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Brexit imperils European Unified Patent Court - experts

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(Reuters) - Britain's stunning vote to leave the European Union rattled global markets and caused companies to reconsider their presence and investment in the country. It could also doom a decades-long effort to set up a Europe-wide system for patent enforcement mere months from its launch, scholars and attorneys said.

After fraught negotiations that lasted years, the so-called Unified Patent Court is slated to open next May, with one of its main divisions in London. Proponents say the court would give companies a more convenient, centralized place to enforce their patents in Europe, instead of having to litigate in each country individually, saving time and money and avoiding conflicting judgments.

Brexit has thrown those plans into disarray. And while lawyers are primarily advising clients of a possible delay to the court's introduction, many are suggesting a graver outcome: The collapse of the project entirely. Britain had not yet ratified the treaty bringing the new court into force.

"If Britain does not ratify, the thing as it stands will probably fail all together," said Sir Robin Jacob, a professor of law at University College London and a key advisor to the new patent court, in a phone interview.

Jacob, who was also a former judge on the Court of Appeal of England and Wales, said the unified court would be far less attractive as a forum for companies if the United Kingdom, one of the biggest economies in the world, does not participate.

European patents are obtained in a single place, the European Patent Office in Munich, Germany, a system that will not be affected by Brexit since the office is not a European Union entity.

The patents, however, must be validated, infringement cases filed and injunctions obtained, in each European country individually. The unified court sought to stitch this fragmented system together.

#### FORTY YEARS IN THE MAKING

Though the idea for such a court has been around since the 1970s, the Unified Patent Court has come closer to reality than any previous effort.

During the negotiations some countries expressed reservations over how the court would be set up, or the languages that would be used. Spain, for instance, is not a participant. But 25 European Union member states have signed the accord.

Ten have ratified the agreement so far. A minimum of 13 are needed to greenlight the court's opening, including Germany, France, and Britain, the three countries with the most patents in force. France has already ratified, while Germany and Britain were expected to do so in the coming months.

Legal experts say that in spite of the Brexit vote, Britain has not yet begun the Article 50 proceedings to leave the European Union and can still legally ratify the treaty as a current member of the European Union. Whether politicians would want to be part of such a European-centered project is a different matter, to be decided by the government under new prime minister Theresa May.

Several attorneys' groups, including the Intellectual Property Lawyers' Association, which has members in England and Wales, are lobbying the British government to ratify the accord. On Monday, the European Patent Litigators Association sent a letter to the British government urging for the system to go ahead.

If Britain decides not to ratify the agreement, the treaty would have to be revised, said Alexander Ramsay, chairman of the committee in charge of preparing the court's launch, in a phone interview.

Among the topics for revision, he said, are untethering Britain's participation to the court's establishment, and moving the court's London division. The other main divisions are in Paris and Munich, and most observers say London's bench would transfer to Milan, Italy.

New York-based patent attorney John Pegram said renegotiating the accord would be protracted and could fail outright. "Compromises are houses of cards. Pull out the card at the bottom and what happens? The UK is one of the cards that everything else is balanced on."

Kevin Mooney, a London-based attorney who led the group that drafted the court's rules, agreed. "One cannot be confident that it will be renegotiated. It has taken 40 years to get where we are," he told Reuters.

Yet, still some insiders see cause for optimism. Ramsay said the fact that a unified court has been so long desired is a reason to believe it will not fail.

"Having seen this project from the inside, I'm quite certain it will survive. It would be a shame when we are so close," he said, adding that the preparatory committee is continuing as "business as usual," at least for now.

As it stands, the unified court is open to European Union member states only, Ramsay said.

But some legal scholars have opined that since the court would not be an official European Union institution but a treaty among member states, Britain could remain a member of the unified court even if it exited the union.

One way, for instance, would be to formally agree to abide by European Union law as it relates to the court.

But Jacob said that it's an open question whether anybody will push for this option. "That depends on the political will."

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