



## Administrative Committee

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Decision of the Administrative Committee under  
Article 87 (2) UPCA amending the Agreement

26 June 2023

## EXPLANATORY NOTE

### 1. The effect of Brexit on the UPCA

According to Article 7(2) of the Agreement on a Unified Patent Court (UPC Agreement or UPCA) the Central Division of the Court of First Instance of the Unified Patent Court (UPC) shall have “its seat in Paris with sections in London and Munich. The cases before the Central Division shall be distributed in accordance with Annex II ...” to the Agreement which provides that cases concerning patent sections (A) and (C) of the International Patent Classification (IPC) should be handled by the London section.

The United Kingdom decided to withdraw from the European Union invoking Article 50 of the Treaty on the European Union in March 2017. The withdrawal happened on 1 February 2020, and took full effect on 31 December 2020, at the end of the transition period provided for by the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union. As a consequence, the United Kingdom also left the Agreement on a Unified Patent Court, withdrawing its ratification instrument on 20 July 2020.

All Member States of the Preparatory Committee for the UPC, in view of Brexit and the withdrawal of the UK from the UPCA, confirmed on 10 September 2020 the following common understanding of Article 7(2) the UPC Agreement (PC/01/Sept2020, paragraph 50):

*Since the allocation of cases to a section of the Central Division of the Court of First Instance in London has to be interpreted as having no effect there is no need to proceed at this stage with a modification of the wording of Article 7 of the Agreement. Cases concerning patent-classes (A) and (C) can be dealt with provisionally until a decision is taken about the creation of another section of the Central Division by the parts of the Central Division that remains.*

In its meeting of 8 May 2023, the Presidium of the Unified Patent Court decided that, as from 1 June 2023 and until a final decision is taken on the creation of another section of the Central Division, actions pending before the Central Division related to patents in IPC section (A) shall be assigned to the seat in Paris while actions related to patents in IPC section (C) shall be assigned to the section in Munich. Once this decision takes effect, cases will be allocated between the Paris seat and the Milan and Munich sections of the Central Division according to the attribution foreseen in the amended Annex II of the Agreement.

### 2. Amendment of the UPC Agreement

All Member States have agreed at the same meeting of the Preparatory Committee on 10 September 2020, that the creation of a new section should be discussed and dealt with as soon as possible once the UPC Agreement has entered into force.

A permanent solution is needed to bring the UPCA into line with the consequences of Brexit and the withdrawal of the United Kingdom from the UPCA. As envisioned by Contracting States, the preferred

solution is the creation of a new section of the Central Division and the reallocation of the competences of the former London section between the seat and the two sections of the Central Division.

The creation of a new section of the Central Division and the reallocation of the competences of the former London section can only take place by way of amending the UPCA.

Accordingly, the UPCA will be revised to deal with the references to the United Kingdom and London in Article 7(2) and Annex II of the UPCA. To that end, the UPC Agreement provides for a simplified revision procedure. According to Article 87(2), the Administrative Committee may amend the Agreement to bring it into line with an international treaty relating to patents or Union law. The withdrawal of the United Kingdom from the European Union and as a consequence from the UPCA constitutes a change in Union law which allows the recourse to such simplified revision procedure.

Article 87(3) UPCA provides that a decision of the Administrative Committee taken under Article 87(2) shall not take effect if, within twelve months from the date of the decision, a Contracting Member State declares on the basis of its relevant national decision-making procedures that it does not wish to be bound by the decision. In order to provide legal certainty, any change by way of the simplified procedure, should therefore, only take effect twelve months after the decision. In *bona fide* and without prejudice to Article 87(3) of the Agreement, preparatory work will start upon the adoption of this decision to ensure that the amendments that are the subject matter of the decision are fully and immediately operational at the moment of its entry into effect.

Italy presented its candidacy to host a new section of the Central Division in the city of Milan at the above-mentioned meeting of the Preparatory Committee on 10 September 2020.

The proposed decision is drafted in accordance with the abovementioned architecture: creation of a new section of the Central Division and the reallocation of the competences of the former London section to the seat and the two sections of the Central Division.

**DECISION OF THE ADMINISTRATIVE COMMITTEE OF 26 JUNE 2023 AMENDING THE  
AGREEMENT ON A UNIFIED PATENT COURT**

THE ADMINISTRATIVE COMMITTEE

CONSIDERING that the Agreement on a Unified Patent Court has entered into force on 1 June 2023;

CONSIDERING that the Unified Patent Court is a common Court of Contracting States of the European Union for the settlements of disputes relating to European patents, supplementary protection certificates and European patents with unitary effect under regulation (EU) No 1257/2012 implementing enhanced cooperation in the area of the creation of unitary patent protection;

HAVING REGARD to Article 50 of the Treaty on the European Union and to the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland (hereinafter, the United Kingdom) from the European Union, entered into force on 1 February 2020, as well as to the notification by the Government of the United Kingdom on the withdrawal from the Agreement on a Unified Patent Court on 20 July 2020;

HAVING REGARD to the Agreement on a Unified Patent Court and in particular Articles 1, 7 paragraph 2, 87 paragraphs 2 and 3 and Annex II thereof;

HAVING REGARD to the decision by the Presidium of the UPC dated 8 May 2023, on the provisional distribution of actions related to patents in IPC sections (A) and (C) pending before the Central Division.

HAS ADOPTED THE FOLLOWING DECISION:

**Article 1**

The Agreement on a Unified Patent Court is amended as follows:

1. Paragraph 2 of Article 7 is amended as follows:

“2. The central division shall have its seat in Paris, with sections in ~~London and~~ **Milan and** Munich.  
The cases before the central division shall be distributed in accordance with Annex II, which shall form an integral part of this Agreement.”

2. The following amendments (in bold) in the distribution of cases within the Central Division <sup>(1)</sup> are made in Annex II:

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<sup>1</sup> (The classification into 8 sections (A to H) is based on the International Patent Classification of the World Intellectual Property Organisation (<http://www.wipo.int/classifications/ipc/en>).

<del>London</del> <b>Milan Section</b>	Paris Seat	Munich Section
	President's Office	
<b>(A) Human necessities, without Supplementary protection certificates</b>	(B) Performing operations, transporting	<b>(C) Chemistry, metallurgy, without Supplementary protection certificates</b>
	(D) Textiles, paper	(F) Mechanical engineering, lighting, heating, weapons, blasting
	(E) Fixed constructions	
	(G) Physics	
	(H) Electricity	
	<b>Supplementary protection certificates</b>	

### Article 2

In advance of the general review of the Agreement foreseen in Article 87 paragraph 1 of the Agreement on a Unified Patent Court, the Administrative Committee shall launch a specific review of the implementation of this decision three years after its adoption.

### Article 3

Preparatory work will be launched, under the supervision of the Administrative Committee, to ensure that the Milan section will be fully and immediately operational when this decision takes effect, without prejudice to Article 87 paragraph 3 of the Agreement on a Unified Patent Court.

### Article 4

This decision shall enter into force on the date of its adoption and will take effect twelve months after the date of its adoption, provided that no declaration is made according to Article 87 paragraph 3 of the Agreement on a Unified Patent Court.

Done on 26 June 2023 (online meeting)

For the Administrative Committee

signed Paul van Beukering

Deputy Chairperson