



The Federation's activities

One of the IP Federation's chief lobbying tools is its policy papers. These are all available on the website at:

www.ipfederation.com

The policy papers on the website represent the views of the innovative and influential companies that are members of the Federation. Members are consulted on their views and opinions and encouraged to debate and explore issues of practice and policy. Only after consensus is achieved are external bodies informed of the collective views of industry via the Federation.

The policy papers are also submitted to the relevant third party consultative bodies, e.g. the Standing Advisory Committee before the European Patent Office (SACEPO), and the Patent Practice Working Group (PPWG), at the:

- European Patent Office (EPO)
- European Union Intellectual Property Office (EUIPO)
- World Intellectual Property Organization (WIPO)
- UK Intellectual Property Office (IPO)

as well as, in appropriate cases:

- BusinessEurope
- European Commission
- Ministers
- Judges

Policy papers 2018-2019

Policy papers submitted in the second half of 2018 and the first half of 2019 are as follows:

PP 5/18 Hague Convention on the Recognition and Enforcement of Foreign Judgments

IP Federation views on the proposed Hague Convention on the Recognition and Enforcement of Foreign Judgments, insofar as it concerns intellectual property rights

PP 6/18 Consultations on CPTPP and FTAs with USA, Australia and New Zealand

IP Federation response to consultations on the UK potentially seeking accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and on trade negotiations with USA, Australia and New Zealand

PP 7/18 EU Justice Sub-Committee - Intellectual property and the Unified Patent Court

IP Federation submission to the EU Justice Sub-Committee on intellectual property and the Unified Patent Court, in connection with the inquiry looking at the impact that Brexit could have on the status of EU-related IP laws within the UK, including those pertaining to the realms of life sciences and healthcare

PP 1/19 EPO user consultation on the introduction of a postponed examination system

IP Federation response to European Patent Office user consultation on the introduction of a postponed examination system

PP 2/19 EPO Strategic Plan (2019 - 2023)

IP Federation comments on the European Patent Office Strategic Plan (2019 - 2023)

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PP 3/19 Evaluation of EU legislation on design protection - European Commission consultation

IP Federation response to European Commission consultation on design protection in the EU open until 30 April 2019

PP 4/19 Call for evidence to review 2014 copyright changes

IP Federation response to call for evidence published in connection with the UK IPO post-implementation review (PIR) of the Copyright Act amendments of 2014

PP 5/19 Amicus Curiae Brief on Enlarged Board of Appeal case G 1/19

Amicus curiae brief on Enlarged Board of Appeal case G 1/19 (European patent application 03793825.5) - Patentability of computer-implemented simulations

PP 6/19 IPReg consultation - removing restrictions on providing pro bono advice

IP Federation response to IPReg consultation on removing restrictions on providing pro bono advice closing on 9 October 2019

PP 7/19 Amicus Curiae Brief on Enlarged Board of Appeal case G 3/19

Amicus curiae brief on Enlarged Board of Appeal case G 3/19 (referral pursuant to Art. 112(1)(b) EPC by the President of the European Patent Office) - "Article 164(2) EPC / Pepper"

IP Federation President's reception 12 July 2019

Suzanne Oliver was elected as the new President of the IP Federation at our AGM on 12 July 2019. The handover by Belinda Gascoyne, Immediate Past President, was commemorated at the IP Federation President's Reception held at Gowling WLG. They will both work with newly elected Vice-President, Scott Roberts.



EPO President's visit to the IP Federation on 13 September 2019

The IP Federation President, Suzanne Oliver, hosted António Campinos, President of the European Patent Office (EPO), at a joint meeting of the Federation's Council and Patent Committee on 13 September 2019. Mr Campinos outlined the EPO's recently published Strategic Plan 2023, and described how its five strategic goals laid the foundation for an ambitious and sustainable future for the EPO and the wider patent system in Europe.

IP Federation representation at external meetings

IP Federation was represented at numerous meetings at which at least one public official was present in the second half of 2018 and the first half of 2019, including the following:

| Title of meeting / topic of discussion | Date | Venue |
|--|-------------|---|
| IP Trade Advisory Group | 14 Sep 2018 | Dept. of International Trade, London |
| B+ Sub-Group Sixth meeting | 26 Sep 2018 | Hotel Kempinski, Geneva |
| DIT FTA consultation | 5 Oct 2018 | Ove Arup, London |
| Patent Practice Working Group | 9 Oct 2018 | UK IPO, Newport |
| IP Federation meeting with AmCham EU | 28 Nov 2018 | European Commission |
| IP Federation meeting with Claire Moody | 28 Nov 2018 | European Parliament |
| IP Federation meeting with UKRep and UK IPO | 28 Nov 2018 | UKRep, Brussels |
| Debates on SIs, discussing UPC | 3 Dec 2018 | UK IPO, London |
| BE-EPO Bilateral meeting re GDTF & ICG | 15 Jan 2019 | Hotel Savarin, The Hague |
| GDTF and ICG IP5 | 16 Jan 2019 | EPO, The Hague |
| IP Inclusive AGM | 22 Jan 2019 | Carpmaels & Ransford, London |
| Four Presidents Meeting | 22 Jan 2019 | UK IPO, London |
| Patent Practice Working Group | 29 Jan 2019 | UK IPO, London |
| Business Readiness Forum, Workforce, People and IP | 21 Feb 2019 | Westminster Conference Centre, London |
| IPEC Users' Committee Meeting | 27 Feb 2019 | Rolls Building, London |
| BE-EPO Bilateral meeting re SPLH issues | 28 Feb 2019 | EPO, Munich |
| Exhaustion of IP Rights workshop | 7 Mar 2019 | UK IPO, London |
| IPO/DIT meeting - trade and patents | 12 Mar 2019 | UK IPO, London |
| FEMIP EPO meeting - general discussion of EPO matters | 18 Mar 2019 | EPO, Munich |
| UK Stakeholders Meeting on SPLH | 20 Mar 2019 | UK IPO, London |
| Patent Practice Working Group | 10 Apr 2019 | UK IPO, Newport |
| CBI/IPO IP Attaché Roundtable | 15 May 2019 | Allen & Overy, London |
| Discussion on aspects of AI and IP, and emerging technology | 18 Jun 2019 | Olympic Stadium, London |
| IPEC Users' Committee Meeting | 1 Jul 2019 | Rolls Building, London |
| Meeting with IP Minister | 3 Jul 2019 | Houses of Parliament, London |
| Patent Practice Working Group | 17 Jul 2019 | UK IPO, London |
| Department of International Trade on Trade Opportunities | 22 Jul 2019 | Foreign and Commonwealth Office, London |
| HMG IP Attaché for North America | 3 Sep 2019 | UK IPO, London |
| Roundtable discussion on aspects of IP under the Chatham House rule | 13 Sep 2019 | UK IPO and UPC courts, London |
| Roundtable discussion with USPTO on aspects of IP | 16 Sep 2019 | Institute of Civil Engineers, London |
| Standing Advisory Committee of the European Patent Office - Working Party on Rules | 18 Sep 2019 | EPO, Munich |
| WIPO conversation on IP and AI | 27 Sep 2019 | WIPO, Geneva |
| Intellectual Property Expert Trade Advisory Group (IP ETAG) | 30 Sep 2019 | Foreign and Commonwealth Office, London |
| Biannual meeting with CBI Innovation staff | 23 Oct 2019 | CBI offices, London |
| Consultation on UK-Japan FTA (post-Brexit) | 23 Oct 2019 | CBI offices, London |

The Federation's campaigns

An important point to understand is that, in general, IP lobbying and influencing is a long-term activity - especially as we do not tend to get involved in short-term single-issue items of a sectoral nature. However, some of the more specific campaigns in which the Federation has lobbied and enjoyed various key successes in the second half of 2018 and the first half of 2019 are set out below. These are all cases of success or partial success in which the Federation had a role.

1. We have participated as a member in the Department for International Trade (DIT)'s Intellectual Property Trade Advisory Group meetings. We also submitted responses to the four DIT consultations on the UK potentially seeking accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and on trade negotiations with the USA, Australia and New Zealand by the deadline of 26 October 2018.
2. We arranged meetings in Brussels on 28 November 2018 with DG Grow and the UK Representation to the EU (UKRep), supported by the UK IPO. The agenda included the following items:
 - Horizon 2020
 - European Defence Fund
 - Unified Patent Court
 - Hague Convention
 - Brexit and IP
 - SPCs
3. On 8 October 2018, the IP Federation filed and served an application for permission for written intervention in the *Actavis v ICOS* case at the Supreme Court on the question of obviousness only. This follows the IP Federation's letter to the Supreme Court earlier in the year. There is a general point of principle on the law of obviousness which may be applicable across all research-based industries.

The application for permission for written intervention on the question of obviousness only was granted and, on 27 March 2019, the Supreme Court handed down its unanimous decision in [Actavis v ICOS \[2019\] UKSC 15](#). The Supreme Court's decision was rooted in maintaining the balance of the patent system. It also referred to and referenced several arguments and cases set out in the IP Federation's submissions.

4. On 12 September 2018, the IP Federation lobbied various organisations, including the European Commission and MEPs, against the inclusion of IP rights within the scope of the draft Hague Convention for the Recognition and Enforcement of Foreign Judgments, saying:
 - IP rights are different in material respects from other legal rights that arise in a civil / commercial context, such that the rationale for the Convention does not apply in relation to IP.
 - We also see no meaningful benefit to the Convention applying to IP.
 - Further, we see very serious downsides arising if IP rights are included in the scope of the Convention.

Our secondary position had been that, even if IP is included, then patents should be excluded.

A paper on the Hague Convention from the delegation of the European Union was issued on 17 May 2019, proposing the exclusion of IP except copyright and related rights, and in fact IP was completely removed by Article 2.1(m) of the concluded text dated 2 July 2019.

5. Throughout the period, the IP Federation has had meetings on various aspects of Brexit with DExEU, DIT, BEIS and the UK IPO. Topics addressed have included trade policy, exhaustion regimes, the UPC and SPCs.
6. The IP Federation has regularly sent a representative to meetings of BusinessEurope's Patent Working Group on behalf of the CBI, with whom we have a close working relationship.
7. The IP Federation is growing as an organisation, with two new members in 2019.

Work in progress

Work in progress continues to focus on Brexit.

1. The IP Federation policy position on Brexit is as follows:

- Certainty is paramount to industry.
 - All accrued and pending intellectual property rights must be preserved in the UK post-Brexit.
 - The UK must provide for the ability to obtain equivalent UK rights in the UK post-Brexit.
 - We recognise the benefits for industry that can come from the Unitary Patent and Unified Patent Court and call on the UK and other Contracting States to work together urgently to enable the UK to stay in the system after Brexit, and to give consideration to transitional arrangements in case the UK or any other Contracting State is unable or unwilling to remain in the system.
 - Once the UPC is established, the involvement of non-EU, European Patent Convention Contracting States (e.g. Switzerland and Norway) in the UPC could be an advantage to industry, and should be explored.
 - We encourage the use of the Patent Box and R&D tax credits to support the UK as an innovation-friendly economy.
 - Exhaustion of IP rights needs to be dealt with actively upon Brexit. We do not support full International Exhaustion as this would be highly detrimental to the UK's IP-intensive industries.
2. On the Unified Patent Court and Unitary Patent, including Brexit and the UPC, we wish to emphasise Europe-wide industry support for the UK to ratify the UPC agreement as soon as possible and desire for the UK to remain within the system post-Brexit. UK ratification was a necessary important first step.
 3. On accrued rights and Brexit, namely SPCs, trade marks and design rights, our members wish for the existing rights and applications to continue operating post-Brexit without compromising IP right holders' rights.
 4. The Montenegro option (automatic transfer of EU trade marks on to the UK register, maintaining original priority dates) is the unilateral option that comes closest to satisfying the above tenets, as well as being the most practical and efficient to implement for all parties concerned. We consider that it would also be beneficial to provide an opportunity for EU trade mark owners to opt out of the otherwise automatic transfer of rights on to the UK register, to reduce cluttering.
 5. We recognise the practical difficulties in securing a suitable bilateral arrangement with the EU which would effectively keep the UK in the Community design system after Brexit. Assuming therefore that Community designs will cease to have effect in the UK at Brexit, our strong preference is for all Community registered design rights to be automatically transferred across to the UK register at the time of Brexit.
 6. On unregistered designs, we acknowledge that the loss of Community unregistered design rights is a particular concern for certain sectors of the UK design industry. A new Community-style UK UDR which 'mirrors' the existing Community unregistered design right would go part way to addressing those concerns.
 7. Any newly created Community-style UK unregistered design right should sit alongside the existing UK unregistered design right and should mirror the existing Community unregistered design right exactly. The three-year term of protection for Community unregistered design rights should not be increased in the UK.
 8. The UK should make it a priority to secure an agreement with the EU that disclosure in the UK after Brexit would still qualify for Community unregistered design right in the remaining states of the EU.

9. Brexit should not be seen as a reason to introduce criminal sanctions for infringement of unregistered design rights. We strongly oppose such sanctions.
10. We are opposed to IP rights being within scope of the draft Hague Convention for the Recognition and Enforcement of Foreign Judgments. Inclusion of IP rights (such that a foreign court can determine infringement of an IP right) would only lead to nullity suits in the corresponding jurisdiction, complicating the dispute further.
11. On the EU's approach to standard-essential patents (SEPs) following the Commission's SEP Communication on 29 November 2017, our members believe that it looked balanced but the specific implementation of the principles and the impact of that would need to be closely monitored.
12. Our members in the pharmaceutical sector are strongly opposed to a manufacturing waiver under SPCs. A manufacturing waiver erodes the IP right significantly. SPC law has been interpreted narrowly, leading to denial of extended patent protection resulting in insufficient rewards for the innovators.
13. We continue to press for accelerated patent examination to be available to foreign applicants as of right in China, irrespective of whether they have first-filed in China.

See also the Activities tab on the IP Federation website (under "Our Work") for the latest news.

Benefits of being in the IP Federation

As set out on the IP Federation's website, membership benefits include:

- Authoritative representation at national and international level
- Access to legislators and officials
- A non-sectoral forum to exchange ideas and opinions on key intellectual property issues as they relate to IP
- Excellent networking and learning opportunities for new and established IP attorneys
- Advance notice of forthcoming legislative proposals and practice changes
- Monitoring service for all consultations, both at national and at EU Commission level
- Regular alerting service, newsletters and policy papers

Social networking

As well as having its own website, the Federation has web presence through social networking sites, with a page on Facebook, a profile on LinkedIn and a Twitter feed - @ipfederation. Over the last year, we have once again increased the number of people who follow us on Twitter and now have 890 followers, including some notable figures in the IP world. This is the easiest way to be notified of any new policy papers and other news items on our website.

David England, 23 October 2019