

United Kingdom – Referendum on Brexit

In the referendum on June 23, the UK voted to leave the European Union (“Brexit”).

What are the consequences of this vote?

For the time being, there is a lot of uncertainty as to when and how an effective withdrawal of the UK will happen. There are also many different options for the strategy after exit, including retaining membership of the EEA only, joining the EFTA or other potential arrangements. It is impossible to forecast whether the United Kingdom will effectively leave the European Union and at what date.

Article 50 of the Treaty of the European Union provides that a Member State may decide to withdraw from the European Union. A time period of two years is then provided to organize this withdrawal. The British Government may well delay the triggering of Article 50, however, in an effort to try to negotiate special legal and commercial agreements with the other EU Member States before officially deciding to leave European Union.

What would be the consequences in the IP field in case of an effective withdrawal of the United Kingdom?

The presently existing EU trademarks and Community designs would no longer be effective in the United Kingdom. It would be necessary therefore to obtain trademark and design protection in the UK through the national UK legislation or via International agreements.

Concerning the UPC agreement and the Unitary Patent Regulation, it seems extremely doubtful that the UK could maintain its participation. The Unitary patent results from an EU Regulation that is only available to EU Member States. The European Court of Justice already implicitly, decided that the Unified Patent Court Agreement cannot apply to countries outside the European Union such as Turkey or Switzerland. It is doubtful that any specific agreement could be reached to arrive at a different solution, even if the UPC Agreement is not a pure EU legal construction but an International agreement.

The entry into force of both the UPC Agreement and the Unitary Patent Regulation necessitate ratification by 13 EU Member States, including the three countries in which the highest number of patents were filed before entry into force. If the UK withdraws before ratification, Italy will be the third country replacing the UK such that the UPC Agreement together with the Unitary patent could only come into force following ratification by 13 Member States including France, Germany and Italy. The London section of the central division would have to be relocated in another Contracting Member State. The most logical location would be Paris, which is the main seat of the central division.

If the UK decided to ratify the UPC Agreement before leaving the European Union, this would create a legally complicated situation.

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Since however, the UK is clearly an important country within the European Union at the present time, it is possible that the Member States will try to find an acceptable solution to this dilemma.

We will keep you promptly informed of any developments concerning the impact of this situation on your IP rights

Contact us:

For any question you may have, please do not hesitate to contact our team.



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