



EUIPO publishes Q&A on the impact of a “no-deal” Brexit

The Q&A guide is the EUIPO’s interpretation of what will happen under existing laws in the event that no agreement is reached between the UK and EU

On 30th January 2018, the EU Intellectual Property Office (EUIPO) published a [Q&A guide](#) that considers the potential legal effect on EU registered trade marks and designs of a “no-deal” Brexit. This follows the EU Commission’s position paper published in September 2017 (reported [here](#)).

The EUIPO grants EU trade marks and EU registered designs but has no role in the European patent system, which is why the EUIPO’s guide does not mention patents (or related rights like SPCs). Indeed, Brexit will have no effect on European patents as the European Patent Office is not an EU institution as discussed [here](#).

What does the Q&A guide say?

The Q&A guide is the EUIPO’s interpretation of what will happen under existing laws in the event that no agreement is reached between the UK and EU. Negotiations on such an agreement are ongoing and will remain so for the foreseeable future.

As such, the Q&A guide presents a “doomsday scenario”: subject to any transitional arrangement, EU registered trade marks and designs would no longer cover the UK from the date the UK leaves the EU (currently 29th March 2019).

What does the Q&A guide not say?

Unlike the Commission’s position paper, the Q&A guide does not consider issues that are within the legislative power of the UK Government to address. It is important to recall that the UK Government has the power unilaterally to grant the same scope of protection for EU intellectual property rights in the UK such that current rights would be maintained in the UK post-Brexit, regardless of whether or not a political agreement is reached.

The UK Government is yet to publish its position on IP post-Brexit, and it remains unclear when it will do so. However, this is widely expected to follow the guiding principle of the Commission’s position paper that “the protection enjoyed in the United Kingdom [...] by [...] holders of intellectual property rights having unitary character within the Union before the withdrawal date is not undermined by the withdrawal of the United Kingdom from the European Union”.

This would be consistent with the UK Government's commitment to provide certainty and continuity upon Brexit (reported [here](#)).

Commenting on the Q&A guide, the President of the Chartered Institute of Trade Mark Attorneys said:

"even if no deal between the UK and EU is reached, the UK Government has the gift to grant EU rights the same scope of protection as they have now. [...] There is a growing consensus among the IP community internationally that replicating EU registered rights at the UK IPO would maximise legal certainty, while minimising cost to business."

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Need advice?

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

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