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The Impact of the Brexit on Intellectual Property Rights in Europe

The United Kingdom (UK) voted June 23, 2016 to exit the European Union (EU). While the full impact of the vote will not be known for some time, we are circulating our initial impression how the “Brexit” could impact our clients’ intellectual property (IP) in Europe.

For the immediate future, the answer is Brexit will have little or no effect. While the vote politically commits the UK to the exit, the formal extrication process will not begin until the UK provides official notice to the EU. That notice begins a two-year period during which the UK will negotiate the terms of its departure. The details of this withdrawal process are unclear because the UK’s exit is unprecedented.

With respect to patent protection, there should be no change even after the withdrawal. The European Patent Organisation, whose 38 member states include the UK, oversees the European Patent Office (EPO). Patent applications filed with the EPO are centrally examined before validation in individual states. Enforcement of patents in Europe requires bringing actions in each respective state in which recourse is desired. The European Patent Organisation is not an EU institution. Therefore, this regime will remain in place even after the exit of the UK is complete.

The Brexit may, however, halt or fundamentally alter major patent law changes that had been in development. Specifically, European countries are in the process of creating a unitary patent system

that will provide for centralized patents enforceable across the EU through pan-EU courts. However, UK participation was central to these plans, and the exit of the UK from the EU throws the future of the unitary patent system into doubt. The remaining EU participants may proceed without the UK or negotiate with the UK to join the proposed unitary patent system.

European Union Trade Marks (EUTMs) and Community Registered Designs (CRDs) will continue to be enforceable in the UK through the pan-EU courts through the completion of the exit negotiations. This also applies to new EUTMs and CRDs filed during the same period. Absent additional legislation, these rights will lapse as to the UK after the exit is finalized. As this would have serious negative consequences for companies relying on IP rights in the UK, it is likely that a process will be implemented whereby EU rights, such as EUTMs and CRDs, may be converted to UK rights during a transitional period. After the UK exit from the EU, we expect that a separate application will have to be made to have trademark rights in the UK.

The details of how to seek UK-specific protection in addition to EU protection to achieve comprehensive IP coverage in Europe will need to be clarified. We expect that holders of IP in Europe will likely continue to enjoy analogous protections to those currently available but should watch for new legislation and regulations to make sure their rights are sufficiently protected.