CLIENT ALERTS & INSIGHTS

Brexit's Effect of Intellectual Property Rights

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Authors: Susan E. Clady, Alison K. Evans

Now that the United Kingdom has voted to withdraw from the European Union (commonly known as "Brexit"), we turn to the question of how Brexit will affect intellectual property rights in the UK and Europe.

The good news is that in the short term Brexit will have no impact or effect on intellectual property laws and practices in the UK or Europe. The UK has yet to invoke "Article 50" of the Lisbon Treaty, which triggers a two-year negotiation period for the UK to formally withdraw from the European Union. Therefore, any changes due to Brexit are at least two years away.

Patent Law and Practice

The traditional European patent system is based on the European Patent Convention, which is an independent convention and not part of the European Union. Therefore, traditional patent filings and prosecution in both the European Patent Office and the UK Intellectual Property Office will not be affected in the short term or long term by Brexit. Past and future patent applications prosecuted and granted through the European Patent Office will be valid and enforceable in the UK through the current national validation process.

However, the new Unitary Patent system and Unitary Patent Court will likely be delayed by Brexit. The Unitary Patent system is created through European Union regulations. Therefore, upon the UK's withdrawal from the European Union, it will no longer be eligible to participate in the system. To complicate matters further, a requirement to formally institute the Unitary Patent Court is for the three European Union member states with the most patents in force (which currently includes the UK) must ratify the agreement that establishes the court. For at least the next two years, the institution of the Unitary Patent Court relies on UK ratification of a system that it will not ultimately participate in. Therefore, it is very unlikely that the UK will ratify the agreement. The status of the Unitary Patent system will remain in doubt until after the formal withdrawal of the UK from the European Union or the renegotiation by member states of agreements relevant to the Unitary Patent system.

Trademark Law and Practice

Trademarks granted by the European Union Intellectual Property Office will remain valid and enforceable in the UK until its withdrawal from the European Union. Prior to the formal withdrawal of the UK from the European Union, it is highly likely that the UK will pass legislation to create mechanisms for validating the effect of European Union trademarks in the UK through a conversion process. As the ultimate withdrawal date becomes known, companies should reevaluate European trademark strategies to include selectively pursuing UK trademarks in addition to European Union trademarks.

Further Information

If you have any questions on this topic please contact a member of Benesch's Innovations, Information Technology & Intellectual Property (3iP) Practice Group.