

April 26, 2018

## U.K. Follows Through on Promise to Ratify Unified Patent Court Agreement

In a move to support British innovative industry, Sam Gyimah, the UK IP Minister, [announced](#) today, April 26, 2018, that the U.K. has ratified the Unified Patent Court (UPC) Agreement, making it the sixteenth country, and the second of three mandatory members, to do so. The U.K.'s ratification puts pressure on Germany, the only mandatory country that has not yet ratified the UPC Agreement, to resolve a pending constitutionality challenge to the UPC brought in the German Federal Constitutional Court to allow the UPC to commence.

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Announcing the move, Mr. Gyimah noted: "Ratification of this important Agreement demonstrates that internationally, as well as at home, the UK is committed to strong intellectual property protections. This will help to foster innovation and creativity, bringing our modern and ambitious Industrial Strategy to life." For the court to come into being, thirteen EU countries, including the U.K., Germany, and France, must ratify the agreement. France ratified the agreement in 2014. And with the U.K.'s ratification completed, all eyes are now on Germany.

The U.K.'s ratification was not without its bumps. After completing most of the required steps, the ratification process was derailed by the unexpected Brexit vote, casting doubt on whether the U.K. would ratify the Agreement, which was premised on membership in the European Union, or whether it could even participate in the UPC. The U.K. put doubts about its ratification to rest when it promised, in November 2016, that it intended to ratify the Agreement despite the Brexit vote. However, that ratification was further delayed by the U.K. "snap" election called in June 2017. In the meantime, Germany halted its ratification in late 2017 after a lone citizen filed a challenge to the constitutionality of the UPC. With the U.K.'s ratification now completed, the pending German constitutional challenge remains the sole primary obstacle to the start of the UPC, bringing new urgency to the case, which has been pending for over a year. While the U.K.'s ratification removes an important obstacle to the UPC, uncertainty remains regarding the U.K.'s participation after it leaves the EU, an issue that will be negotiated with the EU as part of the U.K.'s withdrawal from the bloc.

Germany's ratification, when it occurs, would trigger a four-month countdown for the UPC to begin operations. Once it goes into effect, the UPC will usher in a new era of patent law. Currently, for patents granted under the auspices of the European Patent Convention (EPC), infringement proceedings must be brought on a country-by-country basis; and loss of a patent right in one country does not necessarily affect the rights of the patentee in another country. The UPC will replace the current fragmented country-by-country patent enforcement regime in Europe with a single judgment regime. The ability to seek EU-wide enforcement or invalidation of a patent through a single action puts the strength of the EU's \$17 trillion market behind European patents, and could challenge the dominance of the US as the platform of choice for major patent disputes. It will affect those who currently hold conventional European patents, as well as those who plan on filing for them in the future. While many of the features of the UPC can be advantageous (*e.g.*, potential cost-effectiveness, efficiency of a single-action enforcement, technically-trained judges, shorter pendency, *etc.*), the new system may also presents new risks. Companies with significant patent or business positions in Europe will need to re-evaluate their patent strategy to best prepare for the new court.