

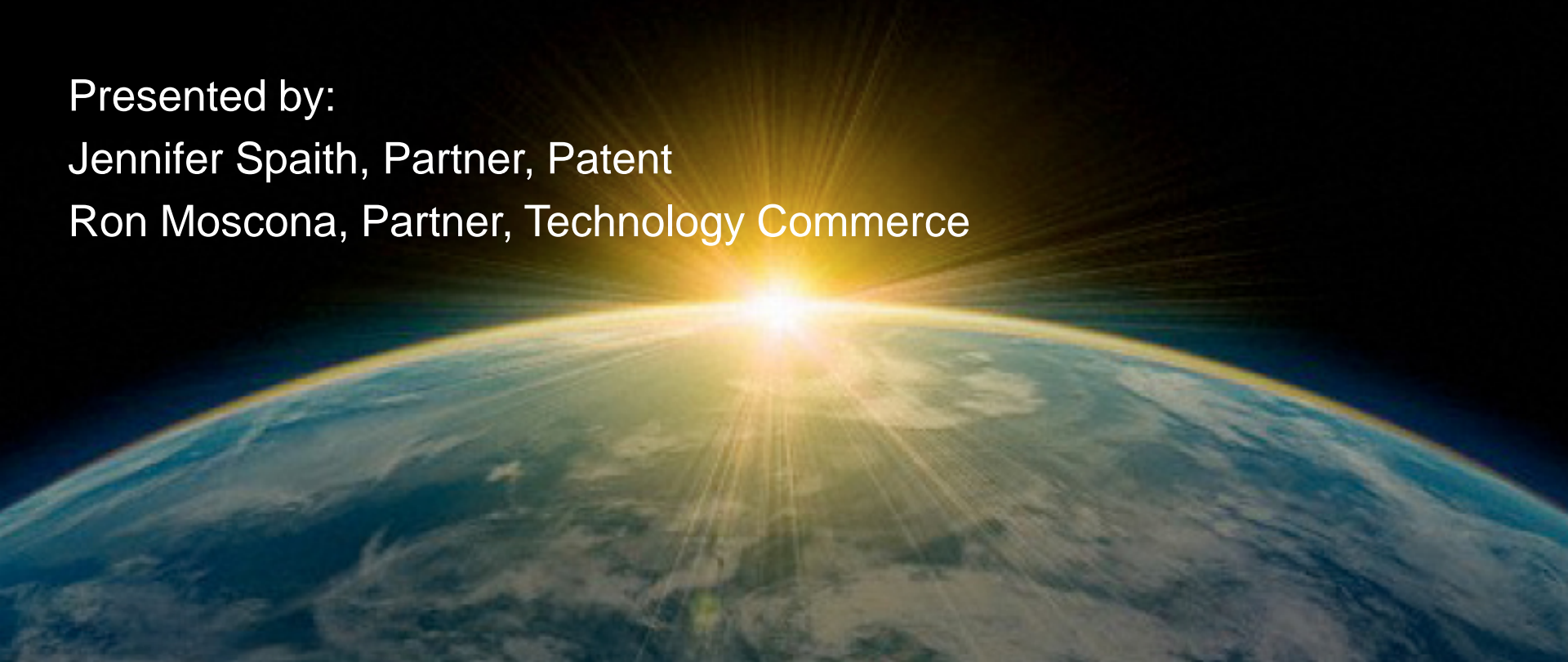
interactive dialogue

IP in Europe Post-Brexit: Registrations, Enforcement and Other Questions

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Why Pick This Topic?

- The UK is one of Europe's largest economies and the world's 5th largest
- The UK is typically the first market of entry for US companies and a gateway to the European market
- Intellectual property rights are highly integrated across the EU
- The recent referendum decision in the UK to leave the EU opens up a lot of questions
- The way IPRs are going to be treated post Brexit will have a significant impact on trade between the UK and the remaining EU

Main Issues for Discussion

- UK European patents and the unitary patent system
- EU trade marks and EU designs
- Copyright
- Enforcement and jurisdiction
- Exhaustion of IP rights and trade related issues

Patents

- UK was the main driver behind the unified patent system
- Unitary patent and unified patent court agreements would have to be renegotiated by remaining EU parties
- UK unlikely to join unified patent court due to jurisdiction of EU court
- UK unlikely to join unitary patent due to supremacy of Union law
- EU parties may fail to agree on new system due to disagreements over languages
- European patent system will be unaffected

European Union Trade Marks and Designs

- Priority of existing EU registrations/applications will likely be maintained. No need to rush to register in the UK now
- Existing EU registrations likely to be protected in the UK after Brexit as UK rights without new filings
- Applications pending on day of Brexit may need to be refiled in the UK (claiming priority of EU filing date)
- EU court will no longer have jurisdiction over the UK
- Invalidation/revocation by EU court will not bind UK
- Validity/revocation decisions by UK courts will only affect the UK interest

Copyright

- Copyright basics largely harmonised under EU law:
 - Copyright in Information Society Directive
 - Computer software Directive
 - Database Directive
 - Rental and Lending rights Directive
 - Satellites and Cable Directive
- Main areas of harmonisation:
 - Restricted acts (e.g., recent Playboy hyperlinks case)
 - Exhaustion of rights (e.g., UsedSoft)
 - Exceptions to copyright protection (exhaustive list)
- UK will be free to develop copyright law independently after Brexit but no major changes likely in the foreseeable future

Enforcement of IP Across the EU

- Within the EU, Brussels Regulation (EU/1215/2012) ensures rules on jurisdiction and enforceability of judgements – UK will almost certainly be out
- Cross border jurisdiction in IP cases possible under EU jurisdiction (for infringement, not validity) but the rule is rarely invoked
- Within EEA (EU + EFTA), the Lugano Convention (1988) provides for similar rules on jurisdiction and ensures enforceability of judgements
- Enforceability of judgements between the remaining EU and the UK and rules on jurisdiction will be an issue for Brexit negotiations
- Significant uncertainty due to no fall back position at the international level (and no right to join Lugano without existing members' consent)

Exhaustion of IP Rights and Trade Across the EU

- The 4 EU freedoms – Goods, Services, People, Capital
- Exhaustion of rights and free movement of goods
- Movement of goods within the EU
- Goods imported into the EU/UK
- Silhouette and the rule against international exhaustion