

## **BRIEFING NOTE**

### **Impact of Brexit on UK and European Intellectual Property**

The United Kingdom left the European Union (EU) on 31 January 2020. The EU Withdrawal Agreement provides a transition period until 31 December 2020, during which there will be no change to the law or practice of law.

#### **Patents**

UK national patents will be unaffected by Brexit.

The existing European patent system will be unaffected by the UK leaving the EU, therefore there is no action required by patent holders. The UK will continue to be a contracting state to the European Patent Convention and therefore patentees will still be able to obtain patent protection in the UK through the European Patent Office. UK based Patent Attorneys will continue to be able to file, prosecute, validate and oppose European Patents for clients before the EPO, as is the current practice.

Pending applications for Supplementary Protection Certificates, which are based on EU regulation, will continue and can be granted after the end of the transition period. The relevant EU legislation will be retained in UK law and therefore there will be no significant changes in the short term.

The Unified Patent Court (UPC) Agreement was made in 2013 but it has not yet entered force, as it awaits on the ratification of Germany. Although the UPC Agreement is not an EU instrument, it envisages that the participating countries will be EU member states and expressly provides that the UPC will give primacy to EU law. However, the UK government has signalled its desire to stay within the UPC and will address its membership as part of the negotiations concerning the country's relationship with the EU. Therefore, there will be no significant changes in the short term.

#### **Trademarks**

UK national trademarks will be unaffected by Brexit.

After the end of the transition period, EU Trademark (EUTM) registrations will no longer have territorial scope over the UK. However, there will be no loss of EUTM rights as a result of Brexit.

Holders of granted EUTM's at the end of the transition period will be automatically given a fully equivalent UK right at no cost. No action will be required by EUTM owners and no official fees will be payable. The UK registration will retain the original filing, priority and seniority dates, and first renewal date will be the same as the original EU registration.

If the EUTM right is subsequently revoked due to a procedure that is pending at the end of the transition period, the equivalent UK right will also be revoked.

Where a EUTM has been applied for but not granted by the end of the transition period, applicants will have 9 months from the end of the transition period to reapply for the equivalent UK right.

After the transition period, it will still be possible to file under the Madrid System for International trademark registrations designating the UK. To obtain registered trademarks

covering the remaining EU member states and the UK, it will be necessary to file both a UK national trademark application and an EU trademark application, either as individual applications or through the international trademark registration system.

## Designs

UK national design registrations will be unaffected by Brexit.

After the end of the transition period, Registered Community Design (RCD) registrations will no longer have territorial scope over the UK. However, there will be no loss of RCD rights as a result of Brexit.

RCD's at the end of the transition period will be automatically given a fully equivalent UK right at no cost. No action will be required by RCD owners and no official fees will be payable. The UK registration will retain the original filing, priority and seniority dates and first renewal date will be the same as the original EU registration.

Applicants for RCD's that are pending at the end of the transition period will have 9 months to reapply for the equivalent UK right.

After the transition period, it will still be possible to file registrations under The Hague Agreement and therefore UK and EU-wide design protection may be obtained by this route.

At the end of the transition period, Unregistered Community Designs (UCDs) will cease to have effect in the UK. However, holders of UCDs which arise before the end of the transition period shall automatically become the holder of an equivalent UK unregistered right affording the same level protection. It will continue to be protected in the UK for the remainder of the 3-year term attached to it.

The UK is looking to create a new unregistered design right called "Supplementary Unregistered Design" (SUD) which will have effect in the UK only. The purpose is to ensure that equivalent unregistered design protection remains available in the UK following the end of the transition period as was available before the expiry of the transition period.

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