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Ten Reasons Why the UK Should Join Europe's Unified Patent Court

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On June 1, 2023, the Unified Patent Court (UPC) opened its doors after having been in the works for decades. The UPC has jurisdiction over essentially all European patents, making it a one-stop shop for patent litigation in Europe. In under two years of operation, the UPC has demonstrated high quality, predictability, balance and speed of decisions. It has rapidly emerged as a major forum globally for determining innovators' rights to control the fruits of their labour and investments.

Despite playing a key role in the creation of the UPC, the UK is not a party to the UPC, since it withdrew its ratification of the UPC Agreement in light of its withdrawal from the EU and political stance towards EU law and the European Court of Justice. However, the UPC is independent of the EU, and the UK government's decision to withdraw from the UPC was not a necessary consequence of Brexit. The UK is thus sitting out a golden opportunity to benefit from a state-of-the-art system for incentivizing and rewarding innovation that it played a central role in designing. There are at least 10 reasons why the UK and the EU would benefit from the UK joining the UPC.

First, rejoining the UPC would amplify the UK's voice in EU patent policy. The UK's world-class judges would have the opportunity to join the pool of judicial candidates, which would benefit the UK, the EU and global patent policy as UPC 'common law' develops. UK judges would also be able to sit at the tables of various UPC administrative committees to help shape the structure and procedure of the UPC.

Second, becoming once again part of the UPC would provide the UK with a venue to enforce and defend patent rights. Since the UK was heavily involved in the development of the UPC, it was originally delegated a section of the Court in London that, due to the UK's withdrawal from the UPC, was reassigned to Milan. Today, no UPC divisions are situated in the UK, but a division could be created in the UK upon its rejoining. Rather than enforcing and defending European patents in other countries, UK patentees and their advisors would be able to utilize a local UPC division, making it less costly and more convenient to enforce and defend patents.

Third, the UK's involvement would improve the development of UPC common law. UK judges' history and expertise in developing common law would be particularly valuable for UPC common law, as codification of every nuance of intellectual property law is an impossible undertaking. Cementing the UPC's global reputation hinges on the quality and strength of its decision-making. The UK's contribution in this area would make the UPC even more attractive to other common-law countries (eg the United States, India, Australia).

Fourth, the UK rejoining the UPC would provide UK patentees the opportunity to own and enforce unitary patents in their home market as well as across the EU, reducing cost and time burdens. This would also protect inventions in the UK and enable the growth of companies in the UK.

Fifth, the UK's participation would benefit all UPC members. The UK's re-entry would benefit all UPC member states by providing patent protection in the UK, the sixth largest national economy in the world by GDP. Currently, patentees in UPC member states must seek separate UK patent protection in addition to unitary patent protection, which results in additional costs and administrative efforts that could be reduced.

Sixth, through its participation, the UK could encourage other EPC member states to join the UPC. The UK is not the only important national patent market missing from the UPC, and by rejoining the UPC, the UK could be a trailblazer in encouraging other EPC members such as Spain, Switzerland and Turkey to join.

Seventh, by joining the UPC, the UK could alleviate the UPC of the burdens of its growing caseload. Since the UPC began hearing cases, it has demonstrated impressive speed in handling its docket. However, as the number of cases before the UPC grows, it may not be able to maintain the same speed and efficiency. The introduction of a local division in the UK would help ensure continued prompt and efficient caseload management. Additionally, there are approximately 2,000 registered UPC representatives in the UK who would significantly enlarge the pool of technically qualified judges for the UPC.

Eighth, including the UK in the UPC would create a one-stop shop for European patent litigation. Without the UK in the UPC, patentees must enforce and defend patents in the UK separately from the rest of Europe. This is exactly what the UPC seeks to avoid.

Ninth, joining the UPC would match the UK's pre-grant role in European patents with the UPC's post-grant role. The UK is already heavily involved in European patent-granting policy through its role in the European Patent Office (EPO). But the current status quo reduces the UK's influence on patent policy in Europe and beyond, as having no seat at the table in post-grant policymaking handicaps its ability to be effective in pre-grant policymaking. Future patent policy will necessitate coordination between the UPC and EPO, and, with the UK having no role in the UPC, that policy will be shaped without the UK's valuable influence.

The last reason that the UK should join the UPC is to grow innovation economy infrastructure in UK cities. London would certainly benefit from the growth of the legal and other professional services that support innovators, venture capital and privacy equity funding sources associated with patent protection if the UK were to rejoin the UPC. But so too would cities like Manchester and Glasgow, because their professional service providers would be able to conduct their business in the UK, and, in the future, such cities may be viable options for new UPC division venues as well.

From its inception, the UPC was intended to have a significant presence in the UK. The plan was and still can be a win-win. It is time to bring that plan to fruition, for the benefit of the UK, Europe and global innovative outcomes.

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