Brexit and Intellectual Property Rights
A View from Outside the EU

Bassem Awad, Deputy Director for IP & Innovation
BIICL-CIGI, Legal Challenges Post Brexit
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OUTLINE

I. Current Landscape of IP & Innovation in the UK
II. Possible Advantages of Brexit for the UK
III. Key Changes and Challenges posed by Brexit
I- Current Landscape of IP & Innovation in the UK

The Global Innovation Index 2016
Winning with Global Innovation

https://www.globalinnovationindex.org/gii-2016-report
WHO IS LEADING INNOVATION?

THE GLOBAL INNOVATION INDEX 2016

Every year, the Global Innovation Index ranks the innovation performance of nearly 130 countries and economies around the world. Each country is scored according to 82 indicators.

www.globalinnovationindex.org

TOP 5 PERFORMERS WORLDWIDE

1. SWITZERLAND
2. SWEDEN
3. UNITED KINGDOM
4. UNITED STATES OF AMERICA
5. FINLAND

TOP 3 LEADERS IN INNOVATION QUALITY

HIGH-INCOME COUNTRIES

1. JAPAN
2. UNITED STATES OF AMERICA
3. UNITED KINGDOM

MIDDLE-INCOME COUNTRIES

17. CHINA
25. INDIA
27. BRAZIL

Economic Importance of Intellectual Property rights in the UK

<table>
<thead>
<tr>
<th>UK Investment in intangible assets 2011-2013</th>
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<tbody>
<tr>
<td>PATENT</td>
</tr>
<tr>
<td>13.3% of UK GDP</td>
</tr>
<tr>
<td>(€265 b)</td>
</tr>
<tr>
<td>TRADEMARK</td>
</tr>
<tr>
<td>38.4% of UK GDP</td>
</tr>
<tr>
<td>(€762 b)</td>
</tr>
<tr>
<td>COPYRIGHT</td>
</tr>
<tr>
<td>8.4% of UK GDP</td>
</tr>
<tr>
<td>(€168 b)</td>
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On a Regional Level: European Patent Office

<table>
<thead>
<tr>
<th>Patent Granted in 2015</th>
<th>Total = 68,421</th>
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<tbody>
<tr>
<td><strong>US</strong></td>
<td>14,950</td>
</tr>
<tr>
<td><strong>Germany</strong></td>
<td>14,122</td>
</tr>
<tr>
<td><strong>Japan</strong></td>
<td>10,585</td>
</tr>
<tr>
<td><strong>France</strong></td>
<td>5,433</td>
</tr>
<tr>
<td><strong>UK</strong></td>
<td>2,097</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>68,421</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Ranking of top UK applicants</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 ROLLS-ROYCE</td>
<td>540</td>
</tr>
<tr>
<td>2 UNILEVER NV/PLC</td>
<td>247</td>
</tr>
<tr>
<td>3 BAE SYSTEMS</td>
<td>242</td>
</tr>
<tr>
<td>4 BRITISH TELECOM</td>
<td>141</td>
</tr>
<tr>
<td>5 GLAXO SMITH KLINE</td>
<td>119</td>
</tr>
<tr>
<td>6 VODAFONE</td>
<td>75</td>
</tr>
</tbody>
</table>

https://www.epo.org/about-us/annual-reports-statistics/statistics.html#national
Status of IP laws & regulations in the UK

- **International IP treaties and conventions:** UK is signatory of most international IP treaties

- **Domestic IP system:** most UK IP law included, directly or indirectly EU principles
  - EU Directives are translated to domestic IP laws
  - EU regulations take direct effect in UK without a specific UK law
  - EU case law is influenced by the European Court of Justice (CJEU) decisions and reasoning
II- Possible Advantages of Brexit for the UK

1) Statutory Interpretation
   - Return to the Common-Law Doctrine
   - No further referrals to the European Court of Justice
   - No obligation to interpret UK law in light of EU Directives

2) Freedom to pursue wholly the UK innovation Strategy
III- Key Changes and Challenges posed by Brexit

1) Exclusion of the UK from pan-European IP rights systems
2) Gaps within the current IP legal framework
3) Revisiting some basic principles of International IP
4) Negotiation of new Bilateral Trade Agreements (BTAs)
1) Exclusion of the UK from pan-European IP rights systems

- No EPUE (European patent with unitary effect)
- No more EU Trademark or EU Design = EU-wide rights will need to be replaced by national rights
- Need for appropriate transitional provisions
- UK practitioners (lawyers, and patent and trade mark attorneys) will cease to be entitled to act as professional representatives in the EU Intellectual Property Office and Community Plant Varieties Office
2) Gaps within the current IP legal framework

- **International IP treaties and conventions:** Currently EU is a signatory to the Hague Agreement but the UK is not…

- **Domestic IP laws & regulations:**
  - Need to revise *statute law* and *secondary legislation* implementing EU Directives into UK national law
  - *Supplementary Protection Certificates* (EU regulation)
  - *Trade secrets* and *data exclusivity* (EU 2016 Directive)
  - *Geographical Indications* (reciprocity)
3) Exhaustion of Rights/ Parallel Imports

**EU Regional exhaustion** = IP rights exhausted on first marketing within the EU

**UK** = national or international exhaustion of IP rights
4) Negotiation of new BTAs

UK will need to begin strategizing on negotiating bilateral trade agreements with partners.
Thank you

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