results of the UK referendum on membership of the EU were announced on 24th June 2016, it was generally held that the patent system in Europe was about to adopt its most profound change since the advent of the European Patent Convention (another multinational agreement not involving the EU) in 1973. After long negotiations,

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the creation of the UPC was about to turn into reality. We were within a whisker of seeing the required number of ratifications by member states and the Preparatory Committee had nearly finalized its work. The prognosis was that the UPC could enter into force in the course of 2017.

The result of the UK referendum has made the future of the UPC uncertain. Article 89 of the UPC Agreement requires that, for the UPC to come into force, the UK, as one of the three countries where the highest number of European patents are in effect, ratifies the UPC Agreement. If the UK does not ratify the UPC, this will likely require a renegotiation of the UPC Agreement and lead to a significant delay of the whole project, if only because without a UK ratification the system can only enter into force after the UK has formally left the EU. In EPLIT's opinion, such a delay will be to the detriment of inventors and businesses in the UK and elsewhere.

A ratification of the UPC Agreement by the UK will mean that the system can enter into force without much delay. Should the UK decide to leave the EU after ratification, the UK may be able to continue to participate in the UPC and EPLIT certainly hopes it will. EPLIT is also of the view that the system is much more attractive if the UK continues to participate in it. However, even if this were legally or politically not possible, EPLIT still believes that all users of the European patent system will be better off if the UK ratifies the UPC Agreement in the near future so that this important development of the patent system in Europe will not have been jeopardized.

If you have any questions, please do not hesitate to contact us.

Sincerely yours,

A handwritten signature in black ink, appearing to be 'K. Bijvank', written over a white background.

on behalf of EPLIT
Koen Bijvank, President