

Consultation of the HM Treasury – Financing Growth in Innovative Firms

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 members 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 plaintiffs or defendants in IP related court actions, here and elsewhere.

The consultation

HM Treasury has launched an open consultation “Financing Growth in Innovative Firms” [Financing-growth-in-innovative-firms](#)

The Consultation is looking for input to help strengthen the UK further as a place where growing innovative firms can obtain the long-term patient finance that they need to scale up.

The deadline for response to the consultation is **22 September 2017**.

The IP Federation would like to thank HM Treasury (HMT) for giving us this opportunity to contribute to the consultation.

IP Federation response

1. We welcome that the Government is seeking to foster an innovative, intellectual property (IP) generating culture amongst the business community, as IP rights should promote and reward innovation.
2. The Government should be careful to ensure that an overarching cohesive innovation and IP policy is developed and implemented, which supports the national prosperity agenda and serves all sectors of the economy.
3. We refer to our previous policy papers (PP6/16 and PP09/12, copies attached) in response to earlier-related Government (formerly BIS-led) consultations on the national innovation plan. We request that this consultation fully takes into account the findings of these earlier consultations and the considered submissions made by Industry in response to these earlier ones.
4. Corporates play a key role in supporting the growth of small innovative business. This vital contribution provided by the

Corporates should be recognised and celebrated, and incentivised by Government where necessary.

5. We encourage the Government to develop and implement IP and innovation sector strategies, in close consultation with Industry. This should help the identification of future potential opportunities for Government-business collaboration, investment, further innovation and growth.
6. We continue to encourage strongly the use of the Patent Box and R&D tax credits to support the UK as an innovation-friendly economy. Such policies strengthen the UK as a place where innovative businesses are provided with confidence to invest in R&D, and thereby are encouraged to grow.

Conclusion

In summary, the IP Federation is in favour of positive action in this area. The contribution of innovation and IP to economic wellbeing, jobs and growth should be recognised, celebrated and encouraged. The UK Government should represent and support the interests of UK business stakeholders both on the domestic and international stage.

IP Federation
20 September 2017



IP Federation members 2017

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
Cummins Ltd.
Dyson Technology Ltd
Eli Lilly & Co Ltd
Ericsson Limited
ExxonMobil Chemical Europe Inc.
Ford of Europe
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 Technologies (UK) Limited
NEC Europe
Ocado Group plc
Pfizer Ltd
Philips Electronics UK Ltd
Pilkington Group Ltd
Procter & Gamble Ltd
Renishaw plc
Rolls-Royce plc
Shell International Ltd
Siemens plc
Smith & Nephew
Syngenta Ltd
UCB Pharma plc
Unilever plc
Vectura Limited

BIS open consultation – National Innovation Plan: call for ideas

Introduction

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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. Many of the more notable decisions are made available on 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.

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Caterpillar U.K. Ltd
Dyson Technology Ltd
Eli Lilly & Co Ltd
Ericsson Limited
ExxonMobil Chemical Europe Inc.
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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
Vectura Limited

Role of Government in Protecting and promoting Intellectual Property

Introduction

The IP Federation represents the views of a significant number of major innovative UK companies in matters concerning intellectual property policy. A list of members is attached. Not only do our companies own considerable numbers of IP rights, both in Europe and internationally, but they are affected by the activities and IP rights of competitors. They may be either plaintiffs or defendants in IP related court actions.

The consultation

The All-Party Intellectual Property Group [announced](#) on 14 March 2012 that it is to conduct an inquiry into the role of Government in protecting and promoting intellectual property. The Group has decided to look at this issue because responsibility for development and enforcement of IP policy sits across many Government departments and agencies. There have been numerous reviews into IP policy in the last ten years but the decision-making framework within which policy is developed and agreed has not been sufficiently examined.

The Group is asking organisations to submit short written submissions to the following questions by 30 March 2012.

IP Federation response

The IP Federation has contributed to the numerous reviews into IP policy and agrees that the decision-making framework within which policy is developed and agreed has not been sufficiently examined. Our response to the specific questions in the [inquiry](#) is as follows.

1. What should the objective of IP policy be?

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 can be enforced in fair, balanced judgments. It should promote this both in the UK and abroad. Furthermore, the contribution of IP to economic well-being, jobs and growth should be recognised and encouraged; it should both promote and reward innovation. The Government should not be frightened actively to defend and promote the role of robust IP protection as ultimately benefiting the consumer and society as a whole.

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 (the 'creative sector') drive the thinking in this area. Whilst these are very important sectors, we must not push the technological industries (the 'innovative sector') into a position where they are considered secondary. Significantly in the ICT and digital technology arena the two sectors are converging, which brings this different policy prioritisation into sharper focus. 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 robust patents and other intellectual property rights should be granted and enforced in sound judgments here and abroad.

2. How well co-ordinated is the development of IP policy across Government? Is IP policy functioning effectively on a cross departmental basis? What changes to the machinery of government do you believe would deliver better IP policy outcomes?

The development of IP policy across Government is not sufficiently well co-ordinated. By way of example, pharmaceutical issues can be split between the Intellectual Property Office (IPO), BIS, DFID and the Department for Environment, Food and Rural Affairs, whereas in information and communications technology there is a similar split between the IPO, BIS and the Department for Culture Media and Sport. There is a lack of consistency across Government departments and frequent changes of personnel, leading to a lack of expertise and continuity in policy making.

How Government departments deal with IP in their own transactions should support general 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 the 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. Where light has been shed on this, the results have not always been what we would have hoped. Thus, in the Open Standards Procurement Policy, the Cabinet Office took a unilateral initiative evidently with little or no input from the IPO, which employs Government policy experts. Initially this went ahead without a deep understanding of the business implications and potential unintended consequences for industry.

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

In parallel the IPO should continue to engage proactively with IP stakeholders and experts inside Government and those stakeholders should provide their expertise when appropriate. This has not happened adequately in developing policy on the recent EU patent reform proposals. These proposals involve significant issues concerning litigation (an area which is not within the core expertise of the IPO); the Ministry of Justice which has this expertise appears reluctant to participate.

The minister and staff responsible for IP need to either have the relevant business background or access to advisers with such background. It is a very complicated portfolio, and anyone who is inexperienced in the field is potentially going to struggle with it without the necessary support.

In parallel the IPO should continue to engage proactively with IP stakeholders and experts outside Government and in this regard the minister could have more visibility.

3. There have been numerous attempts to update the IP framework in the light of changes brought about by the digital environment. How successful have these been and what lessons can be learnt from these for policy developments?

The tendency for IP policy to concentrate on the “digital environment” is itself a potential flaw in seeking to assess how successful the Government is in updating the IP framework to deal with economic and societal developments. In many other areas, such as the issue of the experimental use exception affecting the pharmaceutical and biotech industries, proposals to update the IP framework are still awaited, despite the issue being raised in the Gowers Review nearly 6 years ago, and again in the Hargreaves Review.

Attempts to update the IP framework are often too unfocused, with little real outcome. Although work is now taking place to [implement](#) the recommendations made by Professor Ian Hargreaves following his review of IP and growth, it is too early to say how successful these have been.

We find there have been consultations followed by post-consultations then further consultations, with very little action.

The Government’s use of consultation meetings often seems to be more about checking boxes, rather than a tool for helping inform and bring change about when it is needed. 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 at some fixed time in the future.

4. How effective is the Intellectual Property Office and what should its priorities be?

The main priority of the IPO should be to grant high quality robust patents and other intellectual property rights in an efficient manner, and it is very effective at this.

Almost as importantly, however, its priority should be to influence IP policy, both nationally and internationally. In particular, it should carry users’ concerns into the EU and European Patent Office and beyond.

Although there is a role for academics and economists to play, this role should not be overstated. Aiming to have a better theoretical evidence base for IP policy making must not mask the fact that IP has a significant impact on businesses in the real-world.

John Alty, Chief Executive Officer and Comptroller General of the IPO,

appears keen personally to reach out and engage with stakeholders, and is to be congratulated for this.

5. UK IP policy sits within European and supranational agreements. How should the UK government co-ordinate its policy at an international level and what should it do to promote IP abroad to encourage economic growth? Do you have examples of good and poor practice in this area?

There is a lack of engagement or, at least, influence, at the EU level, as mentioned above.

The UK Government should represent the interests and concerns of UK stakeholders both on the EU stage and internationally. The EU Patent Reform proposals are perhaps a (bad) example where policy seems to have been driven more by European political aspirations than genuine stakeholder advantage and, at least until recently, the UK's influence appears to have been less than it should have been.

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 (EPO) is essential to economic growth and that priority should be given to making these institutions work better for the European economy.

6. Protecting, and enforcement of, the IP framework often sits in very different departments to those that develop IP policy and those that have responsibility for the industries most affected. What impact does this have and how can it be improved?

IP policy is not so useful if you cannot bring change about. The IPO and Government should be more vocal in implementing IP policy.

Further consideration should be given to establishing an office to formulate and implement IP policy throughout Government departments. If this is not an extension of the role of the IPO, then this would ideally be a non-political post, so that a long-term view can be taken. An alternative approach might be the nomination of an IP liaison role in each relevant Department to liaise both with other Departments and with the IPO on IP issues as they arose within the Department's area of competence.

Conclusion

In summary, the IP Federation is in favour of action in the following three key areas:

- recognition of the policy expertise of the IPO and making full use of this;
- better coordination of IP policy across Government; and
- making the UK IP policy voice heard, especially in Europe.

Certain aspects of the current system work well, but there is much scope for improvement.

IP Federation
30 March 2012

IP Federation members 2012

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Caterpillar U.K. Ltd
Delphi Corp.
Dyson Technology Ltd
Eli Lilly & Co Ltd
ExxonMobil Chemical Europe Inc
Ford of Europe
Fujitsu Services Ltd
GE Healthcare
GKN plc
GlaxoSmithKline plc
Hewlett-Packard Ltd
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