

Business Innovation and Skills Select Committee Inquiry on the Hargreaves Report Submission by PraxisUnico

- 1) **PraxisUnico is an educational not-for-profit organisation set up to support innovation and commercialisation of public sector and charity research for social and economic impact. PraxisUnico has over 2600 members from 113 universities – most universities in the UK - and research organisations .52 commercial concerns, patent agents and intellectual property lawyers are associate members. PraxisUnico holds an annual conference and has delivered professional training to around 2500 individuals from 40 countries.**

- 2) PraxisUnico encourages innovation and acts as a voice for the research commercialisation profession, facilitating the interaction between the public sector research base, business and government. PraxisUnico provides a forum for best practice exchange, underpinned by first-class training and development programmes.

- 3) PraxisUnico supports the general direction of travel as indicated in the Hargreaves Report and in the Governments response. We agree that:
 - a. change is needed;
 - b. International cooperation and work sharing is essential, particularly across the EU. We agree with working collaboratively with countries within the EU even where a single agreement cannot be reached with all member states (following the recent decisions on EU wide patents);
 - c. The IPO should have a stronger mandate;
 - d. A single EU patent is essential and must be pursued vigorously;

We disagree that patent fee costs are a suitable control mechanism for patent thickets. The costs incurred in securing professional advice relating to patenting far outweigh the patent filing costs.

4) Turning to the detailed recommendations

a. **Evidence** We agree that as far as is possible the IP system should be based on objective evidence.

The key words in the recommendation are “as far as is possible”. We feel that in some instances decisions on policy must follow clear principles which are then adapted in line with evidence, in the field of IPR the length of time taken to gather evidence means that the system will always lag substantially behind technological change. The pace of technological change then compounds this effect. The challenge for many is uncertainty, by providing the IPO with a stronger mandate greater certainty will ensure action and adaptability.

b. **International priorities.** The highest priority should be given to achieving a unified patent court and patent system. The IPO should lead by example in the field of work-sharing and focus on a goal which is EU wide which will in turn, in our opinion, be of the greatest benefit to UK businesses, universities and rights owners. It is essential that the pace with which patent applications are considered needs to increase and this will never be achieved at a national level without an appropriate level of resource being deployed.

c. **Copyright licensing.** We agree with the principle of a Digital Copyright exchange and that this should work to an agreed code of practice. Having been involved in many consultations the code of practice must be kept as simple as possible and driven by key principles on which the IPO would then have a mandate to amend in line with cases they consider. We are concerned that the ability to achieve the Exchange within a reasonable time period will be challenging, which again argues for the need for the IPO mandate to be strengthened. Collecting societies should be required by law to adopt codes of practice approved by the IPO

d. **Orphan works.** All copyright material should be kept available wherever possible. This is essential for the health of the UK research environment. Where IP rights owners cannot be traced then the rights should become freely available.

e. **Limits to copyright.** The Government should deliver copyright exceptions at national level to realise all the opportunities within the EU Framework. Absolute clarity on these exceptions is becoming increasingly important for the research community.

- f. **Patent thickets and other obstructions to innovation.** As noted earlier work-sharing between patent offices across the world and, in particular, within the EU is essential if the patent backlog is to be tackled. Novel and innovative means must be found to ensure consistency of examination and process of patent applications, for example examination through a process equivalent to Wikipedia making the best use of modern technology. We would caution proposing a patent fee structure as the solution to patent thickets. Professional adviser costs far out-weigh patent fees. The strengthening of the IPO mandate may help in dealing with the issue of patent thickets. The challenge in many patent disputes is not the IP system but the differences within commercial legal and judicial systems across the EU which leads to considerable variability in judgements acting on the same evidence. We struggle to see a solution in this regard, other than a statutory requirement to go to expert arbitration and mediation prior to any court action – see (h) below.
- g. **The design industry.** The design industry is critical to the UK and we agree that consideration should be given to the extension of the Digital Copyright Exchange in this area. But this should be done as a separate exercise in order to ensure that design is given due importance and that the time taken to establish the Exchange is not compromised.
- h. **Enforcement of IP rights.** We believe that there should a radical re-think of how patent disputes are handled in the legal system. The costs involved and the length of time taken are considerable disincentives to all but those with the deepest pockets. We believe that effective systems overseen by experts with pre-determined costs and timelines as exemplified by the WIPO arbitration and mediation system should be either adopted or a national version implemented through the IPO. In our view, this will both address the concern with regard to small firms and IP addressed in the report and would also provide benefits to universities, NHS Trusts and other public sector agencies which generate IPR but who do not have deep pockets.
- i. **Small firms access to IP advice.** We struggle to see how a low cost IP and legal advice system could be implemented. We believe that continuing major efforts in education are required and that the implementation of other recommendations, including strengthening the mandate of the IPO and reducing the costs of an EU wide patent, will have much more positive impact on a small firm's approach to IP.

j. **An IP system responsive to change.** This is the most important recommendation. The IPO powers must be extended by providing the ability to give statutory opinions. This should not solely relate to copyright but extend to other IP rights. The pace of technological change is so rapid that without such extended mandate we will be considering a further report in another four years time. It is essential in providing the mandate that goals of the IPO are clearly established with a strong economic focus, balanced with protecting the rights of owners (providing they are seeking to mobilise their rights for economic or societal gain) and with a major focus on international collaboration thus supporting UK businesses to act on a global platform. Oversight of the IPO then becomes an important issue and the experiences of SABIP noted in the report do not bode well.

Request for publication

This PraxisUnico submission was drafted in consultation with our members. This final submission has not been circulated outside PraxisUnico's Board and Committees.

PraxisUnico is a membership organisation and we are frequently called to act as the membership's collective voice when responding to Select Committee Inquiries. Considering our members' participation in the drafting of this response we request that we be permitted to make this submission available to our members.

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Declaration of Interests

Dr Douglas Robertson is directly involved in the operations of university research commercialisation functions.

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