

SLAUGHTER AND MAY

## Brexit Briefing: Implications for Intellectual Property

IP is likely to be one of the areas of law that is most affected by Brexit. IP legislation is harmonised to a significant extent through EU Directives and Regulations.

The Government has announced that a Great Repeal Act will come into force immediately after Brexit to implement the majority of EU law into UK law which will then be repealed or amended over time.

However, difficult questions and considerable uncertainty remains for IPR owners, particularly in relation to the future treatment of those IP rights which offer unitary protection across the EU.

Please refer to the publications section of our website ([www.slaughterandmay.com](http://www.slaughterandmay.com)) to see all our Brexit Essential briefings.

These are designed to help senior executives in charge of legal, finance and risk determine the impact of the referendum and its outcome on their business.



# Key issues for IPR owners:

## Status of existing pan-European IPRs

Following Brexit, the UK will fall outside the EU trade mark and design regimes with the result that EU Trade Marks and Community Registered and Unregistered Designs will no longer have effect in the UK. This will also apply to EU designations of origin and geographical indications. The UK Government will need to find a legal mechanism allowing for continued protection of these rights in the UK. Various models have been proposed to the Government, some of which may result in additional administrative and financial burden on rights holders.

## Pharma regulation and protections for medicines

Brexit will have a very significant effect in the life sciences/pharma sector particularly if the UK does not stay in the European Economic Area (EEA). Much of the regulation in this sector comes from EU Directives or Regulations. Supplementary Protection Certificates (SPCs) allowing extension of patent term for medical and plant products derives from an EU Regulation which, subject to transitional arrangements being put in place, will no longer apply. The Government will need to decide what form of protection it will ultimately apply post-Brexit.

## Future of the Unitary Patent regime

The result of the EU Referendum delayed the launch (due in early 2017) of a new pan-European patent right, the Unitary Patent, and a centralised court system, the Unified Patent Court, to enforce this new right together with traditional European patents with the life sciences section of the Court in London. The UK Government intends to ratify the UPC Agreement (the UK being one of three Member States required to do so in order for the Court to come into effect) and is now in the final stages of the ratification process. This now raises the question of how the UK will remain a part of the regime following Brexit. In the short term, patent owners should review their portfolios to assess which European patents they wish to opt-out of the new regime as the sunrise period for registering opt-outs is likely to come into effect in the next few months.

## Exhaustion of rights

UK trade mark, copyright and design legislation contain provisions enshrining the European exhaustion of rights doctrine. If these provisions are repealed or amended to reflect the UK's anticipated withdrawal from the EEA, IP-protected goods put on the market in the remaining EEA states would exhaust an IP-owner's rights with respect to intra-EEA trade only. Whether it will become possible for UK IP rights to be used in order to prevent parallel imports from the EEA into the UK will depend on the exhaustion model adopted for each form of IP, e.g. national, hybrid or, some form of international exhaustion.

## IP licensing

Changes to existing agreements may be required for example to defined terms, the territory to which the licence applies and the actual rights licensed. Parties will need to think strategically about the most advantageous time to raise the issue as this may open the possibility for renegotiation of the rest of the terms. Going forward agreements will need "Brexit-proofing".

## Enforcement

Pan-European remedies, such as cross-border injunctions, will no longer cover the UK and may require a separate application to the UK courts. Similarly, some of the remedies that were imported from EU legislation (such as the publication of judgments) may no longer be available, unless adopted.

## Business as usual

Until the UK leaves the EU, IP owners can still apply for pan-European rights and enforce those and existing rights in the EU. The prosecution and grant of national rights will remain unaffected by Brexit. The grant and prosecution of European Patents will similarly be unaffected by Brexit as European patent law derives from the European Patent Convention, an international agreement separate from the EU.

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