

Brexit and Intellectual Property (IP) rights

The UK left the EU on 31 January 2020. A Transition Agreement between the UK and the EU meant that for the rest of 2020 there were few real changes to intellectual property rights. On 31 December 2020, the Transition Agreement came to an end with an ongoing trade agreement taking its place. In this article, we summarise the key consequences of Brexit for intellectual property rights.

Patent Rights

A patent is an exclusive right to prevent others from using your invention without your permission. There is no change to patent protection in Europe as a result of Brexit. The European Patent system is independent from the EU and has always included non-EU members such as Switzerland and Norway. The UK will remain a full Member State of the European Patent Convention and patent protection in the UK can still be obtained via a European patent. Thus UK-based European patent attorneys can continue to represent clients at the European Patent Office.

From 1 January 2021, new filings for UK patents will require an address for service in the UK, where previously an EU or EEA address for service could be used.

European Registered Trade Marks

Trade mark registrations usually cover rights such as brands and logos. Before Brexit, businesses were able to obtain UK protection by applying for EU trade marks (EUTMs), which are European rights covering all EU member states. However, following Brexit, EUTMs will no longer cover the UK. Thus, from 1 January 2021, businesses wanting to protect their brands and logos in both the EU and the UK will need to file separate applications in both the EU and the UK.

All existing EUTM registrations contained on the EUIPO database (and international trade mark registrations covering the EU) at 31 December 2020 were automatically cloned by the UKIPO to create 'UK comparable rights'. These new 'comparable rights' will only apply to the UK, will in due course require a UK address for service and can be enforced, challenged, licensed or renewed completely separately from the remaining EU right.

Where a EUTM application was pending before the EUIPO on 31 December 2020, it is necessary to file a parallel UK application to cover the UK within a period of 9 months from the end of the transition period. A UK address for service is required.

Registered Community Designs

A registered Community design (RCD) gives its proprietor the exclusive right in the EU to make, use, sell, import and export any product embodying or bearing the design. As with EUTMs,

RCDs are EU rights and following Brexit, this EU right will no longer provide protection in the UK.

The position for RCDs is like that for EUTMs. Existing registrations were cloned automatically to create corresponding

UK rights and pending applications will need to be refiled to provide a parallel UK application. Going forward, separate UK filings will be required alongside any EU applications in order to obtain protection in the UK.

Unregistered Designs

Previously, businesses were also able to obtain protection for designs via EU unregistered community designs (UCD). This right gives protection for designs for three years from the first disclosure within the EU. The UK has now created its own version of this right, covering only the UK.

Alongside UK continuing unregistered design rights, there are also other means to protect designs in the UK after the end of the transition period without a registration including the new Supplementary Unregistered Design (SUD). However, the interactions and qualifying requirements of the various unregistered rights are complex, and we would always recommend that you consider registering designs.

Copyright

At present, there are unlikely to be many changes to copyright law, as copyright is a national right provided separately by each individual country. In addition, both the UK and EU are members of international agreements such as the TRIPS agreement. However, differences may emerge in future as UK law develops separately to EU law.

Summary

In summary, there are a number of changes to existing IP rights, as follows:

- European Patents – Not affected
- European Registered Trade Marks – Protection Continues – UK Rights cloned
- European Registered Community Designs – Protection Continues – UK Rights cloned
- Pending EU Trade Mark/Design Applications – Backdated Filings possible for 9 Months

However, there are provisions in place to ensure that holders of IP rights are not disadvantaged.

To stay up to date with any changes to IP rights and to find out more information, please visit <https://www.appleyardlees.com/brexit/>, or contact Kate Hickinson at kate.hickinson@appleyardlees.com



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