

July 1, 2016

## How the Brexit Vote Will Affect IP

The United Kingdom voted on June 23, 2016, to exit the European Union, a decision that creates uncertainty for businesses and their intellectual property strategies.

As far as patents are concerned, the most significant immediate effect is likely to be a delay in the implementation of the new Unitary Patent and Unified Patent Court (UPC), which had been expected to be implemented in early 2017. As things stand, the UK will not be able to participate in the new UPC system once it leaves the EU, since EU membership is a pre-requisite to participation. On the other hand, the UK will likely remain a signatory to the European Patent Convention (EPC), and it will still be possible to obtain a UK patent via the EPC system.

**EU Trade Marks (EUTMs)** will for now continue to cover the UK. Until the UK actually leaves the EU (at least two years from now), EUTMs still have full force and effect across the UK. EUTMs can currently and for the foreseeable future still be invoked against national UK trademarks and infringing use in the UK. But once the UK formally leaves the EU, newly filed EUTMs will no longer cover the territory of the UK (subject to any special extension arrangement that may be made). A mechanism will likely be provided to allow the continued protection or extension of pre-existing EUTMs to the UK post-Brexit.

Like EUTMs, **Registered Community Designs** are unitary rights covering the whole EU. Provision will likely be made to ensure that Registered Community Designs continue to be afforded equivalent national protection in the UK when it formally leaves the EU.

Copyright exists on a national basis within the EU and so UK copyright will continue unaffected pursuant to national legislation. Whether and to what extent this legislation will continue to be interpreted in accordance with EU harmonizing directives remains to be seen, but the courts will no doubt continue to look towards the Berne Convention and Universal Copyright Convention for guidance and so the law likely will not diverge substantially from that in the rest of the EU.

The position for **domain names** is more straightforward, in that their registration is not EU related, and so, for example, UK-based individuals and companies that own .com, .net, .co.uk or .uk domain names will not be affected by Brexit. The one exception is .eu domain names, which may only be registered by individuals who are residents of or businesses that are established in the European Economic Area (EEA). It is possible, but not at all certain, that the UK may become an EEA member once it has left the EU. If it does not, then arrangements will need to be made to determine whether existing registrants of .eu domain names may retain them.