

European Intellectual Property Teacher's Network

Third Annual Workshop

20 – 21 July 2009

**Institute of Advanced Legal Studies,
Russell Square, London**

Report 2009

**EIPTN, Centre for Commercial Law Studies
Queen of Mary University of London**

Report prepared on behalf of
the European Patent Office



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Programme

Programme & Timetable	8
Welcome	11
Session 1a – Interdisciplinary IP Teaching	13
IP Teaching in Science and Engineering Faculties Alexandros Papaderos (Technical University, Munich, Germany)	14
Summary	14
Questions and Comments	15
Teaching IP to an Interdisciplinary (Non-Legal) Audience Marie-Christine Janssens, (Catholic University Leuven, Belgium)	16
Summary	16
Questions and Comments	17
Teaching IP to Plant Biologists Niels Louwaars, (Wageningen University, The Netherlands)	18
Summary	18
Questions & Comments	19
Session 1b – Interdisciplinary IP Teaching	21
Approaches to IP Teaching in Different Disciplines Ruth Soetendorp (Bournemouth University, UK)	22
Summary	22
Questions and Comments	23
Teaching Patent Law – Between Natural Sciences and Law Herbert Zech (Bayreuth University, Germany)	24
Summary	24
Questions & Comments	25
Approaches to IP Teaching Taken from Other Disciplines Mike Adcock (University of Durham, UK)	26
Summary	26
Questions & Comments	27
Session 2 – Online Teaching	29
Teaching IP in an Online Environment Keren Bright (Open University, UK)	30
Summary	30
Questions & Comments	31
Engaging the Distance Learner Online Caroline Coles (Leicester De Montfort University, UK)	32
Summary	32
Questions & Comments	33

Session 3 – Approaches to IP Teaching	35
Problem Based Learning in an IP Programme: A question of Balancing Content and Skills? Chris Wadlow (University of East Anglia, UK)	36
Summary	36
Questions & Comments	37
Multiple Choice Questions and Extended Matching Questions in IP Education Claire Howell, Aston University	38
Summary	38
Questions & Comments	39
Teaching IP to International Students: Early Career Teaching Experience Agnieszka Machnicka, Università di Siena, Italy	40
Summary	40
Of Pleasure and Pain – Teaching IP to a Diverse International Cohort Thorsten Lauterbach, Robert Gordon University, Aberdeen, UK	42
Summary	42
Questions & Comments	43
Session 4 – Teaching IP in Country-Specific Contexts	45
Teaching IP Law at German Law Schools Maximilian Haedicke (Albert-Ludwig University, Freiburg, Germany)	46
Summary	46
Teaching IP in Poland: Experiences from a Post-Communist Country Maciej Barczewski (University of Gdańsk, Poland)	48
Summary	48
Introduction to IP in the Non-Law Curriculum: a Perspective from the Iberian Countries Mariano Riccheri (University of Alicante, Spain)	50
Summary	50
Questions & Comments	51
Session 5 – Facilitating IP Teaching	53
Developing a Standard Modular IP Curriculum Christoph Bruhn (European Patent Academy of the European Patent Office)	54
Summary	54
Questions & Comments	55
How Patents Work: Developing a Patent Teaching Kit Duncan Matthews (Queen Mary University of London, UK)	56
Summary	56
Questions & Comments	57
Teaching Patent Drafting: A Practitioner’s Perspective Gwilym Roberts (Kilburn and Strode, UK)	58
Summary	58
Questions & Comments	59

Session 6 – Conceptual Issues in IP Teaching	61
Teaching IP to Private International Law Experts and Vice Versa Paul Torremans (University of Nottingham, UK)	62
Summary	62
Questions & Comments	63
Explaining the Interactions between IP Law and International Law Carmen Otero García-Castrillón (Universidad Complutense de Madrid, Spain)	64
Summary	64
Questions & Comments	65
Why Teachers Should Avoid the ‘P’ Word – Notes for a (Heated) Discussion of the ‘Property’ Problem? Kevin Scally (University College, Cork, Ireland)	66
Summary	66
Questions & Comments	67
Rapporteur’s Summary of Outcomes	68
Next Steps and Closing Remarks	70
Delegate List	71

Programme & Timetable

Monday 20 July 2009

12.30-14.00

Registration and buffet lunch

14.00-14.15

Welcome & introduction

Spyros Maniatis (Queen Mary University of London, UK), Christoph Bruhn (European Patent Academy of the European Patent Office) & Duncan Matthews (Queen Mary University of London, UK)

14.15-14.45

Keynote address

Annette Kur (Max Planck Institute, Munich, Germany) (cancelled)

14.45-15.45

Session 1a – Interdisciplinary IP Teaching

(Chair: Robert Pitkethly, University of Oxford, UK)

Alexandros Papaderos (Technical University, Munich, Germany) "IP Teaching in Science and Engineering Faculties"

Marie-Christine Janssens (Catholic University Leuven, Belgium) "Teaching IP to an Interdisciplinary (Non-Legal) Audience"

Niels Louwaars (Wageningen University, The Netherlands) "Teaching IP to Plant Biologists"

15.45-16.00

Tea

16.00-17.30

Session 1b – Interdisciplinary IP Teaching*

(Chair: Robert Pitkethly, University of Oxford, UK)

Ruth Soetendorp (Bournemouth University, UK) "Approaches to IP Teaching in Different Disciplines"

Herbert Zech (Bayreuth University, Germany) "Teaching Patent Law – Between Natural Sciences and Law"

Mike Adcock (University of Durham) "Approaches to IP Teaching Taken from Other Disciplines"

*Including roundtable discussion with speakers from sessions 1a and 1b

17.30-18.30

Session 2 – Online IP Teaching

(Chair: Jo Stanley, University of Cambridge, UK)

Keren Bright (Open University, UK) "Teaching IP in an Online Environment"

Caroline Coles (Leicester De Montfort University, UK) "Engaging the Distance Learner Online"

18.30

End of Day 1 Proceedings and transfer to Park Inn, Russell Square

19.30

Annual EIPTN Dinner at Coopers Restaurant, Lincoln's Inn Fields

Tuesday 21 July 2009

9.00-9.30

Coffee and Registration

9.30-11.00

Session 3 – Approaches to IP Teaching

(Chair: Alison Firth, University of Surrey, UK)

Christopher Wadlow (University of East Anglia, UK) "Problem Based Learning in an Intellectual Property Programme: A question of balancing content and skills?"

Claire Howell (Aston University, UK) "Multiple Choice Questions and Extended Matching Questions in IP Education"

Agnieszka Machnicka (University of Siena, Italy) "Teaching IP to International Students: Early career teaching experience"

Thorsten Lauterbach (Robert Gordon University, Aberdeen, UK) "Of Pleasure and Pain - Teaching IP to a Diverse International Cohort"

11.00-11.15

Coffee

11.15-12.30

Session 4 – Teaching IP in Country-Specific Contexts

(Chair: John Pickering, SABIP, UK)

Maximillian Haedicke (Albert-Ludwigs University, Freiburg, Germany) "Teaching IP Law at German Law Schools"

Maciej Barczewski (University of Gdańsk, Poland) "Teaching Intellectual Property in Poland: Experiences from a post-communist country"

Mariano Riccheri (University of Alicante, Spain) "Introduction to IP in the Non-Law Curriculum: a perspective from the Iberian Countries"

12.30-14.00

Lunch

14.00-15.15

Session 5 - Facilitating IP Teaching

(Chair: Ken Shadlen, LSE, UK)

Christoph Bruhn (European Patent Academy of the European Patent Office) “Developing a Standard Modular IP Curriculum”

Duncan Matthews (Queen Mary University of London, UK) “How Patents Work: Developing a patent teaching kit”

Gwilym Roberts (Kilburn and Strode, UK) “Teaching Patent Drafting: A practitioner’s perspective”

15.15-15.30

Tea

15.30-16.45

Session 6 - Conceptual Issues in IP Teaching

(Chair: William Kingston, Trinity College Dublin, Ireland)

Paul Torremans (University of Nottingham, UK) “Teaching Intellectual Property to Private International Law Experts and Vice Versa”

Carmen Otero García-Castrillón (Universidad Complutense de Madrid, Spain) “Explaining the Interactions Between Intellectual Property Law and International Law”

Kevin Scally (University College, Cork, Ireland) “Why Teachers Should Avoid the ‘P’ Word – Notes for a (heated) discussion of the ‘Property’ problem”

16.45-17.00: Closing remarks & next steps for the EIPTN workshops

17.00: Free time and transfer to Park Inn, Russell Square

Welcome

Duncan Matthews opened the third European Intellectual Property Teacher's Network Meeting by welcoming participants and introducing Spyros Maniatis, Professor of Intellectual Property Law at the Centre for Commercial Law Studies at Queen Mary University of London. Professor Maniatis also welcomed the participants and went on to note the significance of the network's name change. Originally the Intellectual Property Teachers' Network (IPTN), three years ago it became the European Intellectual Property Teachers' Network (EIPTN), thus adding a European dimension to its activities. With support from the European Patent Academy (EPA) this has resulted in an ever stronger European network, which can be easily seen in the number of countries represented at this meeting. Professor Maniatis was delighted to welcome new faces along with the familiar ones present. He then invited Christoph Bruhn from the European Patent Academy at the European Patent Office (EPO) to speak.

Mr Bruhn reflected on his past connections with Queen Mary University of London, which he remembered fondly. He went on to explain that the EPA, which was founded in 2005, is an institute of the EPO. He emphasized that the EPA, whose task it is to bring IP knowledge to European institutions, has its own administrative council with a supervisory board that decides on policy and programmes. The main target groups for EPA activities include national IP institutions, small and medium-sized enterprises (SMEs) and professional representatives in relevant fields, as well as universities and academics, particularly those involved in IP research. The latter are Mr Bruhn's personal area of responsibility. He thanked the hosts of this year's EIPTN meeting and looked forward to an interesting and stimulating exchange of ideas.

Duncan Matthews then presented apologies on behalf of the keynote speaker, Annette Kur of the Max Planck Institute, Munich, Germany. Unfortunately, problems with her flight arrangements meant that she was unable to attend. Duncan expressed his disappointment as she was to have presented a thought-provoking piece about the TRIPS agreement, discussing whether it should be viewed as a ceiling or a floor. Her proposed topic examines really profound issues that need serious consideration.

Nevertheless, Duncan went on to point out that there are many other important issues to be discussed over the next two days and noted that there would now be more space in the programme for discussion of those ideas.

Duncan recalled that the IPTN/EIPTN had been set up as an informal group of academics interacting in a friendly and relaxed setting where they exchanged ideas about best practice in teaching and learning activities. He noted that a request that came out of last year's meeting was for the next gathering to be held as a round-table discussion, and Duncan pointed out that the room had been set up accordingly for this year's meeting.

Duncan took the opportunity of encouraging the participants to get involved in the International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP) and said that he would forward details about membership. He reminded participants of the ATRIP annual congress, which will take place in Vilnius, Lithuania this year, from the 15-16 September. He then handed over to the chair of the first session, Robert Pitkethly of Oxford University.

Session 1a

Interdisciplinary IP Teaching

Chair: Robert Pitkethly, University of Oxford, UK
(Robert.pitkethly@sbs.ox.ac.uk)

Robert Pitkethly introduced the session on interdisciplinary IP teaching by highlighting the problem of worrying ignorance among SMEs about the use of IP systems. These, he said, are the very businesses that should be utilizing the IP system to grow. For this reason, it is important to take a broader view and ensure that the teaching of IP reaches all relevant disciplines and is not just taught to lawyers.

IP Teaching in Science and Engineering Faculties

Alexandros Papaderos (Technical University, Munich, Germany)

(Papaderos@zv.tun.de)

Dr. Alexandros Papaderos is University IP Coordinator at the Technische Universität München (TUM). He is Deputy Head of the ORI and the Head of the TUM Patent and Licensing Office.

When he joined TUM in 2001 as Inventor Consultant at the Department for Knowledge Transfer, his main objective was to establish an Inventors' Bureau to consult with and support inventors, maintain contact with highly inventive groups, offer support for the identification of patentable research results, and to organize information events on the patent system. In October 2008, a new Office for Research and Innovation (ORI) was established at TUM, with the Patent and Licensing Office handling IP rights and their commercialization as part of the ORI.

Dr. Papaderos earned his Diploma in Biology at the Ruhr-Universität Bochum, Germany, and after completing his Diploma thesis at the Research Center Jülich and his doctoral thesis at the GSF-National Research Center for Environment and Health in Munich, he worked as a consultant for a German credit institution.

Summary

Alexandros Papaderos, after introducing himself as 'not a lawyer', went on to explain the importance of intellectual property at his university. Of the 13 faculties at the university, eleven are invention-relevant. With student and staff numbers combined, the university comprises more than 30,000 potential inventors. Therefore, he sees his mission at the university, as technology transfer officer and inventor-consultant, as being strongly connected to IP issues.

He explained how an invention is processed at Munich Technical University. The most important aspect, in his opinion, is the promotion of IP awareness. He has found that students and researchers frequently fail to recognize the IP potential of their research and focus on publication rather than exploitation of their ideas. There is a general lack of knowledge of the IP system and a consequent deficit in IP skills. Information and training are therefore very important. With a rapid turnover of staff at the university incorporating IP into the student curriculum is essential. They need to learn about both the academic and the business world and particularly to understand how a patent office works.

To create an environment that encourages invention disclosure and participation in the technology transfer process, there needs to be a university-wide culture of support for the dissemination of IP information. Success stories should, therefore be widely publicized, and better access given to patent documents so that technical information can be used where appropriate.

In particular, he pointed to the problem that researchers are often unaware of their rights so it is important to get them talking to lawyers in order to break down their fear of legal issues. He highlighted the importance of employment contracts as an area that needs special attention. Researchers need to secure their own rights. They also need to be able to spot IP issues in their students' work so that opportunities are not lost. For this reason he considers the early involvement of the university's legal advisors is important.

Questions and Comments

Alison Firth (University of Surrey, UK) asked whether there was a strategy regarding the education of journalists in order to ensure the effective publication of successful inventions and to avoid, for example, such glaring errors as, 'someone copyrighted their trademark at the patent office'?

Alexandros Papaderos explained that the matter was discussed with the inventor and the press department, where they employ science journalists whose job it is to educate the media. There is an agreement with the journalists whereby they don't issue a press release until both the technology transfer office and the inventor have seen it and screened it for inaccuracies.

Niels Louwaars (Wageningen University, the Netherlands) wanted to know what was more important, teaching students about opportunities, with an emphasis on spin-offs etc..., or teaching them about the threat of infringement.

Alexandros Papaderos said he considered both to be important. Technology transfer is a process, he explained. Spin outs are one way to commercialize inventions but there are risks, and standards that need to be maintained. If a student wishes to start a company s/he needs to know what his/her rights are and what IPRs need to be established from the beginning. Investors won't give money until IPR issues have been resolved.

Maximilian Haedicke (Albert-Ludwig University, Freiburg, Germany) enquired how IP awareness was raised in the teaching departments.

Alexandros Papaderos answered that since very few faculties have patent law lecturers, the technology transfer office (TTO) offers special training to research staff. They approached the chair of the automotive technology department, for example, offering a specialized lecture designed specifically for that field.

Ideally they would offer general information about technology transfer with a follow-up lecture focusing on the particular discipline. But, at the moment the demand tends to be for specialized information. There is still a long way to go.

Mariano Riccheri (University of Alicante, Spain) was interested in how other lecturers responded and whether they assisted with the dissemination of IP information.

Alexandros Papaderos felt that most were not interested and tended to see IP as a by-product, and not their specialty. Many professors have become used to relying on the TTO for support. Others don't care because they are only really interested in the science and see IP as a distraction.

Maximilian Haedicke (Albert-Ludwigs University, Freiburg, Germany) asked if the focus at the TTO was only on patents or whether they were also concerned with other forms of IPRs.

Alexandros Papaderos responded that the TTO is not just concerned with patents, but also other forms of IP protection. There are furniture designers in the architecture department, for example, for whom patents are generally unsuitable. Students often think they can patent everything; therefore, there is a need to teach them how to determine the appropriate type of protection through specialized lectures for each faculty.

Maximilian Haedicke asked whether the TTO advised teachers as users of copyright materials.

Alexandros Papaderos said yes, but that often people do not follow advice. For that reason they have a 'War Treasury' (fund) to deal with trouble with third parties. So far it hasn't been used, but it is particularly difficult dealing with the information technologists. Half of them favour open-source technology while the others do not.

Teaching IP to an Interdisciplinary (Non-Legal) Audience

Marie-Christine Janssens (Catholic University Leuven, Belgium)

(m-ch.janssens@law.kuleuven.be)

Marie-Christine Janssens studied law and history of arts at the Catholic University of Leuven. She received her law degree and joined the Brussels Bar in 1981. From 1981 to 1993 she practiced law in an international law firm specializing in intellectual property matters, spending a year, from 1985-1986 in a law firm based in Washington D.C.

She joined the Centre for Intellectual Property Rights in February 1989 as an assistant to Professor Frank Gotzen, and in January 1996 she obtained a Ph.D. from the Faculty of Law at the Catholic University of Leuven with a dissertation on the legal status of employee and university inventions in the countries of the European Union.

She is currently professor at the universities of Leuven and Brussels where she teaches courses including "Copyright Law", "Trademark Law" (in Dutch and English), "Intellectual Property Rights in the Information Society" and "Intellectual Property Management". She is also the academic responsible for the library of the Faculty of Law and a member of the Commission on Scientific Integrity of her university.

Since 1990 she has published extensively on copyright, trademark and patent related issues and has spoken at various national and international conferences. She regularly acts as an expert in working groups established by the university and has participated in European and National research projects. Since 2006 Marie-Christine Janssens has been President of the Belgian Council for Intellectual Property Rights section for Copyright and Neighbouring Rights (Ministry of Economic Affairs).

Summary

Marie-Christine Janssens pointed out that the idea of teaching IP to a non-lawyerly audience is not breaking new ground, but she hoped that it might be useful to share her personal experience of teaching IP management to scientists, engineers and economists. She acknowledged the contributions made to the topic by Robert Pitkethly and Ruth Soetendorp as well as the discussion in "The Gowers Review". She concludes that there is no real consistency in the way that IP law is taught to non-law students, so her own contribution may add to the inconsistency or, more hopefully, add some consistency.

Her focus here is on teaching IP without an 'L' for law.

As a member of the Centre for IP Rights, Marie-Christine Janssens is part of the Law faculty, but her particular interdisciplinary goal is to integrate IP teaching into the science and engineering faculties. In order to do this, she has had the help of a number of local companies, in particular Johnson and Johnson, Philips and Tibotec, all of which have expressed unhappiness with the lack of IP awareness among graduates of Leuven, and were therefore eager to collaborate. The practical hurdles to be overcome included convincing the Dean, funding a course, and integrating the course into the relevant faculties. The latter goal was achieved through inviting key figures to lunch, as well as through drawing their attention to the European Commission statement that says, in part, that, "All science, engineering and technology professional qualifications must include provision for appropriate IPR knowledge". With this goal supported by the Belgian Council for Trade and Industry, the faculties accepted the idea of the course as long as they would not have to pay.

The course was delivered as an elective, not a compulsory, subject. Thus attention had to be given to its promotion through attractive flyers aimed at marketing the course to a wide range of participants. It was important to involve as many companies as possible to entice students with the prospect of job opportunities. The companies gave their services free.

There was, however, a language problem. Students found the words *law* and *legal* immensely off-putting. It proved impossible to avoid using them in Dutch so the solution was to use the English term 'Intellectual Property Management' even though the course was taught entirely in Dutch.

It was then easy to convey to the students why the course was important for them. They were aware that they would inevitably encounter IP problems at some point in their career. The course aimed to teach students to recognise the importance of IP, to be able to identify the relevant people to whom they should go to report problems, and to understand the potential for using IP.

This was achieved as part of a collaborative teaching process executed by two professors, along with a number of industry representatives and other practitioners. Some were graduates of Leuven who had gone into business and were returning to share their IP knowledge.

The six modules gave an overview covering: the life cycle of a product from research to production, the economic framework, extracting value from a patent, trademarks and design protection, as well as raising some of the important controversies raised by IP protection. While the legal framework of IP protection was covered, the rule was never to mention an article of law. Even when it was necessary to teach the students about a treaty it was not felt necessary to mention the specific article, to avoid associating IP with the dusty image of the law.

The involvement of industry meant that there was an emphasis on real-life stories and the topic was presented in a dynamic way. Following the course, which was delivered to 120 students at a time, on average, many wrote asking where they could go to get more IP information.

Questions and Comments

Ruth Soetendorp (Bournemouth University, UK), referred to the European Commission statement and asked if anyone had got any Commission contacts to address the education of non-lawyers in IP and make IP an element of the accreditation process. The Intellectual Property Awareness Network (IPAN) are working with science and engineering bodies to push IP in this respect but one problem is that there is no formal endorsement of this. The Gowers Review has paid lip-service to the idea but the UK Government hasn't said anything of substance. The Commission's statement is merely a recommendation and is, thus, soft law which makes it harder to convince the professional bodies that IP should be an important part of accreditation.

Marie-Christine Janssens completely agreed but couldn't offer an immediate solution.

Chris Bruhn (European Patent Academy (EPA) commented that it is important to keep people informed about activities. The EPA conducts roving workshops that bring professors and others in education, particularly the decision makers at universities, together. These workshops create the necessary forums for convincing them of the importance of IP knowledge for students and to introduce the patent teaching kit as a tool for introducing IP education. He said that the EPA had also started another project, which would be the subject of tomorrow's talk, on IP curriculum development. These IP tools will hopefully get the backing of the EU Commission which may assist in integrating IP in non-law faculties.

Marie-Christine Janssens asked whether it was possible to get the message to the Deans of the universities directly.

Herbert Zech (Bayreuth University, Germany) said that money is really the bottom line. If you have the finances then they will agree, but if you say you need money there is a problem because the law faculty won't pay to teach the science faculty.

Alexandros Papaderos (Technical University, Munich, Germany) noted that publicity is important. If you can generate enough publicity so that the president of the university gets a mention, there is more likelihood of participation.

Robert Pitkethly (University of Oxford, UK) concluded that this 'turf-war' aspect of interdisciplinarity was an issue that would come up later.

Teaching IP to Plant Biologists

Niels Louwaars (Wageningen University, The Netherlands) (Niels.louwaars@wur.nl))

Niels Louwaars is a bio-policies specialist at the Centre for Genetic Resources, at Wageningen University in the Netherlands. His academic background in applied genetics initially led him to work on seed production projects in Asia and Africa. Inspired by this formative experience, he wrote a PhD thesis called "Seeds of Confusion" that focused on the policy issues relevant to seeds, including seed regulation, patents and breeder's rights, as well as access to genetic resources and benefit sharing.

In addition to undertaking research projects in these fields for various international organizations, he teaches international short courses in a number of countries and, with increasing regularity, university courses in Wageningen. He is a member of the court in The Hague, dealing with plant breeder's rights cases.

Summary

Niels Louwaars explained that his early training as a plant breeder/geneticist working in developing countries established his interest in the policy and legal aspects of his work. When he returned to the Netherlands in the mid 90's it was at a crucial moment in international regulation. The Trade Related Aspects of Intellectual Property Agreement (TRIPS) was being implemented and the Convention on Bio-Diversity (CBD) had been signed.

Niels is currently doing some policy research into developments in the seed industry, focused on bio-diversity and traditional knowledge as well as IP. He set up an International Plant Breeder's Right (PBR)'s short course in 1997, and together with Prof van de Meulen, will be starting an IP course in the regular curriculum next year.

While he is not a lawyer, he is, nevertheless, involved in IP. Over lunch, he had met some people who shared similar concerns. Indeed, he said, many discussions about IP take place over food and drink: during dinner with board members, for example, or over a beer with students.

At Wageningen University, which used to be an agricultural university and now specialises in agriculture-related science subjects, there is only one law professor, and he specialises in food law. Wageningen University is not very 'dusty' therefore, in the sense that Marie-Christine Janssens described.

In plant sciences IP is very important. Plant breeders' rights were taught in the past as part of the applied genetics course because students would go on to get jobs in plant breeding or seed companies. Niels admits that at the time he found the topic boring and hated it. But, nevertheless, it was there as part of the applied science course.

Now things have changed and IPRs are even more important. It is impossible to imagine doing any sort of research without coming across IP issues. With public-private partnerships now involved in universities it is even more important to know how to manage IP strategically in order to share in the benefits. Patent protection is more complex than plant breeder's rights and students need to know how it works, along with other topics like data protection and copyright, especially since the Netherlands is a big plant breeding country.

The short, International Plant Breeder's Rights course, Niels established, is a mid-career training course for policy makers, plant breeders, scientists and lawyers. They come from different countries and have different roles in their country. The course is great fun but it is difficult to reconcile all the differences between the students to create an effective learning environment. It is, therefore, important to make the differences explicit and to make the students' backgrounds relevant so they can share their experiences and learn from each other.

Before any cross learning can take place, they are taught the basics of IP, the international policy environment and seed systems in order to get a basic understanding of the issues. Sometimes economists and plant breeders are put into separate groups and at other times they are mixed up. Group work is a very important part of the course. The goals are very much dictated by the students themselves and an important part of the course is what the students will do with the information they have learned, when they return home. For that reason, the students are expected to report back sometime after leaving, explaining what they have done in the interim.

In addition, this year Niels will be starting an IP course for regular students at Wageningen. This involves an element of, perhaps even greater, interdisciplinarity, which will be a big challenge. The course is aimed at senior undergraduates and early post graduate students. Requests to join the course have so far come more from social scientists who are interested in the effects of IPRs on society, and for whom IP is a sexy subject, than from natural scientists. These groups have very different expectations. Scientists tend to just want the mechanics, whereas the social scientists want to take a critical approach. Niels would like to encourage the scientists to take a more critical approach, too, while he is also concerned to address the propensity among social scientists to attack IP without having the proper foundations. It should be possible and productive to put both groups together since both need a basic understanding of IP as well as the ability to develop a critical view.

The plan is for a twelve day course teaching the basics of the history of IP law and policy, moving on to the mechanics of IP protection and strategies for managing IP, teaching students how to search patent databases, and finally introducing IPR policies including open-source options. Speakers will be invited from the patent office as well as from the private sector. Next year Niels will be able to answer questions about how it went.

As a university, Wageningen doesn't have an IP strategy. While there are contacts between some departments and big business, it is left to each department to try and develop its own strategy for negotiations. As a result, some mismatch between public interest and commercial aims would seem quite likely.

Questions & Comments

Chris Wadlow (University of East Anglia, UK) asked Niels if he knew of any other university with a similar perspective or whether he thought it was unique.

Niels Louwaars responded, with a smile, that of course they were unique.

Mike Adcock (University of Durham, UK) suggested that Rothamstead Research Centre in the UK may take similar approach.

Alexandros Papaderos (Technical University, Munich, Germany) said that he was greatly interested in the approach. He explained that the previous week his university had signed an agreement with a Dutch plant breeder for which they needed to hire a special attorney to prepare the licence agreement. He noted that managing plant breeder's rights is very different from patent licensing.

Herbert Zech (Bayreuth University, Germany) asked Niels whether he taught plant breeder's rights first.

Niels Louwaars replied that plant breeders' rights courses are taught on the mid-career courses according to the students' background. For example, if teaching a trade negotiator who was working on IP clauses it would be necessary to explain seed systems, and plant breeders' rights would be a component of that.

Mariano Riccheri, (University of Alicante, Spain) was interested in the possibility of a course targeted at social scientists. He asked whether there were many such university courses. And he asked if there were any IP courses addressed to policy makers other than the WTO/WIPO ones?

Niels Louwaars answered that the University of Amsterdam political science department delivers a course focusing on IP. And added, wryly, WIPO has its own way of teaching IP.

Mariano Riccheri noted that this meant that basically the only available courses for policy makers were the official ones.

Niels Louwaars emphasised that this is a very important topic and that politicians tend to leave it to others. He stressed that they should know more about it, especially in developing countries...

Christoph Bruhn (EPA) pointed out that WIPO offers IP for policy makers.

Niels Louwaars added that UPOV also teach a regular course on IP, because they want more members.

Session 1b

Interdisciplinary IP Teaching

Chair: Robert Pitkethly, University of Oxford, UK
(Robert.pitkethly@sbs.ox.ac.uk)

Approaches to IP Teaching in Different Disciplines

Ruth Soetendorp (Bournemouth University, UK)

(iprsoet@googlemail.com)

Ruth Soetendorp is Professor Emerita at Bournemouth University, where she is Associate Director of the Centre for Intellectual Property Policy and Management. She is also Visiting Professor at Middlesex University Business School.

She is a member of the Chartered Institute of Patent Attorneys Education Committee, founding convenor of the Intellectual Property Awareness Network's education sub-group, and the Intellectual Property Institute. She is a member of the European Patent Office International Academy, and has worked on the EPO's Regional Industrial Property Programme and IP Education Roving workshops, most recently in Slovenia. EU funded projects in which she has participated include Euro-China Intellectual Property International Co-operation programme in Beijing and Shanghai. In her work with the World Intellectual Property Organisation, she has participated in IP Education and Research events in Geneva, Foshan, Ho Chi Minh City, Colombo, and most recently Dhaka. In India, she has worked with the Ministry of Education, Karnataka on IP Education, and with institutes in Mumbai and Pune.

As a UK Higher Education Academy National Teaching Fellow (2001), Professor Soetendorp maintains a good working relationship with the UK Intellectual Property Office on IP Education and Research issues and she gives presentations at numerous international IPR education conferences. Her recent writing and current research focuses on IPR pedagogy, including the development of resources for the inclusion of intellectual property in the non-law curriculum, and measuring the extent of IP education in UK science and technology faculties. Her consultancy activities focus on customised training for management of IPR in times of change. She is the EU correspondent of IPForum, the journal of the IP Society of Australia and New Zealand.

Summary

Ruth Soetendorp began her presentation by handing out a questionnaire for a project to find out the extent of IP teaching to non-law students at universities in the UK. She asked participants to fill it in even if they were not from a UK university as it would be interesting to find out how colleagues from abroad manage teaching IP to non-lawyers.

Her focus is on general pedagogical issues that are not necessarily IP specific, but she uses case studies from IP teaching.

Students who come to IP classes often come with some enthusiasm but they are not necessarily 100% positive. A good starting place, to get them interested, is to teach them how not to get ripped off.

It's important to find out how students feel about the topic as they may feel intimidated. However, while the students may not be well-versed in law, they generally don't expect to be spoon-fed. They tend to be prepared to take responsibility and use a range of strategies to manage their own learning process.

Ruth has identified a number of approaches to use when teaching IP to non-law students. These include: using cases, problem-solving, using simulations and using a clinical approach. Elements of these can be woven into the teaching design to make it more useful for the students, but she tends to avoid the doctrinal approach. This resonates with Marie-Christine's presentation, earlier, and supports the view that a doctrinal approach is generally considered to be 'dusty' and off-putting for non-lawyers.

The most important thing, in reality, is to take an active and practical approach to learning and using a combination of approaches is probably desirable and in keeping with Kolb's learning circle. This aims to achieve deeper and longer-lasting learning through a cyclical process in which the student moves from concrete experience to reflection and ultimately abstraction, developing theories and testing them out.

Ruth illustrated her use of practical approaches through two case studies, one in Bournemouth and the other in Pune, India.

At Bournemouth Business School the course developed out of a relationship between the Law faculty and the Design, Engineering and Computing (DEC) faculty. It was mentioned earlier that money is often a bar to inter-departmental projects, but this example shows how it can work. The product designers from the DEC were introduced to the IP students from the Law faculty in an advisor/client relationship. In this way, it was possible to test the law students' knowledge of IP law with real 'clients'. An advice letter project involved students working together without academic staff input, thus saving money. The product designers, meanwhile, were introduced to issues of ownership and exploitation as well as commercialization. The technology transfer office (TTO) team was available to the students, offering the advantage of being able to spot any patent potential early.

The project generated questions from the students, who needed to know how to achieve certain outcomes. It became clear to the engineering students that if they were unable to articulate what they needed, it would be costly for them. By the same token, the lawyers would have to ask the right kinds of questions and present their advice in a way that was suitable for their client. In this way both lawyers and the engineers benefited and were prepared for real life modern encounters. Furthermore, the 'them' and 'us' relationship was broken down with the engineers losing their fear of the law.

In terms of structuring the encounters, the product designers were grouped either in pairs or in larger groups depending on the numbers. The first class was given as a kind of master class to show what would be expected of them. It was necessary to have a lot of patience and goodwill and where pairings turned out to be 'dud', a plan B had to be ready.

The Pune project took a different approach, with IP professionals identifying work worthy of commercialisation and displaying it at an IP workshop to capture the students' attention. The focus of the workshop was a famous Indian Olympic rifleman, who happened to be a graduate of the institution. His role was to illustrate a technology that enabled the audience to see the act of shooting, on a screen, as it happened. In order to organise this workshop there were a number of hurdles to be overcome, which included arranging for the student to come back to the university and perform, and getting permission for a gun to be shot in the hall. The outcome was that it generated a great deal of excitement and enthusiasm for IP.

Another project with a similarly imaginative approach that Ruth has come across, is that of an American university that runs an IP course for engineers involving a cruise around the Mediterranean. At each port the students must buy something and write a report on trademarks etc...

Questions and Comments

Claire Howell (Aston University, UK) had heard about the advice letter idea and was going to use it with LLB students but had a problem with funding. She mentioned that an idea for getting round the funding problem is to target the money allocated for an IP audit for engineers to pay for the IP connection between the students. She pointed out that it often requires imagination and determination to come up with funding.

Teaching Patent Law – Between Natural Sciences and Law

Herbert Zech (Bayreuth University, Germany)

(Herbert.zech@uni-bayreuth.de)

Herbert Zech studied law at the universities of Erlangen and Munich, passing the First Legal State Examination in 1999. After completing a clerkship at the Higher Regional Court of Munich and the Second Legal State Examination (bar exam) in 2001, he earned his doctorate from the Universities of Konstanz and Verona with a thesis on, “Management Liability in the Case of Company Capital Losses in Germany and Italy.”

He worked as an attorney in the Munich office of law firm Freshfields Bruckhaus Deringer in tax and corporate law from 2002 to 2003.

From 2005 he worked as a research assistant at the Department of Civil and Commercial Law at the University of Kaiserslautern. While there he also studied biology, graduating in 2007 with a diploma.

Since 2007, he has been an senior lecturer and researcher at Bayreuth University. His main academic interest are intellectual property law, especially biotechnology and nanotechnology patents, and company law.

Summary

Herbert Zech wanted to show that, in Germany at least, doctrinal teaching can be fun. To demonstrate, he described his own teaching of the interface between patent law and technology. He said that this point at which current debates and regulation coincide could be exciting and interesting which he illustrated with reference to the way in which the particularities of bio-technology have affected patent legislation.

He is, therefore, concerned with teaching the more controversial aspects of patent law to law students in a way that may be equally applicable to non-law students. Before embarking on this, however, the students must have a certain amount of knowledge about patent law. National patent law should be at the core of the patent law course along with the European Patent Convention and other relevant European legislation, leaving the more controversial areas of regulation such as biotechnology or nanotechnology to the latter part of the course.

In this approach there are three steps in the process of teaching patent law

1. Teaching the scientific basis, particularly for the law students who tend to know very little about technology or science.
2. Teaching the legal principles, and
3. Teaching the students about the legal problems that arise out of the technology.

The emphasis will differ according to whether the target group is one of law students or non-law students, and according to the level of their knowledge.

The third step can be taught through selecting particular topics for examination, demonstrated using the example of nanotechnology.

The Example of Nanotechnology

First, it is necessary to find a way to define the relevant terminology. With nano-technology a good starting point is the European Patent Office’s standard definition, which makes it clear that inventions falling into this category are so categorized because of their size, and functions that can be attributed to their size.

It is helpful to demonstrate the smallness of nanotechnology using graphic illustrations. Their usefulness can equally be shown through illustration of special nano-created effects. And, once the different claim categories have been introduced to the students, it is easy to see why nanotechnology fails to fit easily into these categories, thereby raising interesting legal questions.

For example, a nano-machine, pre-existing in nature, is discovered to be an enzyme responsible for generating energy. This is just a complex molecule so it is not clear whether it should be categorized as a compound or an apparatus. And, when it comes to patent novelty, if a substance is already known, it is questionable whether it can be considered novel merely because of its scale and effects. These are very much live issues as it is still unclear whether, or to what extent, patent protection might be applicable to nanotechnology.

Such topic centred teaching can get students interested in patent law. Law students gain useful background knowledge that they would not otherwise encounter, while also learning about the latest discussions among legal academics, and having fun, which motivates them to learn more.

Questions & Comments

Niels Louwaars (Wageningen University, The Netherlands) asked whether this approach was taught in large classes or in small groups.

Herbert Zech explained that it was done in a large lecture theatre and that in the German system seminars are rare, so normally there is no small group teaching.

Approaches to IP Teaching Taken from Other Disciplines

Mike Adcock (University of Durham, UK)

(Mike.adcock@durham.ac.uk)

Dr Mike Adcock is a lecturer in Intellectual Property at the School of Law, Durham University, UK. He obtained a PhD in plant sciences from the University of Sheffield, UK, in 1992 and worked for many years in science on a variety of projects. In 2000 he moved to law, obtaining a postgraduate qualification in 2003.

His main research interest is the interface between science and law, especially in the area of patents and biotechnology. He has worked on projects looking into contentious issues, such as, intellectual property rights and genetics, plant intellectual property and intellectual property and bioethics.

Summary

Mike Adcock explained that he had been trying to find ways to teach law students from mixed backgrounds when he hit upon the idea of using poster presentations. The students were an LLM group of mainly Thai and Chinese students as well as UK students and students from other countries.

The LLM has recently moved from assessment by exam to essay assessment, which has proved more challenging for the students. While this has proved to be a good thing in many ways, it has also resulted in a higher failure rate, mainly among the overseas students and particularly those from China, largely due to problems with referencing.

Mike's concern was how to help prepare these students better for the assessment by teaching plagiarism avoidance, more explicit teaching of writing skills and referencing etc..., while at the same time avoiding alienating the local students.

When teaching multicultural groups a methodological hurdle is the fact that some students are used to a very teacher-led style in their home countries, which contrasts with the general expectation in the UK here that master's level courses should be learner centred.

Posters proved to be a way of addressing both issues. Coming from a science background, posters were familiar to Mike, and in the context of the LLM they not only gave the students the opportunity to develop and present their work but also to discuss their research with other students and with academics.

The LLM group was about 20 students and each student produced his/her own poster. Initially, Mike introduced the idea of the poster session to the students and explained that it was part of the peer-review process. The students, who tend to be rather non-critical at the start, were encouraged to develop the skill of engaging in non-confrontational and constructive criticism. They were also expected to 'feed-forward', i.e. explain to the student whose poster they are reviewing, how to improve it. To do this they filled in a form which they were instructed to do in an informative, positive and affirming way. They were required to provide feedback on different levels: content, organisation and language. In this way they had to understand the assessment criteria and develop their capacity to review the work of others against those criteria by commenting on each area as well as giving a grade.

When the students engage in the process, it hopefully has a positive effect on their essay writing, helping them to evaluate their own work and leading to work of a higher quality as they develop an increased understanding of the research process and how to structure their ideas. It also gives students an awareness of their position in the class compared with the other students in the class, potentially motivating them to work harder. Additionally, it gives them the opportunity to bring in their own experience and knowledge, to be

more autonomous and take responsibility for their own learning. Because the poster session offers the opportunity for one to one conversation communication between the lecturer and the students is improved, particularly as it can be combined with a more social experience, for example drinks in an informal setting. For the lecturer, this helps to identify weaker students who need help at an earlier stage.

A major constraint, however, is class size. Mike did this with his students when he had a manageable class size and has been unable to do it this year with higher student numbers. This is unfortunate as he felt that the students who were involved in the poster session achieved greater understanding as a result.

Questions & Comments

Alison Firth (University of Surrey, UK) asked how the students chose their topics and whether they needed a lot of help initially.

Mike Adcock explained that they were encouraged to think about a topic from their home country being discussed in the news, for example a case, a news report etc... Then they were asked to identify the key issues.

Duncan Matthews (Queen Mary University of London, UK) wanted to know whether there were any problems with the students being over-critical, or overly generous in their peer review.

Mike Adcock conceded that there were some difficulties with extreme criticism, in some instances, since the peer review forms were anonymous, but these were relatively rare.

Thorston Lauterbach (Robert Gordon University, Aberdeen, UK) asked if the students produced the posters individually.

Mike Adcock said that they did but that it was down to class size. In the last year he tried to do it in groups of four which was not as useful as there were the problems of group dynamics etc...

Thorston Lauterbach went on to ask if the peer assessment was included in the final grade.

Mike Adcock answered that it was not included in the grade and that the work for the posters was all formative. There was, however, a prize for the best poster.

Alison Firth wondered whether the university offered a workshop for poster-production.

Mike Adcock said they didn't. The basics were taught in class, for which his science background came in handy. The students were encouraged to break up the text and use images as well as a readable font.

Herbert Zech (University of Bayreuth, Germany) wondered whether German students would accept such innovative concepts. Coming from a German background which is very theoretical and quite dogmatic, he said that he has found that German students tend to want to be left alone. He was interested in the students' reactions.

Ronke Shoderu (London Metropolitan University, UK) advised that the only way to change students' mindset is to do it.

Ruth Soetendorp (Bournemouth University, UK) agreed and added that students like to feel that they are in safe hands. They don't want to feel at risk or that they will be more at risk than in a traditional situation, so they need to be assured that their assessment will not be put at risk.

Mike Adcock said that the feedback was generally positive but that it was rather difficult to sell the idea to people from an earlier generation who prefer chalk and talk and exams. Questions were raised about how to sell this kind of idea to paying clients.

Niels Louwaars (Wageningen University, the Netherlands) observed that it was a cultural thing. He has observed that Chinese and Thai students tend to like to absorb information and not to be active themselves. He added that it takes a lot of effort to design a course that aims to generate knowledge and teach skills. However, he felt that students should all learn to be critical and learn different ways of learning, not just chalk and talk.

Alexandros Papaderos (Technical University, Munich, Germany) pointed out that there are also cultural differences between disciplines, not just between nationalities. Engineers, for example, just want to be given the manual...

Session 2

Online Teaching

Chair: Jo Stanley, University of Cambridge, UK
(Js731@hermes.cam.ac.uk)

Teaching IP in an Online Environment

Keren Bright (Open University, UK)

(K.E.Bright@open.ac.uk)

Keren Bright is Director of the Law Programme and a Senior Lecturer in Law at The Open University. Keren also holds a consultancy with the UK Centre for Legal Education (UKCLE). UKCLE is the law subject centre of the Higher Education Academy and is based at the University of Warwick. This involves the professional development of law lecturers at universities across the UK and also writing resources for law lecturers for the UKCLE website.

Keren qualified as a solicitor in 1998 in a practice specializing in media law, after previously following a career in education. She was formerly a principal lecturer in Business Law at the Oxford Institute of Legal Practice, a member of its senior management team and course leader for intellectual property, private acquisitions and business accounts. During her time at the Institute, Keren enjoyed a sabbatical with the clinical law programme at Monash University, Melbourne, Australia and a placement in the intellectual property department of a leading London law firm.

Summary

Keren Bright explained that the Open University (OU) was the brainchild of the Labour government in the 1960s, who established it in an attempt to broaden participation in higher education and to increase equality of opportunity. It has been demonstrably successful in these goals as it is now the largest UK university. There are some 5,500 students in the Law faculty ranging in age from 16 to 90 and taking courses for a wide variety of personal and career reasons.

Intellectual Property is taught within the Commercial Law course, which focuses on topics such as assignment, licensing and franchise agreements. IP is also incorporated in the Interdisciplinary Business and Human Rights course which examines areas such as corporate social responsibility.

While straw polls reveal that most people want an element of face to face learning on their courses, the OU offers a blended learning style with online options available. One such attempt at using online forums for teaching has been through asynchronous E-conferences in which students post comments in response to a case study, for example. They can post their comments, which can only be seen by other members of their group, at any time. This has not proved altogether satisfactory for a number of reasons, largely due to lack of space and the fact that often the first student to answer uses much of that space. The system is 'clunky' with discussion threads difficult to follow, and both students and tutors have expressed unhappiness with the approach, which has been evaluated at ten percent less satisfaction than face to face learning.

However, a better system has recently been tried, using an American East Coast software package called Elluminate which aims to replicate the face to face experience in an online environment. Before training the tutors, the software was tested out.

The basic format is a screen divided into sections, replicating the functions of a classroom, with part of the screen devoted to a whiteboard. Participants are listed and visible, and can click on a hand icon when they wish to participate—the online equivalent of putting up a hand in class. Participants queue to make their point or ask a question in the order they clicked on the hand icon, thus avoiding the problem of interrupting. Other icons include the tutor being able to use the smiley to ask if everyone is happy ☺ or if anyone is unhappy ☹, or alternatively there is a thumbs up/down option. The tutor can poll students by asking them to click on a tick or a cross icon.

The tutor can show a video or a webpage in the main window by means of a URL, or upload a power point presentation. Using tools, it is possible to divide the class up into groups and subgroups to work separately and then to bring them back into the main room to report back on what they have done. In the same way, 'brainstorming' of concepts can be done in individual boxes followed by reporting back to the group. At the beginning of a class with a new group, ice-breaker exercises can be conducted with each student introducing themselves and where they come from, for example. This is particularly useful with OU students who may be sitting in quite distant locations during a course team-meeting. By using a microphone tutor and students can communicate with each other through voice. However, for the most part students seem to prefer 'chatting' using text.

Planning an Elluminate session in advance is important, as is preparation time for both tutors and students. The sessions tend to be very intense and the tutors need to have a script so that they know at all times what they should be doing. This is provided by the OU.

Feedback to the Elluminate forum has been positive with some students commenting that they preferred it over face to face sessions. They found that they concentrated more fully on the tutorial and were not distracted by other students. However, three hours is too long for an Elluminate tutorial. Because it is so intense one hour is enough. Tutors who were unhappy with the old system have said that they like Elluminate.

Keren Bright also pointed to the Second Life virtual world as having potential as an online learning environment. This has been tried at Harvard Law School where students attended 3D lecture theatres and took the experience seriously, dressing their avatars in lawyerly smart suits. In this forum, too, the students can communicate by voice using microphones.

Questions & Comments

Jo Stanley (University of Cambridge, UK) commented that this shows that Facebook really can help.

Niels Louwaars (Wageningen University, the Netherlands) asked how many students one tutor could manage.

Keren Bright explained that there would normally be twenty students in each group and that there would be two tutorials, to which attendance is voluntary. She added that from six to ten students were expected to be present online.

Niels Louwaars thought that sounded rather expensive.

Chris Wadlow (University of East Anglia, UK) asked if the system could be adapted for use on an i-phone, or other such mobile device.

Keren Bright didn't see why not.

Robert Pitkethly (University of Oxford, UK) asked if it had been used with fewer or more than six to ten students.

Keren Bright said that it had not, so far, been used with more than six.

Maximilian Haedicke (Albert-Ludwig University, Freiburg, Germany) asked if the approach had been used in combination with other techniques such as face to face.

Keren Bright replied that the law course was only online.

Engaging the Distance Learner Online

Caroline Coles (Leicester De Montfort University, UK)

(ccoles@dmu.ac.uk)

Caroline Coles achieved a BSc in 1982 and went on to receive the Diploma in Law in 1993. She became a solicitor in 1998. She has founded her own management consultancy firm, practiced with Freeth Cartwright in Nottingham and, prior to qualification, worked in marketing with Boots Company plc.

Currently, she teaches Business Law and Practice, Commercial Law and Business Accounts on the Legal Practice Course (LPC) at De Montfort University. She is the coordinator for e-learning for the Department of Professional Legal Studies.

Summary

Caroline Coles has a particular interest in IP literacy. She is concerned with how much students take in and noted that there are often problems, among both overseas and UK students, with their evaluative and analytical skills. She stated that her goal is to find a way to help students improve, by meeting them half way.

Caroline acknowledged that students like face to face learning. But she thought it was worth asking what they get out of it, especially since many of them don't participate particularly actively in such learning situations. She wondered whether a blend of learning styles might improve participation.

Caroline explained the concept of the Edgeless University: one in which the university is not limited to its buildings but whose online presence reaches out to a wider spread of students who could be, quite literally, anywhere. In today's world where more than 66% of students play online multi-player games and participate in online social networks, as well as using all kinds of mobile technology it is necessary to help them to engage in criticism of what they read on the web. This type of 'literacy' is necessary to address the significant deficit caused by the fact that frequently students do not read books but just 'bounce' around the web getting snapshots of topics rather than developing critical skills.

Caroline is concerned that students should learn how to use the web better since, for some time now, Britain has been moving towards a largely digital society. There may be some impact on this as a result of the recession but, so far, the TV and radio changeovers seem to be going ahead as planned. And, it is likely that in a time of economic hardship more students will be part-time. This is already the case in higher education with many students unable to afford either the time or money to study. It can be seen in the reform of the Legal Practice Course (LPC) which is moving towards reducing the attendance requirement so that students spend less time in university, as well as shortening courses which means less time for reflection.

Caroline said that she accepted that face to face learning might be the ideal but it is necessary to be practical and try to optimise opportunities online. She is concerned to find a way to help students in an online environment engage with the course material, as well as reducing potential feelings of isolation and keeping students engaged with the course. In this way, she said, she hopes students will retain more knowledge. She also hoped that by providing a sense of community online they would be less likely to drop out. She explained that the main tools she uses to do this are the online lecture and the wiki.

She is keen to develop the concept of 'good' digital teaching practice and what this might mean for her students. She has to teach substantive law, here described as a lot of 'stuff', but this needs to be balanced with other approaches that stir it up, i.e. encourage students to express themselves by evaluating and critiquing the law. This combination of approaches she calls, 'stuff and stir'.

For the online recorded lectures she uses an open source software package called Articulate which runs videos via flash on the web. It is easy to use, and power point presentations can be uploaded to run alongside the lectures to which live websites can be added, thus allowing students to explore a topic further by clicking on a link. For example when discussing applications for Trade Mark registration a link to the IPO website can be added, bringing the topic more 'alive' and getting students to do more of the 'stuff'. Later they can do the 'stir'. It is important to get the timing right in the lecture, when including links to websites, and to explain clearly to the students what they are expected to do. Leeds University hosts a useful website with information about Articulate, with examples from a pilot study.

The online lectures have been very well received by full time students as well as the distance learners. If, for some reason, a student can't attend they have the option of listening to a similar lecture. And, if they miss something or find a concept difficult, they can listen as many times as they wish. It's also possible to include interactive exercises of the scrabble or hangman type to get quick feedback, as well as longer quizzes. These can be set in different ways. For example, the pass rate can be set at a particular level (70% e.g.) and students enabled to take the quiz as many times as necessary to pass it.

Caroline described some research she has carried out with the Graduate Diploma in Law (GDL) distance-learning students to find out their feelings about the course. In terms of hindrances to learning many of them complained of lack of time being a significant factor. They overwhelmingly liked the online lecture format, and particularly appreciated the fact that this enables them to do their learning at any time and place, although many of them would like a testing element to be included.

Caroline uses a wiki to get students talking about ideas. This is only open to students on the course and is not anonymous. Students are identified by name. On the wiki, an article can be posted for the students to comment on. The important thing is to be clear what you want the students to do. They can, for example critique the article in terms of content, structure and language, with the aim, ultimately, of applying the same kind of criticism to their own writing. The task can keep changing to maintain students' motivation, and they can be rewarded for their participation by, for example, providing a link to an article they would otherwise have had to search for.

Caroline said that the challenge is to get the students to be independent thinkers, so they have to start with what they know and build up. With the wiki there are no right answers. However, the tutor can stir it up a bit to provoke discussion. The other role of the tutor is just to check that students are using the tools effectively. Otherwise this is mainly a forum for independent learning.

Questions & Comments

Alison Firth (University of Surrey, UK) asked, firstly, whether Caroline had had to spend a lot of time online, initially, monitoring the wiki and doing the online lectures, and secondly, with reference to the website, whether the students could change the structure.

Caroline Coles confirmed that it took a lot of time initially. She explained that it took approximately three hours preparation to one hour of lecture time, stuck in an office with a headset. And, it was particularly time-consuming building in the interactive exercises. However, she believed it was worth it and added that if the Articulate software is too expensive there are other software packages that do similar things.

On the other hand, she said the wiki is not particularly time-consuming. It's only necessary to check it once or twice a week. At the beginning it is necessary to explain why you're using it and what outcomes are expected, etc... And, occasionally it might be necessary to intervene to prompt comment. Otherwise, it's up to the students.

Kevin Scally (University College, Cork, Ireland), observed that there seems to be a proliferation of online tools such as the University of Edinburgh's virtual campus, tutorials on twitter, Moodle, Blackboard etc.... He wondered how much can be done alone without technical support.

Caroline Coles agreed that it was important to choose the most appropriate tool for the job.

Claire Howell (Aston University, UK) said that she uses podcasts. The students do still turn up to lectures, so it does not replace face to face learning, but they do like the possibility of repetition. She anticipated that it may be very useful for students to be able to access lectures from home if the swine flu epidemic continues into the next semester.

Caroline Coles responded that podcasts are nice and flexible and that it is useful to be able to download files in different formats.

Kevin Scally cautioned that maintenance can be a big issue, and that funding is needed to make sure that materials are kept up to date.

Claire Howell said that she has support for that.

Kevin Scally complained that he doesn't.

Mariano Riccheri (University of Alicante, Spain) asked Claire Howell what content she put online.

Claire Howell said she put her lectures as both audio and video files; essentially, this involves talking through a power point.

Kevin Scally said he made no more than two minutes of podcast available as he found the students got bored quickly.

Claire Howell found the opposite was true among her students.

Jo Stanley (University of Cambridge, UK) noted that there is some useful open source software which may be more economical but that IT support is needed if this option is chosen.

Session 3

Approaches to IP Teaching

Chair: Alison Firth, University of Surrey, UK
(Alison.Firth@surrey.ac.uk)

Problem Based Learning in an IP Programme: A question of Balancing Content and Skills? Chris Wadlow (University of East Anglia, UK) (c.wadlow@uea.ac.uk)

Christopher Wadlow is a professor at the Norwich Law School, University of East Anglia, where he is the programme leader of the LLM in Information, Technology and Intellectual Property Law. He is probably best known as the author of the leading textbook on the law of passing-off, now in its third edition.

He was previously a solicitor in the intellectual property department of the London office of international law firm Simmons & Simmons for over 20 years, before joining the University of East Anglia as a Reader in 2004. He is also a member of the ESRC Centre for Competition Policy at UEA.

Summary

Chris Wadlow spoke at Aston, two years ago, about using problem-based learning techniques (PBL) to teach technology transfer. On this occasion his focus was on using PBL to teach current IP problems. In both cases the courses are more skills orientated than content based.

In the earlier course the students were put into teams to prepare their work over four to five week cycles. Students' main outcome from the technology transfer course was the skills they developed. However, before they could do that they needed basic information first. On reflection, it became evident that the PBL format has a number of problems, illustrated by the fact that student feedback was polarized. While many students find it useful, particularly overseas students for whom it has some significant advantages, it is very different from the standard approach to post-graduate teaching, is quite demanding, and requires a fairly high degree of maturity from the students, with the result that some fail to engage.

Chris Wadlow's solution was to move away from practical problem-solving but to keep the students doing the work and reporting back. As a result, the course now has more academic and legal content, with introductory reading material prescribed, but it retains the emphasis on learning by doing, with students doing their own research on a set proposition. Rather than four week cycles, in which students can fall off the edge completely without supervision, the cycles are quicker with a topic being covered in a week. The principle of less reliance on the teacher is retained.

The new course structure is implemented in the second semester and covers ten current issues in IP. It involves students being put into teams of three or four students, meaning four groups in a class of twelve. Each team is given a proposition which they then research, returning at the end of the week to give a 15 minute presentation on that topic, followed by free discussion conducted on traditional seminar lines.

There are many issues that could be chosen, but the essence is that a number of propositions are put forward from different points of view. These are allocated to the groups who are required to work as a team to find arguments in support of the particular proposition they have been given. In their presentation they argue from that position. However, during the discussion at the end they revert to being individuals and are encouraged to be critical from their own point of view.

Chris acknowledged that this may be considered to be a typical seminar format, and that this more academic approach may be squeezing the problem out of PBL. However, he would argue that it is still different from the normal seminar teaching method in that the initiative is transferred to the students and the students are learning with and from each other. Compared with the normal Socratic style of seminar it is less intimidating and less directed by the teacher. Students also benefit to a certain extent from passive learning through the experience of listening to others. They learn skills of legal research and teamwork and, in their assigned roles, they learn to role play. They also learn formal presentation skills.

After three or four weeks the teams are re-shuffled to try to avoid problems created by poor group dynamics which were potentially disastrous when the cycles were longer and the groups were stuck with each other for the entire semester.

Chris Wadlow found no problems with student apathy or resistance, as there had been previously, and this was reflected in the overall positive feedback which was not polarized as it had been before. With a large number of problems to choose from, it is comparable to conventional seminars and functions well. The course is straightforward to run and is amenable to conventional assessment which is by coursework based on a topic that the tutor approves. With the short cycle structure students get regular feedback, which is reassuring, and the skills developed here are somewhat less intimidating than those needed for mooting, for example.

Questions & Comments

Caroline Coles (Leicester, De Montfort University, UK) asked how much IP teaching the students would have had before the PBL semester.

Chris Wadlow replied that on the IP LLM they would have spent one full semester.

Ronke Shoderu (London Metropolitan University, UK) said that she had had a similar experience and that while, initially, the students were rather resistant, after a while they said they enjoyed it far more. There were, however, some students who had problems working with other students in their groups. She was interested in suggestions for what to do about that other than re-shuffling the groups.

Chris Wadlow said it was a matter of group management. On the whole, he said, he tends to be 'hands-off' with the groups; although with the longer schedule he did monitor them. There's no need with the shorter schedule. On the LLM the students come from very varied backgrounds with some students starting from square one. He pointed out that York University uses entirely PBL methods on the introduction to the law degree, with undergraduates and suggested that if you teach using a single method from year one the students buy it. With mixed methods, he said, it's difficult to get the students to work to a front-loaded cycle.

Keren Bright (Open University, UK) felt that it should be noted that the students on the York University course were interviewed first to see if they would benefit from PBL, before being admitted to the degree programme.

Multiple Choice Questions and Extended Matching Questions in IP Education

Claire Howell (Aston University)

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Claire graduated in 1984 with an LLB from University College Cardiff. Continuing her studies at the Inns of Court School of Law she was called to the Bar in 1985 as a Barrister of the Middle Temple. In 1994 she studied for an LLM in Commercial Law at Birmingham University.

Claire has taught at various Law Schools including Cardiff, Birmingham and UWE Bristol. She has teaching experience at both undergraduate and postgraduate level of Company Law; Sale of Goods and Agency, Contract law, Employment Law and Intellectual Property Law.

Her research interests are in Company and Intellectual Property Law

Summary

Claire Howell began by saying that assessment is dear to her heart, as it is for most teachers faced with marking huge numbers of student essays. And, IP is generally assessed by essays. In an attempt to address some of the problems raised by essay-based assessment, Claire focused in her presentation mainly on the use of multiple choice (MC) or extended matching questions (EMQ)s.

She recognized that it is important to know what you are trying to discover through the assessment, so the assessor must decide whether he/she wants the students to demonstrate knowledge, show their ability to apply the knowledge, or demonstrate the ability to think critically.

Claire acknowledged that free response written answers are good at testing some of the higher order skills such as the ability to analyze, synthesize and evaluate, but they also have disadvantages. They often consist of a quotation followed by an instruction to critically analyze and discuss the statement, which means that the students are required to guess what issue or issues the instructor intended them to identify. The instructor, no doubt, thinks this is obvious, but it may not be as clear as they think. To get a good grade, the student is required to have read and interpreted the statement in the way the instructor expected. An additional problem arises if another instructor with a different viewpoint ends up marking some of the papers. Claire is concerned about the inevitable element of subjectivity in marking essay style answers which commonly leads to quite wide disparities between markers.

What's more, the essay style of assessment means that students focus on only one topic. And, the responses can take a very long time to mark, particularly when written under exam conditions and students' handwriting is a factor.

In comparison, MCQs, which are used extensively in the science and more mathematically orientated departments, achieve a sort of 'objectivity' and are very easy to mark by computer. The complexity of the questions can be increased or decreased as appropriate and a bank of questions can be developed so that they can be used year after year. Over time, the questions are tested and the best ones selected so that the results produce a bell curve with students neither getting all the questions right or all wrong, which can be a problem if the questions are pitched at the wrong level.

The questions are, initially quite hard to write. And, other problems include the way in which they encourage students to use a process of elimination to answer the questions rather than applying their knowledge, raising the question of what exactly is being tested. Nevertheless, Claire thinks that the MCQ style of question is useful, particularly for revision.

Extended matching questions (EMQS) are familiar to the sciences but new to many in other disciplines. Claire became aware of the approach, initially, from a book aimed at medical students. While EMQs take longer to mark than MCQs it is still less onerous and more consistent than traditional essay marking.

They tend to be structured with a problem question followed by up to 20 possible solutions provided, some correct and some incorrect. Students are asked to perform such activities as choosing the best answer, and ranking the top five questions in order of priority. The students can then be asked to justify their choices. This has the advantage of testing application of knowledge and not just recall, as well as reducing the incentive for students attempting to look at other students' answers. It retains the advantages of MCQs in that a bank of questions can be developed, and incorporates some of the features of essay style answers. Most importantly, they have the advantage of greater reliability, with students not needing to try and guess the intention of the question setter. This approach, therefore, offers a useful compromise, and in a study at Aston Business School where the outcomes of the different assessment approaches were compared, when essay style and MCQ testing approaches were compared, EMQs resulted in better overall performance with none of the students evaluated as poor.

Questions & Comments

Mariano Riccheri (University of Alicante, Spain) said that he uses MCQs. He has always found them problematic, but has found that sometimes, due to workload, it is the only feasible choice. He wondered if there was any other reason to use MCQs.

Claire Howell replied that they have the advantage of not being subjective and they avoid the external marking problem raised by essay style questions where different markers are fundamentally opposed in their assessment but can both justify their grade. In such a situation you could be faced with the choice of giving a student a first class degree for what some would consider mediocre work or a third class degree for what others consider excellent work. So, unfairness is reduced and at the same time the workload is reduced.

Teaching IP to International Students: Early Career Teaching Experience Agnieszka Machnicka (Università di Siena, Italy) (Agnieszka.machnicka@eui.eu)

Agnieszka Machnicka is a post-doctoral research fellow at the University of Siena. After graduating in Law from the University of Warsaw summa cum laude, in 1999, she completed a D.E.S.S. Franco-Polonais de Droit Français et Européen des Affaires under the joint auspices of the Université de Poitiers and University of Warsaw, in 2000. She went on to do an LLM in Common Law at the University of Ottawa which she completed in 2002. Remaining in academia, she pursued her doctoral studies and completed a PhD at Warsaw on comparative contract law in 2005 and subsequently a PhD at the European University Institute in Florence on intellectual property in 2008.

Her professional experience comprises appointments as a teaching assistant at the University of Warsaw, a visiting researcher at the Katholieke Universiteit Leuven, and a research assistant at the European University Institute in Florence. Since 2007 she has been invited as a visiting lecturer to the Master's degree program at the Faculty of Law, University of Alcalá.

Her research interests are in interdisciplinary relations between Intellectual Property Law culture, society, and national identities.

Summary

Agnieszka Machnicka started her talk by thanking the organisers of the EIPTN for the opportunity to come to London and join other teachers of IP in discussing best practice for IP teaching. She particularly thanked Prof. Alison Firth whom she met at a conference in Madrid in 2008 where Prof. Firth inspired her and invited her to come to the EIPTN meeting.

Agnieszka based her talk on her own teaching experience. She has taught IP teaching in three institutions, on a civil law course to undergraduates at University of Warsaw as well as to both undergraduates and postgraduates at Universidad de Alcalá, and at Università di Siena where she is currently a post-doctoral fellow.

At the University of Warsaw the basics of IP are taught to undergraduates in the faculty of law. The course covers topics such as copyright and trademark law and focuses in particular on the harmonisation of copyright law in the EU, as well as criminal aspects of IP law. At postgraduate level IP is taught to students in special sections in the civil law department. There the main focus is on patent law which is considered to have more practical application and is offered to people wishing to become patent agents or patent lawyers.

IP is also taught as an option in the special schools of foreign law at University of Warsaw where optional courses in English, French and Italian Law are taught together with European Law. For students who choose this option it is like studying for another degree in parallel with the domestic law degree. On the English and European Law course IP is compulsory. On the French and European Law course there is an introduction to IP which enables students to become familiar with the area; and on the Italian and European Law course, Competition Law and European IP Law are compulsory components of the course.

At Università di Siena there is no master's level degree as such in IP law but there are courses available in industrial property law and trademark law within the two year graduate specialisation programme.

Universidad de Alcalá offers IP as an optional subject at undergraduate level on the law degree. At postgraduate level IP is taught to both Spanish and international law students studying general law and business law on the Master Oficial en Derecho (Escuela de Postgrado) and the Master en Derecho de la Empresa. On the second of these, the Business Law course, IP is compulsory and taught from a commercial perspective.

The nature of the institutions has an interesting impact on what is taught, with some institutions being international per se compared with national universities that offer international programmes. This has an effect. Where there are more international students there is a greater emphasis on teaching the international conventions rather than on national codes and jurisprudence.

It is important to find teaching methods that will reach all students, including those who come from a non-European legal tradition. This may not be too difficult as there is frequently common ground. For example, the study of case law is not exclusive to common law jurisdictions as some think. When familiarizing non-EU students with European law, in particular, it is necessary to study the jurisprudence of the European Court of Justice (ECJ). In teaching IP law to international students it is necessary to start by engaging the knowledge that students already have and then lead students from basic concepts to more structured legal reasoning.

Agnieska has noted from her experience that while different modules focus on different aspects of IP, it is important that IP should be compulsory. This is how she encountered it in the first place. Most importantly students need opportunities to learn about IP law in order to capture their interest and curiosity to embark on further study of IP in the future.

Of Pleasure and Pain – Teaching IP to a Diverse International Cohort Thorsten Lauterbach (Robert Gordon University, Aberdeen, UK)

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Thorsten Lauterbach completed his LLM at Aberdeen University in 2002 and is projected to complete his PhD in the Notion of Joint Authorship in Copyright Law, at Edinburgh University, in 2011. From 1999-2002, he lectured in law at the University of Paisley, and since then he has taken up a position at the Robert Gordon University, Aberdeen, where he currently lectures. His main areas of interest include Information Technology Law, Media Law and IP Law.

He has published a number of articles and has contributed regularly to the Scottish Law Gazette, since 2001. He wrote the chapter on IP in a textbook, edited by MacFadzean, Introduction to Law and Legal Obligations (2006).

Summary

Thorsten Lauterbach said he represented ‘the voice of the north’, coming down to London for the EIPTN from Aberdeen where he teaches IP law to international postgraduate students in the department of law and business. He explained that to be admitted to the full time postgraduate law courses students should have a good business or law degree, although admissions tutors keep an open mind and also consider other factors such as experience and motivation.

IP modules are not run separately by the different MSc/LLM courses which cover International Trade Law, International Commercial Law and International IT law. Rather, there is a common core IP module called Contemporary IP Law which all students can take. It is mandatory for the International Commercial Law and the International IT Law LLMS, but optional for the others. Specialist IP modules may be added where necessary.

The Contemporary IP Law course comprises eleven classes of three hours each, totalling 33 hours over a period of six weeks with a break in the middle for consolidation. The consolidation week is a useful opportunity to bring in a guest lecturer and field trips can also take place during that time. There are generally between 40 and 50 students altogether on the International Trade LLM, with about 15 taking the IP module. They tend to be from varied backgrounds with a larger number of Chinese students since China joined the WTO, and a sizeable contingent of Nigerian students who are often already in practice before joining the course. Assessment is by either portfolio or essay.

Thorsten team teaches the course along with another instructor. They both have an international student background and are both PhD candidates working in the IP field.

The challenges they confront are mainly how to teach such a varied cohort particularly with the Nigerian students mainly being lawyers and the Chinese, non-lawyers. There is a need to develop intercultural competence among the students. The personal skills needed are broad mindedness, mutual respect and tolerance. In addition, the students have to develop cognitive and language skills, as well as international legal knowledge.

The approach to teaching is thematic rather than black letter and there is no text book. Instead, Thorsten and his colleague Moe Alramahi have developed a reading list that caters to student needs. Language tends to be a big difficulty as are expectations. Some students want to be challenged while others want spoon-feeding. A big problem is the fact that some students are admitted onto the courses with an IELTS score of just 6.5. This is not really adequate for studying law and tends to be a particular problem with some Chinese students, who then find coping with the materials very difficult.

It is necessary to develop strategies for teaching this type of international group. Thorsten has found variety important. He said that he often uses blogs and websites such as the IPKat and Afro-IP among others and while there is some tutor input into the classes the structure revolves mainly around group debate.

Questions & Comments

Mike Adcock (University of Durham, UK) enquired about what the students do for the portfolio.

Thorsten replied that a variety of things may be included: narrative blogs, for example, based on the discussion topics.

Duncan Matthews (Queen Mary University of London, UK) agreed that an IELTS admission score of 6.5 can be problematic. At University of London the minimum is seven. However, at Kent they accept a score of 5.5 for student admission to the IP programme. He wondered whether Thorsten felt that he had to adapt the content because of the language skills.

Thorsten conceded that he had to tailor his materials to the students' language ability, noting that a major change had occurred with the trend to admit Chinese students with lower IELTS scores. Three years ago the students were largely from India, and able to cope with traditional essay writing. That is just not possible with many of the Chinese students whose language skills are at the lower end of the admissions criteria, so assessment has had to be adapted. During the course it tends to be more presentation-based, with a move away from long essays, but the students still have to produce a 16,000 word dissertation at the end of the course so it remains important to teach and test essay writing in order to prepare students for the assessment.

Session 4

Teaching IP in Country-Specific Contexts

**Chair: John Pickering, Strategic Advisory Board for
IP Policy (SABIP)**
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Teaching IP Law at German Law Schools

Maximilian Haedicke (Albert-Ludwig University, Freiburg, Germany)

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Professor Dr. Maximilian Haedicke, has studied law in Germany, Switzerland and the United States. As Fullbright Scholar, he completed an LLM at Georgetown University in 1995 and shortly afterwards passed the New York bar exam. He completed his PhD on "Copyright and US International Trade Law and Policy".

He went on to become assistant professor at Max-Planck-Institute for Foreign and International Copyright, Patent and Competition Law in Munich after completing both his State exams and a legal clerkship at Berlin High Court. While at Max Planck, where he headed the US department, he prepared his thesis on German contract and IP law. Subsequently he worked for the international law firm Freshfields, in Munich and Düsseldorf, specializing in IP and IT law, especially patent litigation.

He has held the chair of IP and Competition Law at Albert-Ludwigs-University in Freiburg, since Fall 2003, and is a member of the Patent Committee of the German Association of Intellectual Property Law (GRUR).

Summary

Maximilian Haedicke introduced Freiburg at the beginning of his talk, locating it on a map and extolling its virtues as one of the most beautiful cities in Germany, situated next to the Black Forest and home to the famous Black Forest cake as well as cuckoo clocks and a handsome twelfth century church tower. All these, as well as the fact that Freiburg is sunny and warm in the summer and produces good wine as a result of its volcanic earth, are reasons to visit.

Recently, Freiburg University has had its 550th anniversary. It ranks highly among German universities and in a competition of excellence it was one of five universities selected to receive fiercely contested funding. For 449 years of its history intellectual property has not been a major concern at Freiburg University. Indeed, in Germany, until ten years ago, only the Max Planck Institute in Munich focused on IP issues. Now, there are some others such as Bayreuth, said Maximilian in reference to Herbert Zech's earlier presentation, and Freiburg has also taken up the challenge.

This raises the question of why it has been so hard to integrate IP into the German Law system. And the answer seems to be that the State examinations do not allow much room for specialization. A set number of compulsory courses, which are heavily standardized, must be passed at the initial stage, while the clerkship stage is similarly restrictive. The aim of the system is to produce lawyers with a strong general background who are then able to grasp all areas of law easily. But, this system leaves the students neither aware of IP, nor interested if they are, and the brightest students, therefore, tend not to be attracted to the IP field.

Recent changes to the first state examination have, however, given the opportunity to include more specialization with 30% of the exam grade now allocated for elective fields of study, which the students are obliged to choose.

One of the options at Freiburg is Intellectual Property and Information Law which comprises components of IP as well as administrative law issues, on the information law side, such as, the regulation of broadcasting. All students choosing this option take a number of compulsory courses which include Copyright Law, Internet Law and Media Law. Then they specialize; there are two lines of courses within the IP and Information Law option and the students must choose which direction they want to go in. On the IP side the students go on to study more Copyright Law, Trademark Law, Patent Law and Competition Law. Examination is by take-home exam, oral presentation and ordinary exam, implemented by the legislature. The teaching faculty on the IP course is high profile, and the IP elective is greatly in demand now, compared with other more traditional fields of study.

A popular approach that has generated awareness of IP, adopted by Freiburg University, has been the organization of conferences as a non-commercial platform for young lawyers and law students, at which 40-50 PhD students presented papers. The first such conference took place in 2006 for students who had just finished the state examinations. Maximilian said it was a fun event that offered a non-intimidating forum both for networking and expressing ideas.

Since 2006, the conference has gone from strength to strength, one year inviting participants from India and more recently opening up the opportunity to give presentations to non-PhD students. Many established lawyers give their time free of charge to lead workshops on IP-related topics. For them, it is an opportunity to recruit, and because there is competition to attend the conferences, students must submit a CV for selection. Maximilian hoped that, in this way, IP awareness will spread in Germany because, in his opinion, the economy needs more IP lawyers.

Teaching IP in Poland: Experiences from a Post-Communist Country Maciej Barczewski (University of Gdańsk, Poland)

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Maciej Barczewski is the head of the postgraduate programme in Intellectual Property Law and High Technology Law at the University of Gdańsk (Poland). He is also an Adjunct Professor at Chicago-Kent College of Law (USA) where he lectures on European Copyright Law.

He has published a number of books and articles in leading law journals, including the European Intellectual Property Review and the Polish Yearbook of International Law and presented papers at numerous international conferences on both intellectual property and technology law topics. He has also served as an expert to the European Commission on the European Union Public License.

He is a member of the International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP). His current research interests include IP provisions in Free Trade Agreements, as well as legal aspects of Digital Rights Management.

Summary

Maciej Barczewski's presentation aimed to describe the IP landscape in Poland. He began by establishing the basic regulatory framework. There are two Acts governing the regulation of IP protection, the Copyright and Neighbouring Rights Act of 1994 and the Industrial Property Act of 2000. Both now offer high protection, in line with both international agreements and European Union directives, and to achieve this they have been heavily amended, recently. Thus Poland has moved from a low level of IP protection to reach the European standard.

When it comes to enforcement, however, it tends to be rather weak. Software infringement, for example is not considered important and from Maciej's experience in the prosecutor's office he noticed that infringers who were caught were released quite quickly and it was only after really persistent offending that finally some punishment was meted out. There would be intermittent raids on places where infringers were known to be active but not much in the way of consequences. The general attitude of indifference may be attributable to the Soviet legacy and their understanding of the nature of property or it may be, perhaps, a consequence of the weak protection itself.

Until the 1990s, despite the existence of legal protection for trademark, copyright and patents, common practice was to illegally exchange films and software at weekend markets. Illegal copies of films and music were prevalent and Polish state radio even broadcast computer game code to be recorded and run on personal computers. These activities led people to believe that IP should not be protected and that copies should be available free of charge.

Some universities have offered elective courses in IP. However, there are insufficient skilled teachers, and because of the way in which university employment policy operates there is a very long rotation of staff. This makes it difficult for younger academics interested in IP to become established and, as a result, most students remain uninformed and uninterested in IP. However, Maciej said he expected this would change with time. And, in response to this climate of weak enforcement there have been some recent changes following the compulsory introduction of IP into all universities' curricula as a result of a regulation passed on 12 July 2007.

The regulation making IP teaching compulsory does not specify how it should be taught so there is a lot of variation in its implementation. For example in Chemistry they may offer a 15 hour course of traditional lectures whereas in other faculties it could just be a two lecture in the basics, which is probably insufficient. There is a tendency, however, whatever the approach to teaching IP, to avoid using legal terminology or the word 'law'.

Maciej introduced IP at the University of Gdańsk Law School. The course has proved popular, with around forty students a year writing their thesis on IP. Postgraduate programme participants are often attorneys who are aware of the increasing importance of IP and wish to increase their knowledge.

More generally, the Baltic Festival of Science offers public lectures on IP protection, thus, increasing awareness among the public. And, since 2005, there have been three international IP conferences in Gdańsk. These have marketing as well as educational value and Gdańsk is now competing for the 2012 title of European Capital of Culture. In order to obtain that distinction, Gdańsk will have to demonstrate that it does indeed value IP protection.

Introduction to IP in the Non-Law Curriculum: a Perspective from the Iberian Countries Mariano Riccheri (University of Alicante, Spain) (Mariano.riccheri@ua.es)

Mariano Riccheri graduated with a degree in political science from the University of Geneva in Switzerland and then completed a diploma in International Relations, in Argentina. He went on to do an LLM (Magister Lucentinus) in Intellectual Property at the University of Alicante, the main centre for IP education in Spain.

He is now Programme Manager for the Magister Lucentinus at the University of Alicante where he both created, and runs, the Community Trade Mark Special Module. As well as lecturing in IP, he also gives numerous presentations at conferences both nationally and internationally.

His main research interest is in the area of Geographical Indications (GIs), and he has participated in a number of EU-funded research projects on the impact of GIs.

He has acted as an expert for the EPO in the field of IP Education and Dissemination in Universities and designed the “Plan for the Dissemination of IP Teaching in Universities” for Spain and Portugal. And, consulting for the EU, he has worked together with the Mexican Industrial Property Office on the establishment of an IP Academy and the development of IP programmes which include training in the areas of Trademarks and Geographical Indications.

Summary

Mariano Riccheri, originally a political scientist from Argentina, rectified this situation, he said in introduction, by studying for an LLM in IP law. He is now the programme manager of the Magister Lucentinus at the University of Alicante, in Spain.

Mariano noted that, while there is no political or economic reason to put Spain and Portugal together for the purpose of examining IP education in the non-law curriculum, the two countries do share some common traits. Law faculties in both countries offer IP teaching to undergraduates. However, this is not true in other faculties except where a particular professor is particularly aware of IP issues.

In Engineering, Science, Business and Economics, IP is not very commonly taught, and where it is, it is done on an ad hoc basis and to a very variable degree. In Chemistry, for example, where there is high interest, on the personal initiative of a professor, as much as 60 hours IP teaching may be offered. At postgraduate level, in law schools, the teaching of IP is very prevalent, although Maciej was aware of some modules being suspended because of lack of students. However, interdisciplinary courses are in their infancy, especially in IP management, which tends to be a neglected area, although Universidade Técnica de Lisboa is noteworthy for going against this trend.

A major problem in both Spain and Portugal is that while there are many IP specialists among the law professors, there are very few in other disciplines. Mariano welcomed the contributions made by some patent agents and specialists in technology transfer offices (TTOs) who have become involved in IP teaching, but said that this is quite unusual.

There is a question over who should teach IP to the non-law students at both undergraduate and postgraduate level. Law lectures, as such, may not go down well in engineering department and it is generally best to avoid direct reference to the Law, articles of treaties etc... But, on the whole, there tends to be no one other than the law professors who can do the teaching. There is no shortage of industrial property agents, however, and plenty of them offer patent or trademark services, for example. But there is very little awareness among SMEs so clearly something is going wrong.

The EPO roving workshops that took place in Madrid in November 2008 and in Lisboa, in June 2009 reached the conclusion, based on surveys and interviews, that IP should be introduced more effectively into the non-law curriculum. The TTOs expressed immediate interest and offered to help. However, they have their own agenda, focused on generating value and income, whereas a broader educational goal is required focusing more generally on raising awareness. A positive sign noticed by Mariano is that Ministers of education and patent offices are gradually becoming more aware of the issues.

Mariano highlighted the exemplary project organized by Professor Pascual Segura of the Universidad de Barcelona (Centre de Patents) and Oficina Española de Patentes y Marcas, in association with the host University TTO. This involved visiting different universities delivering a four hour programme called, 'Everything a (Scientist/Engineer) Needs to Know about Patents', which explained how to obtain protection for IP, what you should/shouldn't do with it, and who to go to with ideas both within the university and outside the university setting, to raise IP awareness among science and engineering students. The course is pretty comprehensive although it doesn't mention strategic or management issues, due to time constraints.

Another project, available for all students at the Politechnical University of Madrid, offers 50 students a forty hour online course in IP. It is co-designed by the Engineering School and the Spanish Patent and Trademark Office (SPTO) and teaches the basics of IP as well as including quite a lot of detail about alternative protection schemes. It also has sessions focusing, for example, on biotechnology or information technology. However, this course is entirely optional.

In Portugal there is no teaching of IP for non-law students at undergraduate level. However, there are some IP courses for postgraduates. The patent office, for example, organizes a three day course for engineers, lawyers, economists or journalists, in which students are organized into groups according to their background.

What is clear is that support from key institutions such as the patent office is crucial in both countries. And overcoming lack of awareness among professors is as important as raising awareness among students. In terms of integrating IP teaching early in the non-law curriculum there is some conflict with the Bologna university reform plan, which seems to be going in a different direction. Finally, IP teaching needs resources. Mariano suggested that where funding is not forthcoming, it may be possible to turn to the TTOs or patent offices.

Questions & Comments

John Pickering (SABIP) began the question session by saying that he thought a number of aspects came out of the three talks, in particular the role of personal enthusiasm and initiative; the legal environment, particularly regarding enforcement; and the point at which IP is introduced into the curriculum. It is clear that patent office support is important and that TTOs can play a role. How to teach IP, variously, to law and non-law students is an issue, as is getting the balance between legal content and ethical content right. For businesses the importance of strategic management of IP resources needs more attention.

Alison Firth (University of Surrey) asked to what extent the patent offices in Spain and Portugal are interested in copyright issues as well as industrial property.

Mariano Riccheri answered that patent offices do not have competence when it comes to copyright, which has an inevitable effect on IP education. Patent offices offer support for patents, trademarks and designs but not copyright. He regretted this, and noted that as a result programmes tend to be stronger on the industrial property side. Institutions won't get involved in the areas not under their control. And, he added that it gets even more complicated because in Spain, Geographical Indications come under the Ministry of Agriculture, while in Portugal they come under the patent office's responsibility.

Alexandros Papaderos (Technical University, Munich, Germany) thanked Mariano for mentioning the importance of the role of TTOs. He wanted to point out that in order to get non-law students interested in IP companies need to make it clear that they prefer students who know about IP.

Mariano replied that direct support from companies might be wishful thinking, but in that respect he referred to Ruth Soetendorp who had earlier mentioned that some professional certification schemes include an IP element.

Chris Bruhn (European Patent Academy of the European Patent Office) highlighted the activities of the EPA which has been developing tools for delivering low cost help for universities to integrate IP into the curriculum. The EPA's teaching kit has been developed exactly for this purpose.

Chris Ryan (Nottingham Trent University, UK) said it might be useful to look at the ways in which IP teaching is approached in a law firm environment. In their internal training, small groups of young lawyers talk to each other and discuss how to resolve problems. While there are enormous differences of approach, the key to resolving problems is cooperation and action research.

Paul Torremans (Nottingham University, UK) pointed out that in teaching non-lawyers it was dangerous to start off by scaring them with too much detail about enforcement, stressing what they cannot do. Instead, he said, it's more effective to put the emphasis on the positive aspects, stressing what they can do with IP. In that way, instead of being threatening, you get the students' attention.

Claire Howell said she was aware of a small businessman who has an invention he needs to license, but won't discuss it because he has no confidence in the system and doesn't want it to be pinched. She said he was exactly the kind of person we need to reach with IP information. Unless he can be persuaded to use the IP system the invention will die because he can't afford to commercialize it himself. She expressed concern that there are many others in a similar position who have an obsessive fear of IP.

John Pickering said that the Intellectual Property Office (IPO) is aware of this and is anxious to be of help.

Ruth Soetendorp agreed that the IPO's work is marvellous, but stressed that a real issue is how to convince the university establishment, Chancellors, Deans and Vice Deans among others, of the importance of IP education. Without their support, she was concerned that the EPA materials might be wasted. Efforts need to be made to put pressure at university level to open the door for those who want to expand IP teaching. At school level there is an opening in the national curriculum for teaching IP within citizenship modules but universities are autonomous and not as susceptible to pressure.

Christoph Bruhn explained that he has been very involved in the EPA's roving workshops which are targeted at decision makers at universities as well as IP stakeholders. The next such workshop will be in Oslo. He has found that when the problems and challenges are explained and they are shown examples of successful implementation of IP integration in universities as well as the potential benefits, the national university representatives are interested. And, there are a number of good examples to refer to in Europe. Tools are available to aid implementation. The teaching kit is one such tool, and there are others which are relatively simple to use, and come at a low cost.

Robert Pitkethly (University of Oxford, UK) said that he gives talks to graduate scientists trying to convince them that IP is a means of controlling your invention and that it is not just about stopping people from doing something. He gives the example of the Chamberlain family secret—a pair of obstetric forceps that they kept secret for 130 years. Had they patented the invention they would have had control over it and the technology would have been shared offering great public benefit. To convince people to use the system the emphasis should therefore be put on control rather than litigation.

John Pickering wrapped up the session by commenting that the emphasis should be on what IP can do for you, as well as making IP accessible.

Session 5

Facilitating IP Teaching

Chair: Ken Shadlen, LSE, UK
(k.shadlen@lse.ac.uk)

Developing a Standard Modular IP Curriculum

Christoph Bruhn (European Patent Academy of the European Patent Office)

(cbruhn@epo.org)

Christoph Bruhn joined the EPO in 1989, with a degree in physics, to work as a project manager in patent information. He led a co-operation programme for the European Commission on Effective Enforcement of Intellectual Property Rights in Turkey between 2002 and 2004.

He has been a member of the European Patent Academy since 2005, managing training projects in innovation support. He became head of the Academy's Academic and IP research unit in 2009.

Summary

Christoph Bruhn has travelled to many countries with the EPA roving workshops. He explained that universities need orientation when it comes to knowing what subjects to teach in an IP curriculum. The EPA has, therefore, started a new project to develop an IP curriculum aimed at introducing IP teaching to students in universities all over Europe. The intention is to produce a standardized curriculum that can be applied generally. It's not going to be designed for highly specialized universities in industrialized countries but, rather, more directed at the 'newer' countries of Europe.

There will be a detailed list of topics with learning objectives outlined for each topic. It will cover a broad spectrum of IP and related areas such as innovation management, licensing and business start-up, and it will be aimed at faculties where IP may have a role. It will explain both the potential risks of using IP wrongly as well as the risks of not using IP.

The curriculum will be developed initially for undergraduate level and gradually tailored for postgraduates up to PhD level. The idea is not to train IP specialists, but to be applicable to all students in all faculties. The main motivation is to make all students aware of the day-to-day functions of IP as well as its value. They need to be made aware of the fact that they are creating it during their studies, that there are opportunities for them if they use it properly and risks if it is not used, or is mis-used. Thus students should know how to use the patent system before they start their research so that during their studies they are aware of the possibility of the potential future value of their work.

The curriculum will be a standard instrument that can be applied in different environments. It will be applicable for all countries, at all levels of studies and in all faculties. To be able to adapt to local conditions, it will have a modular structure, and in terms of content, it will cover a broad spectrum of IPRs as well as competition and trade law as far as it is relevant to IP issues. It will focus on enforcement and litigation, not in order to terrorise users, but to explain that there are affordable ways of conducting negotiations and litigation over IP infringement issues.

In developing the curriculum the aim is to use already existing material as far as possible. It is being developed by Mariano Riccheri, in cooperation with experts and together they are going through the advisory and review stages. The finished product will be ready later this year or early next year.

Mariano Riccheri explained that this was quite a difficult mandate as the audience for the proposed curriculum is so wide. It has to reach students and researchers at all levels in the non-law faculties of 36 member states. This requires thoughtful reflection and the sharing of ideas. Indeed, he would be interested in any comments.

The mandate has a central inherent contradiction in that the aim is to develop a standard curriculum, but at the same time it is recognised that one size won't fit all. Differences among the target groups can be quite pronounced. Among undergraduates and postgraduates, for example, there can be wide variance in their

levels of awareness and competence. Therefore, a degree of flexibility needs to be planned into the curriculum which makes a modular approach logical. In that way, it will be possible to have more advanced versions of modules with similar content. Also, some modules will be more relevant to one group than another, while others will be more broadly relevant. In each course there will be some problem solving and at least one workshop. The number of modules planned is not yet fixed but at the moment it is likely to be eight or ten. A minimum of twelve hours of lectures is recommended for 1 ECTS credit.

Questions & Comments

Maximilian Haedicke (Albert-Ludwigs University, Freiburg, Germany) said that he thought it was a great idea. He wondered whether there would be a testing module and, if so, whether it would be of the MCQ type. He pointed out that a big problem would be correcting the test, which is time-consuming and therefore a cost that some departments may not be prepared to pay.

Christoph Bruhn noted this point.

Mariano Riccheri replied that the testing part of the curriculum would be developed in the second stage of development whereas they were currently working on the first stage.

Claire Howell (Aston University, UK) pointed out that MCQs can be put online without difficulty.

Christoph Bruhn agreed that questions should be online. It would be possible, in that way, to measure a student's previous knowledge giving them the opportunity to decide whether it was worth taking a particular module, whether they need to take another module first, or perhaps if they should take a more advanced module.

Maximilian Heidecke stressed that the important thing was that the system should be transparent.

Claire Howell asked what the aim of the curriculum was. Did it aim to provide knowledge that could be used in future courses or was it going to be part of a degree programme?

Christoph Bruhn said it would be a bit of both. He didn't think that someone at the beginning of their studies would be skilled in the art of applying knowledge in practice. The curriculum aims at raising awareness so he questioned the need to formally assess the students and give a grade.

Mariano Riccheri agreed that at the beginning the goal was to raise awareness but he also thought that later in the process competence would need to be measured. In his opinion no one would do a master's course just for awareness. In business management courses, IP could be taught quite intensively. It would be possible to have many modules on strategic use of IP, for example. In that case it would be necessary to seek a certain level of competence.

Caroline Coles (Leicester De Montfort University, UK) was interested to know whether the EPO would grant a certificate or whether this would come from the university.

Christoph Bruhn said that the universities would do the assessment and there would be no EPO certificate. The EPO does not want to interfere in university matters but is merely providing orientation in IP for those who want it. The idea of credits originated from some universities.

Alison Firth (University of Surrey) commented on the fact that the list of possible topics for modules includes a number that relate to ethical issues. She wondered whether it would be possible to have an indication for users of the syllabus to know where elements of the IP curriculum might fit into the general curriculum.

Mariano Riccheri responded that this would be something to do at a later stage.

How Patents Work: Developing a Patent Teaching Kit

Duncan Matthews (Queen Mary University of London, UK)

(d.n.matthews@qmul.ac.uk)

Duncan Matthews is a Reader in Intellectual Property Law in the Centre for Commercial Law Studies at Queen Mary University of London. Before joining Queen Mary in 2002 he was a lecturer in law at the University of Warwick. He has also worked as a researcher at a policy think-tank (the National Institute for Economic and Social Research, London) and as an EU lobbyist.

He has acted as an advisor to the Directorate General Trade of the European Commission; the ECAP II EC-ASEAN Intellectual Property Rights Co-operation Programme; the Science and Intellectual Property in the Public Interest Program (SIPPI) of the American Association for the Advancement of Science (AAAS); the United Nations Development Programme (UNDP); the European Parliament Committee on International Trade; the European Patent Academy of the European Patent Office; and the UK Strategic Advisory Board for Intellectual Property Policy (SABIP).

He has been a member of working groups of the UK Chartered Institute of Patent Attorneys (CIPA) and the Institute of Trade Mark Attorneys (ITMA) examining the future of education for the professions and is also a member of the CIPA Education Committee.

Summary

Duncan Matthews announced that the law module teaching kit for the EPO was being given the finishing touches and would soon be released. He went on to describe the process of designing the kit which was initiated when the EPO approached Duncan and asked him what he would teach a group of undergraduate law students studying commercial or company law about IP, in a three hour teaching slot. He was further asked how he would support a non-IP teacher asked to deliver the same content.

This raised, first of all, the question of whether there was a need for such support, so a telephone survey among teachers of company and commercial law was undertaken, focusing particularly on the newer states of the EPA, to which the response was affirmative.

A set of slides was drafted and shown at an expert meeting in June 2008 where advice and comments were sought on the detail and relevance of the material. They were also submitted to the EPO for scrutiny especially where references to the EPC were made.

The kit comprises two core modules. In addition to these, there are sub modules offering opportunities to extend the course beyond the initial three hours. A course coordinator would lead students to practically related modules where appropriate.

Core module 1 is aimed at non-law students and focuses more on the economic value of patents and avoidance of disclosure etc... It is not focussed on the legal provisions.

Duncan's area of concern was Core Module 2 which does have a law focus.

The core module for law students is made up of 31 slides supplemented by a 50 page book of teaching notes, downloadable from the EPO website, which is designed to enable a non-specialist to deliver the lecture. The module can be integrated into an existing syllabus where an awareness of IPRs would be useful, for example in teaching due diligence or ownership of IP in the context of mergers and acquisitions. The three hour lecture is introductory in nature, and functions as a taster. If it works well it will generate interest and younger academics will be brought into the field.

In order to make sure the teaching kit gets used, existing networks will be used to spread the word about the project. The teaching kit is one element of the EPA's wider activities, in particular the EPOs road map exercise and the IP curriculum exercise. It's of great importance to get heads of universities to take ownership of the need to integrate IP into law syllabi and for this there is a need for academic 'champions'.

Questions & Comments

Chris Wadlow asked if the teaching kit was downloadable free of charge from the EPOs website on something akin to a commons licence. He noted that many people would want to personalise the content and asked whether, if some slides were omitted, the presentation would remain coherent.

Claire Howell (Aston University, UK) pointed out that the kit was not intended for specialists.

Duncan Matthews clarified that some slides were optional but that otherwise his understanding was that the presentation cannot be altered,

Christoph Bruhn (European Patent Academy of the European Patent Office), however, said that teachers could use it as they liked and even change it. But if they did they would not be able to use the EPO logo because it would no longer be the EPO programme. He added that the EPA intended to translate it into different national languages.

Duncan Matthews said that the expert meeting had discussed who would teach using the kit, i.e. professors, assistants or practitioners.

Ruth Soetendorp said that she found the project very exciting and had some suggestions: firstly, to set up a user support group or forum to share ideas on assessment, for example.

Christoph Bruhn thought that was a good idea that had not been envisaged but could be done. He went on to say that the material was, in principle, ready-to-use. The whole idea was to reduce time and effort for the institutions. The project would soon be going into its pilot phase so the EPO was offering half day training workshops in use of the teaching kit from September onwards. The EPO would catalogue and make available Frequently Asked Questions (FAQs) following the workshops and aim to set up a forum when there were sufficient users.

Duncan Matthews said that the intention was to make registration a requirement on downloading the teaching kit. That way it would be possible to follow up how and where the kit was being used.

Ruth Soetendorp wondered whether the teaching kit could be promoted at places like the Society for Legal Scholars (SLS) or UK Centre for Legal Education (UKCLE) where there are large gatherings of non-IP lawyers.

Mariano Riccheri felt that the teaching kit should be integrated into the IP curriculum roving workshops and the project presented as an integrated project rather than as separate elements. In that way, they would reinforce each other.

Teaching Patent Drafting: A Practitioner's Perspective

Gwilym Roberts (Kilburn and Strode, UK)

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Gwilym Roberts has eighteen years' experience as a UK and European Patent Attorney dealing with drafting prosecution and opinion work in relation to a range of technologies. He has lectured and published widely and is a faculty member for the Queen Mary University of London Certificate and MSc courses in IP law. He is the author of numerous papers and articles, editor of the Chartered Institute of Patent Attorneys (CIPA) Patents Training Manual and author of "A Practical Guide to Drafting Patents" published by Sweet & Maxwell.

Gwilym obtained his degree in physics from the University of Oxford and holds a Certificate in Intellectual Property from Queen Mary University of London as well as European Patent Attorney and UK Chartered Patent Attorney practicing certificates and qualification as a UK patent litigator. He is a member of the CIPA Liaison with the UK Intellectual Property Office, a member of the Patent Committee of CIPA, a member of the Patents Commission of the UNION of European Practitioners (UNION) and President of the British Group of UNION.

Summary

Gwilym Roberts said he doesn't use modern teaching methods. Instead, in order to teach patent drafting, as a teaching tool, he uses a—cheese-grater! He explained that he talks for three hours about this cheese grater, and it seems to do the trick.

Gwilym graduated with a physics degree, did an apprenticeship at the patent office and qualified in 1990. It's a job that he never finds boring. His work involves a range of activities, but they all concern patents. However, he acknowledged that it is a difficult profession to get into, with a pass rate of only 20-30% on the qualification exam. Most of the learning is done, 'on the job', and it requires practical experience so a science background is essential. When it comes to teaching the skills necessary to do the job, Gwilym said it was a matter of teaching the un-teachable. Much of the skill of drafting is simply a matter of intuition. Choosing the right term to use in a claim frequently depends on gut feeling, so it's hard to give useful positive advice.

Making the transition from the relative certainties of the world of science to the uncertainties of the law is difficult and it requires a scientist who loves both language and business. This might explain why most patent attorneys are geeks. On the face of it, it seems a simple task to describe an invention, but in reality patent claims are very difficult to draft. And the implications, if the claim is too narrow, or too broad, are significant.

There are some basic rules, however, that can be broken down into a three step approach to demystify the process. First the drafter needs to know who he has to please. This includes the owner, third parties, the courts and investors. The legal background is not as complex as it looks and boils down to a set of manageable criteria. At the beginning, trainees are not bad at drafting. However, after about six months, when they have gained some experience, they get worse because they know too much.

This is when they need a framework of rules and tests. A framework that seems to have caught on is called the five sofas test, encapsulated in the acronym SOFAV which stands for structure, operation, fabrication, advantages, and variants.

To demonstrate practical application, the cheese-grater comes into its own. On the original cheese-grater that Gwilym used as a teaching tool there were five patents, but on the more modern stainless steel version, there are even more. Using the cheese-grater to teach the process works because it is practical, the participants enjoy working in groups, and at the end of the exercise they usually end up with several patent claims. While intuition and experience cannot be taught, it is possible in this way to give confidence and to enable boundaries to be drawn.

Patent drafters need to know exactly who looks at the patent and what they are looking for. In fact, the main audience for patent claims, which tend to run to between 30-40 pages long, include, the patent office to determine validity, judges to decide validity, and/or infringement, researchers looking for information and investors looking for a possible commercial opportunity, as well as potential infringers.

In writing the claim a basic 'pub test' is helpful and provides a framework for the drafter who can work through the features of the claim, identifying the novel features of the invention in the context of an imaginary conversation with a well informed pub landlord. Thus, claim writing can be broken down into a manageable set of repeatable steps. Once written a series of cross checks is done to test if the claim is too limiting or too broad. There is a delicate balance to be achieved between validity and infringement. If written too broadly it could potentially include too many other applications.

Questions & Comments

Jo Stanley (University of Cambridge) asked how Gwilym would go about teaching inventive step to an inexperienced apprentice.

Gwilym replied that it was problematic because potentially it's a very subjective thing. There are many tests available that may help but the EPO problem-solution test is the best one. In fact, he said, the level of inventive step required is lower than most people might think.

Alexandros Papaderos (Technical University, Munich, Germany) wanted to know how often Gwilym advised clients to go back to the laboratory and figure the invention out in more detail before going ahead.

Gwilym said that this happens quite often.

Chris Wadlow asked about invention space and whether there was a difference between looking at something as a piece of plastic and looking at it as a bundle of inventions.

Gwilym said that patent drafters look at objects differently from other people and when looking at an invention tend to mentally separate out the different advantages you can pull out of a single product. Some of these advantages will be uncouplable and others stand alone. But essentially they think of an object as a disembodied group of inventions that happen to be on the same product.

Session 6

Conceptual Issues in IP Teaching

Chair: William Kingston, Trinity College, Dublin, Ireland
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Teaching IP to Private International Law Experts and Vice Versa Paul Torremans (University of Nottingham, UK) (Paul.torremans@nottingham.ac.uk)

Paul Torremans graduated in law, with distinction, from the University of Leuven, Belgium, in 1990, simultaneously obtaining a law teaching degree, also with distinction. After State Exams in 1991, he likewise achieved distinction in his LLM in European and International Trade Law at the University of Leicester, where he went on to complete his PhD.

*He is very widely published, with numerous books and articles to his name, and his well-known text book, *Holyoak and Torremans Intellectual Property Law*, is now into its fifth edition.*

Summary

Paul Torremans aimed to add a layer of complexity to the debate by examining the interface between IP and Private International Law (PIL). He noted that IP lawyers talk about territoriality of rights, but private international lawyers find this unconvincing. For private international lawyers as long as there is a foreign element there is a private international law issue. Since IP is exploited internationally it is important for private international lawyers to understand the way the IP world works.

The origins of IP protection lie in local protection granted by the monarch to inventors by royal prerogative. Thus the rights given were territorial. While IP protection has developed since then, the territorial nature of the rights remains. This might seem strange in the 21st century, with borders much less easily defined. The internet, for example, has necessitated the development of a law of cyberspace that has to deal effectively with global exploitation in a borderless environment. This raises questions about where infringement took place; indeed it raises the possibility of infringement occurring in many places simultaneously.

Where IP is concerned, because of the principle of territoriality, infringement must be dealt with country by country. But who will have jurisdiction? Where copyright is concerned, Article 5.1 of the Berne Convention mandates national treatment and also that observance of formalities is not necessary to enjoy protection (Article 5.2), which is a hint that *lex protectionis* applies and is unavoidable. So, the answer to the question— if you have international exploitation of IP, which choice of law do you have?—seems to be, the law of the country where you claim protection. However, the essential matters of whether the principle of territoriality is a rule of jurisdiction, and whether the jurisdiction is exclusive, as well as, where there is an international element, who will have jurisdiction, are not resolved.

Many rights, other than copyright, however, are registered rights. Does this mean that they are like land or immoveable property and, therefore, an old fashioned approach is necessary? Where patents are concerned, an applicant generally gets a bundle of patents for one invention. Is this the same patent? If the applicant has to go to each jurisdiction for a decision about infringement, court by court, s/he may be faced with different decisions in each court. This should not happen but is the position we are in currently so there is a need for consolidation.

To the private international lawyer IP is no different from any other contractual right. It is important, therefore, to distinguish IP rights from their contractual exploitation to clarify the link between a right and its infringement.

In order to avoid confusion, and so that IP people and private international people understand each other, a number of IP issues need to be resolved. This requires more than just harmonisation and involves finding the answers to some tricky questions. Private international law will still be needed despite harmonisation so Paul Torremans and a group of colleagues are working together to find a model solution and to try to build bridges between the private international and IP worlds. To ensure that both perspectives get equal representation the group is made up of half public international lawyers and half IP lawyers, and they are hoping to have something to show for their efforts by next year.

Questions & Comments

Chris Ryan (Nottingham Trent University, UK) asked who the members of the discussion group were.

Paul Torremans replied that they were not politically funded, but international experts funded by Max Planck or the American Law Institute.

Chris Wadlow wanted to know whether the results from this group would be feeding into consultation on jurisdiction regulation.

Paul Torremans said that this was inevitably the case. The group have given their thoughts on the matter and they were waiting to hear what the Commission makes of them. They have had their differences with the Commission, but recently have been coming closer. The interaction has not been fully coordinated but their input has been given.

Explaining the Interactions between IP Law and International Law

Carmen Otero García-Castrillón (Universidad Complutense de Madrid, Spain)

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Carmen Otero García-Castrillón is Professor of Private International Law in the Public and Private International Law Department of the Complutense University of Madrid. She received her doctorate in Law from the same university after earlier completing an LLM at the University of Amsterdam.

Her teaching and research areas include IP Law from the perspectives of International Law, International Economic Law, European Community Law, International Contracts Law and Conflicts of Laws and International Civil Procedure.

Summary

Carmen Otero García-Castrillón comes from a private international law and international trade background, and began her presentation by establishing the fact that the relationship between IP and international law has been at issue at least since the Paris Convention on the Protection of Industrial Property, in 1883. Today, as she said, it is even more important to understand the ways in which domestic and international law interact with respect to IP. Carmen proposed to explain how she uses the case of patent protection in Spain to teach this to her students. Spain has had some major problems lately that concern IP and are interesting, particularly in the way that they demonstrate the relevance of social and economic aspects of IP as well as the legal perspective.

Medicines were not patentable in Spain, before 1992. Before joining the EU, only processes for producing medicines were patentable, and on membership, in 1986, when Spain, by virtue of EC membership, joined the European Patent Convention (EPC), a reservation regarding the patenting of medicines was negotiated. The reservation was formally deleted in 2007, but, in fact, expired earlier, in October 1992, from which point Spain, as an EU member, was obliged to respect European Court of Justice (ECJ) decisions in this area.

Additionally, from 1996, Spain was bound by its obligations under The Trade Related Aspects of Intellectual Property Agreement (TRIPS). As a developed country, Spain was not entitled to the transitional arrangements available to developing countries and so patents must be made available, 'for any inventions, whether products or processes, in all fields of technology' (Article 27.1).

Implementation of TRIPS would inevitably have implications for the generic drug production industry which, therefore, argued that the EU reservation was still applicable. However, after January 1st, 1996, the producers of original, innovative, medicines wanted protection. Before this, the EPO president had recommended, in light of the reservation, that no product protection should be given. Therefore, in order to get through, medicinal product claims were worded as if they were processes. This strategy led to uncertain validity and risked annulment in the courts. So, in 1996, after TRIPS, the pharmaceutical producers adopted a new approach, claiming the direct effect of certain TRIPS articles. The generic drug industry, on the other hand, claimed that product claims were not valid and they argued that they themselves were not in violation.

The international law problem raised is whether TRIPS articles can have direct effect. This is something that, on the face of it, needs proper interpretation by the ECJ. However, examination of the ECJ's jurisprudence reveals that this is unnecessary. It has been found that national courts are responsible for interpreting TRIPS rules and for deciding if they are directly applicable. In doing this, the rules on treaty interpretation, codified in the Vienna Convention on the Law of Treaties (VCLT) 1969, should be used.

This is not guaranteed to achieve a uniform approach but, by following the criteria, it is possible to find common ground. Carmen asserted that the wording in the text of Article 27.1 TRIPS is clear and unconditional and that, furthermore, the date from which existing subject matter should receive protection is worded similarly clearly and unconditionally, in Article 70.2.

Therefore, existing medicinal products should have been protectable subject matter from January 1st 1996, but due to the reservation this has not been true. It seems unthinkable that the negotiating parties were intending to create a right that people could not claim and, regardless whether one takes a monist or a dualist approach to international law, (Spain takes a monist approach), this is a violation of TRIPS.

The Spanish administrative courts have stuck to the EPC reservation and found that it is not affected by TRIPS. Thus European Patent claims have been held to have no effect in Spain. In the civil courts, in some cases, TRIPS direct effect has been established.

However, there is an additional problem to do with the status of translations, something which has been used to prevent the publication of product claims. In the light of the fact that international obligations within the EU have superiority over national law, this situation cannot stand. Thus, a way must be found to have claims published in Spain.

Carmen, thus, established that it is essential to teach students the ways in which international law and IP interact, and that to fully understand the implications of these interactions it is necessary for them to master interdisciplinarity subtleties as well as their specialties.

Questions & Comments

Duncan Matthews (Queen Mary University of London, UK) commented that he found this talk especially interesting because he had written a paper published in Intellectual Property Quarterly about the amendment of Article 31 TRIPS. He had found the WTO decision to amend the article puzzling, particularly a footnote that says all EU member states, and all states on accession, will not take advantage of Article 31bis. He wondered whether the footnote might be explained by the situation in Spain.

Carmen responded that Greece had been in the same situation as Spain but that she hadn't kept up to date with what has happened more recently.

Paul Torremans commented that modern treaties tend to mix two things: instructions to states about what to do, and direct effect provisions. The result, he said, was confusion. The drafters need to be clear exactly what it is they are trying to do. The copyright three step test is a case in point. It is not clear whether it is meant to be an instruction or a provision that is intended to have direct effect.

Why Teachers Should Avoid the ‘P’ Word – Notes for a (Heated) Discussion of the ‘Property’ Problem? Kevin Scally (University College, Cork, Ireland) (K.scally@ucc.ie)

Kevin Scally trained as a graphic designer and began his career working mainly in the arts and theatre for companies such as the English National Opera, the National Theatre and the Royal Opera.

With the introduction of CAD systems into design he began to develop software to manage the complexity of file sharing and communications in a virtual workspace. He joined Aldus Corporation in 1992 where these ideas became the basis for Aldus’ Metro, one of the first collaborative groupwork software projects.

Kevin left the software industry in 2002 to complete a PhD at Trinity College Dublin on US Small Entity patents. He currently teaches Management and Innovation in University College Cork, where he is Course Director for the new MBS in Management & Marketing to be launched in September 2009.

Summary

Kevin Scally began by explaining that he teaches IP as part of an Introduction to Management and Innovation course. He lectures groups of 250 students starting from the simple and progressing to the more complicated aspects.

A basic concept he questions on the course is whether the term property is appropriate when applied to intellectual property. He illustrates the problem, graphically, by comparing an essential way in which real property and intellectual property differs. With land, property owners can put up clear signs to trespassers that say KEEP OUT! In this way, there is no doubt when someone crosses the boundary. In contrast, it is not always clear when a patent, or a copyright work, for example, has been infringed.

He went on to point out that, in Ireland, like many smaller countries, there is a need to generate more business and noted that small and medium sized enterprises (SMEs) are key to this goal. These differ greatly from large corporations which generally have the resources and know-how to manage IP effectively. Big companies can easily threaten the SMEs on issues of trademarks, tradenames and copyright, with their legal teams, whereas in contrast, SMEs tend to be very nervous about IP and to feel that it just adds to their costs without in any way reducing their risks. They are also aware that in order to draft a patent claim, for example, an engineer would have to be taken off other important work. They often work to tight margins and, ultimately, they question whether IP is of any real benefit to them at all.

The property paradigm, which seems to have attracted general consensus in relation to IP, is a relatively recent one. There has been a change of emphasis over the years reflected in the morphing of the term industrial property into intellectual property, thus, lumping patents, trademarks and copyright uncomfortably together. However, the fact that the term intellectual property has caught on, offering a comfortable, and perhaps misleading, idea of ownership of information, does not mean that it cannot be challenged. Kevin Scally cites Boldrin and Levine as saying that it could, just as easily, be called intellectual monopoly.

Usage of the term intellectual property spread after the World Intellectual Property Organisation (WIPO) was founded in 1967 and has rapidly gained currency. In 2007, the Patent Office, UK became the Intellectual Property Office (IPO). Kevin Scally referred to Michael Carrier’s emotional lamenting of the fact that it may be too late to depropertize intellectual property (Carrier 2004).

Intellectual property protection is justified as a necessary response to market failure, where the time and effort that goes into making a product is not acknowledged and therefore is undervalued. Offering a limited monopoly is intended to address this, and encourage creativity and invention in order to benefit society. But, the complexity of IP means that the notion of property doesn’t necessarily fit well.

Kevin Scally, asserted that each piece of new information is a product of what has gone before it and also a precursor to the next idea. The most recent inventor is, therefore, laying claim to ownership of the whole chain of ideas and not just being rewarded for his/her part in the development. This, he suggested, seems excessive and results from application of a false paradigm. To correct this, Kevin Scally proposed a 'network' as a more appropriate paradigm to acknowledge the huge collaborative effort of creativity spanning both time and space. The network is made up of multiples of nodes each representing a single creative endeavour. Thus, inventors take control of elements of the network through their efforts and are compensated accordingly. Kevin Scally makes an analogy with the way in which toll booths on new roads are used to recoup the expenses made in building and maintaining them.

While Kevin Scally acknowledged that it is hard to persuade people to accept this different paradigm for IP, he reminded us that in 1669 the killing of a slave was not treated as murder; something that was, then, accepted. If we can move on from the notion of person ownership, he said, we can certainly reject the notion of ownership of ideas and replace it with the better solution outlined above.

Questions & Comments

Alison Firth (University of Surrey) wanted to know if Kevin Scally thought that there was a role for IP in controlling glut of information, protecting moral rights etc...

Kevin Scally replied that he did think there may be a role for some kinds of rights. He agreed that people need to be compensated but doesn't think that the property paradigm is suitable, and sees no reason for rolling copyright, patents and trademarks into one bag. What he would like to do is to unpack them and find individual solutions for each case. He expressed concern about Duffy's idea of a unified IP system and pointed out that software manufacturers are worried about recent moves in the European Patent Office. Copyright may not be the perfect system for protecting software but it is free of charge.

Rapporteur's Summary of Outcomes

This year's workshop again raised a number of issues of concern to intellectual property teachers, adding fresh perspectives to the discussion of several themes reprised from previous years. In particular, the importance of finding champions to support initiatives aimed at integrating the teaching of IP, and IP related issues into the curriculum, was strongly emphasised once more.

Using Resources

The effective use of resources was considered to be very important and, in this respect, the roles of technology transfer offices and local patent offices were emphasised, both as providers of IP advice to inventors and as educators. Local companies were also identified as a source of instructors and speakers on IP relevant areas. As they have vested interests, for example, in employing IP-savvy graduates, speakers from these companies were frequently prepared to give their services free.

A number of speakers referred to the fact that informal discussions with decision-makers over food and drink often prove persuasive in getting IP integrated into the curriculum. This is something to be factored in at all levels, perhaps. The effect of refreshments was also mentioned with reference to motivating students to want to learn about IP.

Dealing with 'Dustiness'

This year, a number of speakers felt the need to get away from the 'doctrinal style of teaching, which they felt was considered 'dusty', and 'turning-off' many students. They believed that by avoiding the 'L' word (law), students were much more likely to engage with the subject matter.

However, not everyone agreed that it was necessary to completely ditch the doctrinal approach. It was felt that when students can see a connection between real problems and the consequent development of rules, they can be well-motivated to look more closely at those rules. The way that new technology has driven rule-development is illustrative. A pertinent example is the difficult, and as yet unresolved, case of the protection of IP rights in nanotechnology inventions. Other technologies, likewise, raise interesting issues. This approach worked well with law students, but it was felt that it would be equally effective with non-law students.

Encouragement or Warning

Student motivation must also be considered when deciding where to place the emphasis in teaching IP. Some participants felt that it was necessary to avoid scaring the students off from the outset by excessively focusing on the penalties for getting caught for infringing. Infringement of IPRs by students and even academics is a recognised problem, but when trying to get them interested in the topic of IP it was felt better to begin by demonstrating the opportunities to them offered by protecting IP, focusing on the benefits of having control over inventions as well as the potential for generating value through commercialization. Teaching students how not to get 'ripped off' was also felt to be a good starting point.

Dealing with Reality

Students today face many challenges, and it was felt that these need to be acknowledged in order to address their requirements properly. The combined constraints of time, distance, and limited financial resources mean that increasing numbers of students are studying part time, and teaching methods need to be developed to deal adequately with their needs. The internet and relevant software can provide students with the option of listening to lectures online while following a power point presentation, as well as the possibility of experiencing online tutorials together with other students. The online environment can provide a realistic setting that allows for group interaction among distance-learning students with the teacher providing input while also acting as facilitator and moderator. Initially, online activities are quite time-consuming to set up, but those who have used them are convinced that the time spent is worthwhile and some, like the 'wiki', need very little monitoring once set up. However, concerns were raised over the amount of finance available for maintaining such initiatives. Among the participants, it seemed that support was variable, with some institutions offering good support and others very little.

Choosing Teaching Styles

A number of teaching methods can be adopted to reduce students' over-reliance on the teacher. While 'chalk and talk' may still have a place, it is, perhaps, not always suitable for some groups of students. Postgraduates, especially, may need to be encouraged to develop self-reliance. Methods such as problem-based learning get students working together in groups and discovering 'answers' for themselves. The use of poster sessions, similar to those familiar to science students, has also proved useful in getting students to work autonomously to develop and present ideas. This approach also helps instructors to identifying students' problems at an early stage. Another method involved a 'real-life' exercise that matched up law students with engineering students to advise them on IP. This was not only motivating, but broke down barriers between disciplines and revealed a potential source of funding for IP teachers, as science and engineering departments may have money allocated for IP-related activity. On a larger scale, full-scale conferences have also been found to be highly motivating for all levels of student. Ultimately, practical constraints tend to dictate how elaborate teaching methodologies can be, with limited time and money available. A common issue wherever group work is concerned is the fact that group dynamics may prove problematic.

Coping with Different Backgrounds and Abilities

A common challenge for many IP teachers is the need to deal with diversity among the students. Particularly at postgraduate level students are usually in international groups, and come from a wide range of cultural and linguistic backgrounds. In the UK, the linguistic requirements for postgraduate admittance can be insufficient which means students struggle with complex materials. Teachers, therefore, have to find ways to overcome language issues before teaching content. Managing classes of students with markedly different language skills makes it extremely hard to pitch the content at the right level to reach all. It can be equally difficult to address the needs of students from different disciplines who, likewise, have a wide range of abilities and motivations.

The Teaching Kit and IP Curriculum

The EPA teaching kit and IP curriculum projects aimed at law students and non-law students respectively were welcomed by the EIPTN participants. The modular approach was unanimously appreciated in that it would allow students to find their own level, thus avoiding 'dumbing-down' the content.

Asking the Big Questions

Finally, the meeting addressed a more essential question of whether the intellectual property paradigm is indeed a suitable framework for the varied subject matter now grouped together under that umbrella term, thus demonstrating that questions about the philosophical underpinnings of intellectual property are still worth debating.

Next Steps and Closing Remarks

Duncan Matthews thanked the speakers and, on Chris Bruhn's behalf, said that he had been very impressed by the quality of the presentations and the discussion. He asked the participants to complete their evaluation forms and hand them in, to demonstrate that it had been a worthwhile event.

As for the next steps, Duncan explained that there was a possibility of taking the network outside of the UK for the next meeting and a chance that the location might be Spain. He promised to keep participants informed about developments.

Duncan closed the meeting by thanking the speakers once more, and thanking the chairs for their skilful conducting of the sessions, the participants for their contributions and Burcu Kilic and Sandra Baird for all their hard work in organising the event.

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