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## Licence to File: Brexit, Opt-Outs and European Patent Validation for British Holders

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As James Bond's 1989 adventure Licence to Kill, in which a special permit confers extraordinary authority upon its bearer, Brexit has furnished British patentees with a renewed licence to navigate Europe's patent landscape under distinct rules. While the European Patent Convention (EPC) remains intact—Britain never exited that treaty—patentees domiciled in the UK now confront separate validation formalities, the forfeiture of Unified Patent Court (UPC) jurisdiction, and a fresh opt-out calculus. Drawing upon official guidance and court-practice analyses, this article unpacks concrete scenarios for UK right-holders and recommends both legal reforms and strategic measures to safeguard their inventions post-Brexit.

### Brexit and the EPC: Continuity with a Catch?

The EPO, an independent international organisation, continues to grant European patents covering the United Kingdom exactly as it did before Brexit.

Under the EPC, patentees designate member states at grant and, for each designated country, carry out national validation formalities. Crucially, for patents designating the UK, the UK Intellectual Property Office (UK IPO) now requires that the patentee maintain an address for service within the UK, Gibraltar, or the Channel Islands; without such an address, no contentious proceedings can proceed in the UK.

In a key reassurance, the UK IPO confirms that “*granted European Patents which designate the UK are transferred onto the UK Register automatically. No validation is required*” when an EEA-based address for service was in place at grant ([UK IPO Guidance 2023](#)). However, with the UK's withdrawal from the EEA, British domiciliaries must now update their service address to comply, lest they risk ignorance-based defaults in litigation.

### Loss of UPC Access and the New Opt-Out Landscape?

Perhaps the most profound shift concerns the Unified Patent Court. The UK government has confirmed it will not participate in either the UPC or the Unitary Patent (UP) system. Consequently, British patentees may no longer centralise cross-border enforcement and must instead litigate separately in national courts—an expensive and potentially inconsistent alternative.

For European patents that remain validated elsewhere in Europe, an opt-out mechanism still exists. From 1 January 2023 until one month before the end of the seven-year transitional period (at least

until May 2030), patentees may remove their patents from UPC jurisdiction without fee. This opt-out remains effective for the patent's entire life unless withdrawn—though unitary patents themselves cannot be opted out. British holders with pan-European portfolios must therefore decide whether to preserve recourse to new UPC precedent or rely on traditional national forums. As of September 2024, more than 600,000 opt-outs have already been registered across Europe, including a significant share by UK-based holders ([Questel, European Patent Trends — Has the UPC System Been a Success?](#)).

### **Concrete Scenarios for UK Patentees**

Consider a UK-based med-tech innovator whose European Patent EP2783914 B1 covers diagnostic devices in multiple EU states. Before Brexit, the firm would have paid a single renewal fee and trusted uniform EPC procedures. Post-Brexit, renewal notices arrive separately from the EPO and the UK IPO, and the company must ensure a valid UK address for service by January 2021 or face default in UK actions. Meanwhile, if the patent is validated in Germany and France, the holder can opt-out of UPC jurisdiction by March 2023, thus preserving the right to litigate through German and French national courts under established local case law.

Alternatively, a London engineering SME relying primarily on UK and Irish validation may choose to forgo costly separate EPO renewals in continental Europe and instead file direct national applications in critical states. This recalibrates budgetary allocations and simplifies docketing, but sacrifices the broad protection the EPC once provided in one fell swoop.

### **Proposed Legal and Strategic Remedies**

To mitigate these frictions, two legislative measures are paramount.

First, UK Parliament could amend the Patents Act to introduce a “Unified Validation Protocol”, streamlining post-grant formalities through a single notification to both the UK IPO and the EPO—thereby restoring the efficiency of the former EPC-based system. This could include a six-month grace period for late renewals without penalty, drawing on analogous relief found in French patent law (cf. [French Intellectual Property Code, Art. L 612-19](#)).

Second, negotiating a bilateral judicial cooperation agreement with the EU would re-establish a limited central forum for cross-border disputes involving British patentees. A UK-EU Patent Tribunal—perhaps seated in London or Dublin and operating under UPC procedural rules—could serve as a hybrid forum, reconciling divergent national judgments while cutting litigation costs for British right-holders. Similar models exist in the EU-Norway/Switzerland trade agreements for mutual recognition of arbitration awards.

Strategically, right-holders should invest in robust docket-management systems to track dual renewal calendars and service-address requirements. Engaging patent attorneys with dual UK/EPO qualifications ensures compliance across both jurisdictions. Portfolio reviews ought to distinguish high-value “European” patents warranting parallel UK validation from niche inventions better served by direct national filings.

As Bond's licence granted him extraordinary powers that demand equal measures of responsibility and oversight, so Brexit's new regime confers upon British patentees both autonomy and complication. By leveraging unified validation protocols, pursuing judicial cooperation, and embracing disciplined portfolio management, UK holders can secure their rights across Europe's

fragmented but dynamic patent landscape. In this post-Brexit epoch, true mastery lies in transforming procedural challenges into strategic advantage—ensuring that every patent granted remains as resilient as 007 himself.

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