

Impact of Brexit on IP System ¹

Zhang Weijun

The UK's referendum on its membership of the European Union (EU) is a vital turning point in the European integration process. Legally speaking, the UK has not yet left the EU, and it still depends on further negotiations and contention between them to decide their relationship in the future. This result, however, will certainly cast uncertainty on the laws of the UK or EU, including IP laws. Undoubtedly, the UK's vote to leave the EU may have substantial impact on the intellectual property (IP) integration process, which is an important part of the European market integration, especially the European unitary patent system that is at a critical moment of its establishment. This article is intended to analyze these issues.

I. Impact on European Unitary Patent

A British exit (commonly referred to as a "Brexit") will have direct and significant consequences for the proposed European Unitary Patent.

1. Origin of European Unitary Patent

EU member states are eagerly awaiting the establishment of a unified patent protection system mainly for the following three reasons:

First, to promote industrial development and strengthen external competition capabilities, the EU is making active efforts in boosting free flow of personnel, cargoes, investment and services in an European unitary market. Nevertheless, the free flow of cargoes and services among vari-

ous EU member states is affected by territorial limitations on grant and protection of IP, especially patent, and moreover, where such activities as patent licensing, patent investment, and manufacturing and sales of patented products are involved, patentees must conduct complex assessment of patent protection in each country before making crucial judgments. To alleviate those limitations, it is necessary to establish a unified patent protection system to conform to the EU's holistic strategies for setting up a unitary market. Efforts to create a scheme related to a unitary patent grant, patent infringement litigation and invalidation procedures across the European Community have been made as early as the 1960s.

Second, the costs for granting and maintaining "European patents"² are still higher at present. European patents are granted uniformly by the European Patent Office (EPO), but after that, the member states handle them in accordance with procedures of their own laws and in their own official languages, just like domestic patents. If European patents are to be maintained at a designated country, in the light of Article 65 of European Patent Convention (EPC), any contracting state may prescribe that the owner of the patent shall supply a translation of the claims and specification in its official language. If this is the case, supposing 8 countries are designated in the patent application, the translation costs may, at most, account for 25% of the total cost, which results in that the total cost for a European patent application is about 5 times more than that in US and three times more than that in Japan.³ High costs are adverse to enhancement of R&D level and industrial development in Europe.

Third, in the presence of differentiations in litigation system and rulings among the EU member states, European patents, notwithstanding the unitary grant thereof, become a bundle of national patents after being granted. If patent infringement occurs in different countries, the patentee has to initiate infringement proceedings in corresponding countries. Further, it is impossible to guarantee that the same conclusion in parallel litigation can be reached at the courts of different countries.⁴ What's more, the EPO's understanding of the EPC is not consistent with the interpretations of the patent laws by different patent offices, which leads to unpredictability of patent protection and law enforcement, which is adverse to both the plaintiff and the defendant, and enhancement of litigation costs that does not meet the requirement for facilitation of proceedings, as well as forum

shopping where a party attempts to have his action tried in a particular court or jurisdiction.

For the above reasons, the member states in EU are making every means to set up a unitary patent protection system that is low-cost, uniformly effective and subject to unitary litigation procedures. Ever since 1960s, with the abolition of the Community Patent Convention (CPC)⁵ and the resistance encountered by the "Regulation on Community Patent"⁶ from several EU member states, the EU speeded up again its initiation of the unitary patent process around the year of 2010 to face up to tough economic slowdown, and brought forward "Europe 2020" that is a 10-year strategy proposed on 2010 for advancement of the economy of the EU, which aims firstly at "smart economy" based on knowledge and innovation. A patent system has always been considered as a crucial link in the course of promoting innovation and economic growth, so the Innovation Union, as the main initiator of "Europe 2020", called on the EU member states to "reach agreement on the EU patent"⁷ as quickly as possible. Since Spain still voted against the agreement on the EU patent in a meeting of the Competitiveness Council on 10 November 2010, the EU Council finally gave their authorization of initiating the "Enhanced Cooperation" procedure⁸ in 2011 in preparation for realizing the European patent with unitary effect ("EPUE" for short) and establishing a Unified Patent Court across all EU member states except Spain and Croatia. This cooperation was implemented by the so-called "unitary patent package"⁹, which consists of three basic elements, wherein (1) "the Unitary Patent Regulation" and (2) "the Regulation on Translation Arrangements" belong to EU laws, whereas (3) "the Agreement on a Unified Patent Court" is an international treaty. The European Parliament and EU Council, except Italy¹⁰ and Spain which did not participate in "Enhanced Cooperation", adopted the two Regulations¹¹ on 17 December 2012. Twenty-four of the EU member states signed the Agreement on a Unified Patent Court (hereinafter referred to as UPC Agreement)¹² on 19 February 2013. The Unitary Patent Regulation and the Regulation on Translation Arrangements came into effect on 20 January 2013, but are currently unable to be implemented until the UPC Agreement becomes effective — in other words, the two Regulations can only be implemented with the approval of 13 member states including German, France and UK.

By 3 June 2016, ten countries¹³, namely Austria, France, Sweden, Belgium, Malta, Luxembourg, Denmark,

Portugal, Finland and Bulgaria, have approved the UPC Agreement. The Protocol to the UPC Agreement on Provisional Application was signed by seven participating EU member states at the beginning of October 2015. A Court of Appeal of the Unified Patent Court, located in Luxembourg, has been ready for everything.¹⁴ The operation of the Unified Patent Court has entered into a countdown phase. However, due to Brexit, the UK may not be entitled to decide on the Agreement. Then how to bring the entire system into effect ends up with an uncertain question. The expectation on normal implementation of the European unitary patent system in 2017 can hardly be realized.

2. Status of UK in the European unitary patent system

It can be said that the voices of UK are well echoed in the battles in connection with the European unitary patent system. Some settings in the European unitary patent system are pretty advantageous to the UK.

For instance, in December 2011 and May 2012, the Competitiveness Council could not reach a consensus on the finalized text twice, wherein the first focal point in dispute was the seats of the Unified Court, at the time of which London, Munich and Paris were candidate cities.¹⁵ Finally, in June 2012, the Heads of State or Government participating in Enhanced Cooperation reached an agreement on the solution for the last outstanding issue of the patent package, in particular the seat of the Central Division of the Court of First Instance¹⁶, that is, the central division is established in all the three cities¹⁷. London, as one of the three places hosting the central division, will handle patent disputes over human necessities, chemistry and politics.

Further, a language issue always remains one of the most controversial issues in the formation of the European unitary patent system, and is, to a large extent, a factor that made Spain refuse the unitary patent and eventually initiate a unitary patent system by means of "Enhanced Cooperation". However, as one of the filing languages of European patents, English naturally becomes the authorized language of the European unitary patent and one of the litigation languages of the Central Division of the Unitary Patent Court.

Yet, Articles 6 to 8 of the Unitary Patent Regulation (draft) once stipulate direct infringement, indirect infringement and limitations thereof. Some member states, however, suggested to delete Articles 6 to 8 of the Regulation¹⁸ on the grounds that the Court of Justice of the European Union (CJEU) does not make high-quality verdicts in respect of

community trademark and it is doubtful that the CJEU can handle patent-related cases due to the specialization and complexity of the patent law. Such strong challenges mainly come from the UK. The Rt. Hon. Professor Sir Robin Jacob, an ex-judge in the Court of Appeal of England and Wales and a professor at University College London (UCL), frankly said that "I know of no one in favour of involvement of the CJEU in patent litigation".¹⁹ The UK is one of the three countries that are decisive in approval of the UPC Agreement, so there is significant pressure for making it into reality²⁰. As a result, a compromise solution was made in December 2012: the previous Articles 6 to 8 are replaced by Article 5a (current Article 5); according to Article 5(1), the unitary patent owner is entitled to prevent a third party from implementing some "conducts" (apart from exceptional circumstances) in the member states where the patent is protected, and Article 5(3) stipulates that these "conducts" shall be subject to regulation by the laws of corresponding member states. Meanwhile, infringing conducts and exceptions are prescribed in Articles 25 to 27 of the UPC Agreement. In doing so, the EU court can still examine the application of the provisions regarding infringement in the UPC Agreement,²¹ but the EU court's jurisdiction is substantively limited as compared with the previous unitary patent solution, to ensure that expert and transnational ruling groups are still the court of first instance and final appeal in the field of European patents.²² Some scholars deem that the model is ridden by political compromise and mistrusts in the European Court of Justice (ECJ).²³²⁴

In all, the UK is one of the dominant countries in implementing the European unitary patent system, and the implementation of that system is more favourable to the UK. Thus, the UK has decided to add the provision related to authorising the ratification of the UPC Agreement in the new IP Act, which became effective in October 2014²⁵, and signed the Protocol to the UPC Agreement on Provisional Application in October 2015.

3. Future tendency of Brexit and European unitary patent

Actually, it is highly likely that the UK will approve the UPC Agreement by the end of 2016. With the surprising outcome of Brexit, the UK itself is unable to decide whether or not it can still participate in the European unitary patent system even if it is its desire to remain in the European unitary patent system.

One week later after the UK's vote to leave the EU, in

the 17th meeting of the Preparatory Committee of the Unified Patent Court held in June 2016, the Preparatory Committee and the EPO Select Committee have declared this in a joint statement: "last week's vote in the UK in favour of leaving the EU has given rise to questions concerning the future of the Unified Patent Court and the Unitary Patent Protection. At this stage it is too early to assess what the impact of this vote on the Unified Patent Court and the Unitary Patent Protection eventually could be. This will largely depend on political decisions to be taken in the course of the next months. It has to be recalled that for the time being the United Kingdom remains a Member State of the EU and a Signatory State of the Unified Patent Court Agreement. Pending more clarity about different possible scenarios the chairmen of the Preparatory Committee and the Select Committee are of the opinion that the work dedicated to the technical implementation should continue to progress as envisaged, in accordance with the mandate of both Committees and in line with the clear wish of the user community to bring the Unified Patent Court and the Unitary Patent into operation as soon as possible".²⁶ In 2 August 2016, the UK IP Office released relevant Guidelines to make a similar statement: "the UK remains a Contracting Member State of the Unified Patent Court at present. We will continue to attend and participate in UPC meetings in that capacity. There will be no immediate changes."²⁷

According to the above statements, all of the UK, the Preparatory Committee of the Unified Patent Court and the EPO are active in participating in and boosting the implementation of the European unitary patent. It may be too early or over-pessimistic to say that the UK's referendum outcome will lead to the perishment of the European unitary patent. Undoubtedly, however, the outcome indeed casts lots of uncertainties over the future of the European unitary patent. Both the UK and the EU are in the dilemma as to whether the UK shall still comply with the UPC Agreement or not.

On the one hand, theoretically speaking, the UK is the contracting state of the UPC Agreement, so the Brexit does not affect its position as the contracting state of the Agreement. The Agreement is an international treaty, instead of the EU law, so the UK can still choose to remain a member of the Agreement and one of the three necessary countries to decide when the Agreement shall come into force even though the UK finally leaves the EU (it is expected that the UK will complete its formal exit from the EU by the end of

2018). The two regulations in the unitary patent package pertain to EU law, the UPC Agreement also contains the principle respecting the primacy of EU law and the EU court still has jurisdiction over cases related to unitary patents, so the premise for participation in the European unitary patent system and the Unified Patent Court is to be a membership of the EU.²⁸ If the UK after leaving the EU still remains in the system of the unified patent court, both the UK and EU will be legally in an embarrassing situation. As there are many uncertainties at present, it is nearly impossible that the UK will approve the UPC Agreement by the end of 2016 as scheduled.

On the other hand, if the UK selects to exit the Agreement immediately, the entry into force of the Agreement is not dependent on the approval of the UK any longer. In this case, the series of benefits the UK has won in the unitary patent system will disappear. Once the UK exits the Agreement, the UPC Agreement must be rectified by deleting the UK from the list of the necessary countries in deciding the entry into force of the Agreement and the London Central Division should be assigned to other member state, which will certainly give rise to a fierce political battle again. What's worse, three years after the signing of the Agreement, only ten out of 25 signatory states have ratified the Agreement. Once the Agreement is amended, the newly amended Agreement may have to be ratified by those member states, which will greatly prolong the entry into force of the Agreement. That is undesired by both the UK and the EU. Furthermore, if the unitary patents have no effect on the UK, their value will be extremely decreased. If the currently determined standards²⁹ for patent annuities will not be lowered, then the attraction of filing unitary patents may be on the decrease. If London is no longer one of the Central Divisions of the Unified Patent Court, it may reduce the expectations on the Unified Patent Court from the Industry (especially, Industry from the UK). In doing so, the enterprises in the UK or even other countries would rather select to support the current European patent system, instead of the new unitary patent system. If this is the case, the necessity of the European unitary patent system will be significantly compromised, which is undesired by other countries currently participating in the unitary patent system.

It is possible that the UK still participates in the unitary patent system after Brexit? Although it is not completely impossible, there still exist great difficulties. It depends on the political will of the UK and other member states participat-

ing in the unitary patent system, as well as the legal stance held by the EU court. According to the opinion of the EU court³⁰, the participating member states of the UPC Agreement are limited to the EU member states³¹, which explains why the non-EU countries, such as Sweden, Norway, Iceland and Turkey, do not participate in the European unitary patent system. If the UK after Brexit still remains in the unitary patent system, it is obviously contrary to the above opinion. If the EU has to make such an arrangement, it will face political and legal tests, and the arrangement certainly needs a period of time for negotiation and is subject to examination on its validity by the EU court. Even if the EU court finally accepts such an arrangement, it would be impossible to complete the procedure within two or three years, such that the time for initiating the European unitary patent will also be greatly prolonged. Of course, it would be a good thing if such an arrangement can be finally achieved. That's because the arrangement at present is subject to criticism due to the fact that if the non-EU member states are excluded from the unitary patent system, the number of states where patents can be granted by a central mechanism is actually reduced, which is disadvantageous to patent applicants in terms of economy and efficiency. If the UK after Brexit can still participate in the European unitary patent system, then the non-EU states, like Sweden, can also participate in the European unitary patent system, which can instead enhance the attraction of the unitary patent system.

Surely, the best result will be that the UK can ratify the UPC Agreement in a short period so that the Unitary Patent System and the Unified Patent Court will be initiated as scheduled in 2017. Nevertheless, if the European unitary patent system cannot be implemented on time and the Unified Patent Court cannot achieve the unitary protection of European patents across the EU as soon as possible, then the EPO may face a new opportunity to re-initiate the "European Patent Judiciary (EPJ)". Ever since 1970s, the EPO has been only in charge of granting European patents without attending to the enforcement and protection of patents in respective countries, so the EPO was urged to establish a "cross-border enforcement system of European patents" after 2000, draft the European Patent Litigation Agreement (EPLA) (filed in 2003 and amended in 2005) and get prepared to set up a special court of first instance and second instance in 2003 (the so-called "European Patent Judiciary") so as to replace domestic courts to hear all the cases

related to infringement and invalidation (exclusive of licensing) of European patents. Just due to the EU's own will of establishing its unified patent protection system, the EPO's plan was stopped by the EU to render the enforcement system fruitless. If Brexit leads to the prolonged implementation of the European unitary patent system, we cannot rule out the possibility that the EU turns to support the EPO's restart of "cross-border enforcement system" on the basis of the current UPC Agreement.

II. Impact on European patents and IP across EU

Although Brexit may postpone the implementation of the European unitary patent, the Chinese enterprises can still apply for European patents through the current European patent system for the sake of protection of inventions. Even if the UK is no longer the EU member, it is still the member of the EPC and the Chinese enterprises can still seek protection of their inventions in the UK by way of applying for European patents with the EPO.

In a short run, as far as trademarks and designs are concerned, the Chinese enterprises can still seek protection in the UK by applying for registration of EU trademarks and EU designs with the Office for Harmonization in the Internal Market (currently named EPO), since the UK has not officially exited from the EU. Once the UK is officially separate from the EU, there are little chances for the Chinese enterprises to seek continuous protection of their EU trademarks and EU designs from the UK (unless the UK would like to do so). But for those EU trademarks and EU designs obtained prior to the UK's exit, it is expected that the UK will protect them by converting them into the UK registered trademarks or registered designs through transitional law. The official response from the UK IP Office is that "the government is exploring various options and we will be consulting users of the system about the best way forward."³²

In a long run, Brexit will affect not only the territorial power of the EU IP, but also the building of the EU IP system. As a representative country of the Anglo-American Law System, the UK plays a vital role in the formation of the EU IP law. IP-related EU law (regulations or directives) must coordinate the disparities between the Common Law and the Civil Law. Just because of this, the EU IP law blends the Common Law and the Civil Law in a better manner, which serves as a good reference for IP legislation in China. Once

the UK gives up its membership of the EU, the EU IP authorities may lack voices from the UK. Although there will be less difficulties and fetters for the system coordination when the EU makes relevant laws, the EU IP law tends to be more similar to the Civil Law and the German Law, which may not be a good thing for mutual learning and integration between legal systems.

III. Impact on the UK IP system

The IP system of the UK, which is a member of the EU, has an influence on relevant EU laws and shall also comply with relevant directives and regulations of the EU. Once the UK leaves the EU, it would be a problem as to how to deal with the relationship between the IP-related EU laws, relevant verdicts of the EU courts and the relevant UK laws. In this regard, the UK IP Office holds a view that “the continued effect of EU Directives and Regulations following our exit from the EU will depend on the terms of our future relationship”.³³

For instance, to avoid dual protection of practical artworks as copyright and design, Article 52 of Copyright, Designs and Patents Act 1988 of the UK stipulates that once (artistic) work is mass manufactured, the protection period thereof is reduced to 25 years after its first publication. After the end of the period of 25 years, the work may be copied by making articles of any description, or doing anything for the purpose of making articles of any description without infringing copyright in the work. In *Flos v. Semeraro*, the ECJ clearly stated in 2011 that the protection period of 25 years under the UK law does not meet the requirement of the EU laws. Therefore, the UK officially announced in April 2013 that Article 52 will lapse by 6 April 2020. We will wait and see whether the UK will still make amendments to its Copyright, Designs and Patents Act according to the verdicts of the ECJ after Brexit.

With the UK's withdrawal from the EU, there may occur issues as to whether the UK IP professionals are still entitled to apply for trademarks and designs on behalf of their clients at European Union Intellectual Property Office (EUIPO), and whether the exhaustion of IP rights within the EU is still effective in the UK.

All in all, the UK's referendum on its membership of the EU greatly impacts the European integration process and also casts many uncertainties on the IP integration process across the Europe. Once Brexit becomes reality, it may un-

avoidably affect the current EU IP legal system, as well as the IP management and business strategies of Chinese enterprises which seek protection in the UK through EU IP (especially trademarks and designs) registration route. Although it is still early for the UK to leave the EU legally, Chinese enterprises and IP practitioners shall keep a close eye on this process, in particular the subsequent changes of the European unitary patent system so as to be well prepared for the future. ■

The author: Professor at the Law School and IP Institute of Tongji University, and researcher of German Studies Center of Tongji University)

¹ This paper is supported by Tongji University under “Fundamental Research Funds for Central Universities”.

² The European Patent Convention (EPC) was signed in 1973 and amended in 1991 and 2000 respectively. The European Patent Office was established under the EPC and was empowered to grant the European patents. The European patents have no uniform effects across the European Community, but only effects of a national patent.

³ Proposal for a Council Regulation on the Community patent, 2000/C 337 E/45, Text with EEA relevance, COM(2000) 412 final, submitted by the Commission on 1 August 2000.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2000:0412:FIN:EN:PDF>.

⁴ In the case of *Epilady*, the verdicts of the courts in German, Austria and Netherlands upheld infringement, whereas those of the courts in the UK and Italy did not uphold infringement. See David Perkins & Garry Mills (1996). *Patent Infringement and Forum Shopping in the European Union*. *Fordham International Law Journal*, Volume 20, Issue 2. Retrieved from <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1522...ilj>.

⁵ Community Patent, also known as a European patent for the Common Market. In 1975, nine countries of the European Economic Community signed the Community Patent Convention (CPC), in order to create community patents commonly effective across the Community. The patents are only subject to the CPC after being granted and are independent from national patents of member states. Because the member states of the European Community were unwilling to give up the national sovereignty or jurisdiction over civil disputes and gave no consideration to the interests of the patent applicants, the goal of establishing a unitary patent system for the common market was unable to be achieved.

⁶ In the 21st century, the CPC cannot be ratified, so the EU turned to

set up a community patent system by way of “EU regulations” for the reason that the Community legislation does not need approval of the member states. In 1 August 2000, the EU Commission submitted the Proposal for a Council Regulation on the Community patent for the purpose of creating a new unified patent right, which is similar to the current Community trademark and Community design. The proposal was laid down in 2004 because it was not passed by the Competitiveness Council of the EU communication.

⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Europe 2020 Flagship Initiative, Innovation Union, COM(2010) 546 Final, (Oct. 6, 2010). Retrieved from https://ec.europa.eu/research/innovation-union/pdf/innovation-union-communication_en.pdf.

⁸ Enhanced Cooperation is the procedure set out in Article 20 of the Treaty on European Union and Articles 326 and 327 of the Treaty on the Functioning of the European Union, and can be implemented even though one or more member states do not agree and be applied to the fields that need consensus. Generally speaking, all the member states of the EU must reach a consensus on the patent language system. However, the “Enhanced Cooperation” procedure made the “translation arrangement” regardless of the opinions of Spain and Italy. Enhanced Cooperation is in nature a political choice, although subject to regulation of some laws. Within the boundary of such laws, the member states participating in cooperation may do things that are against the wishes of nonparticipants.

⁹ Proposal for a Regulation of the European Parliament and of the Council implementing Enhanced Cooperation in the area of the creation of unitary patent protection - Analysis of the final compromise text, Brussels, 1 December 2011, 17578/11. Retrieved from https://www.unitary-patent.eu/sites/www.unitary-patent.eu/files/Council_Proposal_for_Regulations_17578_11_1_December_2011.pdf.

¹⁰ According to the latest news, Italy officially joined in “Enhanced Cooperation” in October 2015. Retrieved from http://www.sipo.gov.cn/wqyz/gwdt/201510/t20151029_1195462.html.

¹¹ Regulation (EU) No 1257/2012 of the European Parliament and of the Council of 17 December 2012 implementing Enhanced Cooperation in the area of the creation of unitary patent protection, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32012R1257>. COUNCIL REGULATION (EU) No 1260/2012 of 17 December 2012 implementing Enhanced Cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements. Retrieved from <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32012R1260>.

¹² Agreement on a Unified Patent Court. Retrieved from <http://www>.

unified-patent-court.org/images/documents/upc-agreement.pdf. Notices from European Union Institutions, Bodies, Offices and Agencies, Council Agreement on a Unified Patent Court, (2013/C 175/01). Retrieved from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:175:0001:0040:EN:PDF>.

¹³ Retrieved from <http://www.consilium.europa.eu/en/documents-publications/agreements-conventions/agreement/?aid=2013001>.

¹⁴ Unitary Patent and UPC: Progress Report (October). Retrieved from <http://www.managingip.com/Article/3498642/Unitary-Patent-and-UPC-Progress-Report-October.html>.

¹⁵ Press Release, 3133rd Council meeting, Competitiveness (Internal Market, Industry, Research and Space) Brussels, 5 and 6 December 2011, 18115/11. Retrieved from http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/intm/126579.pdf.

¹⁶ European Council 28/29 June 2012, Conclusions, Brussels, 29 June 2012, EUCO 76/12. Retrieved from http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/131388.pdf.

¹⁷ Brussels, 29 June 2012, Commissioner Barnier welcomes the European Council’s agreement on the seat of the Unified Patent Court-the final element in the patent package. Retrieved from http://europa.eu/rapid/press-release_MEMO-12-509_en.htm, quoted from http://fedtrust.co.uk/wp-content/uploads/2014/12/Radcliffe_Unitary_Patent_Report.pdf.

¹⁸ ~FACTSHEET~ The long road to unitary patent protection in Europe, 7 DECEMBER 2012. Retrieved from http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/intm/134393.pdf. On 28 June 2012, the heads of state or government of the participating member states also suggested the co-legislators, the European Parliament and the EU Council, to delete articles 6 to 8 of the regulation implementing Enhanced Cooperation in the area of the creation of unitary patent protection.

¹⁹ The Rt. Hon. Professor Sir Robin Jacob. Opinion on the proposal to create a Unified Patent Court and Unitary Patent, 2 November 2011. Retrieved from <http://www.eplawpatentblog.com/eplaw/2011/11/eu-prof-sir-robin-jacob-opinion-on-unified-patent-court-and-unitary-patent.html>.

²⁰ Ingve Björn Stjerna, Unitary patent and court system - No “Light on the Horizon”, 26 November 2012. Retrieved from http://www.stjerna.de/index_en_html_files/Stjerna,%20No_light_on_the_horizon.pdf.

²¹ Hanns Ullrich: Select from Within the System: The European Patent with Unitary Effect, Max Planck Institute for Intellectual Property & Competition Law Research Paper No. 12-11, at 42. Retrieved from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2159672.

²² A Unified Patent Court, as a common court for the member states under the framework of the EU laws, is still subject to the regulation of the preliminary referral procedure under Article 267 of the Treaty on the Functioning of the European Union. It may request the EU court to make a preliminary ruling as to the application of the EU law.

²³ The Court of Justice (ECJ), founded in 1952, belongs to a part of the EU court and it is the supreme court in the EU in the matters of EU law. The Court of Justice of the European Union (CJEU) is generic term of EU courts, and was originally established as the Court of Justice of the European Coal and Steel Communities and was renamed the Court of Justice of the European Communities (CJEC) in 1957. With the entry into force of the Treaty of Lisbon in 2009, the court system obtained its current name (CJEU). The General Court was created in 1989 and the Civil Service Tribunal was created in 2004. The General Court was originally known as the Court of First Instance for the purpose of alleviating the burden of the Court of Justice.

²⁴ Thomas Jaeger: What's in the Unitary Patent Package?, Max Planck Institute for Innovation & Competition Research Paper No. 14 - 08, p14. Retrieved from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2435125.

²⁵ Principal developments since signature of the Unitary Patent Court Agreement. Retrieved from <http://www.lexology.com/library/detail.aspx?g=40aec535-f42f-4f41-b21c-f93edb2d1d05>.

²⁶ Communication from the Chairmen of the UPC Preparatory Committee and the EPO Select Committee dealing with the Unitary Patent. Retrieved from https://www.unified-patent-court.org/sites/default/files/communication_from_the_chairmen.pdf.

²⁷ IP and BREXIT: The facts on the future of intellectual property laws following the recent Referendum decision, 2 August 2016. Retrieved from <https://www.gov.uk/government/news/ip-and-brex-it-the-facts>.

²⁸ The Unified Patent Court finally adopts the mode similar to the Benelux Court of Justice. Indeed, the latter being a court common to a number of Member States and, situated, consequently, within the judicial system of the EU, its decisions are subject to mechanisms capable of ensuring the full effectiveness of the rules of the Union. See Creating a Unified Patent Litigation System-Orientation debate, Brussels, 26 May 2011, 10630/11. Retrieved from <http://www.managingip.com/pdfs/st10630.en11.pdf>.

²⁹ On 24 June 2015, the Select Committee of the Administrative Council of the EPO endorsed, with the required majority, the European Patent Office's "True Top 4" proposal for a set of uniform renewal fees applicable to the unitary patent. The proposed fees covering the territory of the 25 EU member states participating in the unitary patent correspond to the sum total of the renewal fees currently paid for the four countries in which European patents are most frequently validated to-

day (Germany, France, UK and the Netherlands). This complies with the status quo of the European patents effective in the national phase to the maximum extent, thereby providing the applicants with actual favours. The data showed that 64% of the current European patents after grant is only effective in not more than 3 countries, 77% thereof is effective in not more than 4 countries, and only 7% thereof is effective in five countries. See Business-friendly fee pattern adopted for the unitary patent. Retrieved from <https://www.epo.org/news-issues/news/2015/20150624.html>.

³⁰ Opinion 1/09 of 8 March 2011, The Court rules that the plan to create the European Patents Court is incompatible with Union law. http://ec.europa.eu/dgs/legal_service/arrets/09a001_en.pdf.

³¹ Creating a Unified Patent Litigation System - Orientation debate, Brussels, 26 May 2011, 10630/11. Retrieved from <http://www.managingip.com/pdfs/st10630.en11.pdf>.

³² See supra note 27.

³³ See supra note 27.