

# BREXIT and your IP Rights in Europe

## BREXIT and its effect on UK IP Rights Holders

### Current situation:

Article 50 of the Treaty of Lisbon was invoked on 29 March 2017. The UK therefore has until 29 March 2019 to negotiate its leaving (= exit) from the EU (= Brexit).

On 30 March 2017, the UK Government introduced a White Paper on the Great Repeal Bill <https://www.gov.uk/government/publications/the-repeal-bill-white-paper> . This piece of legislation will repeal the European Communities Act 1972 (which embodied the principle that, in the event of conflict, EU law had precedence over UK National law).

On 6th September 2017 the European Commission publishes its own [position paper on intellectual property](https://ec.europa.eu/commission/sites/beta-political/files/position-paper-intellectual-property-rights_en.pdf) [https://ec.europa.eu/commission/sites/beta-political/files/position-paper-intellectual-property-rights\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/position-paper-intellectual-property-rights_en.pdf)

The document notably recognizes that *"the holder of any intellectual property right having unitary character within the Union and granted before the withdrawal date should, after that date, be recognized as the holder of an enforceable intellectual property right in relation to the United Kingdom territory, comparable to the right provided by Union law – if need be on the basis of specific domestic legislation to be introduced"*.

On 14th December 2017, the EU Commission published the following Notice:

[https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/contentPdfs/news/Brexit\\_preparedness\\_notice\\_on\\_IP.pdf](https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/contentPdfs/news/Brexit_preparedness_notice_on_IP.pdf)

countersigned by EUIPO, to holders of and applicants for European Union Trademarks and Registered Community Designs in the context of the notification of the intention of the United Kingdom to withdraw from the European Union.

Today, the European Union Trademarks (EUTMs) and the European Registered Designs (RCDs) are as effective in the United Kingdom (UK) as they have always been.

We have a great certainty, the EUTMs will no longer cover the United Kingdom, when Brexit takes effect. There are reasons to be confident that provision will be made for continued protection of existing EUTMs in the UK, however it is still not certain, how this will be done. Continued protection may not be automatic, the trademark owners may have the possibility/need to convert their EUTM into individual national Trademark in the UK.

The international Trademarks designated in the EU should be treated like the EUTMs to ensure continued UK coverage after Brexit.

Our proposal: Whatever happens, it is always wise to be on the safe side.

### Our recommendations (subject to specific advice in particular circumstances):

1. File now a new UK Trademark application, if the UK is a key country of interest (even before Brexit takes effect).
2. File a new UK Trademark application, if you are aware that the Trademark is going to be licensed or enforced in the UK in the future.
3. File an EU Trademark application, if you are interested in using your Trademark in the EU member states except the UK (the UK territory will be divided out as a separate registration retaining its original application date).

4. In case the proper use of your European Trademark is in the UK and/or in the rest of the EU questionable and the grace period of proper use (5 years) will be over prior to March 2019, we recommend that you should file a new application (in the UK and/or in the EU), in order to avoid non-use attacks in the particular territory.
5. File a RCD application now, if the UK territory is of normal interest (the UK territory will be most likely divided out as a separate registration, retaining its original filing date).
6. File a UK Design application, if you want to include a description of the Design and/or you want to add a partial disclaimer in the UK. This is possible for the UK registered Designs but not for the RCDs.
7. File a UK design application as a basis for filing an international design application through the Hague system, claiming priority, if appropriate - since the UK joins Hague Agreement (planned for April 2018). You could then claim priority and include a EU design application in the process.
8. The EU unregistered Design right will be lost in UK after Brexit (this will affect e.g. the fashion and car industry immediately).
9. The UK unregistered Design right shall not be affected by Brexit.

**Remarks:**

- The UK remains a member of the Patent Cooperation Treaty (PCT) which remains unaffected by Brexit. Hence Patents are not affected coming via the PCT-Route
- The European Patent Convention (EPC) is unaffected by Brexit. Hence Patents are not affected coming via the EPC-Route.
- Copyright is governed by the Berne Convention and is unaffected by Brexit.
- The UPC/pan-European court system has yet to be ratified by the UK (and Germany), but the UK Government has committed to ratify before the end of 2017 and did still not ratify. It is doubtful that UPC comes into force before March 2019. And in any case the UPC has to be redrafted if UK should stay within the UPC-System – which is unlikely under our view. Hence the Brexit will most likely influence the UPC-effect. It will most likely not be relevant for the UK after March 2019. And it is still doubtful if it comes into force at all soon.

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