Withers & Rogers

IP Review

Summer 2009

Rainy Day IP

With the economic weather looking gloomy for now, we ask what strategies can firms employ to maximise the cost effectiveness of their intellectual property?

R:IP?

Does recession signal the death knell of R&D and IP spending?

Marriage of Invention

The secrets of what makes a successful patent attorney/inventor partnership.

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Rainy Day IP

With the economic weather looking gloomy for now, we ask what strategies can firms employ to maximise the cost effectiveness of their intellectual property? Here, Dave Croston considers ways to buck the credit crunch.

Cost Reduction Measures

With credit difficult or downright impossible to obtain and expensive in any case, any spending on a firm's existing IP portfolio has to be reviewed to ensure money is not being spent maintaining protection which is no longer needed.

A first step should be to review the extent of territorial cover and consider whether protection is genuinely commercially useful in each country. In most countries, patents require the payment of annual fees to keep in force. It may be that some territories are no longer of interest and that substantial savings can be made by retrenching to a core group of countries.

It is equally important to consider the products covered by patents in the portfolio. Often, the market has developed to such an extent that a patent obtained ten years ago, whilst still potentially in force for another decade, no longer provides commercially useful protection.

Some territories, including the UK, allow a patent proprietor to designate that licences are available as of right under the patent. That designation results in a reduction of the annual maintenance fees payable, usually by 50%. This is one way in which non-core patents can perhaps be maintained when they might otherwise be allowed to lapse.

In relation to pending applications, costs can be reduced in the short term or deferred to a later date by using appropriate tactics. Using the international patent application process pushes back the date when decisions

Rainy Day IP cont...

have to be made about foreign patent filing by 18 months. Extensions of time to respond to patent office letters are available, usually for a small fee, deferring the cost of responding. These measures help delay costs in cases which are already pending, but what about developments in the pipeline?

Expenditure on IP protection for such developments should focus on those closest to market, where the return on the investment in IP is more immediate. The key is to look at the improvements to existing products that are coming through and focus efforts there rather than seeking protection for blue-sky development that may not be ready for launch for some years.

That said, such middle or long term developments should not be overlooked, but by ensuring that strong measures are taken to ensure confidentiality of those projects, the immediate need for patent filing is obviated.

That brings us to the next action that can be taken to improve your IP health in tough economic times.

Take Stock

Review not just your existing registered IP portfolio but consider also the unregistered rights that you may own. Technology businesses generate unregistered IP every day. Whether it is unregistered UK or EU design right in the shape of a new product, copyright in software code or installation instructions, database right in customer lists, technological know-how in the heads of production staff or goodwill in the name of the company, these are all rights established by statute or by common law and which form a significant part of the value of a business.

Probably the most valuable commodity that any business has at its disposal is the intellectual capital of its employees. In recessionary times, the risk of that capital being diminished through redundancy is very much increased. Carrying out a key knowledge audit highlights where valuable knowledge exists within a business and can begin to reduce the risk associated with losing those key people by codifying the information and clarifying that it is proprietary to the business.

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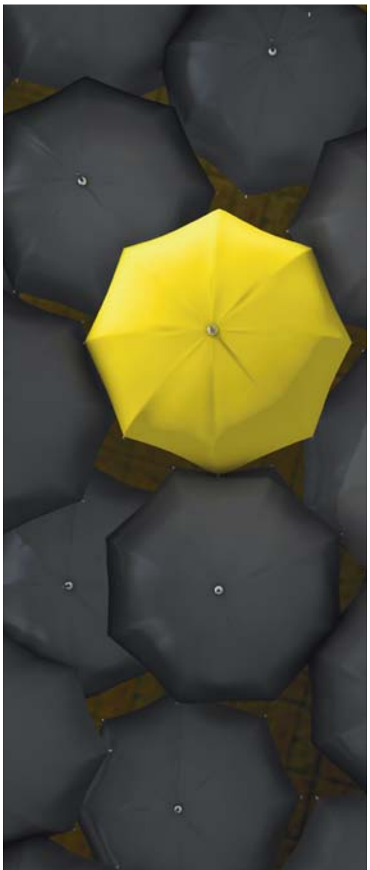

Such audit processes are probably being carried out in relation to other aspects of the business to ensure that maximum value is being derived from its assets so an IP audit should not be viewed as something unusual but rather just a natural part of the overall stocktaking process.

Leverage Profit

The aforementioned measures may reduce costs or help to catalogue what intellectual capital is owned by the business, but true value is achieved only when the intellectual assets are put to work to generate additional profit.

The review of the existing portfolio may have revealed that part of the registered IP portfolio is no longer core to the business. Rather than allowing those rights to lapse, seek to leverage value from the IP. Look for potential purchasers or licensees of your technology.

Licensing-out existing technology may result in a flow of royalties but may also result in selling of consultancy for exploiting the know-how around the inventions. If the technology has been developed into a product already, it may be supported by registered or unregistered designs and a brand with registered trade mark protection, allowing a licensee or purchaser to take on a turnkey solution for more immediate returns.

Often, a thorough knowledge audit reveals various possible developments that were previously suppressed and which can be exploited quickly to increase profit from existing products, either from improvements to the product itself or from efficiency improvements in manufacture.

Competitor Review

Recessionary times produce a more chaotic, unpredictable environment in which to trade. Whilst this presents hurdles, it also provides opportunities to the quick-witted. The same is true in relation to IP.

Stronger competitors may seek to innovate out of recession, looking to steal a march on their weaker counterparts when the economic conditions improve. Keep a close eye on competitor activity. Patent applications are not published until 18 months after filing but even that information can reveal the direction of progress being pursued. By gaining strong intelligence on past inventive activity, and with a little thought, future developments may be predicted. By seeking to protect such developments pre-emptively, businesses can gain considerable advantage over those competitors.

Review not just your existing registered IP portfolio but consider the unregistered rights that you may own.

Weaker competitors may seek to imitate success so it is important that a careful watch is kept on them to ensure that attempts to "coat tail" are dealt with quickly and forcefully. In times of economic difficulty, new entrants to markets may be less respectful of any status quo established with reference to more long standing competitors. The johnny-come-latelies tend to have less concern for IP and are more interested in quick profit. Acting strongly against such newcomers is very important to prevent a shrinking pie being shared ever wider.

The weakest competitors may present a business with the best opportunities. Failing companies may produce a gap in the market to be filled. Recognise that such organisations may have IP that previously protected their market. Such IP may be available for purchase either as a fire sale item or, after the doors have closed, from a receiver or administrator, seeking to realise whatever value they can for the creditors in as short a time as possible. Sweeping up this "distressed IP" can grant a business the keys to a protected area of the market that they could not previously access.

Summary

- Review existing rights and focus spending on core activities.
- Take stock of all of your intellectual capital, not just the registered rights.
- Seek to leverage profit from that capital, including possible licensing out or sale of non-core IP assets.
- Watch strong competitors to determine direction of their innovation.
- Watch weaker competitors for signs of copying and act quickly to prevent it.
- Seek "distressed IP assets" to expand into market areas previously denied.

Although the measures described could be said to apply even when the economic outlook is sunny, they are particularly apt in the current cloudy circumstances.

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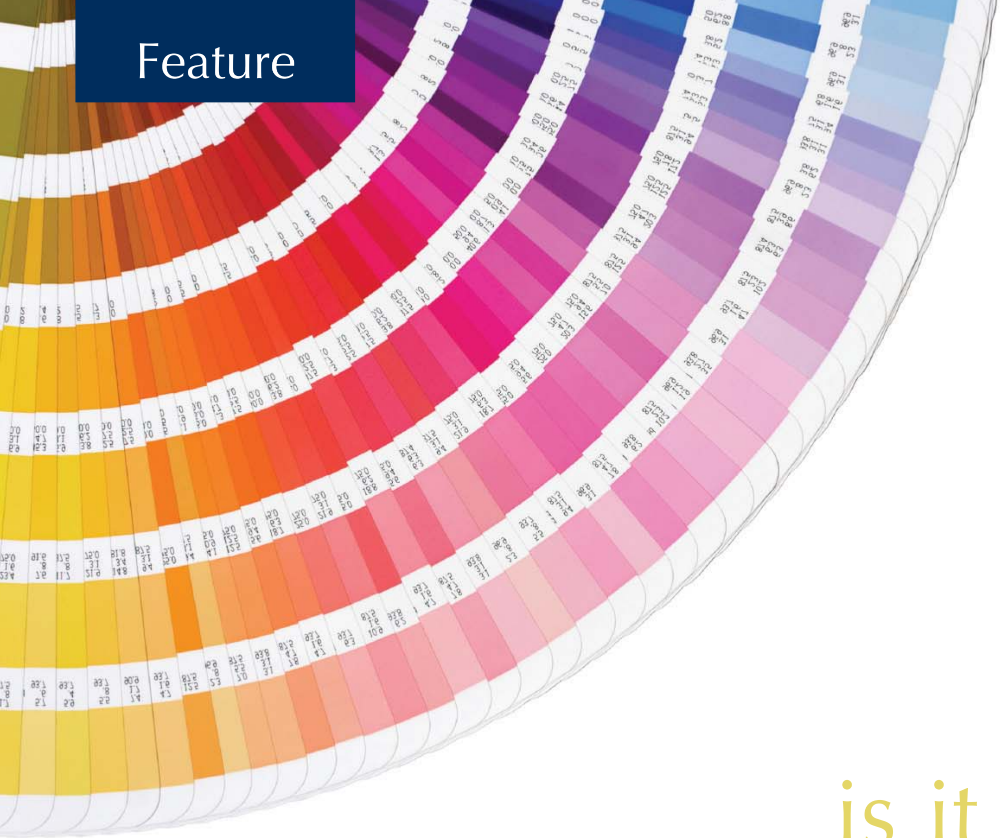

Hue's brand is it anyway?

Colour talks when it comes to winning brand recognition, according to new research by our trade mark group.

Colour is the strongest visual element of a trade mark, say marketing professionals. However, the majority are unaware they can legally protect the colour of their brand. In a poll of marketeers, 64% of respondents rated colour more important than a slogan, typeface or logo shape. The brands with the highest colour recall are AA for its yellow and black (98%) and Easyjet for its orange (93%).

Other brands that are well known for their colours include Cadbury's purple (88%), BP's green (88%) and the Royal Mail's red (85%). Despite the prominence that marketeers place on the colour of a brand, it is rarely registered for trade mark protection, partly because such protection can be difficult to obtain.

Cadbury's, which scored highly for colour recognition in our research, is one of few UK companies that has protected the Pantone reference of its 'purple', and it did so retrospectively, by demonstrating its consistent and prominent use over a number of years. Bearing in mind the importance of colour, marketeers involved in brand development would be wise to consider use of colour when seeking trade mark protection.

Almost all respondents correctly recognised that the name of the brand or product (98%), as well as the logo design (90%) can be registered for trade mark protection, but many were unaware that other elements can be safeguarded.

..it is surprising that so few are aware that they can seek trade mark protection for a brand's sensory attributes

For example, 80% of respondents didn't know that a smell can be registered for trade mark protection and 65% didn't know that sounds can be protected.

Most marketeers understand that people respond to brands emotionally and it is surprising that so few are aware that they can seek trade mark protection for a brand's sensory attributes. With millions of pounds spent on brand development within global corporations and the influence of marketeers growing at boardroom level, there is an opportunity to prioritise trade mark protection further.

In times of recession, brand owners become vulnerable to "me too" products, and one way in which that manifests itself is in copyists adopting similar colour schemes. Although obtaining trade mark protection for colours is not straightforward, once achieved it can act as a powerful protector of the overall brand image and prevents the lookalike product from competing visually on the shelves.

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Employee inventors reap "Outstanding Benefit"

Two research scientists, James Duncan Kelly and Kwok Wai Chiu, were awarded a payment of £1.5 million by the High Court in February 2009. Kelly and Chiu's champagne moment came when The Honourable Mr Justice Floyd granted their application against GE Healthcare for compensation in relation to patents owned by the healthcare giant for inventions made by Kelly and Chiu.

Kelly and Chiu were employed as research scientists by Amersham International. In the late 1980s they successfully synthesised a compound called P53. P53 became a key component of a patented radioactive imaging agent ("Myoview") which proved to be a very successful product for Amersham, and latterly for General Electric who took over Amersham (which thus became GE Healthcare) after the invention was made. Indeed, by 2007, Myoview had generated sales worth over £1.3 billion. Such was the scale of this success that Drs Kelly and Chiu sought compensation from Amersham/GE Healthcare under section 40 of the UK Patents Act 1977 (UKPA). The case was heard in the High Court by Mr Justice Floyd.

There was no question that GE Healthcare owned the patents. However, Section 40 provides employee inventors with a means of obtaining just recompense for generating patents which are of 'outstanding benefit' to their employers. The section was notorious in that, until the present case, no successful action had been brought by an employee using these provisions (although some cases have been settled out of Court). This has mainly been due to the difficulty in proving that a patent itself has been of outstanding benefit.

It was held that the patents were of outstanding benefit to Amersham (the employer) and that Drs Kelly and Chiu were entitled to compensation. In determining that the patent was of 'outstanding benefit', Floyd J found that, by being able to keep competition at bay through the monopoly rights granted under the terms of the patents, Amersham enjoyed increased sales and were able to negotiate corporate deals from a stronger position. Floyd J decided that, taking all of the facts into consideration, the patents had been worth £50 million to GE Healthcare. From the facts of the case, there seemed little doubt that the product to which Kelly and Chiu's invention contributed had been extremely successful. Kelly and Chiu succeeded in bridging the gap between the technical (the invention), the legal (the patent) and the commercial. It was held that the employee's share of the value of a patent might, in principle, lie between 0-33% or beyond.

However, in this case, a figure of 3% was considered just and fair on the facts of the case. Dr Kelly was granted £1million, while Dr Chiu was granted £500,000.

Section 40 was amended in 2005 to make compensation payable when either the invention or the patent has been of outstanding benefit. This is expected to increase the success rate for actions taken under this provision. However, as this 'new law' only applies to patents applied for after 1 January 2005, the present case was decided under the 'old law'. Action can be taken under section 40 from the date on which a patent is granted until up to a year after the patent lapses. Accordingly, the 'old law' will continue to be relevant for a number of years to come. It remains to be seen whether Mr Justice Floyd's decision will embolden other employee inventors to claim under Section 40.

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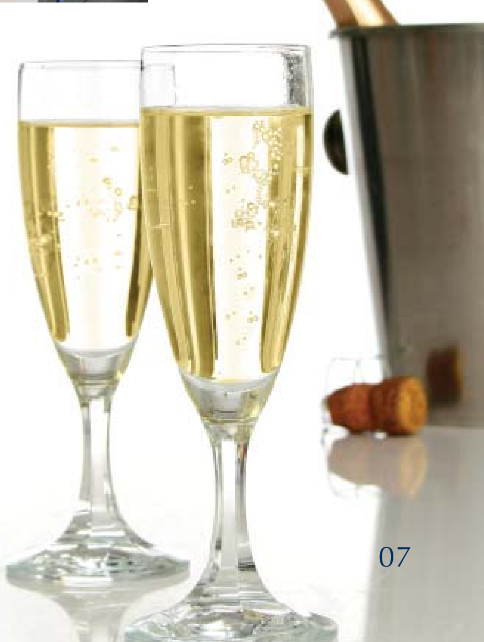

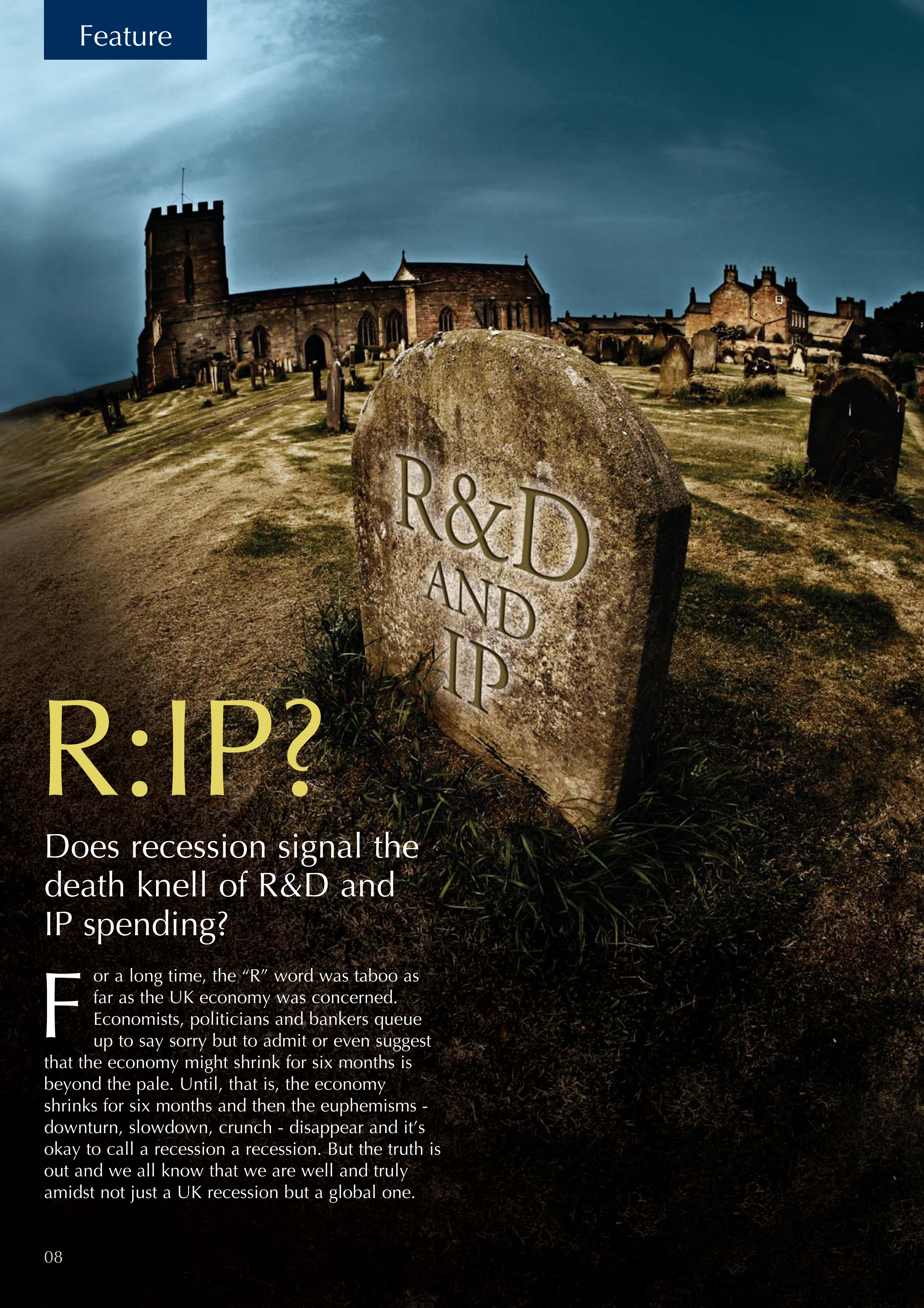

R:IP?

Does recession signal the death knell of R&D and IP spending?

For a long time, the "R" word was taboo as far as the UK economy was concerned. Economists, politicians and bankers queue up to say sorry but to admit or even suggest that the economy might shrink for six months is beyond the pale. Until, that is, the economy shrinks for six months and then the euphemisms - downturn, slowdown, crunch - disappear and it's okay to call a recession a recession. But the truth is out and we all know that we are well and truly amidst not just a UK recession but a global one.

Those with an interest in R&D and the development of new technology may wonder what is likely to happen to R&D and IP spending during such extreme circumstances. Will the taps be turned off on R&D spending or will their business buck the trend and seek to innovate out of the slump?

Looking back at the last UK recession (from Q3 1990 to Q3 1991), economic statistics show that GDP fell by 2.6%, manufacturing output by 7% and R&D spend by 8%. Although patent filings at the UK Patent Office (or UKIPO as it is now known) were on a long term downward trend by the time the 90-91 recession hit, the drop in R&D spend was not matched immediately by a fall in the number of patent applications. Filings held up in 1991 and then fell in 1992. Likewise, the surge in R&D spend, which began in 1997 was again lagged by patent filings at the UK patent office by 12 months.

There are good, albeit circumstantial, reasons for this lag. Companies do not simply shut off their R&D pipeline when the economic waters get choppy but they may focus on projects that are closer to market, those more likely to generate more immediate revenue. Such projects would require more immediate patent filings to avoid a loss of rights when the products are launched. By focusing on more immediate activity, initial filing numbers are maintained for a short time. Eventually, the flow of new developments needing protection begins to fall.

Once the prospects begin to improve and R&D funds are more available, there is a natural inertia before projects are developed to the point where patent filings are justified.

So what of the credit crunch recession, the first recession of the new century in an era of globalised, intertwined economies? There are some significant differences between the circumstances of the 1991-2 recession and those of the 2009-10 recession.

Three factors suggest a greater impact on IP filings. Firstly, whilst interest rates were historically high in 1990-1, credit remained available. In the current circumstances, even very sound businesses have found credit hard to come by. In simple terms, in the 90s recession the oil in the economic mechanism was costly but available whereas now it has run dry.

Secondly, this recession is also marked by its extent, affecting countries the world over, a product of the global interlinking of financial institutions. UK plc cannot rely on other countries still growing to pull it out of the slump.

Thirdly, the UK has a very large financial sector that has been affected to a greater extent than other sectors so the UK may be disproportionately affected.

Having said that, there are various factors which suggest the opposite! The most seriously affected sectors of the economy, financial and retail, are not substantial generators of patentable inventions.

Cash may be king but cutting R&D and IP spend at this time risks missing an opportunity

Over the last ten years, the substantial investment made in science and technology has been an attempt to build a knowledge based economy where the need to innovate is central. Linked to this change is a greater awareness and appreciation of the significance of IP protection in a world where technological development can be reproduced at incredible pace.

In the present circumstances, for those running businesses based upon technological innovation, there are hard choices to make. Cash may be king but cutting R&D and IP spend at this time risks missing an opportunity. Recessionary circumstances present threats to business but also opportunities as weaker competitors either fail altogether or retrench development to allow for cost cutting. Pushing ahead with development can position a business well for the upturn but businesses must couple innovation with protection to ensure that efforts to create new products are not hijacked by opportunist copyists.

Conventional wisdom has it that companies are more apt to enforce their IP rights in difficult economic times

Ask a marketeer what innovation provides and they will say: “a gap in the market or a new market altogether, a unique selling proposition, a reason for a customer to buy our product over someone else’s”. Spending to protect the fruits of that innovation shores up that market position at a time when the market is less crowded as weaker competitors fall by the wayside.

Being aware of your competitors’ IP is even more important in the current circumstances. Conventional wisdom has it that companies are more apt to enforce their IP rights in difficult economic times but in addition to the threat there is opportunity. The failure of a competitor may suddenly open up a market area which had previously been closed off and there may even be a chance to obtain useful IP cheaply by purchasing distressed IP assets.

The key is to use the R&D and IP spend wisely. Elsewhere in this issue we have various suggestions for using IP spend more effectively to ensure that new developments can be protected effectively. Of course you can contact your Withers & Rogers attorney if you have any questions about using your IP spend to best effect in these difficult circumstances.

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Keeping costs down at the EPO

On any measure the European patent system has been very successful. Averaging growth in filings of around 10% year-on-year since its foundation in the 1970s, the European Patent Office now receives 146,500 applications per year.

Recent fee changes and the slide in the value of Sterling against the Euro have seen the cost of prosecuting European patent applications rise for UK businesses over the last few months. With IP budgets coming under pressure in the current economic climate it is more important than ever to ensure that patent applications are prosecuted in a cost effective manner. Here are a few areas where we can help you save money on European cases without compromising your protection.

Drafting to avoid excess fees - We can minimise the effects of the fee changes by careful drafting of the patent application. The EPO fee structure penalises the inclusion of lots of dependent claims. Careful drafting can avoid the need for lots of claims without affecting the scope of protection.

Avoiding fees for late instructions - Annual maintenance fees are payable on pending European patent applications. The fees can be paid up to six months late but last year the EPO increased the late fee from 10% to 50% of the fee due.

Our associated renewals firm Withers & Rogers Renewals LLP can assist - providing automatic reminders to help avoid late fees. If you have previously relied upon the extension period, it is going to cost a lot more. Let us help you avoid those costs.

There are other areas where timely instructions can avoid unnecessary fees. Work with your Withers & Rogers LLP contact to ensure that responses to official letters are prepared and filed in good time thus avoiding further processing fees.

We can minimise the effects of the fee changes by careful drafting of the patent application

Advice on EP validation strategy - When a European patent application is granted it is necessary to validate the patent in the territories of interest to the applicant. Validation formerly required the filing of a full translation of the granted patent into the local language at the national patent office concerned. From May 2008, a number of countries, signatories of the so-called London Agreement, reduced or abolished altogether the translation requirement in their country. There are currently 14 such countries although new signatories are expected to join. When your European patent application is approaching grant, ask for an up-to-date list of the London Agreement countries and see if you can make savings in the validation of the patent.

Online filing - We have been successfully using the European Patent Office's online filing system during patent prosecution for some time. The system provides a high level of certainty and security to patent filing procedures. Clients also benefit from a reduction in some EPO filing charges.

The range of documents that can be filed electronically in the EPO has recently been extended to cover the filing of documents in Opposition, Appeal and Review proceedings. This development also means that online filing is now possible for all EPO procedural steps.

Videoconferencing for hearings - Our investment in technology can assist in reducing costs in other areas too. We have state of the art videoconferencing (VC) facilities in each of our offices.

It is the practice of the EPO to appoint a hearing, known as Oral Proceedings, when the examination of an EP application has reached an impasse. Such a hearing must be requested by the Applicant and it is common practice to make a precautionary request when filing a response to an examination report.

The hearing has, until recently, had to be conducted in one of the offices of the EPO, typically in Munich or the Hague, which necessitated the EP attorney having to attend in person. The EPO is typically represented at the hearings by a three person Board comprising the Primary and Secondary Examiners and a “Rapporteur”. At the conclusion of the hearing a decision is taken on whether to allow or refuse the application.

...the EPO are now prepared to conduct certain Examining Division Oral Proceedings by video conference

The need for the EP attorney to attend in person has now changed and the EPO are now prepared to conduct certain Examining Division Oral Proceedings by VC. In 2006 the EPO published guidance concerning interviews and Oral Proceedings held by VC. In the event of a request to conduct Oral Proceedings by VC, the EPO will determine whether or not it is appropriate for the application in question and, if appropriate, appoint a hearing date and time. The EPO has VC studios in Munich, The Hague and Berlin. No fee is charged by the EPO for conducting interviews or oral proceedings by VC but the Applicant/Representative are expected to bear their own transmission costs.

We recently conducted Examination Oral Proceedings by video conference on behalf of a Japanese Applicant. The request for VC Oral Proceedings was made in response to the receipt of a conventional summons to attend Oral Proceedings at the EPO's offices in Munich. We submitted our request to hold the proceedings by VC shortly after receipt of the summons.

This resulted in the cancellation of the original summons and the subsequent issue of a VC specific summons for the same time and date.

The hearing resulted in the patent application being deemed acceptable for grant. From start to finish, including the breaks, the hearing took just under two hours.

In many cases attendance at Oral Proceedings by VC is significantly more time and cost effective than appearing in person.

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Marriage of Inve

Karl Barnfather uncovers the secrets of what makes a successful patent attorney/inventor partnership.

The partnership that exists between the engineer and the patent adviser is increasingly important in determining the success of corporate innovation strategies. However, the relationship is not without its tensions. So what makes a successful marriage of invention?

A common instruction received by a patent attorney is one that comes out of the blue, accompanied by an urgent request to file a patent application as soon as possible. This should tell us something about the nature of some businesses' relationship with the world of patent protection.

This is how the story usually goes. A member of the sales team visits the research and development department to find out more about what's going on. While chatting to an engineer, the salesperson discovers that work is underway to develop an improved product with some highly marketable new features. When meeting a key customer the next day, the salesperson can't resist telling them about this exciting new development and without thinking the entire research proposition has been disclosed and as a result rendered it unpatentable.

Another common way that valuable research is disclosed unintentionally is at exhibitions and trade fairs or in conference papers, perhaps prepared by academics, and circulated to delegates at events.

In such circumstances, the patent adviser has little option but to inform the company that it is already too late. The research work is already in the public domain and unfortunately, it is not possible to turn back the clock. Even if the Intellectual Property Office (UKIPO) is unaware of the disclosure and protection is granted, a single challenge could be sufficient to invalidate the patent. A little loose talk or a show of academic prowess could end up costing an organisation dearly.

Having an idea

The best time for the patent adviser and the engineer to get together is actually before the idea has even been conceived. The most successful patent partnerships – those that work most efficiently and deliver most commercial value – operate a carefully managed invention process from the outset. While we may like to think of inventors as Newtonian individuals, in quiet contemplation waiting for the apple to drop, the act of invention is in fact a far more commercial process, which involves developing practical applications and solutions to technical problems.

a little encouragement in the form of a well-constructed invention reward programme is usually helpful

The extent of the patent adviser's role in this process can easily be overlooked. For example, one key way that the patent adviser can help is by letting the engineer know when an invention is worth protecting. Engineers and their peer group are not always the best judges of an invention's patentability. After all, they are dealing with inventions every day and to them a technical development can seem like a relatively small step forward, while its commercial potential could be huge if it gives an existing product a new unique selling point. Working closely with the patent adviser at an early stage, can make the assessment of patent-worthy projects much more effective.

The patent adviser can add value at the conception stage in other ways too.

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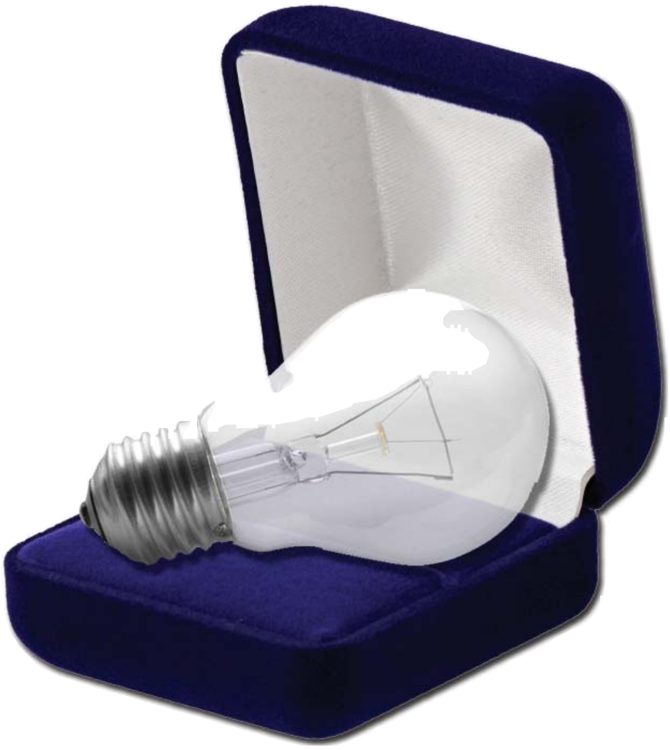

Maintaining a dialogue with the patent adviser means the engineer has access to information about other related patent applications and this information can be used to direct research and development activity to areas where their inventions are likely to be most commercially viable. In some cases, the patent adviser is also able to provide valuable information on new 'standards' in emerging fields, such as mobile telephony or digital audio visual technology. This will help to ensure that any innovations under development are compatible with the dominant user technologies.

Encouraging internal disclosure

Most companies involved in research and development activity are aware that effective patent protection relies upon the timely internal disclosure of inventions. Engineers appreciate this too and a little encouragement in the form of a well-constructed invention reward programme is usually helpful.

At Withers & Rogers, we have recently undertaken research among companies in a variety of industry sectors, which has confirmed that invention reward schemes are widely used. Individual rewards can vary between a few hundred and several thousand pounds and the value of cash incentives climbs according to the stage that the invention has reached – for example a reward for grant of a first patent is usually significantly higher than a reward for an initial disclosure.

Once an invention has been disclosed internally, the next step is to decide how best to exploit it. There are a range of options to consider and each requires a slightly different approach in terms of patent protection. Firstly, the invention can be sold in order to generate a return on the company's investment in research and development activity.

Alternatively, the invention can be licensed to a third party, backed by a licensing agreement, or the invention can be made and then licensed to the third party – an option which often requires the greatest investment in exchange for higher commercial rewards. Of course, many choose to use the patent to secure a market to manufacture and sell the product themselves.

Regardless of which option is chosen, this is the end game for the patent partnership – the point at which the company realises the value of its investment.

Once an invention has been disclosed internally, the next step is to decide how best to exploit it

Removing barriers

Even when the invention process is tightly-managed and an invention reward scheme is in place, engineers can occasionally fail to disclose their inventions appropriately. For the company involved, this is cause for concern and in some cases, such failures could be prevented by increasing the level of interaction between the engineer and the patent advisory team.

It is not unusual for companies to prefer that the patent adviser is kept at arm's length from the engineer in order to avoid disrupting research activity. For established companies, with well-managed invention systems, this approach can work well and helps to ensure that interactions with the patent advisory team are kept to a minimum. However, there are inherent risks in taking this approach and for most innovation-led businesses operating in fast-moving technological fields, a closer and more regular dialogue is usually beneficial.

Like-minds

The most successful patent partnerships are those where the engineer and the patent adviser share a passion for invention and a depth of knowledge of the specific area of technological research. By working closely together to manage and harness the value of inventions and advise on the strategic direction of research and development activity, this 'marriage of invention' will deliver lasting business value.

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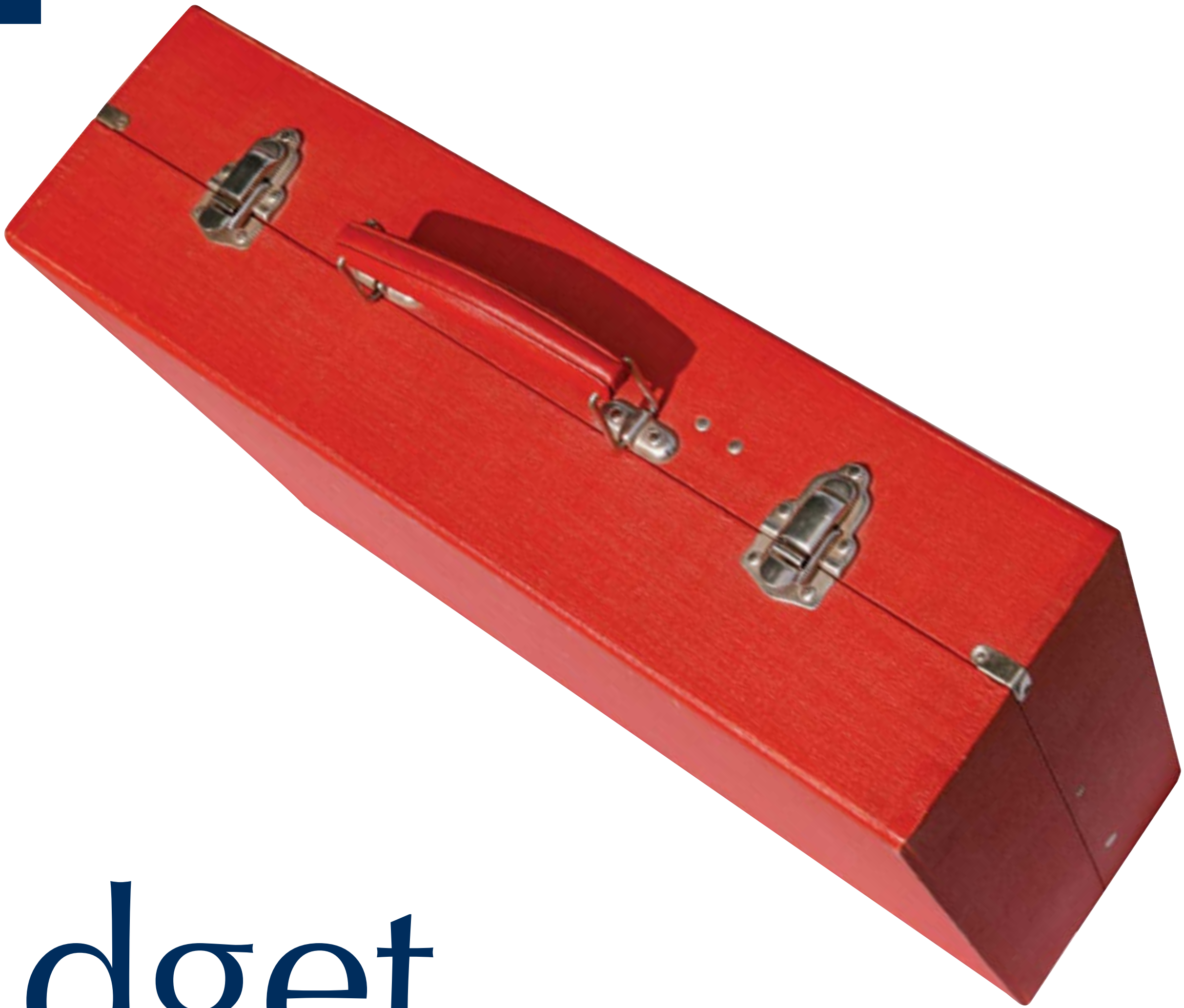

Budget fails to inspire

Investment in environmental technologies not enough to spark innovation.

In the budget, it was announced that the government will invest £1 billion to help combat climate change by supporting low carbon industries to help the UK meet its first carbon reduction target of 34% by 2020. A further £2.5bn would be available for business to encourage investment in sectors such as advanced manufacturing and low-carbon technologies.

Such measures don't go far enough.

There is a potential ray of hope in that the need for investment in advanced manufacturing and the low-carbon industries is being heeded. However, the level of investment announced today falls short of the level required to encourage innovation in this area. If we are going to grow as an economy we must continue to innovate, and incentives such as the extension of tax credits on research and development to cover the costs associated with protecting the fruits of that innovation would have more impact.

This budget is uninspiring for businesses and represents a lack of recognition of the importance of IP to building a true knowledge-based economy in the UK. There was not a single UK business in the top 50 filers of international patent applications in 2008 and UK plc was static against double-digit filing growth from China, Korea and Sweden. We need to address this quickly if we are to achieve enhanced global competitiveness.

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No more long division at the EPO

In the latest of a series of rule changes aimed at reducing the workload of their Examiners, the EPO has announced changes to the rules relating to the time for filing divisional patent applications.

A divisional patent application is like a clone of the so-called "parent application", bearing the same filing date and applicant details. They are typically used where an application contains various different inventive aspects, to pursue independent protection for those separate aspects.

Before the change to the rules, a divisional patent application could be filed from any pending European patent application.

The only deadline that needed to be met was the date of grant, lapsing or refusal of the parent application. However, there was a growing perception that the opportunity to file divisional applications while any application was pending was leading to abuse, with some divisionals being filed over ten years after the initial parent application was filed.

The EPO have amended the rules to insert an additional deadline for so called "voluntary divisionals", i.e. those filed by the applicant of their own volition. The "voluntary divisional" deadline is the earlier of the date of grant, lapsing or refusal of the parent application or two years from the date of the first Examining Division official letter on the parent application or any other application in the same family! Separate rules have been set down for so-called "mandatory divisionals", where the requirement to file the divisional is created by an objection made by the EPO.

The full details of the rule changes can be found on the EPO website at: http://www.epo.org/patents/law/legal-texts/decisions/archive/20090325.html

The new rules will curtail the opportunity to make divisional filings many years after the initial application and should reduce the uncertainty that is created for interested third parties when multiple divisional applications are filed. However, this change removes a powerful tool from the hands of patent proprietors seeking to pursue infringers.

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Withers & Rogers **News**

Withers & Rogers appoints four new partners.


Rachel Wallis


Tania Clark


David McWilliams


Russell Barton

We are delighted to announce the promotion of four of our attorneys to partners in the firm.

Based in London, Rachel Wallis works in the area of life sciences and chemistry. Tania Clark, who is qualified as both a barrister and a trade mark attorney, is a member of our trade mark group.

Advanced engineering specialist, David McWilliams, and electronics, computing and physics expert, Russell Barton, both based in the firm's Midlands office, have also been made partners.

Adrian Chettle, chairman of Withers & Rogers LLP, said, "We're delighted to be able to recognise and reward the expertise and talent within our firm. These four attorneys have consistently proven their ability to develop strong client relationships and deliver effective results for businesses across a variety of sectors.

"The appointments will help to maintain the impetus of the firm. Despite the economic conditions, demand for patent and trade mark advice has held up well over the past 12 months, as companies seek to protect their innovations and investment in R&D at every stage of development."

We have also appointed two associates, Richard Worthington and Elizabeth Swan, who have both joined the firms Bristol office.

Welcome news for **brand owners**

Since its opening in 1996 the Community Trade Mark Office (OHIM) has been a great success, allowing brand owners to obtain cost-effective, EU-wide protection for their trade marks.

OHIM has now announced a 40% reduction in the overall official fee cost of obtaining a Community Trade Mark. From 1st May 2009, registration fees will not be payable. The effect of the fee reduction takes the total official fees for a Community Trade Mark from £1750 (£1600 for e-filing) to £1050 (£950 for e-filing). This is a welcome and timely fee reduction which we hope will make the Community system more attractive to small and medium sized firms.

If you have any queries in relation to the changes please contact us.

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