

INTELLECTUAL PROPERTY



What would you say are the immediate considerations to make for foreign businesses, such as Brazilian firms, that have IP protection in the UK or the EU?

The changes being verified in the EU, now with the recently announced exit of the UK from that important block, until now considered as the highest GDP on the planet by the World Bank, bring in lots of uncertainties. For this reason, I consider it is still too early to try to draw any scenery of the consequences which may come at medium and/or long term, not only for the UK but to the block as a whole, and finally its relationship with the rest of the world and vice versa.

Although EU authorities have publicly assured that, as the British exit concludes, there will be a two-year deadline for adjustments, I believe the immediate recommendation to be given to international investors, especially in Brazil, is to closely follow the guidelines to be published and extend the local protection of IP assets. Communitarian trademarks and patents, both registered today with the EU, continue to be valid in the UK, and it is expected that, when the UK withdrawal is completed, regulations to make them become national rights will be established so to preserve the rights of trademark and/or patent applicants who have obtained their communitarian registrations in the terms of the law.

Could it eventually cost more for Brazilian firms to protect their patents and trademarks in the UK?

Cost has been of the arguments used by the more conservative right wing, who raised the flag and cried for the British independence from the EU, arguing that the UK was losing business with desired markets such as India, the United States and China, for its subordination to Community rules which would have reduced their flight range. Costs will be high not only for Brazil, but for the whole world, including and especially the UK itself. Anyway, I believe the costs for any company willing to obtain unrestrained protection for their IP assets in the European block will considerably increase. And not only the costs, but their business strategies should also be significantly re-defined.

While the general notion is that, following the Brexit outcome to the UK's referendum on EU membership, there will be no immediate threat to IP legislation or businesses in the UK, the same questions are now being asked regarding the rest of the world. Brazil is in the middle of its largest recession in decades, but benefits from a growing creative sector, or a 'creative economy'. As a primary pillar of such an economy, IP plays a big part in the growth of the nation.

Here to shed light on how Brazilian business and IP engagement might be affected is Carlos Borghi, CEO of PatCorp, a company dedicated to addressing intellectual property management.

If the EU's plans for an EU universal patent protection are scrapped due to the leave of the UK, how could foreign businesses lose out?

I consider highly unlikely that the British exit from the EU will cause any loss in the rights as obtained by Brazilian parties and/or any other nationals who have attempted to invest in the EU, giving priority to such important markets as the UK, especially England. I believe that such rights must be preserved, otherwise there would be an unfair restriction to those who had and still have huge costs to protect and maintain their industrial property assets. It is unquestionable that the British exit will bring in political and legal consequences to the owners of IP rights within the EU. Besides the investments with separate applications, the investor should carefully follow jurisdictions in case of a court proceeding, since, in case of an infringement of any rights, e. g. injunction orders issued by UK authorities will no longer be valid in the EU and vice versa.

Should Brazilian and other foreign businesses be worried about the IP protection they already hold in the UK, and its association with the EU?

Beware, I would say, especially during these next two transition years which will be required to implement the announced decisions, in the hope that UK laws will remain in line with EU directives, so that both can provide uniform regulations for the applicants of IP rights.

What would be the ideal outcome, in terms of IP, for Southern American firms operating in the EU?

MERCOSUR, the block formed by South American countries and led by Brazil, should be impelled by a new political order, but must remain side by side with the new EU arrangements. As a member of the common market, Brazil cannot make agreements alone, at its own risk. Negotiations between Mercosur and the EU go through very slowly, for a long time, and with the British exit from the EU, it is quite probable that negotiations will be withheld and become even more difficult, since that block as a whole should theoretically

become weaker due to the gas suppressed for new negotiations. As an example, Brazil has tried for years to get the suppression of European barriers to its agricultural products.

Is there anything else you would like to add?

The UK represents less than 4% of the global economy, but its participation in the European block has always been important, politically speaking. The economic consequences of its exit from the EU will depend on how that exit will take place. We should highlight that the decision taken by the referendum must still be approved by the British Parliament in Westminster, to be then advised to the EU. In Brazil, economic impacts should not be immediate. England has been bravely defending its independence for 1000 years. Its adoption of the protecting model as offered by the European family would cost it a price, as well as its exit. But I believe that, despite the inevitable initial discomfort of the exit, the country will soon find its break-even point, not losing its attention towards world order, currently in a fast pace of paradigm breaks. **LM**

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