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Director of the Institute and Company Secretary
Dr Paul Leonard

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Prof. Sir Hugh Laddie (elected 18.10.06)
Mr Christopher Morcom QC (retired 18.10.06)
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Mr David Roberts (retired 18.10.06)
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Major Subscribers

During the year ended 31 March 2007

AstraZeneca
Baker & McKenzie
BATMark
Bird & Bird
BP
Bristows
BTG
Clifford Chance
Dyson Technology Limited
Frank B Dehn
GE Healthcare
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Patent Office
Pfizer
Rouse Legal
SJ Berwin
Slaughter & May
Wilmer Cutler Pickering Hale and Dorr



Intellectual Property Institute

Insight, understanding and progress through research

Our Mission

Our mission is to promote awareness and understanding of intellectual property law, and its contribution to economic and social welfare, through high quality, independent research. We aim to provide knowledge and expertise for industry, policy makers, professionals and the general public, in order to foster a legal, social and regulatory climate that supports an innovation-based economy.

A Brief History of the Intellectual Property Institute

The idea of establishing a research body concerned with intellectual property law started to take shape in the late '70s. It was around this time that Hugh Brett, a practising solicitor, who had failed to persuade his previous employers that copyright, patents and trade marks were important business legal rights, decided to establish a journal dedicated to intellectual property law. It was to be called the European Intellectual Property Review (EIPR).

Major publishers were unwilling to accept that intellectual property was an important and growing legal subject, so the journal was first published from Hugh's bedroom. However, the number of lawyers who subscribed to the EIPR soon proved the sceptics wrong. There had now become recognition among practising lawyers that IP rights were not the sole preserve of patent attorneys, trademark agents and a few specialised lawyers. One copyright textbook had, for example, stated that specialised IP lawyers could be counted "on the fingers of one hand".

Interest in the subject was growing, fuelled by the UK's entry into the Common Market. Many early cases in the ECJ were IP cases. The European Commission identified early that if there were to be a true Common Market then harmonised IP laws throughout the Market would be necessary. Attention was starting to focus particularly on the common law aspects of IP harmonisation, since it was perceived that the development of an IP regime across Europe was being dominated by civil law thinking emanating from the Max Planck Institute in Munich (under the energetic direction of Prof. Frederick Beier and Prof. Eugen Ulmer).

Ironically, it was at the Max Planck Institute in Munich, in 1980, during a conference of the British/German Jurists Association (organised by Jack Black and Prof. Ulmer) at the Max Planck Institute, that the idea to form a UK institute finally materialised. Michael Flint, a senior partner at Denton Hall, Hugh Laddie and Robin Jacob (leading barristers at the time) Professor Bill Cornish, Professor Gerald Dworkin, Bryan Harris and Hugh Brett were among those who had gathered to discuss comparative copyright / authors' rights. During the conference, a group from the UK delegation chatted in the gardens nearby. They were appalled that there was no institute to compare with Max Planck in the common law countries, and concerned at the lack of a common law voice in the corridors of Brussels. They resolved to take action to establish what would be called the Common Law Institute of Intellectual Property (CLIP).

As the following anecdote suggests, perhaps there were already signs that Europe was taking notice of common law traditions. Robin Jacob was due to speak towards the end of the conference, on the Sunday morning. There was a bit of a panic because nobody had seen him on the Saturday, the first day of the conference. Unknown to all, he had gone off to the lakes and mountains, which had seemed to him the more favourable choice. However, he turned up bright and breezy on the Sunday morning. He began his talk by placing a large black pilot case on the table, from which he withdrew a plastic shopping bag emblazoned with the Union Jack. Few (including Sir Robin) can remember what he talked about, but everyone remembers the Union Jack bag, and that he had recently been in Luxembourg, where he was appearing for the UK government in the famous Coditel and Maize Seed cases. He had been surprised (and pleased) to observe that the Court had begun to talk and ask penetrating questions; a practice which followed the joining of the UK to the EEC as the common law judges and advocates general settled into the job.

The first CLIP offices were in Hugh Brett's offices at 25 Beaumont Street, Oxford. Shortly thereafter, it was decided that CLIP would be better placed if moved to London, and Michael

Flint hosted meetings at Denton Hall's offices in Grays Inn. Through Michael's enthusiasm and contacts, CLIP began to secure funding from industry and the legal profession. The first meeting, when the idea of creating the Institute was exposed to a larger audience, was also held in Denton Hall's offices in Gray's Inn. Intellectual property specialists from the bench, notably Mr. Justice Whitford, barristers and solicitors attended.

On 15th March 1982 in the Rotunda Room of the UK Patent Office the first meeting of the Foundation Committee of CLIP was held. The Chairman for the meeting was Lord Scarman, the Institute's first President. CLIP's Council included: Edward Armitage, Jack Black, Hugh Brett, Bill Cornish, Gerald Dworkin, Michael Flint, Geoffrey Hobbs, James Lahore, Brian Norris and Stephen Stewart QC. These were the prime founders of the Institute. Michael Flint was initially the Chairman of the Foundation Committee but as he had to spend much of 1982 in Los Angeles, the chair was passed to Stephen Stewart who had recently retired from being the Director of the IFPI.

Thanks to financial support from the American film industry, the Institute enjoyed premises at the Institute of Advanced Legal Studies, at Russell Square. Indeed, the establishment of CLIP owed much to Michael Flint's enthusiasm and his determination to secure funding from industry and the legal profession.

The Institute's first Director was Ivor Davies, formerly the Comptroller of Patents at the UK Patent Office. The first public event organised by the Institute was a conference at the Waldorf Hotel, London, on the subject of piracy. Thanks to Brian Norris, the conference was sponsored by the Motion Picture Association of America. Lord Scarman chaired it and gave the keynote speech. The national newspapers, as well as legal journals, covered the event. It was at this conference that the Institute could be said to have been launched. Prof. Beier, then Director of the Max Planck came and welcomed the arrival of their "Little Sister".

In April 1991 John Adams, then Professor of Commercial Law at the University of Kent, but latterly Professor of Intellectual Property Law at Sheffield University, took over as Director of the Institute. In 1994 the Institute changed its name to the Intellectual Property Institute, under the chairmanship of Sir Geoffrey Pattie, formerly a minister at the DTI. During this time, Ron Coleman, formerly Chief Engineer and Scientist at the DTI, helped to manage the Institute, remaining in post until John Reid, previously head of Patents at Unilever, became General Secretary in early 1997. The Institute had by this time moved to Southampton Buildings and the two Johns managed the Institute jointly until 2000 (having moved again to Outer Temple, Strand in 1999). Sir Robin Jacob had become a High Court Judge and the Institute's President, succeeding Lord Scarman.

In 1999, Ian Harvey, the Chief Executive of BTG plc, took over as Chairman of the Board. In May 2000, Paul Leonard was appointed as the Institute's first full time Director, combining roles of Director and Secretary General previously held by John Adams and John Reid. Since March 2001, the Institute has been located at 36 Great Russell Street, not far from its first premises, in Russell Square.

In 1982 Hugh Brett wrote, in an article in EIPR [1982, 5, p.129], that the "primary objective of the Institute will be to provide the facilities for research into the relevance and reform of intellectual property law. It is not possible to meet the needs of industry and the demands of innovation without a proper research centre. West Germany, for example, has the famous Max Planck Institute in Munich, with some 50,000 books, and a budget of over one million pounds per year, largely provided by government. A beginning has to be made....."

The objectives of the Institute have not changed since Hugh Brett articulated them twenty-five years ago. Over the years, the Institute can be justifiably proud of its achievements, made on a budget that has, sadly, never approached that afforded to the Max Planck Institute or, indeed, numerous other equivalent bodies around the world. In recent years, the Institute has owed much to the generosity of the pharmaceutical industry as well as numerous law firms, and it has enjoyed increasing support from the UK Patent Office, including the provision of a new Associate Director for the Institute, Richard Howe. The Institute is taking active steps to widen its support base from the private sector and government. The little sister wishes to grow up!

Chairman's Statement

This year has been one of building new activities and research programme on the strengthened foundations for the Institute. These foundations include a substantial increase in membership (which has continued to grow this year) and bringing governance of the Institute in line with best practice. The generosity of BP plc in paying three years' subscription upfront has recently helped substantially in creating a stronger financial base for the Institute in launching its new research programme. The new research programme has also been instrumental in bringing our corporate members closer to the research programme and the projects it frames.

The genesis of the new research programme with its five research areas lay in the Landscape Proposals developed by the Director and used as a basis for developing a set of research priorities which were closely aligned with the interests of our stakeholders. The relevance of these areas was reinforced by the high quality of the Research Directors appointed by the Institute to run programmes in each of the areas. We already have research projects under way in several of the research areas and which are supported directly by our members.

The seminar and conference programme has also been very active with an increase in both the number and quality of events.

On a more personal note I have been heavily involved with the Institute's China Programme, which the Director reports on elsewhere. I am struck in China by how much further they have progressed in being aware and respectful of IP than is commonly realised. But also, it is clear that the Institute is held in high regard in China, being seen as a first port of call for many Chinese IP delegations coming to Europe. We must be careful not to get distracted from our core mission. On the other hand, we should be aware of the value that the IPI's work is held in both in China and elsewhere and how best we might develop the opportunities that this presents.

Finally, I was delighted that Sir Hugh Laddie and Mike Barlow agreed to join the Board last year – they have proven as energetic as I had expected. I thank all the members of the Board for the work and support they have willingly given to help the Institute progress as it has over the past twelve months.

The output of the Institute is gathering pace as we had expected and hoped that it would – a real tribute to the energy and commitment of the Director.

Ian Harvey

Director's Report

The Gowers Review of intellectual property dominated the policy scene this year. It was important not least because it was sponsored by the Treasury: an overt recognition of the central role of IP to the UK economy. The role of the IP Institute was brought to the fore, since the Gowers Review report used IP Institute research to underpin policy recommendations, and because we were able to respond quickly to calls for further research in the policy arena. This year, we not only enjoyed a high profile on the UK IP landscape, but also in the crucial emerging markets of China and India. In China, Dr Wang, with the support of the Chairman, managed a series of high profile events for Chinese industry, providing access to high level expertise in IP management and exploitation. The work has spurred a strong relationship between the Chinese government and the Institute, and we have been pleased to host a number of trade and IP delegations from China throughout the year.

In India, we made a significant impact on the government's proposals to limit the patentability of micro-organisms, through the so-called "Mashelkar Committee". The Institute has been very effective this year at stimulating dialogue between the west and the major emerging markets; work we intend to build upon in the future.

We continue to evolve and, this year in particular, we are at an exciting and important stage of development having (at the time of writing this report) appointed four new Research Directors (in addition to Dr Wang). We now have a clear set of research priorities (set out in our new brochure), with five research themes spearheaded by a separate Research Director.

1 Addressing Fragmented and Cumbersome IP Systems in Europe

Prof. Michael Blakeney, Research Director

IP law and regulation is fragmented in Europe, causing uncertainty, excessive costs and numerous other problems for IP users and policy makers in the region. The Institute is pursuing a variety of research projects that will address some of these issues. For example, by providing basic data sets for patent litigation (numbers filed, which areas, which jurisdictions, how many litigated, success rates etc.). We will also carry out projects that will underpin the effective development of the European Patent Litigation Agreement (EPLA); investigating the procedural means available in the EU of protecting against litigation: e.g. gauge the extent to which there is EU harmonisation on declarations of non-infringement.

We will carry out research to provide evidence as to where, and how, the IP system in Europe is fragmented, and to gauge the costs to business of such an IP system in Europe.

We will pursue research to establish whether measures such as the London Agreement, the EPLA and the EU Enforcement Directive will be effective measures to address a fragmented IP system in Europe.

2 Enforcement, Cost-Reduction and Accessibility

Dr Puay Tang, Research Director

The effective enforcement of IP rights, the costs associated with such enforcement and the subsequent access to "IP justice", are significant issues for the IP system and,

indeed, its credibility. We will seek to build on our knowledge from previous research gauging the social and economic effects of counterfeiting.

We will also look to carry out a number of research projects addressing specific issues under the EU Enforcement Directive, and to examine the efficacy of current methods of digital rights management, determining and promoting best practice, for example.

3 The IP / Innovation Link

Prof. Jeremy Phillips, Research Director

We will investigate, for example, the value within Europe of supplementary protection certificates (SPCs): how many have been granted, how many have been enforced, and have they achieved their stated purpose? Additional work could include a comparative assessment of the efficacy of the SPC *cf.* provisions in the US.

We will aim to carry out a number of projects looking at the efficacy of the IP system generally to promote and foster creativity and innovation. In other words, seek to establish a platform of real understanding about how the IP system actually works to achieve its stated (or notional) goals.

4 IP and Competition

Prof. Stefan Szymanski, Research Director

We will establish research to gauge the social and economic effects of parallel trade and / or the exhaustion of IP rights, including, for example, an assessment of the impact of allowing exhaustion within the EU.

And we will seek to examine the interface (and tensions) between IP and competition law, particularly the effects of Articles 81 and 82 of the Treaty on the exercising of IP rights.

5 China Programme

Dr Victoria Wang, Research Director

In response to the dramatic rise in China's economy, and the significant emphasis that we and, indeed, China have placed on the role of IP rights in trade and investment in the region, the Institute is working with the UK and Chinese governments to establish a programme of research and events aimed at promoting mutual awareness and understanding across a broad range of IP issues.

In the first instance, we are pursuing research to establish basic data sets, providing intelligence on trends in IP protection (patent filing by country, sector, technology area etc.) and enforcement (success and failure rates in various jurisdictions etc.). We will carry out research to investigate any and all aspects of IP in China and, in particular, its role in fostering beneficial trade relations with China in the future.

Taking the difficult decision to lower our membership fees some years ago has paid dividends: our corporate membership has grown considerably and, crucially, we now enjoy increased access to advice and expertise from across the IP spectrum. I am looking forward to widening our membership base still further in the year ahead, but it is to the research programme that we look to make the most significant step forward in the near term, fully

exploiting the expertise of our newly-appointed Research Directors to deliver a far higher level of core research activity than has been possible to date.

This year has itself been productive, however, with a number of projects initiated or completed, and a correspondingly rich vein of publications as a result. These have complemented the publication of the IP Quarterly during the year, with Prof. Margaret Llewelyn, our Editor, providing a guiding hand which has resulted in a journal of considerable quality and appeal.

Research Summary

- **Trevor Cook** (Bird & Bird) completed an exceptionally thorough examination of the European perspective on the extent to which **the experimental use defence** to patent infringement applies to differing types of research. Trevor Launched the publication at an event held at Clifford Chance (see below) and the publication has been moving rapidly from the Institute's stock shelves.
- Having prepared an excellent analysis of the current provisions for **address for service** in the EU, **Daniel Burkitt** (Oxford University) provided the Institute with an update on the issue covering recent developments in, for example, Ireland. The work has sparked much interesting debate in Europe around the interpretation and use of Article 49 of the Treaty of Rome, which deals with restrictions on the freedom to provide various services. The work was instigated and sponsored by TMPDF.
- **Dr Robert Pitkethly** (Said Business School) completed the **2006 IP Awareness Survey** for the Institute, on behalf of the UK IP Office. The survey is an extremely important contribution to our understanding of the level of knowledge and awareness within the UK. Crucially, the survey has been crafted in such a way that it allows year-on-year analysis of improvements (or otherwise) to the status quo. This will allow the UK IP Office to gauge the effectiveness of their numerous awareness-raising initiatives, and to respond to trends and issues that the survey reveals.
- In direct response to the recommendations of the Gowers Review report, we have instigated work to gauge **the efficacy of SPCs** within the pharmaceutical sector. It is now many years since these provisions came into force and an examination of their effects is most timely. This work is being led by **Dr Duncan Curley** (McDermott, Will & Emery).
- To address some concerns over proposed changes to Indian patent law, the Institute carried out two research projects, both by **Dr Shannad Basheer**, which made a very significant impact to the Indian government's deliberations through the Mashelkar Committee: a paper on gauging the **compatibility of limiting patent protection for pharmaceuticals and micro-organisms** under the TRIPs Agreement, and another examining the current provisions and use of **Article 39.3** of TRIPs, which deals with data protection.
- Finally, the Institute was delighted to secure funding for a major research project on the economic effects of introducing a **droit de suite** (artists' resale right) in the UK. Led by Professors **Stefan Szymanski** (Tanaka Business School) and **Katy Graddy** (Brandeis University, USA) the project is due for completion in January 2008. The work follows a successful initial study on the subject which the Institute carried out for

the (then) Patent Office. The new research will provide significantly greater depth and, it is hoped, make a significant contribution to policy development in this area.

EVENTS

A great strength of the Institute is its ability to bring together people from differing backgrounds to discuss issues of topical importance in the IP field. This year we have reached out to industry, students, policy makers (national and international) and the legal profession. We have held briefings, updates, moots and mock trials and, of course, a flagship Stephen Stewart Lecture, delivered by Andrew Gowers himself. Below is a brief summary of our major events.

- 10 May 2006: Seminar with Trevor Cook on the patent research exception, at Clifford Chance, Chaired by our President, Sir Robin Jacob.
- 5th July 2006: Seminar with David Tatham on domain name dispute resolution since 2000, held at BAT and chaired by Tony Willoughby.
- 28th July 2006: IPI hosts a senior Chinese Delegation on China IP and international trade at the UKIPO.
- 7th September 2006: IPI contributes to a mock, multi-jurisdictional trial held at Harvard Law School. The UK litigating team included IPI Council member, Henry Carr QC, and the UK Judge was His Honour Judge Fysh, also a member of our Council.
- 12th October 2006: Complementing the excellent briefings for business people in China, the Institute held a high level event on “The Chinese Opportunity - successful business development in China” at Linklaters. Our Chairman, Ian Harvey, steered the events of a very successful day.
- 29th November 2006: Andrew Gowers delivered the 2006 SS Memorial Lecture at Slaughter May. Over 150 delegates attended and, again, Ian Harvey was in the chair.
- 18th January 2007: Ilanah Simon delivered an excellent seminar on trade mark dilution, US developments and their impact in the EU. The event was hosted by CPA Management Systems Ltd, and chaired by the Director.
- 15th March 2007: Seminar with Evie Kyriakides, Mars UK Ltd on FMCG trade mark issues, chaired by David Tatham and held at McDermott, Will & Emery.
- 24/25th March: Professor David Vaver and his organising team staged the Annual International Mooting Competition, Oxford. The Institute is proud to be associated with what has become a true highlight in the IP calendar. To demonstrate the true international nature of the moot, it was won by a team from Queensland who defeated a team from the USA in the final.

New Members

We are delighted to be able to report the following new additions to our membership over the past financial year. Their contribution will not just be financial; it will also be through bringing their collective experience to bear in shaping our agenda for future work. We extend a very warm welcome to:

- BATMark
- Dyson Ltd
- IBM
- Inst de Recherches Int. Servier
- InterDigital Communication Group
- IP21 Ltd
- JA Kemp
- Merck Sharp & Dohme

Director's Assessment of Performance for the Year

We are, I believe, at something of a watershed in the twenty-five year story of the IP Institute. This year we carried out a strong programme of research in support of industry and policy makers, here and abroad, but we have ambitions to much more. Looking ahead, with the added resource of our new Research Directors, we aim to make a step change in our research output and to take full advantage of a wider, more diverse membership base.

The establishment of a new Strategic Advisory Board for IP, and new resource for policy development, including research, presents a particular challenge for the Institute which we are keen to meet. I look forward to working with all of our supporting firms to make sure that the Institute has takes full advantage of the new opportunities on the horizon.

As ever, I am very grateful for the help and support of the Board and Council. Their advice and guidance is invaluable. I am also indebted, as ever, to Anne Goldstein and Sue Hanstead for their constant hard work on behalf of the Institute; all behind the scenes but no less valuable for it.

Leading the IP Institute continues to be a pleasure and a privilege, and I am looking forward to the coming year's challenges and successes with more anticipation than ever before.



Dr P A Leonard
Director

Statement of financial activities - for the year ended 31 March 2007

	2007 £	2006 £
Incoming resources		
Incoming resources	242,239	192,335
Resources expended		
Charitable expenditure	(230,887)	(176,566)
Governance costs	<u>(19,220)</u>	<u>(18,073)</u>
Net (resources expended) before taxation	(7,868)	(2,304)
Tax on (outgoing) resources	<u>-</u>	<u>-</u>
Net (deficit) for the year	<u>£(7,868)</u>	<u>£(2,304)</u>

Balance Sheet – 31 March 2007

	2007 £	2007 £	2006 £	2006 £
Fixed assets				
Tangible fixed assets		2,414		3,226
Current assets				
Debtors	20,881		41,053	
Cash at bank and in hand	<u>89,782</u>		<u>22,963</u>	
Total current assets	110,663		64,016	
Creditors				
Amounts falling due within one year	<u>(78,414)</u>		<u>(24,711)</u>	
Net current assets		<u>32,249</u>		<u>39,305</u>
Total assets less current liabilities		<u>£34,663</u>		<u>£42,531</u>
Capital and reserves				
Unrestricted funds		<u>34,663</u>		<u>42,531</u>
Total funds		<u>£34,663</u>		<u>£42,531</u>