

**From:** [REDACTED]  
**Sent:** 14 November 2017 12:14  
**To:** industrialstrategy  
**Subject:** comments on industrial strategy for IP

Dear Sirs

I make some comments feedback below. These are my views and not necessarily those of Barker Brettell LLP.

My biggest point is that the government can do more to use the tax system to encourage the behaviours it wants in the IP field – R+D tax Credits, and patent Box are achieving an effect. More can be done.

My second point is that SMEs in particular need education, education, education, on IP and why it helps their business. But there is no funding to do that. Provide some funding – get firms like mine – active in business and IP every day – to collaborate with University tech transfer departments, to give educational seminars, training courses, case studies, etc. It is all happening now on an ad-hoc basis on a marketing budget shoe-string. But if you want to see a change, fund it properly, and get real IP – protection patent and TM attorney firms to deliver the training rather than solicitors or academics.

Build the education into Business courses at universities, and science course, and art courses – TMs and copyright at least. Some universities do more than others to prepare their students for the working aspect of IP on business life when they leave university and join a business.

I am a patent attorney in a Birmingham based firm of patent attorneys. I have 30 years of experience as a patent attorney, and am the firm's Senior Partner. We are maybe the 10<sup>th</sup> 15<sup>th</sup> largest firm of patent attorneys in the UK and as large as any patent and TM firm outside London. Half our work comes from the UK and half from overseas, especially USA. We turn over more than £20m.

In terms of industrial sectors we are big in Automotive and Aerospace, and in Universities, and food and drink, and Medical technologies/healthcare. In terms of IP, we are 70% patents and 275 TMs and 3% registered designs/unregistered design right. True copyright in artistic works is very small as a business for us – we are more industrially focussed.

We are active in the lower half of England – from north of Nottingham down to the south coast.

We have no manned overseas offices, but our 35 patent attorneys spend about a man-year in USA between them each year looking for work. Our 15 Trademark attorneys are more UK focussed – as a proportion our TM work is more for UK companies.

Our business creates commercial opportunities for companies with IP by protecting the IP and thereby giving the chance to exploit it, and protect the money and time invested in creating the IP. We stop jobs being exported overseas.

The UK government /IPO could do more to help UK companies operating overseas. China, for example, pays companies the costs of patenting in overseas territories – at least up to about £10k. If the UK government wanted to help SMEs export it could – for patentable inventions that have a good (for example "the invention is patentable") report from the PCT examining authority give a grant of say £10k to be spent on patent protection in USA, Europe, and China. Or any country where the UK government wanted to target UK business interest.

The IPO could return to doing freedom to operate clearance searches of patents in key countries – it used to do them, and they were very useful indeed. I do not know why they stopped – manpower I think. But their searches were good value and to a good standard.

The above focusses on patents, but the same applies to TMs or Design protection. IF the UK government wanted to support exports it could subsidise SMEs – not private individuals or big companies – SMEs, companies that actually have a real product, by subsidising TM protection in key markets to stop brands being stolen, or to protect designs, so they are not stolen overseas. Or giving a tax break on such spending.

## TAX Breaks

Two projects have been very useful – R+D tax credits and Patent Box.

IF the government wanted to support UK innovation it could extend the tax relief on them. It could target growth in specific export markets by giving extra tax relief on the sale of patented products to specific markets.

It could make TM and design spending more than 100% tax deductible – as an incentive to protect the fruits of UK creativity.

The software industry has had a bad deal from the UK government in the IP world. Why is software unpatentable IF it is new and non-obvious? Why do software engineers not have their jobs protected by patents, like hard science/engineering? In the modern world the ban on patenting technical software is illogical and damages UK industry. Why do the children of a software engineer need to fear their parent's job being moved overseas as overseas companies freely copy the ideas and concepts – because there is no patent protection? Their lives are important as well. When the patents act was written – more than 40 years ago, the software world and its importance to the UK economy, was very different to the current position. Repeal the ban of patenting new and inventive software and business methods. New and inventive is enough of a protection to the public in software, as it is in pharmaceuticals.

What do we spend on IP? relatively little – we are a service company. We protect our brand in the UK and in Europe. We spend, say, £1000 a year on doing that.

We use all aspects of the IP system, Patents, Trade Marks, registered designs unregistered designs, database rights, copyright.

What do we value about the UK IP system – it is not as expensive as some, and is not as bloody-minded as the European system.

The biggest barrier we face when using the UK IP system is the fact that it costs so much and our clients need to find the money when the project is in its infancy – before it is generating any money. The problem is a bit like student grants /loans – the money needs to be spent before the return on it – years and years before the full return.

One solution could be like student loans – IP protection loans, to be paid back when the product makes a return, and written off if it does not make a return after 10 years say. The government could target development into areas of strategic interest to the country.

Another barrier when using the UK IP system is that for some companies it is not as relevant or important as the position in Germany or USA. For bigger companies, or ambitious companies, - and especially for companies based in USA – the UK is a nice to have country in its business plan, but USA and Germany are the "must-have's", so the UK gets side-lined a bit. That is an international barrier to engaging with UK IPO – it is the wrong Patent office sometimes.

Some comments on the projects discussed in the Annex

## IP trading Platforms

They exist – there are 3 or 4 of them. They are not successful. Buying IP in isolation from a business plan/business that it supports is seldom a good idea. People don't want IP for the sake of IP – they want the better revenue and

profits that comes from a business that can't have its R&D investment stolen overnight – it's the business need/driver rather than the pure IP that comes first.

I doubt that the UK government will want to be seen to rank one company's IP over another's on a trading platform. Or to implicitly warrant that the IP has value by trading it.

B2B model IP agreements – these would be very useful for small SMEs. And a minefield for the unwary. It will be a bit like selling your own house – you can do it – but will you do it well? They will be a good starting point, and will de-mystify some of the concepts. Personally, I think they would be a good idea and they should be done.

The Lambert agreements seem to have been done as a hobby on a shoestring by some interested and public spirited individuals. Hopefully the government would pay a reputable law firm (based outside the capital to keep costs down), and not us, to write some standard templates. BUT standard templates suit standard situations, and the trick is to know the situation standard, and which standard template best fits, to that as a starting place and then modify it. But having public standard templates with a discussion of what standard situation they fit would be very useful.

Voluntary IP Register - why? Personally I see this as adding to the cost of business, not reducing the cost. There would be the cost of adding things onto it. Then the cost of searching it to tell clients what is on it. Then we would still have to say that there are of course lots of unregistered copyrights and design rights and unregistered TMs that are out there and that we just can't ever find by searching. So we have extra cost and are no further forward.

New financial products – really? It was not so long ago that banks got a jolly good kicking for being too adventurous in their lending and 2008 was no fun for anyone. That was lending on bricks and mortar. Lending on IP? It will be pure smoke and mirrors. The value of IP is notoriously hard to assess – you can get any answer you want, within reason. And it changes overnight as new technology makes old technology redundant. So even if I have great IP today, tomorrow it can be worthless. As a commercial lending proposition that seems high risk, which will undoubtedly mean high returns for the bank. And proper businesses can just borrow money on more traditional assets at lower rates. So only unfunded start-ups with no assets are likely to be interested.

If the government wanted to start a government bank taking 40% share in all the punts the bank took, a super-sized Dragon's den with taxpayer's money, then maybe. But we have VC for proper businesses already – what need is not being met? And is it a need the taxpayer really wants to foot the bill for?

IP Licensing Resolution – yes, good idea. But it is bound to be appealable to the courts. But still a good idea. We had some years of the UKIPO settling licence fees when the old 1949 act patents were extended from 16 years to 20 years, back in the early 80s. All of those patents got a windfall, unexpected, extra 4 years of life, in exchange for a licence of right, and the UKIPO used to settle licence terms then. That worked well. It can work for any licence fee dispute.

Royalty free patents. This is already in the patent system – no change is needed. If a patentee wants to dedicate their patent to the public they can simply not pay the annual renewal fee and it lapses – becoming free to the public. If the patentee knows they want to dedicate it to the public when the patent is being prosecuted to grant – so that the front page of the granted patent can say this – then the answer is simply don't pay the examination fee to the UKIPO. The patent publishes still – the public can see it, but it never grants – so it is free to the public.

IP valuation standards – This is a black art, emperor's new clothes, smoke and mirror subject. I don't think it is possible to value IP divorced from the business that already supports it. Will the government stand by any valuation they endorse? If so, that would be useful – but the government/IPO often makes itself impossible to sue for getting things woefully wrong.

Has the advent of other government endorsed and regulated valuation methodologies been proven to be valuable to those other countries?

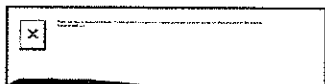
Have ago, by all means, and after many years it might be useful to have a recognised scheme – but early on, it will be difficult to use. Is the value attributed that in a forced sale in receivership? The UK government appointed

receivers already value (undervalue to the benefit of the purchaser) IP in liquidations and receiverships. This is done with the power of The Crown. Those people presumably are already confident they are valuing things well. I think they do what the person who appointed them wants to do, and fairness and mid-point valuation is not a driver in that government valuation scheme.

I hope that this feedback helps.

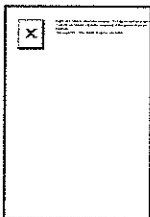
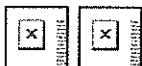
Yours faithfully

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