

BREXIT's Projected Impact on Intellectual Property Rights

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Brexit finally arrived on Jan. 31, 2020, and we are now in the period during which the UK and EU will negotiate the final rules governing their future. During this transition period, the UK and EU will continue to recognize IP rights without change. When the transition period ends on Dec. 31, 2020, some changes to IP rights will come into effect in the UK and EU. We expect the most significant impacts of Brexit with respect to intellectual property rights to be:

Patents

The European patent system allows applicants either to file for a regional patent through the European Patent Office (EPO) or to file for national patents at the patent office within each country. This patent system exists independent of the EU, and Brexit will not impact patents granted through the EPO and national patent offices.

Trademarks

There are three ways to register trademarks in Europe: (1) with the individual countries; (2) through the Madrid Protocol administered by the World Intellectual Property Organization (WIPO); or (3) with the European Union Intellectual Property Office (EUIPO). Brexit will affect each differently.

Before (and after) the EU was formed, individual countries afforded national trademark rights through their own respective trademark offices. These national registrations will remain unchanged after Brexit.

The Madrid Protocol, which also exists independent of the EU, established a system to pursue international protection for trademarks within Europe and beyond. Applicants can designate each country in which the international trademark registration applies. After the EU joined the Madrid Protocol, trademark applicants also had the option to register a mark in all EU member states collectively. At the end of the transition period, an international registration (designating the EU) will no longer apply to the UK. To address this impact, the UK will work with WIPO to establish mechanisms that preserve these protections.

European Union Intellectual Property Office (EUIPO)

A significant impact of Brexit relates to the protection of EU trademarks and community designs (registered and unregistered) obtained through EUIPO. EUIPO allows applicants to file one application to register trademarks and community designs in all EU countries simultaneously. This system will continue without much change in the EU. However, existing EU registrations and pending applications will no longer have effect in the UK.

The UK plans to convert registered EU trademarks and registered community designs into "comparable" UK trademark or community design registrations at the end of the transition period. For pending EU trademark and design applications (not yet issued), applicants will have nine months to file UK "clone applications" to protect their UK rights. These procedures will be clarified during the transition period.

For unregistered community designs, the UK will continue to recognize any rights that arise before the end of the transition for their full term as "continuing unregistered designs." After the end of the transition, unregistered design rights will be protected as Supplementary Unregistered Designs established under UK law. These supplementary rights will arise by publication in the UK and should be carefully reviewed relative to EU community design rights and

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procedures.

Industrial Designs

International protection for industrial designs may be obtained under the Hague Agreement administered by WIPO. Similar to the Madrid Protocol for trademarks, applicants may designate each individual country in which the international design registration applies, or applicants may register the design in all EU member states collectively. Because international design registrations designating the EU will not apply to the UK after the transition period, the UK and WIPO are currently working on mechanisms to preserve these design rights in the UK.

Copyrights

Copyright protection exists in Europe largely under the laws of each country and should remain unchanged after Brexit. Reciprocal protection of copyrights between the UK and EU will continue. Some reciprocal rights defined by cross-border copyright arrangements, such as those covering online content services and databases, will be the subject of further negotiations during the transition period.

Miller Canfield attorneys continue to monitor the state of Brexit negotiations and remain available to answer your specific questions.