COLLABORATION: THE WAY FORWARD?

In common with most economies in the developed world, Scotland is attempting to maximise the impact of a knowledge-based economy. Universities are now regarded as a key generator of innovation. It is becoming increasingly evident that to gain the necessary critical mass to succeed there is a requirement for collaboration amongst organisations across a wide range of high technology disciplines. At the basic research level, the Scottish Funding Council is encouraging academic institutions to adopt a collaborative approach to research through its Strategic Research and Development Grants (SRDG) and more recently through its pooling initiatives – currently in Geosciences, Economics in Physics, Chemistry, Lifesciences and Engineering.

Joint ventures between high-technology companies are a well-recognised route for the development of novel products, and although individual academic researchers have collaborated for centuries, the ability of academic institutions to collaborate in the development of new technologies is often over-looked. In Lifesciences and drug discovery and development in particular, there are several striking examples through which Universities in Scotland have participated in development projects collaboratively with either one or several corporate partners. The Y-ring Institute which is based at the University of Glasgow is a collaboration between the Universities of Glasgow and Strathclyde and Mitsubishi Pharmaceuticals and is directed at identifying new therapies for schizophrenia. The Division of Signal Transduction Therapy (DSTT) based at the MRC Protein Phosphorylation Unit at the University of Dundee is a collaboration between a specialist research centre and six large pharmaceutical companies, Astra-Zeneca, Boehringer Ingelheim, GSK, Merck and Co., Merck KGaA and Pfizer. Protein phosphorylation is one of the body’s principal control mechanisms and changes in this control is a cause of diabetes, cancer and rheumatoid arthritis amongst other diseases. The outputs of this collaboration helped to develop further an existing collaboration between Dundee and the Virginia-based Upstate Company. Upstate set up a facility in Dundee which employs over 70 people. Each of the Y-ring and the DSTT was originally negotiated in the mid-1990s. Importantly however in each case the corporate client(s) went on to renew the contracts – repeat business indicates client satisfaction.

The geographic proximity of the main centres of excellence is a major advantage to Scotland. An example of this competitive advantage is that the four Medical Schools in Scotland are situated within a maximum of 150 miles of one another thereby facilitating the attraction of funding for truly collaborative programmes. The Translational Medicine Research Collaboration which involves the Medical Schools, Aberdeen, Dundee, Edinburgh and Glasgow, the four Health Boards of Grampian, Greater Glasgow, Lothian and Tayside attracted an investment of $50m US over five years from Wyeth, a pharmaceutical company rated in the top ten worldwide for research spend. This was matched by a £17m investment by Scottish Enterprise. Wyeth was attracted to Scotland not only by the quality of the science but also by the complementarity of the Scottish offering thereby making it a national initiative with Centres of Excellence at each of the Medical Schools and a central laboratory based in Dundee.

Reviewing the various successful collaborative models suggests that an opportunity may exist to build on the success of Scotland’s collaboration experience to create an indigenous pharmaceutical industry. Within the biopharma industry sector in Scotland there already exists expertise in the areas of toxicology, formulation, clinical trial design and management, regulatory expertise, chemical design and marketing while the drug discovery element is limited to a number of small specialist Biotechnology companies. The identification and development of new compounds with recognised therapeutic value is key to the development and growth of a pharmaceutical industry. One of Scotland’s major assets is the world class Lifesciences research base distributed across its universities. Drug discovery is a major focus of this activity and represents a potential pipeline of therapeutic opportunities. The challenge is how to recognise synergies and harness complementary technologies to create this pipeline.

A collaborative approach is the key. This requires the creation of a new vehicle which encourages and facilitates the pooling of expertise and resources from the university research base. The model would be directed at development of the early stage opportunities and would bridge the gap between current academic endeavour and early stage commercial activity. The outputs of the activity would result in the generation of more robust licensing opportunities for major pharma and existing biotech companies and would generate the pipeline which is required to create a cluster of sustainable biotechnology spin-out companies. This new wave of spin-out companies, and existing biotechs, would no longer be precociously reliant on a single technology for their survival. Technologies would be bundled within each spin-out and in the event of technology failure the pipeline would provide a source of rapid replacement technology opportunities.
President’s Diary

The New Year is an obvious trigger to take stock of where we, as LES Britain & Ireland, are and where and how we wish to develop. We start 2007 with a very healthy bank balance, fairly stable membership of around 650 and many events planned for London and the Regions. By the time this edition of News Exchange is published we will have had a London evening meeting on “Security Protocols and Systems” and a North West Group meeting on “The National IP Crime Strategy and the Role of the Trading Standards Officer” in Manchester. The Savoy Lunch (8 February) is preceded by a Half-Day Seminar “An Overview of the Licensing of IP Rights” and we have organised a Three-Day course on the “Fundamentals of Intellectual Asset Management” from 28th February to 2nd March at the University Women’s Club in London. Between these events, I hope to venture north of the border to the LES (Scottish Branch) “Burn’s Supper with a Difference” on 13 February. Plans for our Annual Conference in Dublin are well advanced, as noted elsewhere in this edition. So, we are already set to have a busy year. The question is: what else should we be doing?

Your Council has no wish to “rest on its laurels”. We recognise that any organisation that tries to stand still is likely, in reality, to go backwards. Whilst what I hear in feedback from members indicates that LES B&I delivers valuable benefits to them in the form of a varied menu of worthwhile meetings and networking, both nationally and internationally, we do not yet feel we understand as well as we would like what would attract more members, particularly from industry. This is one of the initiatives that I intend to develop in the coming year. But this is not something that Council can do alone. So, if you have any thoughts on this, please do let me know.

I am delighted to welcome Conan Chitham, Partner, Brands and Rights at Mishcon de Reya onto Council. I have asked him to take a fresh look at how we market LES B&I and to develop a new strategy. He has had extremely relevant experience in raising membership at the International Licensing Industry Merchandisers’ Association (IIMA). This brings me to the topic of membership of Council in general. Any member of LES Britain & Ireland can serve on Council, either by election at the AGM, or by co-option. All that is required is the time, energy and commitment to take responsibility for a specific task or area and to “make it happen”. The present members of Council try to spot members with that potential, but we are open also to volunteers; just contact me or any other member of Council and tell me or them what you would like to do for LES.

I have also been asked how members of LES B&I can get involved in LES International. The simple answer is: volunteer to join one of the committees, and go to the LES Annual Meeting. As with LES B&I’s Council, the Chairs of the various committees in LESI are always on the lookout for people who are prepared to put real effort into developing initiatives and themes. If you would like an introduction to the relevant Chair, please contact me or any member of Council.

However you decide to participate in LES, I wish you a happy and fulfilling 2007!

Martin Sandford President LES B&I

1. Sawyer v Atari Interactive Inc (19/10/06). Partial summary judgement issued in favour of Chris Sawyer in dispute with Atari over royalties.

2. Cinpris Gas Injection Ltd v Melea Limited (23/11/06). Claimant could not claim a licence under a patent under s.37(2)(c) Patents Act 1977 where its proprietary interest claim in respect of the patent had failed.

3. Charlie McCreery, Commissioner for Internal Market & Services discusses at Pan European Intellectual Property Summit (07/12/07) how IP is set to transform and improve Europe's competitiveness; and the forthcoming communication on the EU patent strategy on jurisdictional arrangements.

4. Matthew Fisher v Gary Brooker & Onward Music Ltd (20/12/06). A former band member of Procul Harum declared co-author of the song “A Whiter Shade of Pale” and granted a 40% share in the musical copyright.

5. Patent Office engages in further consultation (18/12/06) on the future of examination of trade marks on relative grounds. The consultation will be open until 12 March 2007.

6. The British Council think tank Counterpoint publishes book “Unbounded Freedom” (14/12/06) advocating the use of Creative Commons.

For further details on all of the above please visit: http://www.les-bi.org/
Partial Success For The L’Oréal Group In “Smell-alike” Case

In a recent decision handed down by the High Court of England and Wales, the L’Oréal Group was able to establish that look-alike products with similar packaging, bottle shapes and branding infringed its intellectual property rights. Not surprisingly, however, the global cosmetics brand failed to get protection against the actual smell of “smell-alike” perfumes. In the UK, unlike some other countries, copyright law does not protect a smell and whilst in theory a smell can be protected under trade mark law, in reality this is very difficult to do.

Whilst the case does not appear to be much of a direct commercial success for L’Oréal (as the packaging of goods complained of were changed sometime ago) it does send a strong message to competitors who produce “smell-alike” brands to ensure that they do not take unfair advantage of “the reward for the costs of promoting, maintaining and enhancing a particular trade mark” by their packaging and promotional behaviour. Simply changing the name of the product is not sufficient.

The judgement also revealed a relatively detailed cost breakdown for launching a new product or fragrance. This cost is indicative of the potential damage which can be done if intellectual property rights in brands, packaging, colour, promotional and advertising material are not adequately protected. L’Oréal sets aside up to 500,000 euros for proper trade mark protection for a new fragrance. This might sound costly but the amount is less than ½ % of the total cost of a new fragrance launch. Bearing in mind that the legal cost of bringing this case before the Court is likely to have easily exceeded 500,000 euros, L’Oréal and other companies may well be advised to spend more on trade mark protection than they have done in the past (one of the easiest ways to protect intellectual property rights in the UK). L’Oréal’s case involved nine different look-alike perfumes, however L’Oréal only won in relation to two of the products. The partial success of the case may to some extent be indicative of the lack of specific trade mark or design protection for all features of L’Oréal’s products.

The cost of launching a new fine fragrance is substantial and the process can take up to two years. According to the evidence, the typical cost of the launch of a major new fragrance is as follows:

<table>
<thead>
<tr>
<th>Category</th>
<th>Cost (€)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preliminary market study</td>
<td>75k - 100k</td>
</tr>
<tr>
<td>&amp; product positioning analysis</td>
<td></td>
</tr>
<tr>
<td>Bottle &amp; packaging</td>
<td>50k - 100k</td>
</tr>
<tr>
<td>Bottle moulds</td>
<td>150k - 500k</td>
</tr>
<tr>
<td>Advertising development</td>
<td>50k - 100k</td>
</tr>
<tr>
<td>Models</td>
<td>500k - 1,5m per annum</td>
</tr>
<tr>
<td>Fragrance</td>
<td>Based on royalty of sales</td>
</tr>
<tr>
<td>Trade mark registration</td>
<td>150k - 500k</td>
</tr>
<tr>
<td>Market research &amp; testing</td>
<td>200k - 42m</td>
</tr>
<tr>
<td>Launch campaign</td>
<td>50m - 100m</td>
</tr>
<tr>
<td>Global costs</td>
<td>60m - 120m</td>
</tr>
</tbody>
</table>

Against the backdrop of such expenditure it is easy to see how a look-a-like product is able to gain significant advantage by lawfully selling their product. One of the questions is whether the reward for the costs of carrying out research, designing and promoting a product has been appropriated by the manufacturer of the look-a-like product and if so, whether an unfair advantage has been obtained in the marketplace through “free-riding”. As the question of infringement of a registered trade mark requires a comparison of the mark which was registered against the packaging used in the look-a-like product, much of this question revolves around what has actually been registered.

Among L’Oréal’s global brands are L’Oréal itself, Lancôme and Garnier. The essential case is that the defendants (which include Bellure NV, North West Cosmetics, HMC Cosmetics and Malaka Investments) were importing, distributing and selling copies of some of its luxury products. The copies were not imitations in the sense of being counterfeit but “smell-alikes” marketed in packaging which L’Oréal claimed took unfair advantage of its own product names, packaging and brand image. L’Oréal complained under the headings of trade mark infringement, passing off (i.e. where a product is designed such that the company is attempting to pass it off as being another product) and unfair competition.

In L’Oréal’s case whether or not all the packaging was registered as a trade mark (i.e. the bottle shape and the packaging as well as the name of the product) heavily influenced the outcome. In the case of Lancôme’s ‘Miracle’ fragrance, the look-alike perfume ‘Pink Wander’ was found to be unlawful despite having a different name and box packaging, because L’Oréal had registered the ‘bottle mark’ and the bottle containing ‘Pink Wonder’ was the same as the ‘Miracle’ bottle. An infringement was also established in relation to the use of L’Oréal’s word marks on the comparison lists and in response to customers’ queries.

For perfume manufacturers, this decision may not go far enough. Smells per se are incredibly difficult (if not impossible) to protect in the UK. On the other hand this judgement shows that the court will aide brand owners who have adequately protected their trade marks (including packaging) against look-alike products. One recommendation is that fragrance houses and brand owners should apportion more of their budget to intellectual property protection upfront, to make it very difficult for smell-alike products to take advantage of the significant expense involved in launching a new fragrance.

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Congratulations!

John and Jane Roe are celebrating the birth of their daughter, Geraldine Honor, who arrived rather earlier than expected, in late December!

John is the LES B&I Secretary.
The Gower's Review, commissioned by the government to look at intellectual property law in the United Kingdom, published its final report on 6 December. This major report constitutes the first broad review of IP rights in the UK since the 1980's.

The Call for Evidence elicited 517 responses and a petition on extending the copyright term for sound recordings. The list of respondents to the Gower's consultation is illuminating, if not much of a surprise – in addition to LES you can find the usual suspects such as the Business Software Alliance and FAST, rarer species such as the British Society of Plant Breeders (of whom more later), and some bunch calling itself Pink Floyd. At first glance it might seem that all human life was here, but not quite; in the main they were rights holders seeking to extend, or at least resist the erosion of, their intellectual property rights rather than rights users. In the circumstances the robustness of some of the Gower's recommendations – not slavishly following the demands of rights holding lobbies in the way that many governments have done in the past - is to be commended.

Overall the Review concluded that the present intellectual property system in the UK is working well, but it still identified 54 recommendations where reform is necessary to improve the IP regime for all its users.

The big "news" as far as the media were concerned when the Report came out was that Gower's had rejected the calls for an extension to the term of music copyright. Gower's also said that the policy of not extending patent rights beyond their present limits within the areas of software, business methods and genes should be maintained, and that policy makers should adopt the principle that the term and scope of protection for IP rights should not be altered retrospectively (music to the ears of anyone who has had to grapple with the effects of the Duration of Copyright and Rights in Performances Regulations 1995!).

Of particular note is the recommendation that section 60(5) of the Patents Act 1977 be amended to clarify the research exception to patent rights for agriculture. Gower's said that patent protection for any breeding activity in relation to a plant incorporating patented technology will automatically risk infringement action. Whether that is accurate or not, most will welcome the idea of a clarification of this area of the law, but just how it is to be clarified will no doubt be the subject of further intense lobbying.

There's stuff in the Report for the "little guy" - it should be made easier for users to file notice of complaints procedures relating to Digital Rights Management tools by the provision of an accessible web interface on the Patent Office website by 2008. There should be a DRM labelling convention. There should be fast track registration for trade marks.

There's stuff for users of IP such as:-

• clarifying exceptions to copyright to make them fit for the digital age enabling access to content for libraries to permit libraries to copy the master copy of all classes of work in permanent collection for archival purposes and to allow further copies to be made to militate against wear and tear;
• the creation of an new exception to copyright for the purpose of caricature, parody or pastiche;
• a new provision, to be enacted at European level, for orphan works – where the identity of authors cannot easily be found;
• introducing a strictly limited ‘private copying’ exception to enable consumers to format-shift content they purchase for personal use. For example to legally transfer music from CD to their MP3 player.

But the rights holders did not come away empty-handed. The Review recommends strengthening enforcement of IP rights through:

• stronger powers and duties for trading standards to bring criminal prosecutions against infringers of copyright law (already contained in section 107A of the Copyright, Designs and Patents Act 1988 but not yet implemented);
• IP recognised and incorporated as an area for police action in the National Community Safety Plan;
• tougher penalties for online and physical copyright infringement - with a maximum 10 years imprisonment;
• reduce the costs of litigating IP rights for businesses large and small - by using mediation and consulting on the fast-track limit. The Review acknowledges that prohibitive legal costs affect the ability of many to defend and challenge IP; and
• consulting on the use of civil damages and ensuring an effective and dissuasive system of damages exists for civil IP infringement.

Then there's stuff where you're tempted to ask "where did that come from?!" For instance the government should "monitor success of current measures to combat unfair competition in cases relating to IP, and if changes are found to be ineffective, Government should consult on appropriate changes." Uh? All depends on what you call "unfair". HMG should also "establish a new Strategic Advisory Board for IP policy (SABIP), covering the full range of IP rights, reporting to the Minister responsible, by 2007. The Board should be drawn from a wide range of external experts as well as key senior policy officials from relevant government departments, and should be based in London." A QUANGO running IP policy – no thanks!

And finally there's some wishful thinking:

The UK government should "continue to support and expedite the establishment of a single Community Patent through negotiations in Europe" and "support the establishment of a single EU court to adjudicate cross-border IP disputes by promoting the European Patent Litigation Agreement." Don't hold your breath, Mr G!

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Here is the Answer:
Christmas Quiz There were no correct answers to the Christmas Quiz

The decision says: ‘cf the apocryphal words of Caliph Umar about the destruction of the library of Alexandria and the Word of God’

The words are: ‘They are useless and need not be preserved. If they disagree, they are pernicious and ought to be destroyed’
The U.S. Supreme Court’s Recent MedImmune Decision And Its Implications For Intellectual Property Licensing Management

Background And Case Summary
The United States Supreme Court issued a decision in MedImmune, Inc. v. Genentech, Inc., No. 05-698, on January 9, 2007, holding that a patent licensee was not required to terminate or breach the license agreement prior to seeking declaratory judgment of patent invalidity or non-infringement.

MedImmune manufactures Synagis, a drug used to prevent respiratory tract disease in infants and young children, using monoclonal antibody technology licensed from Genentech. The patent license agreement with Genentech covered an existing patent (Cabily II), and a then-pending patent application which eventually issued as the Cabilly II patent. Upon issuance of the Cabilly II patent, Genentech delivered a letter to MedImmune indicating that Synagis was subject to royalty payments in accordance with the license agreement. In an effort to avoid potential infringement litigation, MedImmune informed Genentech that it planned to pay the royalties, but only under explicit protest and with reservation of all rights. Subsequently, MedImmune filed a declaratory judgment action, seeking to have the Cabilly II patent declared invalid, unenforceable, or not infringed.

The United States Declarationary Judgment Act permits a court to prospectively declare the rights, duties, or obligations of the parties to a dispute, provided there is a "case of actual controversy." The issue presented in MedImmune (or any declarationary judgment case) ultimately becomes one of standing under Article III of the U.S. Constitution, i.e., whether there exists a "controversy" in the absence of a material breach of a patent license agreement.

The district court, as well as the United States Court of Appeals for the Federal Circuit, relying on Gen-Probe Inc., v. Vyri, Inc., 359 F.3d 1376 (Fed. Cir. 2004), dismissed MedImmune's claims on the grounds that a licensee in good standing was prohibited from filing a declaratory judgment action against its licensor due to failure to satisfy the Article III "case or controversy" requirement. The rationale offered by the Gen-Probe court was that the patent license agreement, and the licensor's compliance with it, "obligates any reasonable apprehension" that the licensee would be sued for infringement.

The Supreme Court reversed, holding that a plaintiff threatened with possible harmful action does not surrender the right to challenge the legal basis for that action when the steps it takes to avoid the harm are coerced. Justice Scalia further opined that the very purpose of the Declaratory Judgment Act was to ameliorate coercion that would force a challenger to make the difficult choice to abandon his defenses or risk being sued. The risk posed to MedImmune, for example, was that if Genentech were to prevail in an infringement action following a breach of the license by MedImmune, MedImmune could be held liable for treble damages and attorney fees, and that sales of Synagis (which account for more than 80 percent of MedImmune's revenue) could be enjoined. This being so, the royalty payments to Genentech were, the Court found, for more than 80 percent of MedImmune's revenue) could be enjoined. The MedImmune court rejected this traditional notion, indicating that "the promise to pay royalties on patents which have not been held invalid does not amount to a promise not to challenge their validity."

Consequently, the MedImmune decision may render patentees susceptible to a greater number of validity disputes initiated by non-breaching licensees, thereby increasing the uncertainty, risk, and litigation expenses associated with patent enforcement. This in turn may induce patentees prospectively to demand greater royalty fees, or to develop variable fee structures, in order to compensate for the increased risk of litigation. This increased cost of litigation to the patentee and the increased royalty fee to the licensee could serve as a market barrier to some entities, or could ultimately be incorporated into the price of licensed products. Alternatively, patentees may begin including standard language in license agreements requiring licensees to waive their right to challenge validity. Whether such a provision would be enforceable has yet to be determined, as no such "anti-challenge" clause was included in MedImmune's license with Genentech. The MedImmune decision may well have further ramifications with respect to communications directed towards potential infringers because an additional footnote to the decision included comments broadly but non-specifically critical of the Federal Circuit's overall jurisprudence on what statements by a patentee gave rise to a "reasonable apprehension of suit," as required for jurisdiction under the Declaratory Judgment Act.

Implications Of The MedImmune Decision
The MedImmune case required the Court to weigh a number of countervailing public policy considerations regarding license agreements and patent policy. For instance, there is a significant public policy in favor of patent licensing as a means to reduce litigation and foster judicial efficiency. Conversely, there is an equally-compelling policy consideration in favor of helping expunge invalid patents by permitting licensees to challenge validity of a licensed patent.

Traditionally, a patent license served as a covenant not to sue with respect to each party involved in the license agreement. The patentee relinquished a portion of its exclusionary rights, and was precluded from pursuing a claim for infringement against the licensee. In exchange, the licensee was subject to royalty payment obligations, and was precluded from challenging the validity of the patent. In effect, the licensee was purchasing an insurance policy, which immunized it from an infringement suit, provided royalties were conveyed and the validity of the licensed patents was not contested. The MedImmune court rejected this traditional notion, indicating that "the promise to pay royalties on patents which have not been held invalid does not amount to a promise not to challenge their validity."

Parties on both sides of the patent licensing equation will thus likely wish to monitor, and consult counsel regarding, how the MedImmune decision is ultimately applied by the courts.

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1 This article originally appeared in issue 22 of IAM magazine, published by Globe White Page, London (www.iam-magazine.com)
LES Irish Section

The first of the 2007-2008 Second-Friday LES/Forfás Lecture Series is planned for

Martin Mullins, Director of the Technology Transfer Unit, Trinity College, Dublin will discuss “Lessons from the US Technology Transfer Office Experience”

Martin Mullins is the newly appointed Director of the Technology Transfer Unit at Trinity College, Dublin. Most recently Vice President for Technology Licensing at Georgetown University in Washington D.C., he previously served as Associate Vice President for Licensing and Director of the Office of Technology Transfer at Case Western Reserve University, and as Senior Licensing Manager and Interim Director of the Office of Technology Licensing and Industry Sponsored Research at the Harvard Medical School. Prior to this time he held positions with Eli Lilly & Co and Bioresearch Ireland. Martin holds both a Bachelors and Masters degree in biochemistry from University College Cork.

Martin’s presentation will be of great interest to anyone involved in the public or private sector in technology transfer from universities and other tertiary institutions.

There is no fee for the seminar but attendance is limited and pre-registration is required. Accordingly, please notify Ailisair McFly, chairperson of LES Irish Region of your intention to attend by sending an e-mail to the co-ordinator, Kate Hollis. at kate.hollis@mcop.ie or telephone Kate Hollis on Tel. +353 1 6442436.

LES Scotland Region

The LES (Scottish Branch) December meeting was a well-attended (45 people) and thought-provoking evening. Although there was the requisite mulled wine, the real warmth on the wet Glasgow evening was provided by the three speakers, who addressed the question of “Scottish Universities – a sparking future?” but from very different perspectives.

Gillian McdFadzean, Director Technology & Research Services at Heriot-Watt University reviewed the current situation – what are the Universities’ assets (ranging from their alumni and real estate to their knowledge assets), where do they generate income (not perhaps from spin-out companies and licensing deals), and where do they add value; Gillian highlighted the “fantastic, valued, education & training” provided by the 20 Higher Education Institutions in Scotland and how they represent 8.6% of UK population but 13% of research funding. But Gillian also cast a challenging eye as to the future – re teaching looking at overseas delivery and distributed learning, and re research looking to “pooling” and the “D” of R&D. She threw down the gauntlet of whether this can be done piecemeal, through brand & reputation, graduates, alumni, real estate etc, or whether it was time to “get really serious” and look at the “M” word or the “F” word. (Merger or Federation in case you’re wondering!)

Gillian stressed the importance of building on research pools and bringing strategic perspectives.

And if there’s not a “win / win” there’s a “no deal” to spinning-out. He emphasised that NiTech’s marketing strategy in addition to the technology has been key to their success. He told of NiTech’s intellectual asset journey and the guidance this had given their strategy, and how to keep focus and use professional assistance wisely. A comment from the floor was that Ian ought to be lecturing to prospective spin-outs to increase their chances of success!

All told, an excellent evening and the Branch is now looking forward to its Burns Supper on 13th February – with three other exciting speakers and appropriate music, food and prizes!

The LES (Scottish Branch) “Burns’ Supper with a Difference” is on the 13th February at Merchants House, 7 West George Street Glasgow G2 1BA, (opposite the main door of Queen’s Street Station).

The theme for the night is – “Burns – cashing in on old relics”. Are we commercialising our historical assets? Should we? Are we doing it effectively? On the night we’ll look at innovative and challenging ways of using these assets for the good of all – and we promise in a fun and very social manner!

As always, the evening will be peppered with pipes, haggis addressing and entertaining but most importantly will include our entertaining “inter-course” speakers:-

• Alan Horn, Director of the hugely successful Kelvingrove Art Gallery and Museum Refurbishment Appeal, speaking on the assets – tangible and intangible – of the museum’s collections;

• Lynne Cadenhead of Scottish Quest, explaining the development of a remarkable game, using Scotland’s history to create something novel and very marketable.

But the audience doesn’t just sit and listen; you will be challenged to develop a trade mark with brand potential for an as yet undisclosed relic – clues to good brand development will be provided by Andy Boddice of Think Feel Know. Prizes will be awarded for the best!

The historic Glasgow venue The Merchants House was established long before Burns (its constitution dates to 1605) and active then with the mercantile community and civic government. (Remember Burns was an Excise man!) We are lucky enough to be getting their prestigious (and very relic-y) hall for our Supper, but don’t worry there is a bar and the three-course meal and traditional tipple are included in your ticket price.

Caroline Sincock - Chair
For further details contact Cara, email: les@glasconf.demon.co.uk

LES West Midlands Region

Following a successful programme last year we look forward to an at least equally interesting and enjoyable series of events this year.

We start next month, on Tuesday 27th February 2007, with a talk by David Barron who is a partner at Wrights & Co and head of the high-tech team within their IP group. David will talk about licensing issues in the mobile telecoms field. This field is very heavily patented, with many different parties competing for licensing fees. Licensing negotiations in this sector are increasingly spilling over into litigation, where various issues can end up before the courts. These issues include:

• disclosure of PPRs and other obligations to standards bodies

• litigation as part of licensing negotiations - types of relief being sought

• extent of licensing obligations for IPRs essential to a standard

• can a court determine FRAND licence terms?

David has unparalleled expertise of the issues arising in this sector and will be able to talk through current licensing/litigation issues that are before the courts in the UK, elsewhere in Europe and the US.

On Friday 27th April 2007, His Honour Judge Fysh will be presenting a talk entitled “A Mixed Bag: The PCC and the Copyright Tribunal at Work”.

Notices and booking forms for these meeting will be circulated but for further information please contact Wilson Gunn at 0121 236 1038 or birmingham@wilsongunn.com
LES B&I Annual Conference
13-14 September 2007
Trinity College, Dublin

The Irish Economic Miracle
Lessons for the Licensing Community

Interested in following the Irish success story? The 2007 LES B&I Conference is the place for you!

In February last year silicongrepubl.com (Ireland’s Technology News Service) reported that the Irish Government’s budget allocation to R&D rose by 45% between 2002 and 2004. Personnel employed in research activities in the higher education sector rose by about 65% in the same period.

Mr. Martin Cronin, CEO of Forfas the Irish Government Agency concerned with policy development for technology and innovation commented at the time, “The continuous improvement in R&D performance will assist Ireland in boosting the competitive position of our goods and services in the international marketplace in the years ahead.” We are indeed fortunate to have Mr Cronin as a plenary speaker at the Dublin conference. He, along with our second plenary speaker, Mr. Sean Dorgan, CEO of the Irish Development Agency, which is the Irish Government Agency responsible for attracting international inward investment into Ireland, are in excellent positions to give insights into the making of the “Celtic Tiger” phenomenon and the implications and opportunities for the licensing community.

Geography and the case of the pork pie!

The outcome of a European Court of Justice decision will define the ability of pork pie manufacturers to brand their pies “Melton Mowbray”.

European Regulations introduced to protect agricultural products and food stuffs which have an identifiable geographical origin make it possible to register either a designation of origin or a geographical indication and the Government is keen to see more UK products registered.

A recent application to register the “Melton Mowbray Pork Pie” as a Protected Geographical Indication (PGI) was given the support of the Department of the Environment, Food and Rural Affairs (DEFRA). However, the Melton Mowbray Pork Pie Association (MPPA) faced an uphill struggle because Melton Mowbray Pork Pies had been made for many years in parts of the country very remote from the Melton Mowbray area in Leicestershire, for which the PGI was being sought.

For example a Northamptonshire based pie manufacturer had been producing Melton Mowbray Pork Pies for well over 50 years. Although the pork pies were made to a traditional recipe approved by MPPA, the manufacturer was alarmed to discover that they did not fall within the designated area. They were able to persuade DEFRA in the consultation process to include parts of Northamptonshire where their factory was located, which is about 40 miles from Melton Mowbray within the PGI.

DEFRA subsequently decided to forward the MPPA application to the European Commission for consideration, as the first step in the registration process. Other manufacturers were unable to persuade MPPA to include their localities within the proposed PGI. Northern Foods, a producer of pork pies badged Melton Mowbray but which were not made in Melton Mowbray or by the ‘traditional’ recipe, sought judicial review of DEFRA’s decision. Northern’s argument was simple – the name of the ‘specific place’ must match the ‘geographical area’ of production. Effectively, Melton Mowbray could only be a PGI for Melton Mowbray Pork Pies, if the pies were made in Melton Mowbray. In fact, the MPPA was seeking to register a much larger geographical area covering Nottinghamshire and parts of Northamptonshire and Lincolnshire, as well as of course, as Leicestershire.

At first instance, the Judge rejected this argument effectively holding that the name of the PGI – the specific place – is only a badge certifying a general geographical origin together with other characteristics of the project and that the different wording used in the regulation ‘specific place’, ‘geographical area’ – made clear that they referred to different concepts. However, the Court of Appeal was not so sure when the case came before them earlier this year and has referred the case to the European Court of Justice for their interpretation of the Regulations concerning these issues. The issue will not however be determined as Northern Foods have decided not to pursue their appeal.

John Hill
Partner, Shoosmiths

The conference will also provide the opportunity to learn the basics of licensing by running the highly-recommended LESI Fundamentals Course. With workshops covering the areas of Healthcare, EC/Laws, Brands, IT & E-Commerce as well as the Plenary Sessions there will be something of interest to all LES members.

LES Ireland, keen that you should experience some of the delights of Dublin’s cultural life as well as learning about the country’s economic success and business opportunities, have arranged the Conference Dinner at the beautiful Dublin Banking Hall, why not bring your partner and share the experience?

For further information contact Cara, email: cara@glasconf.demon.co.uk

www.tct.ie
www.enterprise-ireland.com
www.dublintourist.com
www.ryanair.comwww.wntemp.ie
www.ryanair.com

Anita’s email address was incorrect in the last edition of News Exchange! Consequently the deadline for suggestions and comments is extended until 1 March 2007.

• LES: The IP Club
• LES: The Tech Transfer People/Club/Enthusiasts/Gurus
• LES: The place for tech transfer networking
• In 2 Tech Transfer? C U at LES
• LES: Tech Transfer Networking, Education and more
• LES: IP from concept to conclusion
• LES: Creating a sense of community among UK licensing professionals
• LES: Our business is all about IP – the prize for the best suggestion has not yet been awarded!

For reservations and further information contact Cara, email: cara@glasconf.demon.co.uk

18 CPD points for the 3-day course; 12 CPD points for days 2 and 3 only.
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For further information please contact regional officers for LES events in Britain and Ireland (see panel on the left of this page or visit the LES B&I website http://www.les-bi.org/) and the officers of national societies for overseas events (see LES directory or the LES website http://www.lesi.org)