

Enforcement of Intellectual Property Rights

Ireland provides a well-established and stable environment for the development and protection of intellectual property, and the enforcement of IP rights, which is firmly rooted in the State's EU membership. Ireland fully recognises that the high tech industries which it has attracted – in the life sciences, social media, ICT, gaming and other sectors – are heavily reliant on the exploitation of IP rights and expect a high level of protection for their patents and other IP rights.

Why Choose Irish Law and Irish Lawyers for Enforcement of Intellectual Property

Integration into the EU Legal Order: Ireland has been a participant in the European Patent Convention (EPC) for 25 years, is an active proponent of the new European Unitary Patent, and applies European Union Law in the fields of trade mark and copyright protection, design rights, and electronic commerce. As an EU member state, Ireland gives full effect to the EU Regulation on Supplementary Protection Certificates extending the period of exclusive protection in connection with medicinal products.

Ireland fully applies and implements EU law in the field of copyright, including EU Law providing for the protection of software and electronic databases. Irish courts are in a position to seek guidance from the Court of Justice of the EU to ensure that Irish decisions properly reflect that harmonised EU law. In the fields of trademarks and industrial designs, the Irish courts sit as EU Trade Mark Courts and Design Courts rendering decisions with cross-border effect in respect of trademarks registered at the EU Intellectual Property Office, and registered and unregistered Community designs.

Enforcement of Judgments and the Unified Patent Court: Irish judgments are automatically enforceable in other EU member states under EU rules.

Ireland has committed to the establishment of a local Irish seat of the Unified Patent Court, which will offer a specialised venue for providing judgments in the patent field, subject to the ultimate jurisdiction of the Court of Justice of the EU. This will allow multi-national businesses based in Ireland to obtain judgments in Ireland having effect across the EU in respect of European Patents and the new European Unitary Patent, thus avoiding multi-jurisdictional litigations about identical patents.





IP Litigation in Ireland: The Irish legal system is a common law system. Pending the establishment of the Irish seat of the Unified Patent Court, IP litigation takes place before the High Court in Dublin, subject to appeal to the Court of Appeal and, exceptionally, to the Supreme Court. Judges with experience of very significant and complex IP litigation – as practitioners and as trial judges – serve on all of these courts. The bulk of significant IP litigation in the State takes place before the Commercial Court division of the High Court, which provides a fast-track case-managed system with hearings before a limited pool of judges. In 2020, a new Intellectual Property and Tech list will be established as part of the Commercial Court division of the High Court.

Experience and Expertise of the Legal profession in Ireland: Irish lawyers have expertise in advising on patents and other forms of intellectual property, and experience of conducting complex intellectual property litigation. They are all entitled as of right to advise in respect of EU law issues and to appear before the EUIPO and EU Courts. Ireland has firms of solicitors with sufficient scale, resources and experience to handle major transnational IP litigation. Irish solicitors regularly advise in respect of multi-jurisdictional patent disputes. Barristers practicing in the field of IP likewise have experience with complex litigation and deep expertise in the examination of witnesses, including expert witnesses.



How will BREXIT impact on Enforcement of Intellectual Property Rights?

Patents: Unlike some other IP rights, patent rights have traditionally been dealt with on a national basis across the EU. While there is a European Patent concept, it is a centralised examination system at European level for a patent application and the patents granted through this process are ultimately granted by each national Member State IP registration office. This European Patent system was created under the European Patent Convention, which is not an EU convention. This means that Brexit does not impact upon patent rights as much as it does on other IP rights, which have European wide effect through an EU law.

Trade marks: A European Union Trade Mark (EUTM) provides a rights holder with trade mark protection rights in each member state of the European Union, including the UK. Following Brexit, a person seeking to obtain a trade mark in the United Kingdom and in the rest of the current EU will be required to apply for these rights separately. In the event of EUTMs ceasing

to have effect in the UK post Brexit, it is expected that national UK laws will be implemented to allow existing EUTM owners to register those rights as national UK rights in order to maintain their protection.

Approach of Irish Courts: As mentioned above, Ireland, like the UK is a common law jurisdiction. Post Brexit, Ireland will be the only common law and native English speaking member state in the EU. Further, there is often a high degree of similarity in the approach of the Irish courts and UK in IP disputes. The Irish courts system and processes are often familiar to clients which may not be the case with other EU countries. Irish lawyers have expertise in advising on patents and other forms of intellectual property, and experience of conducting complex intellectual property litigation and Irish lawyers are all entitled as of right to advise in respect of EU law issues and to appear before the EUIPO and EU Courts.

For these reasons, one of the effects of Brexit on IP enforcement could be that IP portfolio holders in the UK may choose to relocate their EU IP portfolio to within the EU post Brexit and may choose Ireland.

