

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Sixth Delegated Legislation Committee

DRAFT INTELLECTUAL PROPERTY (AMENDMENT
ETC.) (EU EXIT) REGULATIONS 2020

Wednesday 9 September 2020

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Sunday 13 September 2020

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The Committee consisted of the following Members:

Chair: SIR DAVID AMESS

† Baynes, Simon (*Clwyd South*) (Con)
 † Bell, Aaron (*Newcastle-under-Lyme*) (Con)
 Champion, Sarah (*Rotherham*) (Lab)
 † Coutinho, Claire (*East Surrey*) (Con)
 † Evans, Dr Luke (*Bosworth*) (Con)
 † Fletcher, Mark (*Bolsover*) (Con)
 † Furniss, Gill (*Sheffield, Brightside and Hillsborough*) (Lab)
 Grady, Patrick (*Glasgow North*) (SNP)
 † Hart, Sally-Ann (*Hastings and Rye*) (Con)
 Hillier, Meg (*Hackney South and Shoreditch*) (Lab/Co-op)

Hodge, Dame Margaret (*Barking*) (Lab)
 † Hollinrake, Kevin (*Thirsk and Malton*) (Con)
 † Logan, Mark (*Bolton North East*) (Con)
 † Onwurah, Chi (*Newcastle upon Tyne Central*) (Lab)
 † Solloway, Amanda (*Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy*)
 † Tarry, Sam (*Ilford South*) (Lab)
 † Tomlinson, Michael (*Lord Commissioner of Her Majesty's Treasury*)

Anwen Rees, *Committee Clerk*

† **attended the Committee**

Sixth Delegated Legislation Committee

Wednesday 9 September 2020

[SIR DAVID AMESS *in the Chair*]

Draft Intellectual Property (Amendment etc.) (EU Exit) Regulations 2020

9.25 am

The Chair: Order. Before we begin, I remind Members that social distancing should be observed at all times. Hand sanitiser has been provided. It is obvious that some colleagues present have not served on a Delegated Legislation Committee before; the Government and Opposition Whips are available to explain to Members, if they have any queries, how to proceed.

The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Amanda Solloway): I beg to move,

That the Committee has considered the draft Intellectual Property (Amendment etc.) (EU Exit) Regulations 2020.

It is a great pleasure to serve under your chairmanship, Sir David, and it is a pleasure to speak in my first Delegated Legislation Committee as a Minister, particularly on such an important area as intellectual property. Intellectual property forms a vital part of the UK economy. A well-balanced IP system supports our citizens in their creativity and ingenuity, providing incentives for our businesses to innovate through research and development. We have seen the importance of innovation and creativity throughout the pandemic: the repurposing of old treatments to combat the virus, new technologies supporting social distancing, and theatre companies bringing performances into our homes.

IP enables society to benefit from sharing knowledge and ideas while rewarding creators. Innovation will be crucial in the years ahead to support our recovery from the impacts of covid-19, and the UK is already a global leader. Just last week, the World Intellectual Property Organisation ranked the UK as the fourth most innovative country in the world, and the Government are committed to ensuring that we maintain that position.

So why are the regulations needed? As the Committee knows, the European Union (Withdrawal) Act 2018 brings across EU law that applies to the UK at the end of the transition period, making it into domestic law. To safeguard against the possibility of leaving the EU without an agreement, six statutory instruments were approved last year, covering various IP rights. They ensure that EU law on IP will work correctly when brought across. Of course, the withdrawal agreement meant that the UK left the EU on 31 January 2020 in an orderly way. At the end of the transition period, we will have control of our laws and will operate once again as a sovereign, independent nation. However, it is still important that we do so with a statute book that functions effectively.

This SI, which was laid before Parliament on 13 July, therefore has three objectives. First, it updates last year's SIs on IP so that they will work correctly at the end of the transition period. There will be changes to

previous references to "exit day". Updating also allows us to fix some small errors that were found when revisiting the text of those SIs.

Secondly, as EU law continues to apply to the UK during the transition period, the SI deals with the new EU law that has been introduced since last year's SIs were made. It fixes inoperabilities that will arise when the law is brought over into UK law in December.

Thirdly, the SI ensures that we fulfil our obligations under the withdrawal agreement. The agreement commits the UK to preserving IP rights that had effect by virtue of our EU membership. Of course, that is what last year's SIs were already doing, but there are some practical differences that must be reflected.

On trademarks and designs, last year's legislation ensured that an equivalent UK right would be created for any EU right that is in force on exit day. Since EU rights continue to apply in the UK during the transition period, the SI moves the date of that process to 31 December. That will safeguard as many as 200,000 additional IP rights that will have been granted by that time. Where the validity of the EU right is being challenged and a decision is still pending at the end of the transition period, the withdrawal agreement requires us to apply that decision to the equivalent UK right once it has been made. The SI sets out how the process will work. It means that third parties will not require the expense of separate action to get rid of the equivalent UK right. The changes ensure that holders of such rights have certainty that their rights will be properly protected in the UK.

Another important area of IP law is supplementary protection certificates—SPCs—which provide additional protections for patented medicines and pesticides. This reflects that those must be approved by a regulator before they can be sold, which can take many years. SPCs help protect our most innovative drugs. For example, the asthma medicine Nucala has been protected for a maximum period of five years. Developed by GlaxoSmithKline, it has had world sales of more than £200 million in the last quarter. SPCs balance supporting innovation and developing new drugs with the need for patients to have access to drugs cheaply through competition from generic manufacturers.

The UK's SP system derives from EU law. Last year's legislation ensured that the system would function in the same way before and after exit day, giving certainty for both right holders and the wider interests. Since then, the EU law on SPCs has taken effect, introducing what is generally referred to as the manufacturing waiver. This allows third parties to make SPC-protected medicines in certain specific circumstances while the SPC is in force, without requiring the permission of the SPC holder. We consulted stakeholders on how the waiver should work in the UK. They were clear that we should keep the circumstances in which it can be used the same. That is the approach we have taken in this instrument to ensure we maintain the fine balance of this complex area of IP law.

Finally, the SI also deals with copyright and database rights, as well as the principle of exhaustion of rights. The changes in those areas are all concerned with simply updating last year's legislation to reflect the end of the transition period. This instrument will ensure that the UK's IP system has a firm footing when the transition period comes to an end, giving our innovative

and creative citizens and businesses the certainty they need in this important area. I commend the regulations to the Committee.

9.32 am

Chi Onwurah (Newcastle upon Tyne Central) (Lab): It is a great pleasure to serve under your chairmanship, Sir David. I welcome the Minister to her first SI Committee; it is a pleasure to shadow her. Science is an area on which there is general agreement in our aims, if not always in our implementation, approach and support for it. The Opposition's aim is that the UK should be the most innovative nation in the world. Although our fourth place is something to be proud of, it is not something to be satisfied with.

As the Minister said, intellectual property makes a significant contribution to the UK economy each year. The 2017 report by the Intellectual Property Office estimated that UK firms invested £133 billion in knowledge assets, compared with £121 billion in tangible assets. A really important distinction often overlooked is that much of our property and business assets are in intangibles and IP, as opposed to bricks, mortar and manufacturing. The sector is estimated to represent 4.2% of total GDP. As the IPO has noted, it is growing UK investment in intangible assets that is protected by intellectual property, rising by £23 billion since the millennium.

The Minister said that intellectual property laws have been seamlessly—perhaps she did not this emphasise this enough—harmonised across Europe for many years, with much of the UK's legislative framework in this area composed of EU regulations and directives that are shared across the 27 member states. These rules have protected businesses and benefited consumers. This is not just a debate about academic legal terms; it will have very real effects and will help support many of our constituents. It is the shared, for example while abroad—although obviously travel abroad is much limited these days.

Labour recognises that the purpose of the statutory instrument is to address a semantic issue and move the implementation date of several regulations from the exit day to the end of the IP competition day. We acknowledge that this measure is important and will ensure that a series of key rights remain in place until the end of the transition period, enforceable where necessary. We also recognise that the Government's intention is to provide a degree of certainty to businesses between now and the end of the year by amending the existing 2019 regulations, which will ensure that UK and European Union proprietor rights remain in place at the end of the transition period and are fully protected for their duration. We welcome that.

However, we are concerned that existing sensible harmonised and reciprocal protections will cease to be available to UK nationals, residents and businesses after the transition period. The Minister spoke a good deal and very well on the rights of UK citizens and businesses in the UK. We are concerned about the rights of UK citizens and businesses within the European Union.

The Conservative party once claimed to be the party of business and, as such, the Government must understand that providing certainty for only the next three months is not really any certainty at all. Businesses of all sizes

across the UK, and European Union businesses wishing to trade effectively with us, remain in the dark on what the future regime will look like. Many have told me how worried they are that they are not going to be able to plan to ensure that their intellectual property is protected immediately following the transition period.

Despite many rounds of negotiations, as we are all too aware, the Government are yet to make any progress on a future relationship with the European Union, which is causing huge uncertainty for businesses, which, as we all know, have already been hit hard by the unexpected coronavirus pandemic. This lack of progress puts UK businesses at a huge disadvantage.

As things stand, UK trademark attorneys will no longer have a right of representation at the European Union Intellectual Property Office, but European economic area practitioners will still continue to be able to provide an address for services before the UK Intellectual Property Office, which may lead to UK businesses and good jobs leaving for the European Union. The Minister and I have corresponded on this issue, and I have met the Chartered Institute of Trade Mark Attorneys, for whom this issue is really important—as it is for those who depend on those jobs.

The Government have said that the rights of representation before EU institutions and courts are the preserve of the single market, but it is deeply concerning to UK businesses and the Labour party that the Government will not include that as a part of the UK's approach to negotiations with the European Union. What is the Minister doing to address that imbalance, which will give an advantage to European Union trademark attorneys and put ours at a significant disadvantage? What is she doing to support UK IP practitioners? We acknowledge and welcome the consultation that the Government ran over the summer, but time is fast running out and we need action.

The political declaration, which the Government co-produced with the European Union, makes an explicit commitment to seek enforceable and reciprocal intellectual property protections,

“going beyond the standards of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights and the World Intellectual Property Organisation conventions”.

Unfortunately, we have seen the Government rowing back on some of the principles laid out in their own political declaration, which has left businesses unsure about what they can rely on the Government to deliver. Will the Minister take this opportunity to confirm whether harmonised IP and copyright-related protections are still a key negotiating objective of the Government, and give us an update on what progress has been made in this area of negotiations?

Businesses in the UK benefit from automatic database protections that are a unique feature of European Union law. Labour is pleased to see that this statutory instrument recognises the importance of that provision by extending it to the end of the transition period for all European economic area nationals, residents and businesses. However, it is unclear what protections will be available to businesses that, for example, might have multiple sites across the European Union, with shared databases being accessed across borders. That could lead to the absurd situation where one outpost was automatically protected by the

[Chi Onwurah]

harmonised European Union legal framework and another was covered by a UK limited legal framework. What are the Government doing to ensure that does not happen?

Equality and support for the disabled is one of our core values in the Labour party and something we take very seriously, so it is concerning that the proposed legislative change would lead to blind or visually impaired people in the UK having no automatic right to accessible format copies of materials under the widely celebrated European Union directive 2017/1564. As the UK is not currently party to the Marrakesh treaty, the additional opportunity to secure the right outlined here will not be available immediately after the transition period comes to an end without a bespoke agreement. Can the Minister be clear about what steps she is taking to ensure that there will not be a negative impact on blind, visually impaired or otherwise print-disabled people when we leave the transition period?

Finally, some businesses have communicated to me their concern that the sheer number of European Union trademarks that need to be converted into UK rights before the end of the transition period will place additional pressure on the registrar, and that gaps in cover could therefore occur. Can the Minister reassure those businesses that the Government have taken all necessary steps to ensure that the UK IPO is adequately resourced and ready to deal with the added red tape that comes from the predicted 700,000 trademarks that now need to be transposed? Can she tell us how many have been transposed to date?

Will the Minister take this opportunity to outline what consideration she has given to how the UK and the European Union, whatever the future trading relationship looks like, can co-operate and exchange information on issues of intellectual property, copyright and approaches to trademarks design and patents, as laid out in the political declaration?

Labour has always supported intellectual property; it was the last Labour Government that transformed the Patent Office into the Intellectual Property Office in 2007, and 30 years earlier it was a Labour Government that introduced the Patents Act 1977. We are happy to support the Government as a constructive Opposition on this issue, when they are right, and there are many examples of that within this SI. However, we have also raised many questions about how the UK will move forward following the end of the transition period. It is vital that British businesses, IP practitioners and consumers get the answers to these questions as soon as possible, so that they can navigate any future relationship in just 118 days' time, and potentially at a time when we see a resurgence of the pandemic. I thank the Minister in advance for her response.

9.44 am

Amanda Solloway: I thank the hon. Member for Newcastle upon Tyne Central for her comments and acknowledge her great passion for science and this particular field. I thank the Committee for its consideration of the draft regulations and hon. Members for their valuable contributions.

In response to the specific questions that have been asked, of course we are interested in protecting UK rights here and abroad. This and other legislation ensures that we do that by, for example, creating comparable rights in the UK for trademark and design holders.

One of the questions was about consultation. The Government have taken on board the concerns raised by UK attorneys about their loss of rights and representation at EUIPO. The IPO has recently finished an online call for views on this issue, which received more than 1,000 responses. We are considering whether to reciprocate by requiring a UK-only correspondence. The IPO has been planning for some time for the end of the transition period. It is the most robust place to cope with the additional IP rights that will come across from the EU. No EU rights have yet been transferred; they will come across at the end of the transition period.

Intellectual property matters. The IP system exists to encourage innovation and the sharing of information, and gives confidence to invest time, money and energy in developing something new—a business, a new book or a new piece of technology. The UK IP system is consistently rated as one of the best in the world, and I agree with the hon. Lady about wanting to make the UK the most innovative country in the world—I thank her for that.

Earlier in the summer, the Government set out our long-term objective for research and development through the new R&D roadmap, which I believe is a strong foundation for the way forward. We are committed to strengthening science, research and innovation further across the UK and making them central to tackling the major challenges that we face, including disabilities such as blindness. Intellectual property has an important role to play in supporting those objectives.

The IPO will continue to deliver high-quality rights, grant services, lead best practice for the enforcement of IP rights and retain its central involvement in international discussions on the development of the global IP system. Alongside the roadmap and the IPO's work, these draft regulations will play their part in helping to ensure that our IP system is in a good place to support the Government's goals and innovation so that the UK is best placed to develop and grow innovative businesses. I hope the Committee will support the regulations.

Question put and agreed to.

9.47 am

Committee rose.

