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# Kluwer Patent Blog

## AIPPI Milano

Brian Cordery (Bristows) · Monday, September 19th, 2016

by **Vanessa Rieu**

The first panel session of the AIPPI Milano conference – an “additional session”, crammed in early on the Sunday morning, focused on Brexit and its implications for IP. Moderator Prof Cesare Galli (IP Law Galli), and panellists Sarah Matheson (AIPPI Reporter General), Gordon Harris (Gowlings WLG (UK)), Francesca Giovanni (OSHA Liang (FR)) and Tobias Dolde (Noerr (DE)) debated various topics, including possible changes to substantive IP laws where they have been harmonised at EU level, the consequences on enforcement strategies, new opportunities which may arise and the consequences of Brexit on SPCs, patents, trade marks and design rights.

Gordon Harris explained that Article 50 TEU sets out the legal consequences of withdrawal from the EU. Article 50(3) clearly provides that the UK would have two years to negotiate a withdrawal agreement, unless the European Council unanimously agreed to an extension of time. Upon the entry into force of the withdrawal agreement, or the expiry of the two year period, the EU treaties will no longer apply to the UK. All European legislations and regulations will expire and disappear from UK law. So what’s next? Irrespective of the UK’s post-Brexit relationship with the EU, existing and pending SPCs are expected to be unaffected, and it is likely that term extensions under Regulations 469/2009 (medicinal products) and 1610/96 (plant protection products) will be incorporated into the EEA Agreement.

Various exit scenarios were discussed. The UK Parliament is expected to reenact en mass large quantities of EU legislation, as necessary, to prevent legislative gaps from emerging. Doing so might be straightforward regarding the two main SPC Regulations, however it might prove more difficult regarding the paediatric extension provisions, which are likely to be dealt with in the context of a wider regulatory strategy. Longer term, the option to develop the SPC legislation in the UK might lead to interesting results, in particular concerning medicinal products and SPC term. Post Brexit UK legislation on SPCs could be made more favourable to the pharmaceutical industry (eg providing for a longer term) to attract investors and might include medical devices. However, at the end of the day, it is likely to be similar (but not identical) to EU law, adopting the approach currently taken by Switzerland.

Francesca Giovanni discussed the implications of Brexit for the allocation of jurisdiction and the recognition and enforcement of judgments. The current rules on allocation of jurisdiction, enforcement and reciprocity of judgments across the EU Member States, as well as laws governing parties’ non contractual obligations and service of documents are still in force, at least until 2019.

After Brexit, the UK will lose the benefit of the current Brussels Convention, Rome II and Service Regulations. In the absence of new laws, the Brussels Convention of 1968 might re-emerge as the governing instrument, as outdated as it is. Another option would be to ratify the Lugano Convention, which currently applies to certain countries only (including Switzerland and Norway). A third option would be to join the Hague Convention, which was ratified by the EU. This would provide some degree of reciprocity, but only in relation to final decisions. The UK could also negotiate a series of bilateral or multilateral agreements specifically addressing these issues.

And for trade marks? Tobias Dolde presented various scenarios and options (the EU TMs might cease to cover the UK, might continue to cover the UK or might automatically break into EU TM and UK TM, raising issues as regards to registration and costs), before concluding that the safest option, in these uncertain times, is to file both an EU TM and a UK TM, which of course dramatically increases the costs of protection. Similar issues apply to design rights.

As Gordon Harris summed up the position succinctly: “Brexit doesn’t mean Brexit, it means chaos”.

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