

## **BIS open consultation – National Innovation Plan: call for ideas**

### ***Introduction***

The Federation represents IP intensive companies in the United Kingdom - a list of members is attached. Our member companies are extensively involved with IP in Europe and internationally. Not only do our companies own considerable numbers of IP rights, both in Europe and elsewhere, but they are affected by the activities and IP rights of competitors. They may be either claimants or defendants in IP related court actions, here and elsewhere.

### ***The consultation***

The Department for Business, Innovation and Skills has launched an open consultation [‘National Innovation Plan: call for ideas’](#).

The Consultation is chiefly looking for input to help develop an innovation framework that:

- builds and supports an open business environment that encourages innovation
- promotes collaboration and the sharing of ideas to drive innovation opportunities
- provides businesses with the confidence to invest in R&D and supports them to diffuse and scale the best ideas
- uses the power of procurement and customer demand to stimulate the development of innovative products

The Consultation is composed of seven specific questions, which will inform the National Innovation Plan which is set to be published later this year:

1. How best can our regulators drive innovation and make the UK the regulatory test bed capital of Europe?
2. How can we deliver real culture change within public procurement?
3. How can we ensure that we put the UK at the forefront of open data opportunities?
4. Where can we maximise the opportunities for innovation, as we deliver high-quality infrastructure that unlocks broad economic opportunities?
5. Where can the UK work alongside the private sector to create the deepest pool of innovation finance in Europe?
6. What do we need to do to get maximum benefit to the UK economy from challenger businesses?
7. How can we ensure that the UK’s inventiveness and creativity capitalises on our strong intellectual property system to generate growth and further innovation?

The deadline for response to the consultation is **30 May 2016**.

### ***IP Federation response***

The IP Federation would like to thank BIS for giving us this opportunity to contribute to the National Innovation Plan. Our response to each question follows.

#### **1. How best can our regulators drive innovation and make the UK the regulatory test bed capital of Europe?**

Attempts to update the IP framework are often too unfocused, with little real outcome. What would be helpful is if the government identified and published some identifiable target metrics for its proposals so real measurements of how successful its implementation of proposals are fixed sometime in the future. The government should recognise the IPO as generally having the lead on IP matters, or at least consult and fully engage with the IPO in all IP-related policy issues.

The government should be careful to ensure IP policy serves all sectors of the economy. Sometimes it appears that the profile of digital media and the creative industries drive the thinking in this area. Whilst these are very important sectors, government policy must not push the technological industries (the “innovative sector”) into a position where they are considered secondary.

To support the technology industries government policy should facilitate the generation and exploitation of IP by provision of efficient legal and administrative frameworks to ensure high quality patents and other intellectual property rights should be granted and enforced in sound judgments here and abroad.

In this respect the appointment of a third full time judge to the Chancery Division’s Patents Court is welcomed. Active involvement in the shaping of the Unified Patent Court, so that valued aspects of the UK patent litigation system continue to be available to litigants in the new forum, is to be encouraged. Further support for the Intellectual Property Enterprise Court, to ensure that it continues to be able to manage the efficient resolution of less complex and less high-value disputes, is also to be considered.

In addition, the UK, whether through the government and/or the IPO, should be more visible in pressing for improvement in the operation of European institutions responsible for granting IP rights in Europe, as this would enhance the regulation underpinning the technological industries.

#### **2. How can we deliver real culture change within public procurement?**

The development of IP policy across government is not sufficiently well coordinated. There is a lack of consistency across government departments and frequent changes of personnel, leading to a lack of expertise and continuity. Government departments should recognise that IP policy is for the benefit of the general economy and competition for private industry to develop and exploit IP including that generated in supplying products and services to government.

How government departments deal with IP in their own transactions should support government IP policy, i.e. recognise that it is for the benefit of the

general economy and competition for private industry to develop and exploit IP, including that generated in supplying products and services to government. Often government contracts seek to gather together ownership of such IP to, in effect, compete with those suppliers and freely transfer ownership of IP generated to competitors. In such circumstances the long term objectives of encouraging an IP generating culture amongst private industry is overlooked for a short term instant gain for an individual department.

It would help deliver better IP policy outcomes if the IPO was recognised in government generally as having the policy lead on IP matters, or at least if the IPO was consulted and engaged in all IP-related policy issues.

### **3. How can we ensure that we put the UK at the forefront of open data opportunities?**

All decisions of courts in the UK (except those specifically ordered by the court to remain confidential) should be made available online upon their handing down. Currently, the closest thing to an 'open data' source for court decisions is the website of the British and Irish Legal Information Institute, [bailii.org](http://bailii.org). Many of the more notable decisions are made available on [bailii.org](http://bailii.org), but the website is not comprehensive, nor is it an open government source. For judgments which are not made available on BAILII, lawyers typically resort to electronic copies held by expensive subscriber-accessible on-line providers of legal resources, and to personal contacts in the legal sector. 'Open data' should prioritise the making available online of all court decisions in a comprehensive manner.

Further, non-confidential documents filed at court (e.g. pleadings) should be readily-accessible by the public via an online service, as in the US.

UK IPO data should be made available in a way that would make it more interrogable, and statistical data more readily-obtainable.

### **4. Where can we maximise the opportunities for innovation, as we deliver high-quality infrastructure that unlocks broad economic opportunities?**

IP Federation members have no particular comments on this issue.

### **5. Where can the UK work alongside the private sector to create the deepest pool of innovation finance in Europe?**

The contribution of IP to economic well-being, jobs and growth should be recognised and encouraged; it should both promote and reward innovation. In addition, the UK government should represent the interests and concerns of UK stakeholders both on the EU stage and internationally. The UK should actively seek an understanding by other member governments that the improvement in efficiency of the European IP institutions such as the European Patent Office (and, soon, the Unified Patent Court) is essential to economic growth and that priority should be given to making these institutions work better for the European economy.

## **6. What do we need to do to get maximum benefit to the UK economy from challenger businesses?**

The government should focus on fostering an IP generating culture amongst private industry, as IP rights should both promote and reward innovation. As a result, the government should not be frightened to actively defend and promote the role of robust IP protection as it ultimately benefits the consumer and society as a whole.

The availability of efficient protection for these robust IP rights underpins this. The UK, whether through the government and/or the IPO, should be more visible in pressing for improvement in the operation of European institutions responsible for granting IP rights in Europe, as this would enhance the regulation underpinning the technological industries.

## **7. How can we ensure that the UK's inventiveness and creativity capitalises on our strong intellectual property system to generate growth and further innovation?**

The objective of UK IP policy should be to promote innovation and creativity, and thereby promote economic growth and consumer welfare in the UK, EU and elsewhere. Key to ensuring achievement of this objective is the grant of high quality patents and other intellectual property rights which are enforced in fair, balanced judgments. Government policy should facilitate the generation and exploitation of IP by providing efficient legal and administrative frameworks to ensure robust patents and intellectual property rights are granted here and abroad.

Currently, the development of IP policy across government is not sufficiently well coordinated. For example, pharmaceutical issues can be split between the IPO, BIS, DFID and the Department for Environment, Food and Rural Affairs. The minister and staff responsible for IP need to either have relevant business background or access to advisers with such background.

When formulating any new IP policy proposal, government should openly and meaningfully consult with Industry at a very early stage, and thereafter throughout the consultation process, to understand fully the potential impact of the new policy proposal on business operations in the real world.

Specific impact assessments on the effect on Industry in support of any new Government department/agency proposals should be undertaken. The impact assessment results should be openly discussed in advance with Industry for review and comment. Industry expert views should be listened to and fully taken into account, prior to the introduction of any new policy proposal, in order to mitigate the risk of any unintended consequences arising from the proposed policy changes.

Although there is a role for academics and economists to play, this role should not be overstated. Aiming to have a better theoretical base for IP policy making must not mask the fact that IP has a significant impact on businesses in the real world. The UK IPO should take the lead in drawing upon the expertise of stakeholders and liaising with government to continue to develop the IP environment in order to support growth and further innovation.

## **Conclusion**

In summary, the IP Federation is in favour of positive action in the following key areas (refer also to our points made in previous policy paper [PP09/12](#) in response to the consultation on the role of government in protecting and promoting intellectual property):

- recognition of the real need for government, when formulating any new IP policy proposal, to consult with industry openly and meaningfully at a very early stage;
- better coordination of IP policy across government, and recognising the role of the UK IPO as the IP policy lead;
- any dealings with IP in their own transactions by government departments and agencies to strongly support the general government IP and innovation policy and the UK national prosperity agenda; and
- making the UK IP and Innovation policy voice heard on the global stage.

IP Federation  
25 May 2016



## **IP Federation members 2016**

The IP Federation represents the views of UK industry in both IPR policy and practice matters within the EU, the UK and internationally. Its membership comprises the innovative and influential companies listed below. The CBI, although not a member, is represented on the Federation Council, and the Council is supported by a number of leading law firms which attend its meetings as observers. It is listed on the joint Transparency Register of the European Parliament and the Commission with identity No. 83549331760-12.

AGCO Ltd  
Airbus  
ARM Ltd  
AstraZeneca plc  
Babcock International Ltd  
BAE Systems plc  
BP p.l.c.  
British Telecommunications plc  
British-American Tobacco Co Ltd  
BTG plc  
Caterpillar U.K. Ltd  
Dyson Technology Ltd  
Eli Lilly & Co Ltd  
Ericsson Limited  
ExxonMobil Chemical Europe Inc.  
Ford of Europe  
Fujitsu Services Ltd  
GE Healthcare  
GKN plc  
GlaxoSmithKline plc  
Glory Global Solutions Ltd  
HP Inc UK Limited  
IBM UK Ltd  
Infineum UK Ltd  
Johnson Matthey PLC  
Merck Sharp & Dohme Ltd  
Nokia UK Ltd  
Pfizer Ltd  
Philips Electronics UK Ltd  
Pilkington Group Ltd  
Procter & Gamble Ltd  
Renishaw plc  
Rolls-Royce plc  
Shell International Ltd  
Smith & Nephew  
Syngenta Ltd  
The Linde Group  
UCB Pharma plc  
Unilever plc  
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