

## BREXIT AND ITS EFFECTS ON INTELLECTUAL PROPERTY RIGHTS

On June 23rd the United Kingdom (UK)<sup>1</sup> decided, by means of a referendum, to exit from the European Union. This decision is known as “Brexit”. According to Art. 50 of the Treaty on European Union, the UK must notify the European Council – which for this purpose represents the EU – of its intention to exit, after which the parties will negotiate an agreement setting out the arrangements of that withdrawal and of the future relationship between the UK and the EU.

In practice, the UK will stop being a member of the EU once this agreement enters into force or, in case the parties are not able to reach such agreement, two years as of the date on which the notification is made<sup>2</sup>, unless the parties unanimously agree to extend the term for negotiations. During those two years as of the date of notification, the UK will remain a member of the EU and, consequently, the EU regulations, including those regarding intellectual property rights, will remain in force in the UK. In other words, Brexit will not have an immediate effect on intellectual property rights granted/recognized by the EU.

These are the principal effects that Brexit will have on intellectual property rights, once it occurs:

**1. Trademarks** European Union trademarks (EUTM) will cease to apply in the UK. The owners of these rights will have to use the transitional mechanisms that the UK decides to implement in order to allow for the conversion of existing EUTM into corresponding national UK rights. EUTM will continue to apply in the rest of the EU member states. It is important to consider the effect that the requisite of use may have with regards to EUTM which are used solely in the UK, because this use will no longer be relevant for maintaining those registrations. The owners of these EUTM must adopt the necessary measures in order to be able to defend their registrations from future non-use cancellation actions, and consider, for example, using their EUTMs in another member state of the EU. If the UK is an important market for the owner of the EUTM, it is advisable to consider the

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possibility of securing its protection separately as national UK trademarks, so that its rights are executable immediately in this state, avoiding the uncertainty regarding their protection, since the transitional measures to extend protection of EUTM to the UK are yet to be defined.

2. **Patents** The European Patent Office (EPO) is not an institution of the European Union, consequently, Brexit will have no effect on European Patents. The UK will remain a member of the Patent Cooperation Treaty (PCT) and of the European Patent Convention (EPC). However, there is uncertainty as to the participation of the UK in the European Unitary Patent system, which is slated to take effect in 2017. This is a simplified system which allows a patent owner to obtain a uniform protection of a patent in all the member states of the EU, based on the filing of a single patent application, for which a single fee regime would be applicable and over which a single court would have jurisdiction: The Unified Patent Court (UPC). In principle, the UK would be able to ratify the respective treaty and participate in the UPS during the two years prior to its exit from the EU.

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1 The UK comprises four countries: England, Scotland, Wales and Northern Ireland.

2 The UK has not made this notification yet, so the 2 years' term for its exit remains undetermined.

3. **Designs** As with the EUTM, EU Designs will remain valid in the UK until Brexit occurs. The UK will likely implement transitional mechanisms which will allow transforming EU Designs in national registrations. If the protection of these rights in the UK has a special relevance for their owner, it is advisable to analyze the possibility of applying for national protection while the transitional mechanisms that will enable their local protection are defined.

4. **Copyright** Copyright in the UK is governed by national regulations, so even though these regulations are harmonized with EU regulations, it will not suffer changes as a consequence of Brexit.

Finally, with regards to the above mentioned intellectual property rights, it is important to consider revising agreements, such as license

agreements, in which they are included and which have effect in the EU, because it may be necessary to make adjustments in order to clarify their territorial scope of protection.

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