

Written evidence by the Chartered Institute of Patent Attorneys (FRE0068)

Q: What are the current provisions covering intellectual property in the Withdrawal Agreement?

A: Intellectual Property provisions can be found in Title IV of the Withdrawal Agreement, Articles 54 to 61, along with Article 97 which sets out representation in ongoing proceedings before the EUIPO. (UK representatives will have ongoing rights of representation at the EUIPO but only in ongoing proceedings.)

EU trade marks, registered designs and design rights will continue to be protected in the UK after Brexit. Holders of these rights which have been registered before the end of the transition period will become the holder of a comparable UK right.

Patents are not EU rights, and the EPO is not an EU body and such these are not included in the withdrawal agreement, although supplementary protection certificates (a form of patent term extension) are EU rights and are included in the withdrawal agreement and will also continue in the UK after Brexit.

Q: How do the UK and the EU's positions in the negotiations compare with regard to intellectual property?

Both the UK and EU have high quality IP systems that are largely harmonised and both parties want this to continue.

A: What are the key concerns of your clients regarding intellectual property matters in the negotiations between the UK and the EU?

Our member and our member's clients (UK PLC) would prefer to have reciprocal rights of representation, or failing that, a requirement for a UK address before the UK IPO. Our members' clients (UK PLC) would like to be able to serve documents in the UK in relation to UK rights, rather than having to file these overseas. Our members would like a level playing field with overseas attorneys and our member's clients (UK PLC) also want this because otherwise UK businesses will have an extra layer of cost in the EU, which EU business would not have in the UK.

If anyone from the EU can file an application before the UK IPO, this will mean that EU business can either file directly itself or use its own EU representative to make such filings. Conversely, UK business would have to appoint an EU attorney to act in the EU and would not be able to either file directly itself or use its UK attorney, thus adding an extra layer of cost.

Ideally, any new comparable rights that are negotiated, such as unregistered design rights, need to be reciprocal, or at least allowing for simultaneous disclosure. Otherwise there will be implications for UK PLC, in particular, around the likes of London Fashion Week and Paris Fashion Week, wherein first disclosure at one or other of these shows would otherwise mean limited protection is afforded for any designs shown (i.e. UK only or EU 27 only).

Q: Based on the parameters set out by the UK and EU draft legal texts, could reaching an agreement with the EU restrict the UK's ability to pursue agreements on intellectual property matters with third countries? If so, how?

We don't believe so. Any problems are more likely to be the other way round if third parties press the UK to agree to IP provisions that differ from the current harmonised position between the UK and EU.

Q: Could you sketch out a possible compromise between the UK and the EU on intellectual property and how it might be achieved?

A compromise is required on reciprocity of rights and UK address for service. We support comments made by our sister organisation, the Chartered Institute of Trade Mark Attorneys, on this issue.

Q: What would happen if agreement was not reached between the UK and the EU on intellectual property matters? What would be the international legal baseline they would fall back on?

Due to existing high levels of international harmonisation the UK would be largely unaffected. The UK is a signatory, for example, to the WIPO-administered Paris and Berne conventions on the protection of intellectual property. The main issues for the UK would be unregistered design rights and the added cost to business due to having to employ two sets of attorneys in the UK and Europe.

Q: What are the mechanisms for the protection and enforcement of intellectual property rights across Europe beyond those governed by the legal order of the EU and the jurisprudence of the CJEU? Will the UK need to accede to these mechanisms after the Transition Period if it wanted to take advantage of them, or has it already done so?

There are none. We are already signed up to all relevant international agreements.

Q: Has COVID-19 had any impact on the administration and enforcement of intellectual property in the UK? What lessons can be learned from this that could assist in preparations for a new intellectual property regime after the Transition Period ends?

We've learned that the UK can implement electronic versions of relevant documents quite quickly and after the Transition Period ends we need to be able to electronically request changes to the address for service, preferably allowing for batch changes otherwise there will be massive backlogs as currently all changes are done manually by the UK IPO – this should be prioritised. UK IPO has responded very well in comparison to the EPO and the EUIPO with certainty and time for business to make proper preparations.

July 2020



Committee on the Future Relationship with the European Union

House of Commons, London, SW1A 0AA

Email: freucom@parliament.uk Website: <https://committees.parliament.uk/committee/366/committee-on-the-future-relationship-with-the-european-union/>

11 June 2020

Mr Lee Davies
Chief Executive
Chartered Institute of Patent Attorneys

Dear Mr Davies,

The House of Commons Committee on the Future Relationship with the European Union is inquiring into the progress of the negotiations between the UK and the EU. Under normal circumstances, the Committee holds regular oral evidence sessions in Westminster. However, measures to prevent the spread of the coronavirus make this difficult.

The Committee is keen to gather as much evidence as possible to inform its deliberations so I am writing to you to ask whether you would be willing to help us with our work by making a written submission. We welcome general responses to our [call for evidence](#), which was published on 4 March. We also hope that you would be willing to answer some of the more specific questions set out below on issues that fall within your area of expertise. Submissions need not address every bullet point and can include other matters that you think are relevant to the negotiations and should be drawn to the attention of the Committee.

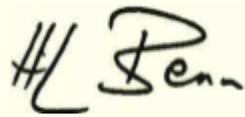
For the purposes of this letter on intellectual property, we are concerned with trademarks, designs, copyright, database rights, patents and trade secrets. Please therefore take references to intellectual property in the questions to exclude geographical indications and plant varieties. We intend to cover these separately at a later stage.

- What are the current provisions covering intellectual property in the Withdrawal Agreement?
- How do the UK and the EU's positions in the negotiations compare with regard to intellectual property?
- What are the key concerns of your clients regarding intellectual property matters in the negotiations between the UK and the EU?
- Why do you think the EU does not want to include audio-visual services in any agreement? How might the EU's reluctance to consider audio-visual services in the negotiations impact on the intellectual property of the UK's audio-visual services industry?
- Based on the parameters set out by the UK and EU draft legal texts, could reaching an agreement with the EU restrict the UK's ability to pursue agreements on intellectual property matters with third countries? If so, how?
- Could you sketch out a possible compromise between the UK and the EU on intellectual property and how it might be achieved?
- What would happen if agreement was not reached between the UK and the EU on intellectual property matters? What would be the international legal baseline they would fall back on?
- What are the mechanisms for the protection and enforcement of intellectual property rights across Europe beyond those governed by the legal order of the EU and the jurisprudence of the CJEU? Will the UK need to accede to these mechanisms after the Transition Period if it wanted to take advantage of them, or has it already done so?

- Has COVID-19 had any impact on the administration and enforcement of intellectual property in the UK? What lessons can be learned from this that could assist in preparations for a new intellectual property regime after the Transition Period ends?

The Committee staff will be happy to discuss the inquiry, any issues raised, or the process for submitting written evidence. You can contact them at freucom@parliament.uk.

Yours,

A handwritten signature in black ink, appearing to read 'H/ Benn'.

Hilary Benn
Chair of the Committee