

CANTOR COLBURN CLIENT ALERT

The Impact of Brexit on Owners of IP Rights: Keep Calm and Carry On - At Least for Now

The United Kingdom's recent referendum vote to leave the European Union (EU), otherwise known as "Brexit," has led to much speculation and uncertainty as to the implications and effects. This includes intellectual property law, since the UK has been an important part of the EU's overall drive to harmonize trademark and patent protection systems for all EU members. However, it is important to stress that the existing IP relationships between the UK and the EU currently remain the same as they have been, and are likely to remain unchanged for at least the next two years.

In these circumstances, we are generally telling our clients who own intellectual property rights (IPRs) in the EU to proceed as they normally would, until the arrangements for the UK's separation from the EU have been formalized. However, we do suggest that IPR owners or related parties in the EU begin a review of any IPR agreements that cover or include the EU and/or the UK, such as licensing agreements. We consider it worthwhile to anticipate where changes to an agreement's provisions such as governing law or territorial scope, may be required.

Cantor Colburn will provide updates and guidance as the Brexit situation develops. For now, we note the following key IPR areas which are likely to be affected by Brexit:

Trademarks

- European Union trademarks (EUTMs, formerly known as "CTMs") still have full force and effect in the UK. After the UK leaves the EU, the most widely-held expectation is that EUTMs will no longer cover the UK, but there will already be a mechanism in place to convert prior EUTM rights effective in the UK into their equivalents at the national level.
- For new EUTM applications during this transition period, we believe that in most cases trademark owners should still file only at the EUTM office, without a separate national application in the UK, to avoid an unnecessary duplication in coverage and an additional expense.
- However, if the United Kingdom is a crucial market for a particular trademark owner, and to avoid the potential delays in receiving valid and enforceable UK trademark rights during the conversion process, it may be prudent to file a separate UK trademark application in addition to an EUTM application.



Registered Community Designs

- Similar to EUTMs, we expect that a procedure will be available to convert Registered Community Designs into UK-specific rights.

Patents

- While Brexit will not greatly affect current patent practice in the EU, Brexit will likely delay or prevent the planned future unitary patent system for Europe.
- Brexit will not affect current patent preparation and prosecution in the UK. Applicants can apply for patent protection in the UK via two routes: (1) direct filing in the UK; and (2) filing a European patent application with the European Patent Office (EPO). The direct filing route is unaffected by the UK's exit from the EU. The second route, the EPO, will also not be affected. The EPO was created under the European Patent Convention (EPC), which is a separate agreement from the EU agreement. The UK will still be a contracting member in the EPC even after Brexit occurs. Thus the current practice is unlikely to change.
- On the other hand, the proposed future Unitary Patents and Unitary Patent Court systems are likely to be affected by Brexit. First, these systems will be delayed because the UK was among the countries required to approve these agreements before they become effective. Italy will now take the UK's place. Second, the Unitary Patents and Unitary Patent Court systems will likely be amended to exclude the UK. The UK will have to negotiate new IP agreements with the EU. We hope that the need for harmony will guide these new agreements, and no radical changes will occur, but nothing is certain.
- As Brexit unfolds, European and UK patent strategies will evolve. Companies should constantly evaluate the value and costs of obtaining patent coverage in the major markets (for example, the UK, Germany, and France) in view of new treaties entered into during or following the UK's exit from the EU.

Copyrights

- Copyright rights are currently owned on a national-basis only (there is no "EU Copyright" at present). But Brexit may have some impact on current efforts to harmonize copyright laws and enforcement in Europe.

IPR Enforcement

- Enforcement of IPRs could well become more complicated once Brexit has concluded. For instance, the jurisdiction of UK courts will then be limited to the UK, and conversely national courts in the EU will not have jurisdiction in the UK after Brexit. Some form of legal reciprocity between the UK and EU countries is possible, similar to existing arrangements under the EU, but whether or not this will emerge after the separation negotiations is currently unclear.



Cantor Colburn LLP

For Further Information and Assistance

Please do not hesitate to contact your Cantor Colburn attorney with any questions you may have about the developing situation regarding Brexit.

Please do not hesitate to contact us if we can be of further assistance.

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Please note that each situation has its own unique circumstances and ramifications. This Client Alert is for informational purposes only and is not legal advice.