

# **interactive** dialogue

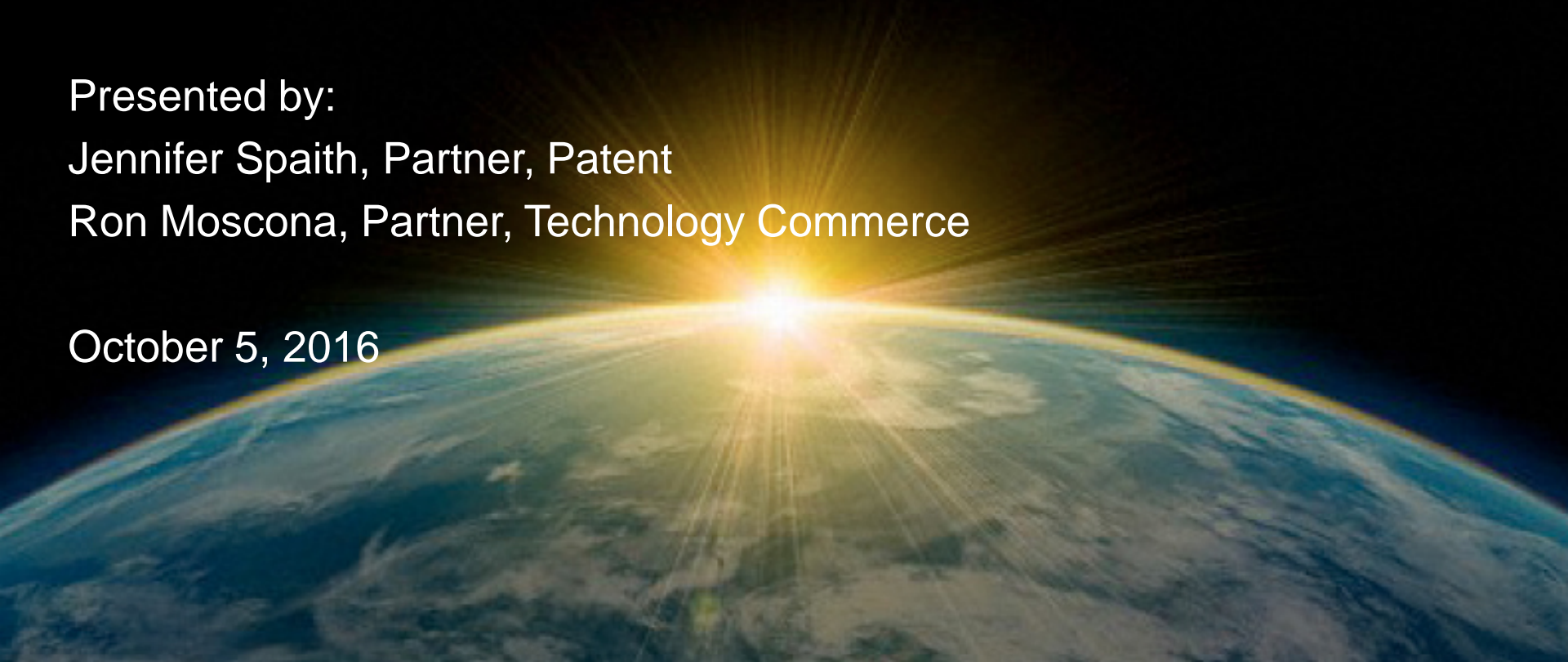
## **IP in Europe Post-Brexit: Registrations, Enforcement and Other Questions**

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October 5, 2016



# 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 5<sup>th</sup> 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

- European patents and the unitary patent system
- Pharmaceuticals and medical devices
- 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

# Pharma and Med Devices

- Supplementary Protection Certificates and data exclusivity under EU law
- UK likely to adopt similar domestic legislation
- SPCs linked to EU regulatory system (first MA principle)
- Future relationship of UK and EU regulatory regimes one of the big issues
- Centralised procedure, mutual recognition, CE marking – key to manufacturers and important to regulators
- EMA is based in London and MHRA one of the key institutions in the system
- Industry and regulators will want to continue current system as much as possible

# 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

# How Do I Learn More?

## interactive dialogue

### Patenting & Licensing When Subject Matter Eligibility is Uncertain

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**January 2017**

# Questions?



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