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THE INTERNATIONAL FEDERATION OF INDUSTRIAL PROPERTY ATTORNEYS  
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Dear Mr Gowers

**GOWERS REVIEW OF INTELLECTUAL PROPERTY**

I was pleased to have the opportunity of meeting you on 28 February 2006 and appreciated being invited by you to the Treasury along with the Presidents of CIPA, ITMA and TMPDF.

I am now writing on behalf FICPI-UK in response to your call for evidence.

I would like to start with general remarks. Basically it is our view that, as a result of careful study and modification over the years, with input from many parties, the UK now has an Intellectual Property system which is sophisticated, quick and cost effective. It is much admired by those in other countries. We do not consider that any major changes are required.

The modern, quick and relatively inexpensive system is due in no small part to the way in which the Patent Office was led by Alison Brimelow CBE, when she was Chief Executive Officer, with the assistance of her then Director of Patents, Ron Marchant. We were very pleased when Ron Marchant succeeded Alison Brimelow as Chief Executive of the Patent office because we knew that the good work would continue.

On the European front, it is much to be welcomed that Alison Brimelow will take over the presidency of the European Patent Office in a little over a year's time.

I will now turn to some specific issues. Where I do not comment on questions that you have posed, this is because we feel that either that these questions are more appropriate to others, such as users of the system, or else we have no specific comment to make.

Much legislation seeks to regulate the rights between just two parties and can therefore be relatively straight forward. However, IP legislation seeks to regulate rights which affect many parties, including R & D companies, competitors, employee inventors, independent inventors, the Government, customers and members of the public. Given this, it is surprising that present IP legislation is not more complex. We are of the opinion that the present legislation strikes a very good balance.

**System Complexity**

As mentioned above, the system is surprisingly un-complex, given the job that it has to do. It would be unwise to seek to "simplify" the system simply as an end in itself, because unexpected adverse consequences could arise in other areas.

### **What Could Be Done to Improve Awareness and Promote Innovation?**

A lot has been done in recent years, including a very successful series of Road Shows by the Patent Office, and information packs are also available for schools. Perhaps more could be done to assist Universities in promoting Intellectual Property to under-graduates and particularly to under-graduates studying technical subjects.

### **Are There Any Barriers to Obtaining IP Rights In Certain Sectors?**

There are some barriers in areas such as software, business methods and methods of treatment, but the law appears to be developing in our preferred direction. We believe that generally, any ideas which are novel and inventive should be susceptible of patent protection and that moral or ethical issues should be determined not by patent law but by other national legislation in countries that choose to take action.

### **How Well Does the National System, Administered by the Patent Office, Perform?**

Very well. The Office also does well with the decreasingly used design registration system, and the trade mark examination system is well administered. Compared to some Patent Offices, the UK is a shining beacon of sensible and timely operation.

Using combined search and examination, it is possible to obtain patents in the UK very quickly, which makes them worthwhile pursuing alongside European patents.

### **How Well Do International and European Systems Perform?**

More complex issues are involved here, and generally the International and European systems do not perform quite as well as the UK national system. This is one reason why the arrival of Alison Brimelow at the European Patent Office is much to be welcomed.

The PCT system generally works well, although it has a knock-on effect on national/regional processing in the case of offices which are International Searching Authorities.

The International trade mark systems perform adequately although there are delays in Geneva and problems at OHIM, particularly with on-line filing.

It is a little early to say how the International design system is performing but its introduction was welcome.

### **How Well Does the UK System Provide Protection of IP?**

Very well.

### **Have We Noticed that Patents Are Being Used Defensively?**

Not to any significant extent. Patent Law does provide for the granting of compulsory licences in these circumstances. At least one of our members does have a sense that organisations "stock pile" patents.

### **Any Specific Problems Enforcing One Type of IP over Another?**

No.

### **Does the Current Competition Law Sit Well with IP Rights?**

There is a basic conflict, since IP rights obviously restrict competition, but this is only for a limited period and the monopoly granted is a necessary *quid pro quo* for the efforts and investment of the inventor. There have been difficulties in reconciling the two in the past, but generally the situation is improving.

## **Utility Models**

Generally SME's consider Utility Models to be desirable and big industry does not. We have no comments on this conflict but we do point out that most other European countries have a Utility Model system.

## **Clients View on Costs**

Generally the larger clients understand the costs involved while smaller clients can feel that official fees and Attorney's fees are unreasonable, the extreme view being that they should be entitled to protection automatically at no cost. Generally we consider that the balance is right and the costs of obtaining Intellectual Property protection are absolutely tiny compared to the costs of advertising and marketing a product.

## **Barriers to Licensing IP in Certain Sectors**

The usual barrier to licensing is not particularly sectoral but simply that the rights owner does not want to. There is anecdotal evidence that not knowing who owns the rights is a barrier to taking licences from the academic sector but this is probably exaggerated.

## **Copyright**

50 years is a long time and we do not see any particular justification for extending it.

## **Are The Copyright Exceptions Clear?**

We believe not. This is one area of the law which could do with some updating and clarification, particularly in view of the changes coming about in the digital age, which considerably enables copying.

## **Identification of Owners of Copyright**

It is indeed difficult to identify the owners of copyright in many situations but having regard to the proportion of copyright material that is actually worth copying, a registration system would not necessarily be useful or cost effective.

## **Trade Marks, Particularly the CTM**

Some companies do still look entirely to the UK market and the UK system is still very useful. However, the majority of company applicants use the CTM because they get protection in many countries for a cost equivalent to that of just a few national applications.

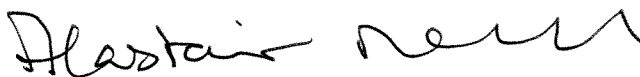
## **Designs**

The Community Designs Office is extremely cost effective and is being used extensively. However the enforceability and validity of such designs is yet to be tested and there is still a case for maintaining the UK national design system.

## **Other Issues**

We understand that responsibility for IP is now split between the DTI and the DCMS and we do wonder if this is a good idea, as it seems unlikely to assist clarity or decision making.

Yours sincerely



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