

I: Introduction: rights affected

What's Brexit all about?	
What is Brexit?	The withdrawal of the UK from the EU following the 2016 referendum in which 51.9% of the UK voters opted to leave the European Union.
How will that happen? What are the main options being talked about?	<p>'No deal' Brexit: the UK leaves the EU with no deal and no transitional period.</p> <p>Brexit with a 'deal' – business as usual for a while longer during the expected 'transitional period'.</p>
When does this all kick in?	<p>No deal Brexit – 31 October 2019+ any transition period announced unilaterally by the UK government. Or + any further extension agreed</p> <p>If there's a wider UK-EU deal, the transitional period is expected to defer the need for any action until at least December 2020 (subject to any renegotiation of the transitional period).</p> <p><i>We are actively monitoring the situation and as soon as we know definite dates for any action we will report back and update these notes.</i></p>
Will this affect me?	<p>Only if you have pan-EU TM or Design registrations granted by the EUIPO or any other EU-wide IP rights referred to below. These will change shape as discussed below.</p> <p>Brexit does not affect European Patents granted by the European Patent Office (EPO).</p> <p>It does not affect directly the UK rights granted by the UKIPO. But after Brexit these will no longer overlap with the pan-EU right so will not be grounds on which to base EU trade mark oppositions or cancellation actions.</p> <p><i>We are on hand to advise on ensuring that desired coverage is maintained.</i></p>
What are pan-EU rights? How does Brexit change them?	<p>Pan-EU TM and Design rights grow as the EU grows and shrink as the EU shrinks. The EU has never shrunk before. We are entering uncharted waters.</p> <p>New EUTMs and EU Designs filed after Brexit will no longer cover the UK. You will get coverage in the then-27 countries of the EU. The post-Brexit EU right you secure won't be infringed by use in the UK. It does not provide a ground on which to base a UK trade mark opposition or cancellation action. For that you will need UK rights.</p>

	<p>Read on to find out about the difference in impact on pan-EU rights already registered and pending at Brexit.</p> <p>Separate UK national protection for TMs and other affected IP rights will be needed following Brexit to maintain protection throughout Europe and in the UK. R&G can support you to obtain rights in both the EU and the UK.</p>
Should I panic?	<p>No!</p> <p>The message from all is “Minimal Disruption”.</p> <p>Existing EU trade mark and design registrations at the date of Brexit will be cloned preserving protection in the UK, and there will be a transitional period for converting pending EU applications into EU applications plus UK applications.</p> <p>Reddie & Grose have all cases on our records under close monitoring and will provide reports as and when any action is needed.</p> <p>We are happy to take over representation for any portfolios of rights and do not raise an administration fee for the change in attorney of record.</p>
Will I get notification from the UKIPO that I need to take any action?	<p>No</p> <p>Present indications are that the Offices will not be inviting TM holders to do anything.</p> <p>If you have good representation, your advisers will be monitoring this and letting you know what you should do and by when.</p> <p>Please talk to us if you would like us to advise on your portfolio.</p>

IP rights affected

Is this only for EU trade marks? Or does it apply to any other IP?	<p>It applies to all of the following rights:</p> <p>Registered rights : EU TMs, EU designations of international trade marks, EU designs and EU plant variety rights</p> <p>Unregistered rights : EU unregistered design right.</p> <p>R&G have a wealth of experience in relation to all of these rights.</p>
I have been using the Madrid system for trade marks and the Hague system for designs. What is happening to their EU designations?	<p>The Designs and International Trade Marks (Amendment etc.) (EU Exit) Regulations 2019 essentially confirms that EU designations of International trade marks will be treated in the same way as EU Trade Marks – discussed in this note.</p>

<p>What about patents?</p>	<p>Nothing changes</p> <p>The UK is and is set to remain a party to the European Patent Convention (EPC), which is not tied to the European Union. Therefore, Brexit does not affect the way a European Patent is granted by the EPO, for protecting your inventions in the UK and elsewhere in Europe.</p> <p><i>R&G have a very strong patents team that will continue to represent clients in all matters before the European Patent Office. Our office in Munich gives us a base close to the EPO.</i></p>
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Representation

<p>Can Reddie & Grose continue to act for me in UK and European IP matters?</p>	<p>Yes</p> <p>Our attorneys act before the UKIPO for UK trade mark, patent & design registrations, the EUIPO for EU-wide trade marks and designs, the EPO for all European patents and the CVPO for Plant Varieties.</p> <p>We have offices in London, Cambridge, The Hague and Munich.</p> <p>We employ attorneys from around the globe.</p> <p>Some of our attorneys are also qualified to act in other IP Offices, Ireland being one.</p>
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Territorial extent of IP rights which used to cover the 28 countries which make up the EU before Brexit

<p>Which territories will be covered by a UK national IP registration filed after Brexit?</p>	<p>Same as a UK filed before Brexit</p> <p>All countries of the UK - England, Wales, Scotland, Northern Ireland.</p> <p><i>Our attorneys can support you in all matters before the UKIPO to obtain all necessary IP rights in the UK.</i></p>
<p>Which countries will a pan-EU IP right cover after Brexit?</p>	<p>One less</p> <p>There will be 27 EU member states – Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden.</p> <p><i>Our attorneys can continue to support you to obtain pan-EU IP protection after Brexit.</i></p>

Effect on EUTMs and other pan-EU rights that are already registered before Brexit

<p>What will happen to my existing EUTMs and other pan-EU rights that are already granted at 31 October?</p>	<p>UKIPO will create an equivalent UK national right that is a “clone” of the existing registered EU-wide right.</p> <p>The cloned UK right is expected to retain the filing / priority / seniority date of the EU right. So nothing changes aside from having two separate rights to monitor for renewal.</p> <p><i>There are over 1 million EUTMs to be cloned. The UKIPO has been working on this for some time already but this cloning process may not happen immediately on 31 October or any later date agreed as Brexit date. If clearing marks for use, we’ll be checking the EUTM register and assuming the clone exists.</i></p>
<p>Will I have to do anything?</p>	<p>No</p> <p>The cloning process will be automatic for all pan-EU rights granted before Brexit.</p> <p><i>We hear there will be an option to opt out of the clone, but this seems unnecessary for all but a few niche cases. You may end up with two UK registrations if you had a UK one already but there is no penalty there. A decision as to which lives on can be made at next renewal.</i></p>
<p>Will it cost anything?</p>	<p>No</p> <p>UKIPO has said that the clones of granted cases will be free. The message is “Minimal Disruption”.</p> <p><i>We can provide updates on the status of cloned UK rights and provide confirmation when all in the portfolio are complete or at any time on request.</i></p>
<p>Should I pre-empt any automatic cloning of pan-EU rights that are already registered or set to be registered by 29 March by filing separately in the UK now?</p>	<p>Not necessarily</p> <p>This is not necessary for any pan-EU rights already registered at the date of exit.</p> <p><i>We don’t think any action is warranted here but read on for thoughts on new applications being filed now.</i></p>

Applications for pan-EU rights still pending at Brexit

<p>What about applications for a pan-EU IP right still pending before the EUIPO at 31 October?</p>	<p>Yes</p> <p>The cloning process is not automatic in this case. Instead, there will be a 9-month grace period to file at the UKIPO an "equivalent" UK application for the same right which was under application in the EU. That period will close 9 months after the agreed Brexit date. The new UK application attracts official application fees. Representation will be needed before the UKIPO for many such filings.</p> <p>The new UK application is expected to retain the filing / priority / seniority date of the pending EU right.</p> <p><i>We are looking at and advising proactively on whether you can get the EUTM application to registration before Brexit takes effect so you get the automatic cloned UK right without paying for a new UK application.</i></p>
<p>Should I be pre-empting that by filing in the UK trade mark applications now?</p>	<p>Early filing in the UK isn't strictly necessary but we think it's a good idea, particularly for important marks.</p> <p>Any EUTM applications filed now won't get to registration before 31 October. So the option is file in the UK now, or wait until Brexit kicks in and then use the grace period to re-file the EUTM the UK.</p> <p><i>Filing in the UK does cost money but is not expensive. You will have to pay for the cloned application anyway. That's optional remember, so if you have a UK on file already, there's probably no need for the clone, subject to checking intervening rights.</i></p> <p><i>Filing now in the UK as a fresh application will avoid uncertainty over exactly how the "corresponding" cloned UK applications will be handled and how rapidly they reach grant status.</i></p> <p><i>Delaying the UK filing until Brexit kicks in increases the risk that a third party will register the same or a similar mark before the UK "clone" is granted without an opportunity to oppose pre-registration. Invalidation after grant is still possible but this is more expensive and carries certain risks.</i></p> <p><i>But.....if a withdrawal Agreement is reached before October 31st, the transition period will kick in and defer the need for an immediate separate UK filing. You will get an automatic clone if the EUTM is granted by the end of the transitional period.</i></p>
<p>What about EU registered design applications?</p>	<p>Probably no action needed for now</p> <p>They tend to be granted a few days after filing so we are not recommending separate UK design applications yet.</p> <p><i>We are filing priority documents early to ensure no delays in obtaining the EU registration</i></p>

Brexit and SPCs

<p>What are SPCs?</p>	<p>A Supplementary Protection Certificate (SPC) is a form of IP that comes into force at the end of your patent's life to extend the term of protection by up to 5 years for specific medicinal or plant protection active ingredient covered by the patent. A 6 month extension of the SPC term is possible via a paediatric extension.</p> <p>SPC legislation is derived from an EU Regulation but SPCs are applied for and maintained on a country-by-country basis. Therefore, to obtain patent term extension in multiple countries in the EEA, you have to apply for an SPC in each country individually (even before Brexit).</p> <p>In order to apply for an SPC in the UK, you must be the proprietor of a EP(UK) or UK patent in force that covers the active ingredient for which a first marketing authorisation to place a product containing the active ingredient on the UK market as a medicinal or plant protection product has been granted.</p>
<p>Will UK SPCs be affected by Brexit?</p>	<p>Yes</p> <p>The EU Regulation governing SPCs will no longer apply in the UK after Brexit (or, if a "Brexit deal" under the EU27 agreed Withdrawal Agreement of 25 November 2018 is accepted by the UK, after the end of the transition period whenever that terminates).</p> <p>Guidance notes from the UK government suggest that even in a "no deal" Brexit scenario, current SPC legislation will be retained in UK law.</p>
<p>Will applying for a UK SPC be affected by Brexit?</p>	<p>As SPCs are granted on a country-by-country basis, UK applications are lodged with the UK IPO. This will remain the case after Brexit.</p> <p>However, applying for marketing authorisations required for SPCs may change after Brexit.</p> <p>Currently, marketing authorisations to place a new medicinal or plant protection product on the market in the UK can be granted in one of two ways: either by a centralised procedure governed by the European Medicines Agency ("EMA") or from the UK Medicines & Healthcare products Regulatory Agency ("MHRA").</p> <p>After Brexit or its transition period, it is possible (but not certain) that marketing authorisations for the UK will need to be obtained solely from the UK MHRA and that centralised procedure marketing authorisations will not be valid in the UK.</p>
<p>What will happen to my marketing authorisation applications that are still pending at the time of Brexit?</p>	<p>We are hoping to receive more guidance from the UK Government on this soon.</p>

	<p>However, we think it's likely that if your marketing authorisation application was lodged with the UK MHRA you won't need to do anything.</p> <p>Conversely, if you have applied for marketing authorisation via the centralised procedure it is possible (but not certain) that you will have to reapply to the UK MHRA if your marketing authorisation application has not been granted before Brexit (or before the end of a Brexit transition period, if applicable).</p>
Will my granted UK SPC be affected by Brexit?	<p>No</p> <p>Even in the event of no deal your granted UK SPC will continue to have effect in the UK after Brexit.</p>
Will I have to do anything different to maintain my granted UK SPC after Brexit?	<p>Renewal fees for the duration of the UK SPC are paid to the UK IPO before the SPC comes into force. Therefore you won't have to do anything else.</p>
Will R&G still be able to help me with my SPC applications in the UK and abroad?	<p>Yes</p> <p>We will still be able to support you through the SPC application process in the UK (and elsewhere) before and after Brexit.</p>

Brexit and CPVRs

What are CPVRs?	<p>A Community plant variety right (CPVR) is an EU-wide right granted to new plant varieties that have been found to be distinct, uniform and stable. CPVRs are administered by the Community Plant Variety Office (CPVO) based in France.</p> <p>Once granted, a CPVR holder has an exclusive rights to effect certain acts in relation to the protected variety in the EU, including production, selling, marketing, exporting and importing.</p> <p>A granted CPVR is valid for a maximum duration of 25 years, or 30 years for vines, trees and potatoes, from the date of grant, provided annual renewal fees are paid.</p> <p>CPVRs co-exist with national plant variety rights (also called plant breeders' rights [PBRs]) granted by the UK and other EU countries. However, national plant variety rights such as UK PBRs are deemed suspended if they co-exist with CPVRs.</p>
Will CPVRs be affected by Brexit?	<p>Yes</p> <p>As with EU trade marks and EU registered designs, CPVRs are an EU-wide right governed by EU law so will not be effective in the UK post-Brexit.</p>

	<p>If the UK accepts a “Brexit deal”, a holder of a CPVR granted before the end of the transition period (as defined in the deal) will be entitled to become the holder of a UK PBR for the same variety if they register to do so.</p> <p>With the above Brexit deal, any pending CPVR applications at the end of the transition period can be converted to UK PBR applications for the same variety, with the UK PBR applications deemed to have the same priority and/or filing dates as the converted CPVR applications. The deadline for conversion will be 9 months from the end of the transition period.</p> <p>Under a “no deal” Brexit scenario, current UK government guidance suggests that granted CPVRs will be accorded the same rights in the UK as before Brexit. For pending CPVR applications, equivalent UK PBR applications will need to be filed. Again, priority and filing dates will be maintained. There is no guidance yet on the time-scale for conversion under a “no deal” Brexit.</p>
<p>Will applying for a CPVR be affected by Brexit?</p>	<p>The CPVR process will continue as before, but CPVRs will not cover the UK after Brexit. Therefore, to obtain UK PBRs for new plant varieties, separate UK national PBR applications will need to be pursued.</p>
<p>Will R&G still be able to help me with my CPVRs?</p>	<p>Yes</p> <p>We will handle CPVR cases via our EU-based colleagues or associates. Naturally, we will also continue to assist with UK PBR cases including conversions from CPVRs post-Brexit.</p>