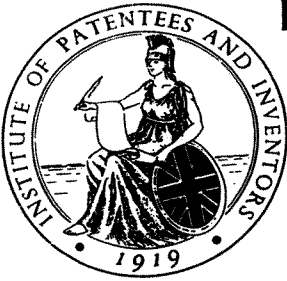


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# INSTITUTE OF PATENTEES & INVENTORS

- Over 86 years of Service to Inventors -

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The Review Team  
Gowers Review of Intellectual Property  
Zone 4/E1  
HM Treasury  
1 Horse Guards Road  
London  
SW1A 2HQ

19<sup>th</sup> April 2006

Dear Sirs,

**Re: Gowers Review of Intellectual Property**

We understand that you would like responses to some or all of the issues raised in the letter from Mr. Andrew Gowers as published on the Review website. We comment as follows.

1. It appears to us that many of the questions are directed towards large firms, universities and colleges. As such we would ask that the Review Team bear in mind SMEs and individual entrepreneurs. The considerations for individual entrepreneurs and SMEs are a world apart from the considerations applicable for large industrial concerns, universities and colleges. Large industrial concerns have no problems with finance. Universities and colleges are often financed by government-run schemes. SMEs and individual entrepreneurs have no finance and this is the crucial difference.
2. In your publication, you refer to firms increasingly appearing to be innovating collaboratively, and using cross-licensing agreements and patent pools to share their IP with other firms. These facilities are simply not used and do not appear to be available to individual entrepreneurs and SMEs, especially micro-SMEs.

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3. In your publication, you refer to the increasing complexity of high-tech products and of scientific research leading to problems, with firms often needing to use large numbers of existing patents to develop a new product. This is a feature of large chemical firms but it is not one that occurs at all for individual entrepreneurs and many SMEs. More specifically, individual entrepreneurs and many SMEs simply cannot afford the luxury of having large numbers of patents on new products.
4. In your publication, you also ask how well individuals and other organisations are able to exchange and trade IP. For individuals and micro-SMEs, we are not sure if the magnitude of the difficulty of licensing/exchanging/trading IPI is fully appreciated. The difficulty is so great that nothing happens at all in virtually all cases.
5. You ask how easy it is to find out about obtaining IP rights. For many SMEs and the majority of individual entrepreneurs, this seems to be quite difficult. We are the only long established national organisation representing SMEs and individual entrepreneurs. We get very many calls from SMEs and individual entrepreneurs each week needing information on how to obtain IP rights. We have to say that the advice provided by the UK Patent Office and especially the Private Applicants Unit is more than first class. There would, in our opinion, be an added benefit in providing a route by which individuals could consider the advice that they have obtained and then check out their proposed course of action as determined their understanding of the advice obtained. Often their understanding of the advice is incorrect and their proposed course of action is dangerous. At the moment, we provide much of the further advice on a pro-bono basis.
6. You ask if there are any specific barriers to licensing IP rights for SMEs or individuals, for example barriers to entry to patent pools. With respect, the question appears to us to be extremely naïve. Individuals and small businesses have a widely agreed failure rate of 96 – 98% in licensing their IP rights. It is thus not so much a question of isolating specific barriers, as trying to work out a solution to the entire problem insofar as it affects small businesses and individuals. We emphasise that licensing of IP rights by small businesses or individuals is a completely and utterly different manner to licensing IP rights by large chemical and electrical firms, and universities and colleges.
7. You ask the extent of use of IP Litigation Insurance. The majority of our members prefer to use IP litigation insurance. Many of our members do however find the cost of the IP litigation insurance prohibitive.

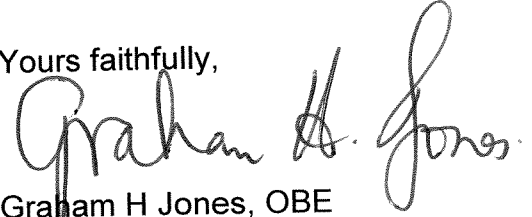
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8. You ask how well the national system for awarding IP performs, as administered by the UK Patent Office. In our opinion, the administration by the UK Patent Office is more than excellent. It is possible to contact the Patent Office and obtain a well informed opinion on virtually any question on any area within IP. Not only is the opinion informed, but it is given in a most friendly, helpful and pleasant manner. International and European systems have improved but the UK Patent Office in our opinion remains vastly superior in its efforts to any other organisation throughout the world.
9. You ask if there are specific barriers to obtaining IP rights for small businesses or individuals. The answer is basically one of cost. Many small business and individuals cannot afford professional help. If they wish to do things themselves, they are very ably assisted by the UK Patent Office. However, the UK Patent Office cannot assist beyond the first year of filing a UK patent application. This is the time when the filing of foreign patent applications needs to be undertaken and professional help is essential. At this stage, the small businesses and individuals are cast adrift.
10. In conducting the Review, we wonder if there is a tendency to concentrate on high-tech inventions. High-tech inventions are paramount in the chemical and electronic industries, and we appreciate that they affect our everyday lives. We do however draw attention to the fact that equally as much money can often be generated by low-tech or medium-tech inventions. You ask for proof and we enclose some letters from USA patent attorneys in support.
11. In the Review, we wonder if there might is perhaps be a tendency to concentrate on large existing organisations such as large firms and universities, and to forget that the majority of firms start as one or two individuals. In the interests of creating future business, we believe that individuals need more support so that they can create more business opportunities. The enclosed letters from the USA attorneys support this view. Most SMEs start from individual entrepreneurs. Most large companies start as SMEs. We draw attention to the enclosed page 21 of the Labour Party Manifesto for Enterprise, Skills and Science, and the part where it says that the UK has a lower start-up rate than the USA, and that the UK needs to do more to encourage individuals to start new businesses and help others thrive in today's competitive economy. The Institute of Patentees and Inventors tries to do its part and believes that a greater understanding of the problems facing individual entrepreneurs and micro-SMEs is a basic necessity before effective action can be taken to increase UK business start-ups.

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We remain available for providing any further information that may be required.

Yours faithfully,

A handwritten signature in black ink that reads "Graham H. Jones". The signature is written in a cursive style with a large, looping initial 'G' and a distinct 'H'.

Graham H Jones, OBE  
Vice Chairman, IPI  
European Patent Attorney

Enc.

October 29, 2004

TO WHOM IT MAY CONCERN

**Background**

Our Intellectual Property practice is a long established USA practice. Our clients are involved in very diverse industries, and through the entire range of hi-tech to low-tech industries.

For many years we have worked with Graham Jones to implement the Intellectual Property requirements of our clients in the UK and Mainland Europe.

On both sides of the Atlantic there is a justified perception by some of the population that previously secure jobs are moving to countries with a lower cost base. Simultaneously, the degree of sophistication of imported products from countries previously associated with commodity and utility products continues to increase.

We believe a strong approach on both sides of the Atlantic to Intellectual Property protection must be a significant and very cost effective strategy for increasing the competitiveness of USA and British businesses, aiding them to create and sustain value added jobs, and thereby economic prosperity and growth.

Below we have expanded on this theme.

**A. Encouraging Economic Prosperity and Growth**

1. In our experience, the technical content of inventions is not necessarily a deciding factor in the commercial success of those inventions. Low-tech, medium-tech and hi-tech inventions all have substantially the same chance of commercial success. Much depends upon the business acumen and degree of entrepreneurship exhibited by the individual or business concerned. This is especially so in start-up situations. Products which may at first sight appear mundane and low-tech can equally well contribute to the success of our clients in building significant enterprises with solid foundations, as can medium-tech and high-tech products.

2. It should be borne in mind that the diversity of educational standards mitigates against the majority of the population working in hi-tech industries. Whilst many hi-tech companies have a high profile, it is frequently medium and low-tech businesses that employ more people on a long term sustainable basis.

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Page 2

3. Good intellectual property protection is vital to protect shareholders' investments. This is particularly important for publicly-traded companies but even privately held companies can significantly enhance shareholder value with good intellectual property protection. For both public and private companies, intellectual property protection is the best defense strategy against copying and losing the benefits of research investment.

**B. Co-operation and Understanding Between USA and UK**

1. Our clients protect their Intellectual Property in Europe, usually by way of filing European patent applications and/or European Community trademarks. European patent applications and/or the European Community trademarks can be obtained by us through any one of the European countries. We prefer to use the UK because of the existing cooperation between our countries, and also because we both have English as our mother tongue. We believe that these factors also encourage our clients to use the UK as their manufacturing/business base in Europe.

2. The USA is the largest economy in the World and as such the prime English language export territory for UK firms. A proactive approach to Intellectual Property protection by UK businesses gives them a solid foundation for export success to the USA.

3. We fully agree with Graham Jones' promotion of Intellectual Property protection as a cornerstone to job creation, entrepreneurial growth, and improved value of businesses.

Very truly yours,

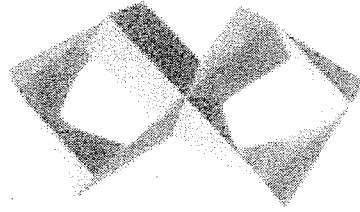


Brian M. Dingman, Esq.

BMD/clh

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ANNE C. AVELLONE  
Patent Attorney

DAVID M. GESHWIND  
Patent Agent

January 5, 2005

Graham Jones and Company  
77 Beaconsfield Road  
Blackheath, London SE3 7LG — England

Dear Mr. Jones:

I am a US Patent Agent in the above firm. In addition, I have been an inventor and entrepreneur for more than 20 years and have 10 high-tech patents to my name. I have other patents — both high-tech and low-tech — pending.

To date, the most profitable invention I have made is a patent-pending invention that is decidedly low-tech. It is a board game made of cardboard, and plastic (or wooden) tiles. It took less than \$1,000 to prototype and market the game to fruition, as a license to a manufacturer/distributor. My estimate is that for approximately \$50,000 we could have set up a business to successfully retail this product on our own.

Most of my high-tech inventions require on the order of \$250,000 to prototype, and millions to commercialize.

While the high-tech inventions often have a theoretical potential to return far more than low-tech inventions, the chance of success vs. capital requirements are such that the expected return on investment is not necessarily better.

In terms of return on investment — for either venture capital or government support — it is my belief that, for example, with \$250,000 to spend, setting up 5 fully functional small businesses might be preferable to prototyping a single high-tech invention.

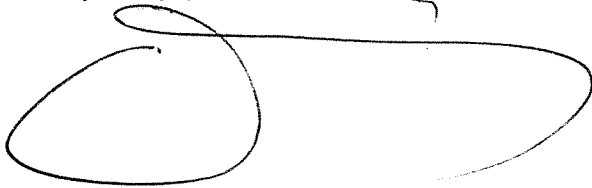
With the relative financial ease of entering the market with a 'knock-off' low-tech product — especially with off-shore manufacturing — protection of (at least) the home market with a patent can be very important with low-tech inventions.

In my opinion many, if not most, high-tech patents involve improvements to circuits, algorithms or processes which, while they are sufficiently novel to obtain a patent, can be engineered around. They are, consequently, of little practical value. While it is no guarantee that a low-tech patent will be of practical value, there is a far greater chance that such a determination can be made by reviewing the patent document or a low-cost prototype.

Because of the high cost of development, high-tech inventions generally require very large markets (e.g., PCs, CDs, DVDs) or highly specialized high-cost ones (e.g., medical technology, military). With low-tech inventions, smaller markets for less expensive products can be pursued to the benefit of both the public and the producer.

For the above reasons, I believe that low-tech inventions, and patents thereon, should not be short changed compared to high-tech.

Very truly yours,

A handwritten signature in black ink, consisting of a large, stylized loop on the left and a long, sweeping horizontal stroke extending to the right.

David M. Geshwind  
Registered Patent Agent

promote joint working and bring local inspection and enforcement agencies together.

An effective planning regime protects the environment while promoting economic growth – and does so quickly and responsively. If re-elected, we will ensure that our planning system continues to protect the sustainability of local and regional environments – and we will continue to develop a regime which is simpler, faster and more responsive to local and business needs including the need to create jobs and regenerate our cities.

#### **A better environment for small business to grow**

The success of the UK's small businesses and enterprises is a testament to Britain's hard-working entrepreneurs and business owners. Some 99 per cent of all businesses in the UK are micro or small businesses, and improving the business environment so more of them thrive and grow will bring great benefits. Small firms employ 12.6 million people and account for 58 per cent of private sector employment.

There are now 1,000 businesses starting up every day with Labour, with the lowest failure rates for over a decade.

Labour has created the right economic environment in which small businesses can start up and succeed. We have cut small business tax from 23 pence to 19 pence. We have reduced the administrative costs of tax for small business, cutting the tax return for 500,000 of the

smallest businesses, and rolled out options for paying and managing VAT online so small businesses only provide information once to the amalgamated Inland Revenue and HM Customs and Excise. Last year, the Small Business Service assisted more than 600,000 pre-start and existing small businesses and helped over 4,000 companies to innovate with almost £250 million of R&D grants (formerly SMART awards).

But we still have a lower start-up rate than the USA. We need to do more to encourage individuals to start new businesses and help others thrive in today's competitive economy.



Working with the RDAs we will establish a programme for high-growth business coaching to help budding entrepreneurs and small companies with growth potential to access the focused and intensive management support and coaching they need. We propose an e-learning based model to train the next generation of entrepreneurs with Business Link working with the Learning and Skills Councils to help small businesses find accredited local higher education providers. Our aim is to help first-time entrepreneurs get off on the right foot by maximising their chance of commercial success, and introducing SMEs to appropriate government support at the earliest possible stage.

Some of the most successful and entrepreneurial businesses in our economy are those run by ethnic