



Two Down, One to Go: The UK Ratifies Unified Patent Court Agreement

On April 26, 2018, the United Kingdom ratified the Unified Patent Court Agreement ("UPCA"). This act removed any doubts concerning the United Kingdom's determination to participate in the agreement post-Brexit. However, the very existence of the agreement is still an open question. Along with Germany and France, the United Kingdom is one of the three signatories whose ratification is required for the agreement to enter into force. Now that France and the United Kingdom have ratified it, the fate of the agreement lies wholly in German hands.

Germany's ratification was halted after a constitutional complaint was lodged last June. The complaint addresses issues regarding the democratic accountability of the regulatory powers overseeing the operation of the Unified Patent Court ("UPC") and the independence of the judiciary. It was admitted for decision by the Second Senate and is on this year's agenda. It is possible, however, that questions of European law will be referred to the Court of Justice of the European Union for preliminary ruling under the Treaty on the Functioning of the European Union. If so, the intended implementation before the United Kingdom leaves the European Union on March 29, 2019, is less probable.

What happens to the agreement after this historic day is hard to predict. The UPCA is an international agreement, which was set up under the European Union's auspices, and membership is presently limited to EU countries. Therefore, the United Kingdom's future relationship with the UPC will be subject to negotiation with the European partners who expect the United Kingdom to accept the supremacy of EU law on UPC decisions while participating—a necessary political burden.

Thus, the UPC saga continues. Stay tuned for the next installment from the German Constitutional Court.

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