



Jul 05, 2016

Categories:

[Publications](#)

Authors:

[Matthew D. Delaney](#)

Brexit's Implications on European IP

On June 23, 2016, the United Kingdom voted to withdraw as a member of the European Union. This British exit, or "Brexit," will have far reaching implications and touch upon almost every aspect of European business over the coming years. While the full impact of Brexit on European intellectual property is uncertain and will be determined largely by the laws and regulations adopted in response to the UK's withdrawal, IP holders should consider taking steps now to avoid lapses in rights during or after the transition.

European Patents

European patent law is governed by the European Patent Convention (EPC), a multilateral treaty which established the European Patent Office (EPO). The EPO issues European patents independent of EU regulations or directives. Other countries such as Switzerland and Turkey adhere to the EPC while remaining independent from the EU. Thus, the future legal relationship between the UK and the rest of Europe regarding European patents appears to be fairly stable in view of Brexit.

The EU's Proposed Unified Patent Court

The Unified Patent Court (UPC) is a proposed patent-specific court open only to [member states of the EU](#). Once established, the UPC will hear cases regarding [infringement](#) and revocation proceedings for newly established EU-wide "Unitary Patents." The UPC will issue a single court ruling on Unitary Patents, with this single ruling being directly applicable throughout the EU.

The UPC was originally scheduled to come into effect in late 2017, with the UK set to play a major role by hosting one of the three branches of the Court. However, because of Brexit the UK is no longer eligible to participate in the UPC and tremendous uncertainties now exist about its future. Entities likely to be seeking patent protection in Europe should not presume the UPC or Unitary Patent system will be implemented any time soon.

European Trademarks and Registered Designs

European trademarks and registered designs will be significantly affected by Brexit. Currently, European marks and designs are granted and administered through the European Union Intellectual Property Office (EUIPO), a branch of the EU. These registrations provide unitary EU-wide protection as a single registration enforceable under one set of rules throughout the EU. While new EU registrations after Brexit will no longer include protection in the UK, it's unclear what will happen to existing EU registrations after Brexit is formalized. It's possible the UK could enact new laws extending domestic coverage to EU registrations through conversion process. It's also possible that owners will be required to refile trademark or design applications domestically in the UK to maintain coverage. Due to the unknown nature of how the EU and UK systems will eventually diverge and co-exist, applicants may be wise to file applications in both the UK and the EU during this transition period.

While geographical use is not required to obtain a design registration, in light of Brexit, owners of EU trademarks should carefully review the actual geographical use of these marks. For example, if a trademark owner has only ever used a particular mark in the UK, an EU registration based on this UK use may be open to validity challenges. For new applications, applicants will need to show use in the UK as well as the EU in order to obtain trademark registrations in both entities.

While the future relationship between the UK and the EU with respect to trademarks and registered designs is unknown, it's clear that Brexit will increase costs for registrants and prospective applicants. Entities operating in Europe should be aware of these increase costs and plan to adjust future IP budgets accordingly.

Litigation

After the UK formally withdraws from the EU, UK courts will no longer be able to grant or enforce pan-European relief for IP related legal issues. With respect to future claims, IP owners seeking pan-European relief such as an injunction will need to initiate separate claims in both the UK and an EU member country. This will increase

the costs of enforcement, and IP owners should be careful to factor these increased costs into future litigation considerations and strategy. With respect to current EU claims such as EU-wide injunctions, the effect of UK's withdrawal from the EU is uncertain. IP owners should carefully consider the impact of the UK's withdrawal and alter or supplement their litigation claims accordingly. For example, an IP owner with a current EU-wide injunction would be wise to seek a supplementary or concurrent UK injunction issued by a domestic UK court.

Agreements and Contractual Obligations

Many EU-specific IP documents such as licenses, non-disclosure agreements, and co-existence agreements describe the underlying territory as the "member states of the European Union" or include similar language. Depending on the precise wording, these agreements, while originally intending to cover the UK, may no longer do so after Brexit. IP owners should carefully scrutinize all European agreements for proper and continued coverage of the UK.

How Should IP Holders Respond to Brexit?

European IP holders should consider taking the following steps in response to UK's Brexit vote:

- Determine whether any marks are protected through an EU trademark registration. If so, consider filing a parallel trademark application in the UK to maintain coverage in the UK. However, consider the underlying use of the mark and whether the mark qualifies for both an EU and UK registration.
- Determine whether any registered designs are protected through an EU filing. If so, consult with your IP counsel to determine whether a parallel design application can be filed in the UK.
- Consult with your IP counsel to determine whether the UK or EU has promulgated a process for converting EU trademarks or designs into UK registrations, or whether any new mechanism is available for maintaining coverage in the UK after Brexit. While a conversion process does not yet exist,

new laws will have to be implemented in response to Brexit and your IP counsel will be able to advise you on the changing legal landscape.

- Consider the impact of any potential new trademark or design applications and whether these applications will provide the necessary coverage in the UK, if intended.
- Review all IP agreements such as licenses or non-disclosure agreements to ensure the defined territory covers the UK after withdrawal from the EU, if intended.
- Consider expediting the initiation of IP enforcement proceedings before the formal withdrawal of the UK from the EU and while the EU IP laws are still applicable and well understood. After Brexit is formalized, UK judges will no longer be required to follow EU directives and rulings may be harder to predict.

For more information, please contact [Matt Delaney](#) or any other attorney in Frost Brown Todd's [Intellectual Property Law and Litigation Practice Group](#).

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.