

Protecting Your IP Post-Brexit

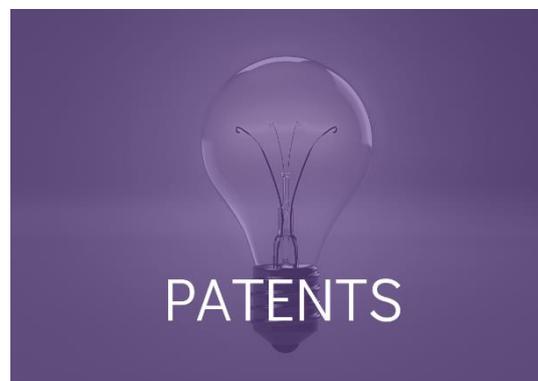
Quick Guide



Patents

Q. What effect has Brexit had on your pre-existing European patents?

A. None. Your patents remain as they are. The European Patent Convention and the European Patent Office (EPO) are independent from the EU, therefore, they are unaffected by the UK leaving the EU. In fact, the EPO currently includes eleven non-EU member countries (e.g. including, Switzerland, Turkey, and Norway).





Q. Has Brexit had any effect on new and pending European patent applications?

A. None. The filing and prosecution of European applications through the EPO have been unaffected by Brexit. New and pending applications can continue to designate the UK, and UK-based European attorneys can continue to represent clients at the EPO.

Trade Marks and Designs

Q. Has Brexit affected your pre-existing EU trade mark and design applications?



A. Yes. However, all pre-existing EU trade marks (EUTM) and Registered Community Designs (RCD) were automatically cloned on the UK register on 1 January 2021 to ensure no loss of rights in the UK. These cloned EUTMs and RCDs have the exact same legal status as if you had registered them under UK law. They retain all the original dates and are fully independent UK registrations. All pre-existing EUTMs and RCDs

remain in force across all remaining EU member states.

Q. Has Brexit affected your pending EU trade mark and design applications?

A. Yes. Applicants whose EU applications were pending on 31 December 2020 have until 30 September 2021 to re-file their applications in the UK and retain the EU filing date and any priority or seniority claim. UK application fees are payable.

Q. How will Brexit affect your new EU trade mark and design applications?

A. From 1 January 2021, trade mark and design protection will need to be sought separately in the UK and the EU if rights are required in both jurisdictions. As described below, it will now be necessary to appoint a European attorney to represent applications at the European Union Intellectual Property Office (EUIPO).

Q. Do UK trade mark and design attorneys still have rights of representation in the EU?

A. No. From 1 January 2021, UK trade mark and design attorneys were no longer able to represent clients on new applications or new proceedings at the EUIPO, therefore, it is now necessary to appoint a European attorney to do



so. Fortunately, Cameron IP has put in place contingency plans with a preferred European partner, to ensure we can continue to act for clients in all EU trade mark and design matters. UK attorneys can continue to represent clients in relation to existing cases which were pending on 31 December 2020.

Q. What has happened to EU rights arising from international registrations?

A. All existing international registrations (Madrid Protocol trade marks and Hague Agreement designs) which designated the EU were automatically cloned to the UK register to form standalone UK registrations.

Applicants who have an international trade mark or design designating the EU, which was pending as on 31 December 2020, have a period of 9 months from 1 January 2021, in which to apply in the UK for the same protection. In this case, it will be necessary to pay UK application fees and the application will be subject to UK examination requirements and, for trade marks, publication requirements.

The UK will need to be designated separately from the EU for any future applications under the Madrid Protocol or Hague Agreement.

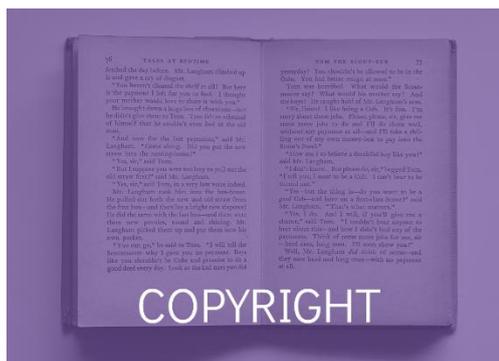
Q. What has happened to unregistered design rights?

A. All unregistered community design rights that arose prior to 31 December 2020 continue to be protected in the UK for the remainder of their 3-year term. From 1 January 2021, a supplementary unregistered design (SUD) became available under UK law. The SUD provides similar protection to that provided by an unregistered Community design, but only for the UK. The SUD will be established by way of first disclosure in the UK or in another qualifying country. It is important to note that first disclosure in the EU will not establish a SUD right and it could destroy the novelty of the design should you later seek to establish UK unregistered rights.

Copyright

Q. How are copyrights affected?

A. Due to the UK's continued participation in the international treaties on copyright, the majority of UK and EU copyrights will still be protected in both the UK and EU. This applies to works made before and after 1 January 2021. Pre-existing cross-border copyright arrangements unique to EU member states





ceased from 1 January 2021. These included cross-border portability of online content services, copyright clearance for satellite broadcasts, reciprocal protections for database rights and the orphan works exception.

Supplementary Protection Certificates



Q. How are Supplementary Protection Certificates (SPCs) affected?

A. As SPC's are granted as national rather than EU-wide rights, there is no need for the UK and the EU to create any comparable rights. The Withdrawal Agreement ensured that any SPC applications which were pending as of 31 December 2020 would be examined under the

current framework.

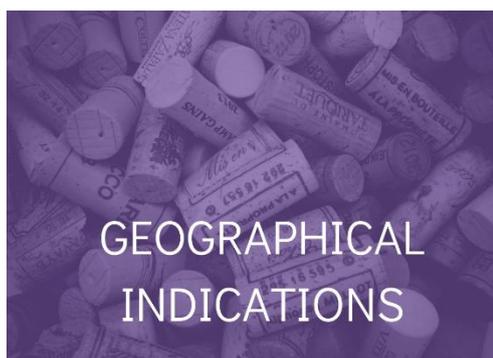
However, from 1 January 2021 it is necessary to check whether your marketing authorisation is valid for the whole of the UK, just Northern Ireland, or just Great Britain. Applications for an SPC will still need to be filed at the UKIPO within 6 months of your authorisation.

Geographical Indications

Q. How are geographical indications (GIs) affected?

A. All existing UK products which are registered under the EU's GI schemes will remain protected under the UK GI schemes. Registered GI's that can be produced anywhere in Ireland will continue to be fully protected in both the UK and the EU. From 1 January 2021,

producers now need to apply to the relevant UK scheme to protect a new product name in Great Britain and to the EU scheme to protect a new product name in Northern Ireland and the EU.





Address for Service



Q. Who can act as a UK Address for Service (AfS) for my UK applications?

A. The UK Intellectual Property Office changed the rules on Address for Service (AfS) addresses at the end of the transition period. Only addresses in the UK or Channel Islands are now accepted as AfS for new applications and new proceedings from 1

January 2021. The change applies to all patent, trade mark and design rights.

Supply Chain

Q. How might Brexit affect your supply chain in relation to your IP rights?

A. Goods that are placed on the UK market by the IP right holder (or with consent from the IP right holder) may no longer be considered exhausted (exhaustion of IP rights refers to the IP rights on goods being terminated once the good has been bought from the original IP

right holder) when exported into the European Economic Area. The result is that any business importing these IP-protected goods from the UK into the EEA might need to obtain the right holder's consent, even if the product is being bought from the IP right holder / someone else who has bought it from the IP right holder.



The IP rights on goods which are placed on the EEA market by, or with the consent of, the right holder after 31 December 2020 will continue to be considered exhausted in the UK. The result is that parallel imports into the UK from the EEA will be unaffected. This is currently under review by the UK Government and therefore may change in the future.



Can We Help You?



Q. How can we help your business navigate the post-Brexit climate?

A. We would be happy to conduct a quick (free of charge) overview of what IP rights you have and then confirm specifically what (if any) actions need to be taken to ensure it is all "Brexit-safe" with minimal fuss or cost implication for you. If you do want us to do that,

all we would need to know is which entity name(s) the IP is registered under.

Contact Our Brexit Team



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