

“Brexit” and intellectual property rights in Europe

In a referendum held on 23rd June 2016, the UK voted to leave the European Union.

The UK Government will now have to negotiate terms of exit from the EU with its European partners. This process is likely to be a long one. As yet, there is no certainty on how the process will play out. The best estimate is that the exit process will take at least two years, and probably significantly longer, during which time the UK will remain an EU member. Even so, you may be concerned as to what the situation will be for intellectual property rights in Europe when the UK does eventually exit.

As a European IP firm, we have already made preparations to continue to represent our clients in all European IP matters where we currently advise you. You will continue to receive the high levels of service and client care which you have come to expect.

We summarise briefly below the likely situation for some important aspects of IP. As you will note, in the main we recommend that you hold back from making any rushed decisions until the situation becomes clearer. However, if you have IP agreements with other parties, it would be advisable to start checking these agreements for issues that might arise from a UK exit.

We shall of course provide further updates as the situation develops. In the meantime, if you would like additional information, please get in touch with your usual contact at Carpmiels & Ransford.

European patents

The UK will continue to be a member of the European Patent Organisation which is a separate body from the EU. Thus, patent protection in the UK will continue to be available via the European Patent Office by validating granted European patents in the UK after grant. The European Patent Convention will continue to be part of UK law, and our European patent attorneys will continue to act in the usual way in all matters before the EPO.

Unitary patent (“UP”) and Unified Patent Court (“UPC”)

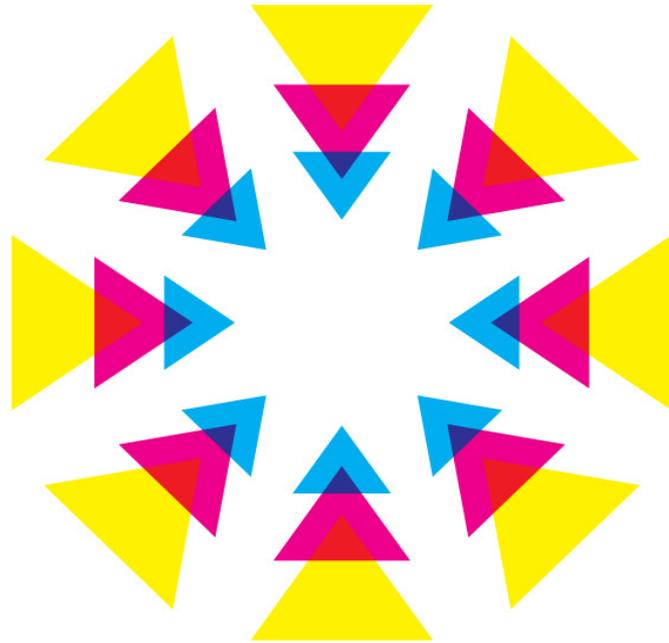
We now expect the commencement of the EU’s Unitary Patent and Unified Patent Court system, previously scheduled for 2017, to be delayed by months and possibly years. If this new system does eventually start in the EU, then UK patent protection from a European patent will continue to be available by nationally validating the European patent in the UK after grant. The protection afforded by a UP will not extend to the UK, and neither will the UPC have any jurisdiction within the UK. We expect that the UK will continue to be an important, albeit independent jurisdiction for acquiring and enforcing European patents. Many of our lawyers will have rights of audience in both the UK and UPC, and we will be able to obtain UPs on behalf of our clients. When timings become clearer, we shall be able to advise further how to approach European patent filing strategies, including opt-out decisions.

EU trade marks (“EUTMs” - formerly “CTMs”) and registered Community designs (“RCDs”)

The legislation governing EUTMs and RCDs is entirely silent on what happens to those IPRs when a country leaves the EU. Some possible scenarios are:

- The “worst case” is that, once the UK has left the EU, EUTMs and RCDs will simply cease to cover the UK. In that scenario, if IPR owners do not also own corresponding UK registrations, their UK rights will be lost.
- More positive outcomes are that (i) the UK will enact national legislation which would deem that EUTMs and RCDs extend to the UK or (ii) the UK and the EU will agree that EUTMs and RCDs can be “converted” (such that new identical UK trade mark and design registrations would be created out of the corresponding EUTMs and RCDs).

Given that the UK will remain a member of the EU for some time, and given also that we think it less likely that, post-exit, EUTMs and RCDs will simply cease to cover the UK, we do not recommend at this stage that you take further action (e.g. to re-file for your marks in the UK). However, we shall monitor developments and provide further guidance as the position becomes clearer.



Agreements

It is hard to predict with any certainty what effect the referendum decision and the UK's ultimate exit from the EU will have on existing agreements. Whilst some agreements may be entirely unaffected, there could be unintended consequences for others. Either way, it would be advisable to review your IP agreements (whether in force, or currently being negotiated) as soon as possible to identify any potential issues. For example, if the territory covered by an IP licence refers to the "European Union", does the agreement now need amending so that it continues to include the UK? Could the UK's exit affect the day-to-day operation of the agreement in any way? Will exit trigger the force majeure provisions or any termination rights? Do any references to specific EU laws need to be changed? Ultimately, the answer is likely to be a matter of construction for each agreement. Where there is any uncertainty, the best way to resolve it is to clarify the position by agreement between the parties. Our transactions team would be happy to assist with any such review or negotiation process.

Regulatory exclusivities, including supplementary protection certificates (SPCs) and regulatory data protection (RDP)

EU legislation currently covers a number of rights which are of importance to the pharma and agrochemical industries. These include SPCs, regulatory exclusivities (i.e. data and market protection), orphan drug exclusivities and exclusivities derived from paediatric studies. It is too early to say what impact the UK's exit from the EU will have on these rights, and so at this stage we do not recommend that you take any specific action. We shall monitor developments and provide guidance as the position becomes clearer.

Need advice?

For more information, please contact email@carpmaels.com.

Carpmaels & Ransford LLP is a leading firm of European patent attorneys based in London. For more information about our firm and our practice, please visit our website at www.carpmaels.com.

This information provides a summary of the subject matter only. It should not be acted on without first seeking professional advice.

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