Brexit: Where Are We Now on the Protection of EU IP Rights in the UK after Brexit

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While COVID-19 has been running us all ragged, we cannot lose sight of another globally impactful event — Brexit. The UK-EU Withdrawal Agreement came into effect on January 31, 2020 and provides for the implementation of registered EU intellectual property rights into UK law after Brexit. What does it say and what do EU and UK IP rights holders need to do now?

Trademark Rights

All existing registered EU IP rights will be automatically recognised under UK law, free of charge and without any additional required application. This means that all EU trademarks, EU designs and EU plant variety rights will be granted comparable UK rights. This includes international trademarks or designs that designate the EU. Geographical indications and designations of origin will also be recognised. Therefore, names such as Parma Ham and Feta Cheese will still be protected in the UK.

Trademark Renewals and Cancellations

The new UK IP right will maintain the same date of filing, and therefore the same
renewal dates, as the comparable EU right. Therefore, if you have an EU right that will expire shortly after December 31, 2020 (the end of the transitional period) you should consider renewing it before December 31, 2020 to avoid having to pay double renewal fees.

If an existing IP right is declared null and void or invalidated in proceedings which have commenced before the end of the transitional period, it will automatically be declared null and void in the UK, unless the grounds for invalidation are not valid in the UK.

**Pending Trademark Applications**

If you have an EU application applied-for during the transitional period and still pending at the end of the transitional period, you will have nine months (six months for plant variety rights) to apply for a corresponding UK registration.

**European Patents**

EU patents are not affected by Brexit. EU patents that designated the UK will continue to be maintained and enforced under the same protections in the UK as pre-Brexit.

**Wider IP-Related Protections in the UK**

Owners of IP rights in UK databases will have their rights automatically protected in UK law to the same standard as under existing EU law (even where the EU law is broader than the UK law).

In addition to registered rights, the UK will grant protection under UK law for the holder of an unregistered EU design right which has been published before the end of the transitional period. There is no current agreement about how such designs will be treated after the transitional period.

**Conclusion**

In summary, hopefully this will be a smooth transition, but nothing is certain and EU unregistered design rights that are created after the transitional period may no longer be valid in the UK, which is a concern particularly to the fashion industry. To avoid possible post-transitional period headaches for future applications, you should consider starting to apply for both EU and UK rights (if you have not begun doing so already).

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