
Kluwer Trademark Blog

Brexit – 21 days to go

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When I started writing this article, the news came out that the UK and the EU had reached an agreement on the Northern Ireland border checks, so the UK would remove controversial clauses from the Internal Market Bill that were breaching the Withdrawal Agreement with the EU. Last night, Boris Johnson met Ursula von der Leyen in another attempt to bring negotiations forward but the three main points, namely fishing rights, competition rules and enforcement of any deal, are still not resolved. The next crucial deadline is Sunday, when the parties will decide if any negotiations will continue.

Since our last report on Brexit, the UK Government has launched a new campaign to help businesses and individuals prepare for the end of the transition period. Whilst a trade deal would remove the need for tariffs on goods crossing borders, there will still be the need for border controls and new paperwork. The preparations for border controls are not finished yet and it is likely that a widespread disruption will occur. To facilitate transit traffic to the EU, a Brexit border was introduced in Kent. Lorry drivers entering the EU will need an access permit into Kent. A dedicated area of Kent is transformed into a lorry park, which was jokingly named Farage Garage on social media and so far, nobody has tried to register a trade mark. On a more positive note, more than 20 of the existing trade deals that the UK was part of whilst still in the EU, have been rolled over and will start on 1 January 2021. Most importantly, the UK has signed new trade agreements with Japan, Canada and Singapore, which reflect the same conditions that the UK had whilst in the EU.

Regarding IP rights, the situation has changed little.

By now, it was already widely reported what will happen to EU trade marks and designs and pending applications.

There are, however, quite recent news regarding representation and addresses for service that were published by UKIPO on 23 November 2020 UKIPO.

Whilst during the transition period, when filing a patent, trade mark or design application, an address in the UK or the Isle of Man, Channel Islands or the European Economic Area (EEA) was accepted, from 1 January 2021 onwards, only an address in the UK, Gibraltar or the Channel Islands is suitable as address for service. This will also affect applications which have been filed claiming an EUIPO filing date as set out in Article 59 of the Withdrawal Agreement, so all those that are re-filed in the UK because the EU Application is still pending at the end of the transition period.

Addresses for service of already pending applications or registered rights will not need to be changed, unless the right is challenged by an opposition or invalidity or revocation proceeding from 1 January 2021 onwards. If no address for service in the UK, Gibraltar or the Channel Islands is provided, these proceedings will go on and might succeed without involvement of the trade mark holder.

Along the same lines, when challenging a UK trade mark application or a registered right, the acting party must provide an address for service in the UK, Gibraltar or Channel Islands, unless the challenge is based on a 'comparable right' that was created based on a EU right.

On the contrary, post registration actions to update or change the register and renewals do not require a UK, Gibraltar or the Channel Islands address. Comparable rights that are cloned from a EU registration will also not require a change of the address for service, even if challenged, as described above. This will change from 1 January 2024, when a UK, Gibraltar or Channel Islands address for service will be required for those contentious proceedings as well.

Comparable rights that are created from International Registrations will require a UK, Gibraltar or Channel Islands address immediately.

Last but not least, UKIPO will introduce new forms for the opt out procedures.

This sounds quite confusing, but compared to the rest of Brexit, there is at least some certainty.

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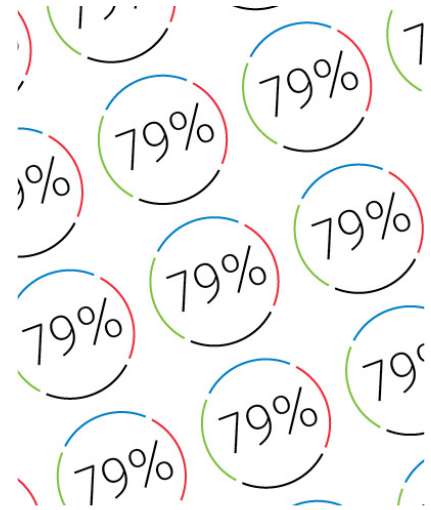
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