

“Brexit” Update

It has been four months since the UK’s historic vote to leave the European Union. Since that time we have been watching developments closely, and although there is still a large amount of uncertainty, we believe that we are now in a position to make some informed predictions regarding the potential ramifications of Brexit for the IP world.

Summary

There will be changes to the regime of IP protection in Europe and the UK which will be minor in respect of patents and more significant with regard to Trade Marks and Designs. We continue to expect that the rights of IP owners will be fully respected as those changes are implemented given both the long history of the UK’s respect for private property and its obligations under multinational treaties such as the WTO TRIPS agreement.



Tim Hewson

Consultant, Bath
tim.hewson@abelimray.com

Political Developments

David Cameron resigned as UK Prime Minister on 13 July 2016. He has been replaced by Theresa May who has appointed a new Government. Theresa May has pledged to trigger Article 50 of the Treaty of the European Union by March 2017. This will formally begin the process of negotiated withdrawal from the EU. Article 50 provides for two years of negotiation at the end of which the UK will cease to be a member of the EU. The two year period can be extended by mutual agreement, but both sides of the negotiation have indicated a desire to conclude matters quickly in order to provide certainty. Some commentators are sceptical about this short timescale but if it is adhered to the UK will be out of the EU sometime in 2019.

The UK Government has laid out plans for a “Great Repeal Bill” under which four decades of accumulated EU legislation will be transferred *en masse* into domestic law so that it can then be examined, retained or revoked, according to the will of the UK parliament. The British Civil Service has begun the lengthy process of examining that EU law.

Patents

It is important to emphasise that the European Patent Office (EPO) is not an EU institution and the prosecution of European Patents at the EPO will be unchanged. The rights of representation

at the EPO of UK-based European Patent Attorneys will remain the same, and it will, of course, remain possible to designate the UK on European Patents in the same way as for other non-EU EPC-contracting states like Norway and Switzerland. For the EPO it is “business as usual”

Unitary Patent (UP) and Unified Patent Court (UPC)

The UP and UPC are EU initiatives which, at least at the moment, require the UK’s participation to come into effect. There are convincing legal arguments that the UP and UPC systems could function with UK participation after the UK has left the EU. However, for that to happen the agreements would need to be amended, which would take time and the UK would have to agree to recognise the supremacy of European Law and the Court of Justice of the European Union in relation to matters before the UPC. While the EU Court would likely be willing to take on this role, in our view it would be politically very difficult in the UK for the UK to surrender sovereignty to the EU Court. This view is supported by Theresa May’s statement on 3rd October 2016 in relation to Brexit that “we are not leaving [the European Union] only to return to the jurisdiction of the European Court of Justice”. We must therefore conclude that, as things currently stand, the likelihood of the

Unitary Patent package happening with UK participation is low. This raises the question as to whether it might happen without the UK's participation. Whilst that is certainly possible, no one expects it to happen soon, given the need to either reopen the negotiated agreements and/or wait for the UK to leave the EU.

Trade Marks and Designs

The EUIPO (previously known as OHIM) is the European Union's office for EU-wide Trade Marks and Registered Designs. Post-Brexit it will not be possible for the UK to be covered by those EU-wide registered rights. We continue to expect that it will be possible to convert existing EU Trade Mark and Design registrations to UK national registrations, either automatically or by re-registration in the UK.

Abel and Imray continues to be at the heart of European IP. We are monitoring these issues carefully and will update you as new information emerges.

London

20 Red Lion Street
WC1R 4PQ, UK
T +44(0)20 7242 9984
F +44(0)20 7242 9989

Cardiff

3 Assembly Square
Britannia Quay
CF10 4PL, UK
T +44(0)29 2089 4200
F +44(0)29 2089 4201

Bath

Westpoint Building
James Street West
BA1 2DA, UK
T +44(0)1225 469 914
F +44(0)1225 338 098