



ADVANCING INDUSTRY'S VIEW ON INTELLECTUAL PROPERTY SINCE 1920

TRENDS & EVENTS

Intellectual Property:
Current Events and
Future Prospects

December 2019



The IP Federation was founded in 1920 as the Trade Marks, Patents and Designs Federation (TMPDF) in order to coordinate the views of industry and commerce in the United Kingdom, and to make representations to the appropriate authorities on policy and practice in intellectual property (IP) matters.

Aims

The IP Federation's aim is to bring about improvements in the protection afforded by intellectual property rights throughout the world, to the advantage of inventors, manufacturers and consumers alike. Today the Federation has over 40 IP-intensive member companies operating in a wide range of sectors and product groups, among which are many of the largest companies in the UK, as well as smaller companies. [For a list of full members see back cover.]

Most if not all industrial and commercial firms use or are affected by intellectual property rights, even if they are not particularly concerned with innovation protected by patents and designs. Nearly all firms own trade marks and copyright material. All are affected by competition law and the rights of others. The work of the Federation is therefore of value to everyone. While many firms leave day-to-day matters concerning the acquisition, defence and enforcement of rights to professional attorneys, it is still important to take a direct interest in the policy background, to ensure that proper rights are available, and that they can be secured in a straightforward and efficient way and litigated without unnecessary complexity and expense.

Activities

The IP Federation initiates proposals and follows developments at national, European and international levels across all fields of intellectual property. It has a close relationship with the Confederation of British Industry (CBI) and provides professional input on intellectual property matters to the CBI, as well as representing it in certain meetings of BusinessEurope (the Confederation of European Business) concerning intellectual property. The IP Federation is also an invited observer at diplomatic conferences and meetings of standing committees of the World Intellectual Property Organization (WIPO).

Contacts

The IP Federation maintains good contacts with the UK Intellectual Property Office (IPO), and members of its council and committees participate in several focus groups and practice working groups which provide expert opinion to the UK Government and its agencies on intellectual property matters. It also has good contacts with the European Patent Office (EPO) and is represented on bodies which advise the EPO.

It is represented on the UK user committees of the Intellectual Property Enterprise Court (IPEC) and Patents Court, and is on the IPO's list of consultees in relation to references to the Court of Justice of the European Union (CJEU).

The IP Federation also maintains contacts with parliamentarians both in Westminster and in the European Parliament. In the UK, it has close contacts with the Chartered Institute of Patent Attorneys (CIPA), the Chartered Institute of Trade Mark Attorneys (CITMA) and FICPI-UK, the UK association of the International Federation of Intellectual Property Attorneys, and is a member of IPAN (the IP Awareness Network). Internationally, the IP Federation exchanges views and maintains good contacts with similar IP user organisations in other countries.

Membership

The IP Federation has a council, which meets monthly to agree Federation policy, a governance committee, and a number of technical committees, to which detailed consideration of issues may be delegated. Most members pay a fee that entitles them to a council seat, as well as on any or all of the committees. Some members pay a lower fee that allows them to join any or all of the committees. All members may vote at the AGM at which (*inter alia*) the president of the Federation, any vice-presidents, and the governance committee are elected. If you would like to join the Federation, please contact the Secretariat at the address which follows.

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PRESIDENT'S INTRODUCTION

Having stepped into the role of President in July 2019, it is with great pleasure that I am able to introduce this edition of *Trends and Events*, the annual journal of the IP Federation. The Federation aims to bring about improvements in the protection afforded by IP rights throughout the world, working together to represent 47 IP-intensive member companies, operating in a wide range of sectors and product groups, among which are many of the largest companies in the UK. Intellectual Property (IP) is the lifeblood of these innovative businesses, and there is a growing realisation of the importance and value of IP on the global stage. Unsurprisingly, therefore, it is an extraordinarily busy and interesting time for us in the dynamic world of business IP.

The big issues that have dominated IP Federation Council meetings are in the most part related to IP post Brexit - Brexit being a topic that has dominated the news, causing a change in Prime Minister in July. The Government Minister responsible for IP has also changed a number of times in the past year, with Sam Gyimah MP, Jo Johnson MP and latterly, Chris Skidmore MP, all taking up this important role.

Despite the ever-changing UK, as well as global, political conditions this year, the Federation has been successful in its goal of growing its membership. Canon, Eisai, Hitachi, Juul Labs, RB and Vodafone have all joined as members since March 2018.

I had the pleasure of hosting António Campinos, President of the European Patent Office (EPO), in September 2019. He 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.

The Federation has consistently pushed for the UK to ratify the Unified Patent Court and to stay in the system for the long term, and we continue to do so. Industry has encouraged the harmonisation of IP rights for over 100 years, and the Federation will continue to advocate that the UK maintains or enhances its level of harmonisation in obtaining and enforcing IP rights with other countries in Europe and internationally via our efforts in many collaborations, most notably via the B+ Patent Law Harmonisation working group of the IP5.

The submissions in *Trends and Events* this year, are as ever, dependant on the tremendous efforts of our Council and Committee members, and of our secretariat of two (David England, Helen Georghiou). I also want to thank the other members of the Presidential troika. Belinda Gascoyne of IBM has expertly steered us through a tumultuous last year in the presidential role and is, as tradition, staying on as for second term of Vice-President and as immediate past president. We are also now joined by Scott Roberts of BT as our new Vice-President. I also want to thank James Horgan as outgoing past-President. His sage knowledge and practical experience have been of immense value to me personally, as well as to the Federation as a whole.

We were very sad to hear the news in November this year of the death of David Barron (Gowling WLG), who after a long fight with illness passed away peacefully with his family around him. David had been supporting our work for nearly 30 years and was one of the first three solicitor associates for the Federation. He will be very much missed by everyone who knew him. We were also saddened by the death of Sir Henry Carr QC, who passed away in July this year. He too will be greatly missed by many at the Federation who knew him and who were lucky enough to benefit from his huge personal and professional contributions to their lives and work.

Looking ahead, I expect 2020 to be another intensely busy year with much change ahead. Specifically, we will be celebrating the 100-year anniversary of the Federation, and I am confident that, with the support of Council, the Federation will continue to make its voice heard and help to shape IP policy on the international stage, whatever shape Brexit eventually takes. As it stands, we are not aware of any other industrial membership body in Europe that meets on such a regular occurrence, has such a deep as well as broad membership and is so active in IP matters, as I hope you will see as you read this year's *Trends and Events*.

Suzanne Oliver, President IP Federation, July 2019 - July 2020

IP FEDERATION

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)

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 consulta-

tion 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

The 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

Title of meeting / topic of discussion	Date	Venue
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 poten-

tially 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 legis-

lative 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

ENFORCEMENT ISSUES

Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters

“A great day for global justice”
(Really?)

These are the opening words of an 8 July 2019 Press Release from the Hague Conference on Private International Law (known as “HCCH”) announcing the adoption on 2 July of the 2019 Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters. The somewhat portentous words marked a significant step in a project that had been under way for more than 25 years.

Private international law (or “conflict of laws” as it is commonly known in common law countries) is the body of law that determines in which country’s courts a dispute between nationals of different countries can be brought, which law will apply to the dispute and in which countries any court order will be recognised and enforced. It is largely governed by national laws, though there have been attempts to draw up treaties, and a body of EU law exists, setting out rules on any or all these three issues.

When the author was studying law at university, private international law was an option in the third year. However, although it was never specifically stated, it was known that only the brightest should study it (in the same way as only the brightest are capable of practising tax law). It was not regarded as suitable for the average student. As the author was decidedly average, he did not study it.

So, given the aura around private international law and his own ignorance of the subject, it was with a sense of trepidation that the author greeted the arrival on his virtual desk in spring 2017 of the February 2017 draft Convention on Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters being negotiated under the auspices of the Hague Conference on Private International Law (known as HCCH). That sense of trepidation grew when he read those papers.

As its name suggests, the draft Convention was a proposal for a scheme under which courts in one party (the requested court) would agree to recognise and enforce the judgments of the courts of another party (the court of origin). It dealt with only one part of the private international law trinity. It did not seek to regulate the law that had to be applied by the court of origin or the rules under which that court exercised jurisdiction over the defendant (though both choice of law and jurisdictional rules would affect whether an order would be enforceable in the requested court).

At first sight, it might be thought that the IP Federation, comprising many of the most innovative and IP-reliant companies in the UK, would favour an international instrument which might, if widely adopted in its broadest form, allow one court to hear IP disputes involving many countries and the judgment of that court (whether injunctive or monetary) to be enforced in other countries. However, the IP Federation's members are also defendants in legal proceedings and are therefore conscious of the need to promote a balanced system that works for all users.

A little historical background to the Convention is instructive. Work on such a convention originally dates back to before the 1970s. In 1971, a convention on recognition and enforcement was agreed. Only two states appear to have ratified, and a further three appear to have succeeded to that convention. In a May 1992 paper, the Permanent Bureau of the HCCH attributed that failure in part to its complex form.

Work on the present Convention (known as the Judgments Project), began as long ago as the first half of the 1990s, and a preliminary draft was issued in August 2000. From very early on, the questions of whether judgments relating to IP should be within or excluded from the Convention, and how IP should be treated if it was within the Convention, were contentious for a variety of reasons.

A report of a meeting of experts in February 2001 indicates that the EU felt that, if rules that provided "predictability and acceptable grounds for jurisdiction" could be agreed, inclusion of IP would be "very useful". The US however, having consulted industry, found almost uniform

opposition to the then-current text and great "difficulty understanding" it. (Amusingly perhaps, the report of the meeting notes the Commission concern that any Convention must be capable of dealing with "Community IP rights [including] in the very near future ... the Community Patent.")

It was apparent that it would not be possible to achieve consensus on a draft dealing with issues of both jurisdiction and enforcement, so focus turned in 2002 to a Convention on litigation involving agreements containing choice of courts provisions (i.e. jurisdiction clauses). That work proceeded quickly, and a Convention was concluded on 30 June 2005. Its success can perhaps be measured by the fact that, apart from the EU and EU Member States, it has only five contracting parties, only two of which (Singapore and Montenegro) have ratified it.

It wasn't until 2012 that the HCCH Council agreed that work on the Judgments Project should resume through a Working Group, and it took until 2016 for a preliminary draft to be ready for discussion. That draft contained no suggestion that IP should be excluded from the scope of the Convention. The discussion of the preliminary draft led to publication of a further draft in February 2017. It was this draft that came to the attention of the Federation.

The February 2017 draft was difficult for an outsider to understand, as it contained many sections of square bracketed text, indicative in treaty negotiations of substantive disagreement. The majority of these related to IP. There was clearly a significant disagreement as to whether judgments relating to IP should be within the scope of the Convention at all (and thus portable among its parties), the scope of judgments that might be portable (for example, preliminary and final injunctions and monetary awards, judgments on validity or just infringement) and the conditions which would be necessary for portability (for example, only if the judgment related to infringement of an IP right in the country court of origin or also judgments related to "foreign IP rights").

Even the most apparently simple but in fact quite complex questions produced various options for answers over the next

year and a half. For example, on the question of what, if any, IP might be excluded from the scope of the Convention, suggested answers ranged from (i) no exclusion of IP at all (2016 preliminary draft), to (ii) exclusion of “[intellectual property rights[, except for copyright and related rights and registered and unregistered trademarks]]” (February 2017 draft), to (iii) exclusion of “[intellectual property [and analogous matters]]” (November 2017 and May 2018 drafts). This question is of fundamental importance. If IP judgments (or some of them) are to be excluded, there needs to be consensus as to what they are for the Convention to work. For example, would a judgment of a court in country A relating to trade secrets or traditional knowledge be enforceable in country B?

All drafts after the preliminary draft contemplated complete exclusion of “intellectual property” from the Convention, all drafts also contemplated the inclusion of some or all “intellectual property”, and all drafts had extremely complex provisions as to how various types of judgments relating to various types of IP should be treated.

One might have thought that an important process step for parties working on the issue of whether and how IP should be within the scope of the Convention might have been to find out the views of users of IP systems. As we have seen, the United States consulted its users as early as 2001. The EU took a different approach; by (at latest) December 2017, a paper submitted by the EU to HCCH (prefaced with the words “This paper expresses the preliminary views of the EU delegation and may not in any circumstances be regarded as stating an official position of the EU”) stated:

The EU is in favour of retaining IP within the scope of the Convention. IP rights are an important economic factor, and a secure legal framework for cross-border cases is of the essence.

This is interesting because this preliminary view was formed without any consultation with users whatsoever. Indeed, to this day, there has been no formal consultation by the Commission. As we shall see, views were given to the UK IPO and Ministry of Justice by the Federation. And the

Convention was the subject of a hearing in the Legal Affairs Committee of the European Parliament in April 2018 at which the presentation of the representative of BusinessEurope stated:

IP owners in Europe were only made aware in mid-2017 of this ongoing negotiation and its potential impact on IP rights. We did not proactively call for the inclusion of IP to its scope as we did not feel the need for it. **BUSINESS-EUROPE is against the inclusion of at least patents, trade marks and designs in the scope of the Convention.** [Emphasis in original]

So, the “preliminary and non-binding view” of the EU did not appear to be that of its businesses. Nor did the EU paper explain why it now favoured a Convention which would apply to IP even though the draft did not encompass “predictable and acceptable grounds of jurisdiction”, which had appeared to be a pre-condition of support for inclusion of IP in 2001.

The Council of the Federation considered the February 2017 draft. The large number of square-bracketed sections made it difficult to assess where the Convention might end up. But significant issues were unresolved and had to be carefully considered, not least by the user community. Would the UK Courts have to recognise or enforce a judgment revoking a UK patent or an injunction for infringement of copyright which had extra-territorial effect? Would it have to enforce an order for damages for misuse of traditional knowledge, a cause of action unknown to UK law? Would it have to enforce a judgment of a Court which did not operate under commonly accepted standards of due process (a question of relevance to the Convention as a whole, not just an IP judgment)? Would the judgment of a national or regional patent office be enforceable? How would contractual judgments with important IP elements be enforceable?

While recognising that there might, in theory, be some merit to some IP judgments being included within the Convention under some conditions, the Council felt that the draft was inadequate and would give rise to many problems. It concluded that the dangers with the draft far outweighed any benefits.

The Federation brought the issue to the attention of other relevant trade associations, which ultimately led to the BusinessEurope intervention in the European Parliament referred to above.

We also spoke to the officials at the IPO and Ministry of Justice, who welcomed and understood our views and concerns (albeit at the time they had no direct ability to control matters, since the EU had exclusive competence to negotiate the Convention).

Fresh drafts followed in November 2017 and May 2018. Each appeared to be moving towards a more limited application of the Convention to IP (though it was hard to tell because a significant amount of square-bracketed text remained). If IP was to be included, in its most limited scope, the Convention might only have required recognition and enforcement of compensatory monetary judgments for infringement of an IP right existing in the country of the requesting court. But it was by no means clear that this would be the outcome. As noted above, the complete exclusion of IP from the scope of the Convention also remained a possibility in each draft.

Each draft became more complicated (did no one recall the 1992 thoughts of the Permanent Bureau that complexity was partly responsible for the failure of the 1971 Convention?). Such was the complexity that the EU felt it necessary to publish a paper running to almost 30 (dense) pages explaining how the IP provisions of the November 2017 draft were intended to operate. The Co-Rapporteurs published a similar paper in May 2018. As the complexity increased, the need for careful consideration by all stakeholders, especially users who would be affected, became more important.

Though the outstanding issues on IP were significant, progress on other areas was such that it was decided in 2018 to convene a Diplomatic Conference in June 2019 to finalise the Convention.

In light of that decision, the Federation decided to adopt and publish a policy paper. It contained detailed comments on the May 2018 draft. Neither the EU explanatory paper nor that of the Co-Rapporteurs had proved sufficient to allay

the concerns of the Federation as to the value and risks of the Convention relating to IP, even if the final form adopted when all the square brackets were resolved were to include the most limited scope of inclusion contemplated by the May 2018 draft.

The Federation position was succinctly stated:

The IP Federation is strongly against the inclusion of any IP within the scope of the Convention.

In any event, the Convention adopted on the "great day for global justice" excluded from its subject matter "intellectual property".

That term remains undefined, though we understand that Explanatory Notes to the Convention might address its meaning (which, as noted above, is an important question with a bearing on whether the UK courts will know, for example, whether to enforce a judgment of a foreign court for misuse of traditional knowledge). The Explanatory Notes may also explain the circumstances in which contract judgments where IP questions are critical are and are not to be enforced.

Questions such as these will have to be considered by the Federation in deciding whether to endorse UK accession to the Convention (assuming the UK leaves the EU).

At the time of writing, only Uruguay has signed the Convention. As the Press Release noted, the Secretary General of the HCCH:

stressed ... that with the adoption of the Convention a new chapter has opened and that the focus now shifts towards the promotion of the Convention. He invited all delegates to be "champions of the Convention" so that "the Convention is taken up by States. That it is implemented correctly. That it operates effectively".

It remains to be seen whether the Convention is widely adopted or whether, like the 1971 Convention, it is an interesting document that will be revisited in years to come.

David Rosenberg, 4 November 2019

PATENTS

European patent reform

As in all recent years, the unitary patent and Unified Patent Court (UPC) dossier has been among the Federation's highest priorities¹ in the last 12 months, following the long-awaited agreement between the European Parliament and Council in late 2012 which resulted in the unitary patent and language Regulations being adopted in December 2012, and signature of the UPC Agreement on 19 February 2013.

To recap on events in 2017 and 2018, as of January 2017, it had been expected that the UPC would open on 1 December that year. However, the project was stalled by a challenge to the legality of Germany acceding to the UPC filed on 31 March 2017. This led to the German Constitutional Court (the BVerfG) advising the German President four days later (on 3 April) not to sign the legislation permitting German ratification of the UPC Agreement (UPCA) pending a decision on the merits by the BVerfG, something expected to take about 18 months to emerge. With no urgency to press on rapidly with UK ratification, and with an intervening General Election creating practical difficulties, the UK also deferred its ratification, but this was duly completed on 26 April 2018.

In the interim, in February 2018, the BVerfG listed the UPC challenge for hearing in 2018. However, despite this, 2018 ended with no sign of any progress. The case was then (in February 2019) re-listed for hearing later in 2019. Currently the case remains pending with no indication of when a decision might be anticipated, albeit the queue of cases ahead of it in the list is shrinking such that it appears reasonable to assume that a decision may issue in late 2019 or early 2020.

The significance of the ongoing delay is, of course, that there is now no prospect that the UPCA will come into force prior to Brexit, even if it is delayed until 31 January 2020 (as widely expected as of the time of publication of this report).

Further, unless Brexit is delayed by a longer period, it is highly unlikely that even the precursor to the opening of the UPC, the Provisional Application Period (PAP), could commence before Brexit.

Effects of Brexit

It is generally recognised that, if the UPCA does not come into effect (at least to the extent of the commencement of the PAP) before a "no-deal" Brexit, or before the end of a Brexit which includes a transition period of the type included in the deal offered by the EU but declined by the UK, then the UK's participation is at risk. This is because it has been argued by a number of commentators that it is a prerequisite of membership of the system that all states should also be members of the EU, and unarguably the UPCA was drafted upon the assumption that all states would be EU Member States. It is therefore debatable, even if the BVerfG rejects the constitutional challenge and thereby gives the green light to German ratification of the UPCA, whether Germany would proceed with ratification for fear that the CJEU might subsequently rule the whole system to be unlawful with UK as a participant. It is equally debatable whether Germany and a number of other states would wish to see the system start unless the UK was a participant.

Overall, therefore, the future of the UPC remains as uncertain as it seemed on 24 June 2016, albeit for very different reasons. However, there remains a strong political will in both the UK and more widely among other states that have ratified the UPCA that the system should proceed with the UK in it. The IP Federation remains committed to supporting the project, and similarly committed to the efforts to resolve the important matter of the UK's long-term participation.

Alan Johnson, Bristows LLP, 9 September 2019

¹ In this regard the IP Federation Brexit Policy Position (Policy Paper PP 1/17 - updated 20 January 2017) remains definitive.

European Patent Office update

The Federation continually engages with the European Patent Office (EPO) to provide input to consultations, on matters relating to implementing and on ancillary regulations to the European Patent Convention (EPC) and to procedures of the EPO. The Federation maintains ongoing working relationships with EPO representatives including meetings with the President and Directors throughout the year.

Notable Decisions of the Boards of Appeal of the EPO

T 1085/13

In decision T 1085/13, the board considered the novelty of a claimed compound, the claim stipulating it having a specified purity. Distinguishing T 990/96, the board found that a claim defining a compound having a certain purity lacks novelty over a prior art disclosure describing the same compound only if the prior art discloses the claimed purity (at least implicitly). For example, the prior art may disclose a method for preparing the compound that inevitably results in the purity as claimed. According to the board, such a claim does not lack novelty if the disclosure of the prior art needs to be supplemented, for example by suitable (further) purification methods allowing the skilled person to arrive at the claimed purity.

The question of whether such (further) purification methods for the prior art compound are within the common general knowledge of those skilled in the art and, if applied, would result in the claimed purity, is not relevant to novelty, but is rather a matter to be considered in the assessment of inventive step (reasons 3.7, 3.8).

T 1845/14

Decision T 1845/14 concerns an unclear parameter defined in a claim where required values of the parameter essential for solving a problem underlying the invention are indicated in the specification. The board found that the ability of the skilled person to solve that problem by reproducing what is claimed is not a suitable criterion for assessing sufficiency of disclosure when the problem (or an effect derivable from it) is not explicitly or

implicitly part of the definition of the claimed subject matter (point 9.8 of the Reasons).

G 1/18

Enlarged Board opinion G 1/18 addressed the referral by the President of the EPO of questions regarding the admissibility of an appeal in cases of a failure to observe the two-month time limit under Article 108 EPC owing to belated payment of the appeal fee and/or belated filing of the notice of appeal. The motivation for the referral relates to the rules for refund of all or part of the appeal fee since there can be no reimbursement if an appeal is inadmissible (Rule 103(1) EPC), as distinct from the situation if the appeal is instead considered not to have been filed.

In its opinion G 1/18, the Enlarged Board takes the view that the consequence in law of a failure to observe the two-month time limit under Article 108 EPC is that the appeal is deemed not to have been filed, and not that it is to be rejected as inadmissible, and that accordingly, the appeal fee will be reimbursed in such cases. In so finding, the Enlarged Board has endorsed the prevailing view in the Boards' case law.

G 2/19

Enlarged Board decision G 2/19 relates to the right of a third party (within the meaning of Article 115 EPC) who has appealed against a decision to grant a European patent to be heard. Further, the decision considers whether oral proceedings of the Boards of Appeal at their location in Haar infringes Articles 113(1) and 116(1) EPC.

The Enlarged Board confirmed that a third party within the meaning of Article 115 EPC is not entitled to appeal and has no right to be heard by a Board of Appeal. Further, the board confirmed that oral proceedings held in Haar do not infringe Articles 113 (1) and 116 (1) EPC.

Pending Referrals to the Enlarged Board of Appeal of the EPO

G 1/19

In the interlocutory decision T 0489/14, the board considers the question of

patentability of a computer-implemented simulation method involving the simulation of the movement of pedestrians through a building structure. The board referred questions of the technical nature of such inventions to the Enlarged Board as referral G 1/19. The referral is widely seen as potentially significant, not just for simulation methods but also for potential implications for the approach to assessing the patentability of many computer-implemented inventions.

In its interlocutory decision T 0489/14, the board deviates from existing case law in T 1227/05 (Circuit Simulation I/Infineon) according to which a step of a computer-implemented method “may contribute to the technical character of a method only to the extent that it serves a technical purpose of the method ... provided the method is functionally limited to that technical purpose” (reason 3.1). Further, the board in T 0489/14 consider that “a technical effect requires, at a minimum, a direct link with physical reality, such as a change in or a measurement of a physical entity”. Both these conclusions by the board are inconsistent with the prevailing approach to patentability assessment for computer-implemented methods as adopted by the EPO in the Guidelines for Examination.

The IP Federation filed a brief as *amicus curiae* in G 1/19 that is available to view at tinyurl.com/IPFedAmicusG1-19. A decision of the Enlarged Board is expected in 2020.

G 3/19

The referral by the President of the EPO of questions in G 3/19 concerns the relationship between the Implementing Regulations and Articles of the EPC and, specifically, the relationship between Rule 28(2) EPC and Article 53(b) EPC in respect of the patentability of plants or animals exclusively obtained by means of an essentially biological process.

Article 53(b) EPC recites “Patents shall not be granted for ... plant or animal varieties or essentially biological processes for the production of plants or animals”. This is identical to the wording of Article 4(1)(b) of the EU Biotech directive (98/44/EC). The EPO Enlarged Board of Appeal delivered identical decisions in G 2/12 and G 2/13 (referred to as Tomatoes II and

Broccoli II), stating that “the process exclusion in Article 53(b) EPC does not extend to ... product-by-process claims” (Final Conclusion 3). Subsequently, the EPO Administrative Council amended Rule 28 EPC by inclusion of new provision, Rule 28(2) EPC (decision of the Administrative Council CA/D 6/17), which entered into force on 1st July 2017. The new rule states “Under Article 53(b), European patents shall not be granted in respect of plants or animals exclusively obtained by means of an essentially biological process”.

In December 2018, an EPO Board of Appeal in case T 1063/18 (Pepper) concluded that the new Rule 28(2) EPC is in conflict with Article 53(b) EPC as interpreted by the prior Enlarged Board decisions G 2/12 and G 2/13.

The pending referral G 3/19 thus seeks the Enlarged Board’s opinion on two questions: whether Article 53 EPC can be clarified in the Implementing Regulations without the clarification being *a priori* limited by the interpretation of the Article given in an earlier decision of the Enlarged Board; and whether the exclusion from patentability of plants and animals exclusively obtained by means of an essentially biological process according to Rule 28(2) EPC is in conformity with Article 53(b) EPC.

The IP Federation filed a brief as *amicus curiae* in G 3/19 that is available to view at tinyurl.com/IPFedAmicusG3-19. A decision of the Enlarged Board is expected in 2020.

Procedural Developments at the EPO

EPO Proposals for Streamlining the Patent Grant Procedure

In 2019 the EPO has developed proposals with the objective of streamlining procedures before the Office. A number of these are summarised below.

- The Office proposes to extend the existing “PCT-Direct” procedure, according to which an applicant may file a substantive response to a written opinion of a European search of an earlier application, to additionally apply to second filing Euro-direct applications. According to this proposal, an applicant may efficiently ad-

dress citations and observations made in respect of a search for an earlier application in a subsequent EP filing.

- The Office proposes improvements to communications between applicants/representatives and the EPO in respect of applications. Proposals include: improvements to the identification of responsible EPO interlocutors for cases; clear identification of available methods of communication with EPO interlocutors; inclusion of a clear indication within a communication of an exact date by which an action or response of a party is due; increasing the use of telephone communication with examiners; and the use of Skype for Business for streamlined collaboration between the EPO and users.
- In view of legal and operational considerations and with an ambition for administrative simplification, the Office proposes to stop notifying

inventors of their designation in respect of patent applications. Additionally, the EPO is exploring options for revising the current legal framework governing the publication of inventors' data that would allow a more balanced reconciliation of all their different interests, i.e. their moral rights to be named in European patent applications and patents, and their legitimate right for better protection of personal data.

- The Office proposes to abolish the notification by registered letter with advice of delivery, while noting that the burden of proof of delivery continues to rest with the Office.
- The Office is further exploring making available cited documents (in particular, non-patent documents) online to parties to proceedings.

Scott Roberts, 21 November 2019

Obviousness

Consistency in the law and a balanced approach to the approach to inventive step / obviousness are both matters of considerable significance to all IP Federation members. It was therefore a matter of some concern that the judgment of the Court of Appeal in *Actavis v ICOS* of 1 November 2017 appeared to open up the possibility of a more restrictive approach to inventive step than had hitherto been generally understood. As a result, and so that the law could be clarified, IP Federation supported an application for permission to appeal to the Supreme Court, and following grant of permission applied to intervene, in writing, in the appeal. This application was successful and, accordingly, written submissions (prepared on IP Federation's behalf by Bristows LLP) were introduced into the appeal, which was heard on 19 and 20 November 2018. Three other organisations also intervened and made written submissions, namely: the UK BiIndustry Association, Medicines for Europe, and the British Generic Manufacturers Association.

Judgment was delivered on 27 March 2019, with Lord Hodge giving the lead judgment (with the President, Lady Hale, and the

other Law Lords agreeing). Pleasingly, the Supreme Court clarified that the judgment of the Court of Appeal should not be read as in any way changing the law. Dismissing the appeal, in paragraph 103 of his judgment, Lord Hodge stated as follows:

"... The IP Federation similarly expressed concern about a perceived risk that people might extrapolate from statements in the Court of Appeal's judgments that the result of routine investigations cannot lead to a valid patent claim. It expressed a particular concern about the breadth of the statement by Lewison LJ (in para 180): "in a case which involves routine pre-clinical and clinical trials, what would be undertaken as part of that routine is unlikely to be innovative". Its concern was that a simplistic adoption of this phrase as a blanket test without regard to the facts of the specific case would be contrary to the fundamental principles of patent law. I do not interpret the Court of Appeal's judgments, including Lewison LJ's statement which I have quoted, as supporting such an extrapolation. Kitchin LJ gave the leading judgment, in which he

adopted a fact specific assessment based on the facts of this case and involving the weighing up of several factors, and Floyd and Lewison LJ agreed with his reasoning and conclusions. I do not construe the judgments of the Court of Appeal as supporting any general proposition that the product of well-established or routine enquiries cannot be inventive. If that had been what the experienced judges had said, I would have respectfully disagreed. But it is not. As Jacob LJ

stated in *Actavis v Merck* (above) para 29, there is no policy reason why a novel and inventive dosage regime should not be rewarded by a patent. A fortiori, efficacious drugs discovered by research involving standard pre-clinical and clinical tests should be rewarded with a patent if they meet the statutory tests ..."

Alan Johnson, Bristows LLP,
11 September 2019

Patent harmonisation

Substantive Patent Law Harmonisation (SPLH)

Representatives of the IP Federation have continued to play a leading role in the development of global thinking on improving the international patent system, especially through increased harmonisation of substantive law. Currently the patent laws of leading industrial nations or regions, such as the US, Japan and Europe, differ on several fundamental principles. While business has become accustomed to managing these differences, greater harmonisation of patent laws would bring considerable benefits through reduced transaction costs in global patenting and lower obstacles to trade. Crucially though, the resulting system must offer the best incentives to invent, and rewards for investment in innovation.

The IP Federation membership has not only the expertise to understand the complex legal and technical concepts involved, but also the experience of knowing what will work for industry. On behalf of the IP Federation, Carol Arnold and Tony Rollins have participated in a range of domestic and international meetings over the past year aimed at building understanding, developing options, and exploring possible avenues for progress.

Patent law harmonisation is by no means a new endeavour: it has in different guises been under discussion for decades. But over the last few years, greater momentum and a more positive outlook have been developing, through the work of the so-called B+ group of patent offices from the US, Japan and countries belonging to the European Patent

Convention, the Trilateral Offices (US Patent and Trademark Office, Japan Patent Office, and the European Patent Office), and the "IP5" (comprising the Trilateral Offices and the patent offices of the Republic of Korea and the People's Republic of China). Central to that progress has been connected activity by various industry groups, in particular the Industry Trilateral ("IT3") and IP5 Industry, within which BusinessEurope ("BE") is the relevant European body.

With the agreement of the Confederation of British Industry ("CBI"), the IP Federation represents the UK in the BE team, both in terms of building thinking and being an active part of its delegation to meetings. That has involved Carol and Tony in contributing ideas and analysis for the evolution of the BE position on a range of complex issues, in face-to-face meetings and substantive web meeting discussions. They have then made the case for the resulting positions in IT3 and IP5 Heads/Industry meetings in Seoul in June 2019 and IT3 and B+ meetings in Geneva in autumn 2019, and in a number of bilateral meetings. The aim has been to progress work on a package of measures for substantive patent law harmonisation for wider consideration and hopefully approval. Such a package should fairly balance the interests of businesses, individuals and other bodies, encourage innovation and protect the rights of innovators and third parties. Most recently, the possible implications of Artificial Intelligence and other new and rapidly emerging technologies for these discussions have been recognised.

While it is recognised in all discussion fora that agreement must be achieved on any package as a whole, and not separately on individual issues, consensus does seem to have been reached on a number of issues. Though progress has been made elsewhere, there remain areas on which an agreed position has still to be reached, particularly on certain aspects of a grace period system, and on appropriate third party protections.

Looking ahead, the B+ group has agreed that IT3 can continue its SPLH work, to which IP Federation members will continue to contribute and influence.

Global Patent Assignment

The harmonisation of patent practices and procedures (as distinct from substantive law) also offers opportunities for eliminating duplication of work and corresponding time and cost reductions.

The IP5 Patent Harmonisation Expert Panel ("PHEP"), a technical body of patent experts under the umbrella of the IP5, was established in 2012 to explore the potential for alignment of patent practices. Recognising the importance of bringing on board the views of stakeholders, the PHEP has been working in close co-operation with IP5 Industry. At the IP5 meeting in June 2019, particular focus was placed on a new project called "Global Patent Assignment". The proposal is that a universal form and database for patent assignments should be developed to replace the current requirements to file separately with each patent office assignment documents following different formats and procedures. Benefits would include improved efficiency and greater legal certainty. Work is now underway to gather and validate data on the position in as many jurisdictions as possible, to which the IP Federation will certainly be contributing.

Sean Dennehey, 6 November 2019

Pilot for "PCT-IP5 search" / "CS&E": update

Pilot doing well so far, still open to PCT applicants until 30 June 2020

Subject to the successful conclusion of a pilot, which began on 1 July 2018 and closes to volunteering PCT applicants on 30 June 2020,² it is hoped that in a few years' time all PCT applicants will be offered a procedural option providing for -

one of the IP5 offices (European, US, Japanese, Chinese, and Korean) receiving a PCT application to act as a "main ISA" leading a *collaborative exercise*, the result of which will be that the main ISA issues a search report and written opinion in Chapter I based on both its own work and on inputs from the other four offices (called "peer ISAs").

Such an option is currently officially called "PCT collaborative search and examination (CS&E)"; but to avoid possible confusion with other initiatives (and possible future renaming), in this report it is called "PCT-IP5 search".

The Federation was the originator of this concept. The advantages of PCT-IP5

search are fully set out in *Trends and Events* August 2018, pages 35-37. If the pilot is successful and PCT-IP5 search is implemented, this will be the biggest single improvement in the PCT since the PCT began in 1978.

The 2018 article in *Trends and Events* set out also what would be involved for Federation members participating in the pilot, and specifically noted the inducement that extra searches are obtained at no additional official cost. WIPO gives information at <https://www.wipo.int/pct/en/filing/cse.html> and provides the form https://www.wipo.int/export/sites/www/pct/en/forms/rcse/ed_rcse.pdf (English version) by which a PCT user can volunteer applications for the pilot. *The pilot remains open to the volunteering of new applications until 30 June 2020*, or until each main ISA has filled its quota of applications (100 over the two-year period from 1 July 2018).

² It should be noted that this pilot is informed by the results of two previous pilots on a smaller scale.

The aim of this update, then, is twofold:

- (i) to remind interested Federation members that the pilot is indeed still open to new applications; and
- (ii) to report briefly on the pilot so far.

As of the date of this article, the number of applications which each main ISA can still accept before it reaches its quota of 100 are as follows:

- EPO, 16 applications, with no restrictive sub-quota on applications in English;
- USPTO, 7 applications (in English);
- JPO, 50 applications (in Japanese with an English translation);
- CNIPA, 42 applications (in English or Chinese); and
- KIPO, 4 applications (in Korean with an English translation).

(Continuously updated information is

available at <https://pct.wipo.int/ePCTExternal/pages/PCTCollaborativeSearch.xhtml>.)

Users of the JPO have furthest to go if the quota of 100 is to be reached, but the JPO was a somewhat late starter.

The EPO found, in the first year of the pilot, that few applicants wish to volunteer PCT texts in French and German; presumably this is because many companies based in French- and German-speaking countries quite normally file in English (a practice which (a) eliminates translation-created discrepancies between the PCT application and the national phase US application and (b) reduces translation costs in other national phases).

It is not yet possible to report on the success of the pilot in improving outcomes for applicants. The Offices will probably report officially only in 2021 or later, but anecdotal reports from applicants can be expected before then.

Michael Jewess, 30 November 2019

COPYRIGHT, TRADE MARKS AND DESIGNS

Developments in Copyright

As 2018 moved into 2019, progress on the EU Directive on Copyright in the Digital Single Market ("EU Copyright Directive") was looking shaky to say the least - a highly controversial IP bill; unprecedented lobbying and international media attention; celebrities such as Sir Paul McCartney and Lady Gaga campaigning in Brussels; and even death threats against politicians! The trilogue negotiations between the European Commission, European Parliament and the EU Council, each of which appeared to have a different view of the appropriate text, were dragging on and it looked like the negotiations were at stalemate or heading off the rails completely ... And then, rather suddenly and surprisingly speedily (presumably so as to keep ahead of the May 2019 European parliamentary elections), a 'final' version of the text was agreed and presented to European Parliament in February, and approved by the Parliament in March and then by the European Council in April. The

EU Copyright Directive (EU 2019/790) came into force on 7 June 2019 and hence must be implemented by Member States by **7 June 2021**.

The main points of controversy surround a new press publishers' right to seek remuneration from platforms for re-posting their content, known as the 'link tax' by its detractors; and the so-called fix of the 'value gap', which imposes obligations for online platforms to filter user-uploaded content for copyright infringing material. Many argue that in practice this will require that online platforms monitor anything being uploaded so as to be able to delete any items which might present a legal risk, and that this will amount to censorship. A full discussion of both of these issues could take many pages. It suffices here to say that the IP Federation has stayed completely away from commenting on these particular aspects of the EU Copyright Directive.

One aspect of the of the EU Copyright Directive which was welcomed by the IP Federation was in relation to a mandatory exception for Text and Data Mining ("TDM") for commercial as well as non-commercial purposes. To introduce the context of the IP Federation comments here, it is necessary to backtrack to a time when the EU trilogue talks seemed to be stalling. On 30 January 2019, the UK IPO announced a call for evidence - in connection with its own post-implementation review of the UK copyright changes made in 2014 - to which the IP Federation responded.

The IP Federation response considered the impact of the UK copyright exception for text and data mining an essential technique used in machine learning, and highlighted the vital need to extend the current exception for TDM to enable commercial use by commercial entities.

Machine learning, which forms the backbone of Artificial Intelligence ("AI"), relies on aggregating both raw and structured data and content into a machine-readable form and analysing this information - at hyper scale - to identify insights, patterns and relationships, which can be used for a myriad of valuable purposes, such as augmenting how we make critical decisions. The ability to unlock benefits from AI, for example in innovative projects benefitting the public, should exist for all entities - large, medium or small, public or private, commercial or non-commercial - and for all purposes.

We pointed to the independent report "Growing the Artificial Intelligence Industry in the UK", which included the recommendation that, in order to support TDM as a standard and essential tool, the UK should move towards establishing that the right to read (i.e. where an entity *already has* lawful access) is also the right

to mine data. The report also recommends that the Government should assess the value that could be added to the UK economy by making data available for AI through TDM, including by commercial businesses.

Further, the Government's Industrial Strategy and AI Sector Deal recognised the critical role of AI to the UK and the necessary partnerships between government, academia and business that need to occur if the UK is to be able to compete in the fast-moving field of AI.

If the UK is to keep pace with the rest of the world, the IP Federation's members believe it is absolutely necessary that the CDPA be amended to expressly allow for the reproduction of lawfully accessed works to facilitate TDM, for commercial or non-commercial purposes, by commercial and non-commercial entities. This can be implemented with sufficient protections for content owners to ensure that copies made for AI purposes do not disrupt their existing commercial markets and are treated securely to protect their legitimate copyright expectations.

In the midst of the ongoing Brexit negotiations, it is unclear what the stance of the UK Government is with respect to the EU Copyright Directive. If the Government decides not to transpose the EU Copyright Directive into UK law, it will avoid having to transpose the controversial provisions mentioned earlier. However, the IP Federation would urge the Government to at least implement a copyright exception for text and data mining activities for both commercial and non-commercial purposes, and by commercial and non-commercial entities, so as to avoid a hampering effect on AI development and commercialisation in the UK.

Belinda Gascoyne, 8 October 2019

Top ten trade mark and passing off cases in the first ten months of 2019

The cases fall into five themes: Colours and shapes, bad faith, targeting, parallel imports and cybersquatting.

Colours and shapes

Red Bull GmbH (supported by Marques) v EUIPO, Optimum Mark sp. z o.o. (CJEU; C-124/18; 29.07.19)

The CJEU held that the combination of two colours was insufficiently clear and precise to be registered as a trade mark under Article 4 of Regulation 207/2009, despite the fact that the marks had been registered on the basis of acquired distinctiveness through use.

Optimum applied to invalidate two of Red Bull's marks. Both marks claimed protection for the colours blue and silver, the first in a ratio of "approximately 50%-50%" and the second "in equal proportion and juxtaposed to each other".



The CJEU followed its earlier decision in *Heidelberger Bauchemie* (C-49/02) where it held that two or more colours have to be arranged systematically so that they are associated in a predetermined and uniform way. In relation to Red Bull's marks, the CJEU approved of the General Court's finding that the word "approximately" reinforced the imprecise nature of the graphic representation, and the word "juxtaposition" meant that the mark could take different forms while still being "in equal proportion". Indeed, from the evidence of use filed with the applications, it could be seen that Red Bull used the colours in a very different manner to the graphic representations comprising the applications.

Glaxo Wellcome UK Ltd & Anr v Sandoz Ltd & Ots (Arnold LJ; [2019] EWHC 2545 (Ch); 4.10.19)

Arnold LJ (in his first judgment following his elevation) held that Glaxo failed in its claim that Sandoz had passed off its inhaler as being connected in the course of trade with Glaxo and/or equivalent to Glaxo's Seretide Accuhaler through the

use of the colour purple on its get-up and packaging.



Glaxo launched its Seretide Accuhaler in 1999. The packaging and the inhaler were marketed in various shades of purple. In 2015, Sandoz launched a branded generic competitor also featuring purple on the packaging and the inhaler.

Glaxo relied on four surveys which had been submitted to the UK Trade Marks Registry in support of its claim that the colour purple had acquired a distinctive character. Arnold LJ held that the surveys merely showed that GPs and pharmacists recognised the colour purple as a feature of Seretide inhalers. This was entirely consistent with patients finding it convenient to differentiate between their different inhalers by reference to their colour, but it did not show that they regarded the colour as being distinctive of inhalers having a particular trade origin. Further, the trade witnesses were clear that they would not rely upon the colour purple to indicate anything about, for example, the marketing authorisation of an inhaler.

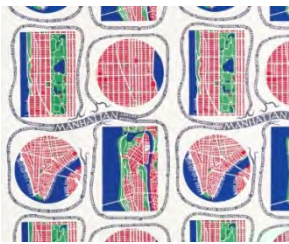
The enquiry into whether Sandoz had been

“living dangerously” was a waste of time. Sandoz had chosen the colour purple to signify the substance combination; it was not passing off if the similarity in colour merely reassured patients that its product had the same active ingredients as the Seretide Accuhaler.

Textilis Ltd, Ozgur Keskin v Svenskt Tenn AB (CJEU; C-21/18; 14.03.19)

The CJEU held that a sign consisting of a 2D pattern cannot be regarded as being a ‘shape giving substantial value’ under Article 7(1)(e)(iii) of Regulation 207/2009.

Svenskt Tenn markets and sells furniture, furnishing fabrics and other decorative accessories. One of its most famous patterns is called MANHATTAN, showing stylised maps of the island surrounded by other decorative elements. The CJEU pointed out that the 2D pattern could not be held to be indissociable from the shape



of the goods to which it was affixed (e.g. paper and fabric) and further that the form of those goods differed from those of the decorative motif. Therefore, there was no infringement of Article 7(1)(e)(iii).

Bad faith

Sky plc & Ots v Skykick UK Ltd & Anr (Advocate General Tanchev, C-371/18; 16.10.19)

The AG has opined on the five questions referred to the CJEU by the High Court.

Sky claimed infringement of its EUTMs and a UK trade mark comprising the word SKY registered for numerous goods and services, including computer software in class 9. Skykick alleged Sky’s marks were invalid on the grounds that they were registered in bad faith and lacked clarity and precision.

The AG was of the opinion that there was no provision in any of the relevant legislation for invalidating a trade mark on the grounds that some or all of the terms in the specification lacked sufficient clarity and precision as Article 51 of Regulation 40/94 is exhaustive. However, following the decision in *CIPA* (C-370/10), it

is possible to infer that a trade mark which does not satisfy the requirement of clarity and precision infringes public order under Article 7(1)(f). For example, registration of ‘computer software’ is unjustified and contrary to the public interest because it confers on the proprietor a monopoly of immense breadth which cannot be justified by any legitimate commercial interest of the proprietor.

The AG was also of the opinion that applying for a trade mark without any intention of using it for the specified goods or services may constitute bad faith under Article 51(1)(b) in so far as it is an abuse of the trade mark system e.g. where the applicant’s sole objective is to prevent a third party from entering a market or where there is evidence of an abusive filing strategy. Applying for a broad range of goods or services is not sufficient to demonstrate bad faith if the applicant has a reasonable commercial rationale for doing so. Where the ground for invalidity exists in respect of only some of the goods or services for which the trade mark is registered, the trade mark is to be declared invalid as regards those goods or services only.

Finally, the AG was of the view that Section 32(3) of the Trade Marks Act 1994 (which provides that, when making the application, the applicant must state that the mark is being used or there is a bona fide intention to use it) is compatible with Directive 89/104 provided that it is not the sole basis for a finding of bad faith.

Koton Mağazacılık Tekstil Sanayi ve Ticaret AŞ v EUIPO; Joaquín Nadal Esteban (CJEU; C-104/18 P; 12.09.19)

The CJEU held that a finding of bad faith did not presuppose that the contested mark was identical/similar to the earlier mark and registered for identical/similar goods or services.

In setting aside the decision of the General Court, the CJEU held that there may be situations where the applicant for registration of a trade mark could be regarded as having filed the registration in bad faith where there was no similarity of goods or services with the earlier mark. In determining whether an applicant had made an application in bad faith, a court should take into account “all the relevant

factual circumstances as they appeared at the time the application was filed”.

Trump International Ltd v DTTM Operations LLC (Carr J; [2019] EWHC 769 (Ch); 29.03.19)

Trump International’s application for TRUMP TV had been correctly refused for bad faith.

Mr Gleissner, the sole director of Trump International, had no connection with President Trump. He had also made numerous applications in the past through different companies to register well-known trade marks with which he had no connection. Carr J gave guidance to the IPO on how such applications should be dealt with in future. Although the power to strike out should be exercised with caution, where a *prima facie* case of bad faith was established, and no evidence in response was filed on behalf of the applicant, it could be appropriate for the Registrar to exercise that power.

Website targeting and jurisdiction

AMS Neve Ltd & Ots v Heritage Audio SL & Anr (CJEU; C-172/18; 5.09.19)

The CJEU held that Article 97(5) of Regulation 207/2009 must be interpreted as meaning that the proprietor of an EU trade mark, who considers that a third party has infringed his rights by using an identical sign in advertising and offers for sale displayed electronically in relation to identical or similar products, may bring an infringement action in the Member State where the consumers or traders to whom that advertising and offers for sale are directed are located. This is notwithstanding that the third party took decisions and steps in another Member State to bring about that electronic display.

AMS Neve (based in the UK) brought trade mark infringement proceedings in the IPEC, alleging that Heritage Audio (based in Spain) had offered infringing products to consumers in the UK via its website. The IPEC declined jurisdiction in respect of the claim based on the claimants’ EUTM following an examination of earlier CJEU case law which indicated that only the Member State in which the defendant had taken steps to put the signs in question on the website had jurisdiction. However, the CJEU was of the opinion that, if the English

court were to find that the advertising and offers for sale on Heritage Audio’s website were targeted at consumers or traders in the UK and were entirely accessible by them, AMS Neve would be entitled to bring proceedings for infringement of their EUTM in the UK.

Parallel imports

Nomination Di Antonio e Paolo Gensini SNC & Anr v Sebastian Brealey & Anr (HHJ Hacon; [2019] EWHC 599 (IPEC); 13.03.19)

Nomination had legitimate reason to oppose Sebastian Brealey’s (trading as JSC Jewellery (“JSC”)) sales of genuine Nomination links pursuant to Article 7 of Directive 89/104.

JSC purchased Nomination bracelets from retailers throughout Europe, disassembled them, and resold them on eBay in either blister packets or small plastic bags. Judge Hacon considered that this was likely to damage the reputation of Nomination’s marks (following *Copad v Christian Dior* (C-59/08) serious damage was not required). Nomination was accordingly found to have a legitimate reason to oppose JSC’s sales pursuant to Article 7(2).

Judge Hacon also held that, unlike pharmaceutical cases, Nomination should not succeed in their arguments that JSC had not identified who had done the repackaging or that the repackaging risked damaging the condition of the links (*BMS* conditions (3) and (2) respectively). Pharmaceuticals were sensitive products; there was no such sensitivity attached to the sale of bracelets.

Dansac A/S & Hollister Inc. v Salts Healthcare Ltd & Ots (Birss J; [2019] EWHC 104 (Ch); 21.01.19)

*Birss J considered the effect of the CJ’s decision on the BMS criteria in *Junek v Lohmann & Rauscher* (C-642/16).*

The third defendant, Medik, imported the claimant’s ostomy bags into the UK from various EEA countries and relabelled them.

In *Junek*, the parallel importer did not open the box, but had simply stuck a label on it when importing medical devices from Austria to Germany. No notice was given (*BMS* condition (5)). The CJEU held that the *BMS* criteria were not engaged and

therefore it did not matter that no notice had been given.

Following *Junek*, Birss J considered that if there was no risk to the guarantee of origin, then there was no contravention of the *BMS* criteria. Therefore, if the box had not been opened and if the new label did not cover an existing label, then the new label might not put at risk the guarantee of origin. However, one still needed to look at the label in order to make a determination as to whether there was a risk (note, not a serious risk) of harming the guarantee of origin provided by the trade marks. If there was, the *BMS* criteria would apply and notice would have to be given.

Cybersquatting

Media Agency Group Ltd & Anr v Space Media Agency Ltd & Ots (Floyd & Rose LJJ [2019] EWCA Civ 712; 12.03.19)

Cybersquatting by itself does not amount to passing off. The requirements for passing off still need to be satisfied.

At first instance, the judge following *BT v One In A Million* [1999] 1 WLR 903 found that the claimants owned sufficient goodwill in TRACCOUNTABLE and that by registering the domain name www.trackaccountableadvertising.com the defendants were guilty of passing off.

On appeal, Floyd LJ held that, even if the domain had been registered for cybersquatting purposes or as an instrument for fraud, the requirements of passing off still needed to be satisfied. As the TRACCOUNTABLE mark had not been used by the claimants, they could not have acquired goodwill in the name and a passing off action could not succeed.

Katharine Stephens, Bird & Bird LLP,
27 November 2019

ABC of design developments

The brief for this article was that I should comment on what has happened in design law over the past year, and suggest what might happen next. The current political environment makes prediction of anything difficult, but I will do my best. The three areas I will focus on are conveniently the ABC of this article...

A is for "Aspect". Followers of design law will recall that, courtesy of the Intellectual Property Act 2014, the meaning of design was changed so as to exclude "aspects" of articles. It has to at least be a "part" of an article. While this amendment to the law was being devised, the UK IPO acknowledged that the difference was not immediately clear, but the objective was to avoid ever decreasing circles of definition of articles down to the tiny, disconnected bits seen in cases like the *Sealed Air v Sharp* strawberry punnets case. The most useful analysis of this so far has been in the *Neptune v DeVOL* litigation in 2017, in which the (very tragically) late Mr Justice Carr said that "aspects of a design include disembodied features which are merely recognisable or discernible, whereas parts of a design are concrete parts, which can be identified as such". This begs questions of its own, but

it was worthy of note that Carr J referred back to Laddie J's comments in *Ocular Sciences*, where he suggested that the end portion of the spout of a teapot combined with the top portion of the lid could not be considered a part of the design as they are disembodied from each other. There is further litigation going through the courts that covers this topic, so I would expect to see more on this in the next few months.

B is for "Brexit". It is inevitable that the biggest thing to (not quite, at time of writing) happen to designs over the past 12 months and the next year has been Brexit. Designs is an area where more change is due to happen than in many other areas of IP, in no small part due to the changes and effect on unregistered designs - both UK and EU. EU27-based designers creating designs after Brexit will no longer have the ability to rely on UK unregistered design, which will be a great loss to them, and all designers will have to think carefully about where they first launch their designs so as to get either the UK or EU versions of the current UCD. As it stands, you will not be able to have both. This could lead to a re-opening of the debate over where you can have a first disclosure for subsistence purposes; the current position appears to

be as held by the German supreme court - that it must be physically in the territory of the EU. This leads to inevitable questions about whether a simultaneous global broadcast launch of a new design will constitute a disclosure that allows a designer to qualify for both the UK and EU versions, which will need to be resolved by the courts in due course.

C is for "Consultations". There may have been understandably little public consultation on Brexit, given the timeframes, but there was a lot of stakeholder-led consultation involving the IP Federation, as well as many others. The EU, by contrast, has been consulting heavily over the past year, on the future of design law as well as on convergence projects. Of most note, a consultation that closed in April this year asked for comments on the whole design regime. Many bodies put in submissions that clarity should be given to the question of how a shape-only design should be represented under the EU system, when the written description is not published and must be disregarded, and cases such as the UK Supreme Court's decision in *Trunki* observed that a line drawing could mean it is a design for shape only or, by contrast, it could be claiming minimalism as a feature in its own right. Various proposals have been put forward, including permitting the written description to have some effect (but this leads to

translation issues) or having some tick boxes to allow applicants to claim shape only, or not. It remains to be seen how the EU will decide to take these issues forward following the close of the consultation. Another review of interest is the catchily-titled "CP10", which is looking at how disclosures on the internet should be treated when they are relied upon to invalidate a design. Clearly not everything on the internet should count, given the test involves those operating in the circles specialised in the sector concerned, but knowing where to draw the line is tricky and the EU's attempts to converge practices across the member states will hopefully be of assistance.

Finally, I am pleased to see that design law is continuing its increase in popularity in terms of both the desire to secure design protection and the ability to enforce it. It is clear that smaller companies in particular now feel better able to take on those who copy their designs. This is in no small part due to the diligence of the courts (especially the IPEC) in managing disputes and keeping them proportionate to the issues involved, as well as the significantly reduced filing and renewal fees that the UK Intellectual Property Office introduced a few years ago.

John Coldham, Gowling WLG (UK) LLP,
10 September 2019

UK ISSUES

IP Inclusive

Throughout the 2018/2019 period, IP Inclusive has gone from strength to strength, with increased awareness and recognition across the IP Professions, the establishment of a number of new Communities and the introduction of regional networks.

The IP Federation is a member of IP Inclusive Management (IPIM), the governing body that oversees everything done under the IP Inclusive banner, with Carol Arnold from the IP Federation in the role of Secretary. In January 2019 Richard Goddard, President of CITMA, became Chairman of IPIM.

Through 2019, there has been significant

growth in activities, with numerous events - in London and across the regions, and as a consequence there has been an increase in the IP Inclusive profile across all IP jobs and professions.

Joining the existing communities, Women in IP, IP Out and IP and ME, two new networking and support communities have been launched - IP Ability and IP Futures.

IP Ability is the IP Inclusive community for disabled people, carers and allies working within the IP professions. It aims to provide a supportive and informative network focussing on the issues relating to disability and long-term health conditions of all kinds, whether mental or physical,

visible or invisible, permanent or temporary, sudden onset or progressive. This new community is developing a series of initiatives which will be launched throughout 2020.

IP Futures, launched on 12 September 2019, is a community for early career stage IP professionals. It aims to offer networking and support to not yet fully qualified and up to three-years-qualified IP professionals, including paralegals and secretaries, searchers, IP managers, IP Solicitors, Barristers and Patent and Trade Mark Attorneys. In their launch event they discussed social mobility and inclusivity.



Several regional networks have also been launched through the year and more are being established, including in the North of England and South West and Midlands. These networks are running their own events, meaning that events are not all London-centric. This is particularly important for the IP Federation, since a significant number of our members are based outside London.

Initiatives this year have been focussed on Mental Health - IP Inclusive joined with Jonathan's Voice, the charity set up after the sad death of a CIPA Member, to provide support to IP professionals suffering from mental health issues and guidance and support for their colleagues and employers to guide them on how best to support those who might otherwise continue to suffer in silence.

IP Inclusive has just launched a new Diversity and Inclusion survey - we expect the results will make interesting reading and provide guidance on our direction for the future.

IP Inclusive week is becoming an established event in the IP calendar. In 2018, the IP Federation celebrated by hosting a

discussion on the issues relating to in-house environment. In 2019 we focussed on Social Mobility - discussing with Andrea Brewster OBE the different Social Mobility Charities and how we could work with one or more of them to foster social mobility throughout the professions. Historically, in-house departments have offered different routes to entry into IP, and a number of our members' departments include employees who do not have the usual qualifications and experience often demanded by private practice. It is for this reason that the IP Federation is ideally placed to make a difference in Social Mobility in the IP Professions in 2020.

In the background to all this activity, there have been various changes in the management structure of IP Inclusive, as is totally appropriate for such a dynamic and fast-growing organisation.

In July 2019, IPIM introduced a new position of Lead Executive Officer (LEO) to manage the next stage of the initiative's development. It has appointed Andrea Brewster OBE to the role, whose background in establishing IP Inclusive leaves her well placed to lead the next stage of the initiative's evolution. The aim is that during this next stage the governance structure will be reviewed, allowing the role, and the organisation, to evolve as necessary to suit the IP Inclusive of the future.

The LEO will lead IP Inclusive's activities and day-to-day operations, co-ordinating and supporting the work of its volunteers in pursuit of the initiative's objectives. In addition, the LEO will explore options for future development, including potential new structures and funding mechanisms, and assist IPIM in putting appropriate plans in place.

This new arrangement is designed to facilitate and support IP Inclusive's growth, whilst safeguarding the goodwill and confidence of its stakeholders. IPIM will continue to be responsible for IP Inclusive's governance and legal obligations, for ensuring that its activities align with its objectives, and for overseeing the work of the LEO. IPIM and the LEO will work closely together to agree IP Inclusive's strategic aims, in consultation with volunteers, sponsors and other key stakeholders.

In a new Governance Memorandum drafted alongside the LEO job specification, IPIM recognises that IP Inclusive is an organisation in transition. The LEO position ensures that IP Inclusive continues to have the leadership needed for the organisation to thrive and allows IPIM to step back from direct involvement in the operational planning and delivery of its activities.

The IP Federation continues to be heavily involved in the direction of IP Inclusive, ensuring that the views of in-house counsel and the requirements of in-house IP professionals are represented in their

activities.

Carol Arnold, who has served as the IP Federation representative of IPIM since formation, will retire from these responsibilities with effect from the end of 2019, with Julie Dunnett replacing her in 2020. IPIM will appoint a new secretary to replace Carol. Many thanks to Carol for her hard work and commitment over this crucial period of launch and establishment of this important initiative.

Julie Dunnett, 14 November 2019

IP FEDERATION BIOGRAPHIES 2019–2020

Suzanne Oliver, President



Suzanne is a UK Chartered Patent Attorney and European Patent Attorney, as well as a Chartered Engineer. She has over 15 years of experience in patents, having entered the profession after working for a number of years as an engineer for Nortel Networks; she has a master's degree in electronics from the University of York.

Suzanne has represented Arm on the Council of the IP Federation since 2013 and she supports a wide range of IP strategy, patent and trade mark management issues for Arm. Suzanne was involved in Arm, and a founder member of ORoPO, the world's first open patent register. In 2016, Suzanne joined the launch panel for the inaugural "Women in IP" networking event, as a part of the UK's "IP Inclusive" initiative. She is also one of Managing Intellectual Property's Corporate IP Stars for 2019.

Belinda Gascoyne, Immediate Past President



Belinda is a UK Chartered Patent Attorney and European Patent Attorney with over 20 years of practical experience in all aspects of intellectual property, gained both in private practice and in industry. She has represented IBM on the Council of the IP Federation since 2011. Belinda specialises in the fields of computing and electronics and has a degree in physics from the University of Bristol.

Belinda also represents IBM on the techUK IP Policy Group and the CIPA Computer Technology Committee, and is a Director of ORoPO (Open Register of Patent Ownership). She is one of Managing Intellectual Property's Corporate IP Stars for 2019.

Outside work, Belinda enjoys spending time with family and friends as well as swimming, walking and sailing.

She was President of the IP Federation from 2018 to 2019.

Scott Roberts, Vice-President



Scott is a UK Chartered Patent Attorney and European Patent attorney with over 18 years of experience in patents gained in both industry and private practice. Scott joined the patent profession after 10 years' experience as a software engineer and a period lecturing in computer science. He has worked in-house at both British Telecommunications and IBM specialising in computing and telecommunications technologies. Scott has represented both BT and IBM at the IP Federation since 2008 and chaired the IP Federation patent committee from 2016 to 2019.

Scott is the UK industry representative at the Standing Advisory Committee of the European Patent Office (SACEPO) and also sits on the SACEPO working parties for Rules and Guidelines. He represents UK industry at the BusinessEurope Patents Committee. Since 2009 he has been a member of the Examination Committee of the European Qualifying Examination (EQE) for professional representatives. He is also a co-author of the CIPA European Patents Handbook.

Originally from South Wales, he now lives in the South of England with his wife and three children where he tutors maths, science and computing. He volunteers at a local NHS trust where he works with nurses to address the challenges in their professional practice. In his down-time he can be found indulging in dystopian literature.

David England, Company Secretary

David joined the IP Federation as Secretary in June 2010. He is a UK and European Patent Attorney with 25 years of experience gained at Reckitt & Colman, Astra Pharmaceuticals and BTG International. During his career, he has worked exten-

sively on the creation, defence and licensing of intellectual property (mainly patents, but also designs and trade marks), and has represented his employers on both the Patents and Designs Committees of the IP Federation.



In his spare time, David sings with the highly regarded BBC Symphony Chorus, performing regularly at venues including the Barbican and the Royal Albert Hall.

Helen Georghiou, Office Manager



Helen joined the IP Federation as Admin Assistant in November 2016. This was a completely new sector for her, as she had spent over 20 years as a PA and office manager in market research companies. She then followed her personal passion and entered the world of property development, where she still works on a part-time basis. Some could say that in many respects intellectual property and physical property have similarities when it comes to ownership and rights, so joining the IP Federation made perfect sense. It has proven to be a rewarding environment.

With two teenage daughters, a husband and a dog, there's not much time left! But where possible, Helen enjoys interior designing, socialising ... and the odd vodka or two!



David Tatham OBE, 1936–2019
President of TMPDF, 1989–1991



IP Federation members 2019

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
Canon Europe Ltd.
Caterpillar U.K. Ltd
Cummins Ltd.
Dyson Technology Ltd
Eisai Europe Limited
Eli Lilly & Co Ltd
Ericsson Limited
Ford of Europe
GE Healthcare
GKN Automotive Limited
GlaxoSmithKline plc
Hitachi Europe Ltd
HP Inc UK Limited
IBM UK Ltd
Infineum UK Ltd
Johnson Matthey PLC
JuuL Labs UK Holdco Ltd
Merck Sharp & Dohme Ltd
Microsoft Limited
Nokia Technologies (UK) Limited
NEC Europe
Ocado Group plc
Pfizer Ltd
Philips Electronics UK Ltd
Pilkington Group Ltd
Procter & Gamble Ltd
Reckitt Benckiser Group plc
Renishaw plc
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