



BREXIT & INTELLECTUAL PROPERTY RIGHTS

While the vote in favour of Brexit will have no immediate effect on Intellectual Property (IP rights), the eventual departure of the UK from the EU will have certain consequences for IP rights. Businesses should ensure that they have a good strategy in place to protect their IP rights once the UK officially departs the EU.

POST BREXIT CONSIDERATIONS

AREA	POTENTIAL IMPACT
Patents	<p>As the system is governed independently of the EU, the EU patent system will remain largely unaffected by Brexit. The European Patent Convention is the body sanctioned with the control and granting of European Patents and does not distinguish between EU and non-EU member states.</p> <p>The majority of the EU Member States are in the process of establishing a new EU-wide patent system (called the Unitary Patent) which would include its own court structure. The Unitary Patent is an EU initiative and on departure from the EU the UK will no longer be eligible to participate without further legislative measures. This means there may be a separate requirement to register a patent in the UK to ensure that it is adequately protected which may increase costs for businesses. The vote in favour of Brexit is likely to postpone the introduction of the Unitary Patent as the legal framework will now need to be amended.</p>
Trademarks	<p>EU Trade Marks (“EUTMs”) were established by EU legislation and give protection to trade marks throughout the EU. For EUTMs to be protected, they must be in use within the EU and may be open to challenge if they remain unused for 5 years. Once the UK officially exits the EU, use of EUTMs within the UK may not be sufficient to protect them in other EU member states. Furthermore, EUTMs will no longer cover the UK and brand owners (if permitted by legislation) may have to convert their EUTM to a UK right. Alternatively brand owners may need to file a separate application for UK trade mark protection to accompany their EUTMs.</p> <p>Pan-European Injunctions based on EUTMs will not extend to the UK once they exit the EU and applicants seeking an injunction will have to file two sets of proceedings, one in an EU member state to prohibit infringement in the EU and another in the UK in respect of the UK infringement. This will increase the costs associated with the litigation.</p>
Designs	<p>Similar to the EUTMs system, the system for Registered Community Designs (“RCDs”) will not cover the UK following Brexit. If permitted by legislation, brand owners will need to convert their RCD in the UK to a national right or alternatively, file a separate application for UK design protection. In addition, unregistered community design rights would only provide protection for the remaining parts of the EU.</p>

NEXT STEPS

The UK will have at least 2 years to negotiate the terms of its exit which allows businesses the time to review and optimise their IP rights. Businesses will need to identify those agreements where the EU is the defined territory as well as supplement their IP portfolio with UK national IP rights. If relevant to their operations, businesses should start using their EUTMs widely (preferably in an EU Member State other than the UK) to ensure that the EUTMs cannot be challenged for non-use. While there is still time to prepare for the Brexit, there is no time like the present to review your IP agreements and rights.

For guidance or advice on Brexit or any other IP matters:
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