

A photograph showing a group of people's hands reaching out to hold a white baton, symbolizing teamwork and partnership. The image is tilted and partially obscured by white geometric shapes.

# Legal Aspects – how to keep the UK as Partner in the Patent Package

Prof. Dr. Winfried Tilmann

Paris, July 6, 2016

# Content

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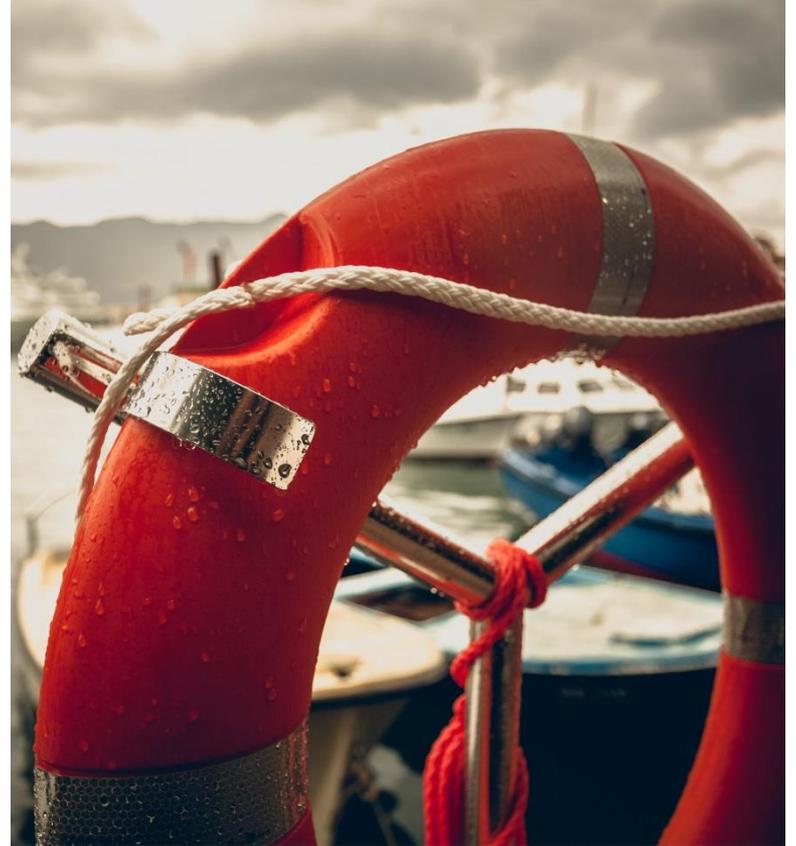
- I. UK ratification - political arguments for a UK ratification
- II. UPCA: legal aspects facing UK leave
- III. EPUE-Reg: legal aspects facing UK leave
- IV. Timetable

# I. UK ratification - political aspects

## 3 Theses

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- Further UK participation: Question of political will.
- No contradiction to Brexit vote.
- Legally possible without much ado.



# UK ratification – pro's

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- UK is still an EU-MS
- Only needed: deposition of ratification instrument
- UK arguments for ratification despite Brexit vote:
  - UPCA: international treaty, not EU law
  - UK local division and pharma section of central division remain in London.
  - UK judges, UK practitioners in the system
- Other signatory states: UPCA and EPUE-Reg without UK would have 30% less value.

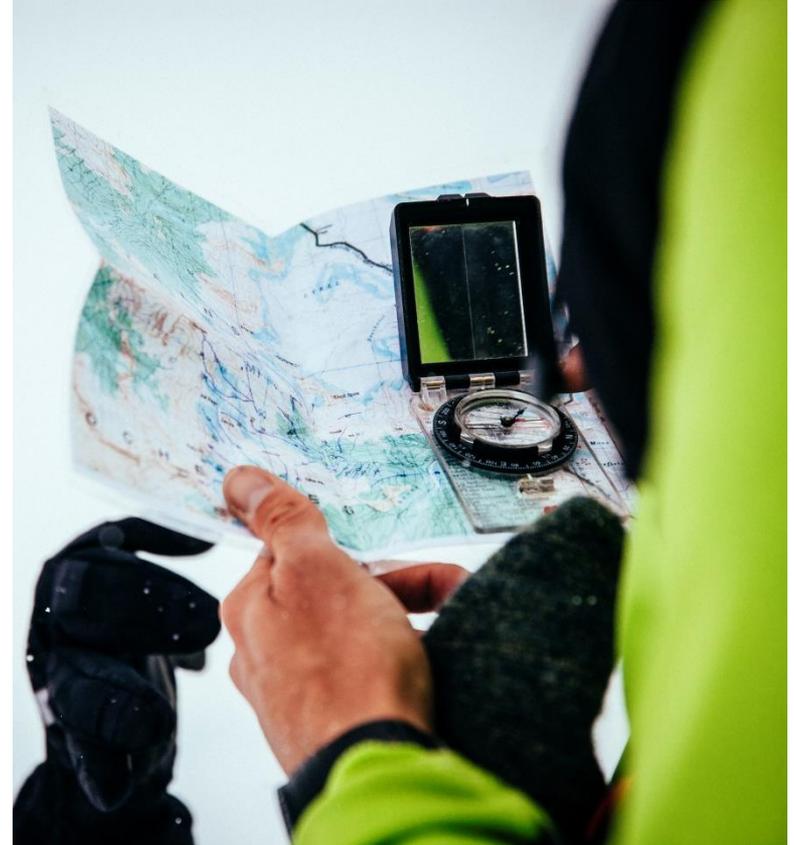
**The Brexit vote, as such, has no legal effect!**

## II. UPCA: legal aspects facing UK leave

# UPCA – Art 84 problem

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- Art 84: only EU-MS may ratify and become CMS.
- Implied: CMS must remain EU-MS.
- If UK leaves EU: cancellation, but nobody would cancel
- Would that already solve the problem?
- Change of Art 84 necessary (basis: Art 149a EPC)



# UPCA: The precise question under Union law

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- UPC: common court of EU-MS (Art 71a ff Brussels-Reg)
- Would UPC continue to be that after UK leave?
- Opinion 1/09: Benelux Court model praised
- But things have changed after Opinion 1/09:
  - Art 21 and 22 UPCA
  - Art 71a ff Brussels-Reg
- Problem: national UK Court in the transitional period
- Confirmation in the exit-agreement would be helpful.
- In that case: Art 87 (2) UPCA (Administrative Committee, no ratification needed).

### III. EPUE-Reg: legal aspects facing UK leave

# EPUE-Reg after UK leave

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- Up to legal exit; normal application
- After the legal exit: Extension of unitary effect by agreement (Art 142 EPC)
- Result: Two kinds of unitary effect (Union law, international law)
- Confirmation by exit-agreement

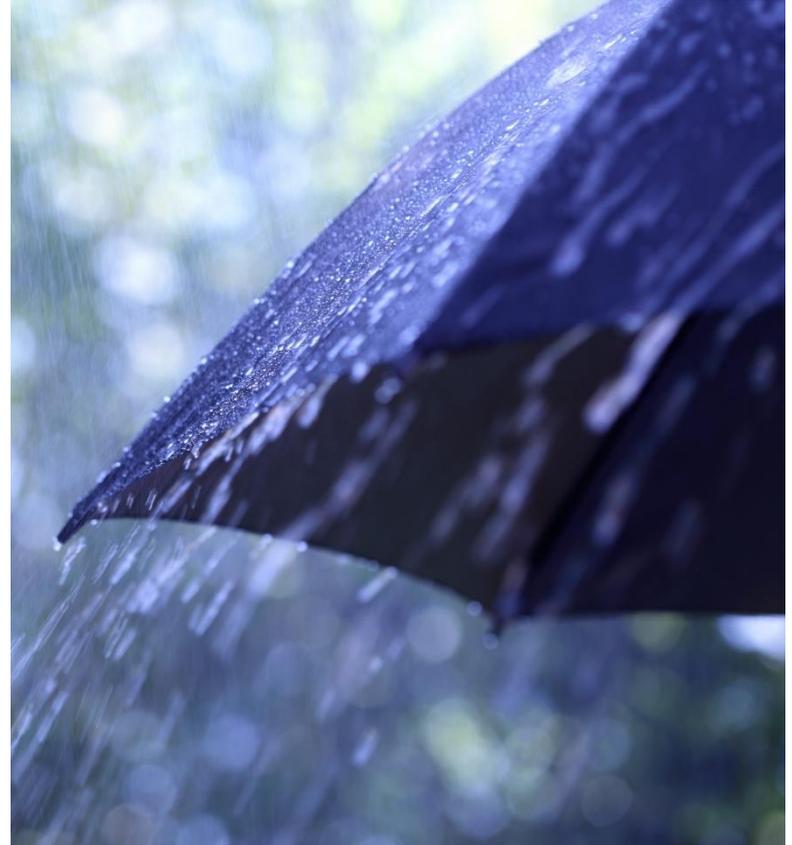


## IV. Timetable

# Timetable

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- Deposition of ratification instrument UK
- Administrative Committee: Protocol to UPCA:
  - Change of Art 84 UPCA (basis: Art. 149a(1)(a) EPC)
  - Extension of unitary effect (basis: Art 142 EPC)
- Confirmation by exit-agreement would be helpful and would make use of Art 87(2) UPCA possible.
- Result: UK safe and dry under the legal umbrella.



## Prof. Dr. Winfried Tilmann

Professor Dr. Winfried Tilmann has been active in the field of intellectual property law for almost 40 years. His practice encompasses all substantive and procedural aspects of patent litigation including all issues of patent infringement and validity as well as patent entitlement and inventorship disputes.

In 1979 Winfried joined an Intellectual Property specialist law firm in Düsseldorf (von Falck & Tilmann) and was admitted to practice in the Düsseldorf Court of Appeal (Oberlandesgericht Düsseldorf) specialising in appeals work in Intellectual Property matters. In 1999 von Falck & Tilmann merged with the international law firm of Lovells where Winfried was a partner until 2005. He now practices as Senior Of Counsel in that firm. He is a member of the Law Faculty of Heidelberg University and of the UPCA Expert Group. He published a number of books and many articles.

Winfried's activities focus mainly in the area of patent law, where he has litigated numerous patent infringement cases. He has also been involved in a large number of invalidity actions before the Federal Patent Court (Bundespatentgericht) and the Federal Supreme Court of Justice (Bundesgerichtshof), and has appeared repeatedly before the European Court of Justice in Intellectual Property matters.



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A photograph showing several people's hands reaching out and holding a white, cylindrical object, possibly a baton or a piece of equipment, in a group setting. The image is tilted and partially obscured by white geometric shapes.

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