

The background of the top section is a technical drawing of a mechanical part, possibly a gear or a circular component, with various dimensions and annotations. Overlaid on this are several drafting tools: a ruler, a compass, and a pencil. The text 'Barker Brettell' is prominently displayed in a large, blue, serif font in the upper left corner.

# Barker Brettell

Intellectual  
Property

DESIGNS

## BREXIT – BEST PRACTICE

The UK will leave the EU once the transition period ends on 31 December 2020. We have compiled an information sheet to provide useful hints and tips in the lead-up to Brexit.

### Can Barker Brettell still handle your European design work?

Absolutely! We will still be able to file Community applications at the EUIPO, or international (Hague) applications designating the UK, EU and/or any other member states. We have EU representation based in an office in the EU (Stockholm) that will be able to handle prosecution, so Barker Brettell can still handle all of your European design work.

### Do you need to file a UK national design application as well as a Community design application?

Before Brexit (i.e. in the transition period): in principle – no. If the design is registered before Brexit, a corresponding UK right will automatically be created after Brexit. The new UK number will be the former EU number prefixed by a “9”, or the former WIPO number prefixed by an “8” for Hague designs.

However, whilst Community designs are often registered quickly, in the run up to Brexit where it is not certain when registration will occur, it may then be advisable to also file a UK national application in addition to the EU. For an application claiming priority, obtaining and filing the required priority documents can slow the process, so this is another reason to consider filing in both the UK and EU in late 2020.

For applications still *pending* when the UK leaves the EU, we will still be able to deal with the application at the EUIPO. Protection in the UK will be able to be secured, but it will be necessary to apply for an equivalent UK right within 9 months from Brexit.

After Brexit: yes – filing both will be required.

The UK is the fifth largest economy in the world and the second largest in Europe, so a UK design is definitely worth having. Depending on the number of designs/representations, separate UK/EU applications or a Hague application designating both the UK and EU may be more cost effective, but we can advise you accordingly. We can file all of your Community, UK and Hague applications. Of course, as we are UK and European design attorneys, we are well placed to advise you on both UK and EU requirements.

### **What happens with renewal fees for Community registrations?**

For renewals due pre-Brexit, these can be paid as normal to the EUIPO and can still be paid late in the 6-month grace period even if that falls after-Brexit. Payment must be made separately to the UKIPO to renew the new right in the UK, which only comes into being on Brexit, although no surcharge will be payable in the 6 months following Brexit.

For renewals due post-Brexit, you will need to renew both the EU and UK if both are to remain in force. An early payment to the EUIPO in advance of Brexit will not be deemed to have renewed the UK right that will be formed on Brexit.

### **What about Community unregistered design rights (CUDs)?**

CUDs that exist when the UK leaves the EU will continue to be protected and enforceable in the UK for the remaining period of protection. For new CUDs coming into force after Brexit, these will not cover the UK.

The UK already provides a national unregistered design right (UDR), and a new supplementary unregistered design right (SUDR) that mirrors the scope of protection of the CUD will be available. Since current CUDs arise on first disclosure of the design in the EU, and the new UK supplemental right will arise on publication in the UK, some thought may be needed as to where, after Brexit, the first disclosure should be.

If you have any questions, you can email us at [brexit@barkerbrettell.co.uk](mailto:brexit@barkerbrettell.co.uk)