

Gowers Review of Intellectual Property

Evidence from University of Leicester

Thank you for inviting us to submit evidence to the review. We understand that this will examine whether improvements could be made to the UK's existing IP framework in the context of rapid technological change and globalisation.

Much of our active interest and involvement in IP is focussed on the protection of inventions and materials arising from the University's academic research and teaching activity, and matters of copyright relating to our Library and information services.

Answers to general questions.

1. How IP is awarded
 - a) There are barriers to obtaining IP rights resulting from system complexity. There is a strong case for greater standardisation and consolidation of procedures and processes across different countries which currently insist on separate applications and examinations.
 - b) Finding out about obtaining IP rights is relatively easy in the UK – via patent office and UK Government web sites. Patent firms, patent lawyers and the patent office itself run useful and plentiful courses and seminars.
 - c) The cost of patent and legal advice and involvement is very high and a barrier to obtaining UK IP rights.
 - d) n/a
 - e) UK Patent Office fee structure does not represent a problem.
 - f) Lack of trust in the system is a barrier as the legal cost of defending exceeds cost of protection.
 - g) Cost is the principal barrier to obtaining IP rights.
 - h) Time and cost are the principal barriers to obtaining IP rights for small businesses, and the recognition that they would likely lose any court action brought against a larger corporation.
 - i) EU system for awarding IP is too complex and costly.

2. How is IP used
 - a) Patents, Copyrights – for protection and income
 - b) n/a
 - c) n/a
 - d) Problems raising finance against intangibles – VC need for detailed due diligence, cost, freedom to operate, uncertainty of ultimate grant.
 - e) n/a
 - f) The UK IP system is not a promoter of innovation *per se* – rather it is an optional outcome of the innovation process.
 - g) The University of Leicester uses methods used by Government to encourage innovation as well as other support measures. Particularly grants, and other financial support.
 - h) Use of patents and other forms of IP as a metric for innovation is common, but not all innovation necessarily leads to protected IP and in certain circumstances a single innovation could lead to several separate patents. IP is an indicator of the level of innovative activity but not an absolute measure.
 - i) No
 - j) Yes, anecdotally. It has a role as a legitimate and understandable component part of a product marketing strategy.

3. How IP is licensed and exchanged
 - a) Negotiating licences to use other's IP is not normally a simple process. This can be time consuming, costly and with no guarantee of an acceptable outcome.
 - b) Mechanisms for finding licensing partners - direct approaches, licensing events, database promotion and database searches, specialist brokers.
 - c) Ease of use of other's IP for research purposes: access to licensed IP for research and teaching is normally embodied in the terms of the licence; access to third party IP is subject to identification and negotiation, which can be time consuming and costly.
 - d) Specific barriers to licensing – unacceptable warranties, limited fields or territories, securing access to pipeline technologies, terms generally inhibiting freedom to operate, unrealistic inflexible time limits for achieving milestones. Barriers on grounds of cost are subject to negotiation process and realism of licensor.
 - e) The most prominent specific barrier to licensing IP in the university sector is the ability to identify suitable licensees.
 - f) No

- g) Barriers to licensing IP to small companies - company capability, corporate credibility/sustainability, ability to deliver, ability to pay, negotiating skills, cost of negotiation, international capability.
 - h) Barriers to international trade in IP - language, culture, differences in legal and patent regimes.
 - i) We do not make use of "licence of right" provisions. We are not familiar with them.
 - j) No comment
 - k) No experience of compulsory licence provisions.
4. How IP is challenged and enforced.
- a) Problems enforcing IP - cost of policing, cost of legal advice/litigation.
 - b) Yes. Cost is a major issue.
 - c) Other resolution methods : these and similar alternatives to litigation are built into our licence agreements as the method of first resort.
 - d) We do not use IP litigation insurance. Decision made on basis of cost/benefit assessment.
 - e) Barriers are cost of suitable coverage.
 - f) For small companies the main barrier to challenging and enforcement is powerlessness, and cost.
 - g) Risk of litigation is a consideration and we endeavour to be diligent in our assessment of the risk and the attention to detail in evaluating, drawing up and entering into any licensing agreements. Establishing Freedom to Operate is an important consideration and expensive to obtain.
 - h) Successful challenge and enforcement requires extensive legal search and possible litigation. This is outwith the resources of most small companies.

SPECIFIC ISSUES

Patent – Utility Models.

The German "utility" approach (presumably cheaper and faster as well as simpler) seems an interesting one

General comments observations

- Standardisation across Europe would be helpful
- Eliminate need for translation
- Importance of IP and strong IP portfolio as criterion for external investment into high growth early stage companies
- High cost and affordability of establishing an IP portfolio for early stage company, particularly the cost of securing wide geographical coverage before full technical and commercial potential has been established.

Copyright Issues

We agree that there needs to be a balance between the copy-right holders and consumers, and are concerned that 'fair use' in library terms is preserved. While there may be concern from rights-holders about the potential for illegitimate use of digital content, we would contend that digital rights management technologies have the potential to 'lock down' access to copyright material far more effectively than in the print environment.

To attempt to redress what can be seen as an imbalance between consumers and copy-right holders in the scholarly environment, open access publishing and the use of creative commons licences are becoming more prevalent. Indeed the University is making full use of open access agreements with publishers to populate the Leicester Research Archive with full texts of research outputs from the University.