



Advancing Industry's View On Intellectual Property Since 1920

Advancing industry's view: IP consultation in the UK

The Federation recognises and is very appreciative of the efforts that the Patent Office makes to seek the opinions of users about ongoing issues. It is clear that the Patent Office is better than most other EU Member States in this regard if not best in class.

Improvements to consultation arrangements need consideration, especially whilst awaiting the Ministerial decision on IPAC and concerns some are having about the effectiveness of the various Patent Office focus groups.

The Federation considers that the formal consultations with interested organisations, which are undertaken during the initial stages of new developments in national, community and international intellectual property law, are usually conducted well when the Patent Office is primarily responsible. The issues are normally spelled out in a consultation document which raises appropriate questions. There usually have adequate time to respond and there is sometimes follow-up in the form of discussion meetings and/or reports on the various positions and the ways forward as seen by the Office.

However this approach to consultation has not been adhered to in relation to the question of origin disclosure in biotechnological patent applications. In this example, TMPDF had to make unsolicited submissions on more than one occasion. The Patent Office should perhaps have been prepared to respond and proceed to proper consultation.

Pre-consultation, which is increasingly formal in approach, must not be a substitute for formal consultation: consultation on the changes to covetous patents in the implementation of the Enforcement Directive was inadequate. Economic impact assessment must be a feature of all consultation.

On the other hand, there has often been a lack of effective consultation when the Patent Office has not been primarily responsible for the proposals of concern. Examples include matters concerning intellectual property in recent amendments to the Enterprise Act, litigation arrangements in civil international and community law as applied to intellectual property, matters affecting well known names in the new Companies Bill, single court proposals in the UK, and the Commission for intellectual property in DfID. To avoid these difficulties in the future, the Patent Office should work towards improving communications both within DTI and between Departments to ensure that intellectual property issues are highlighted and that both it and industry is properly consulted on

Fifth Floor, 63-66 Hatton Garden, London EC1N 8LE
Tel: 020 7242 3923 Fax: 020 7242 3924
admin@tmpdf.org.uk www.tmpdf.org.uk

them at an early stage. In particular, when the Patent Office is alerted by the Federation or other interested organisations to issues arising elsewhere (as for example on the Companies Bill), it should respond and ensure that proper consultation ensues. This would help to assure that the points raised to the Patent Office are not simply being put to one side.

The Federation also has concerns about the nature of ongoing contact and feedback as issues subsequently develop after the initial round of consultation, particularly at the European, community and international levels. The record on notifying it about revised texts in advance of forthcoming meetings is reasonably good and Patent Office officials are always approachable, but it is often not clear exactly where the UK stands (especially on politically controversial issues), or to what extent it has taken account of the comments that the Federation has submitted, recognising that the Federation puts considerable effort into preparing positions on current ongoing issues, discussing them at meetings and ensuring that the comments submitted represent the collective view of members. (These include many of the major innovative firms in the UK that are involved with intellectual property, both as owners of rights and as competitors of rights owners.) It can be very frustrating when TMPDF gets no feedback on whether the UK delegation has taken any comments into account when presenting the UK position at meetings. [Typical examples include grace period, the PCT rules, and the EPLA.]

The acceptance of international, community or EPO proposals by the UK in negotiations represents a commitment to UK law, and the detailed issues and potential changes ought to be discussed with the major UK users, and the UK negotiating position explained.

Some of these matters may have been discussed in focus groups; although some focus group members are employed by companies that are members of TMPDF, the views of individuals in focus groups, often off-the-cuff, do not provide the properly considered and collective views of the members of the major interested organisations in the intellectual property field. The Federation is not opposed to a system for taking views rapidly during the course of developing negotiations, but considers that this should be done through contact with organisations (or their secretariats) rather than individuals. The organisations can nominate representatives to deal with questions on specific issues.

In seeking the opinions of the major organisations involved, it is also desirable to convene meetings where they are represented. Discussions at meetings can lead to adjustments of views so as to establish a way forward or a negotiating position that might be generally acceptable.

There is a need for at least some proactive, blue sky thinking about intellectual property. When considering broad policy questions such as whether the intellectual property systems are needed at all, it is noted that the UK is enmeshed in European, Community and international agreements and any major policy change would have to be negotiated at the European and international levels. It appears that the official feeling in the past has been that the active interested organisations such as TMPDF should be kept out of

any broad brush debate about intellectual property, on the basis perhaps that it would not be prepared to contemplate radical change. This underestimates the Federation - some radical changes would be welcome. In any event, it is organisations such as TMPDF that have a real, serious and continuing interest in the field of intellectual property and which is able to contribute the resources, expertise and practical experience which can give focus to such discussions.

The Patent Office should consider setting up a forum made up of the leaders of the major active representative organisations in the UK field, with perhaps one or two seriously involved academics, representatives of consumer groups and the director of IPI. This would not be an extensive activity but it would meet occasionally to discuss wide general issues, such as public attitudes to intellectual property or intellectual property in the developing world. Subjects could be proposed by the organisations or others interested. The secretariat would be provided by the Patent Office. The composition need not be set in stone. Some topics will need to be researched and the Patent Office budget might allocate funds to relevant projects.

Conclusion:

- Initial consultation works satisfactorily when the Patent Office is primarily responsible for an issue, though it should be made the norm that meetings of interested organisations will be held to discuss the ways forward.
- Consultation on intellectual property issues is not so good when other parts of the DTI, or other government departments, are primarily responsible. The Patent Office should strengthen its contacts, increase its profile so that the rest of government is aware that it is responsible for intellectual property policy and make an input after consulting the interested organisations. The CBI's recent call for a Minister for IP is welcome and such a position would greatly facilitate a unified approach and joined-up thinking.
- Ongoing consultation, particularly in relation to European, Community and international negotiations, should be strengthened by providing more feedback to and dialogue with those organisations that have commented on controversial subjects. The feedback should cover the position taken by the UK and why.
- A forum on which the major interested organisations would be represented should be set up for "blue sky" thinking. It would meet only occasionally.