

# Brexit – how it affects your company's IP

Practical tips on how to ensure that your business does not lose out



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# First, some background:

## What is “IP” and how does it affect your business?

- “Intellectual Property” is really just a blanket term for those rights that enable you to stop others copying what your business does: patents for inventions; registered trademarks; registered designs; and copyright and unregistered design rights.
- Some of these – copyright and unregistered design rights – are automatic rights that arise when you create an original work. They can be used to stop *copying* of the work, but do not protect ideas and concepts.
- The others have to be applied for. Patents cover some sort of technical development, registered trademarks can be used to stop others using the same or similar branding, while registered designs can stop others making their products look similar to yours.



- If you export goods, or even services, to other countries, having protection for your IP in each major market will help you control competition in those markets.
- You will also need to take into account what IP protection your competitors may have in those countries – will this affect your freedom to sell in those markets?
- If you import goods from overseas for sale in the UK, then you will need some protection to help you control competition in the UK market.



# What will change if the UK does leave the EU?

- Patents – there will be no change to the status of existing European patents and no change in how they are obtained in future.
  - The European Patent Office (EPO) is not an EU institution. It was set up under the European Patent Convention whose member states include non-EU countries such as Norway, Switzerland and Turkey.
  - The unitary patent system, covering multiple EU countries, and providing a Unified Patent Court which can hear patent infringement cases with effect for all the members is not yet in force. The UK has ratified, but some other countries have not, and is not yet clear whether the UK will still be able to participate.
  - Rights of representation before the EPO will not be affected by Brexit and UK-based European Patent Attorneys will continue to be recognised. UK-based European Patent Attorneys currently handle a significant proportion of European Patent Applications originating from outside the EU.



EPO headquarters, Munich. Picture © EPO

- Trademarks and designs – the existing EU registrations cover all EU states, including the UK. If the UK leaves the EU, then these will cease to have effect in the UK at the end of any transition period.
  - Under Article 54 of the Withdrawal Agreement, there will be a system of automatic establishment of equivalent UK registrations to ensure continuity of protection. The government has now issued the necessary Statutory Instruments that will provide for the automatic granting of equivalent UK Trademark and Design registrations to existing EU registrations, and we are ready to put the necessary records in place to ensure that our clients' rights are fully maintained.
  - In the future, it will be necessary to apply for separate UK registrations alongside the EU registrations, adding to the cost.
  - It will still be possible to obtain new EU trademark and design registrations covering the remaining 27 countries. We will be able to arrange this for you using our associate in the EU.

# What do we need to do to prepare?

- Consider where your markets are now and where they might be after Brexit.
  - If we no longer have the advantage of being part of the single market, you may still be able to use your IP to overcome any potential competitive disadvantage when selling into the rest of Europe. You may no longer be able to compete on price with competitors in mainland Europe, but using your IP may still be able to give you an advantage.
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    -   ◦ If you are considering entering new overseas markets, will you have any protection against copying in those markets, and are there going to be any problems with other people's IP when your products enter those markets?
- Assess what protection you already have in place. You might be able to strengthen your position by taking action now.
  - Could other companies copy your products or services? Are your brands protected in all markets? What other protection might be available?

Contact us today on 01522 801111 to  
arrange an initial free consultation to  
assess your IP strengths and weaknesses

# What else do we need to do to prepare?

- Are you making the most of R&D Tax Credits? Don't be put off by the "R&D" label – you don't have to be doing laboratory work to qualify.
  - There's no guarantee that the government will be able to continue funding this tax relief after Brexit, so it is important to take action on this as soon as possible. Contact your accountants for this or seek out R&D tax credit specialists
- If you do have patents, are you claiming your Patent Box tax relief on profits attributable to sales of the patented invention?
  - Again, it is by no means certain that this will continue unchanged, so it is advisable to make the most of what you have. Speak to your accountants about this and speak to patent attorneys.

