

**Letter to Intellectual Property Minister** (Amanda Solloway MP, Parliamentary Under Secretary of State at the Department for Business, Energy and Industrial Strategy).

Dear Minister,

### **Continuity and certainty in intellectual property law and procedure**

We are writing to you in our capacity as the leaders of UK representative bodies in the intellectual property sector to welcome you to your new role in these unprecedented times.

The Government is rightly fully occupied with addressing the Coronavirus crisis. We understand that you are not currently able to deal so fully with other matters. We therefore mention only a few key themes for when your work on these issues resumes.

#### **Securing the existing IP system**

First, the IP rights regime is of great importance to advanced economies such as the UK. There is consensus that it is desirable to provide maximum stability in the legal framework for the future.

This framework is important to research-based and creative industries, large and small, to consumers and the general public. The current crisis has demonstrated the importance of sound legislative frameworks promoting strong and responsive R&D, accessibility of the fruits of technological advance. Recent news reports have highlighted the role of IP regimes in preventing counterfeit personal protection and medical products. Copyright and other unregistered rights recognised within the scope of intellectual property as much as patents and other registered rights are a vital part of this framework.

Second, the UK has a world-class IP system and has enjoyed wide influence in shaping intellectual property law internationally. This has ensured a balance between protection of rights and the public interest. There is wide respect for English law as the choice of law in international business contracts and UK dispute resolution systems. The current IP system, including key mechanisms for international co-operation, is strongly supported by industry. The overwhelming view of users and professionals is that as much as possible of it should be retained following the end of the transitional period with a view to limiting costs and duplication.

The UK will need to ensure that all aspects of its IP infrastructure, including its well-respected specialist judiciary and tribunals concerned with IP matters, are fully resourced, to maintain existing standards and ensure that cross-border enforcement of judgments remains straightforward.

Continuity and certainty in this area are particularly important for SMEs for whom the costs of dealing with their IP rights and those of others is relatively large. It is important that the Government does not increase the burdens on business in this area. The UK should continue to prioritise the substantive and procedural IP rights of its undertakings and efforts should be made to ensure that the UK and EU will not make

the position of UK undertakings more difficult and costly than they were prior to the UK's departure from the EU.

Third, as part of securing the existing system, the Government should respect the UK's existing domestic and non-EU international laws and obligations, including the Patents Act 1977, which gives effect to the (non-EU) European Patent Convention (EPC) in future trading arrangements. The Government's indication that it has no intention of entering into trading arrangements inconsistent with existing international obligations, including the EPC, is universally welcomed. It must be carried into effect. Membership of the EPC is fundamental to the efficient administration of patent rights, is the foundation of UK patent law and a key to UK activity and influence in this area.

### **Consultation on specific issues**

There is a wide range of specific issues, which will be addressed in greater detail in separate submissions where UK action should not prejudice the existing position.

For example, some IP right owners have emphasised common and effective activity in the administration of IP rights and enforcement such as cross-jurisdictional cooperation between law enforcement authorities in the fight against counterfeiting. Future trading arrangements should not put existing collaboration at risk and should be the subject of detailed consultation.

To take another example, the question of a post-Brexit exhaustion of rights regime is complex and far-reaching. It involves policy choices. Consultation should be continued on change to the existing regime. In the meantime, maintaining the status quo is widely regarded as desirable.

As a third example, many have expressed regret that the UK will not participate in the Unified Patent Court (UPC) and Unitary Patent. Should the UPC nonetheless proceed without the UK, the Government should ensure that it works to the advantage of undertakings in this country, including rights owners, those affected by those rights and as regards provision of professional services relating to such rights. This too should be the subject of specific consultation.

### **Continued engagement and proposed meeting**

We will continue to engage with the Government on these issues when normal work resumes. We remain grateful for the stakeholder dialogues in the past and will collectively and on behalf of individual organisations, make more detailed submissions concerning aspects of the future trading arrangements with the EU and other countries. A meeting including relevant stakeholders, of a kind held by your predecessors, would be useful. In the meantime, we are ready to assist you at an appropriate time in ensuring that this area of Government activity is given appropriate priority.

**9<sup>th</sup> April 2020**

Sent on behalf of:

Intellectual Property Bar Association (IPBA)

Chartered Institute of Patent Attorneys (CIPA)

The British Association of the International Federation of Intellectual Property Attorneys (FICPI-UK)

British Copyright Council (BCC)

International Trademark Association (INTA)

Chartered Institute of Trade Mark Attorneys (CITMA)

Intellectual Property Lawyers' Association (IPLA)

Law Society

Professor Duncan Matthews (QMUL)

British Brands Group (BBG)

International Association for the Protection of Intellectual Property (AIPPI)