

The Implications of Brexit on Intellectual Property Rights

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After years of angst and political uncertainty, the United Kingdom officially left the European Union on January 31, 2020, and its departure gave rise to many questions regarding the future of intellectual property rights in the UK. Currently, the UK is in a transition period pursuant to the agreement which provided for the departure of the UK from the EU. The transition period lasts until December 31, 2020, and during the transition period the intellectual property system will continue to operate in the same fashion as when the UK was part of the EU. Afterwards, however, changes will occur that will affect intellectual property rights and the operation of the UK system. The UK Intellectual Property Office (“UK IPO”) has put forth guidance on the implications of Brexit concerning various intellectual property rights, and a summary of the changes is provided below.

Trademarks

Registered EU trademarks will continue to have protection in the UK under EU law until the end of the transition period, at which time registrants’ EU trademark registrations will remain intact and the UK IPO will create separate but identical UK registrations without charge. These UK designations will maintain the same legal status, original filing date, and original priority date. Owners of existing EU registrations will be able to opt out of the UK rights if they do not want to continue to pay the renewal fee in the UK. Those that have *pending* EU trademark applications at the end of the transition period will have nine months to apply for protection in the UK and will retain the original EU filing date and international priority.

International registrations for trademarks and designs which are protected under the Madrid and Hague systems before the end of the transition period and which designate the EU will continue to have protection in the UK. The UK IPO is working on a system for continued protection of international registrations after the transition period.

UK-based trademark attorneys will continue to be able to represent clients before the EU Intellectual Property Office (“EU IPO”) during the transition period, and even after for cases that are ongoing at the end of the period. However, it is unclear whether UK-based trademark attorneys will have the ability to represent clients in new cases in front of the EU IPO post-transition period.

Patents

The European Patent Office (“EPO”) is independent of the EU, and therefore existing European patents covering the UK will continue to be enforceable in the UK. In addition, European patent applications that designate the UK may continue to be filed, and granted European patent applications can continue to be validated in the UK. Unlike trademark attorneys, it is clear that UK-based European patent attorneys will continue to be able to represent their clients before the EPO. What remains unclear, however, is whether the UK will be able to participate in the highly anticipated European unitary patent system (creating a single enforceable European patent) and/or the Unified Patent Court (whose rulings would be applicable in all participating countries).

Copyrights

Copyright is not a registered right in the EU, but rather the determination of whether a copyrighted work receives reciprocal protection in the EU (or the UK) is governed by international treaties on copyright. Therefore, UK copyrighted works will continue to be protected in the EU and vice versa. Since much of UK copyright law is derived from the EU copyright framework, in 2019 the UK introduced copyright regulations to correct references to the EU and to maintain UK copyright law.

While the recent guidance of the UK IPO has addressed the immediate effects of Brexit and provided some clarity, we anticipate that the UK and EU intellectual property systems will continue to evolve in the wake of this massive undertaking.

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