

Design rights in a post-Brexit Britain

Following on from Barker Brettell's recent [article](#) summarising that the UK has joined the Hague International Design System – a measure to ensure that owners of Hague Design registrations will continue to enjoy protection post-Brexit we discussed the implications of the 'Draft Agreement on the Withdrawal of the UK' jointly published by the UK and the European Commission with regard to Trademarks in our previous [article](#).

The Draft Agreement also indicates that agreement has been reached in principle on a number of aspects relating to Community Design Registration and Unregistered Community Design Rights.

Provided that the Draft Withdrawal Agreement is signed, the UK will remain within the European Union's (EU) Intellectual Property regime until the end of the transition period which is expected to be **31 December 2020**. Both the EU and the UK are agreed that at the end of the transition period an owner of a 'parent' Community Design Registration shall become the holder of a 'child' UK Registered Design for the same design. Renewal dates for 'child' registrations will correspond to those of the 'parent' EU right and the possible term of protection may not be less than that of the 'parent' Community registration. Currently UK Registered Designs and Community Registered Designs can be extended to 25 years. It has also been agreed that the date of filing and the priority date of any 'child' registrations will be the same as those of the 'parent' Community Design Registration.

Agreement has not as yet been reached on how the registration or grant of the 'child' rights in the UK will take place or if there will be any cost or action required from the proprietor but the Commission's position is that this should be free of charge and that no action should be needed by the proprietor. It is still to be agreed whether there will have to be a UK address for service after the end of the transition period.

Where there is an ongoing administrative or judicial procedure relating to the validity or revocation of a Community Design Right at the end of the transition period then, if the Community Design Registration is declared invalid or revoked, the corresponding right in the UK will also be declared invalid or revoked. If the grounds for invalidity or revocation do not apply in the UK then there is no obligation on the UK to follow the decision on the Community Design Registration.

The UK and the EU have agreed that the necessary steps will be taken to ensure that natural or legal persons who have obtained protection for the international registrations of designs under the Hague system will continue to enjoy protection in the UK. The UK has now ratified the Geneva Act of the Hague Agreement concerning Registration of International Designs. This will come into effect on 13 June 2018 so providing the first step to effect this provision.

An interesting provision that has been agreed is that the holder of an unregistered Community Design that has come into effect by the end of the transition period, shall become the holder of a comparable enforceable property right in the UK having the same level of protection. It would appear that no action will have to be taken by the owner and the right will have a term of protection at least equal to that of the Community unregistered Design Right. Therefore unregistered Community Design rights could be enforceable in the UK until the end of December 2023 and will sit alongside the UK unregistered design rights for that period.

Transitional provisions have been agreed allowing the applicant for a Community Design Registration, that has been filed but not registered by the end of the transition period, a further 9 months from the end of the transition period in which to file a corresponding application for the same design in the UK. Action will be needed by the applicant but no rights will be lost and the date of filing and the date of priority will be the same as the corresponding application filed at the EU Intellectual Property Office (EUIPO).

The broad agreement between the UK and the EU on Intellectual Property indicates that significant progress has been made and that the importance of IP has been recognised.

If you have any questions please speak to your usual attorney.