

31 JANUARY 2020 - THE UNITED KINGDOM LEAVES THE EUROPEAN UNION

After having obtained a substantial majority in the House of Commons following the last elections, Prime Minister Johnson succeeded in obtaining the full approval of the preliminary withdrawal agreement negotiated with the EU. The European parliament also approved this agreement by a large majority.

The consequence of this political situation is the UK's effective exit from the EU on Friday 31 January, 2020.

Nevertheless, nothing will change during a transitory period, which expires at the end of December 2020, when the definitive agreement ruling the relations between the UK and the EU, should be finalized.



On January 1, 1973, the UK adhered to the European Economic Community. 47 years later, it will be leaving the EU.

It is to be hoped that this sad conclusion of a long and fruitful cooperation will not have excessively negative consequences for both the UK and the EU.

The definitive agreement, which now has to be negotiated between the parties, will define the future commercial relations between the UK and the EU. It is impossible today to know precisely the outcome of the negotiations, which may last longer than initially forecasted.

Notwithstanding the outcome of the negotiations, set forth below is a summary of the most probable consequences on IP rights.

Registered EU Trade Marks and Community Designs in the UK

The UK will remain part of the EU trade mark and of the of the EU registered Community design systems throughout the transition period that will end on 31 December 2020. EU Trade Marks (EUTM) and Registered Community Designs (RCD) will continue to extend to the UK during this time.

Right holders with an existing EUTM or RCD will have a new UK equivalent right, which will be created at the end of the transition period under the terms of the Withdrawal Agreement, therefore not on January 31, 2020 but on December 31, 2020. Right holders will have the option of opting out of such UK equivalent right if they so wish.

According to the UK IPO, the new UK equivalent rights will be provided free of charge with the same priority and seniority.

In addition, the UK will not amend address for service rules for the UK equivalent rights for a period of three years after the end of the transition period which is to expire at the end of 2020.

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The UK equivalent trade marks or designs right will be treated as if they had been applied for and registered under UK law.

This means that these trade marks and designs:

- will be subject to renewal in the UK;
- can form the basis for proceedings before the UK Courts and the Intellectual Property Office's Tribunal; and
- can be assigned and licensed independently from the EU right.

International Trade marks designating the EU and International designs registered through the international Madrid and Hague systems

During the transition period, international registrations for trade marks and designs protected via the Madrid and Hague systems that designate the European Union will continue to extend to the UK.

In accordance with the terms of the Withdrawal Agreement, international registrations for trade marks and designs that have been protected before the end of the transition period will continue to be protected in the UK after 31 December 2020.

The UK IPO is continuing to work with the World Intellectual Property Organization (WIPO) on the mechanism to ensure continued protection.

Pending EUTM and Community Design Applications

Business, organizations and individuals that have applications for EUTMs or RCDs that are ongoing at the end of the transition period will have to apply in the UK for the same protection within the 9-month period following the end of the transition period which is to expire at the end of 2020. Filing dates and claims to earlier priority will be recognized.

Right holders taking this step will have to bear, however, the cost of refiling the application in accordance with the UK application fee structure.

Unregistered Community designs: will continue to be protected for the remaining period

The UK will remain part of the EU unregistered Community design system throughout the transition period. This means that two- and three-dimensional designs (including, for example, clothing designs and patterns) disclosed in the UK or an EU Member State can be automatically protected in both territories as unregistered Community designs. This right provides three years of protection from copying.

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In accordance with the Withdrawal Agreement, unregistered Community designs arising before the end of the transition period will continue to be protected in the UK for the remainder of their three-year term. Designs disclosed in the UK after the end of the transition period may be protected in the UK through the supplementary unregistered design, which will protect two- and three-dimensional designs for three years.

Correspondence addresses and representation before the EUIPO

UK withdrawal has consequences on the rights of representation before the EUIPO for EUTMs and RCDs.

Applicants that are not domiciled or do not have a seat in the European Economic Area (EEA) have to be represented before the European Union Intellectual Property Office (EUIPO) in all proceedings other than the mere filing of an application by a qualified professional representative established in the EEA (EU, Norway, Iceland and Lichtenstein).

During the transition period, UK legal representatives will continue to have the right to represent clients before the EUIPO.

Nevertheless, UK legal representatives can continue to represent their clients before the EUIPO in cases that are ongoing at the end of the transition period.

Unitary Patent and the Unified Patent Court (UPC)

While Brexit has no impact on the European Patent, which is granted by an International organization, the EPO, which is outside the EU, it could have severe consequences on the future of patents in Europe, and particularly on the future Unitary Patent and the future Agreement on a European Unified Court.

Concerning the Unitary Patent Regulation, it seems extremely doubtful that the UK will be able to maintain its participation. The Unitary patent results namely from an EU Regulation that is only available to EU Member States.

Concerning the UPC, the European Court of Justice implicitly decided that the Unified Patent Court Agreement could not apply to countries outside the European Union. Amendments to the present UPC Agreement will have to be provided if the UK, which has ratified the UPCA on 26 April 2018, is to stay within the system.

At present, the German Constitutional Court is to give its decision on the conformity of the UPC Agreement with the German constitution. No progress can be made until this decision is issued and only if it is favourable for the proposed new European jurisdiction.

If this is the case, the Protocol on provisional application (PPA) signed on October 1st, 2015, may be finally ratified by the required number of 13 States (UK has already ratified the PPA). The Administrative

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Committee of the future UPC could then be created and discussions could begin for amending the present UPC Agreement, so as to take into account the Brexit.



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