

What Happens to Your IP Rights After a 'No Deal' Brexit?

October 12, 2018

On 24 September 2018, the UK Government outlined its position on how the various Intellectual Property (IP) rights will be treated following "Brexit Day" – planned for 29 March 2019, in the unlikely event that the United Kingdom leaves the European Union in a "No Deal Brexit."

These proposals aim to minimise any disruption and uncertainty to the owners of IP rights.

Patents and supplementary protection certificates

The European Patent Convention (EPC) is a non-EU institution and will continue unaffected by Brexit.

Following Brexit (with or without a deal), the UK will remain a signatory to the EPC.

- European Patent Attorneys based in the UK can continue to represent Applicants before the European Patent Office (EPO) following Brexit.
- Pending European Patent applications designating the UK will continue to designate the UK after Brexit.
- European Patents granted under the EPC already become, in effect, a bundle of separate national rights. These national rights will be unchanged by Brexit.
- The UK Government plans to explore whether it is possible to participate in the proposed Unitary Patent System following Brexit. Following Brexit, European Patent Attorneys will be able to represent you in the Unitary Patent Court (UPC) irrespective of whether the UK signs up to the UPC or not.

Unlike patents, Supplementary Protection Certificates (SPCs) are governed by EU legislation. The UK Government's intention is that the current SPC provisions will be maintained following the UK's exit from the European Union. This would mean that the UK will both honour existing SPCs covering the UK, and allow for the filing of new UK-SPC applications.

EU trade marks and registered designs

EU Trade Marks and Registered Designs granted prior to "Brexit Day" will continue to be protected and be enforceable in the UK, as the UK Government has committed to providing an equivalent trade mark or design registered in the UK. EU Trade Marks and Registered Designs will continue to apply in the remaining 27 EU States.

In other words, proprietors of existing *granted* EU Trade Marks and Registered Designs will not need to take any action to maintain their rights in the UK.

Applicants of EU Trade Mark and Registered Design applications *pending* on "Brexit Day" will be able to refile the application in the UK within a nine-month period in order to maintain the priority date of the EU application.

EU unregistered design rights

The UK will continue to recognise existing EU Unregistered Design Rights following Brexit.

The Government is also considering introducing a new Unregistered Design Right based on EU Unregistered Design Rights covering designs disclosed to the public after "Brexit Day".

Exhaustion of rights

Under EU law, IP rights are exhausted after goods are placed on the market by, or with, the consent of the proprietor anywhere in the European Economic Area (EEA).

The Government plans to maintain the status quo and recognise the existing EEA exhaustion provisions following Brexit. This means that import of goods from the EEA to the UK can continue unaffected.

It remains to be seen how the EU/EEA will treat import of goods from the UK to the EEA.

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