



ARE Patent Law Alert: How Brexit May Impact Your EU and UK Patent Rights

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As previously reported on January 31, 2020, the United Kingdom will no longer be a part of the European Union, under the finalized Brexit Withdrawal Agreement.

Unlike Trademarks (see our alert [How Brexit Will Impact Your EU and UK Trademark Rights](#)), the European Patent Convention (EPC), which established the European Patent Office, is a treaty that was entered into between various European states independent of the European Union.

After January 31, 2020, the United Kingdom joined 11 of the 38 member states of the EPC who are not otherwise part of the European Union. In that regard, it is not expected that the process of obtaining a European Patent (with coverage in the UK) will change after Brexit. Applicants can continue to designate the UK, like any other member state, on European Patents.

However, Brexit's effect on European Patents in the UK may nevertheless be felt in the future. For example, because the UK is no longer part of the European Union, EU Regulations will no longer apply in the UK. Similarly, the Court of Justice of the European Union will no longer have authority over the UK. While, at least to begin with, it is expected that the UK will likely adopt current directives of the EU, over time it would not be surprising to see treatment of EU patents in the United Kingdom diverge from the treatment of the same EU patent in other member states.

In general, the decision of whether to file for UK protection through a European Patent rather than a UK Registration should not be impacted by Brexit (at least for the short term), but how such patents are to be enforced down the road is still an open question.

We will continue to monitor with our European colleagues to keep our clients informed of further developments of Brexit on IP protection in the UK and Europe.