Cooley

Brexit and the European Patent System

June 24, 2016

The result of the UK's referendum on European Union membership is that the UK has decided that it will leave the EU. For now, the UK remains part of the EU. The withdrawal process requires that formal notice be given of the UK's intention to leave, which will be followed by a period of at least two years during which the terms of the UK's withdrawal will be negotiated with the other members of the EU.

European patents

The UK's withdrawal from the EU will have no effect on existing or future European patents. These will still be enforceable in any country in which they have been validated, including the UK. The European Patent Convention, which governs the European Patent Office (EPO) and the granting of European patents, is a supranational convention that is independent of the EU. The convention has been agreed by a group of "contracting states" that includes the UK and many non-EU countries, such as Switzerland, Norway and Turkey. The UK's decision to leave the EU will therefore not have any effect on its membership of the EPC and the ability of European Patent Attorneys practising in the UK to continue representing clients at the EPO. The referendum result does not therefore restrict Cooley's patent team in London from continuing to represent clients at the EPO and will not do so even after the UK leaves the EU.

Key takeaway: There will be no need to change working practices or take any action with respect to European patents as a result of the referendum result.

Unified Patent Court and Unitary Patent

It had been expected that a new single patent (the Unitary Patent) would be available in Europe from early 2017. At the same time, a new court (the Unified Patent Court) was to be established, which would have jurisdiction over the new single patent and traditional European patents. Given the UK's decision to withdraw from the EU and the fact that the UK is currently required to ratify the relevant agreements, it seems highly likely that there will be a delay in the establishment of this system.

Key takeaway: It is likely to go ahead in due course, but the UK's future involvement with the system and the length of delay is currently uncertain. In any event, our team of patent attorneys in London will be able to obtain unitary patents through the EPO and will have rights of audience at the Unified Patent Court. We will issue further alerts as the situation clarifies.

European community registered designs

In the UK, it is possible to obtain registered design protection either nationally (via the UK's Intellectual Property Office) or as an EU-wide right (via the EU Intellectual Property Office). Designs registered by either office will continue to be enforceable in the UK as in other countries of the EU. It is uncertain what will happen when the UK eventually leaves the EU, but it is likely that existing designs registered by EUIPO will continue to be enforceable in the UK.

Key takeaway: After the UK has left the EU, it will probably be necessary to seek registered design protection both in the UK and the EU to obtain the same territorial coverage as was previously available from the EU-wide right alone. Again, we will issue further alerts as the situation clarifies.

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