

英国“脱欧”对知识产权界的影响

用一句话来概括，“脱欧”对专利方面的影响微乎其微，对外观设计和商标则有更为显著的影响，但任何变化都要在至少若干年后，英国正式脱离欧盟之后，才有可能发生，短期内不会发生任何巨大变革。因此我们建议您在此保持关注的同时，无须对短期内的形势太过担忧。

“脱欧”这一历史性的公投结果会给英国带来全方位的影响，但在英国和欧盟之间完成脱欧的所有细节谈判之前，英国依然持有欧盟成员国的地位。完成脱欧程序，也就是《里斯本条约》第50条中规定的相关程序，需要至少两年甚至更久的时间。下面我们会详细阐述脱欧可能对知识产权领域产生的影响。



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英国政府在公投前的官方立场是希望能够留在欧盟，因此没有对“脱欧”的结果做出任何公开预案，目前为止也还没有针对英国与欧盟今后的结构关系的官方意见出台。但有鉴于英国和欧盟之间双边贸易的重要性，相信谨慎处理相关程序，达成双方都能够接受的解决方案，是符合各方利益的。因此，我们有理由，相信无论在知识产权保护方面今后会产生怎样的变化，知识产权所有人的相关权益都将得到尊重。

专利

英国国家知识产权局的主要职能，包括处理英国专利、注册设计以及商标等，都会维持不变。欧洲专利局并非欧盟机构，因此欧洲专利在欧专局的申请事宜也将维持不变。目前在英国的欧洲专利律师在欧专局的代理资格也不会受到影响。欧洲专利条约成员国中已经包括了许多非欧盟国家，比如挪威和瑞士等，因此无论即便英国脱离欧盟，也不会影响授权的欧洲专利在英国进行生效。

期待已久的欧洲统一专利和统一专利法庭系统的进程可能会被推迟。一旦英国离开欧盟，基于欧盟的统一专利和统一专利法庭将无法涵盖到英国，英国的法院将仅对国内法律纠纷有司法管辖权。但是，在英国的欧洲专利

律师在统一专利法庭系统的代理和出庭资格将不会受到影响。

专利补充保护证书 (SPCs)

专利补充保护证书 (SPCs) 是医药和植物新品种保护中重要的部分，是独立存在于各个欧盟成员国内部的国家性权利。根据目前已经掌握的情况来看，英国脱欧对英国的补充保护证书程序不会产生实质性的影响，但英国的补充保护证书与欧盟法院（目前欧盟内有关此类事务的最高上诉法院）之间的联系可能会有所改变。

商标与外观设计

欧盟知识产权局（前“欧盟内部市场协调局”）是一个欧盟机构，因此英国离开欧盟后，由欧盟知识产权局管辖的欧洲商标和外观设计体系将会产生比较大的变化，具体的影响会在今后几年随着脱欧洽谈的推进而逐渐明朗。对于在正式脱离欧盟前已有的欧盟商标或外观设计，预计英国相关部门会通过过渡性条例的方式，继续保障其在英国国内享有原有的保护力度。这样的保障可能通过将其自动转为英国国家商标或外观设计的方式来实现，也可能需要权利所有人进行一个简单的登记，具体的形式会在过渡性条例中明确。在英国脱离欧盟后，如果商标或外观设计申请人还希望在英国获得相关的知识

产权保护，则将会需要在欧盟商标/外观设计之外，单独申请英国的商标/外观设计。无论今后相关体系如何变化，我们为您提供优质高效的服务的宗旨都不会改变。

结语

最后，“脱欧”这一对很多英国人来说都颇为意外的公投结果毫无疑问将对英国和其它欧洲国家造成长期深远的影响。今后的若干年内都将陆续会有许多

“脱欧”相关的的协商与安排跟进。艾博英瑞将密切关注“脱欧”进程，并及时为您通报相关信息。如果您有任何关于“脱欧”可能产生的影响的顾虑和问题，欢迎您随时与我们联系。

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How will “Brexit” affect IP?

The short answer is that the effect on patents will be small and for designs and trademarks the effect will be more significant, but that any change will not happen until the UK actually leaves the EU, which is likely to take several years.

The historic vote in the UK to leave the EU will have very wide-ranging implications but the UK will remain as a full member of the EU while an exit package (a “Brexit”) is negotiated. That process, which is provided for by Article 50 of the Treaty on European Union, is expected to take at least two years, and could be much longer. Some of the potential ramifications for the IP world are explored below.



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The official position of the UK government in the lead-up to the vote was that the official policy was to remain in the EU, and therefore there would be no planning, at least in public, for the event of the outcome being a vote to leave. There is currently no official view of how the UK’s relationship with the EU should be structured, but given the huge importance of trade between the UK and the EU to both sides it is in everyone’s interest to make sure the process is handled carefully and that a mutually acceptable settlement is reached. We expect that the rights of IP owners will be fully respected as any changes to the regime of IP protection are implemented.

Patents

The primary functions of the UK Intellectual Property Office (UKIPO) of granting UK patents and registering UK designs and trademarks will continue unchanged. The European Patent Office (EPO) is not an EU institution and the prosecution of European patents at the EPO will also be effectively unchanged. The rights of representation at the EPO of UK-based European Patent Attorneys will remain the same and it will of course continue to be

possible to designate the UK on European Patents in the same way as for other non-EU EPC-contracting states, such as Norway and Switzerland.

The commencement of the long-awaited Unitary Patent and Unified Patent Court systems is likely to be delayed. After the UK has left the EU, those systems will very likely not extend to the UK and the UK’s national court system will have sole jurisdiction over UK patent disputes. Despite that, UK-based European Patent attorneys will have the right to represent clients in the Unified Patent Court, if and when that system comes into force.

Supplementary Protection Certificates

Supplementary Protection Certificates (SPCs) are important rights in the pharmaceutical and plant protection industries. SPCs are national rights that exist separately for each EU state. It is expected that the UK SPC regime will continue with little or no change of substance, though the link with the CJEU (the highest appeal court for EU SPC matters) will change.

Trade Marks and Designs

The EUIPO (formerly known as OHIM) is an EU institution and so the eventual departure of the UK from the EU will have more impact on the EU Trade Mark (formerly known as the Community Trade Mark) system and the Community Design system which are administered by EUIPO. The implications for trade mark and design owners will become clearer as the exit negotiations proceed over the next few years. It is of course expected that the UK will enact transitional provisions to

provide continued protection in the UK for any EUTMs (formerly CTMs) or Community designs that are in existence as of the date of actual exit. Those transitional provisions might mean that existing EUTMs and Community designs automatically gave rise to corresponding new national rights in the UK or it may be that owners of existing EU rights will need to re-register their rights in the UK by way of applications submitted to the UKIPO. From the date of actual departure from the EU it will be necessary to seek protection in the UK for trade marks

and designs separately from the EU. Whatever happens in the future, Abel & Imray will of course be on hand to advise on how best to protect marks and designs throughout Europe. The UK's vote to leave the EU has come as a surprise to many, and the after-effects will no doubt continue to be felt in the UK and in the rest of Europe for years to come. Over the next few years there will be much activity in arranging an orderly exit and we in Abel & Imray look forward to keeping you informed of developments.

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