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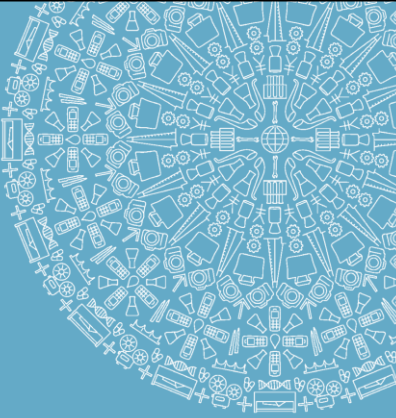
Brexit – effects on UPC

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## Agenda

- The UK's role in the UPC
- Can the UK legally be a part of the UPC post-Brexit?
- How could the UK stay in the UPC?
- Preferred outcome
- Questions



What is the UK's role in the UPC?


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The UK's role in the UPC framework

- One of three essential ratifiers: Article 89(1) UPC Agreement

Entry into force

1. This Agreement shall enter into force on 1 January 2014 or on the first day of the fourth month after the deposit of the thirteenth instrument of ratification or accession in accordance with Article 84, including the three Member States in which the highest number of European patents had effect in the year preceding the year in which the signature of the Agreement takes place or on the first day of the fourth month after the date of entry into force of the amendments to Regulation (EU) No 1215/2012 concerning its relationship with this Agreement, whichever is the latest.



Country of residence of the patentee	Designations as contracting states	
	Patents	Rate
DE Germany	65 117	99.1 %
FR France	63 046	96.0 %
GB United Kingdom	62 481	95.1 %
IT Italy	56 556	86.1 %

Source: EPO Annual Report 2012

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## The UK's role in the UPC framework

- The location of one of the three sections of the Court's "Central Division" for revocation and DNI actions: Article 7(2) UPC Agreement:

2. The central division shall have its seat in Paris, with sections in London and Munich. The cases before the central division shall be distributed in accordance with Annex II, which shall form an integral part of this Agreement.



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## The UK's role in the UPC framework

- Fundamentally the UK has signed up to the UPCA as an EU Member State.

(b) 'Member State' means a Member State of the European Union.

(c) 'Contracting Member State' means a Member State party to this Agreement.



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## Can a post Brexit-UK legally participate in the UPC?

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### Can the UK legally remain a member after Brexit?

- Is it possible at all?
  - CJEU opinion 1/09 - March 2011;
  - Commission non-paper - May 2011;
  - Council Legal Services Opinion - October 2011



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## Can the UK legally remain a member after Brexit?

- Gordon and Pascoe opinion:
  - The CJEU was concerned whether sufficient safeguards were in place in that draft of the UPC agreement to protect EU constitutional principles;
  - The CJEU does not object in principle to the application of EU law outside the territory of the Member States;
  - A risk exists that the opinion could be read as precluding the participation of non-Member State.

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How could a post-Brexit UK remain part of the UPC?

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## How could the UK stay in the UPC?

- If the UK stayed in the UPC as a full member, how could this be achieved:
  - Amendments to UPCA required;
  - Extend UP and Brussels Regulations;
  - More significant actions:
    - UK accepting the supremacy of EU law in its entirety;
    - References to the CJEU.
- EU-UK agreement will be needed.



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## How could the UK stay in the UPC?

- A possible hybrid - Stay in UPC, but exit UP system.
- Politically easier?
  - UPC is an international court.
  - But UP is an EU instrument.
- Industry view?
  - No loss of rights.
  - Budget implications – diminishes attractiveness of UP.



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What if the UK has to leave the UPC system?

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### If the UK has to leave the UPC

- UPCA has no exit provisions:
  - Status of existing court decisions?
  - Actions in progress?
  - English judges?
  - Transitional arrangement (Brexit “implementation phase”)?



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## Preferred outcomes

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### Preferred outcomes

**EXPOSED: Secret plan to tie Britain to EU after Brexit is being kept 'under the radar'**

- Current policy position is officially “all options open” but the UK has long wanted a pan-European patent / enforcement system.
- Would UK really have agreed to ratify if it expected to leave the system 18 months after start-up?
- UK industry has also long wanted a more efficient enforcement system and cheaper patent protection in Europe.
- UK industry wants:
  - UK to remain in both UPC and UP systems.
  - Resolution of legal uncertainties regarding staying in the system.
  - An “insurance policy” of a transitional / exit protocol in case of political difficulties in remaining.

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## Questions?

“Questions are guaranteed in life;  
Answers aren’t.”

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