



# **ARE Patent Law Alert: Brexit Will Likely Have No Impact on European Patents in UK, But Will Likely Have an Impact on Proposed Unitary Patent System**

Author(s): Charles R. Macedo, Benjamin M. Halpern,

In a nationwide referendum held on Thursday, June 23, 2016, the United Kingdom voted to leave the European Union (so-called Brexit). The result of this referendum is not legally binding on the UK government. Nevertheless, UK Prime Minister David Cameron, who had advocated the UK's continued participation in the EU, has now resigned and it is expected that the next government will honor the result of the referendum.

## **No Impact on European Patents Validated in UK Under Current System**

The current European patent system is governed by the European Patent Convention (EPC), which is independent of EU law. Under the current system, the European Patent Office (EPO) grants European patents, which must then be validated in one or more EPC member countries to be enforceable in those countries. The current EPC member countries include a number of non-EU member countries, such as Switzerland and Norway.

Due to the independence of the EPC from the EU, it appears highly likely at this time that Brexit will have no impact on the UK's participation in the EPC. Accordingly, European patents granted by the EPO and validated in the UK under the current system will likely remain enforceable even after Brexit. This was confirmed by the President of the EPO who stated in a press release issued shortly after the Brexit vote that "the outcome of the referendum has no consequence on the membership of the UK to the European Patent Organization, nor on the effect of the European Patents in the UK."

In addition, Brexit will have no effect on the UK's membership in the Patent Cooperation Treaty, which is independent of the EU membership. Applicants can still file national phase applications in the UK based on a PCT application, or alternatively obtain UK patent rights through an European regional phase based on a PCT application.

## **Potential Impacts on Unitary Patent System**

On the other hand, Brexit will likely have an impact on the future of the EU's proposed Unitary Patent system. Under the proposed Unitary Patent system, one can obtain an Unitary Patent from the EPO based on a single application which would be enforceable within all of the participating EU member countries through a single court, the Unified Patent Court. Since the Unitary Patent system is governed by EU law and regulations, it seems unlikely at this time



that the UK will be able to stay in the Unitary Patent system after Brexit.

The Unitary Patent system was expected to come into force in 2017. However, the implementation of the Unitary Patent system will likely face a substantial delay as a result of the Brexit vote. The agreement for creating the Unitary Patent system specifically requires ratification by the EU's top three member countries that validate the highest number of European patents, which currently include the UK. The UK has not yet ratified and as a result of the Brexit vote, it is probably unlikely that the UK will ratify the new system that it will not be part of. Accordingly, it seems likely at this time that the EU will have to wait until the UK leaves the EU before it can implement the Unitary Patent system. Since there will be a two-year transition period during which the terms of the UK's exit from the EU will be negotiated, the implementation of the Unitary Patent system will likely be delayed by at least two years.

We will continue to monitor the effect of Brexit on patent rights in Europe and the UK and will issue further ARE Patent Law Alerts as developments occur. In the meantime, please contact us to learn how Brexit may affect your patent rights.

\* Charles R. Macedo is a partner and Benjamin M. Halpern and Jung S. Hahm are senior counsel at Amster, Rothstein and Ebenstein LLP. Their practice specializes in intellectual property issues, including obtaining and enforcing patent, trademark and other intellectual property rights. They may be reached at [cmacedo@arelaw.com](mailto:cmacedo@arelaw.com), [bhalpern@arelaw.com](mailto:bhalpern@arelaw.com) and [jhahm@arelaw.com](mailto:jhahm@arelaw.com).