

Patents

What does it cover?

- UK patents, particularly supplementary protection certificates (which provide additional periods of protection for certain pharmaceutical and plant protection products); patents for biotechnical inventions; compulsory licences of patented medicines and pharmaceutical testing.
- The Unified Patent Court and unitary patents.
- Issues of confidentiality and correspondence addresses for UK patents.

What will happen?

- In the event of a no-deal departure from the EU, under the EU Withdrawal Act 2018 all relevant EU legislation will be retained within UK law.
- The existing systems will remain in place, meaning any rights and licences in force in the UK as at 29 March 2019 will remain effective, and there is no significant change anticipated to the legal requirements or application processes for patents.
- Supplementary protection certificates will continue as before, with previous EU law being kept together with the existing UK legislative provisions.
- The laws relating to patents for biotechnical inventions, and compulsory licensing arrangements will also continue to apply.
- Exceptions to patent infringements which currently exist in relation to studies, trials and tests on pharmaceutical products will continue.
- With regards to the Unified Patent Court and unitary patents, the situation is unclear as such patents, and the applicable international patent court, are not yet in force. Their enforcement is dependent on ratification by Germany, and if such ratification remains outstanding as at March 2019, the domestic law which would bring it into force in the UK will never take effect.
- In the event that Germany does ratify the Unified Patent Court Agreement before withdrawal from the EU, the UK will consider whether it can remain within the Unified Patent Court and unitary patent systems. If the government finds that the UK cannot remain within such systems, businesses will be **unable** to use unitary patents to protect inventions within the UK.
- UK legislation provides for legal professional privilege to be given to any communication between registered intellectual property representatives and their clients (meaning that in legal disputes, such communications are considered confidential). Such privilege is also afforded to certain representatives who are on a

defined list for the European Patent Office. This is a non-EU agreement, and departure from the EU will have no effect.

- There are no immediate changes to rules for correspondence addresses for service of information with regard to patents and patent applications, and these will not be affected by the UK's withdrawal.

What will businesses have to do?

- As existing patent rights and licences in the UK will automatically remain in force, there will be no action required by either rights or licence holders as a result of departure from the EU.
- The guidance confirms that pending applications for patents and supplementary protection certificates will be assessed on the same basis as previously, and new applications can be filed as before.
- There is also confirmation that with regard to biotech inventions, rights holders, third parties and applicants from the UK, EU and third country businesses can continue to make decisions as under the existing law.
- Businesses who hold, or wish to apply for, a supplementary protection certificate, should ensure they are aware of any changes to the regulatory processes for human and veterinary medicines/chemicals which may result from the UK's departure.
- With regard to unitary patents and the Unified Patent Court, in the event that it is not fully ratified before the UK's exit from the EU, there will be no change for UK businesses at that time.
- If however the Unified Patent Court does come into force before March 2019 and in the event of the UK's withdrawal from the unitary patent system, to the extent that there are any unitary patents in place, they will give rise to equivalent patent protection in the UK. Similarly, to the extent that there are any pending cases before the Unified Patent Court at the point of exit, provision will be made to deal with these (although no detail is provided on this).
- UK businesses may then protect inventions using national patents (including patents available from the non-EU European Patent Office), and UK courts, and use the Unified Patent Court and unitary patent systems to protect inventions within remaining EU countries. EU businesses will be **unable** to use the unitary patent system to protect inventions in the UK, but can apply for UK domestic patent rights (via the UK Intellectual Property Office or the European Patent Office) as they currently do.
- The guidance suggests that businesses seek legal advice on the impact of the Unified Patent Court, and unitary patents, on their intellectual property rights.
- As the current rules with regards to legal privilege and correspondence addresses will remain unaffected, businesses do not need to consider any immediate implications.

This Technical Notice was compiled with the kind assistance of the law firm Squire Patton Boggs, who are working with a number of businesses in the UK and internationally on their preparations for Brexit, and can be contacted via jeremy.cape@squirepb.com

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For Brexit support, contact us:

EEF Brexit hotline: 0808 168 5874

Email: Brexit@eef.org.uk

Website: www.eef.org.uk/brexit

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