



ANNUAL REPORT 31 March 2008

Intellectual Property Institute
36 Great Russell Street
London WC1B 3QB

TEL: 020 7436 3040
FAX: 020 7323 5312

Anne Goldstein, Administrator
email: annegoldstein@btconnect.com

web: www.ip-institute.org.uk

Intellectual Property Institute
1st Floor
36 Great Russell Street
London WC1B 3QB

Tel: 020 7436 3040

Fax: 020 7323 5312

Email:

ipi@ip-institute.org.uk

Publications and Membership: annegoldstein@btconnect.com

Web:

www.ip-institute.org.uk

Charity Registration number:

283150

Company Registration number:

1557489

Director of the Institute and Company Secretary

Dr Paul Leonard

BOARD MEMBERS

Mr Ian Harvey, Chairman
Dr Mike Barlow
Mr Henry Carr QC
Prof. Sir Hugh Laddie
Dr Stephen Smith
Professor David Vaver

COUNCIL MEMBERS

Chairman: Dr Paul Leonard

Professor John Adams	Mr Carl Horton, GE Healthcare Biosciences
Mr Robert Barry, Wilmer Cutler Pickering Hale and Dorr	The Rt Hon Lord Justice Jacob
Dr Mike Barlow	The Hon Mr Justice Kitchin
Professor Lionel Bently	Sir Hugh Laddie, Rouse Legal
Mr Kevin Bill, AstraZeneca	Professor James Lahore
Mr Jack Black, (Deputy Chairman)	Mr Peter Lawrence, Patent Office
Mr Ray Black, SJ Berwin	Professor Hector MacQueen
Professor Michael Blakeney	Mr Christopher Morcom QC
Mr Hugh Brett	Mr David Perkins
Mr Michael Butler, Frank B Dehn	Dr Jeremy Phillips
Mr Henry Carr QC)	The Hon Mr Justice Pumfrey
Mr Trevor Cook, Bird & Bird	Monserrat Ballester Rodes
Miss Liz Cratchley OBE	Dr Tony Rollins
Mr Anthony Dolan, BTG	Dr Gill Samuels, Pfizer
Dr Duncan Curley, McDermott Will & Emery	Mr Martin Sandford, BTG
Professor Gerald Dworkin	Mr Hamish Sandison, Bird & Bird
Mr Michael Flint	Professor Aubrey Silberston CBE
Mr Richard Freeman OBE	Professor Stefan Szymanski, Imperial College London
Dr Christine Greenhalgh	Ms Puay Tang
Mr Michael Hart, Baker & McKenzie	Mr David Tatham OBE
Mr Keith Hodkinson, Marks & Clerk	Professor David Vaver
Mr John Hornby, Clifford Chance	Mr Philip Westmacott, Bristows Vanessa Winspeare

Major Subscribers
During the year ended 31 March 2008

AstraZeneca
Baker & McKenzie
BATMark
Bird & Bird
Blake Dawson Waldron
BP
Bristows
BTG
Clifford Chance
D Young
Dyson Technology Limited
Esteve
Frank B Dehn
GE Healthcare
GlaxoSmithKline
Haseltine Lake
IBM
Inst de Recherches Int. Servier
IP21 Ltd
JA Kemp
Marks & Clerk
Mars
McDermott Will & Emery
Merck Sharp & Dohme
Mewburn Ellis
Microsoft
Morrison & Foerster
Patent Office
Pfizer
Rouse Legal
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

There has never been a more important time for the IPI to exist, delivering high quality, fact-based research about IP to policymakers and business people and promoting debate about the growing number of key IP issues. At a time when even the legitimacy of the IP system itself is under challenge by some, this is directly addressed by our research programme and the current series of lectures on the "Future of IP" by world leaders in the field.

The research programmes described in the past several years have now started to deliver their intended outputs. New research is being started in each area. Our members, and others outside our membership, are increasingly involved in defining, funding and participating in these programmes and projects. We also maintain the fundamental basis that our research conclusions are objective and independent of any funding source.

For the past several decades I have been surprised at how few senior managers of IP-based companies really understand the IP structures on which their businesses depend. So I hope that our continued growth in new members from around the world reflects rising levels of awareness. And, thanks to our growing membership, we have reached close to financial break-even this year and it is important for the future level of research that we continue to grow both our membership base and research income.

I would like to thank our members for their continued, and growing, support of the Institute, my colleagues on the Board and Council for their freely given time to the Institute and to our Research Directors and researchers who deliver the calibre of research which is the basis for our being. Finally, none of this would happen without the direction and enthusiasm of Paul Leonard, our Director.

Ian Harvey



Director's Report

The implementation of the Gowers review of intellectual property was a major factor influencing much on the UK's IP scene this year. The review has been extremely useful in highlighting the importance of IP to the economy and society, and the profile of IP has risen as a result. The increase in profile has not, however, been matched by a similar increase in knowledge and understanding of how IP actually works. As we reported last year, the Institute's research played an important part in informing the policy recommendations contained in the Gowers review (our research for the then DTI on the current law and practice of patents for genetic sequences, for example). This year, we have responded to two issues raised within the review, through Robert Pitkethly's IP Awareness Survey for the UK IPO, and Trevor Cook's analysis of the interpretation of the patent research exception in the EU.

IP awareness will, I believe, be to the fore in policy circles in the immediate future, as the profile of IP increases and policy makers appreciate the importance of improving awareness and understanding within business, especially the smaller enterprises. To quote the conclusions of the IP Awareness Survey: *"The results of the survey present a consistent picture of IP awareness. Larger companies are more IP aware and have greater resources to both find out about IP and do something about it, whilst SMEs and the mass of micro-enterprises which form the cradle of IP and future large companies are in the main effectively unaware of the IP system."* The survey concludes that *"What is indisputable is that awareness of the [IP] system is a pre-requisite for it to work."*

The new UK IP advisory board, SABIP, will be commissioning research on which its policy recommendations can be based. The IPI is uniquely placed to bring together the best people internationally from academia, industry and IP law to undertake such high quality and unbiased research for SABIP.

Our research programme continues to be set out under five major themes, each spearheaded by a separate Research Director. This year, Professor Stefan Szymanski stepped down as an IPI Research Director with his move from the Tanaka Business School (Imperial College, London) to the Cass Business School (City University). Although we are sad to lose Stefan's guidance and expertise, his post has been ably filled by Dr Robert Pitkethly (Saïd Business School and the Oxford IP Research Centre). Robert brings a unique mix of legal, economic, business and practitioner expertise which complements the expertise of our other Research Directors.

Our current research themes and the associated Research Directors are as follows:

- Addressing Fragmented and Cumbersome IP Systems in Europe – Prof. Michael Blakeney
- Enforcement, Cost-Reduction and Accessibility – Dr Puay Tang
- The IP / Innovation Link – Prof. Jeremy Phillips
- IP and Competition – Dr Robert Pitkethly
- China Programme – Dr Victoria Wang

Research Summary 2007/08

Below is a brief summary of research completed or initiated during the period.

The 2006 IP Awareness Survey was carried out by Dr Robert Pitkethly and published by the UK IPO. The survey provides an insight as to the state of IP awareness in the UK; it is designed to be repeated so that changes can be monitored over time. The survey concludes that awareness at present, especially within the smaller companies, is not good. A PDF version of the survey is available from the UK IPO web site: <http://www.ipo.gov.uk/ipsurvey.pdf>

Address for Service Requirements and Restrictions on the Provision of Services by Patent Agents in the EU – This work, by Daniel Burkitt was completed in the year 2006/07, but the Institute published the final report in May 2007, hence its inclusion here. The report examines the “Address for service” requirements for EU Member States and concludes that many states are not meeting their obligations under the provisions of Article 49 of the Treaty of Rome.

Extending Rewards for Innovative Drug Development – a Report on Supplementary Protection Certificates for Pharmaceutical products – Here, Dr Duncan Curley analyses the impact of Supplementary Protection Certificates (SPCs) since their introduction in January 1993. The report covers the background to the introduction of SPCs and examines whether they are still “fit for purpose” for the modern pharmaceutical industry.

A Study into the Effect on the UK Art Market of the Introduction of the Artist’s Resale Right – This study formed a major strand of the Institute’s research programme over the year. Led by Prof. Stefan Szymanski, Noah Horowitz and Prof. Katy Graddy, the work was undertaken on behalf of the UK IPO to inform policy decisions in this contentious area. The work provides:

- An assessment of the impact on the UK art market of the introduction of the right
- An assessment of the costs of administering the right
- An assessment of the benefit to artists arising from the right

A full copy of the report can be obtained from the UK IPO web site: <http://www.ipo.gov.uk/study-droitdesuite.pdf>

The Exclusion of Surgical, Therapeutic and Diagnostic Inventions from Patentability under Article 52(4) of the European Patent Convention – Here, Jeremy Phillips and Florian Leverage address the policy behind the Article 52(4) exclusions and the manner in which the provisions have been applied by the EPO. The report considers specifically:

- The extent to which the interpretation of Article 52(4) appears to be in line with the principle behind the exclusion
- The consistency of the decisions relating to each exclusion over the span of time during which it has been applied
- The consistency of the decisions as between the different grounds upon which an invention may be barred from patentability

The Brand of IP

There has been another element to our research this year which is difficult to categorise but nevertheless potentially important. This work was based on the observation that IP is quite widely criticised in the press and is perceived to have a negative reputation. The initial objective was to examine the “brand values” of IP itself. The work by our researcher, Dr Roya Ghafele (Haas Business School, University of California at Berkeley), was based on an extensive analysis of public discourse in print and on TV in the G8 countries, that most people do not understand the value they derive from IP, and that many reject its legitimacy altogether. An IPI seminar brought together marketing experts from a variety of industries who showed that marketing concepts could help understand the mismatch between what the product (IP) actually delivers, against its negative perceptions (a “tainted brand”). There has been substantial interest from many companies who suffer from this negative perception of IP. We are currently forming an industry-led working group to analyse the problem in greater depth and to begin to formulate a strategy to address the problem. The work thus far has been generously supported by the British Brands Group and by the marketing consultancy Silverfin.

Events Summary 2007/08

Below is a brief summary of the highlights of our events programme this year. As ever, they cover a wide range of subject matter, and they take a number of different formats, but they all have one thing in common: they were hosted with the help and generosity of our members. This report provides an excellent opportunity for the Institute formally to thank them for their continuing support.

- ***The Valuation of IP - 10 May 2007***: a seminar with Mark Bezzant, Managing Director, LECG Ltd, hosted by Shepherd and Wedderburn, and chaired by Sir Hugh Laddie
- ***DNA Patents: The End of an Era - 13 June 2007***: a seminar with Sandy Thomas hosted by BAT Mark Limited, chaired by our President, The Rt. Hon. Lord Justice Robin Jacob
- ***What's Wrong with Copyright? - 19 July 2007***: a seminar with Charles Oppenheim, hosted by Baker & McKenzie, chaired by Christopher Morcom QC
- ***Look Out! It's an Ambush! - 19 September 2007***, a seminar on ambush marketing with Phillip Johnson hosted by Milbank Tweed Hadley & McCloy LLP, chaired by Paul Leonard
- ***“Puzzling Questions...: Claim practice in the European Patent Office that is too favourable to the Patentee?” - 24 October 2007***: a seminar with Dr Tim Roberts hosted by Slaughter and May, chaired by Claire Baldock
- ***“Metaphors and Moral Panics in Copyright” - 13 November 2007***: The 2007 Stephen Stewart Lecture, with William Patry, chaired by the Hon. Mr Justice Floyd, at Slaughter and May
- ***“Unfair Competition and the Unfair Commercial Practices Directive” - 28 November 2007***: Joint CLA/IPI seminar, with John Noble hosted by Linklaters LLP

- ***“Supplementary Protection Certificates – Keeping Pace with Drug Development?” - 23 January 2008:*** a seminar with Duncan Curley, chaired by Paul Leonard, and hosted by Clifford Chance
- ***The Sixth International IP Mooting Competition – 15/16 March 2008:*** a true highlight of the IP calendar in the UK: Organised by Prof. David Vaver (IPI Board member and Director of the Oxford IP Research Centre) and sponsored by, among others, a number of IPI member firms, this year’s event was hosted by Worcester College, Oxford. The winning team, for the second time, was the National University of Singapore, who narrowly beat the University of British Columbia in the final. Other honours went to University College, Dublin (best written submission) and Queensland University of Technology (best individual mooter)

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:

- Mars UK Ltd
- D Young
- Blake Dawson Waldon
- Esteve

Director's Assessment of Performance for the Year

Once again we have carried out high quality, varied and relevant programmes of research and events this year. As I stressed in the past Annual Report, the overriding priority for the Institute is to increase our net income, not least to allow us a greater degree of flexibility and responsiveness in our operations. This year we were very close to break even (a significant improvement on the past financial year) but there is still a long way to go. The IPI Board has lent tremendous support in working with me to develop an operational and strategic plan for the Institute which will build on this improved financial performance so that we can generate greater financial reserves in the future. A key appointment here has been that of Dr Mike Barlow, BP, as Honorary Treasurer for the Institute.

Intellectual property continues to grow as an issue, for business, for policy makers and for society generally. The role of the Institute, to provide sound analysis, through research, on how the IP system is working, likewise continues to grow in importance and profile. It is a pleasure and a privilege to lead the Institute in these exciting times. As ever, I am very grateful for the hard work of the IPI staff, Anne Goldstein and Sue Hanstead. Equally, I am grateful for the support and advice of the IPI Board and Council.

Most importantly, I wish to thank the corporate and individual members of the Institute, without whom our work would be impossible.



Dr P A Leonard
Director

Statement of financial activities - for the year ended 31 March 2008

	2008 £	2007 £
Incoming resources		
Incoming resources	193,119	242,239
Resources expended		
Charitable expenditure	(174,597)	(230,887)
Governance costs	<u>(19,219)</u>	<u>(19,220)</u>
Net (resources expended) before taxation	(697)	(7,868)
Tax on (outgoing) resources	<u>-</u>	<u>-</u>
Net (deficit) for the year	<u>£(697)</u>	<u>£(7,868)</u>

Balance Sheet – 31 March 2008

	2008 £	2008 £	2007 £	2007 £
Fixed assets				
Tangible fixed assets		1,810		2,414
Current assets				
Debtors	42,238		20,881	
Cash at bank and in hand	<u>37,207</u>		<u>89,782</u>	
Total current assets	79,445		110,663	
Creditors				
Amounts falling due within one year	<u>(47,289)</u>		<u>(78,414)</u>	
Net current assets		<u>32,156</u>		<u>32,249</u>
Total assets less current liabilities		<u>£33,966</u>		<u>£34,663</u>
Capital and reserves				
Unrestricted funds		<u>33,966</u>		<u>34,663</u>
Total funds		<u>£33,966</u>		<u>£34,663</u>