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Brexit e i diritti IP nel settore *food*: brevetti, marchi e indicazioni geografiche

Italy should play an active role in the negotiations about the future of the IP protection in Europe after Brexit, including nominating Milan as the venue of one of the Central Court seats of the Unified Patent Court. Actually, notwithstanding the ratification of the Agreement by the UK Government, it is hard to believe that the Central London office of the Court (the one that will deal with the cases in the field of pharmaceutical patents) will be maintained. However the Italian IP circles still consider that the United Kingdom's participation in the system remains absolutely desirable, and still viable, through a limited modification of the Agreement on the European Patent Court, if the UK will remain at least within the European Economic Area, or in any case in the single market, despite the inevitable political difficulties related to the European Court of Justice's power of interpretation of the Agreement. To be successful, in fact, the unitary patent must be attractive and affordable for companies, and so the UK's presence is very important.

The fate of the Unitary Patent and the Unified Patent Court is not the only reason for reflection that Brexit imposes on the legal experts who deal with intellectual and industrial property. What emerges from the first round tables (particularly relevant that which was held in Milan last September, in the context of the world Congress of AIPPI) is firstly the necessity of innovative and out-of-the-box solutions to handle the new situation determined by Brexit, when and if it will be implemented: both in term of substantive law, where it will necessarily have to preserve acquired rights, and in term of enforcement and cross-border issues, which will require a specific agreement between the UK and the EU, along the lines of the Lugano Convention operating for the ex-EFTA countries, but obviously more extended in its scope. Even the transition phase presents considerable problems, due to the fact that the IP rights all have a long life and thus it will be necessary to find cost-effective solutions, which at the same time must ensure a sufficient certainty of rights; for this a fundamental role will compete to European IP judges, who will have to continue to talk and to seek common solutions, even after Brexit.

If the first "victim" of Brexit is certainly the Unitary Patent system, which will require at least a partial renegotiation, also brands and models will no longer be the same, because the cross-border effects concerning the "European" titles will no longer apply automatically to the UK and they will be made on a new basis. Italy is especially concerned for the consequences in the agri-food industry, which will be even deeper, because after Brexit the rules applied in the UK may be different from those applied in the EU: therefore it will be necessary to pay particular attention in order to ensure that the agreements that will be negotiated on a future free movement of goods between EU and UK do not admit that agri-food products do not comply with EU rules are imported in EU. And since the agreements are not always respected by local manufacturers and importers, it will be necessary to redouble the caution, especially on the part of the Food Process Industry Trade Associations.

While waiting for the consideration of these solutions, the first care for Italian companies and their legal counsels is the review of contracts, in particular license agreements and technology transfers, especially if they are long-term ones. The clauses will be tilting, in order to ensure the possibility of an efficient enforcement even after Brexit and therefore they shall consider that the unity of the European jurisdiction may be broken. Changing strategies of filing, putting British national titles alongside 'European' ones today seems premature: it is unthinkable that at the time of Brexit legal protection will not be granted to holders of EU trademarks and community models in the UK, whose extension therefore will be "reduced", and the

protection with an autonomous title will probably have an unnecessary cost. More generally London will be re-considered in the perspective of the global hubs of IP rights management, while other European locations could be more attractive: and Milan, in this way, could become a major player, as institutions, companies and professionals are now doing "teamwork", as the recent positive experience of Expo 2015 proved. Brexit, therefore, first a threat, can become an opportunity for all, and above all for Italy: and Italian ratification of the agreement on UPC can lead this way.