

Gowers Review of Intellectual Property Evidence on behalf of Johnson Matthey PLC

Introduction

Johnson Matthey is a FTSE 100 British-headquartered multinational chemical manufacturing company. It has 7,500 employees, of whom the majority are located in the UK. Its business is almost exclusively business-to-business. Johnson Matthey has an experienced in-house team of patent attorneys and administrators. The person giving this evidence has some 35-years experience in representing clients in protecting and exerting intellectual property and as well as 18 years managing Johnson Matthey's IP function. He has also been employed in Switzerland (1969-73) and in UK's nationalised coal industry (1975-1987). It is stressed that the views are those of the author, and do not represent an official view of Johnson Matthey.

It is noted that the period for submitting evidence is extremely short, and the scope of questions posed is broad. The following views concentrate on the author's personal views from extensive experience in industry and with familiarity with issues affecting small enterprises.

Views and Evidence

It is agreed that, broadly, the UK IP system strikes a satisfactory balance between consumers and rights-holders.

General Questions

1. How IPR are obtained

The complexities of law, administration and precedent are such that individuals require very expensive professional assistance to get adequate protection. This is particularly the case for overseas applications, for example where translations are required. This is undoubtedly a problem for SMEs and academic institutions. (See comments below on Utility Models)

In contrast, copyright does not require any formal registration. Perhaps this is one reason for the general public not to value copyright.

2. How IPR are used

As far as Johnson Matthey is concerned, IP is highly desirable, but is not the exclusive tool in bringing products to market. The principal use of IPR for the various businesses within JM is to establish freedom to use JM's own investments in R&D (which was also the case with the National Coal Board). Other reasons such as obtaining exclusivity, establishing a lead time over competition and generating licensing income are also important.

Johnson Matthey uses DTI and EU-funding in pre-competitive R&D.

I do not believe that data on patents etc are of much use in assessing innovation. The complexities of interlocking rights, understanding what a patent actually protects and surrounding issues, means that even the most skilled analysis is flawed. Having said that, internally we do look both at “patent landscapes” in assessing areas for R&D. We also review patents of our competitors to detect trends.

I have certainly been aware of IPR being used defensively, to create a wall of patents around a really important invention. This discourages “me too” developments, but of course the basic patent is time-limited, so that the competitor is not disadvantaged beyond being unable to patent certain closely related developments. In any event, each additional patent has to meet the novelty and inventive step requirements. I believe this to be legitimate. I have been aware of certain patenting being purely to misguide competitors, but again this may be only part of a wider business deception plan.

3 How IP is licensed and exchanged

I am not aware of “patent pools” being used in the chemical industry, although I understand that they are common in electronics, because of the very different industry structure. Our experience is that a rights holder cannot be forced to license rights, or may ask unrealistic fees. Accordingly, I believe that the compulsory licensing provisions could be strengthened to make them more accessible.

4 How IP is challenged and enforced

Certainly, costs and, as importantly, uncertainties, in IP litigation are barriers to enforcing IPR using the courts. For that reason, and company culture, we prefer to negotiate a settlement. We would not contemplate using the UKPO opinion service until its usefulness has been proven. We have suggested using mediation during a major dispute, but the other side did not wish to do so.

Specific Issues – Copyright

Although copyright does not impinge significantly on our business (apart from occasional copying of our brochures and images), I feel strongly on a personal level that the copyright term is ridiculously long for an unregistered right. In comparison, patent rights, whose ownership and scope are relatively easy to determine, last only 20 years. The US-led entertainment copyright lobby has had far too much influence. I consider it likely that most copyright owners make much more money than patent owners, and authors make more money than inventors.

Also, individuals have difficulty grasping that complex and multi-layered copyright law provides the owner(s) with many different rights, and they feel that copyright owners (often the big, profitable recording/film companies) abuse these rights. As long as this feeling of “bad law” prevails, individuals will ignore or try to evade it. There is another issue, in that the public sees that CD and DVD reproduction is now so cheap that paying “full price” is difficult for them to justify. Also, they see newspapers etc giving away free CDs and DVDs, thus devaluing the concept of copyright.

In scientific publishing, where I advise company authors, the publishers usually insist upon assignment of copyright. I struggle to retain some rights for both the company and the authors.

There are inadequate exceptions for fair use. In particular, although there are experimental exceptions in patent law, there is currently no equivalent in copyright law. Thus our scientists are now required to pay significant copyright fees to get a copy of a paper to assist in their research.

The problem of orphan works would be solved if there were one or both of a much shorter copyright term and a compulsory licence provision.

There is undoubtedly a fundamental problem in the advances of technology, especially in digital reproduction and ever new methods of reproduction and using works. This is a speeding rollercoaster, and it is impossible to predict the future. Thus, legislation will always trail by one or even two decades. I believe that a “bottom-up” review of copyright and fundamentally different solution will be needed, that balances the needs of society better with the needs of the author and balances the needs of the author with those of the publisher. The publisher seems to have immense power, but it was always thus. A suggestion is that an author may be permitted to claim if the work has been of exceptional benefit to the publisher (cf patent law).

Patents – utility models

I have used utility model protection in several instances overseas (Germany, Japan and China). I am now convinced that they have a proper place for the rapid, inexpensive protection of certain developments. I would like to see it introduced in the UK. Also, it could be of real use to the private inventor and SME.

Trademarks

Johnson Matthey uses both the European Community trademark registration, as well as the Madrid system. A UK-only registration is only contemplated for truly local products. Whilst we have experienced few problems with the UK system, I think that UK should adopt the OHIM-type of examination.

Finally –

UK law lacks any effective Unfair Competition law, which I believe could usefully complement the IP laws. It is time that the UK studied the benefits of this type of law, which works effectively in many countries.

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