



Brexit FAQ: Patent issues

Be prepared for Brexit: The questions you need to ask

Life sciences companies with operations in the UK or Europe are wondering where to even start when it comes to Brexit-related legal issues.

To give you a jumpstart, our colleagues from different practice groups across multiple countries have prepared a series of questions you should ask to better understand how Brexit will impact your business and to clarify what steps need to be taken.

In this edition, we share questions to ask when reviewing patent issues:

Exhaustion of rights:

- To what extent are your medicinal products and/or medical devices currently parallel traded between Member States and the UK under the EU principle of ‘exhaustion of rights’?

Supplementary protection certificates (SPCs):

- How many of your medicinal products currently on the UK market are protected by UK SPCs or patents that may be eligible for extension by way of a UK SPC?
- Given that the SPC Regulation will cease to have effect in the UK upon Brexit (subject to any transitional provisions), have you considered what scope of any ‘new’ UK SPC system would most benefit your business (for example a system that simply replicates the SPC Regulation or a more UK-focused system)?

- Do you have any pending SPC litigation involving a reference to the Court of Justice of the EU that might not be resolved before Brexit takes place?

For consideration of issues relevant to the marketing authorisations that underlie SPCs see our [Brexit FAQ: Regulation of medicinal products](#).

Patent licensing:

- How is the territorial scope of the licence defined? Does the licence extend to the UK individually, or only as part of the EU?
- How many of your patent licences provide for a UK Court as the venue for dispute resolution?

For further consideration of issues relevant to reviewing existing licences and negotiating new licences see our [Brexit FAQ: Commercial contracts](#).

Brexit FAQ: Patent issues

Unitary patent and unified patent court (UPC):

- Does your planned strategy for filing unitary versus national patent applications take account of the possibility that unitary patents may cease to or may not be able to extend to the UK upon Brexit?
- Will your planned strategy for opt-out of European patents from the UPC be affected if the UK is not able to participate in the UPC following Brexit?

Key contacts



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