



THINK FORWARD

Brexit's Impact on Intellectual Property Rights in the United Kingdom

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On June 23, the United Kingdom (UK) voted to exit the European Union (EU) – a decisive move whimsically known as “Brexit.” Absent a change in course, that move will affect intellectual property rights in the UK, although exactly when and how remains somewhat uncertain. This Alert identifies some of the more significant aspects of Brexit’s impact on intellectual property rights in the UK.

Timing

Article 50 of the Treaty on European Union requires that any Member State electing to leave the EU provide the European Council with notice of its intent to withdraw from the EU. An agreement on the terms of the withdrawal are then negotiated. The withdrawal becomes effective on either an agreed upon date, two years after the date of the notice to withdraw, or if extended by the European Council, sometime thereafter. It is unlikely that the UK will formally exit the EU before the expiration of the 2-year period following the UK’s notice to the European Council. During this 2-year period, existing intellectual property laws and regulations in the UK are likely to remain largely unchanged.

European Patent Convention

Brexit will have no significant impact on existing or future filings utilizing the European Patent Convention (EPC). The EPC is not an instrument of the EU, and other contracting states to the EPC are not members of the EU. Patent applicants should continue to be able to use the EPC to validate in the UK patents granted by the European Patent Office, without significant impact from Brexit.

Unitary Patent System

Unlike the EPC, the Unitary Patent and the Unitary Patent Court, currently slated for implementation in 2017, are creations of the EU. The Unitary Patent aims to simplify patent protection in the EU by providing applicants with a vehicle to file a single application, utilizing a single fee regime, to obtain a single patent providing uniform protection in each of the EU’s Member States. The Unitary Patent Court, a branch of which was planned for London, would exercise jurisdiction over disputes regarding Unitary Patents.

Upon formal withdrawal from the EU, the United Kingdom will no longer be eligible to participate in the Unitary Patent System. Presumably, the absence of patent protection in the United Kingdom will make the Unitary Patent System less appealing to applicants.

Trademark Protection & Design Registrations

The UK's withdrawal from the EU means it will no longer be part of the EU trademark regime. At that time, existing EU trademark registrations will cease in the UK, while remaining in other EU Member States. Applicants with marks used only in the UK will be subject to revocation of any such EU trademark registration, unless those marks are put into use in other EU Member States, as use in the UK will no longer satisfy the requirement for use in an EU Member State.

It is possible, if not likely, that the UK will enact legislation to offer applicants of existing EU trademark registrations some form of protection based on existing EU trademark rights, for example, by providing an option to convert the UK part into a UK national right, while preserving the application date of the original EU trademark registration.

The impact on and treatment of Registered Community Designs would likely be very similar to EU trademark registrations.

Copyright Protection

Brexit is unlikely to have any impact on copyright protections within the UK, as copyright in the EU is largely territorial, and subject to various other international treaties.

How Brexit Affects You

Brexit will create some uncertainty for intellectual property owners and applicants in the UK over the next few years. Until that uncertainty is resolved, intellectual property owners and applicants should consider multiple strategies to ensure appropriate intellectual property protection is procured and maintained in the UK regardless of how and when the UK formally exits the EU.

Contact Us

If you have any questions or wish to discuss how this decision impacts your business, please contact one of our [Brinks Attorneys](#).