

Unified Patent Court in jeopardy, trade secrets better protected, and EMA set to move

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In 2018, the EU-wide harmonisation of trade secret protection and the uncertain future of the Unified Patent Court will remain hot topics. In the Netherlands, the spotlight will also be on the relocation of the European Medicines Agency to Amsterdam, which is planned in early 2019. Furthermore, the European Court of Justice is likely to consider a number of important intellectual property cases, and we can expect new IP legislation at both the EU and national level.

This article is part of our Crystal Ball Gazing series, in which we look ahead at possible developments in 2018.

Trade secret protection in the EU intensified

The EU [Trade Secrets Directive](#), which aims to standardise national laws against unlawful acquisition, disclosure and use of trade secrets, was adopted in 2016. As we have yet to see many implementation instruments and member states only have until 9 June 2018 to implement the directive, we expect to see interesting developments in this area during the first half of 2018. For more information, also on the recently published Dutch implementation proposal and tips on trade secret strategies, refer to our earlier In context [article](#).

Uncertainty around Unified Patent Court launch

It is hard to predict the launch of the UPC and unitary patents, but 2018 will undoubtedly be another interesting year for this project. At the moment, the countries behind the delay – or perhaps even the abandonment – of the UPC launch are Germany and the UK. Without [ratification](#) of the [UPC agreement](#) and the [Protocol](#) on Privileges and Immunities of the UPC by these countries and one additional country, the [provisional application phase](#) cannot start, preventing the new system from entering into force. In Germany, the ratification process has been suspended until the Constitutional Court rules on the UPC's compatibility with the German Constitution. There has been speculation that a ruling will be issued in the end of 2018, but if an oral hearing is scheduled, this may not happen before 2020. The ratification process in the UK, however, seems to be on track: the ratification is cautiously expected for the first quarter of 2018.

For more information, especially on the background of the UPC and unitary patents, refer to our previous In context [article](#).

EMA

The European Medicines Agency, a decentralised agency responsible for the scientific evaluation, supervision and safety monitoring of medicines in the EU and currently located in London, will relocate to Amsterdam due to Brexit. As the move is

[planned](#) for 30 March 2019, the EMA and the Dutch authorities will use 2018 to prepare for the move. The relocation is expected to have a positive impact on the life sciences sector in the Netherlands.

Guidance from Luxembourg

Depending on the ECJ's workflow, 2018 may bring some important clarification in pending cases on:

- copyright protection for a certain taste ([Levola Hengelo](#))
- shape marks and acquisition of distinctive character (the famous [EUIPO/Mondelez](#) KitKat case)
- shape marks and invalidity grounds (the perhaps even more famous [Louboutin/Van Haren](#) red high-heeled sole case in which Advocate General Spzunar has already provided his [opinion](#))
- rebranding and debranding of goods ([Mitsubishi/Duma](#)), and
- supplementary protection certificates ([Abraxis Bioscience](#) and [LN](#)).

New or pending legislation

Several European proposals have entered into force, including a [regulation on cross-border portability of online content services](#). Two other European proposals – for a [regulation](#) laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, and for a [directive](#) on copyright in the Digital Single Market – are currently subject to discussions within the European Council or its preparatory bodies.

In September 2017, the Commission also adopted a proposal for a [regulation](#) aimed at removing obstacles to the free movement of non-personal data in the EU. The proposal is currently being discussed within the European Council or its preparatory bodies.

In the Netherlands, two bills relating to gambling that we flagged last year are still pending; the [first bill](#) relates to the demerger and sale of Holland Casino, and the [second bill](#) introduces a licensing regime for online gambling. It remains to be seen which of these proposals will become legislation in 2018.