

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

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. Its Council also includes representatives of the CBI, and its meetings are attended by IP specialists from three leading law firms. It is listed on the joint Transparency Register of the European Parliament and the Commission with identity No. 83549331760-12.

AGCO Ltd
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
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
IBM UK Ltd
Infineum UK Ltd
Merck Sharp & Dohme Ltd
Microsoft Limited
Nokia UK Ltd
Nucletron Ltd
Pfizer Ltd
Philips Electronics UK Ltd
Pilkington Group Ltd
Procter & Gamble Ltd
Rolls-Royce plc
Shell International Ltd
Smith & Nephew
Syngenta Ltd
The Linde Group
UCB Pharma plc
Unilever plc
Vectura Limited