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Technology Licensing Opportunities for the Renewable Energy Market in Scotland

The emergence of the renewable energy sector in Scotland in recent years has brought with it an opportunity for all working within the industry to collaborate together, to create recognised standards in the sector, and to put Scotland at the forefront of global renewable energy technology and innovation.

Setting the scene
Scotland is currently riding on the crest of the renewables wave. Many wind, tidal and wave projects have recently been undertaken and the rate of growth of new renewable projects shows no sign of slowing. First Minister Alex Salmond has recently set Scotland an ambitious target of 80% electricity generation from renewables by 2020. The more ambitious players in the market believe renewables could provide 123% of Scotland's power requirement, with any excess being exported. The fact that this is indeed a buoyant market was further evidenced by Spanish energy giant Iberdrola's £2.7bn recent investment into energy in Scotland. The commercial success of renewables projects will go hand in hand with huge benefits to society and the environment from renewable energy.

Ilian Iliev's comment on the Copenhagen Climate Change Conference in the July 2010 edition of this newsletter posed interesting reading and was timely given the recent investment in renewable energy in Scotland. Such investment is, for many investors, a step into the unknown. As in all untested and new markets involving technology, the role of IP will be vital in securing future investment and in commercialising the technology.

At this early stage of the emerging renewables market, investors will wish to vigorously protect any IP created relative to their investment. The desire for such protection may be met with a level of predictable resistance from government and climate change activists keen not to stifle opportunities to put renewable technology into practice caused by what they may see as unnecessary fiscal barriers.
The phrase 'the whole is greater than the sum of its parts' certainly holds true for innovation technology; working together on research and development, in most cases, offers more than working independently in isolation. The financial rewards of working in a quasi-partnership may not be as attractive as 'going it alone', but the dissemination of knowledge amongst those working in the same industry makes the set targets much more achievable and within quicker timeframes. This article argues that the use of cross licensing and patent pools in the renewables sector could be employed to achieve a balanced approach, satisfying all stakeholders in the field of renewable energy.

Cross licensing
The renewables market in its infancy comprises *inter alia* of many small niche organisations keen to develop the 'next big thing'. The author proposes that the smaller organisations might benefit from changing tact and seeking to develop renewable technologies effectively in partnership with each other and/or larger energy companies, and sharing their knowledge and expertise with one another.
The opening up of IP portfolios for others- and maybe competitors in industry- to use may, in the short term at least, seem like commercial suicide. But the potential long term benefits are such that this is a move which should not be dismissed outright.

Cross licensing can be utilised to give organisations the right to use others' IP. It can greatly reduce the risk of unintentionally infringing a competitor's patent portfolio (especially if a competitor has a substantial patent portfolio) because a cross licence between a party and a commercial competitor is in essence an agreement for a party not to enforce intellectual property rights against another other. As a consequence, research and development will ultimately benefit because the risk of patent infringement of another's IP is reduced, and innovation can flourish.

Cross licensing inevitably induces a more trusting cooperative environment, encouraging partnership and innovation. In an undeveloped and opportunistic market, such as renewables, this can only lead to better technology in this area.

Patent pools

Patent pools have been used for decades with generally a high degree of success. A patent pool is a portfolio of patents which the patent proprietors agree to licence to each other and third parties. The distinction between patent pools and cross licensing is that a patent pool is a single entity from which third parties may request a licence to use the patents in the pool. Cross-licensing does not concern itself with collective dissemination of technology to third parties- dissemination is only to those party to the cross-licensing agreement. Patent pools are therefore more attractive to third parties and offer more opportunity to commercialise the pooled technology. The success of the Bluetooth, DVD and 3G standards is testament to the opportunities which patent pools offer.

Lessons learned show that the potential success of a patent pool will depend on a number of key factors:

> The maturity of the particular industry is important. A move to pooling technology prematurely may lead to an acceptance of a sub-standard and underdeveloped technology. On the other hand, delaying the implementation of a technology pool could result in innovators demanding high costs to transfer significant proprietary technology to the pool. Achieving this balance is critical. The extent to which the renewables sector is mature enough for patent pooling is unclear. Expert analysis would be required to ensure that technology is ready for a pool to have any worthwhile effect. It goes without saying that there is little to be gained from trying to exploit underdeveloped technologies. However, the sector cannot afford to ‘miss the boat' in capturing innovation when it is suitably ripe to ensure it is developed and commercially exploited fairly in the interests of all stakeholders.
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> The industry must be one that can in practice take advantage of technology pooling. Many pools have been set up which only serve to stifle innovation. Uncertain markets and/or a lack of interest from key organisations can undermine the purpose of a technology pool. The technology in question is also a key factor that will determine the success of a technology pool: bringing together technology from a wide industry spectrum could suppress the intention of a pool. Groups of smaller pools within smaller sub-industries could service to prove for useful for the industry as a whole.
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> The renewables industry is of course made up of sub-industries of particular energy types, including, wind, wave, tidal and hydro energy. Each of these sectors will have its own unique technologies and the scope of each sub-sector should be defined to ensure any patent pool employed in any sub-sector is practicable and workable.
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> The participants within the patent pool must been seen to be as transparent as possible so to avoid any suggestion of anti-competitiveness or ‘cartels' forming in the pool. An independent figure-head broadly overseeing and managing the pool could bring more confidence to industry, investors and consumers. Collaboration with the Scottish and UK governments in implementing technology pools will go some way to ensuring confidence and to a large extent alleviate suggestions of anti-competitiveness created by the pool.
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> The threat of litigation does not evaporate entirely when a pool is created. Stakeholders within the pool must make sure that the key standards and terms of the pool are identified, monitored

and if need be amended to ensure consensus and fairness amongst the pool members. Royalty rates of the relevant technologies within the pool will vary depending on the significance of the technology to the pool. It is advisable that such rates are agreed at the time of creation of the pool and then continually monitored and amended if necessary to ensure no disputes arise. Of course, for the pool to work, such terms must be fair, reasonable and non-discriminatory basis.

In conclusion

This is an exciting time for the renewables sector in Scotland. It is not often a particular industry is encouraged to grow by governments, investors and society all in unison with each other. The appetite for growth in the sector presents a great opportunity for the key players in the renewables sector to work together and to make Scotland and its energy organisations global players in the market. And all LES members in Scotland can have a big part to play in contributing to Scotland's success in the renewables boom.

Shaun Gibson, Solicitor specialising in IP & technology, Maclay Murray & Spens LLP

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New ISO brand valuation standard

October 2010 saw the launch of the first standard on brand valuation from the International Organization for Standardization (ISO). It was developed over two years by brand valuation practitioners and specialists such as Intangible Business in countries throughout the world.

'ISO 10668 Brand valuation – Requirements for monetary brand valuation' is relevant to those involved in licensing for a number reasons. It defines how to quantify the investment in brands, it provides lawyers guidance on what to expect from valuers when quantifying losses from infringements, it is useful for negotiating royalty rates and other licensing arrangements, for agreeing plans to commercialise IP, analysing return on investment and understanding the value created through licensing.

The standard outlines the three key approaches to valuing brands. There are several economic income-based methodologies which analyse the proportion of a business' earning that are attributable to the brand. One of the most common of these is the relief-from-royalty methodology which calculates the discounted value of future royalty payments the brand owner would need to pay to use the brand if they did not actually own it. This relies heavily on licensing principles such as determining applicable royalty rates and identifying branded earnings. Those involved in licensing will therefore be more familiar than they might think with how to value brands.

The income approach is supported by the market approach which stipulates the brand value should be referenced to comparable brand transactions and the cost approach which calculates the amount invested in creating the brand and the amount that would be required to re-create it. In practice a combination of the most applicable methodologies for the circumstances and particular brand are used to arrive at a rounded, objective valuation.

The key difference about ISO 10668 from other brand valuation standards is the inclusion of both legal requirements and behavioural aspects. Input from lawyers is required to assess the legal rights that protect the brand and the parameters that affect brand value such as distinctiveness, scope of use, and risks such as cancellation or dilution.

The inclusion of behavioural aspects is what really marks the ISO standard out as different. It states that the kind of brand and market analysis usually not carried out or understood by accountants should be a key component of every valuation methodology. Analysis should be conducted on the strength of the brand, looking at aspects such as brand awareness, perceptual attributes, knowledge, attitude, relevance and loyalty. Stakeholders' emotional attachment to the brand and how this impacts pricing, volume and demand should also be considered. This is a significant departure from previous guidelines and one with positive ramifications.

With a key brand valuation method relying on licensing principles and brands being valued increasingly for licensing purposes - especially for disputes – it's worth at least being aware of ISO 10668 and how it can be applied to your licensing strategies.

Thayne Forbes, joint managing director of Intangible Business, the brand valuation consultancy. ***www.intangiblebusiness.com***

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The Limits of Confidentiality

***Robert Tchenguiz and Others v Vivian Imerman* and *Vivian Imerman v Elizabeth Imerman* – Neutral Citation EWCA Civ 908**

"Everyone has the right to respect for his private and family life, his home and his correspondence." (Article 8(1) European Convention on Human Rights). Well, as long as details of his private life haven't been given to a bona fide purchaser without notice of the fact the details are private.

This Court of Appeal case provided some interesting commentary on breach of confidence within modern relationships as well as using the concept of a bona fide purchaser for value without notice in the context of the transmission of confidential information. (It should be noted that the case was originally from the Family Division, which has taken a very different attitude to breach of confidence actions to the other divisions of the High Court – generally, the Family Division will not penalise the taking, copying and immediate return of documents although they do not sanction the use of any force to obtain the documents or the interception of documents or the retention of documents.)

The case concerned a breach of confidence in connection with divorce proceedings. The husband used his brothers-in-laws' offices and the husband's data was stored on a server controlled by one of the brothers-in-law. The brothers-in-law used their access to the husband's computer records to copy large amounts of data to ensure full disclosure of the husband's assets in proceedings within the Family Division.

The husband was successful in his claim for breach of confidence. (He successfully met the test set out in *Coco v A.N. Clark (Engineers) Ltd* [1969] RPC 41 at 47: *"First, the information itself ... must 'have the necessary quality of confidence about it'. Secondly, that information must have been communicated in circumstances importing an obligation of confidence. Thirdly, there must have been an unauthorised use of the information to the detriment of the party communicating it."*)

The judge in the case (Lord Neuberger MR) found that: *"It would seem to us to follow that intentionally obtaining such information, secretly and knowing that the claimant reasonably expects it to be private, is itself a breach of confidence. The notion that looking at documents which one knows to be confidential is itself capable of constituting an actionable wrong (albeit perhaps only in equity) is also consistent with the decision of the Strasbourg court that monitoring private telephone calls can infringe the Article 8 rights of the caller"*.

So merely looking at the documents, without copying them or transferring information, constitutes a breach of confidence, and there is clearly a risk that the information will then be misused or divulged. It is made clear that all copies should be returned or destroyed.

In addition to giving specific guidance on confidential information in the context of marriage and proceedings in the Family Division, the Court confirmed the general understanding that when the information has been passed on to a third party, the claimants' *"rights will prevail as against the third party"*. Lord Neuberger also confirms that there is an exception for *"a bona fide purchaser of the information without notice of its confidential nature"*. It is a long time since these issues were last considered and it is a worthwhile reminder of these concepts, which are often forgotten in the context of bilateral NDAs.

Alice Proby, Charles Russell LLP

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<u>The Importance of Clarity in Co-existence</u>

Omega Engineering Incorporated v Omega SA (Omega AG) (Omega Ltd) [2010] EWHC 1211 (Ch), Arnold J, 28 May 2010

Co-existence agreements are often slightly neglected as an area of trade mark practice. A case earlier this year has highlighted the importance of these agreements; and the necessity to draft them precisely. In this Omega case, the High Court dismissed an appeal by the Swiss watchmaker Omega SA ("Swiss Omega") from the IPO's rejection of its opposition to the registration of a UK trade mark for OMEGA in class 14 by the US company Omega Engineering ("US Omega"). US Omega manufactured products for the measurement and control of temperature. At the same time, the court allowed a summary judgment application by US Omega in an action for breach of contract of a co-existence agreement between the two parties.

The parties had entered into a co-existence agreement in 1984 which applied to the UK (the "Agreement"). Under Clause 5, Swiss Omega agreed not to object to the use or registration by US Omega of OMEGA for: "*Instruments and apparatus intended for a scientific or industrial application in measuring, signalling, checking, displaying or recording heat or temperature (including such having provision to record heat or temperature over a period of time and/or to display the time of day)"*.

In 2008 Swiss Omega opposed an application by US Omega to register OMEGA in class 14 for goods described almost word for word using the language set out in the Agreement. Swiss Omega had an earlier OMEGA registration under class 14; and both parties agreed that under ss 5(1) to (4) of the TMA 1994 a trade mark could not be registered where it conflicted with earlier trade marks or other earlier rights owned by third parties. However, the parties disagreed about the application of s 5(5) TMA 1994 (under which "*nothing… prevents the registration of a trade mark where the proprietor of the earlier trade mark or other earlier rights consents to the registration*"). Swiss Omega argued, amongst other points, that:

- Under the Agreement, Swiss Omega only consented to the use of OMEGA for goods of the type specified in the Agreement in class 9 and not class 14.
- The Agreement was irrelevant (this point was argued on the basis of a previous CFI decision in another Swiss Omega case, were it was found that a co-existence agreement was irrelevant in those circumstances).

The court dismissed the opposition, finding that Swiss Omega had consented to the application under s 5(5) TMA 1994 due to the Agreement. The court also did not believe that the Agreement was limited to goods in class 9. All the following factors were relevant in its decision:

- The existence of the Agreement was a "*very palpable fact*".
- The Agreement did not define the listed goods by reference to a classification number. Indeed, nowhere in the Agreement did it refer to goods in "class 9". There was also no need to add a reference to class 9 into the Agreement.
- What mattered to the parties was the meaning of the Agreement, not the form of the words used. To interpret the Agreement by reference to the classification of goods for the purposes of registration alone (which has no relevance to use in the course of trade) would be to "*permit the tail to wag the dog*".
- By agreeing not to object to the registration and/or use of OMEGA for the goods set out, Swiss Omega must also be taken to not object to the same use of unregistered OMEGA marks (otherwise it would be easy to dodge the obligation, making the Agreement slightly pointless). As

this had to be the case, and as unregistered trade marks had no goods classification, the scope of the obligation couldn't depend on the classification number.

In addition, the court rejected Swiss Omega's arguments based on estoppel, variation and acquiescence, as well as its argument that s 5(5) TMA 1994 had been impliedly repealed when the Trade Marks (Relative Grounds) Order 2007 (SI 2007/1976) came into force. It followed from the court's findings above, that US Omega's proceedings for breach of contract (they argued that Swiss Omega's opposition was in breach of the Agreement) were allowed.

The judgment stressed that co-existence agreements "*are a common, important and under-appreciated aspect of trade mark practice*". Indeed, they can be a very constructive way of companies resolving trade marks conflicts whilst avoiding litigation. Trade mark owners who believe in their helpfulness will be glad to see the UK acknowledging the significance and relevance of these agreements. However, the drafting of co-existence agreements will always be fundamental to their success. For those old agreements locked away in cupboards now might be a good time to make sure the intention will still be interpreted correctly in today's trade mark classification system.

Alice Proby, Charles Russell LLP

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The 2011 Licensing Executives Society International Conference – London

As you are probably aware, next year, LES Britain and Ireland is proud to have the honour of hosting the LESI 2011 International Conference in London. The programme for the conference is developing rapidly and the theme – ***Licensing in the 21^{st} Century – Better, Faster, Smarter*** – echoes that of the 2012 London Olympic Games. Business in the 21^{st} Century is changing, and with these changes, the way in which we practise the business of intellectual property and licensing has to adapt and evolve. The conference programme is being developed to reflect these changes, and we hope to have experts on all aspects of the licensing business as speakers and running workshops. If you have any ideas for these or would like to organise a workshop yourself, then please contact the speaker and workshop group via Sangeeta Puran (spuran@mayerbrown.com) or Hayley French (hayley.french@apitope.com).

The programme will cover the range of industries and emerging technologies to bring the latest developments and issues to LESI members, to equip them to handle the challenges that the changing business landscape brings.
The 2011 LES Foundation Graduate Student Business Plan Competition will also be held during the 2011 conference, and we hope the Britain and Ireland will be well-represented in the finalists – further details can be found on the 2011 web site at www.lesi2011.org.

There are also a variety of sponsorship opportunities available and the packages on offer can be viewed on the website. We are also happy to tailor these to your requirements, so do please contact the Conference Secretariat c/o MCI Ltd, The Beacon, 176 St Vincent Street, Glasgow G12 5SG if you would like to discuss this further.

The conference venue is the newly-opened Westminster Park Plaza, situated on London's South Bank, within walking distance of London's most iconic attractions including the Houses of Parliament, the London Eye and the London Aquarium.

We hope as many members as possible will attend the conference, and we hope to welcome many new members as well. We look forward to seeing you at the Westminster Park Plaza in June 2011.

Anne Lane
Organising Committee Chair

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TCO and the hidden legal costs

Robert Bond of Speechly Bircham looks at the unexpected legal costs and liabilities often overlooked in TCO analysis

The Total Cost of Ownership (TCO) as a financial risk analysis tool is a popular means of recognising the full costs of a project implementation from start to end of life and is not only used by customers to assess the economics of outright purchase as against SaaS or outsourcing or Cloud computing but also by vendors who want to show the cost advantages of hosted as opposed to "exclusive" licences.
Many TCO tools, however, focus on costs that exclude or overlook legal costs and responsibilities without which it is impossible to understand the true cost of ownership!
The days of simple software coding have gone and so customers are very unlikely to have true ownership of a software product. Such ownership brings with it the legal costs of firstly commissioning development, secondly protecting intellectual property rights in the developed work, thirdly the costs of maintaining the software code and supporting the product and fourthly the legal costs of preventing breaches of IPR including piracy.

The complexity today of software solutions and the myriad of integrated third party tools in software products means that ownership by a customer is no more than a limited right of use in return for a licence fee and associated support and maintenance fees paid to the vendor. Nowadays when taking on complex software services, sophisticated customers often dictate their purchasing terms and carry out tendering processes that have a direct cost in terms of "legals". Not all software implementations go according to plan however. Delivery gets delayed, testing throws up errors, specifications and functionality change and some implementations just plain fail. In addition there are regulatory and environmental costs associated with "end of life" and disposal of waste electronic and electrical equipment. All of these issues bring additional legal costs and liabilities.

As customers look to reduce cost and outsource software by buying software as a service or outsourcing or using Cloud solutions then the legal costs for the customer increase as more due diligence is carried out on their vendors, information security audits are undertaken and data protection regulations are researched and complied with. Customers who do not recognise the upfront legal costs of due diligence and contract negotiations or choose to ignore the added value of legal intervention may well expect even more legal costs when problems have to be cured, disputes have to be settled or court costs and damages have to be met!

In exclusive licensing scenarios the legal roles and responsibilities are very much a matter for the licensor and the licensee. In "service" solutions, and in particular where offshoring and the Cloud are used then the legal risks and associated costs are dictated not only by the contract but also by jurisdictional issues, data protection and information security compliance concerns as well as reputational damage and regulatory fines when things go wrong.

Sometimes the short term TCO analysis of hosted and Cloud solutions that indicate savings can be made may actually disguise long or even near term legal costs and ramifications!

Robert Bond, Speechly Bircham LLP

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Licence terms and trade mark infringement

Recent ECJ case law on the effect of selective distribution networks and quality control

Readers of the LES NewsXChange may have missed the commentary in *les Nouvelles* earlier this year (March 2010) by two Spanish authors, María González-Gordon and Mónica Esteve Sanz, on the *Dior vs. Copad* preliminary ruling case of the ECJ (C 59/08 of 29 April 2009). This case was discussed at the LES Pan-European conference in Budapest in June 2010, and the following is a write-up of one of the presentations on the subject which was given by the author.

General legal principles concerning licence terms and trade mark infringement

In considering the interaction of licence terms, or their breach, and whether the trade mark that is being licensed might thereby be infringed, certain core principles from law need to be kept in mind.
Article 5 of the Council Directive 89/104 harmonising trade mark laws establishes the rights conferred by a trade mark: an owner can prevent a third party, unless with authorisation, from using a similar or identical mark on similar or identical goods/services (and in some cases on dissimilar goods/services) including:

- affixing the sign to the goods or to the packaging thereof;
- offering the goods, or putting them on the market or stocking them for these purposes under that sign, or offering or supplying services thereunder;
- importing or exporting the goods under the sign; or
- using the sign on business papers and in advertising.

Article 8(1) of the same Directive 89/104, which deals with licensing, states:
"A trade mark may be licensed for some or all of the goods or services for which it is registered and for the whole or part of the Member State concerned. A licence may be exclusive or non-exclusive."
What if the licence terms are breached? Established case law provides that breaching the terms of a licence – which is an agreement between private parties - does not always lead to breaching trade mark law with its statutory penalties (cf. the ECJ *Peak Holding case: C-16/03),* even if there is a breach in contract law, which has its own appropriate remedies. Nonetheless, the Directive does provide for exceptions to this principle. These are found in Article 8(2) as follows:
"The proprietor of a trade mark may invoke the rights conferred by that trade mark **against** a licensee who contravenes any provision in his licensing contract with regard to:

- its duration,
- the form covered by the registration in which the trade mark may be used,
- the scope of the goods or services for which the licence is granted,
- the territory in which the trade mark may be affixed, or
- the quality of the goods manufactured or of the services provided by the licensee."

The following discussion will focus on the last of these exceptions, and in particular the meaning that the ECJ has now given to the concept of 'quality'.

Quality control

Quality control is a fundamental requirement of a trade mark licence arrangement since it affects the essential function of a trade mark, namely indicating the source or origin of a product or service so that a customer is not confused about its identity. It is so important that in some jurisdictions lack of quality control can even lead to invalidation of the mark that is being licensed, as the mark might be considered to have become deceptive because of the discrepancies in quality. Hence it is for this reason that the legislator insists that breaching a licence agreement regarding 'quality of goods manufactured or services provided' may constitute trade mark infringement.

But in addition, lack of quality control to ensure a 'psychological environment of prestige' for luxury goods can also constitute infringement. This is one of the main points made in the ECJ ruling of *Copad v Dior,* which has unequivocally equated the *brand image* of a product with actual *quality*.

Facts of *Copad v Dior* in brief

- On 17 May 2000, Christian Dior couture SA ('Dior') concluded a trade mark licence agreement with Société industrielle de lingerie ('SIL') in respect of the manufacture and distribution of luxury corsetry goods bearing the Dior trade mark.
- SIL went into insolvency on 14 November 2001 and wished to offload Dior branded goods outside the agreed selective distribution network, which it did contrary to the express prohibition of Dior. It sold goods to Copad International ('Copad') which in turn sold to various discount stores.
- Dior brought actions against SIL and Copad for infringement of trade mark rights.

The French Court of Cassation referred three questions to the ECJ. The first was, can Art 8(2) be interpreted to include a licensee who 'contravenes a provision in the licence agreement prohibiting, on grounds of the trade mark's prestige, sale to discount stores? Put another way, does infringement occur (not just breach of contract) if there are sales outside a selective distribution network which has been approved because the distributor's guarantee in their marketing and sales methods protection of the reputation and high profile of the brand?

The actual restrictive clause in the contract that was claimed to have been breached reads as follows:

> "In order to maintain the repute and prestige of the trade mark the licensee agrees not to sell to wholesalers, buyers' collectives, discount stores, mail order companies, door-to-door sales companies or companies selling within private houses without prior written agreement from the licensor, and must make all necessary provision to ensure that that rule is complied with by its distributors or retailers."

Judgment of the Court

The Court followed the Opinion of the Advocate General – Juliane Kokott (the first female to be an Advocate General):

> Par 24-26: "The quality of luxury goods ...is not just the result of their material characteristics, but also of the allure and prestigious image which bestows on them an aura of luxury."... "Since luxury goods are high-class goods, the aura of luxury emanating from them is essential in that it enables consumers to distinguish them from similar goods. Therefore, an impairment to that aura of luxury is likely to affect the actual quality of those goods."

The Court then went on to note that a selective distribution network seeks to ensure that the goods are displayed in sales outlets in a manner that enhances their value, "especially as regards the positioning, advertising, packaging as well as business policy; it contributes to the reputation of the goods at issue and therefore to sustaining the aura of luxury surrounding them." Selling outside the network (e.g. to discount stores) *may* lead to harm – depending on volumes sold, whether sales outside the network are done only occasionally or regularly, and depending on the nature of the goods normally marketed by those other sales outlets and their marketing methods. For trade mark infringement to occur (according to Article 8(2)) there must be evidence of damage to the image of the brand, which is to be decided on the facts (cf. par. 28-34).

Concluding comments

This is the first time that the psychological or mental condition of a consumer, when faced with a brand (its 'image'), has been equated in trade mark law with the essential *quality* of a product, as according to Article 8(2) of the Directive. Such an equation leads to tricky questions concerning when an image is deemed to have been actually harmed through going outside a selective distribution network. If damage can be established, according to this ruling, that is when it is deemed that no consent has been given to use the owner's trade mark (hence infringement) despite the licensing agreement. However, even if consent cannot be deemed to have been withheld, another part of the judgment – not commented upon here – rules that the rights of the owner may not have been exhausted by the product having been put on the market if the condition of damage to reputation through resale can be established as according to

Article 7(2) (and previous case law). In other words, further sales can still be stopped even if there is no technical infringement.

Although this court judgment is an evident victory for brand owners of luxury goods, one might legitimately question whether this is in fact going one step (or at least half a step) too far in protecting luxury brands, in the disfavour of consumers who are forced to pay artificially high prices for branded goods. Another recent European judgment (*L'Oréal SA v Bellure*) likewise marked a different sort of victory for luxury brand owners with regard to comparative advertising, prompting Lord Justice Jacob (honorary president of LES Britain and Ireland), who had to implement the ruling in the Court of Appeal, to make a rare and public statement criticising the European court for being, effectively, anti-competitive vis-a-vis legitimate traders who were not luxury brand owners. Be that as it may, the *Copad vs Dior* case itself is an immensely interesting case for licensing practitioners and for anyone involved in any way with trade marks and brands. It will no doubt in time generate more commentary than it hitherto has done.

Appendix

Judgment of the Court in Case C-59/08 [23 April 2009] Copad SA v Christian Dior couture SA

1. **Article 8(2) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks, as amended by the Agreement on the European Economic Area of 2 May 1992, is to be interpreted as meaning that the proprietor of a trade mark can invoke the rights conferred by that trade mark against a licensee who contravenes a provision in a licence agreement prohibiting, on grounds of the trade mark's prestige, sales to discount stores of goods such as the ones at issue in the main proceedings, provided it has been established that that contravention, by reason of the situation prevailing in the case in the main proceedings, damages the allure and prestigious image which bestows on those goods an aura of luxury.**

2. **Article 7(1) of Directive 89/104, as amended by the Agreement on the European Economic Area, is to be interpreted as meaning that a licensee who puts goods bearing a trade mark on the market in disregard of a provision in a licence agreement does so without the consent of the proprietor of the trade mark where it is established that the provision in question is included in those listed in Article 8(2) of that Directive.**

3. **Where a licensee puts luxury goods on the market in contravention of a provision in a licence agreement but must nevertheless be considered to have done so with the consent of the proprietor of the trade mark, the proprietor of the trade mark can rely on such a provision to oppose a resale of those goods on the basis of Article 7(2) of Directive 89/104, as amended by the Agreement on the European Economic Area, only if it can be established that, taking into account the particular circumstances of the case, such resale damages the reputation of the trade mark.**

Roman Cholij, Cam Trade Marks & IP Services
Brands Committee Co-chair

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Letters of intent – a cautionary tale

The case of *RTS Flexible Systems Ltd v Molkerei Alois Müller GmbH & Co KG [2010] UKSC 14* illustrates that companies using letters of intent as a means of starting negotiations and permitting a supplier to undertake work while the parties negotiate the formal contract must remember either to extend or replace the letter of intent on expiry if the intention is for a supplier to continue work and no formal contract is in place.

Summary

- The case centred around whether there was a contract between RTS (suppliers of automated machines for packing) and Müller (producers of dairy products) after the expiry of a letter of intent and if so, on what terms the contract existed.

- The case was heard in the High Court, Court of Appeal and Supreme Court, with each court arriving at a different decision based on different rationales.
- The Court of Appeal found that no contract could exist between the parties because the contract being negotiated contained a counterparts clause that required signatures from both parties before a contract could come into effect.
- Lord Clarke in the Supreme Court reviewed the conduct of each party and found that there was a clear intention to create legal relations and a contract had come into existence based on the terms of the contract then in negotiation which contained all of the essential terms required. Lord Clarke ruled that by their conduct the parties had waived the counterparts clause.
- Lord Clarke's comments reinforce the importance for parties to agree the contract before any work begins.

Facts

RTS specialise in the supply of automated machines for food packaging and handling. RTS entered into negotiations and supplied quotations for installation of equipment at Müller's Market Drayton plant.

The parties negotiated the terms of an agreement and a letter of intent was sent by Müller stating that the full contractual terms would be based on Müller's amended form of standard terms. It was further agreed that the full terms would be finalised, agreed and signed within four weeks of the date of the letter. However, the four weeks passed and RTS continued to supply Müller with equipment and Müller continued to make payments for the work undertaken and the goods supplied. When a dispute arose between the parties, it was important to establish whether a contract existed and if so on what terms.

The High Court held that there was a contract but that it contained elements of Müller's standard terms but not all of them. The Court of Appeal found no contract existed (due to the counterparts clause).

The Supreme Court took the view that there was a contract between the parties on the basis that essentially all of the terms were agreed by 5 July 2005 and substantial works were carried out by RTS for which payments were made. In addition to this, important variations were agreed in August 2005, with no suggestion at the time that there was no contract to vary. Had there not been a contract, the parties would have been unable to agree to vary its terms.

It was considered in this case that words and conduct played a part in determining whether there was an intention to create legal relations and whether a contract had come into existence. It was clear in the case that the requisite conduct had been adopted by both parties with work being carried out by RTS for the agreed price on the agreed terms. The decision of the Supreme Court shows that the courts may take the view that conduct and intention to create legal relations are just as important as the actual signing of a contract.

As stated by Lord Clarke "the different decisions in the courts below and the arguments in this court demonstrate the perils of beginning work without agreeing the precise basis upon which it is to be done. The moral of the story is to agree first and to start work later". This is particularly true where a party wishes to include limitations and exclusions on its liability or to incorporate specific delivery deadlines on a supplier.

Michelle Kpatakpa, Speechly Bircham LLP

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The Roo's Image Rights.

Manchester United striker Wayne Rooney has rarely been out of the press in recent weeks. One reason for this was the High Court Judgment (15 July) in connection with his dispute with Proactive Sports Management over their claim for commission under an 'Image Rights Representation Agreement'. Rooney himself was only one of the defendants, the others being his wife Coleen and their respective companies. The Judgment makes fascinating reading, equal to any holiday novel. It runs to 817 paragraphs and, although the legal issues are largely prosaic, it covers a range of interesting background facts relating to Rooney's football career and remuneration, the involvement and advice given by a number of local solicitors and other professionals, and a Crown Court Trial for ‘obtaining money by deception’ and consequent FA Disciplinary Proceedings. In the end, the High Court found the contract with Proactive to be in restraint of trade and therefore unenforceable.

What is particularly notable from the licensing point of view is the commercial value, and extent of exploitation, of Rooney’s ‘Image Rights’. Licences have been granted to a range of organizations including Nike, Coca Cola, Electronic Arts, Tiger Beer, and Pringles, and there is also a rights agreement with Manchester United. Proactive claimed £3m as lost commission. Attention has also been drawn in the press to the tax implications of Image Right payments made to Premiership football players for club merchandising. Celebrity players commonly obtain substantial incomes from their clubs, additional to their salaries, as negotiated payments for Image Rights, which are often paid to off shore companies and avoid income tax. This is presumably justified on the premise that Image Rights constitute valuable intellectual assets.

But Image Rights don’t exist as such in the UK. Image Rights Agreements are essentially contractual obligations that the parties enter into for mutual self-interest. Whether it is necessary to do so is not clear in all cases, but that is rarely relevant. The celebrity agrees to permit use of his or her image for promotion and endorsement purposes, the user agrees to pay large amounts of money to the celebrity, and it is all funded by customers who happily pay premium prices for endorsed products. Some time ago, another Manchester United striker, Eric Cantona, took a flying kick at a troublesome Crystal Palace supporter. Shortly afterwards a wine appeared on the market, without his permission, branded ‘Cantona red wine – the drink with a kick in it’. Cantona threatened to give up football if something was not done about it, and the issue was settled out of court. Harrods recently threatened action against a roadside café branded ‘Hollands’ and reportedly offered to settle the matter by paying the café owner, Mr. Holland, to change the name. Legalities and practicalities are often difficult to separate.

That doesn’t mean that there are no rights attaching to celebrity endorsements. In practice, ‘Image Rights’ are based on a range of Intellectual Property protection that may apply in some, but perhaps not all cases. Trade mark registrations are always a good starting point, and there are several owned by Wayne Rooney’s company. There are multi-class registrations of the words Rooney and Wayne Rooney, as well as an indecipherable signature, and his face with the words Rooney Street Striker. Rooney Crisps, Pepperooney and Roo are however all owned elsewhere. Domain names can also be important and there is waynerooney.co.uk that was transferred to Wayne Rooney’s company after a Nominet dispute resolution procedure. Perhaps most importantly there is passing off. Celebrities used to have a hard time trying to establish that unauthorized use of their images for trade endorsement purposes constituted passing off if they did not already have a trade reputation in the same field. But time has moved on. Battles have been fought over the years in relation to real and fictional celebrities such as Uncle Mac, Abba, the Wombles, Mutant Ninja Turtles, and Kojak, and the courts are now prepared to accept the general right of celebrities to exclusivity in their images for trade endorsement purposes. The more recently evolved law of privacy and confidentiality, derived from cases involving a range of celebrities such as Oasis, Naomi Cambell, JK Rowling, Max Moseley, has provided further support for Image Rights.

Licensing is an ever changing dynamic field and the emergence, development and commercial exploitation of valuable Image Rights, irrespective of their precise legal status, provides a good example of this.

Barry Quest, iPC2-Patents

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Wham, DRAM, thank you, ma'am!

€331 million for memory-makers' cartel

Memories are made of this: €331m DRAM cartel fine is compliance program reminder

Summary

In its first 'settlement' case, the European Commission imposed a €331 million fine on ten producers of Dynamic Random Access Memory (DRAM), a computer component that is sold to major PC or server original equipment manufacturers (OEMs). DRAMs are a common model for 'dynamic' semiconductor memories for personal computers (PCs), servers and workstations.

This is the first case brought by the Commission under the new 'settlement' procedure that allows firms to claim a 10% reduction in penalties in return for admission of the factual findings of a cartel investigation.

The DRAM case is significant for the following reasons:

- The cartel was brought to the attention of the Commission by a 'leniency applicant', Micon, one of the former participants in the cartel, which reported its existence to escape being fined
- Not only does the judgment provide useful guidance on how parties can go about 'settling' a cartel decision, it also gives helpful indications of how cartel participants can seek reductions in fines in return for co-operating with the Commission and gives an idea of the levels of reductions that can be expected
- The settlement procedure has been introduced to free up the Commission's investigative resources and enable it to investigate a larger number of suspected cartels.

Lessons learnt

The high level of fines imposed illustrates the dangers of participating in cartels and infringing competition law. The settlement procedure has been introduced to reduce the length of time the Commission must spend investigating some cartels and to release its investigative resources, thereby enabling it to detect other cartels. With cartel inquiries expected to increase, it is essential for businesses to ensure that they have in place an effective compliance program and to conduct an antitrust audit of their previous practices to expose any shortcomings. Competition lawyers can assist in identifying breaches of the law and, if necessary, assisting in securing leniency from financial penalties.

Leniency, co-operation and settlement

The cartel boasted some household names. Among the ten individual producers fined were Infineon, Hynix, Samsung, Elpida, NEC, Toshiba, Mitsubishi and Nanya.

Participants put in place a secret network for the sharing of commercial information, which allowed them to set prices and quotes for purchasers of DRAMs. The cartel had operated between 1 July 1998 and 15 June 2002.

It had also functioned on a transatlantic basis. US aspects of the cartel had been penalised by the Department of Justice in 2002, which culminated not only in hefty penalties ($160 million, for example, for Infineon), but also jail sentences for a number of executives implicated in price-fixing.

The Commission's fines on individual participants varied between €1,800,000 (on Nanya), up to €145,728,000 (Samsung). All cartelists received a 10% reduction for agreeing to 'settle' the case with the Commission. Many of the fines were further reduced for parties' co-operation with the Commission's investigation. Infineon, for example, saw its fine reduced by 45%. Micon, which had notified the Commission of the cartel in the first place, was rewarded with total immunity from fines under the Commission's leniency policy.

Robert Bell and Paul Henty, Speechly Bircham LLP

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Innovation in Education & Education in Innovation

Those of us who went through their further or higher education in the 80s or earlier may be pleasantly surprised by the advances in the delivery of educational provision in the last 20 or 30 years. In my day I was a student, rather than a consumer, and my education at University took the form of listening to lectures in a cold and draughty lecture hall, furiously taking notes. The lecturer's word from on high was unchallengeable, and was occasionally supplemented by reading a recommended chapter. Interactive learning came in the form of occasional tutorials where a smaller group was invited to discuss an issue or series of questions related to the course lectures. Crammed last minute revision was often enough to secure an exam pass, as there was little in the way of on-going assessment.

Nowadays lectures are only a small part of the learning process. The advent of computers revolutionised the ability to teach large numbers of students, and the interaction between students. A typical example of an innovative delivery of educational provision is the use of a virtual learning environment ('VLE'). A VLE is a web-based integrated teaching and learning environment. Each course or module receives its own space within the VLE. Only students who are enrolled in a particular course can have access to the content, which can comprise learning materials, communications, collaboration between groups of students, assessment and additional resources like timetables. Therefore, lecturers can make their materials available to all students on the course, advise students when new materials are uploaded, and give access to fellow examiners so long as they register with the university's IT department. However, random third parties will not have access to the VLE which is protected by the usual combination of usernames and passwords.

When a student logs on he will see a list of all modules or courses he is currently enrolled on. By clicking on a particular module there will typically be a navigation screen to lead you to areas such as announcements, learning materials, communications, assessments and evaluation. Electronic files such as student assignments can be submitted via the VLE to the lecturer for assessment, and after evaluation the mark or grade is made available to the individual students.

The VLE is also a communication system including facilities for email, discussion boards for asynchronous communication and chatrooms for synchronous communication. As such it is important that terms and conditions are clear and drawn to the attention of students. These will cover the usual privacy issues and prohibitions on harassment or intimidation of other users. Nothing illegal, obscene or offensive should be posted. If contributions to discussion boards and synchronous chat are quoted by another person in a publication then due acknowledgement must be given.

Since it is now generally accepted by educationalists that interactive and participative learning produces better results than old fashioned lecturing, innovations in education such as the VLE should be welcomed by all.

Back in my student days my colleagues in science and engineering subjects were fully engaged for some 35-40 hours per week all term in lectures, tutorials and lab work. Management in all its forms was a subject which was only fit for students in the Faculties of Arts & Social Sciences, or was practised by the manager of a football team. Business subjects simply had no place in the curriculum of science and engineering degrees. Business skills were expected to be picked up, literally, on the job.

However, this has now changed. For the last few years I have contributed a lecture on the legal form of business organizations, focussing on private limited companies, to a group of 4th Year mechanical engineering students. This is one in a series of lectures provided by various professional advisers from outside the University such as patent agents, marketing experts, designers and accountants on a module entitled 'Product Design & Development'. At the beginning of the course the students are divided into groups and by the end of term each group is required to have developed an idea for a new product. On the basis of what each group has picked up from the guest lecturers, a business plan for an innovative concept is prepared. The usual areas of cashflow, protection of intellectual property, investment funding requirements, consideration of buying or leasing facilities, outsourcing, and pricing models are all covered. Each group then presents it in front of their classmates and both the course director who happens to be the Head of Mechanical Engineering and the Professor of Entrepreneurship who is one of the guest lecturers. The two professors evaluate the idea itself and how much it has been thought through to a business plan for the new product design. Each group's presentational abilities are also marked thus giving them an early opportunity to practise an elevator pitch and obtain feedback. Some of the proposed product designs are sufficiently innovative that arrangements are made for the ideas to be further investigated with external professional advisers.

It is noticeable that most universities are now expanding their efforts in knowledge transfer from solely supporting academic staff in developing spinout companies using university-owned technology to encouraging start up business set up by new graduates based on their own ideas. With the current state of the economy it must be beneficial to educate all students in innovation, entrepreneurship and other business topics as the job market is likely to remain difficult for some years to come.

All in all, the delivery of education has come a long way from the days of dozing through lectures with never a thought or care for the world outside your own specialist subject!

Derek Brown, Heriot-Watt University

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Image Rights Contracts – Good planning or foul play?

There has been a lot of focus on the reducing profitability of Premier League football clubs and in many cases, a reliance on wealthy benefactors. Whilst the recession has not had a negative impact on the revenues of Premier League clubs, failure to control wage inflation has caused profits to fall. Wages are the biggest cost for all professional football clubs, and associated with that cost is a significant tax burden; both in terms of income tax and social security contributions. Little wonder therefore that planning schemes such as the utilisation of image rights contracts are so popular amongst clubs.

With the 2010 World Cup currently taking place in South Africa, football is a popular topic of conversation across the country at present. And tax is no exception; football has never been as interesting to HM Revenue & Customs as it is at the current time.

The World's Premier League

The FA Premier League was formed in the summer of 1992, when the broadcasting deal on offer from BSkyB helped to convince the clubs of the old First Division to form a new breakaway league. Over the last eighteen years, the football now screened featuring the best players from around the World to over 200 countries in high definition, surround sound and 3D is almost unrecognisable from that first game, screened on Sunday 16 August 1992.

The finances of Premier League clubs are also unrecognisable from those which existed back in 1992. In the final season of the old First Division in 1991/92, the combined revenue of all 22 clubs in the top flight were approximately £170m[1]. Now, in the latest available figures from the 2008/09 season, the traditional 'Big 4' clubs of Manchester United, Arsenal, Chelsea and Liverpool all individually generated turnover in excess of this figure (with the first 3 generating revenues in excess of £200m for the second season in a row). Total revenues of £1,981m[2] across the 20 Premier League clubs in 2008/09 were the highest in history for any football league in the World.

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[1] From the Annual Review of Football Finance 2010 by Deloitte
[2] From the Annual Review of Football Finance 2010 by Deloitte

The success of the Premier League has been driven by broadcasting revenues, which generate around £1bn a season through the domestic and international deals negotiated by the Premier League. This has in turn enabled the clubs to pay big money to attract the best players in the World, which in turn justifies the escalating value of broadcast rights; a virtuous circle.

However, players (and their agents) are increasingly aware of the revenues generated by the clubs from broadcast deals, as well as increasing commercial and matchday revenues in recent years. Agents regularly seek to renegotiate players' contracts; when players are performing well, other clubs are always interested in signing them, which puts the current club under pressure to increase the players' salary or sell the player to another club.

The key focus for the player in most negotiations is the after tax salary – "How much will I receive in my pay packet every month" – and most well-informed agents will build tax into their negotiating position. Consequently, methods of saving income tax for players and other key employees have been on the agenda for football clubs for many years.

Image Rights Contracts (IRC's) – A major goal?

In the mid to late 1990's, the number of foreign players competing in the Premier League started to steadily increase. As the amounts of money involved in football rapidly inflated, the level of commercial focus and development of specialist legal and contractual skills also increased and attention started to focus on players' remuneration. In 1999/2000, with the top rate of income tax of 40% as well as employers National Insurance Contributions (NIC) of 12.2%, the costs to the club of paying a player say £1m per annum after tax were around £1.87m (see example at figure 1). Clearly, if a club had 10 or 15 players at the club at a similar salary level, this would be a significant cost to the club.

In addition, as players agents' sought to push up salaries, a number of clubs established rigid wage structures, with many unwilling to agree any deals in excess of the maximum salary they were willing to sanction for any player. Under these structures the players at clubs who implemented a wage ceiling were happy in their relative parity with other players; but the clubs knew that as soon as they broke the wage structure for one player, others would also demand increased deals.

So, faced with pressure to increase net salaries for players whilst staying within the parameters of established "wage ceiling" structures, the concept of IRC's became increasingly common.

An IRC enables the club to agree with the player to pay them a basic wage (which is subject to income tax and National Insurance in the normal way), as well as separately agreeing to a payment for the players image rights. Assuming that the player has previously transferred his "image rights" into a separate legal entity (typically a company) the club agrees to a payment to the image rights company to enable the club to exploit the players' image and commercial value. Such payments are typical contractual payments between two companies, therefore not subject to income tax and National Insurance. If the Image Rights Company is established offshore in a zero tax regime, the revenues generated are not subject to corporation tax, so would remain tax free until drawn out of the image rights company.

If therefore a club now wanted to pay a player £1m net of tax, then they might agree with the image rights company that they would make a payment of £500,000 per annum to utilise the players' image. In this case then, the cost to the club of paying a player £1m after tax would be around £1.435m (see figure 2), a saving for the club of £435K.

The use of an image rights company therefore enabled clubs to pay higher after tax salaries at the same gross cost to the club, or the same salary at a significantly reduced cost to the club. In either case, the club could still adhere to a wage structure in addition to an image rights payment. For the players, negotiating image rights payments generally enabled them to boost their net salary, as in the vast majority of cases the tax benefits were split between club and player.

Knowing the Technical Areas inside out

So, if reducing the players' income tax bill (and the clubs NIC costs) is as simple as setting up an image rights company and making payments to that company alongside the players' salary payments, why doesn't everyone do it? Clearly, in order to successfully implement this structure, a good deal of thought and planning is required.

The key principle underpinning an IRC is that a player has an independent image and personality which has a separate and definable value from their playing ability, and falls outside their contract of employment. The standard Premier League player contract covers "general merchandising", as well as including a section relating to promotional activity for sponsors and commercial partners. However the contract also clearly states that this clause can be overridden by a separate image contract, meaning the club would be required to contract with an image rights company in order to use the player's image. Contractually therefore, there is clearly an ability for the club to contract with a player's image rights company.

But does the image have a value? In the US, the value of a sportsperson's "name, fame, image and likeness" as separable from his value in a professional capacity was clearly established back in the 1960's in the *Kramer* case when 70% of Mr Kramer's contract value was allocated to his image. The UK courts were more uncertain around the inherent value associated with a players "image". However, in the *Sports Club & Ors v HM Inspector of Taxes* case (2000), it was held that:

> *"On the facts, the promotional and consultancy agreements had an independent value. The players had had similar agreements with other clubs and it was clear that organisations were willing to pay for the right to use the players' images in association with their products, as provided for under the agreements. Other players of a similar calibre also had such arrangements. Moreover, it was not right to describe the payments as a "smokescreen" for additional remuneration…payments were to be made under them* [the image rights contracts] *and they could have been sued upon them"*

This case made it clear that image rights companies could be established and enter into separate legal agreements with clubs. Moreover, as the payments were made by reason of separate commercial contracts to the image rights company, HMRC had no right to "lift the corporate veil". As such, it was clear that the payments were not subject to income tax (either through operation of PAYE or as benefits-in-kind). In addition, employers NIC was clearly not in point.

Following the ruling in this case, many players (and their agents) saw an opportunity to negotiate an overall package which was tax efficient for the club and the player by way of an IRC.

However, in the above case (heard in 2000), the players in question had set up an image rights company and transferred the value of the image to that company prior to becoming UK resident. Subsequently, a valuation of the image rights had taken place to substantiate the commercial payments made by the club to the image rights company. This payment was made alongside a salary payment.[3]

As the Premier League became increasingly popular, and the influx of foreign players to the UK continued, players started to consider the net salary on offer in England against the other four "Big" leagues around Europe. Figure 3 sets out the current costs to a club of paying a player a net salary of €3m per annum.

As the battle to attract top talent intensified, agents sought to negotiate ever-increasing proportions of a player's salary as an image rights payment. This is ultimately where HMRC have sought to challenge, on

[3] The value associated with an individuals "image" was again confirmed by Mr Justice Laddie in the case of *Irvine v Talksport Limited* in which Mr Irvine's assets were described as "property rights in the goodwill in his name and appearance".

the basis that the payments to image rights companies are excessive, and essentially represent disguised remuneration.

In order to ensure the best chance of success on establishing an image rights company, it is necessary to do the following:

- Ensure the club have actually considered (at Board level) the use of image rights, and their policy on entering into image rights agreements with players. To the extent that the club are happy in principle to enter into contracts with image rights companies, they should draft a proforma contract (which would be adjusted based on the quantum of payments agreed with each player's own image rights company).
- Ensure that the player has established the image rights company in an appropriate jurisdiction, and physically transferred the rights to the company. If the player is UK tax resident at the time of transfer, CGT will be payable on the value of the image (with no base cost).
- Ensure negotiations take place between the image rights company and the club in relation to the value the club place on the image rights. A business plan should be put together around how the club plan to utilise the player's image and to assist in valuing the payments to the image rights company.
- Once the negotiations have concluded, the discussions and valuation should be documented. The agent can then negotiate salary terms in addition to the payment to the image rights company. It will be clear therefore that the club has entered into two separate arrangements; one with the image rights company in order to obtain rights to the player's image, and one with the player for their services as a football player
- Finally, once the contracts are in place, the promotional activity should be monitored to determine whether the club are receiving value for money, and to inform future image rights negotiations. Annual reports should be produced for the board to review the return on such contracts.

Paying the penalty for over-aggressive tactics.

As set out above, HMRC are investigating the use and implementation of IRC's at a number of clubs. These enquiries are not limited to football, as other sports including Rugby Union, Rugby League and Cricket have all been under investigation. We understand that Premier Rugby have agreed a deal in principle with HMRC in relation to the levels of an overall package which can be attributed to payments under IRC's, and are agreeing settlements for prior periods on this basis.

HMRC are in a strong position where the image rights company has not been set up correctly; either no evidence is available to demonstrate the transfer of the image rights from the player to the image rights company, or no attempt has been made to value the payment from the club to the image rights company for use of those rights.

Clearly, when clubs are approaching the end of the transfer window and seeking to sign a number of players in a rapidly diminishing timeframe, it is difficult to work through the process set out above. But the further clubs stray from a clear and defined process in relation to the implementation of image rights contracts, the more scope there is for a successful challenge by HMRC.

Full time for Image Rights Companies?

HMRC have taken an increasingly aggressive line in relation to image rights contracts. They are seeking to recover millions of pounds in tax, interest and penalties from a number of sports clubs, but particularly the Premier League football clubs. Due to the absolute level of wages (estimated at £1.3bn across the 20 Premier League clubs in 2008/09), this could be a highly lucrative area for HMRC. They are seeking to reach a settlement on as many cases as possible.

However, clubs should not simply accept HMRC's view on IRC's. Leading tax counsel has confirmed that HMRC can only set aside the contracts between clubs and the IRC's if the arrangements are a sham; and in almost all cases, that will not be the case. The contract between the club and the IRC will have been entered into correctly, and therefore HMRC's main weapon will be around valuation of the rights. To the extent that players have sought to value the image on the transfer of rights into the image rights company, and that clubs have put together a business plan to determine the value of payments to the image rights company and continue to evaluate this plan, they have a robust starting point to defend any HMRC enquiry.

Going forward, clubs may take the view that the use of IRC's are too problematic, time consuming and risky. Other planning schemes are becoming increasingly popular; we have seen significant interest in the use of EFRBS for example, and are now working with a number of clubs in this area. As the top rate of income tax in the UK is now significantly in excess of any of our major European rivals and wage costs are the most significant costs for clubs, legitimate methods of reducing tax costs will remain popular with football clubs.

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Julian has worked with individuals in the world of sports and entertainment for 25 years, whilst Pete was previously at Deloitte and worked with many sports businesses, including Clubs, Leagues and National Governing Bodies.

Figure 1: Paying a player a net salary of £1m:

Salary payment to player		1,666,667
Employers NI contributions		203,333
Total cost to employer	1,870,000	

Note: These calculations ignore personal allowance, lower rates of tax and employees NI (only levied up to £26K per annum in 1999/2000) for simplicity. In addition, the CT deduction on the salary and NIC payments are ignored as in the majority of cases, clubs are loss-making and do not pay corporation tax.

Figure 2: Paying a player a net salary of £1m including a £500K payment to an Image Rights Company.

Salary payment to player		833,333
Payment to image rights company		500,000
Employers NI contributions		101,667
Total cost to employer	1,435,000	

Note: As in figure 1, these calculations ignore personal allowance, lower rates of tax and employees NI (only levied up to £26K per annum in 1999/2000) for simplicity. In addition, the CT deduction on the salary and NIC payments are ignored as in the majority of cases, clubs are loss-making and do not pay corporation tax.

Figure 3: Comparison of cost of paying a player €3m per annum net of tax in the "Big 5" European Leagues in 2009/10 (includes income taxes and social security contributions).

Country	**Total cost**	**Top rate of tax**
England (post 6 April 2010)	€6.9m	50%
France *	€6.6m	40%
England (pre 6 April 2010)	€5.7m	40%
Italy	€5.5m	43%

Germany	€5.4m	45%
Spain (post 1 January 2010)	€5.3m	43%
Spain (pre 1 January 2010) **	€4.0m	24%

* - Social security contributions in France are considerable, increasing the net cost.
** - Pre 1 January 2010 the so-called "Beckham Law" allowed Spanish clubs to tax non-resident players subject at a flat income tax rate of 24% for their first six years as resident in Spain. This law was repealed from 1 January 2010 (although not retrospectively, so contracts signed before that date (i.e. C Ronaldo) are still subject to the special rate.

Julian Hedley and Pete Hackleton, RSM Tenon

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Pan European injunctions for trade mark infringement – new possibilities?

There can be no doubt that it is extremely useful to be fluent in more than one European language especially when the Court of Justice or the Advocate General issues a judgment or an Opinion in a language (or several languages) other than English. Such is the case in connection with the recent Opinion of Advocate General Cruz Villalòn relating to **DHL Express v Chronopost SA** (Case C-235/09) handed down on 7 October 2010 and which, at the time of writing, exists in 12 European languages but not in English.

A press release (the 'Press Release') issued on behalf of the Court of Justice, for the benefit of the linguistically challenged, provides a useful clue as to the nature of the case whilst at the same time discouraging reliance on its accuracy!

The Press Release indicates that the case concerns the geographical scope of a 'prohibition' (i.e. an injunction) order preventing DHL Express (Frances) SAS ('DHL') from continuing its trade mark infringement activities and the scope of a 'coercive measure' (i.e. a periodic penalty payment order) and questions posed by the French Cour de Cassation following an appeal and cross appeal from the decision of the Paris Tribunal de Grande Instance (the Paris Regional Court) in 2007.

The Facts

Chronopost is the registered proprietor of both a French and a Community trade mark ('CTM') registration for the mark WEBSHIPPING, covering, amongst other things, the collection and delivery of mail. After the marks had been registered, DHL began using the same mark to describe its express mail management service offered principally via the internet. At first instance, the Paris Regional Court, acting in its capacity as a Community Trade Mark Court, held that the CTM had been infringed and issued an injunction prohibiting DHL from continuing the infringing acts and imposing a financial penalty in the event that DHL failed to comply with the injunction.

DHL appealed the finding of infringement to the Cour de Cassation. Chronopost cross-appealed arguing that the effect of the injunction and penalty had been too narrow in scope in that they were limited geographically to France and they should, it argued, be effective throughout the Community. The Cour de Cassation referred the two questions to the Court of Justice.

According to the Press Release, AG Villalòn was of the view that, in principle, a prohibition issued by a national court in its capacity as a Community trade mark court should have effect, as a matter of law, throughout the entire European Union since the Community Trade Mark Regulation conferred jurisdiction on the competent national court to declare that a CTM, which is a pan European property right, has been infringed in one or more member states in order to obviate the need for multiple proceedings in different territories. It therefore follows that the judgments of the special national courts designated Community Trade Mark Courts should be effective throughout the EU.

If, on the other hand, the infringement action is limited to a specific geographical or linguistic area the court's order is limited territorially. Thus the scope of the order should, in principle, correspond to the scope of the infringement.

The position regarding the penalty payment was, however, distinguished because, it was said, the coercive measure only becomes effective, and therefore only needs to be considered, at a later stage if and when there is an actual breach of the injunction by DHL and secondly, because the assessment of size of the penalty payment depends on the geographical scope of the infringing acts themselves and their duration. Thus if DHL were to breach the order in Germany, say, then enforcement of the penalty would be a matter for the local court to determine in accordance with national law. Thus, concluded AG Villalòn, as the coercive measure is subject to local law it should be limited territorially to the country or region in which the court making the order is based.

Comment
Although the Advocate General's Opinion is not binding on the Court of Justice it is rare for the Court to ignore the Opinion or indeed go against it. For claimants, the Opinion is a reassuring reminder, if one were needed, of the benefits of a CTM registration over a collection of national registrations which need to be enforced on a country by country basis. The ability to issue proceedings in a single Community Trade Mark Court and obtain injunctive relief throughout Europe is music to the ears of trade mark owners providing as it does a simple and cost effective means of protecting their brands. For defendants, however, the Opinion is less helpful. Once an order has been obtained in one country it can be assumed that it will be effective throughout the EU making it more important than ever to check thoroughly before new marks are adopted otherwise the consequences of infringement may be very severe indeed.

Observation
When a report of the above case appeared on one IP Blog recently, an anonymous commentator noted that the Press Release had not been quite as accurate as it might have been. The commentator suggested that in the original document AG Villalòn prefaced his remarks concerning the application of the injunction throughout the EU with a proviso that an explicit contrary disposition had not been given. As the writer of this piece is not so technically proficient in one of the 12 languages in which the case has been reported so as to check the accuracy of the Press Release or the blog comment she is not able to comment on this observation, instead she will have to wait until the Opinion is translated in English. In the meantime, to be sure that your injunction is effective through-out the EU it would be wise to ensure that the court granting the order makes it clear on the face of the order whether there are any territorial restrictions on the geographical scope of the injunction or any penalty payment.

Dr Belinda Isaac
Principal of Isaac & Co Solicitors
Co-chair of the Brands Committee

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Patents County Court Rule Changes – Seminar Report

On 27 September 2010, Duncan Curley attended (on behalf of the Laws Committee) a seminar at the UK Intellectual Property Office on the new procedural rules for the administration of intellectual property-related claims in the Patents County Court ('the PCC'). The new rules came into force shortly after the seminar, on 1 October 2010, just after the announcement of the appointment of Colin Birss QC (now His Honour Judge Birss QC) as the sitting judge in the PCC.

One of the purposes behind the reform to the PCC was to realign the court's procedures so that it would be better suited to provide a low cost forum for IP litigation and so provide access to justice for small and medium-sized entities (SMEs). The idea is that the PCC will in future be reserved for lower value, less complex claims, in any area of IP, including trademarks, designs, copyright and patents, as well as ancillary claims, such as misuse of confidential information, or breach of contract. At the seminar, Mr Justice Arnold, who has been one of the leading proponents of PCC reform over the last 2 years, outlined the other main changes to the PCC's rules of procedure, which are now codified in Part 63 of the Civil Procedure Rules (and, insofar as they relate to costs orders, Part 45).

One of the important points of difference with previous practice in the PCC will be the statements of case, that is, the initial documents that are drafted by both sides and which must now contain a concise statement of all of the facts and arguments that a party wishes to rely upon. Whilst there is a requirement for *conciseness*, these documents are intended to a large extent to substitute for the extensive evidence and legal submissions that are a feature of the later stages in IP cases brought in the High Court. Statements of case must be certified by a statement of truth signed by a person at the client with knowledge of the relevant underlying facts. The idea is to move to a procedure in the PCC that is akin to that seen in jurisdictions such as the Netherlands: essentially a 'trial on the pleadings', wherever possible. After exchange of statements of case, the court (not the parties themselves) will identify the issues that need to be determined. The court will then decide *whether* to make an order to bring additional evidence into the case, e.g. by way of experiments or experts' reports. Thus, the new rules envisage a significantly enhanced case management role for the judge in the PCC. It should be stressed that there will be no automatic entitlement of a litigant, e.g. to see documentary disclosure from the opposing party. An order will *only* be made by the court in relation to specific and identified issues and provided that the court is satisfied that the benefit of allowing further material into the case appears likely to justify the cost of producing and dealing with it.

One of the specific areas that was problematic for the PCC in its first incarnation was the question of transfer of proceedings to the High Court. This is thought likely to remain something of a judicial value judgment, even under the new rules (which are contained in paragraphs 9.1 and 9.2 in Practice Direction 30 supplementing Part 30 of the CPR), although one of the main criteria that the court will consider in deciding a transfer application is whether a party to the litigation can only afford to bring or defend the claim in the new, lower cost PCC.

To keep proceedings in the PCC truncated, the court will try and deal with interim matters (prior to the trial) on the basis of paper submissions by the parties, unless the court considers it necessary to have a hearing. If the court considers a hearing to be necessary, it will be done on the telephone or by videoconferencing. The parties can agree to have the court determine the entire claim solely on the basis of the papers, if they wish, but if the case goes to trial, cross examination will now be kept under strict control and trials in the PCC are intended to be managed so that they last no more than 2 days.

The new rules relating to costs recovery in the PCC are groundbreaking and reflect in some measure the experience in the UK Intellectual Property Office, which usually awards costs according to a predetermined scale. There is now a scale of maximum costs that may be awarded for each of the various procedural stages in a claim brought in the PCC. For example, the maximum amount that may be awarded in respect of drafting Particulars of Claim is £6,125. The maximum amount that can be awarded for preparing an expert's report is £7,500. For preparing for a determination on the papers, a party may be awarded a maximum of £5,000 in costs. Any award of costs to a successful claimant in the PCC is to be made at the conclusion of a case and will be capped at £50,000 (for claims on liability that are started after 1 October 2010). The costs cap is £25,000 for an inquiry as to damages or an account of profits. These vitally important changes mean that SMEs can undertake IP litigation in the PCC, knowing that even if they lose a case, their costs exposure is likely to be limited (there are however provisions for costs orders to be made which exceed the cap in certain limited circumstances, for instance, when there has been unreasonable behaviour or an abuse of process).

It is worth noting finally that the PCC will continue to have the power to award the full selection of remedies to successful litigants in IP cases, including injunctions and damages.

Note: it was intended that there should be an official 'Users Guide' to the Patents County Court Guide to accompany the reforms to the PCC, but this has not yet been produced. Readers of News Exchange may instead wish to download a copy of Innovate Legal's Guide to IP Litigation in the Patents County Court at: http://www.innovatelegal.co.uk/Guide_to_the_Patents_County_Court.pdf.

Dr Duncan Curley, Director, Innovate Legal
(duncancurley@innovatelegal.co.uk)

The UK IPO is now consulting on a £500,000 limit on the value of claims that are heard in the PCC. The UK IPO is particularly keen to receive submissions from stakeholders that are directed at answering the following questions:

(a) Do you agree with the proposal that the figure for the limit on the value of claims heard in the PCC should initially be set at £500,000 (excluding interest)?

(b) If you consider this figure does not set the limit correctly, what is your proposed limit and what is your reasoning and evidence for your proposal?

(c) Should you consider that £500,000 is set correctly, what is your reasoning and if possible evidence for supporting this proposal?

The Laws Committee intends to respond to the UK IPO's consultation on behalf of LES and would like to hear from any members with views on the proposed financial limit on the value of claims that are heard in the PCC and their answers to the above questions.

Members should please email Duncan Curley with their thoughts, if possible before 16 November 2010, but if not then by 30 November 2010 at the latest: duncancurley@innovatelegal.co.uk.

Full details of the consultation are available on the UK IPO's website at: http://www.ipo.gov.uk/consult-2010-pcc.htm.

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Important Practice Changes before the UK-IPO

A major change to the calculation of trade mark opposition period has recently been announced by the United Kingdom Intellectual Property Office (UK-IPO). The change has been confirmed pursuant to *UK-IPO Tribunal Practice Notice (4/2010) Opposition proceedings - Calculation of the opposition period*, published on the UK-IPO website on 30 September 2010.
Please see http://www.ipo.gov.uk/t-tpn-42010

Trade Mark Oppositions before the UK-IPO
Previously, the opposition deadline expired within two months from publication of the application in the trade mark journal although it could effectively be extended to three months provided a Notice of Threatened Opposition on form TM7a (online) was filed within the two month opposition period.

Therefore the opposition procedure before the UK-IPO meant that a Notice of Opposition (TM7) or the Notice of Threatened Opposition (TM7a) could be filed within two (2) months of the publication of the application. If a Notice of Threatened Opposition (TM7a) had been filed the opposition deadline would effectively be extended for a further month so that it would expire within three (3) months of the publication date. For example prior to the *UK-IPO Tribunal Practice Notice (4/2010)* if the application was published in the trade mark journal on 20 August 2010 the opposition deadline or deadline to file the Notice of Threatened Opposition (TM7a) would fall on 20 October 2010 and if the Notice of Threatened Opposition (TM7a) had been filed the opposition deadline would fall on 20 November 2010.

In short the change of practice means that the two (2) month opposition deadline or the deadline to file the Notice of Threatened Opposition is now calculated from the publication date meaning that the publication date is included in the calculation of the opposition period. Therefore, following the change the deadline to file a Notice of Opposition (TM7) or the Notice of Threatened Opposition (TM7a) should be filed, at the latest, on the day before the day corresponding to two months after the publication date. So, if the application was published in the trade mark journal on 8 October 2010 there would be a deadline of 7 December 2010 to file the Notice of Opposition (TM7) or the Notice of Threatened Opposition (TM7a).

Rationale behind the Changes

The rational behind the change stems from the manner in which the Trade Mark Rules 2008 are drafted. The relevant provision of the Rules provides that the opposition deadline "shall be the period of two months **beginning with** (emphasis added) the date on which the application was published". The UK-IPO have recognised that the interpretation of the term "beginning with" in earlier UK case law requires the publication date to be included in the calculation of the opposition period. The UK-IPO distinguishes any period starting "from that date" where the day of the initiating event is excluded from the calculation and the term "after that date" which is considered analogous to "from that date". Therefore the deadline to file the Notice of Defence (TM8) and Counterstatement in an opposition and a request to enter (TM9c) or extend the cooling off period (TM9e) in opposition proceedings will fall on a day which has the same number as the day in the month that the party was notified. Therefore a trade mark applicant informed on 16 October 2010 would have until 16 December 2010 to file their defence.

The Trade Mark Rules were revised substantially back in 2008 and it while some inconsistencies in drafting were addressed it is unfortunate that this one was missed. It is unlikely that this will be given any priority under the current legislative program set by the present coalition Government so I expect that we will learn to live with this irregularity.

Application of the Practice to Existing Proceedings

As a result of the practice change a number of opposition cases before the UK- IPO were technically filed late. The Registrar has said that any TM7 or TM7a which was technically filed late will be admitted up to and including 30 September 2010. The UK-IPO has very broad powers to correct any irregularity of procedure under the Trade Mark Rules 2008. As a result the UK-IPO is of the view that even though the oppositions were technically filed late because of the inaccurate guidance in the Manual of Trade Marks Practice and on the UK-IPO website those opposition cases would be considered admissible. This is because those proceedings were considered to be subject to an irregularity of procedure partly attributable to an error by the UK-IPO. For that reason the UK-IPO will not review the admissibility of any TM7/TM7a previously filed.

We have also reminded our clients that even if an opposition is not filed before the deadline there is still the option of bringing invalidation proceedings on the basis of earlier rights once the application proceeds to registration.

The position contrasted with Office for Harmonisation in the Internal Market (OHIM) in the European Union

There is of course no change to the procedure before OHIM as this affects the UK-IPO only and the opposition period before OHIM is three months from the publication date.

Practical Effects of the Change

The effect of *UK-IPO Tribunal Practice Notice (4/2010)* means that the calculation of UK opposition (and other) deadlines has now been changed with immediate effect. We have advised our clients to check all UK opposition deadlines to see if they need to be moved forward by a day - which they probably do - to ensure that any opposition deadlines are not missed.

Additionally, care should be exercised in reviewing any UK watch notice deadlines sent to clients prior to the change as they will probably be a day out. Watch notices are designed to inform brand owners of potentially conflicting marks that conflict with prior rights. In many countries there is no examination for prior rights, therefore existing registrations will not prevent others registering exactly the same mark for the same goods and/or services. A watching service is increasingly a vital part of any trade mark protection strategy particularly in the UK and before OHIM where relative grounds checks are not undertaken as part of the examination process. In most countries, it is the only way our clients receive a warning about applications that have been filed for marks that conflict with their marks. In the case of all recent UK watch notices we have advised our clients to closely review same.

Leighton Cassidy, Field Fisher Waterhouse LLP

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LES International Meetings

LES (Scotland) and LES Czech Republic one-day conference
Exploitation of Intellectual Property
October 7th, 2010
The JABOK Congress Venue, Salmovská 8, Praha 2

On October 7, 2010, a conference on Exploitation of IP took place in Prague, jointly organized by LES Czech Republic and the Scottish Committee of LES Britain and Ireland. Speakers from both LES chapters covered IP creation, identification, protection and exploitation, as well as specific examples of successful IP commercialization between academic and commercial sphere. Special thanks go to Fiona Nicholson for first coming up with the idea of this joint event.

Speakers on behalf of LES B&I
(Philip Hannay, Stephen Robertson & William Mitchell)

Speakers and the Chairman of the meeting with the organisers

Photographs kindly provided by Philip Hannay

LES Courses: The Basics of IP and licensing, IP/IA Business Strategy, Deal Valuation and Negotiation and Living with the Deal
Amman, Jordan

In September Christi Mitchell went over to Amman in Jordan to teach the LES courses: The Basics of IP and licensing, IP/IA Business Strategy, Deal Valuation and Negotiation and Living with the Deal. Christi was helped by Co-Trainer Ms Hams Madanat and the course was organised by Renad A. Noubani,

Manager LES- Arab Countries. The students came from local universities, start-up businesses and government departments.
The sun shone, the food was fantastic and the students were great fun and brilliant pupils.

Christi and the team in Amman, Jordan

LES B&I Committee News…

Brand Committee News

Seminars

We are very much looking forward to our seminar, organised together with the Institute of Trade Mark Attorneys (ITMA), at the Royal Institute of British Architects in London on November 16th which promises to be a memorable event. Some great speakers are lined up to take the audience through both the theory and the practicalities, with case studies, on brand and image licensing. For example, we have Tom Howgate who has many years of industry experience in sports licensing and merchandising, and who has headed up the licensing operations of a number of the world's biggest football clubs, including Manchester United, FC Barcelona, and Juventus. He'll share his experiences of building up the Manchester United brand. Tim Collins, Head of Commercial Development for Children's Entertainment at DC Thomson, which produces comic publications such as *The Beano*, will share his insights in an interactive session into how character merchandising works. And ITMA will provide with its expert speakers, including Simon Chalkely who is also an LES member, lots of do's and don'ts about licensing trade marks.

Roman Cholij will also be attending the leadership meeting of the International Trademarks Association (INTA) in Phoenix Arizona a few days earlier. A pre-warning if you see a bleary eyed co-chair on the 16th!
Look out also for news of our next seminar, planned for February 2011, the organising of which is headed by co-chair Belinda Isaac. Details will follow in due course.
New committee member

The Brands committee are delighted to welcome a new member to join Belinda Isaac, Roman Cholij and David Abrahams – Colin Sawdy, solicitor, from Edwards Angell Palmer & Dodge. Colin has a wealth of practical experience in trade mark licensing dealing with domestic and international clients in a variety of sectors. Colin will introduce himself in a subsequent edition of NewsXChange.

Roman Cholij, Cam Trade Marks & IP Services
Brands Committee Co-chair

Future Meetings…

12th November 2010
LES Ireland Meeting
Commercialisation of IP from Scottish Universities
Mason Hayes+Curran, Dublin 4
Please visit www.les-bi.org for further information and registration details

16th November 2010
Joint LES/ITMA Seminar
An update on legal and practical issues in licensing IP Rights
Royal Institute of British Architects, London
Please visit www.les-bi.org for further information and registration details

23rd November 2010
North West Group Meeting
Parallel Imports - the Euro defences
Beluga, Manchester
Please visit www.les-bi.org for further information and registration details

25th November 2010
Joint LES/ NESTA Meeting
NESTA Offices, London
Please visit www.les-bi.org for further information and registration details

9th February 2010
LES (Scotland) Burns Supper
The Grand Central Hotel, Glasgow
Further details will be available shortly

Members Page

New Members

Mr Nicholas Lipinski, Newton Media Ltd
Nicolas is interested in the following business sectors:
Licensing and other intellectual property matters

Miss Edwina Ellis, MelbourneIT Ltd
Edwina is interested in the following business sectors:
Biotechnology, Pharmaceutical, computer software

Dr Frank Craig, Sphere Fluidics Ltd
Frank is interested in the following business sectors:
Biotechnology, Pharmaceutical, Bioenergy

Mr David Steynor, ClearviewIP Ltd
David is interested in the following business sectors:
Biotechnology, Transportation, Telecommunications

Miss Alexandra Causer, Health Protection Agency
Alexandra is interested in the following business sectors:
Environmental, Chemical, polymers & Associated industries & radiation

Mr Stephen Tony Berry, Berry Davies LLP
Stephen is interested in the following business sectors:
Consumer Goods, Chemical, polymers & Associated industries and energy

Dr Zlatka Stoeva, DZP Technologies Ltd
Zaltka is interested in the following business sectors:
Consumer Goods, Electronics, Chemical Polymers

Mrs Catherine Bethall, University of Reading
Catherine is interested in the following business sectors:
Electronics, University, Environmental

Ms Lisa Hearty, Queen Mary University of London
Lisa is interested in the following business sectors: *Healthcare, Environmental, Animal, plant, food science, Biotechnology, Pharmaceutical, Green Chemistry, Chemical, polymers and associated industries, University, Bio-based industrial products, Renewable energy, Bioenergy & Energy*

Members on the Move >>>

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BIA Board appointments

The BioIndustry Association (BIA) has elected Dominique Kleyn to its Board of Directors at its Annual General Meeting. In addition Clive Dix, Andrew Heath and Alan Marchington have been re-elected. The new Board members will serve from 1 January 2011.
Tim Edwards, BIA Chairman, said:
"I would like to welcome our new Board member and congratulate those that have been re-elected. They will continue to bring broad perspectives and expertise to complement the already considerable talents of the BIA Board. I believe there is a real opportunity to establish the BIA at the centre of the global life sciences industry, and look forward to working with the new and existing Board members towards this goal.

"I also extend my thanks to those Board members who will stand down at the end of the year for the time and effort which they have contributed to supporting and improving the UK bioscience environment."

BioIndustry Association

Established in 1989, the BIA (BioIndustry Association) exists to encourage and promote a financially sound and thriving bioscience sector within the UK economy and concentrates its efforts on emerging enterprise and the related interests of companies with whom such enterprise trades.
With over 250 members, the BIA supports a wide range of sectors, majoring on the human health benefits of the technology and represents the interests of these innovative companies to a broad section of stakeholders from patient groups to politicians, advancing its members interests both within the UK and internationally to create a healthy UK bioscience sector which benefits society. For further information, please go to: www.bioindustry.org

LICENSING EXECUTIVES SOCIETY
BRITAIN AND IRELAND
"Advancing the Business of Intellectual Property Globally"

Moving Company/ Changing Address?

Please remember to tell our administrator, Jennifer Kirkcaldy, if you change your office address so that we can continue to send you LES information.

LES Administrative Office,
Northern Networking Events Ltd
Glenfinnan Suite
Braeview House
9-11 Braeview Place
East Kilbride
Glasgow
G74 3XH

Please also remember to change your contact details in the membership directory on the LESI website (www.lesi.org). As a service to our members the editor will print any change of company and location in newsXchange™. Please contact Jennifer Kirkcaldy, les@northernnetworking.co.uk

Membership

Enquiries should be addressed to Jennifer Kirkcaldy at the LES Administrative Office:

Tel: +44 (0) 1355 244966 Fax: +44 (0) 1355 249959

Email: les@northernnetworking.co.uk

The membership application form may also be found on the LES B&I website: www.les-bi.org