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## **BREXIT and its effect on UK IP Rights Holders – An Update! (25 March 2019)**

Article 50 of the Treaty of Lisbon was invoked on 29 March 2017. The UK therefore has 2 years until 29 March 2019 to negotiate its departure from the EU.

After much discussion in Parliament, the European (Withdrawal) Act was finally passed and received the Royal Assent on 26 June 2018. The Act effectively repeals the European Communities Act 1972 and makes other provisions in connection with the withdrawal of the United Kingdom from the EU.

Section 19 of the European (Withdrawal) Act makes it clear that nothing in the Act shall prevent the UK from replicating in domestic law any EU law made on or after exit day, or continuing to participate in, or have a formal relationship with, the agencies of the EU after Exit day.

The Draft Withdrawal Agreement was published on the 14 November 2018 and endorsed at a special meeting of the European Council on the 25 November 2018. The draft Agreement has been rejected twice by the House of Commons, on 15 January 2019 and 12 March 2019. The EU leaders have just agreed that if the draft Agreement is swiftly approved, the departure date will be extended from 29 March 2019 to the 22 May 2019 in order to give time for the necessary legislation to go through. However, if MPs are still unable to agree the deal, then by the 12 April 2019 the UK will have to decide if it is to

- a) leave the EU without a deal;
- b) accept a long delay involving the EU Parliamentary Elections or
- c) revoke BREXIT altogether.

It still remains to be seen whether the route to be taken for the UK's departure will be that of a Hard Brexit (which is generally taken to mean a significant change, with the UK leaving the EU single market and customs union, and no longer implementing EU freedom of movement rules) or that of a Soft Brexit (which is often used to describe the UK keeping some kind of free trade arrangement with the EU, remaining in a customs union and allowing EU citizens to live and work in the UK).

For now: EU TMs (formerly known as CTMs) and EU Registered Designs are as effective in the UK as they have always been.

Our General Recommendations (subject to specific advice in particular circumstances) are:-

1. File a UK TM application if the UK is your key country of interest (this would always have been our advice in any case).
2. File an EU TM application if you are interested in using your mark in other EU member states (the UK territory will be divided out as a separate registration retaining its original date, post-Brexit, most likely by the Montenegro Model).

Depending when Brexit takes place and whether the application has achieved registration by then, it may be necessary to file a separate UK application claiming priority.

3. File a UK TM application if your EU application is unlikely to achieve registration before BREXIT (- NB this advice will change if the draft Withdrawal Agreement as currently drafted is reached).
4. Use a UK trade mark registration as the basis for filing any International Registration, if appropriate (less likelihood of Central Attack from the owners of any potentially conflicting marks in 27 other countries). This could include designation of the EU TM.
5. File EU Registered Design applications now (the UK territory will be divided out as a separate registration, retaining its original date, post-Brexit, most likely by the Montenegro Model). THERE WILL BE NO NEED TO REFILE POST-BREXIT.
6. File a UK Design Registration as the basis for filing an International Design Registration through the Hague system, claiming priority, designating the EU.
7. UK unregistered Design Right is not affected by Brexit.
8. EU unregistered Design Right will be lost but the UK will establish new schemes which will preserve the full scope of the EU Unregistered Design Right in the UK.

NB:

- The UK remains a member of the Patent Cooperation Treaty which remains unaffected by its membership or otherwise of the EU.
- The European Patent Convention is “European” in a geographical rather than a political sense and is unaffected by Brexit.
- Copyright is governed by the Berne Convention and is unaffected by BREXIT.

The Unified Patent Court (UPC) system was ratified by the UK Government on 26 April 2018. The UPC will now have exclusive competence in respect of European patents and European patents with unitary effect.

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