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Welcome to the latest edition of IP Review

The summer’s big news in the UK has been “Brexit” - the result of the referendum on the UK’s continued membership of the European Union, in which 52 per cent of the voting population opted to leave the EU. As the UK and the rest of Europe come to terms with this decision, we have looked at the possible implications of Brexit for IP owners, and are happy to report that it’s business as usual for the time being at least.

Change in Europe is something of a theme this issue. We’ve provided an update on recent changes to the European trade mark system and how they affect you, and we report on developments in France, relating to the patenting of products made by essentially biological processes, that will concern the biotech industry.

In the world of designs, the long-running Trunki European Community design saga has now come to an end following a decision of the Supreme Court, which will have a significant impact on the way designs are protected.

Some things never change though. Despite a notable court victory for the UK Intellectual Property Office, IP renewal and registration scams remain in operation. See our guidance on how to deal with this ever-present threat later in this issue.

Finally, we are delighted to announce positive changes at W&R, with the promotion of three of our attorneys to Partner. Michael Jaeger, Stuart Latham and Richard Worthington joined the partnership on 1 April. Two of our attorneys, Helen Henderson and Kate Hillis, have also recently been promoted to Senior Associate with effect from 1 July 2016. Those of you who have worked with Michael, Stuart, Richard, Helen or Kate will recognise that these promotions are richly deserved, and I’m sure you will join me in congratulating them on their achievement.

Matthew Howell
Editor
EU trade mark law reform

A new European Union Trade Mark Directive entered into force on 23 March 2016, introducing significant changes to the EU trade mark framework.

Terminology

Most saliently, all references to “Community” have been replaced with “European Union”. For example, the Community Trade Mark has become the European Union Trade Mark (EUTM), and the European trade marks registry, previously known as OHIM, is now the European Union Intellectual Property Office (EUIPO).

Graphical representation - music, sounds and smells

Under the new law, trade marks must “be represented on the register in a manner which enables the competent authorities and the public to determine the precise subject matter afforded to its proprietor”. This replaces the requirement for a trade mark to be represented “graphically”.

Where before a musical score was deemed an appropriate graphical representation of a music mark, the Office will now accept a digital sound file. The same applies to motion marks, where a video file may now be submitted. While some non-traditional marks, such as smell marks, will continue to be problematic under the new wording, the path has been cleared for greater registration of sound and moving images as trade marks.

Certification trade marks

From 24 September 2017, a new category of European intellectual property protection will be available, in the form of certification trade marks. A certification mark is designed for use by authorised entities, and, rather than identifying goods as those of a single entity, it guarantees to the relevant public that the goods or services possess a particular characteristic, such as a level of quality, a mode of manufacture of goods or performance of services, or that they are made from a particular material.

For example, the well-known marks  and  are examples of certification marks. Certification marks are already available in the United Kingdom, but new applicants will soon be able to enjoy protection throughout the EU.

Classification of goods and services

Where an EU trade mark application was filed before 22 June 2012 and specifies a “class heading” in its entirety, and where the literal meaning of the terms used in the class heading would not cover the goods or services required, the trade mark owner may file an amendment, which allows him to specify the exact terms he intended to protect. These will then be protected in addition to the literal interpretation of the class heading terms. The deadline for making these amendments is 24 September 2016. If you have any concerns on this point please contact your usual trade mark attorney.

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Business as usual for IP in Europe

On 23 June 2016, the British people voted in a referendum on whether the UK should remain a member of the European Union. Just under 52% of voters voted to leave the EU, against just over 48% who voted that the UK should remain part of the EU. As a result, the UK will in due course begin the formal process of leaving the EU, often referred to as “Brexit”. That process is likely to take several years to complete. In the meantime the UK will remain a part of the EU, with all of the rights and obligations that entails including in the field of intellectual property. The message for the time being is therefore very much “business as usual”. Nothing will change in the immediate future. We have summarised here the likely impact of Brexit on the various different IP rights in Europe.
European patents - Unchanged

The European Patent Convention (EPC) is not directly linked to the European Union, but is instead a multilateral treaty agreed by the 38 participating member states, and likewise the European Patent Office (EPO) is independent of the EU. This means that the process of applying for and obtaining European patents will not change, regardless of the UK’s eventual status if and when Brexit is implemented. European patent applications will still be filed and prosecuted centrally at the EPO, before being validated, once granted, in the EPC member states in which patent protection is desired.

Unitary Patent and Unified Patent Court (Unitary Patent Package) - Likely delay

The most immediate effect of the referendum result may be on the launch of the long-awaited Unitary Patent Package (UPP), which will create a European patent court and a single Europe-wide patent. Most commentators expected the Unitary Patent (UP) and the Unified Patent Court (UPC) to be up and running in the first half of 2017. It was previously envisaged that all UPP member states would be EU members. The UK is required to ratify the UPP before it can commence. Consequently, the launch may be delayed.

There is currently some political will, not least in the UK, to press on with launch of the UPP in its current form and to seek to retain the UK as part of the UPP even if it eventually leaves the EU.

European Union registered trade marks - Minor changes

As European Union trade marks are EU-wide rights, once the UK has left the EU, European Union trade mark registrations will likely cease to have effect in the UK, and any new European Union trade mark applications will cover only the remaining EU member states.

It is highly probable that the UK government will enact legislation that will permit European Union trade mark registrations that are in force at the time of the UK’s exit from the EU to be extended into the UK, either automatically or on request, so that pre-existing trade mark rights will not be lost.

After the UK leaves the EU, in order to obtain registered trade marks covering the remaining EU member states and the UK, it will be necessary to file both a UK national trade mark application and a European Union trade mark application, either as individual applications or through the international trade mark registration system. UK national trade mark law is closely aligned with EU trade mark law, in terms of the substantive requirements for registration and the protection conferred by a trade mark registration, and also in terms of the duration of trade mark registrations, so aside from the inconvenience of having to file a UK trade mark application in addition to a European Union application, trade mark holders should not be disadvantaged by the change.

European Community registered designs - Minor changes

Like European Union trade marks, European Community registered designs are EU-wide rights. Once the UK leaves the EU, European Community design registrations will cease to have effect in the UK, and any new European Community design applications will cover only the remaining EU member states.

Again, it is highly probable that the UK government will enact legislation that will permit European Community design registrations that are in force at the time of the UK’s exit from the EU to be extended into the UK, either automatically or on request, so that pre-existing registered design rights will not be lost.

In order to obtain registered design protection covering the remaining EU member states and the UK post-Brexit, it will be necessary to file both a UK national design application and a European Community design application. The UK is expected to join the Hague system for International design registrations in 2016, so UK and EU-wide design protection could also be obtained by that route. As with trade marks, UK national design law is closely aligned with EU design law, so aside from the inconvenience of having to file a UK design application in addition to a European Community application, design holders should not be disadvantaged by the change.

Conclusion

Intellectual property rights holders will not see any immediate change as a result of the UK’s vote to leave the EU, and even once the formal process of leaving the EU has been completed the effects of Brexit will probably require only small changes to European patent, trade mark and design filing policies.

We will of course continue to provide updates on the implications of Brexit on IP rights holders. As a European IP firm with offices in both the UK and continental Europe, we are ideally placed to continue to assist our clients throughout the world in obtaining and defending the full range of IP rights in Europe and elsewhere.

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A well-structured IP policy that embraces not only patents but also trade secrets and publication can reduce risk and maximise returns on investment in IP.

Patent, publish or trade secret: which is the right path for you?

Innovative businesses are often faced with a dilemma over how best to protect their new ideas within the confines of a limited budget for intellectual property (IP). In an ideal world, a business would patent each and every commercially important innovation, in order to protect new technologies from adoption by competitors. In the real world though, resources are limited and tough decisions have to be made over where those resources are deployed. These decisions, if not managed properly, can lead to gaps in protection that can be exploited by rivals. On the other hand, a well-structured IP policy that embraces not only patents but also trade secrets and publication can reduce risk and maximise returns on investment in IP. Here we look at the benefits and disadvantages of patents, trade secrets and publication, and consider some of the technical and commercial factors that could influence the choice of whether a new innovation should be patented, published or maintained as a trade secret.
Patents are widely regarded as providing the strongest possible protection for innovations, as they are monopoly rights which can be used to prevent others from exploiting the patented innovation. Patents can be used in different ways to create value, for example by preventing competitors from entering the market with a competing product, by generating revenue directly through licensing, or even by encouraging adoption of an organisation’s technology by permitting access (perhaps with some restrictions) by competitors to patented technologies.

Patents can also be used as a deterrent against litigation. In some industries organisations develop extensive patent portfolios in order to be able to fight back if threatened with patent infringement proceedings.

Significant PR value can also be attached to patents. Organisations which file large numbers of patents are often regarded as being more innovative than those with fewer filings. The idea of patents as a proxy for innovation is increasingly prevalent, to the extent that to encourage innovation many countries now offer “Patent Box” tax breaks, which reduce the amount of tax payable by companies on profits that can be attributed to patented technologies.

Patents therefore offer numerous benefits, but they are not without their disadvantages. For example, part of the process leading to grant of a patent is that the invention must be disclosed publicly in a patent application, in enough detail that those working in the relevant field will be able to make the invention.
This means that when the patent application is published, details of the invention are available for all to see, and once the patent has expired (or if a patent is never granted for any reason) anyone is free to exploit the technology for their own benefit. The requirement to place detailed technical information into the public domain in this way will be problematic for those whose innovations will have a lifespan longer than the 20 year term of a patent.

Obtaining granted patents can be a costly and slow process. The time between filing a patent application and grant of a patent can be several years, and the cost of obtaining patents in all key territories can run to tens of thousands of pounds over that timeframe. Once a patent has been granted, further fees must be paid to keep it in force for its full term. For critical innovations like a new blockbuster drug that will be in use for generations, the cost of patent protection will be dwarfed by revenues over the lifetime of the product, but for less important developments, or those with a more limited lifespan, such as mobile apps, those costs might be more difficult to justify.

So patent protection isn't appropriate in all circumstances, but what's the alternative?

One option is to use trade secrets to protect your innovations. A trade secret can be defined as information that is not generally known to the public, that provides some economic benefit, and for which reasonable efforts have been made to maintain secrecy. Importantly, a trade secret is not a registered right. Instead, trade secrets must be carefully managed in-house, to ensure that they remain secret. Once a trade secret becomes public it loses all value.

Trade secrets are therefore appropriate for innovations that have long-term value and can be kept secret, both in terms of preventing public disclosure by their owners and in terms of being difficult to derive or reverse engineer from any product that may be made available to the public. Chemical formulations, recipes and production processes that provide economic benefits are particularly suitable candidates.

The key benefit of trade secrets is that there is no limit to their term, provided that they remain secret. Indeed, perhaps the best-known example of a trade secret, the recipe for Coca-Cola, has been successfully kept secret for decades.

Additionally, there are no filing or registration costs associated with trade secrets, so once an organisation has put in place the necessary processes and infrastructure for managing its trade secrets, the ongoing cost is negligible compared to the cost of developing and maintaining a patent portfolio.

However, trade secrets are not without their own risks. As noted above, once a trade secret becomes public it loses all of its value, so it is crucial to put in place systems to protect trade secrets within your business. This will involve a disciplined approach to defining and documenting what the business regards as its trade secrets and restricting that information only to those within the business with a
genuine need for access. Typically this will be no more than a handful of people, and may even exclude senior executives. Additionally, those people who are party to the information must be constrained by their contracts of employment not to share the confidential information with any third parties during or after their employment.

As the whole of the value of a trade secret is tied up in its character as a secret, all of the value will be lost if a third party independently discovers the secret, e.g. through their own research efforts or by reverse engineering. There is then an additional risk that that third party could obtain patent protection for the technology underlying the trade secret.

Some protection from this situation is provided by “prior user rights” legislation, which ensures that businesses are free to continue to use technology that they were using prior to the filing of a patent by a third party. However, such prior user rights are not recognised in all territories, and even in those territories that do, the rights are usually very restricted - typically they extend only to the activities that the user was actively engaged in or preparing for at the time of the patent filing, meaning that the prior user is not entitled to extend his use into other fields.

One way to prevent such a situation is by publishing details of new innovations. Publication does not confer any protection for the innovation, and indeed destroys any secrecy in the information that is published. However, publication of technical details of the innovation (even in an obscure and difficult to find journal) will also prevent anyone else from obtaining valid patent protection for the information that is published. Thus, publication can be a powerful tool for ensuring that an organisation is free to use its innovations without fear of being on the wrong end of a patent infringement action.

Publication can of course have wider commercial benefits, helping a business to gain recognition and traction in the relevant technological communities, and building awareness of the business and its technologies to encourage adoption of the technologies and to drive recruitment of talented individuals who can spur further development and growth.

As will be clear from the discussion above, it can be difficult to decide whether to patent an innovation, maintain it as a trade secret or publish details of the innovation. How can this be resolved?

The answer will depend on a number of technical factors and commercial considerations such as the overall strategy of the business and the markets in which it is operating. One approach is to identify the factors that might influence the decision to patent, publish or keep an innovation secret, and allocate a score to each relevant factor, based on the strategy and objectives of the business. The total or aggregate score for a particular innovation can then be used to inform the decision to patent, publish or keep an innovation secret.
...Patent, publish or trade secret

The table below gives some examples of factors that might be considered in determining whether to patent, publish or keep an innovation secret.

| 1. What are the likely commercial returns on the innovation? | 8. Are competitors working on similar technologies? |
| 2. Is the innovation key to implementation of current/future products? | 9. Is freedom to operate important? |
| 3. Can it be discovered/reverse-engineered by competitors? | 10. Is it in a new field of technology? |
| 4. Is it of long-term relevance? | 11. Is it a breakthrough technology or an incremental improvement? |
| 5. Would it be easy to detect in competitor products? | 12. Are there other ways of achieving the same effects (could a patent be worked around easily)? |
| 6. Is it applicable more widely than in own products (i.e. is there a licensing opportunity)? | 13. Are there other reasons to patent (e.g. patent box)? |
| 7. Is it relevant to a standard? | 14. Can it be kept secret? |

The scores allocated to each factor will be weighted, depending upon the overall strategy of the business and the competitive environment in which it operates. As an example, for an innovation in a high-tech business such as semiconductors, factors 1-4, 8 and 12 might be relevant, in that high-scoring answers to those questions (i.e. likely high returns on the innovation + the innovation is a key innovation + it’s easy to discover/reverse-engineer + it is of long-term relevance + competitors are likely to be working on similar technologies + there are no other ways of achieving the effects of the innovation) will probably point towards a decision to patent the innovation.

A different answer to one or more of questions 1-4, 8 and 12 might point to a different outcome. For example, if the innovation is difficult to discover or reverse-engineer (i.e. low scoring answer to question 3), and/or if it is unlikely that competitors are working on similar technologies (low scoring answer to question 8), then the aggregate score of the relevant factors might point to maintaining the innovation as a trade secret, particularly if the innovation can be kept secret (high scoring answer to question 14).

In some situations other factors may be more relevant. For example, if freedom to operate (i.e. the ability to use the innovation without fear of patent infringement) is important (high scoring answer to question 9) and competitors are likely to be working on similar technologies (high scoring answer to question 8) and the innovation cannot be kept secret (low scoring answer to question 14) then the aggregate score of the relevant factors might instead suggest publication of the innovation, to prevent competitors from obtaining a patent for it.

There is of course no one-size fits all solution to the question of whether to patent, publish or maintain an innovation as a trade secret. However, an approach of the kind discussed here, if applied uniformly to all new innovations, can help to ensure that valuable intellectual property is identified, captured and protected in the most appropriate way, to support the overall commercial strategy and objectives of the business.

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Information about when renewal fees on patents and trade marks are due is publicly available, and this has given rise to a number of opportunistic organisations which adopt names similar to those of official government bodies and send renewal reminders to IP owners inviting them to pay fees at amounts of up to five times the official fee.

These organisations send renewal reminder notices out well before the proprietor would receive a reminder notice from their incumbent renewals provider. Where trade marks are concerned, this can be as far as 18 months in advance. Since these notices are deliberately designed to deceive the proprietor, in many cases the proprietor accepts them to be from an organisation related to the UKIPO, or from the UKIPO itself, and pays the fee at an inflated rate.

The UKIPO has previously warned IP owners that such organisations are in operation, and more recently it brought proceedings against one such company, the Intellectual Property Agency Ltd (IPA) for passing off and trade mark infringement.

The Intellectual Property Enterprise Court (IPEC) found that in many cases IPA does pay the renewal fee on behalf of the IP owner, and whilst it is guilty of overcharging to the extreme, the judge made the point that this in itself is not unlawful. However, the judge did find IPA guilty of passing off. Since the recipients believed IPA to be an official government body, as was the intention of the IPA, they responded to the notices in good faith and on the understanding that they were paying an official fee. Furthermore, the judge ruled that IPA had infringed the UKIPO’s registered trade mark, and as a result ordered compensation of £500,000 to be paid.

Baroness Neville-Rolfe, IP Minister, said of the ruling, “I welcome this judgment and the stiff sanctions. Deliberately misleading consumers into thinking they are engaging with an official government agency is a very serious matter. Such misrepresentations of this kind will not be tolerated.”

Whilst the UKIPO’s action is a positive step forward in preventing these organisations from engaging in such practices, it also serves as a stark warning to owners of intellectual property to be extremely vigilant when engaging with renewal agencies. If you are approached by any organisation that you do not recognise or which is quoting fees which appear to be higher than you would expect them to be, or if you receive a renewal notice well in advance of when you ordinarily receive them, then tread carefully. We would urge you to query anything you are uncertain about with your attorney or renewals service provider.

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Beware the IPO scam renewal organisations

Maintaining patents, trade marks and registered designs in the UK requires the timely payment of official renewal fees to the UK Intellectual Property Office (UKIPO). Many organisations employ an intellectual property renewals service to notify them of forthcoming renewal requirements and to pay renewal fees on their behalf.
After initial success for Magmatic when the High Court upheld infringement of its registered and unregistered design rights, PMS appealed on the matter of infringement of the registered design rights only. The Court of Appeal reversed the High Court’s decision and a subsequent appeal to the Supreme Court again found in favour of PMS.

It is fair to say that prior to Trunki the concept of a children’s ride-on suitcase was not widely known, and certainly no product meeting this description was available to consumers (although kids have of course been sitting on wheeled suitcases for years!), and this brings us to the thorny question of “what is the scope of protection of a Community registered design (CRD) in the European Union?”.

According to the statute a CRD provides protection for any aspect of the appearance of the whole or a part of a product resulting from its lines, contours, colour, shape or texture or the materials of which it is made. Importantly, however, it does not protect a concept, and its scope is defined by what the owner has chosen to show in the representations of the design.

Magmatic’s CRD is based on a set of greyscale images (an example of which is shown to the right) from different angles of a computer aided design (CAD) model of the Trunki product. It has no colour and is devoid of surface ornamentation, presumably in an attempt to provide protection for all the various different models of the Trunki.

When assessing infringement of a CRD it is necessary to decide whether the alleged infringing product creates a different overall impression on the informed user than does the CRD. Whilst the Kiddee Case and Magmatic’s CRD are similar in many respects, the Court of Appeal identified two key differences. In the words of the judge, “the impression created by the CRD is that of a horned animal” and “the distinct contrasts in colour between the wheels and the strap, on the one hand, and the rest of the suitcase, on the other, were striking features of the design”.

By contrast the Kiddee Case (shown to the right) has “stripes on its flanks and the whiskers on either side of its nose” which “immediately convey to the informed user that this is a tiger with ears. It is plainly not a horned animal”. Also, the wheels of the Kiddee Case are almost completely covered and the strap is the same colour as the body.

A now familiar site in airports around the world, the Trunki ride-on children’s suitcase has been a huge success story for Magmatic and its founder Rob Law. As is so often the case, however, with success came imitation. The Kiddee Case was launched by PMS International and “specifically designed to compete on price and quality against Trunki products.” In an attempt to halt PMS in its tracks, Magmatic asserted its design rights, both registered and unregistered, against PMS.
It might at first sight seem strange that, in the absence of any similar product in the market and the many similarities between the designs, the question of infringement should depend on these two quite specific design details. However, at the heart of the decision by the Supreme Court is the question of choice. Given the freedom that an applicant has to decide how to represent a design, the Supreme Court felt that it was reasonable to interpret the scope of protection in light of the choices made by the applicant in representing its design.

This decision of the Court of Appeal raised two important points of law concerning how surface ornamentation and colour contrast should be interpreted in a CRD, hence Magmatic’s further appeal to the Supreme Court.

On the surface ornamentation point, Magmatic argued that since the CRD was absent of any surface ornamentation, the surface ornamentation on the Kiddee Case should be ignored in the assessment of infringement, and asked of the Supreme Court whether absence of decoration can be a feature of a design, and whether it was a feature of this particular design.

The Supreme Court has confirmed that the absence of decoration can indeed be a feature of a design, and commented that it would be curious if this were not the case so that elegantly simple designs can be adequately protected. In relation to this particular CRD though, the Supreme Court concluded it was not necessary to decide if absence of ornamentation was indeed a feature of the CRD.

On the colour contrast point, the Supreme Court confirmed that the Court of Appeal was correct to interpret the scope of the CRD as being limited to the contrasting colours of the wheels and strap. The Supreme Court also confirmed that black and white (monochrome) representations of a design cover all colours.

From a practical standpoint the Supreme Court gave the guidance that whilst each CRD must be interpreted in its own context, a line drawing is much more likely to be interpreted as not excluding ornamentation than a CAD image. Whereas a line drawing shows only shape, a CAD drawing with surface rendering will often show not only shape but also some surface ornamentation. A photograph on the other hand will show shape, surface ornamentation, and possibly the product materials as well.

The design registration system in Europe provides enormous flexibility and the applicant can select one or more of these different image types for its design representations.

The sympathy with which the Supreme Court handed down its decision to Magmatic is apparent but in order to provide legal certainty it had to evaluate the CRD based on Magmatic’s choice of how to represent the design of the Trunki product. It seems likely that with a line drawing or a photograph (colour or greyscale) Magmatic would have fared much better in this dispute.

A photograph of the ‘Tipu Tiger’ Trunki, for example, as shown above could never have led to a conclusion that the design protection was for a ride-on suitcase that looked like a ‘horned animal’. A line drawing would not have led to the conclusion that contrasting colour wheels and strap were important design features.

Magmatic was successful in enforcing its unregistered design rights, so it is reasonable to question the value of registering designs if they are going to be construed so narrowly. Put simply, the duration of protection for registered designs is much longer (up to 25 years in Europe), compared to just 3 years in Europe or 5-10 years in the UK for unregistered designs. The shorter duration unregistered design right was not long enough for Magmatic to keep PMS off its turf. However when taking advantage of the longer term of protection offered by registered designs it will often be the case that a single design registration provides insufficient scope of protection, and professional advice on scoping out the design registration should be sought.

The European Union Intellectual Property Office (EU IPO) offers significant fee reductions where multiple designs are registered at the same time and applicants should use this to their advantage and protect multiple different design variants, possibly using different image types, to achieve the broadest scope of protection for their product.

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Europe divided by essentially biological processes

Following in the footsteps of the Netherlands and Germany, France is the latest European country to table changes to its national law to exclude from patentability products which are made by essentially biological processes. This move is at odds with case law from the Enlarged Board of Appeal (EBA) of the European Patent Office (EPO) and will come as good news for farmers and breeders’ associations, but bad news for the biotech industry.

By way of background, the European Patent Convention sets out that “essentially biological processes” for producing plants or animals are excluded from patentability. Back in 2010 in the combined “Tomato I” and “Broccoli I” cases, G2/07 and G1/08, the EBA ruled that adding a technical step to a process for making new plants would not avoid the exclusion if the technical step merely enables or assists an essentially biological process.
Biotech companies will want to obtain Europe-wide protection via the EPO, but then avoid litigation in the Netherlands, Germany and France. On the other hand, farmers and plant breeders may look to exploit the national provisions of these countries.

To avoid the exclusion, the technical step would have to introduce or modify a genomic trait, with the result being a genotype that goes beyond simple mixing of the chosen parent plant genomes by conventional, sexual crossing.

The more recent "Tomato II" and "Broccoli II" cases, G2/12 and G2/13, looked more closely at how to treat products which are themselves novel (new plant parts) but which are defined (in a patent application) as having been made by an essentially biological process. Ultimately, the EBA held that the exclusion does not extend to the products of essentially biological processes, thereby allowing companies to develop and protect, via the EPO, improvements in plant-derived products.

However, farmers and breeders' associations expressed concerns over the "Tomato II" and "Broccoli II" cases as threatening biodiversity and limiting market fluidity, rendering farmers more reliant on a small number of international organisations who hold patent rights. This is a view shared by Dutch and German legislators, who, in 2010 and 2013 respectively, enacted provisions in their national laws to prevent products obtained by means of essentially biological processes from being the subject of patent protection.

The French authorities are now likely to follow suit, after indicating their determination to "remove obstacles to innovation caused by the multiplication of patent applications on life and the growing concentration of the patent holders, at the expense of the plant varieties certificates." However, an amendment to the proposed bill was generally supported, which aims to limit the scope of the exclusion to only animal and plant products.

These differences in the national laws of the Netherlands, Germany and France compared to the EPO will likely have important implications on where European patents covering products obtained by essentially biological processes are enforced. Biotech companies will want to obtain Europe-wide protection via the EPO, but then avoid litigation in the Netherlands, Germany and France. On the other hand, farmers and plant breeders may look to exploit the national provisions of these countries.

A factor that will inevitably complicate matters further is the arrival of the Unitary Patent and the Unified Patent Court. Biotech companies will no doubt follow with interest developments at the Central Division of the UPC that is charged with handling litigation of patents in this field, and may look favourably on the Unitary Patent system if the court appears inclined to follow the case law of the EBA.

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New partners and senior associates at Withers & Rogers

We are delighted to announce the promotion of three senior associates to partner, and the promotion of two associates to senior associate, as part of our ongoing investment in the development of talented people within our firm.

The three newly-appointed partners are Richard Worthington, Stuart Latham and Michael Jaeger. Richard is a member of the firm’s Advanced Engineering group and is also head of our Designs practice group. Both Stuart and Michael are members of the firm’s Electronics, Computing & Physics group.

Richard is based in Bristol and has considerable expertise advising on intellectual property matters in fields such as mechanical engineering, with a particular emphasis on aerospace and defence, automotive, clean energy, packaging and medical device technologies. With a background in engineering and a keen eye for design aesthetics, Richard also advises a wide range of clients about how to use registered and unregistered design right protection either to supplement an existing patent portfolio or as the backbone of their IP strategy.

Also in our Bristol office, Stuart advises businesses about how to protect a wide range of innovations - from high-tech electronics and communications technologies to complex mechanical devices. Among his specialist areas of interest are oil and gas exploration technologies.

London-based Michael Jaeger has extensive experience advising businesses on how to protect their IP in the high-tech areas of telecommunications, prosthetics, electronic audio visual and computer-based technologies as well as mechanical inventions. In particular, Michael has run seminars advising businesses about how to take advantage of the UK’s Patent Box regime.

Our two new senior associates are Helen Henderson and Kate Hillis, both based in our Bristol office. Helen is a biotech specialist with a particular interest in genetic engineering, cell biology and diagnostics, whilst Kate is a member of our advanced engineering group specialising in mechanical technologies, with a particular interest in aerospace and defence.

As chairman Karl Barnfather explains, “We are continuing to grow strongly as a firm and we have chosen to make these promotions in recognition of the pivotal role these individuals perform every day in advising clients and promoting our breadth and depth of expertise externally.”

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