



IP ITeaser 043:

When can IP lawyers stop thinking about Brexit?

As the Retained EU Law (Revocation and Reform) Bill controversially works its way through Parliament, UK IP lawyers could be forgiven for thinking that there may be an end in sight to the need to think about EU law. The headline aim for that bill is a proposed sunset period of the end of 2023 for all retained law (which at the current count is around 4000 but further laws continue to be unearthed). Putting aside the question of whether it is sensible to repeal laws despite not knowing how many there may be let alone what they say, it is interesting to note some areas of withdrawal law which are incompatible with the proposed 2023 sunset.

Firstly, in *easyGroup v Beauty Perfectionists* [2021] EWHC 3385 (Ch), the UK Court held that it had jurisdiction to sit as an EU trade mark court and apply EU Regulation 2017/1001 where proceedings were instituted prior to IP Completion Day. The trial in that case is expected to take place in early 2024, after the supposed sunset.

Secondly, the Brussels Regulation (recast) *lis pendens* provisions continue to apply both to legal proceedings instituted prior to IP Completion and related proceedings pursuant to Articles 29, 30 and 31. Articles 29 and 30 are commonly relied upon in patent and trade mark proceedings where there are related international rights. As such a strategically launched “torpedo” in the EU shortly before IP Completion day could act to prevent related UK proceedings for some time after the end of next year.

No doubt these are just two of many continuing issues which will not reach a natural resolution by the end of 2023. Whatever the final form of the Retained EU Law Bill may be, it seems safe to say UK lawyers cannot stop thinking about EU Regulations quite yet.