

# Brexit Update

It has been nearly six months since the UK's historic vote to leave the European Union. Since that time we have been watching developments closely. Please check the [Brexit section](#) of our website for the latest news. This article highlights some of the developments most relevant to owners of Biotech and Pharma patents.



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## Political Developments

The UK Prime Minister, Theresa May has pledged to trigger Article 50 of the Treaty of the European Union by March 2017, and the House of Commons has agreed (although in a non-binding vote) that Article 50 must be triggered in view of the referendum result. The Supreme Court case regarding whether the Prime Minister will be able to trigger Article 50 without an act of Parliament is still ongoing.

When Article 50 is triggered, this will formally begin the process of negotiated withdrawal from the EU. Article 50 provides for two years of negotiation at the end of which the UK will cease to be a member of the EU. The two year period can be extended by mutual agreement, but both sides of the negotiation have indicated a desire to conclude matters quickly in order to provide certainty. This means that if Article 50 is triggered in March 2017, according to the current best estimate, the UK will be out of the EU sometime in 2019.

Although to date the UK Government has released very little information about their Brexit plans, the Prime Minister has recently committed to releasing more information before Article 50 is triggered. One thing that the UK Government has already laid out plans for is their "Great Repeal Bill" under which four decades of

accumulated EU legislation will be transferred *en masse* into domestic law so that it can then be examined, retained or revoked, according to the will of the UK parliament.

## Currency Developments

The value of the pound against both the US dollar and the Euro has dropped by between 10 and 20% since the summer. This means that the cost of purchasing patent prosecution services from a UK firm is now significantly cheaper for companies based outside the UK.

## Patents

It is important to emphasise that the European Patent Office (EPO) is not an EU institution and the prosecution of European Patents at the EPO will be unchanged. The rights of representation at the EPO of UK-based European Patent Attorneys will remain the same, and it will, of course, remain possible to designate the UK on European Patents in the same way as for other non-EU EPC-contracting states like Norway and Switzerland.

## Unitary Patent (UP) and Unified Patent Court (UPC)

The unitary patent package is a European Union initiative which includes an EU-wide patent court and streamlined procedures for the validation of European Patents granted by the EPO. It has been strongly supported by the UK Government and

was expected to come into force in 2017 but the UK's Brexit vote in June 2016 to leave the European Union threw into doubt the UK's continued involvement. While it was always clear that the UK would continue to be a member of the European Patent Convention and continue to be covered by patents granted by the EPO, it seemed likely that the Unitary Patent Package would be significantly delayed because for it to come into force with the UK's involvement would require a further surrender of sovereignty to the Court of Justice of the EU. For the unitary patent package to happen without the UK's involvement is possible but would require lengthy renegotiation.

In a surprise announcement, the UK Government has confirmed it is proceeding with preparations to ratify the Unified Patent Court Agreement (UPCA). If Germany also ratifies, as is expected, the Unitary Patent Package will enter into force. On 28 November 2016, the UK Minister of State for Intellectual Property, Baroness Neville Rolfe said:

*"The new system will provide an option for businesses that need to protect their inventions across Europe. The UK has been working with partners in Europe to develop this option."*

*"As the Prime Minister has said, for as long as we are members of the EU, the UK will continue to play a full and active role. We will seek the best deal possible as we negotiate a new agreement with*

*the European Union. We want that deal to reflect the kind of mature, cooperative relationship that close friends and allies enjoy. We want it to involve free trade, in goods and services. We want it to give British companies the maximum freedom to trade with and operate in the Single Market - and let European businesses do the same in the UK. But the decision to proceed with ratification should not be seen as pre-empting the UK's objectives or position in the forthcoming negotiations with the EU."*

The UK Government has said that the UK will continue with preparations for ratification over the coming months and will be working with the Preparatory Committee to bring the UPC into operation as soon as possible. It is unclear whether or not the UK will remain in the UPC system following its eventual departure from the EU. That once seemed unlikely, but a move to keep the UK in is building momentum because all agree that the system will be much more attractive to users if it includes the UK. There is however a possibility that the UK will be included in the Unified Patent Court when it opens for business only for it to withdraw from the Courts jurisdiction at a later date.

The Unitary Patent Package will enter into force on the first day of the fourth month following ratification by at least 13 signatories to the agreement which must include the UK, France and Germany. As of today 11 states, including France, have ratified. That leaves the ratification of the UK and

Germany as the trigger for entry into force. The UK should now be able to ratify very quickly. We understand that Germany is almost ready to ratify. This means that those final two ratifications could take place very soon, perhaps within a few months and that the Unitary Patent Package would enter into force in the second or third quarter of 2017.

On ratification, the Unitary Patent Package will cover the UK, France, Germany, Austria, Belgium, Bulgaria, Denmark, Finland, Luxemburg, Malta, the Netherlands, Portugal and Sweden (and any other countries that ratify before entry into force).

Once the start date for the Unitary Patent Package is known, proprietors of European Patents and Applications will face several decisions which may need to be taken in a matter of months. Most notably they need to decide whether to opt some or all of their existing portfolio out of the jurisdiction of this new Court. For further details see our [guide to the Unitary Patent and Unified Patent Court](#) which contains guidance on how best to plan for the new regime.

## Conclusion

Although there is still much uncertainty regarding how, and when, Brexit will happen, as well as regarding the future of the UK's involvement in the UPC, we are at least expecting to receive some more clarity in the New Year on the Governments' position. The team at Abel & Imray will keep you informed as developments emerge.

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