THE INTELLECTUAL PROPERTY REVIEW

SEVENTH EDITION

Editor
Dominick A Conde

THE LAWREVIEWS

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PREFACE

Over the past several decades, there has been a major push to provide uniform and harmonised intellectual property coverage worldwide. To date, however, there remain significant differences and gaps in intellectual property coverage globally. As commerce increasingly becomes focused on international trade rather than individual countries, companies and clients must respond by thinking globally while also understanding the differences that remain between jurisdictions.

While jurisdictional differences can be anticipated and addressed, these differences are further magnified by the geopolitical turmoil that persists worldwide. A prime example is the United Kingdom's Brexit vote, which initially appeared to doom the prospects of establishing a Unified Patent Court in Europe. Those initial fears, however, may have been premature as the United Kingdom is now in a position to fully ratify the treaty establishing the unified court. Another example is President Trump in the United States. While his unorthodox governing style has left many policies of the United States government in turmoil, he has been successful in appointing a new director of the Patent Office and apparently is taking a tougher stand on the misuse of US intellectual property rights, including by placing tariffs on goods subjected to the forced transfer of US intellectual property to Chinese firms. On the other hand, President Trump has failed to fill many key diplomatic posts, weakening efforts at further worldwide cooperation on intellectual property matters. Finally, as China continues to grow its economy, its intellectual property laws have become better defined and more reliable.

To aid practitioners who are navigating this ever changing landscape of global intellectual property, we now present the seventh edition of *The Intellectual Property Review*. In this seventh edition, we present 25 chapters that provide an overview of the forms of intellectual property coverage available in each particular jurisdiction, along with an update of its most recent developments. Each chapter is written and assembled by leading practitioners in that jurisdiction. While all involved have striven to make this review both accurate and comprehensive, we must note that it is necessarily a summary and overview, and we strongly recommend that the reader seek the advice of experienced advisers for any specific intellectual property matter. Contact information for the authors of each chapter is provided at the end of this review.

Dominick A Conde
Fitzpatrick, Cella, Harper & Scinto
New York
April 2018

Chapter 24

UNITED KINGDOM

Gordon Harris, Andrew Maggs, George Sevier and Ailsa Carter[1]

I FORMS OF INTELLECTUAL PROPERTY PROTECTION

i Patents

A patent may be granted covering the United Kingdom for an invention that is new, involves an inventive step, is capable of industrial application, and is not otherwise excluded from patentability. The term of protection is 20 years from the application date, unless a supplementary protection certificate (SPC) is granted (which may extend the term) or renewal fees are not paid (in which case the patent may lapse sooner).

An application for a patent conferring protection in the UK can either be made to the UK Intellectual Property Office (UKIPO), for a GB patent, or to the European Patent Office (EPO) for a European Patent designating the UK. Alternatively, either can be designated as part of a Patent Cooperation Treaty (PCT) application.

In November 2016, the UK government indicated its intent to ratify the Agreement on a Unified Patent Court (the UPC Agreement). The national legislative steps necessary for ratification have now been completed. If the UK does ratify the UPC Agreement, it will come into effect four months after it is ratified also by Germany, triggering the entry into force of EU Regulations 1257/2012 and 1260/2012. Pursuant to these new regulations, European patents with unitary effect (unitary patent (UP)) will become available for an applicant to request during application for a European patent. If a UP is requested, it will be granted instead of national designations for all states for which, at the time of grant, the UPC Agreement has effect.

ii Supplementary protection certificates

An SPC is a form of intellectual property that extends patent term in respect of pharmaceutical or plant protection products in qualifying circumstances.

The term of the SPC is intended to compensate, to some degree, for the period elapsing between the filing of an application for a patent for a new medicinal or plant protection product and the grant of authorisation to place the medicinal product or plant protection product on the market. The duration of protection is the term that elapsed between those dates, reduced by a period of five years, subject to a maximum period of protection of five years.

1 Gordon Harris is a partner and Andrew Maggs, George Sevier and Ailsa Carter are principal associates at Gowling WLG.

iii Designs

In the UK, designs may be protected by a mixture of UK and Community rights, which vary in their subsistence, scope and duration.

Registered designs – UK and EU

Designs that are new and have individual character can be registered with the UKIPO, for the UK, or with the European Union Intellectual Property Office (EUIPO), for the EU.

Three-dimensional and two-dimensional designs can all be protected. However, computer programs, features of an article that have a technical function or that interconnect with other parts of the article and are necessary for the article to perform its function, and designs that are contrary to public policy are not registrable.

Registered designs are monopoly rights (which can be enforced without copying having occurred). The term of protection is 25 years provided that renewal fees are paid.

Unregistered designs

The UK unregistered design right (UDR) protects the shape and configuration of the whole or part of an article (external or internal) that is original, recorded in a design document or the subject of an article made to the design, and created by a qualifying person.

The UDR will not subsist in a method or principle of construction, the shape or configuration of an article that 'must fit' another, or the appearance of an article that 'must match' another. The UDR does not protect 2D designs such as ornamentation or surface decoration (which may be protected by copyright).

The UDR arises automatically. The term of protection is the lesser of: 15 years from first recording in a design document or first making to the design; or 10 years from first making the article available for sale or hire (dates calculated from the end of the relevant calendar year). The owner has exclusive rights to reproduce the design for commercial purposes. During the final five years of the term licences of right are available. If the terms are not agreed, they will be settled by the Comptroller General of Patents, Designs and Trademarks.

The EU unregistered Community design right has a broader scope of protection than the UDR, protecting 3D and 2D designs. EU protection lasts for a period of three years from the date on which the relevant design is first made available to the public and pan-European relief is available.

iv Copyright

Copyright may subsist, *inter alia*, in original literary, dramatic, musical and artistic works, sound recordings, films and broadcasts and typographical arrangements of published editions, provided the work qualifies by its author's nationality or domicile or by the place of first publication of the work. Protection arises automatically when works are recorded in writing or some other form.

Copyright in literary, dramatic, musical or artistic works generally lasts for 70 years from the end of the calendar year in which the author dies. For some literary works, including computer generated works, databases, tables and compilations, and for sound recordings and broadcasts, protection will last for 50 years from the end of the calendar year in which they are created.

Copyright is infringed if the work, or a substantial part of it (assessed qualitatively), is copied, not if another work is created independently.

v Database rights

Databases can be protected in two ways; by copyright and by the *sui generis* database right.

Where there has been a substantial investment in obtaining, verifying or presenting the contents of a database the *sui generis* right will arise. Protection lasts for 15 years from the end of the calendar year in which the database was completed.

Where all or a substantial part of the contents of the database are extracted or reutilised without the owner's permission, database rights will be infringed.

vi Registered trademarks

A mark or sign may be registered as a trademark if it is capable of distinguishing the goods or services of one undertaking from those of another and of being represented on the register in a manner that enables the competent authorities and the public to determine the clear and precise subject matter of protection. It must also not be devoid of distinctive character nor consist exclusively of indicators that may designate the kind, quality, quantity or other characteristics of the goods or services, although it may be shown that the mark has acquired distinctiveness through use. Registered trademarks can include words, domain names, colours and the shape of goods or their packaging, as well as non-traditional marks such as sounds (although in practice, registration of non-traditional marks is difficult to obtain).

A mark can be registered for the UK (with the UKIPO); or as an EU Trademark (EUTM, formerly called a Community Trademark, with the EUIPO, for the EU). A mark will be registered for specified goods and services listed in the classes of the International Classification of Goods and Services.

The proprietor of a mark has the exclusive right to use the registered mark in connection with the classes of goods or services for which it is registered. The mark may be enforced in respect of: (1) an identical mark for identical goods or services; (2) an identical or similar mark for identical or similar goods or services where such use has caused or is likely to cause confusion; and (3) if a mark has a reputation, in respect of an identical or similar sign for goods and services where the use causes detriment or leads to unfair advantage.

A mark may remain registered indefinitely provided that the renewal fees are paid.

vii Passing off

A claimant can bring a claim for passing off where:

a there is goodwill attached to his or her goods or services in the United Kingdom;

b there is a misrepresentation by the defendant leading or likely to lead the public to believe that the goods or services offered are the goods or services of the claimant or there is some other authorised link with the claimant; and

c the claimant suffers damage as a result.[2]

Passing off can be used as a way of protecting unregistered trademarks, names, logos or get-up from being misused by others wanting to trade off the claimant's goodwill.

viii Confidential information

Confidential information is broadly defined as information that has the necessary quality of confidence that is disclosed in circumstances imparting an obligation of confidence.

2 *Reckitt & Colman Products v. Borden* [1990] UKHL 12; *Starbucks v. British Sky Broadcasting* [2015] UKSC 31.

Confidential information may be protected by non-disclosure agreements or confidentiality agreements. It is common for employers to request that their employees sign such agreements if they have access to confidential information.

While in theory it is possible to protect confidential information indefinitely, there may be limits on how long information will retain its confidential status. For example, non-disclosure and confidentiality agreements may be time-limited, the information may become available from non-confidential sources and information may be made available to other parties or the public in the course of litigation.

ix Plant varieties

A plant variety right may be available for a new, distinct, uniform and stable plant variety. 'New' is assessed by reference to sale or disposal.

A plant variety right entitles the holder to prevent anyone from producing or reproducing, conditioning for the purpose of propagation, offering for sale, selling, exporting, importing or stocking for any of those purposes, the qualifying variety. The term of protection is 30 years from the date of grant (for potatoes, trees and vines); or 25 years from the date of grant (all other cases). Protection is available for the UK (from the UK Plant Variety Rights Office) or for the EU (from the Community Plant Variety Office).

II RECENT DEVELOPMENTS

i Recent notable patent case law

Doctrine of equivalents – Actavis v. Eli Lilly

In a landmark judgment, *Actavis v. Eli Lilly*,[3] the UK Supreme Court has swept aside decades of jurisprudence on the assessment of the tort of patent infringement and introduced a doctrine of equivalents in the United Kingdom.

Standards essential patents and fair, reasonable and non-discriminatory terms

In *Unwired Planet v. Huawei*,[4] the High Court of England and Wales (Patents Court), having determined that patents owned by Unwired Planet were valid and essential to the 3GPP telecommunications standard, determined licence terms that were 'fair, reasonable and non-discriminatory' (FRAND) between the parties. Although only selected UK patents were found valid and infringed, the FRAND licence determined was a global, portfolio licence. This is the first time a global portfolio licence has been determined by a court worldwide. Since Huawei had not been prepared to take a licence on terms found by the court to be FRAND, the High Court also developed new injunctive relief – a FRAND injunction, which would be discharged if Huawei entered into the FRAND licence, and with the parties having liberty to apply to the Court regarding the injunction at the end of the licence term (in 2020, while the patents found valid, infringed and essential would be in force until 2028).

3 [2017] UKSC 46.

4 [2017] EWHC 2988; [2017] EWHC 1304.

Dosage regimen patents

Patents to dosing regimens had a difficult year in the UK courts in 2017. In *Actavis v. ICOS*,[5] in three separate judgments, the Court of Appeal made clear the challenges facing patent claims in which the purported invention resides in a dosing regimen. If, by pursuing the clinical trials necessary for marketing authorisation, the claimed dosing regimen would be reached, the fact that at the outset the regimen eventually settled upon would have seemed surprising will not confer inventiveness. In *Generics v. Yeda*[6] and *Fujifilm v. AbbVie*[7] the challenges of obviousness in respect of dosing regimens were also successful.

Declaratory relief – Fujifilm declarations

In *Fujifilm v. AbbVie*,[8] the High Court of England and Wales (Patents Court) awarded, in a landmark judgment, a novel type of declaratory relief to clear the route to market for a product facing a raft of pending patent applications incapable of challenge in the UK courts. The Court concluded that the administration of FKB's proposed products in the treatment of a particular medical indication by a particular dosing regimen would have been obvious at a particular date, and that the Court's declaration of this would serve a useful purpose in view of AbbVie's patent filing strategy and public statements.

Plausibility, obviousness and insufficiency

In *Warner-Lambert v. Generics*[9] and *Idenix v. Gilead*,[10] the Court of Appeal considered the concept of 'plausibility' and its role in the tests for obviousness and insufficiency. The requirement of plausibility is a low, threshold test. It is designed to prohibit speculative claiming, which would otherwise allow the 'armchair' inventor a monopoly over a field of endeavour to which he or she has made no contribution. The role of plausibility in the test for sufficiency is, at the time of writing, under consideration by the UK Supreme Court in the *Warner-Lambert* case, with judgment expected in Q2 2018.

ii Unified Patent Court and unitary patent package

The proposed Unified Patent Court (UPC) and unitary patent system is discussed in Sections I, above, and IV and V, below. The UK government has indicated its intent to ratify the UPC Agreement and has completed the national legislative steps necessary to do so. However, the timetable for the new system becoming operational remains uncertain.

iii EU trademark law reform

Limited reforms to EU trademark law were introduced with effect from October 2017, when Regulation 2017/1001 came into force, replacing Regulation 207/2009. Key amendments are reflected in this chapter. The new Regulation introduced EU certification marks, and

5 [2017] EWCA Civ 1671.

6 [2017] EWHC 2629.

7 *Fujifilm Kyowa Kirin Biologics Company v. AbbVie Biotechnology* [2017] EWHC 395 (Pat).

8 *Fujifilm Kyowa Kirin Biologics Company v. AbbVie Biotechnology* [2017] EWHC 395 (Pat).

9 [2016] EWCA Civ 1006.

10 [2016] EWCA Civ 1089.

broadened the scope of marks that can be registered (previously marks needed to be capable of being graphical representation; now, representation using generally available technology may be sufficient).

iv Shape trademarks

In *Nestlé v. Cadbury*[11] the Court of Appeal ruled that the shape of a four-fingered Kit Kat bar (without a Kit Kat logo embossed on each finger) could not be registered as a UK trademark. Concerning an inherently non-distinctive mark, in demonstrating that the mark has acquired distinctiveness, it was not sufficient to show that consumers recognise the mark and associate it with the applicant's goods.

Similarly, in *The London Taxi Corporation v. Frazer-Nash*[12] the Court of Appeal confirmed a first instance decision that a trademark for the shape the iconic London 'black cab' was invalid for lack distinctive character. In particular, while recognisable, the shape was not shown to have acted as a designation of trade origin.

v Actionable threats

On 1 October 2017, the Intellectual Property (Unjustified Threats) Act 2017 came into force, making amendments to the law prohibiting unjustified threats of infringement proceedings. The Act harmonises, across the different intellectual property rights the subject of a threats regime, what can and cannot be said without falling foul of the provisions restricting the making of unjustified threats. The most significant changes are in respect of registered trademarks (UK and EU) and registered and unregistered designs (UK and 'Community' (EU)), because the threats regimes for those rights have been brought into line with that for patents.

For all relevant rights, there is a notable change to the definition of a threat. Rather than the regime concerning threats to sue in a UK court; it is now concerned with threats of proceedings for infringement in the United Kingdom of the relevant right. The change enables the United Kingdom's threats regime also to apply to new 'unitary patents', when the Unified Patent Court and unitary patent regime come into force.

Across the board, additional protection has been provided for professional advisers. Provided legal advisers comply with the requirements of the Act, their communications are now much less likely to be capable of amounting to a threat.

III OBTAINING PROTECTION

i Patentability

The Patents Act was enacted in the course of the United Kingdom's accession to the European Patent Convention. Certain sections of the Patents Act are expressed as framed so as to have, as nearly as practicable, the same effects in the United Kingdom as the corresponding provisions of the EPC, the Community Patent Convention and the PCT.

Pursuant to the EPC, European patents shall be granted for any inventions, in all fields of technology, provided:

a they are new, involve an inventive step and are susceptible of industrial application;

11 [2017] EWCA Civ 358.

12 [2017] EWCA Civ 1729.

b patentability is not expressly excluded; and

c the application meets certain other requirements, namely, unity of invention, disclosure of invention and clear and concise claims supported by the description.

New

An invention shall be considered to be new if it does not form part of the state of the art. The state of the art comprises everything made available to the public anywhere in the world by means of a written or oral description, by use, or in any other way before the date of filing of the European patent application. Additionally, the content of earlier filed (but not yet published) patent applications (UK or EPC designating the United Kingdom) is considered as comprised in the state of the art. A patent (or application) lacks novelty (is 'anticipated') if the prior art provides an 'enabling disclosure' of what is claimed.[13]

Involves an inventive step

An invention shall be taken to involve an inventive step if it is not obvious to a person skilled in the art, having regard to any matter that forms part of the state of the art (earlier filed but not yet published patent applications are not included in the state of the art for this purpose). In *Conor v. Angiotech*,[14] the House of Lords (the predecessor to the UK Supreme Court) considered the issue of obviousness and approved the following statement of Kitchin J in *Generics v. Lundbeck*:[15]

> *The question of obviousness must be considered on the facts of each case. The court must consider the weight to be attached to any particular factor in the light of all the relevant circumstances. These may include such matters as the motive to find a solution to the problem the patent addresses, the number and extent of the possible avenues of research, the effort involved in pursuing them and the expectation of success.*

In *Hospira v. Genentech*[16] the Court of Appeal noted that there is only one statutory question, namely whether the invention was obvious at the priority date. Whether the invention was obvious to try is merely one of many considerations that it may be appropriate for the Court to take into account in addressing the statutory question; it is not a substitute test for obviousness, and it must in any case be coupled with a reasonable or fair prospect of success.

Industrial application

An invention shall be taken to be capable of industrial application if it can be made or used in any kind of industry, including agriculture. The notion of industry is construed broadly.[17]

Exclusion from patentability

The following are declared not to be inventions (and are therefore not patentable):

a discoveries, scientific theories and mathematical methods;

13 *Synthon BV v. SmithKline Beecham plc* [2005] UKHL 59.

14 [2008] UKHL 49, [2008] RPC 28.

15 [2007] RPC 32.

16 [2016] EWCA Civ 780.

17 *Eli Lilly v. Human Genome Sciences* [2008] EWHC 1903 (Pat).

b literary, dramatic, musical or artistic works or any other aesthetic creation; and
c schemes, rules or methods for performing a mental act, playing a game or doing business, or a program for a computer; and the presentation of information.

However, this only prevents patentability to the extent that the patent or application relates to the thing as such.

Patents also shall not be granted for the following:

a inventions the commercial exploitation of which would be contrary to public policy or morality;
b plant or animal varieties or essentially biological processes for the production of plants or animals (not including microbiological processes or the products thereof);
c methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practised on the human or animal body (although this does not apply to products, in particular substances or compositions, for use in any of these methods);
d the human body, at various stages of its formation and development, and the simple discovery of one of its elements, including the sequence or partial sequence of a gene;
e processes for modifying the germline genetic identity of human beings;
f uses of human embryos for industrial or commercial purposes; and
g processes for modifying the genetic identity of animals, which are likely to cause them suffering without any substantial medical benefit to man or animal, and also animals resulting from such processes.

Other requirements for grant

A patent application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.

The specification must disclose the invention clearly and completely enough for it to be performed by a person skilled in the art. It must be sufficient to allow the invention to be performed over the whole scope of the claim and without undue burden.[18]

The claims of a patent define the matter for which protection is sought. They must be clear and concise and be supported by the description.

ii Subject-specific case law

Methods of medical treatment and diagnostic methods

Methods of medical treatment and diagnostic methods are excluded from patentability. However, products, including substances, for use in such methods may be patented, including where the invention (and novelty) resides in the new use of a known product: purpose-limited product claims are permissible (i.e., claims in the form 'X for use in the treatment of Y').

Previously, for inventions residing in a second or subsequent use of a known medicament, claims in 'Swiss form' were permissible (i.e., 'use of X in the manufacture of a medicament for the treatment of Y') but following the decision of the EPO's Enlarged Board of Appeal in G2/08 (*Abbott Respiratory/dosage regimes*)[19] this is no longer the case. The changes introduced in 2010 made no change to practice regarding existing Swiss form claims already in force.

18 *Eli Lilly v. Human Genome Sciences* [2012] EWCA Civ 1185.
19 G2/08 [2010] 10 OJEPO 456 and UKIPO Practice Notice 26 May 2010.

Patents with claims in Swiss form do not prevent (under the double patenting exclusion) the grant of a related application with claims in purpose-limited product format because the subject matter of such claims is considered different.[20] For the same reason, it is not possible to amend granted Swiss form patent claims to purpose-limited product format.

In *Warner-Lambert v. Generics*,[21] the Court of Appeal gave noteworthy *obiter* guidance on the 'mental element' of a Swiss form claim and the assessment of infringement of such a claim. As regards the assessment of the mental element, Floyd LJ said that an objective approach is necessary, and from an objective standpoint one would normally regard a person to intend what he or she knows or can reasonably foresee as the consequence of his or her actions. The process of a Swiss form claim has since been confirmed by the Supreme Court as not limited to the factory stages of manufacture.[22]

Particularly in the context of inventions concerning medical treatments, the term 'plausibility' has been coined to characterise what it is that a patent specification must provide in order to be sufficient, short of full proof of efficacy;[23] this is under consideration by the UK Supreme Court in *Warner-Lambert v. Generics & Ors*, with judgment expected Q2 2018.

Plants and animals and essentially biological processes for their production

Inventions that concern plants or animals may be patentable if the invention is not confined to a particular plant or animal variety but can be granted if varieties may fall within the scope of the claims.[24]

Whether or not a (non-microbiological) process for the production of animals or plants is 'essentially biological' and therefore excluded from patentability has to be judged on the basis of the essence of the invention taking account the totality of the human intervention and its impact on the result achieved.[25]

Other biotechnological inventions

Finding biological material, such as a microorganism, occurring freely in nature is discovery, not an invention, and so is not patentable as such. However, biological material that is isolated from its natural environment or produced by means of a technical process may be the subject of an invention, even if the material occurred previously in nature. Where the invention resides in a whole or partial gene sequence, the industrial application of the sequence must be disclosed in the application as filed.[26]

In *Oliver Brüstle v. Greenpeace*[27] the CJEU ruled that a 'human embryo was: any human ovum after fertilisation; any non-fertilised human ovum into which the cell nucleus from a mature human cell has been transplanted; and any non-fertilised human ovum whose division and further development have been stimulated by parthenogenesis'. The exclusion covered the use of human embryos for purposes of scientific research; only use for therapeutic

20 T 1780/12.

21 [2016] EWCA Civ 1006.

22 *Actavis v. Eli Lilly* [2017] UKSC 46.

23 *Hospira v. Genentech* [2014] EWHC 1094 (Pat); *Warner-Lambert v. Generics* [2016] EWCA Civ 1006; *Idenix v. Gilead* [2016] EWCA Civ 1089.

24 G 1/98, G 2/12 and G 2/13.

25 UKIPO's Manual of Patent Practice, 76A.03.

26 UKIPO's Manual of Patent Practice, 76A.06, G 2/07, G 1/98.

27 [2011] EUECJ C-34/10.

or diagnostic purposes that are applied to the human embryo and are useful to it being patentable. Further, patentability was excluded where the subject matter involved the prior destruction of human embryos or their use as base material.

Subsequently, in *International Stem Cell Corporation v. Comptroller General of Patents, Designs and Trade Marks*,[28] the CJEU ruled that an unfertilised human ovum whose division and further development have been stimulated by parthenogenesis does not constitute a 'human embryo', within the meaning of that provision, if, in the light of current scientific knowledge, it does not, in itself, have the inherent capacity of developing into a human being.

A claim to a product containing or consisting of biological information is construed as extending to all material (except excluded material) in which the product is incorporated and in which the genetic information is contained and performs its function.

Computer programs

A claimed invention involving the use of a computer program may be patentable if it involves a technical contribution.[29] The Court of Appeal has emphasised the need for each case to be considered by reference to its particular facts,[30] and that a solution to a technical problem can be a relevant technical effect and would not be excluded, as technical character is provided from the problem itself.[31] In *HTC v. Apple*, Kitchin LJ noted the need to consider what the computer program in issue actually contributes.

IV ENFORCEMENT OF RIGHTS

This section provides a brief guide to how intellectual property rights may be asserted, focusing on patents. In the courts of the United Kingdom, issues of infringement and validity are almost always addressed together.

Pursuant to EU Directive 2004/48 on the enforcement of intellectual property rights (the IP Enforcement Directive), Member States shall provide for the measures, procedures and remedies necessary to ensure the enforcement of intellectual property rights. Such measures, procedures and remedies shall also be effective, proportionate and dissuasive and applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse. The nature of available final and interim relief, as well as other aspects of litigation procedure, continues to evolve with the developing jurisprudence in respect of the IP Enforcement Directive, and also with developments in technology.

i Possible venues for enforcement

The United Kingdom has three jurisdictions: England and Wales, Scotland, and Northern Ireland. Each has its own legal system and procedures, the UK Supreme Court being the final court of appeal for all in civil cases. In the field of IP, legislated substantive law applies throughout the UK. The overwhelming majority of IP litigation in the UK takes place in the courts of England and Wales.

28 [2014] EUECJ C-364/13.

29 UKIPO's Manual of Patent Practice, 1.

30 Symbian Ltd's Application [2009] RPC 1.

31 *HTC v. Apple* [2013] EWCA Civ 451.

In England and Wales, the Intellectual Property Enterprise Court (IPEC) is the correct forum for less complex and smaller value IP claims. In the IPEC damages are capped at £500,000 (per claim number),[32] and recoverable costs are capped at £50,000 for the liability stage and £25,000 for the quantum stage. The IPEC procedure is distinct from that which is conventional under English legal practice, for example with less separation of argument and evidence. For more complex and valuable IP claims, the Patents Court hears claims concerning patents, SPCs, registered designs, plant varieties and semiconductor topography rights; other types of intellectual property dispute are heard in the General IP List. All of the courts and lists noted in this paragraph sit within the Business and Property Courts of the High Court of England and Wales.

Patent actions are heard in Scotland by the Court of Session, and in Northern Ireland by its High Court.

The Comptroller General of Patents at the UK Intellectual Property Office (UKIPO) has jurisdiction to adjudicate upon some patent-related issues and may issue opinions on the infringement and validity of patents.

Following the expected entry into force of the UPC Agreement and associated EU Regulations, owners of European patents designating Member States of the EU will (subject to opting-out) be able to enforce those European patents (but not national patents) in the Unified Patent Court (UPC). New unitary patents will also be enforceable in the UPC. The UPC is expected to have a central division (with its seat in Paris, and sections in London and Munich), local divisions in some Member States, and one or more regional divisions covering more than one Member State (e.g., a 'Nordic-Baltic' regional division for Estonia, Latvia, Lithuania and Sweden). Choice of venue will depend on relevant provisions of the UPC Agreement and the UPC's Rules of Procedure. Decisions in relation to European patents that are not 'opted-out' and all unitary patents will have effect across the Member States concerned in each case. At the time of writing, if the UPC Agreement enters into force in 2018, at the minimum the following contracting states will be within the new system: Austria, Belgium, Bulgaria, Denmark, Estonia, Finland France, Germany, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Sweden and the UK. For the term of the transition period (at least the first seven years), the current jurisdiction of the national courts of the participating countries in respect of European patents will continue in parallel. The remainder of this Section is concerned with the existing system, not the UPC.

ii Requirements for jurisdiction and venue

The UK courts described in Section IV.i, above, have exclusive jurisdiction in respect of actions for revocation of UK patents and UK designations of European patents but not actions for revocation of, or otherwise challenging the validity of, other national designations of European patents.

In respect of issues of infringement, jurisdiction may be founded by domicile or by the place where the harmful event occurred or may occur.[33] Where a claim of infringement is made, the defendant may challenge validity, so invoking the exclusive jurisdiction of

32 *OOO Abbot v. Design & Display* [2014] EWHC 3234.

33 Regulation 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters; Lugano Convention 2005; Civil Jurisdiction and Judgments Act 1982.

the courts of the relevant designation. Accordingly, almost all litigation regarding issues of infringement and validity of a European patent takes place in the courts of the relevant designated country.

However in *Actavis v. Eli Lilly*,[34] Lilly was found to have conceded jurisdiction, in the course of pre-action correspondence, such that the Patents Court considered the claim to have been properly commenced and the Court to have jurisdiction to award a declaration of non-infringement covering designations of a European patent for several other EU Member States. In *Eli Lilly v. Genentech*,[35] the Civil Procedure Rules enabled Lilly to commence proceedings for declarations of non-infringement in respect of a UK designation of a European patent and several non-UK designations of the same patent by service on Genentech, Inc, in the United States. (Lilly also challenged the validity of the UK designation of Genentech's European patent, but not the non-UK designations.) In contrast, in *Parainan Pearl Shipping v. Kristian Gerhard Jebsen Skipsrederei*,[36] Parainan's attempt to commence proceedings against the Norwegian owners of several designations of a European patent for relief including declarations of non-infringement, by the employment of a different mechanism in the Civil Procedure Rules, was unsuccessful. This remains a developing area of the law.

iii Obtaining relevant evidence of infringement and discovery

In a civil claim, it is for the claimant to prove his or her case on the balance of probabilities. At the outset, the facts relied upon in support of the claim (or counterclaim) must provide reasonable grounds for making the claim. Without such grounds the claim may be struck out.

Disclosure

Discovery may be available in the course of litigation after the exchange of pleadings. (In unusual circumstances it may be available from a non-party.) A party discloses a document by stating that it exists. The party to whom disclosure is made is then entitled to inspect the document, except where it is no longer in the disclosing party's control or where the disclosing party has a right or duty to withhold inspection of it, for example because it is privileged. Confidentiality does not confer a right to withhold inspection, but the court may order disclosure of confidential documents on appropriate terms, for example to specified members of a 'confidentiality club'. The existence of a confidentiality club will reduce the likelihood that redaction of documents will be allowed.[37]

Standard disclosure requires a party to disclose only the documents on which he or she relies and the documents that adversely affect his or her own case, adversely affect another party's case or support another party's case. In patent cases, disclosure, if it is ordered, is usually more limited. Provision of a product or process description by the alleged infringer usually enables standard disclosure to be dispensed with in relation to infringement. Regarding validity, disclosure is usually constrained to a term two years either side of the earliest claimed priority date. In every case, it is the court that orders the scope of disclosure, and there is no longer a *prima facie* rule of standard disclosure.[38]

34 [2013] EWCA Civ 517; [2014] EWHC 1511 (Pat).

35 [2017] EWHC 3104 (Pat).

36 [2017] EWHC 2570 (Pat).

37 *Aqua v Fiserv* [2017] EWHC 1627 (Ch).

38 *Positec v. Husqvarna* [2016] EWHC 1061 (Pat).

Pre-action disclosure may be obtainable before litigation commences where procedural requirements are satisfied. In *The Big Bus Company v. Ticketogo*,[39] the Patents Court ordered pre-action disclosure of licences previously granted by the patentee to third parties operating in the transport sector.

Evidence

Fact evidence is usually submitted to the court in the form of written witness statements, which stand as the witness's evidence in chief. A witness's oral testimony is usually limited to cross-examination and re-examination.

The court assesses the teachings and scope of a patent through the eyes of 'the person skilled in the art'. He or she is the hypothetical person to whom the patent is addressed. The skilled person has imputed to him or her the 'common general knowledge', which is, essentially, standard technical background of the art in question.

Expert evidence is generally required to assist the court in adopting the mantle of the person skilled in the art and to determine the scope of the common general knowledge. Parties tend to retain their own expert, although they may be ordered to agree upon a single expert. Expert witnesses owe a duty to the court, which overrides any duty they have to the party and its team of legal advisers, and bear a personal responsibility for their evidence.[40] Expert evidence in chief is provided by way of a report, with opportunity to respond in writing to the report submitted by the other expert. Oral testimony is usually limited to cross-examination and re-examination. Cross-examination is considered by the courts to be an important tool by which expert evidence that is submitted to the court may be scrutinised.[41] 'Hot-tubbing' (the hearing of evidence from the experts of opposing parties concurrently) may be employed.[42]

Experiments

In appropriate cases, experiments may be ordered upon the application of a party that wishes to establish a fact by experimental proof.

Methods for obtaining evidence and information

In addition to the mechanisms discussed above, the Civil Procedure Rules provide a number of additional procedural mechanisms for obtaining further information in the course of litigation. The mechanisms available and employed may be relevant to any award or order subsequently made by the court.[43] In appropriate circumstances, the court will award a search and seizure order or an order that a person provide information on others involved in the supply of infringing goods, or both.

iv Trial decision-maker

For the intellectual property rights listed above, civil claims are heard and determined by a judge.

39 [2015] EWHC 1094 (Pat).

40 *Synthon v. Teva* [2015] EWHC 1395 (Pat).

41 *Accord v. Medac* [2016] EWHC 24 (Pat).

42 *Unwired Planet v. Huawei* [2017] EWHC 711 (Pat); [2017] EWHC 2988 (Pat).

43 *Magnesium Elektron v. Neo Chemicals* [2017] EWHC 2957 (Pat).

In the courts of England and Wales, IP claims are usually heard by specialist judges. In the Patents Court more complex patent cases tend to be allocated to Arnold J, Birss J or Henry Carr J – experienced patent judges who are also judges in the wider Chancery Division of the High Court. In the IPEC, patent cases tend to be heard by intellectual property specialist HHJ Hacon.

v Structure of the trial

Following the exchange of statements of case, the setting of case management directions and the conclusion of the steps ordered (for example, discovery and written evidence stages), the trial of the claim will be heard by the judge. At the hearing, the usual structure is that the claimant makes an opening statement, the parties cross-examine the witnesses relied upon by each other, and then each party makes a closing statement.

At the end of the hearing, the judge will either deliver his or her judgment or, more usually, he or she will retire to consider and write the judgment and reconvene the trial at a later date, when the judgment is handed down. An award of injunctive relief may be made with the substantive judgment or shortly afterwards following discussion between the parties or further consideration by the court.

Almost always, the trial is 'split', which means that the substantive legal claim is decided (as described above) and only where a claim is successful will the monetary relief claimed be considered. This consideration takes the form of a second stage to the litigation, involving further directions and a further trial on a damages inquiry or an account of profits, which may run in parallel with any appeal of the main judgment.

vi Infringement

Infringing acts

It is a direct infringement of a patent to do any of the following in the UK without the consent of the patent proprietor:[44]

a where the invention is a product, make, dispose of, offer to dispose of, use or import the product or keep it whether for disposal or otherwise;

b where the invention is a process, use the process or offer it for use in the United Kingdom with the knowledge, or when it is obvious to a reasonable person in the circumstances, that its use there without the consent of the proprietor would be an infringement of the patent; and

c where the invention is a process, dispose of, offer to dispose of, use or import any product obtained directly by means of that process or keep any such product whether for disposal or otherwise.

In *Actavis v. Eli Lilly*,[45] the UK Supreme Court ruled that the assessment of infringement is a two-stage process asking first whether the variant infringes any of the claims of the patent as a matter of normal interpretation and, if not, then second, whether the variant nonetheless infringes because it varies from the invention in a way or ways that is or are immaterial. The Court also provided guidance on when an equivalent might infringe.

44 Section 60(1) of the Patents Act 1977.

45 [2017] UKSC 46.

It is a contributory infringement of a patent to supply or offer to supply in the United Kingdom a person other than a licensee or other person entitled to work the invention with any of the means, relating to an essential element of the invention, for putting the invention into effect. In order to infringe in this way the alleged infringer must know, or it must be obvious to a reasonable person in the circumstances, that the means he or she has supplied are suitable for putting, and are intended to put, the invention into effect in the United Kingdom.[46]

Further, a defendant will be liable as a joint tortfeasor if he or she has assisted in the commission of the tort by another person pursuant to a common design with that person to do an act that is, or turns out to be, tortious.[47]

vii Defences

Statutory exceptions to infringement

An act that would constitute an infringement of the patent will not do so if:

a it is done privately and for purposes that are not commercial;

b it is done for experimental purposes relating to the subject matter of the invention;

c it consists of the preparation in a pharmacy of a medicine for an individual in accordance with a prescription;

d it consists of use on a ship or an aircraft temporarily in the territorial sea or air space of the UK; or

e it consists of a specified use by a farmer of the product of his or her harvest or an animal purchased with the consent of the patent proprietor.

Invalidity

An alleged infringer may counterclaim that the patent is invalid and seek an order for revocation of it. The grounds for revocation are:

a the invention is not a patentable invention;

b the specification of the patent does not disclose the invention clearly and completely enough for it to be performed by a person skilled in the art;

c the matter disclosed in the specification of the patent extends beyond that disclosed in the relevant application as filed; and

d the protection conferred by the patent has been extended by an amendment that should not have been allowed.

A person found to be entitled to be granted the patent may additionally seek its revocation on the basis that it was granted to someone who was not entitled to it, provided the application is filed within the legislated time limits.

Other defences

An act is only capable of infringing a patent if it is done without the consent of the proprietor. Consent, or licence, may be express or implied and may form the basis for a defence. In some (unusual) situations, licences of right or compulsory licences are available.

46 Section 60(2) of the Patents Act 1977.

47 *Sea Shepherd v. Fish & Fish* [2015] UKSC 10.

Where the patentee has already consented to the marketing of the goods within the scope of the claimed invention in another European jurisdiction, the doctrine of exhaustion prevents subsequent enforcement of a patent in the UK in respect of the imported goods.

viii Time to first-instance decision

The time to trial has tended to depend upon the conduct of the parties, the complexity of the case and the diary of the court. The Patents Court intends to list trials within 12 months of commencement of the action, and parties are expected to start to consider potential trial dates as soon as reasonably practicable, which may be very soon after the proceedings are commenced.[48] Where considered appropriate by the court, a trial can take place considerably sooner than this, for example, in *Napp v. Dr Reddy's*[49] the trial hearing took place approximately four months after the litigation commenced, the full substantive judgment was handed down shortly afterwards and the second instance decision was given within six months of the litigation commencing.

For three years from 1 October 2015, a pilot 'Shorter Trial Scheme' (STS) is operating in the Chancery Division of the High Court, including the Patents Court. For suitable cases the STS packages a more streamlined procedure than is usually adopted with the intent of trial being listed within eight months of the case management conference and judgment being returned within six weeks.

Interim relief can be obtained in a matter of hours in urgent cases, although more usually interim hearings take place within a few days or weeks of the application being filed and served.

ix Remedies

If a patent is found to be infringed, or where a litigant's claim is otherwise successful, a range of remedies may be available. These include the following.

Injunctions

Following a finding of patent infringement (and validity), the court will usually award a 'final' injunction, although the position in relation to standard essential patents and second medical use patents is more complex and the outcome, in each case, likely to be more dependent upon the relevant facts.

Injunctive relief may be available at an interim stage where the patentee shows an arguable case of infringement and that a later monetary remedy would not adequately compensate the patentee for the harm caused by the ongoing (alleged) infringement. The court considers the 'balance of harm' likely to be suffered by the respective parties before deciding whether to award interim relief and if so the terms of the order. For non-final injunctions, the patentee is usually required to provide a cross-undertaking as to damages. According to the CJEU's decision in *Solvay v. Honeywell*,[50] the UK courts may be able to grant interim injunctions on a pan-European basis.

48 *Celltrion v. Biogen* [2016] EWHC 188 (Pat).

49 *Napp v. Dr Reddy's & Sandoz* [2016] EWCA Civ 1053; [2016] EWHC 1517 (Pat).

50 Case C-616/10, 12 July 2012.

Injunctions are usually prohibitory in nature although mandatory injunctions are possible. In keeping with the developing jurisprudence of the CJEU in respect of the IP Enforcement Directive, the proportionality and effectiveness of the relief are relevant factors in the court's assessment as to whether to grant the relief sought.

Blocking orders

Since the decision of the High Court in *Twentieth Century Fox v. BT*,[51] website blocking orders have been granted to music and film copyright owners to impede access to websites that are predominantly used to share copyright infringing content. In March 2017, in *The Football Association Premier League v. BT*,[52] the High Court permitted a new form of blocking order, against particular ISP addresses, directed at inhibiting unauthorised live streaming of broadcast events (in this case, of Premier League football matches).

In 2014, in *Cartier v. B Sky B*,[53] similar relief was awarded with respect to websites that advertise and sell trademark-infringing products. The High Court decision was upheld by the Court of Appeal in July 2016[54] and should now be considered settled law, although aspects of the Court of Appeal judgment (principally as to who should bear the costs of implementing the blocking orders) have been appealed to the Supreme Court (at the time of writing, the judgment is awaited).

Delivery up

The court can order that infringing articles be delivered up to a party. This is commonly to facilitate destruction or prevent resale.

Damages or an account of profits

Damages compensate for loss and are intended to restore the patentee to the position they would have been in had no wrong been done to him or her. They may be calculated according to the damage caused to the patentee's profits by the infringement or in accordance with a 'reasonable royalty'. In an account of profits, the profits made by the infringer from the infringement of the patent are awarded to the patentee. The court may order the infringer to give some financial disclosure, so that the patentee may make an informed decision as to which remedy to pursue (not both). Neither remedy will be available against an 'innocent' infringer, although few infringers are found to be 'innocent'.

Declarations

The court can order declarations. Declarations can be, for example: of validity or contested validity, which can impact the award of legal costs in future challenges; of infringement or non-infringement; of essentiality to a technical standard;[55] and that aspects of a party's product or process were obvious at a relevant date, which can create a squeeze between infringement and validity and may be of assistance to parties in 'clearing the way' in some circumstances.[56]

51 [2011] EWHC 1981 (Ch).
52 [2017] EWHC 480 (Ch).
53 [2014] EWHC 3354 (Ch).
54 [2016] EWCA Civ 658.
55 *Nokia v. Interdigital* [2007] EWHC 3077 (Pat).
56 *Fujifilm v. Abbvie* [2017] EWHC 395 (Pat).

Orders for dissemination and publication

The courts can also order a party to publicise the result of a case at its own expense.

Costs

Generally, the unsuccessful party to litigation is ordered to pay the costs of the successful party. However, in deciding what order to make about costs, the court will have regard to all the circumstances, including the conduct of all the parties, whether a party has succeeded on part of its case even if not wholly successful, and any admissible offer to settle made by a party that is drawn to the court's attention.

Where it falls to the court to assess the amount of payable costs, the usual basis for assessment is the 'standard' basis, pursuant to which the court will only allow costs that are considered to be proportionate to the matters in issue and to have been reasonably incurred. This tends to lead to 60–70 per cent recovery by the compensated party of its legal costs. However, cases in the IPEC are subject to capped costs recovery (as noted above), and in the High Court, the court's budgeting rules can lead to costs that are not approved by the court in the context of the costs management regime being considered disproportionate. Further, the Civil Procedure Rules provide, in Part 36, a mechanism intended to encourage settlement of civil disputes by imposing costs consequences where a compliant offer is not bettered, and where applicable this can impact costs recovery in any particular case.

x Appellate review

Decisions of the Comptroller General of Patents and interim decisions of the IPEC may be appealed to the Patents Court. Decisions of the Patents Court and final decisions of the IPEC may be appealed to the Court of Appeal. Decisions of the Court of Appeal relating to important issues of legal principle may be appealed to the Supreme Court. Experienced specialist patents judges in the Court of Appeal are Kitchin LJ and Floyd LJ.

In order to appeal, the party wishing to do so needs permission from the court that has issued the decision in question, or from the court to which it wishes to appeal. Permission is granted if the court considers that the appeal has a real prospect of success or if there is some other compelling reason why it should be heard.

Generally, only errors of law may be appealed. The Supreme Court has instructed appellate courts not to interfere with findings of fact unless compelled to do so. Generally, new evidence is not admissible at the appeal stage.

xi Alternatives to litigation

Alternative dispute resolution (ADR) methods include arbitration and mediation. The Arbitration Act 1996 governs the law relating to arbitration with its seat in England and Wales or Northern Ireland. ADR can enable flexibility in procedure and privacy.

V TRENDS AND OUTLOOK

i Brexit

Following the June 2016 referendum in which the UK population voted to leave the European Union, it is, at the time of writing, expected that Brexit will occur in 2019. The legal structure framing the United Kingdom's relationship with the European Union after Brexit is yet to be finalised. The mesh of EU and UK legislation that defines intellectual property law as it

currently stands in the United Kingdom will need adaption in order to accommodate the legal relationship with the European Union post-Brexit and any other aspects of agreement reached pursuant to the negotiations between the United Kingdom and the European Union. In particular, intellectual property rights of a unitary nature across the European Union will need addressing; either through agreement between the United Kingdom and the European Union that the United Kingdom will remain within the relevant existing system or UK national legislation to transition UK aspects of such rights into national rights. For example, in the event the United Kingdom leaves the EU trademark system, it is likely that there will be a mechanism to allow the continuing recognition of EU trademarks as covering the United Kingdom in some way and the creation of a UK-only right with priority inherited from the earlier registration. Further, agreement or transitioning, or both, to an existing or new national regime is expected to be necessary in neighbouring areas of the law including customs, antitrust, regulation of medicinal products and jurisdiction and enforcement of judgments.

ii Unitary patent and Unified Patent Court

The UPC Agreement was signed by 25 participating Member States of the EU in 2013, including the United Kingdom. As matters currently stand, after the UPC Agreement has been ratified by the United Kingdom and Germany, it will come into force.

With the implementation of the UPC Agreement and associated legislation, European patents that are not 'opted-out' of the UPC system, and granted unitary patents, will fall within the exclusive jurisdiction of the UPC; where a claim for infringement or validity is brought in the UPC, the Court's decision will cover the Member States of all designations of the European patent (or unitary patent) that fall within the court's remit (i.e., the EP designations of all participating Member States that have ratified the agreement at the relevant time); and applicants to the EPO for patent protection will be able to seek unitary protection (a unitary patent) covering those EU Member States that have deposited an instrument of ratification or accession at the date of grant of the European patent.

However, a legal challenge in the Federal Constitutional Court in Germany, and the uncertainties presented by Brexit, mean that at present it is not clear when the new system will become operational.

iii Proposed changes to trade secrets and copyright law in the EU

The Trade Secrets Directive[57] came into force on 5 July 2016, with the aim of harmonising the law on trade secrets across the EU. There is debate as to whether English law is already compliant with the minimum requirements imposed by the Directive. Also, given that the Directive is required to be implemented by 5 July 2018, and the UK will likely cease to be a Member State of the European Union less than a year later, it may be that implementing legislation will not be introduced.

The EU legislature has also proposed the reform of copyright law across the European Union. Current proposals for copyright reform are intended to improve cross-border accessibility to copyright content and related services, and enhance portability of online content that would allow users to transport content from one device to another without the risk of infringement. The proposals continue to be debated.

57 Directive (EU) 2016/43 of 8 June 2016 on the on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure.

Appendix 1

ABOUT THE AUTHORS

GORDON HARRIS

Gowling WLG

Gordon Harris is the co-head of intellectual property at Gowling WLG. He conducts litigation in all UK and European courts for clients seeking to protect their IP, or those who have been accused of infringing other people's rights. He is known as a fighter who will explore every avenue to get the right result, including going to the Supreme Court to change over 100 years of patent law in order to ensure the right outcome for a client.

Gordon has conducted ground-breaking cases on designs and brands in the European Court of Justice and contested the validity of patents in the European Patent Office.

Gordon has over 25 years' experience in IP and is involved in law reform and development through various committees and organisations, all of which allows him to provide decisive commercial advice to clients and to help them to decide the best avenue to take in any given case.

As a qualified mediator accredited by CEDR and the World Intellectual Property Organization, Gordon also pursues alternative dispute resolution both on behalf of clients and as a mediator.

ANDREW MAGGS

Gowling WLG

Andrew Maggs is a principal associate in the intellectual property team at Gowling WLG. He has over 10 years of experience conducting patent litigation, principally for US technology companies, with particular emphasis on wired and wireless telecommunications. His work often involves advising on multi-jurisdiction disputes, including where parallel litigation is ongoing in the United Kingdom, the United States, Germany and before the European Patent Office.

As well as advising on legal, tactical and technical considerations, Andrew has extensive experience advising on issues relating to standards-essential patents, including seeking declarations of essentiality, obligations to standards-setting organisations, and the relationship between patents and antitrust law, in particular the implications of the Court of Justice's decision in *Huawei v. ZTE*.

Andrew helped to establish Gowling WLG's Guangzhou office and has experience assisting clients to resolve their technology disputes in China.

GEORGE SEVIER

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George Sevier is a principal associate in the intellectual property team at Gowling WLG. He deals with all aspects of intellectual property enforcement and exploitation, from brand licensing and advertising law advice, to multi-jurisdictional IP litigation. He has particular expertise in dealing with online infringement, from stopping the use of trademarks in keyword advertising, to recovering domain names, having infringing products removed from online stores, and getting entire websites removed from the internet.

George is a digital copyright specialist, and is a regular writer on the subject of tackling music, film and broadcast piracy in the European Union.

George knows first-hand the challenges faced by clients, having spent more than two years in-house on secondment with high-profile consumer products companies. He is one of only two associate lawyers in the United Kingdom to be recognised by the *World Intellectual Property Review* as a leading trademarks practitioner.

AILSA CARTER

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Ailsa Carter is a principal associate professional support lawyer in the intellectual property team at Gowling WLG. She focuses on the development of knowledge, the production of material for publication and the training of fee earners in the intellectual property team. Ailsa has particular experience advising and representing clients in the pharmaceutical, biotech and consumer products sectors, including in litigation and wider disputes concerning patents, confidential information and trademarks. She has collaborated with lawyers in many other jurisdictions, coordinating and assisting in the context of multi-jurisdictional disputes and projects involving litigation outside the United Kingdom.

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