

ALERTS

Intellectual Property Law Alert - Heading For The Brexit: Will UK's IP Brexit Too?

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With the full effect of the June 23 United Kingdom (UK) vote – known as Brexit – to leave the European Union (EU) still unclear, those seeking protection of their intellectual property in the EU and the UK have a varied landscape to navigate. The UK's exit from the European Union will take at least two years and possibly much longer. During that period, EU IP will be protected in the UK just as it is today. The effect on patents is somewhat limited, whereas the impact on trademarks and designs is likely to be more significant.

Even after Brexit, the European Patent Office (EPO) will continue to examine and grant European Patents because the EPO is not an EU body. The EPO is governed by the European Patent Convention (EPC), which already includes the non-EU countries of Switzerland and Norway. Because the UK will remain an EPC member country despite the Brexit, European patent applications will retain the option to be validated following grant in individual countries, including the UK.

What is less clear is the immediate and long-term future of the Unitary Patent and the Unified Patent Court (UPC), which has not yet been ratified by the EU member states. London was slated to have hosted one of the UPC central division courts, but whether that will be likely or even legally possible is now unclear. Germany and Netherlands could decline to pursue the UPC system if the UK were to drop out of the agreement.

What trademark protection will look like in the UK is uncertain in the long term. Currently, there are three avenues for registering trademark protection in the UK:

1. national (UK-only) registration
2. European community-wide registration via the European Trademark (EUTM), framework administered by the European Intellectual Property Office (EUIPO)
3. international registration that designates the UK under the Madrid Protocol framework administered by the World Intellectual Property Organization (WIPO)

The first and third of these registration frameworks will remain unchanged by the Brexit. How and whether the EUTM system will cover the UK is one of many Brexit issues to be negotiated between the European community and the UK. Until these negotiations are completed, the UK will remain a member of the EUIPO, and EUTMs will continue to cover the UK.

To ensure ongoing UK coverage for EUTMs, the EU and the UK may consider provisions such as legal recognition of EUTMs in the UK,

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applications to extend protection of individual EUTMs to the UK, or conversion rights allowing EUTM registrants to file UK national applications that maintain the priority of their EUTM. During the negotiation period, applicants considering filing EUTMs may wish to consider also filing nationally in the UK to preserve their rights should the governmental bodies fail to agree on a protection framework.

Similarly, industrial designs can be protected either through UK national applications or through EU applications. Since design is protected under the EU-administered Hague Agreement, there will likely be a transitional agreement put in place to address how EU registrations will be enforceable in the UK. As with trademarks, EU design registrations will continue to be recognized in the UK at least until the negotiations are concluded.

Given the globalization and cooperation amongst IP-rights examining authorities, it is far more likely than not that EU intellectual property rights will be recognized in and protected by the UK despite Brexit. What remains less clear is the effect that Brexit will have on the economies of Europe and the rest of the world.

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