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The Post-Brexit IP Landscape: Patents

The end of the BREXIT transition period has no effect on European patents or patent applications. The European Patent Office (EPO) is European in name only and not an institution of the EU. Therefore, any UK designated European Patents will continue to apply in the UK and all natural and legal persons in the UK will still be able to apply for and obtain a patent at the EPO that they are entitled to by invention, employment, or assignment. The statutory instrument, “[Patents \(Amendment\) \(EU Exit\) Regulations 2019](#)” affirms this stance in UK law, and changes references to the EU compulsory license in section 128A of the UK Patents Act 1977 to ‘compulsory pharmaceutical license’. Therefore, the main message with patents post-BREXIT is business as usual.

Unified Patents Court (UPC): The main impact of Brexit on patent litigation has been on the establishment of the Unified Patent Court (“UPC”). Although the UK ratified the UPC Agreement which will bring the UPC into existence, it subsequently withdrew its ratification and withdrew from the UPC system. The fact that the UK is not in the EU (and not in the UPC system) will not affect the ability of UK businesses with European patents designated to participating EU Member States to use the UPC to enforce patents or seek declaratory relief, unless they have chosen to opt these patents out of the UPC’s jurisdiction. UK entities will of course also be able to apply for European patents with unitary effect (otherwise termed unitary patents (UPs)) which will be under the exclusive jurisdiction of the UPC – although UPs will not cover the non-participating EU Member States (Spain, Croatia and Poland, and now the UK), nor any non-EU European Patent Convention States (e.g. Turkey, Switzerland and Norway).

Summary (TL;DR)

- No changes apply to the European Patent system due to BREXIT, as the EPO is not an EU institution.

Conclusion

At Haley Guiliano LLP, we tailor our relationship for every one of our clients, recognizing that a cookie-cutter approach to IP representations is not adequate. We make it a point to understand our client’s business, its needs, and its goals. This underpins the work that we perform in the course of our representation. For more information on any of the matters discussed above, contact us [here](#).

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