

EU REFERENDUM

Summary

The Prime Minister, David Cameron has announced that the EU Referendum will take place on 23 June 2016. The electorate will be asked to vote whether they wish to remain in a reformed EU or leave the EU.

If the results of the referendum are in favour of staying in the EU, the intellectual property laws will not change and the UK will continue to be part of the Unified Patent Court Agreement. Conversely, if the UK were to leave the EU, the Intellectual Property sector will be affected. Leaving the EU would mean that the UK would no longer be bound by EU legislation, and would be able to change its IP laws. However, the UK would still be bound by international treaties and because a substantial part of IP laws is internationally harmonised, it is improbable that there would be any change in national IP legislation. Additionally, the EU would continue to have an indirect impact on our economy but the UK would have less influence.

We discuss the consequences of the UK leaving the EU based on the current laws and international treaties. These changes are likely to be implemented within the transitional period. If a decision is made to leave, there are likely to be negotiations which may alter the consequences we discuss below.

This document is intended for information purposes only and does not support any view on whether we should stay in or leave the EU.

Consequences of leaving the EU

	What would change
European Patent granted by the European Patent Office (EPO) under the London Agreement	<p>The UK would remain a member of the European Patent Convention, as membership is not restricted to EU countries.</p> <p>The UK would retain a vote in the Administrative Council of the EPO. However, it would no longer be part of the Select Committee as this is restricted to EU countries. Thus, if the Select Committee decided to make changes to the rules affecting the UPC, the UK would have no say in the matter.</p> <p>Note also that the UK would retain its 20% liability for special contributions under Article 37 EPC.</p>
Community Trade Marks (CTM)	<p>Currently, under Article 112 of the Community Trade Marks Regulation, CTMs may be converted into national trade marks if they satisfy certain criteria.</p> <p>Although Community Trade Marks holders may use this option to enjoy continued protection of their trade marks in the UK, it is uncertain whether this possibility would still be available should the UK leave the EU.</p>
Registered Community Designs (RCD)	RCDs would cease to apply to the UK and UK Courts will no longer be designated as CDR courts.
Unregistered Community Design Rights (UCDR)	UCDRs would still be available if the disclosure of the design takes place within the European Union. Nationality is not a bar to benefiting from this right and UK businesses would not be excluded so long as they satisfy the disclosure requirements.

<p>Supplementary protection Certificates (SPCs)</p>	<p>SPCs for medicinal and plant protection products are governed by EU regulations.</p> <p>If the UK left the EU, the UK Patents Act would need to be amended to enable continued applicability of SPCs in the UK.</p>
<p>Unitary Patent (UP)</p>	<p>The UP covers all EU countries who have agreed to the UPC Agreement. If the UK left the EU, it would no longer be a member of the UPC and it would not be included in the scope of Unitary Patents.</p>
<p>Unified Patent Court (UPC)</p>	<p>Article 89 of the UPC requires the ratification of the Agreement by the “three Member States in which the highest number of European patents had effect in the year preceding the year in which the signature of the Agreement” took place. At the moment, these are the UK, Germany and France (the only one of the three to have ratified so far). If the UK left the EU, the mandatory ratification would be passed on to another Member State.</p> <p>The UPC would have jurisdiction over Unitary Patents and EPC patents.</p>
<p>London branch of UPC Central Division</p>	<p>Annex II of the UPC Agreement designates that the three sections of the Central Division will be located in London, Paris and Munich. The London section will be in charge of Human necessities, Chemistry and Metallurgy and its location has recently been designated.</p> <p>The UPC Agreement expressly states that part of this section of the Court will be set in London. This should technically stay the same if the UK left the EU. Changing it would require amending the UPC Agreement. However, it is likely that such an amendment would be made and it is doubtful that there would still be a London branch of the Central Division.</p>

<p>European Patent Attorneys</p>	<p>British European Patent Attorneys would retain rights of audience in front of the European Patent Office and will be able to represent parties in the different branches of the UPC in Europe.</p>
<p>Representation rights in front of the Office for Harmonisation in the Internal Market (OHIM)</p>	<p>Should the UK exit the EU, but join the EEA (see the withdrawal process below), representation rights would be possible.</p>
<p>Intellectual Property and Enterprise Court (IPEC)</p>	<p>The IPEC's role would not change and it would retain jurisdiction to decide on patent matters.</p>
<p>Court of Justice of the European Union (CJEU)</p>	<p>There would no longer be a UK judge on the panel. However, if the UK were to join EFTA, the CJEU's decisions would still affect us.</p>

UK withdrawal process

If the UK decided to leave the EU, it would have to notify the European Council. Article 50(2) of the amended Treaty on European Union (TEU) states that: “A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.”

An Act of Parliament would then be passed to repeal the European Communities Act 1972 and implement any negotiated agreement with the EU on their future relationship. Under 218(3) of the Treaty of the Functioning of the European Union (TFEU), the European Commission would submit recommendations to the Council, which would then adopt a decision authorising the opening of negotiations and will nominate the Union negotiator or the Head of the EU’s negotiation team.

A withdrawal agreement is an international agreement between the EU and the departing country (which will be considered a third party during negotiations). Therefore, a withdrawal treaty may have to be concluded as a mixed agreement, making the ratification procedure longer and more complex. The withdrawal agreement will not form part of EU primary law and will require the remaining Member States to negotiate between themselves a treaty amending the founding treaties in order to repeal all the provisions dealing with the departing country. If a departing country chooses to join the European Economic Area (EEA), a third treaty regulating the terms of accession to EFTA will be required and a fourth to deal with the accession to the EEA. The latter would require the approval of the EU and its Member States, the EEA-EFTA countries and the departing/joining country.

A country may only join the EEA if it is an EU Member State or part of the EFTA. Thus, if the UK left the EU, it would have to join the EFTA in order to be part of the EEA. Although the UK was part of the first countries to be a member of EFTA when the latter was founded, it left the Agreement in 1973 to join the European Community. The UK would have to engage in fresh negotiations to join again.

Norway is part of EFTA and the Single Market but has no say in setting any rules and has to implement the Directives that have been passed. The UK may wish to seek a similar arrangement to that of non-EU country Switzerland, which is part of the EFTA but not part of the EEA. Switzerland is unique as it exceptionally negotiates access to the Single Market sector by sector.

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