



Consequences of Brexit on EU trademarks, EU Designs, EP patents and the Unitary Patent

31 January UK left the EU and there is now a transition period until the end of 2020 while the UK and EU negotiate additional arrangements.

The current rules on trade, travel, and business for the UK and EU will continue to apply during the transition period. The transition period can be extended for one or two years if agreement to do so is reached before 1 July 2020, but the current position of the UK Government seems to be that there will be no extension and that new rules regarding intellectual property rights will take effect on 1 January 2021.

EU trademarks and EU Designs

Holders of EU trademarks and EU Designs that have been registered before the end of the transition period will automatically be granted a similar UK trade mark and UK Design. The filing date of those will be the same as that of the EU right on which it is based. Unregistered Community designs which arise before the end of the transition period will give rise to an equivalent UK right.

If an EU trademark or an EU Design has been applied for, but not granted by the end of the transition period, there will be a period of 9 months following the end of the transition period in which it will be possible to file a UK trademark application and claim the filing date of an identical EU trademark application or EU Design application.

After the expiry of the additional 9 months trademark and design protection in UK require filing a separate UK application. Priority from the EU right can be claimed.

Patents

UK remains a contracting state to the European Patent Convention and the London Agreement regarding the requirements for validation of an EP patent in an EPC contracting state. The existing UK patent litigation system will continue as before.

The Unitary Patent is a patent granted by the EPO for which unitary effect can be registered with the EPO for the territory of the participating EU Member States. The EPO is an international organisation set up on the basis of the European Patent Convention and the UPC will be an international court with jurisdiction for patents granted by the EPO. Currently, not only Brexit but also a complaint that has been lodged by an individual against the German ratification of the UPC Agreement with the German Federal Constitutional Court will be decisive of if and when the Unitary Patent will come into force. Currently the stated intention of the German Court is to render a decision in the first quarter of 2020.

UK has already ratified the UPC Agreement and is currently exploring their options to continue being a party to the UPC. Whether London can remain the host city of the pharmaceuticals, chemistry and medical devices Court Section of the Central Division of the UPC is still to be decided.

Supplemental Protection Certificates

Supplementary protection certificates (SPCs) with coverage of UK is governed by EU law. Currently the relevant EU legislation seems to be retained in UK law, however it is expected that grant of SPCs in the UK may change over time.

Please do not hesitate to contact us in case you have any questions

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