

How will “Brexit” affect IP?

The short answer is that the effect on patents will be small and for designs and trademarks the effect will be more significant, but that any change will not happen until the UK actually leaves the EU, which is likely to take several years.

The historic vote in the UK to leave the EU will have very wide-ranging implications but the UK will remain as a full member of the EU while an exit package (a “Brexit”) is negotiated. That process, which is provided for by Article 50 of the Treaty on European Union, is expected to take at least two years, and could be much longer. Some of the potential ramifications for the IP world are explored below.



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The official position of the UK government in the lead-up to the vote was that the official policy was to remain in the EU, and therefore there would be no planning, at least in public, for the event of the outcome being a vote to leave. There is currently no official view of how the UK’s relationship with the EU should be structured, but given the huge importance of trade between the UK and the EU to both sides it is in everyone’s interest to make sure the process is handled carefully and that a mutually acceptable settlement is reached. We expect that the rights of IP owners will be fully respected as any changes to the regime of IP protection are implemented.

Patents

The primary functions of the UK Intellectual Property Office (UKIPO) of granting UK patents and registering UK designs and trademarks will continue unchanged. The European Patent Office (EPO) is not an EU institution and the prosecution of European patents at the EPO will also be effectively unchanged. The rights of representation at the EPO of UK-based European Patent Attorneys will remain the same and it will of course continue to be

possible to designate the UK on European Patents in the same way as for other non-EU EPC-contracting states, such as Norway and Switzerland.

The commencement of the long-awaited Unitary Patent and Unified Patent Court systems is likely to be delayed. After the UK has left the EU, those systems will very likely not extend to the UK and the UK’s national court system will have sole jurisdiction over UK patent disputes. Despite that, UK-based European Patent attorneys will have the right to represent clients in the Unified Patent Court, if and when that system comes into force.

Supplementary Protection Certificates

Supplementary Protection Certificates (SPCs) are important rights in the pharmaceutical and plant protection industries. SPCs are national rights that exist separately for each EU state. It is expected that the UK SPC regime will continue with little or no change of substance, though the link with the CJEU (the highest appeal court for EU SPC matters) will change.

Trade Marks and Designs

The EUIPO (formerly known as OHIM) is an EU institution and so the eventual departure of the UK from the EU will have more impact on the EU Trade Mark (formerly known as the Community Trade Mark) system and the Community Design system which are administered by EUIPO. The implications for trade mark and design owners will become clearer as the exit negotiations proceed over the next few years. It is of course expected that the UK will enact transitional provisions to

provide continued protection in the UK for any EUTMs (formerly CTMs) or Community designs that are in existence as of the date of actual exit. Those transitional provisions might mean that existing EUTMs and Community designs automatically gave rise to corresponding new national rights in the UK or it may be that owners of existing EU rights will need to re-register their rights in the UK by way of applications submitted to the UKIPO. From the date of actual departure from the EU it will be necessary to seek protection in the UK for trade marks

and designs separately from the EU. Whatever happens in the future, Abel & Imray will of course be on hand to advise on how best to protect marks and designs throughout Europe. The UK's vote to leave the EU has come as a surprise to many, and the after-effects will no doubt continue to be felt in the UK and in the rest of Europe for years to come. Over the next few years there will be much activity in arranging an orderly exit and we in Abel & Imray look forward to keeping you informed of developments.

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