

IMPLICATIONS OF EU REFERENDUM RESULT FOR INTELLECTUAL PROPERTY



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The United Kingdom electorate has voted in favour of leaving the European Union. There is continuing uncertainty as to how the UK's relationship with the EU may now develop. This information sheet provides preliminary comments on the implications of the referendum result for intellectual property rights.

Patents

If and when the UK leaves the EU there will be virtually no effect on patents and patent applications. The European patent system (which is based upon the European Patent Convention (EPC)) is not part of EU law and there has been no suggestion by any party that the UK will leave the EPC; indeed, the EPC is an agreement between various European countries which predates the European Union. The European Patent Office itself has already emphasised that:

“...the outcome of the referendum has no consequence on the membership of the UK to the European Patent Organisation, nor on the effect of the European Patents in the UK.”

Accordingly, the ability to obtain European patents having effect in up to 38 members states (including the UK) through the European Patent Office, and to enforce these rights through national Courts, as well as the opposition procedure before the European Patent Office, will remain



unchanged. The result of the referendum will also have no effect on priority claims or on the ability of applicants to file international patent applications under the Patent Co-operation Treaty (PCT).

What will be affected is the proposed new European Unitary patent and Unified Patent Court, which are projects of the EU. It is too soon to say whether a way will be found to adapt these proposals so that they can proceed, either with or without the United Kingdom. There will also be effects on some patent-related rights which are subject to EU law, such as Supplementary Protection Certificates. Existing clients will be kept informed of developments in this regard as and when they occur.

Trade marks and designs

In terms of trade marks and designs the withdrawal of the United Kingdom from the EU would lead to significant changes. The EU trade mark (until recently known as the Community trade mark) and the Community registered design provide protection across the EU and only the EU. When the UK leaves the EU, the UK will presumably no longer be covered by new EU trade mark registrations and Community registered designs. It will be a minimum of two years before this takes place and, in the interim, we expect that transitional provisions will be included in new UK law to allow existing EU trade mark registrations and Community registered designs to continue to cover the UK, or to be converted into UK rights. Nevertheless, it will be some time before any details are known.

General remarks

We will continue to provide a full range of patent, trade mark and design services before the European Patent Office, UK Intellectual Property Office, European Union Intellectual Property Office and World Intellectual Property Organisation, for all of our clients in the UK, in the EU and internationally.

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