



Brexit FAQs
February 2020

When is Brexit?

The UK left the European Union on 31 January 2020. However, for the time being, this is a formality only – nothing substantive has changed.

What is the transition period?

Under the withdrawal agreement, there is now a “transition period” to allow for the smooth implementation of the terms of the UK’s withdrawal from the EU. During the transition period, EU law will continue to be applicable to, and in, the UK. This transition period is set to expire on 31 December 2020, and it is very unlikely that it will be extended.

What IP rights will be affected by Brexit?

EU trade marks and EU registered design rights will be affected, but not until the end of the transition period. Once the transition period has expired (i.e. almost certainly on 31 December 2020), new EU trade marks and EU registered designs will no longer be effective in the UK. For a trade mark or design to be recognised in the UK an application will need to be filed at the UK Intellectual Property Office (UKIPO).

Patents will not be affected by the UK’s departure from the EU, at all. There are no EU level rights for patents at present. The European Patent Convention, which governs the granting of European patents, is not a piece of EU legislation and so no action is required in this sense.

There is a question mark around what will happen to the Unified Patent Court (UPC), which is a proposed single Court for the enforcement of European patents, once the transition period comes to an end. This is unclear, although the UK Government has ratified the Unified Patent Court agreement which intends to bring the proposed EU-wide Unitary Patent into force.

Will my EU trade mark rights cease to exist?

No, your EU rights will continue to exist. At the end of the transition period, the UKIPO will automatically create equivalent UK trade marks for all EU trade marks that were registered/ granted before the end of the transition period, and no action will be required on your part. These equivalent marks will retain the filing dates of the original EU trade marks, and will also retain any priority and/or seniority dates. Of course, your EU trade marks will continue to exist as normal, with the only difference being that they will cover the remaining EU 27 Member States, and not the UK.

The same will happen with EU registered designs – they will automatically be granted an equivalent UK national right. There should be no re-examination of any equivalent UK national right (trade marks or designs) created under these conversion provisions.

Will I receive a new registration certificate when my new comparable UK right is created?

No, the UKIPO are not planning to issue new registration certificates. You will be able to view details of your new equivalent UK right on the UKIPO website.

What if I have a pending EUTM or EU Design at the end of the transition period?

If your EU right is still pending on 31 December 2020 (the likely end of the transition period), an equivalent right will not be created automatically. You will have a period of nine months after that date (i.e. probably 30 September 2021) during which you can apply to register your EU right as an equivalent UK right. The normal UK filing fees will apply, and the equivalent right will retain the same EU filing/priority date. These new applications for equivalent rights will then be examined in the same way as normal new UK applications.

Will Brexit affect my International Registration?

Yes. At the end of the transition period, any International Registration designating the EU will only be valid in the EU 27 Member States, and will no longer have effect in the UK.

The UK will automatically create UK national equivalent rights (not designations under the IR) for International registrations designating the EU. These equivalent rights will retain the filing dates of the original International registrations, and will also retain any priority and/or seniority dates.

For pending International applications, owners will have nine months to file for equivalent UK rights while retaining the filing/priority date of the pending IR designating the EU. The normal UK application fees will apply, and the new applications for equivalent rights will be examined in the same way as normal new UK applications. These international provisions apply both to trade marks and designs.

Will I need to appoint an EU-based attorney after the transition period?

No, Forresters will still be able to represent you. Not all UK firms will be able to continue their representation before the EUIPO but Forresters already has measures in place whereby we will continue to represent our clients seamlessly before the EUIPO.

What can I do to reduce any risk?

The UK government appears to have robust procedures in place to ensure that holders of EU trade marks and EU registered designs will continue to receive equivalent protection following the UK's "final" exit from the EU, at the end of the transition period. Therefore, we do not necessarily recommend making duplicate UK filings of all EU trade mark and EU registered designs, between now and 31 December 2020.

In certain circumstances, you or your clients may wish to consider filing UK national trade mark applications for those marks which are of particular importance in respect of the UK. While the additional UK filings for "doubling up" on existing EU applications and registrations may be seen as superfluous, this strategy of filing UK applications now will remove any uncertainty.

We are offering heavily discounted fees for UK national applications which mirror EU applications and existing EU registrations.

Do I need to take action now?

No, it is not essential to take any action now, especially as existing rights should now be safeguarded.

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