

20 JULY 2020 – OFFICIAL WITHDRAWAL OF THE UK FROM THE UPCA

The UK has decided to officially withdraw from the Unified Patent Court Agreement (the UPCA). The notification of withdrawal has been deposited with the EU Council secretariat on July 20.

The withdrawal has taken effect immediately.

The UK decision is a direct consequence of the Brexit and was expected to take place at some stage. In view of the Brexit, the UK does not wish anymore to participate in a court that applies EU law and is bound by the CJEU. The fact that the UK withdrawal occurs before ratification by Germany and thus before entry into force of the Agreement, has important consequences.

Amendments to the present Agreement will have now to be made before entry into force. It will not be possible to simply rely on a decision by the Administrative Committee to make the necessary amendments, since the Administrative Committee does not exist until the Agreement is in force.

The Preparatory Committee will have to decide which amendments are necessary and how they can be made.

The Protocol on provisional application of certain parts of the UPC Agreement (PPA) can also not anymore enter into force without some amendments.

The main political difficulty also lies in the disappearance of the London section of the central division, which was to be responsible for deciding cases relating to human necessities, chemistry and metallurgy.

Within the remaining future Member States, some voices already mention the possibility to create a new section of the central division in the Netherlands or in Italy.

More realistic could be to dispatch the cases normally allocated to the London section, in Paris where the seat of the central division is located and in Munich where another section of the central division is located.

Still another possibility could be to maintain the presently decided distribution of cases for the Munich section (mechanical engineering, lighting, heating, weapons and blasting) and to consolidate the remaining cases at the seat of the central division in Paris.

In conclusion :

The UK withdrawal will most probably entail a further delay for the entry into force of the UPC Agreement.

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Even if the German parliament would accept now the new bill prepared by the German government for authorizing ratification, it will not be possible for Germany to effectively ratify an Agreement which has to be first amended. The same appears true for the Protocol on provisional application for which anyhow, the number of Member States having accepted or ratified this Protocol, is still slightly insufficient.

It is now necessary to wait for the issue of the discussions within the Preparatory Committee before trying to forecast even an approximate date of entry into force of the UPC Agreement.

Finally, the UK withdrawal has a dramatic consequence on the Unitary patent which will not cover the UK territory.



Contact us:

For any question you may have, please do not hesitate to contact our team.



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