

EIP

Unified Patent Court: The Impact of Brexit

The Unified Patent Court (UPC) now has jurisdiction over 18 of the 27 EU states and advertises itself as an EU court but is there any prospect of the UK getting involved in the Unified Patent Court without rejoining the EU?

Unintended Consequences of Brexit

There have been several unintended consequences of Brexit. As an anti-Brexit person, I must declare myself at the start. One of the big tragedies from our point of view was that the Unified Patent Court had been 30 years in the gestation. I am old enough to remember when it was first mooted. The UK profession, including solicitors, barristers, judges, and the patent office, played a significant role in developing the rules for the Unified Patent Court.

The Impact on the UK Profession

To have the rug pulled out from under us at the last minute was a great pity. The end result has been that Germany is by far the most dominant jurisdiction, with over 90% of the cases now filed in the German divisions. While the UK might not have received half of those cases, it would have received a good chunk. The significance of this is that UK notions and English law, which we spent the last 200 years developing, would have been part of the system. The fact that it is not part of that system is a great tragedy. I know at least one prominent ex judge who believes that the UK could be part of the UPC without having to rejoin. I'm sure we would want to join it, the fact that we are not there is

lacking. The UK is a leading patent jurisdiction. Clients like coming here. I mean, for one thing, not having the UK judges there and not having their thoughts on FRAND issues is a great missed opportunity, especially as many of these judges shaped FRAND.

Standard Essential Patent Cases

A lot of Standard Essential Patent (SEP) cases are currently being filed in the UPC, and it remains to be seen how the UPC will deal with the Fair, Reasonable, and Non-Discriminatory (FRAND) valuation issues. Will they adopt the German model of simply determining who is the friendliest, or will they conduct a detailed valuation? If they opt for a detailed valuation, how will they do it? This remains to be seen.

The Making of a Landmark Ruling: Optis v Apple Explained

Hear more about SEPs—including the landmark Optis v Apple ruling—in the latest episode of EIP Talks. We bring you the inside story from the team behind the landmark Optis v Apple judgment—now the highest-value court-determined SEP license on record. We also explore what this means for FRAND litigation, the future of SEP enforcement in the UK and how this ruling could impact global licensing dynamics.

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