

# BREXIT'S IMPACT ON INTELLECTUAL PROPERTY RIGHTS

Jordan Delev, page 103-120

## ABSTRACT

The functioning of the European Union (EU) and its most important component, the Single Market, have been and are being challenged by the United Kingdom (UK)'s decision to leave the EU, popularly known as Brexit. The UK decision to leave the EU, accordingly, reflects not only on the political-trade constellations between the two entities but also has an impact on the rights acquired by private entities (natural and legal persons). Accordingly Brexit has its implications for intellectual property rights that are harmonized within the EU at a high level, and it also has an impact on the unitary intellectual property rights that exist and operate successfully at EU level. The purpose of this paper is to summarize the effects that Brexit has on intellectual property rights, what will be the treatment of already recognized intellectual property rights in the UK, and how future trade relations between the EU and the UK will affect the regulation of these rights. Therefore, the paper compares the existing acts regulating intellectual property rights and the future steps to be taken by the UK with regard to the regulation and transposition of unitary intellectual property rights, as well as an analysis of changes to the UK intellectual property law as a result of Brexit. The paper partially analyzes intellectual property rights including patents, supplementary protection certificates, trademarks, designs, plant variety rights, protected geographical indications, and copyrights.

**Keywords:** Intellectual property rights, Brexit, European Union, United Kingdom



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## **INTRODUCTION**

Many UK intellectual property laws derive from, or are closely integrated with, EU laws. Although the UK has an independent system of administering national intellectual property rights registrations through the UK Intellectual Property Office (UKIPO), EU-wide intellectual property rights such as the EU Trade Marks (EUTM) and Registered Community Designs (RCD) are found in the intellectual property portfolios of many UK organisations. For such UK organisations, it is important to be aware of what Brexit may mean in respect of their registered intellectual property portfolios.

Nonetheless, there are some forms of intellectual property rights that will no longer be available in the UK without specific post-Brexit provision, in particular EU registered trade marks and designs, as well as Protected Designations of Origins (PDOs) and related rights.

IPRs are, of course, particularly important for technology-reliant sectors, including life sciences/pharmaceuticals, information technology (IT), oil and gas and renewables. These sectors are especially interested in patent protection. Brexit may rule out, or at least time limit, the ability of businesses in tech-reliant sectors to rely on the new EU patent enforcement system to enforce EU patent rights in the UK.

EU legislation has driven much of the UK's intellectual property law in recent years. Traditionally intellectual property rights arise on a country by country basis and give rise to national rights. Thus the UK has its own UKIPO, which deals with UK trade mark, design and patent registrations. There is also stand-alone national UK legislation on unregistered designs, as well as highly developed common law principles in relation to passing off, which protect unregistered trade marks and goodwill, trade secrets and confidential information.

EU intellectual property rights are administered by the EU Intellectual Property Office (EUIPO), and deals with EUTMs and RCDs. There is also an EU system relating to unregistered designs. The existing European patent system is a product of the European Patent Convention (EPC) rather than the EU so will be unaffected by Brexit. The EPC system is not truly pan-European, however, as it effectively grants a bundle of national

patent rights in the participating European states, which then require to be enforced on a country-by-country basis.

As a result of Brexit the UK government has made technical changes through legislation in Parliament using powers under the European Union (Withdrawal) Act 2018. The following 6 Statutory Instruments were laid in Parliament between 23 July 2018 and 31 January 2019:

- The Design Right (Semiconductor Topographies) (Amendment) (EU Exit) Regulations
- The Intellectual Property (Exhaustion of Rights) (EU Exit) Regulations
- The Trade Marks (Amendments etc.) (EU Exit) Regulations
- The Patents (Amendment) (EU Exit) Regulations
- The Intellectual Property (Copyright and Related Rights) (Amendment) (EU Exit) Regulations
- The Designs and International Trade Marks (Amendment etc.) (EU Exit) Regulations
- Supplementary protection certificate law

## **1. BREXIT – IN GENERAL**

On 31 January 2020, the UK left the EU. Brexit is a term coined to signify the UK's departure from the EU. Until the Brexit formalization, the EU was an economic and political union involving 28 European countries. The EU allows free trade and freedom of movement for people to live and work in any country of their choice. The UK joined the EU in 1973, at a time when the union functioned as the European Economic Community (EEC). With the implementation of the Brexit deal, UK is the first member state to have left the Union. The UK leaves the Union as a result of a referendum held on 23 June 2016, deciding whether the UK should stay within the EU or whether it should leave the Union. The result of that referendum was a 52%-48% view that the UK should end its membership of the EU. Brexit was originally due to be completed on 29 March 2019. It comes two years after Prime Minister Theresa May submitted on 29 March 2017 the notification of UK intention to withdraw from the EU called on Article 50 of the Treaty on European Union to launch a formal

process of leaving the union and at the same time began negotiations on leaving.

Article 50(1) of the Treaty on European Union provides that any member state may decide to withdraw from the EU. On 23 June 2016, the UK held a referendum on whether to remain a part of the EU. Article 50 provides for a period of up to two years for the UK and EU to negotiate and conclude a withdrawal agreement that also takes into account the future relationship between the UK and the EU. Absent agreement or extension, requiring unanimity, the UK's membership of the EU would therefore cease March 2019. (Brodies, 2017)

Under the leadership of Teresa May, the deadline for leaving the Union was twice postponed as a result of parliament's rejection of a draft agreement on leaving the EU. After Boris Johnson's replacement for Theresa May as prime minister, a third extension was requested as members of parliament disagreed that the Brexit agreement would come into force. The new exit deadline was set for 31 January 2020, three and a half years after the referendum was held. Given that the European Parliament has given the green light, the UK is leaving the EU by agreement. However, this only marks the beginning of the next steps to be taken in the Brexit process. After 31 January 2020, in order to effectively implement the UK Withdrawal Agreement, the UK enters a transition process until 31 December 2020. During this period, trade relations between the EU and the UK will remain the same as long as the two sides negotiate a free trade agreement. At the same time, other aspects of future relations between the EU and the UK, such as law enforcement, data sharing and security, need to be agreed upon during the transition period. If the trade agreement is prepared in time, new relations between the EU and the UK can begin immediately after the end of the transition period. If the trade agreement is not agreed, the UK may face the establishment of a trade relationship without an agreement. That would mean introducing checks and tariffs on British products that would be placed on the EU market.

Brexit has had its implications for trade relations between the EU and the UK to both intellectual property rights and their regulation. Bearing in mind the fact that the UK leaves the EU by agreement in the foreseen transition period, the UK will continue to follow EU rules but will not be

involved in the decision-making process. In this situation, the day of the UK's exit from the EU is considered the last day of the transition period, which would probably be 31 December 2020. This means that, all EU primary and secondary law will cease to apply to the UK from 31 December 2020. The UK will then become a 'third country'. The effects of the UK's withdrawal from the EU will be different for different intellectual property rights. It will be consider the practical effects on: patents, supplementary protection certificates, trademarks, designs, plant variety rights, protected geographical indications, and copyright.

## **2. BREXIT AND INTELLECTUAL PROPERTY RIGHTS**

### **2.1. PATENTS**

Patents can be obtained in the UK through the national route or the European route via the European Patent Office (EPO). Both are unaffected by the UK leaving the EU. An inventor can continue to apply for, and be granted, a patent by the UKIPO. The requirements and processes for grant will not change, nor will the rights you obtain when a patent is granted. Any existing rights and licences in force in the UK will remain in force after the UK leaves the EU. If legal proceedings involving these rights or licences are underway, they will continue unaffected. Also, an inventor can continue to apply to the EPO for patent protection which will cover the UK. Existing patents from the EPO are also unaffected. UK-based European Patent Attorneys can continue to represent applicants at the EPO. The UK will continue to be a participating state in the EPC. Moreover, there is no effect on the Patent Cooperation Treaty (PCT) system. International patent applications under the PCT will still be able to designate the UK via the national and EPO routes. The UK will remain a member state of the European Patent Organisation and the EPC will continue to apply to the UK after Brexit. The EPO is not an EU institution and currently has ten member states that are not part of the EU. European patents granted by the EPO will still be able to take effect in the UK, and be enforced through UK courts, as now. The conditions for patenting biotechnological inventions will remain in place. UK, EU and third country businesses as patent holders, third parties and applicants can continue to make decisions on the basis of the current legislation.

(European Parliament's Committee on Legal Affairs, 2019, November, p. 17-18).

Only a few specific areas of the patents process have been adjusted by the Patents Regulations. The Patents Rules contain provisions on when a party to proceedings before the UKIPO can be required to provide security for costs or expenses incurred by the other side. The EU's arrangements for civil judicial cooperation mean that an European Economic Area (EEA) resident cannot be the subject of an order to provide such security. After exit day, the UK will fall outside of those arrangements and the exception will no longer apply. The Patents Regulations remove the exemption for EEA residents, so that any person resident outside the UK may be subject to an order for security.

The European patent with unitary effect, commonly known as the Unitary Patent, and the related Unified Patent Court (UPC) are not yet in operation. The UK is one of the three mandatory ratification states – France and Germany being the others – of the UPC agreement. However, it is unclear whether the UK will remain within the UPC system post-Brexit. Whether the UK continues to participate in the Unitary Patent and the UPC after its withdrawal from the EU will be a political decision for the EU, its remaining Member States and the UK. (Shorthose, S., 2016)

The existing European patent system will be essentially unaffected by the UK leaving the EU.

## **2.2.SUPPLEMENTARY PROTECTION CERTIFICATES (SPCs)**

A supplementary protection certificates has the effect of extending the term of a patent relating to protection of a particular medicinal or plant protection product usually by a period of not more than five years. After exit day, the applicant will apply for an SPC in the same way, by submitting an application to the UKIPO. The same timescales for when the application must be filed will apply. The applicant will need to provide the same documentation and evidence as currently required. This includes information on both the UK marketing authorisation and the earliest marketing authorisation for this product in the EEA, if it predates the UK authorisation.

Although supplementary protection certificates are granted nationally, the legal basis for supplementary protection certificates comes from EU regulation. Following Brexit, authorisations from the European Medicines Agency will be converted into equivalent UK authorisations on Brexit. The UK's Medicines and Healthcare Products Regulatory Agency independently of the European Medicines Agency would become a requirement institution for the granting of a SPCs. If SPC holder rely on an authorisation from the European Medicines Agency as the basis for the SPC, may be asked to provide information on the converted UK authorisation, so that this can be recorded on the register. This will not affect the validity of the SPC. (Brodies, 2017).

After exit day, it will no longer be possible for UK courts to make references to the Court of Justice of the European Union (CJEU) for interpretation of the SPC legislation and other retained EU law. Judgments of the CJEU that were issued before exit day will continue to apply to the retained EU law. The amendments made by the Patents Regulations are written to have the same meaning as the original EU legislation, so that existing case law on its interpretation still applies. After exit day, UK courts will continue to apply pre-Brexit CJEU case law in any SPC actions. SPC examiners will also take into account of the relevant CJEU case law applicable before exit day. They will examine SPC applications on that basis. UK courts will not be required to follow judgments of the CJEU issued after exit day, as these will not be binding. They may be taken into account, but it will be for the court to determine the extent to which the post-exit case law applies. (The Chartered Institute of Patent Attorneys [CIPA], 2017, p. 2)

### **2.3. TRADEMARKS**

The primary legislation in UK on trade marks is the Trade Marks Act 1994. There is secondary legislation in the form of the Trade Marks Rules 2008, and amending and standalone regulations. Some of these implement the requirements of the EU Directive on trade marks. The Directive goes beyond international treaties to further harmonise trade mark law within the EU. The UK's implementation of the EU Directive has resulted in several references in UK legislation to the EU and EEA. After Brexit, all existing EUTMs will cease to provide protection in the UK. As a result,

UKIPO amend existing trade mark legislation to ensure that UK protection conferred by EUTM is preserved, and to enable our law to continue working effectively. For these reasons, UKIPO has introduced The Trade Marks Regulations 2019 under the powers of the EU (Withdrawal) Act.

Once the UK has left the EU, it is expected that new EU trademarks will not apply to the UK. As a result, EU trademarks registered in accordance with Union law before the exit date will continue to be valid in the EU27 Member States but will have no longer effect in the United Kingdom as from the exit date. Any application for an EU trade mark pending before the exit date will no longer cover the UK as from that date. Any right granted by the EUIPO on or after the exit date will only cover the EU27 Member States. (Drew, I. and Watal, A., 2016)

Given their considerable commercial importance, the UK enact transitional provisions for the recognition of the UK portion of existing EU trademarks or for their conversion to UK registrations. On exit day, UKIPO will create a comparable UK trade mark for every registered EUTM. Each of these UK rights will be recorded on the UK trade mark register, will have the same legal status as if you had applied for and registered it under UK law, will keep the original EUTM filing date, will keep the original priority or UK seniority dates, will be a fully independent UK trade mark that can be challenged, assigned, licensed or renewed separately from the original EUTM. The EUTM holder will not need to pay for your equivalent or comparable UK trade mark – and there will be as little administration involved as possible and will receive a UK registration certificate. UKIPO will provide a means for identifying comparable UK rights and distinguishing them from existing UK trade marks. (European Commission, European Union Intellectual Property Office [EUIPO], 2018)

UKIPO will only create a comparable UK trade mark for EUTMs registered before exit day. If the EUTM applicant has an EUTM application that's still pending at exit day, the applicant will be able to apply to register a comparable UK trade mark in the 9 months after exit day, to retain the earlier filing date of the pending EUTM and to claim any valid international priority you had on the pending EU application, along with any UK seniority claims recorded against it. If the applicant apply to



register for a comparable UK trade mark, the application must relate to the same trade mark that was the subject of the EUTM application, must seek protection in respect of goods and services that are identical to, or contained within, the corresponding EU application and if the details of the application do not match those of the corresponding EUTM application, the applicant will not be able to claim the earlier EU filing or priority dates. The applicant must submit his/her application within 9 months of exit day.

If the EUTM holder does not wish to hold the new right, it may opt out of holding it. If the holder opt out, the comparable right will be treated as if it had never been applied for or registered under UK law. Opt-out requests can only be submitted after exit day. Any requests made before then will not be valid.

Once a comparable UK trade mark is created, a separate renewal fee will apply for each comparable UK trade mark and the existing EUTM. The fees will need to be paid separately to UKIPO and the EUIPO. For the purposes of future renewal, the comparable UK right will retain the existing renewal date of the corresponding EUTM.

A priority date claimed under the Paris Convention that has been recorded against the corresponding EUTM will be inherited by the comparable UK trade mark. Accordingly, where proceedings involve a comparable UK trade mark with a priority claim inherited from the corresponding EUTM, the date of that priority claim will have effect. Seniority is a concept which derives from EU legislation and has applied only to EUTMs and UK trade marks that have been converted from EUTMs. From exit day, it will also apply to the UK comparable trade marks. Seniority allows a business to consolidate its multiple national registered trade marks into one single EUTM by retaining the 'senior' dates of those national rights and recording them against the EUTM. Seniority can determine the effective date of an existing EUTM. Seniority claims based on earlier UK or International (UK) trade marks will be recognised.

The retention of existing priority and seniority dates in comparable UK trade marks will be automatic. As the holder of an EU right will not have to inform UKIPO of any earlier effective dates. This is because filing, priority and seniority information will be automatically transferred onto the new UK right. The UK application process will provide the holder

with a way of recording priority and seniority dates for applications corresponding to pending EUTM applications filed within 9 months after exit day.

In addition, the holders of international registrations of trademarks having designated the EU before the withdrawal date pursuant to the Madrid system for the international registration of marks, should consider that, as from that date, those international registrations will continue to be valid in the EU27 Member States only and thus will no longer have effect in the UK.

Post-Brexit, new decisions of the CJEU, including new referrals from courts of EU member states on questions of law, would almost certainly cease to apply to the UK. Therefore, although UK and EU trade mark law is currently harmonised, one could envisage a gradual divergence over time. UK courts would no longer be bound to interpret UK trade mark law in accordance with future rulings of the CJEU. (The Chartered Institute of Patent Attorneys [CIPA], 2017, p. 2)

## **2.4.DESIGNS**

The registered Community designs is an EU unitary right. Therefore, EU rules on Community designs will no longer apply to the UK. RCD registered in accordance with Union law as well as Unregistered Community Designs (UCD) made available to the public in the manner provided for in Union law before the exit date will continue to be valid in the EU27 Member States but will have no longer effect in the UK as from the exit date. Any application for a registered Community design pending before the withdrawal date will no longer cover the UK as from that date. (Traub, F. and Clay, A., 2016)

Given their commercial importance, the UK enact transitional provisions to recognise the UK portion of RCD. All registered and published RCDs will have comparable UK designs, which will be recorded on the UK register. These will be treated as if they had been applied for and registered under UK law. The legislative changes introduced in the UK will ensure that the holder of an RCD is provided with an equivalent UK right. They will retain the registration and application dates recorded against the corresponding RCDs and will inherit any priority dates. As fully

independent UK rights, they may be challenged, assigned, licensed or renewed separately from the original RCD. Re-registered designs will be created at no cost to the RCD holder, and with minimal administrative burden will be placed upon the right holder. (European Commission, European Union Intellectual Property Office [EUIPO], 2018).

If RCD applicant holds a pending RCD application on exit day, the applicant will be able to apply to register a UK design in the 9 months after exit day and retain the earlier filing date of the pending RCD. To do so, the UK application must relate to the same design as that filed in the pending RCD application. If the details of the UK application do not match those of the corresponding RCD application, then the earlier EU date(s) will not be recognised. These applications will be treated as a UK registered design application. They will be examined under UK law. In these circumstances, the standard UK fee structure will apply.

Holders of the new right will be allowed to ‘opt out’ of holding it. Opting out will mean that the re-registered design will be treated as if it had never been applied for or registered under UK law. To request an opt out, right holder must submit a short notice providing UKIPO with the RCD number, along with details of any persons with an interest in the right.

A priority date claimed under the Paris Convention that has been recorded against the corresponding RCD will be inherited by the re-registered design. The date of that priority claim will have effect where proceedings involve a re-registered design with a priority claim inherited from the corresponding RCD.

After Brexit, UCDs will no longer be valid in the UK. On exit day, these rights will be immediately and automatically replaced by UK rights. If UCD holder owns an existing right, he/she do not need to do anything at this stage. Designs that are protected in the UK as an UCD before exit day will be protected as a UK continuing unregistered design and will be automatically established on exit day. It will continue to be protected in the UK for the remainder of the 3 year term attached to it. The fact that a corresponding UCD was established before exit day through first disclosure in the EU but outside of the UK will not affect the validity of the continuing unregistered design.

The designers should carefully consider how, when and where they first disclose its designs in order to establish unregistered protection in the UK

and the EU. Under the new law, UKIPO are creating a UK unregistered design right called Supplementary unregistered design (SUD). This right will ensure that the full range of design protection provided in the UK before exit day will remain available after UK leaves the EU. The terms of supplementary unregistered design protection will be similar to that already conferred by UCD. However, the protection it provides will not extend to the EU. Supplementary unregistered design will mirror the UCD by providing post-exit UK protection for both 3- and 2-dimensional designs. SUD will be established by first disclosure in the UK or another qualifying country. It will be subject to interpretation by the UK Courts. First disclosure in the EU will not establish SUD. However, it may destroy the novelty in that design, should you later seek to claim UK unregistered rights.

The holders of international registrations of designs having designated the EU before the exit date pursuant to the Hague system for the international deposit of industrial designs, should consider that, as from that date, those international registrations will continue to be valid in the EU27 Member States only and thus will no longer have effect in the UK.

Post-Brexit, RCD enforcement action brought in an EU court, and any resulting injunction, would not be effective in the UK. Where infringement is occurring in the EU and the UK, separate enforcement actions would be required. Moreover, UK-based companies accused of infringement in the EU would not be sued in their home jurisdiction, but in the court of an EU state. The future influence of CJEU case law on UK design law would be reduced, potentially leading to gradual divergence. (The Chartered Institute of Patent Attorneys [CIPA], 2017, p. 2)

## **2.5. PLANT VARIETY RIGHTS**

New plant varieties that are distinct, uniform and stable may be protected at the EU level by the Community plant variety right, a unitary right covering all member states of the EU, or at the national level in the UK by plant breeders' rights. Once the UK leaves the EU, however, the Community plant variety right will no longer cover the UK.

At present, UK law allows holders of overlapping patents and plant variety rights to apply for compulsory licences to prevent one right from interfering with the use of the other. After exit day, Community plant

variety rights will no longer have effect in the UK. Community plant variety rights holders will not be able to use them to get a compulsory licence on a patent in the UK. The holder will still be able to do so based on UK plant breeders' rights. This will include Community plant variety rights that are converted to UK rights on exit day. (Naylor, M., 2018)

Applicants for Community plant variety rights who do not have a residence or place of business in the EU must appoint a procedural representative who must be based in the EU. After the UK leaves the EU, plant breeders based outside the EU will need to appoint an EU-based representative.

## **2.6.PROTECTED GEOGRAPHICAL INDICATIONS**

Specific legal protection is available under EU regulation for agricultural products and foodstuffs from particular regions or having a specific character in the form of PDOs, protected geographical indications (PGIs), and traditional specialities guaranteed (TSG). These are unitary EU rights established under EU regulation. As with other EU unitary rights, it is likely that transitional provisions would be enacted to recognise existing PDO, PGI, and TSG guaranteed in the UK or for their conversion into national rights. (Shorthose, S., 2016)

## **2.7.COPYRIGHT**

Copyright in the UK is primarily based on the Copyright, Designs and Patents Act 1988. There is no EU-unitary copyright. But there are various EU directives and regulations on whose aim is to harmonise copyright law throughout the EU. Some of these EU laws are implemented in the UK through the Copyright, Designs and Patents Act, others by separate statutory instruments.

Copyright harmonisation in the EU is far from complete. As such, post-Brexit UK will keep EU directives already implemented in the UK, or implement transitional provisions, which are consistent with the EU copyright framework. Outside the EU and its Single Market, the UK will probably still remain fairly closely harmonised to the EU copyright framework as a result of its international treaty obligations, though some

inevitable judicial divergence is likely to arise over time. (Naylor, M., 2018)

There is a great deal of interest in copyright regulation with regard to the copyright clearance for satellite broadcasting after Brexit. Satellite broadcasters transmitting copyright works to EEA states should re-check their permissions. When a satellite broadcaster transmits a copyright work, for example, a film, from one EEA member state to another, they are only required to obtain the copyright holder's permission for the state in which the broadcast originates. This 'country-of-origin' principle was introduced by the Satellite and Cable Directive and avoids satellite broadcasters having to secure individual licences for every EEA state in which their broadcasts are received.

UK law applies the country-of-origin principle to broadcasts originating in any country in the world, except for a limited safeguard in the case of broadcasts originating outside the EEA but commissioned or uplinked to satellite from within the EEA. UK broadcasters may no longer benefit from the country-of-origin principle for broadcasts into the EEA after Brexit and might need to obtain additional right holder permissions covering the EEA states to which they broadcast. This will depend on how the domestic legislation of each EEA member state treats broadcasts originating in non-EEA countries - for example, whether they apply the country-of-origin principle to non-EEA broadcasts, as UK law does .

Database rights in UK arise specifically from the EU Database Directive. In fact, the "sui generis" database right is a uniquely EU intellectual property right only available within the EEA and (theoretically) those countries providing reciprocal protection. UK citizens, residents, and businesses will no longer be eligible to receive or hold sui generis database rights in the EEA after Brexit. UK database owners may find that their rights are unenforceable in the EEA. UK legislation will be amended so that only UK citizens, residents, and businesses are eligible for new database rights in the UK after Brexit. Database rights that exist in the UK prior to exit (whether held by UK or EEA persons or businesses) will continue to exist in the UK for the remainder of their duration. Those in the UK who wish to use databases protected by these rights will continue to need the permission of the right holder(s).

After Brexit, EEA collective management organisations may not automatically represent UK right holders and collective management organisations. Collective management organisations (CMOs) are not-for-profit or member-governed bodies that license rights on behalf of copyright owners. CMOs in the EEA are governed by the Collective Rights Management Directive (the CRM Directive). This includes obligations to represent on request right holders from any EEA member state unless there are objectively justified reasons not to do so. The UK has implemented the CRM Directive via the Collective Management of Copyright (EU Directive) Regulations 2016. The government has published guidance on those regulations. After Brexit, EEA CMOs will not be required by the CRM Directive to represent UK right holders or to represent the catalogues of UK CMOs for online licensing of musical rights. UK right holders and CMOs will still be able to request representation, but EEA CMOs may be free to refuse those requests depending on the law in individual member states.

## **CONCLUSION**

More than clear is the fact that the UK withdrawal is not just a matter for EU and national authorities but also for private parties. Brexit as a new emergence in the EU adequately reflects its implications on all the rights the EU recognizes to its citizens. The process of creating harmonized and unified legislation established national rights based on a horizontal basis and also introduced unitary rights, independent of existing national rights. EU Intellectual property law represent a combination of the existence of unitary rights at EU level and the existence of harmonized national legal frameworks. Brexit also extended its influence on intellectual property rights accordingly.

Post-Brexit, EUTMs will not provide protection in the UK. However, registered EUTMs will be automatically cloned on to the UK Register (at no cost to the right holders) and given the same rights as existing UK trade mark registrations. EU designations of International Registrations will also be cloned on to the UK Register but they will be independent national UK registrations, not UK designations of the International Registration. Pending EUTM applications will not be cloned and re-filing will be necessary if protection in the UK is required. There is a nine month period

from the exit day where re-filed UK applications can claim back the original filing date of the corresponding EUTM application.

After exit day, RCDs will not provide design protection in the UK. However, as with trademarks, RCDs will be automatically cloned on to the UK Register and given the same rights as existing UK design registrations. Pending RCDs (including those subject to deferred publication) will not be cloned on to the UK Register but there will be an option to re-file these rights in the UK whilst keeping the same filing date.

Brexit will have no impact on European patents because the EPC is not an EU treaty. Furthermore, members of the EPC do not need to be an EU state and there are already a number of non-EU members. It is expected that the UK will remain a member of the EPC post-Brexit.

Once the UK has left the EU, separate trademarks and designs will need to be filed in order to ensure protection across both territories. Although it is not strictly necessary to file applications in both the EU and UK due to the cloning of rights, as this only applies to EUTM/RCD registrations and not pending rights, the general recommendation is that right holders should consider filing both UK and EU applications for core trade marks and designs.

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