

Hepworth Browne

EUROPEAN PATENT & TRADE MARK ATTORNEYS

UK Votes to Leave the European Union

Implications for Intellectual Property

On 23rd June 2016 the UK voted to leave the European Union (EU). This note sets out how the so-called Brexit will affect IP matters for our clients and associates.

The main points are that:

- The UK has not presently left the EU and will remain part of the EU for at least another two (2) years. The UK has not yet triggered Article 50 which formally signals the start of a two-year period of negotiations. The UK has absolute control of triggering timing for its leaving.
- European patents and European patent applications will not be affected. The European Patent Office (EPO) is not an EU body;
- UK national IP rights will not be affected;
- EU registered trade marks and designs which cover the UK will remain in force until new regulations give them corresponding effect in the UK.

A. THE BREXIT PROCEDURE

The vote to leave the EU does not cause any immediate change. It is business as usual for the UK and EU. EU laws continue to apply to the UK until negotiations are completed.

The Article 50 notice will not be given at least until the Conservative Party has elected a new Prime Minister on 9th September. It is anticipated that the new Prime Minister will take several months to evaluate the most appropriate model for a final exit. Current feelings are that Art.50 is unlikely to be triggered before the Spring of 2017. There may be a general election after that date, 9th September 2016, but there is no current requirement for one until 2020.

The negotiations will be complex. The Lisbon Treaty requires participation of all EU members. The political climate in the EU may make an agreement difficult to reach. However, regardless of the UK being in or out of the EU, the UK remains an attractive trading partner with the 5th largest GDP in global terms.

B. EUROPEAN PATENTS

European patents (EPs) are granted by the EPO. The EPO is an international (not EU) organisation. The UK remains committed to and is very much part of the EPO's controlling Administrative Council. EP patents already cover non-EU countries, including Switzerland, Norway and Iceland. Granted EPs will continue to be validated in individual countries in the same way as we do today. Existing European (UK) patents will not be affected.

Hepworth Browne and other UK based European patent attorneys will continue to act as representatives for European patents covering all designations. This will not change when the UK leaves the EU.

C. UNITARY PATENTS & UNIFIED PATENTS COURT

If the Unitary Patent (UP) system comes into force after the Article 50 renegotiation, then because the UK is not part of the EU, a UP may not extend to the UK. Additionally, jurisdiction of the Unified Patents Court (UPC) will not extend to the UK.

The UK is an integral part of most patentees' strategy, so an exit from the UP system is likely to reduce the attractiveness of the unitary patent. Applicants will continue to require UK patent protection. We will be able to continue to obtain patent protection by UK validation of granted European patents.

The UPC was scheduled for commencement in 2017. Brexit will probably cause a delay. London was intended to be the location for one of the three central Divisions of the UPC. Irrespective of any delay, the UPC's jurisdiction is likely to be limited by exclusion of the UK. Centralised enforcement would become less attractive. The likely loss of access to the highly respected English judges for the system may mean that national enforcement will invariably remain the preferred approach for most patentees.

The London section of the UPC's Central Division may be relocated to a country within the EU. However, this will require amendment to the UPC Agreement and this may in turn lead to further delays or breakdown of the Agreement.

The introduction of the UPC will affect all owners of EP patents. Unless they have opted out, they will be subject to the jurisdiction of the EU. As the UK will be outside the UPC, this may make a decision to opt out more straightforward to make, not least because challenged unitary patent rights can be centrally revoked by a single decision of the UPC.

D. TRADE MARKS & DESIGNS

UK national trade marks and designs will not be affected.

When the Brexit arrangements are complete, EU registrations will no longer extend to the UK. Transitional arrangements will be put into place. We do not know whether there will be an automatic extension of existing registrations to the UK, or whether re-registration will be required. No change will happen for at least two years. Regardless, Hepworth Browne are putting contingencies in place to see that access to the EU system remains available to all of our clients. Therefore you should continue to file EU trade marks and designs as usual and benefit from our considerable experience. We will let you know as soon as there is any further information.

E. CONTINUED REPRESENTATION

Hepworth Browne can continue to represent you as at present. No change will be necessary. Our professional organisations are working to ensure the best possible outcome for all of us.

Temporary market volatility has seen Sterling drop in value against other currencies, including the Euro and US dollar. Access to the competencies associated with UK based practitioners is therefore now even more affordable in the short term.

We will keep you informed of future developments. Meanwhile, please do not hesitate to contact us if you have any questions.



Robin Browne

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