The man from the ministry

The UK's IP minister outlines his policy priorities and examines some of the issues facing patent owners in Europe and further afield

By **Joff Wild**

There are few countries in the world that have a government minister for intellectual property. One exception is the United Kingdom, where the position of minister for IP was created in July 2007. The first two post holders – Lord Triesmann and Baroness Morgan – were unelected members of the House of Lords and were in office for just a matter of months each. However, minister number three, David Lammy, has had the Higher Education and Intellectual Property portfolio inside the Department for Business, Innovation and Skills for over a year now.

Although it would be fair to say that the IP community in the UK was initially sceptical about having its own government minister (and with good reason, some might add, given the almost invisible presence of both Lord Triesmann and Baroness Morgan), over the last 12 months Lammy has managed to win over a number of converts. He has done so by engaging with many of the stakeholders in the IP system and, unlike his predecessors, by demonstrating a high level of understanding of their problems and challenges. In short, Lammy gives every impression of actually being interested in IP.

Unlike his predecessors, Lammy is an elected MP. He represents the London constituency of Tottenham, a relatively poor part of the British capital with a large working class and immigrant population that is probably best known as being home to one of English football's leading clubs: Tottenham Hotspur. Considered a rising star on the government side, Lammy – who practised as a barrister before entering Parliament – counts Barack Obama as a friend, having met the US President while he was an overseas student at Harvard.

Over the summer, Lammy spoke to *IAM* about his job and some of the key issues that he is currently dealing with.

Can you describe in broad terms what your ministerial responsibilities are with regard to intellectual property?
I see my role as balancing the needs of consumers, creators and businesses to make sure that everyone is getting a good deal for their intellectual property. In this respect I'm the voice of intellectual property in Parliament and I provide a direct contact between the public, businesses, IP professionals and government.

I want people to be able to talk about IP with the same ease as they talk about mobile phones or MP3 players. Most importantly, I want people to understand how the system works and how it can help them in their daily lives. It really is something wide-ranging that is a part of everything we do, from the development of green technologies to the legality of downloading tunes to your iPod.

Most countries do not have a governmental position in which intellectual property is specifically designated. Why does the UK need one?
IP is more important than it has ever been. It is pervasive; it affects everyone, as either producers, creators or consumers. It's very

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much a part of our daily life in what we read, see and hear, and in the thousands of brands that we encounter and consume every day.

The Intellectual Property Office (IPO) is an agency of BIS (the Department for Business Innovation and Skills) and has a very individual role for developing the national framework of IP rights that comprise patents, designs, trademarks and copyright.

Under my guidance, its role is to help manage an IP system that encourages innovation and creativity, balances the needs of consumers and users, promotes strong and competitive markets and is the foundation of the knowledge-based economy.

Up to now, it seems that a lot of the work you have been doing has been related to copyright and the internet. Why have you prioritised these issues?

Copyright has tended to hit the headlines more often than other areas of intellectual property because of its potential to touch every individual who plays music or reads a book.

New ways of consuming content as a result of advances in technology are providing us with new challenges. This has raised some fundamental questions about the balance between the user and the creator. We need to explore this and we are doing so.

The review of our copyright system is work I am leading on. But to say this is prioritised is not really accurate. Colleagues at the IPO are doing lots of work with trademarks and patents, aiming to help businesses, as well.

Some news on patents: we have recently been looking at how to support green patents, resulting in the launch of a fast-track scheme. By prioritising environmentally sensitive patent applications, applicants should be able to get their technologies to market more quickly.

IP laws are reassessed when necessary to ensure they are as effective as possible. For example, we have recently launched an informal consultation on improving the operation of the international patent system, the Patent Cooperation Treaty (PCT), which provides a streamlined procedure for obtaining patent protection in up to 139 countries. We need to ensure that the system provides international coverage where products are being marketed worldwide.

The IPO also recently concluded a public consultation reviewing trademark fees and in July I announced that businesses will be able to register trademarks more cheaply and easily from October of this year. This autumn will also bring some new resources for small businesses: the *Valuing IP – The Dark Art of Valuing Intellectual Property Rights* booklet and online IP Business Licensing Health-Check Tool will further the ways in which we help.

The new Right Start and E-filling initiatives shows that the IPO not only reassesses the law, but does so in an informed and responsive way. I look forward to seeing how this will help business competitiveness and strength throughout the UK.

With regard to the PCT, Francis Gurry, WIPO's Director-General, has called for its reform to facilitate a more coordinated approach to issues such as tackling the international patent application backlog. Where does the United Kingdom stand on this?

I support Francis's Gurry's recent roadmap on reforming the PCT.

David Lammy, the UK's minister for IP
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A properly functioning PCT system is imperative if we are to overcome the challenges that are hindering the patents granting system worldwide.

In fact, the IPO's recently launched informal consultation makes several proposals for reform of the system, many of which reflect Francis Gurry's views.

The IPO proposal included collaborative international search; improvements to international preliminary examination; third-party observations in the international phase; and accelerated processing in the international phase.

This consultation looks at measures to decrease overall costs and administrative burdens for users of the PCT, and to reduce the backlogs of work for national offices. This will enable businesses to more readily obtain high-quality patents through the PCT system, saving them time and money when protecting their inventions worldwide.

The current PCT system is often inefficient and there is a general lack of confidence in the quality of work performed under it; this can cause national offices to duplicate work and further backlogs. The IPO proposals could transform the PCT system for the benefit of patent offices and users.

EU member states are currently involved in protracted discussions about the creation of a single European patent court and a Community patent. When can we realistically expect any significant progress on either?

I wouldn't want to make rash predictions of possible outcomes, but I hope we'll soon be able to report significant progress in both cases.

I recently met my Swedish counterpart, the Justice Minister Beatrice Ask, who was strongly committed to progress on both patent proposals this year and I know the Swedish presidency [of the European Council] is hoping for political agreement in December.

The UK is making every effort to help them achieve this and to make sure that the proposals deliver tangible benefits to business.

I was also encouraged by the mood at the EU Competitiveness Council, which I attended in May. Innovative businesses in all European countries are finding it hard going in the current economic climate. I think it has brought home to all governments how important it is that patent systems deliver for these businesses, and that we make it easier for them to access and use patents in Europe.

So I think we are certainly closer to agreement than we have been for a long time.

From a UK perspective, what are the most important issues relating to the court and the Community patent?

Our overall aim is a system that promotes a more innovative and competitive European economy. Patents can be costly, slow and difficult for businesses to obtain, enforce and challenge in Europe. The impact of this is particularly felt by SMEs.

I want the new system to address this, so that it is easier for all innovative companies to access, use and benefit from the patent system.

That means that the Community patent will need to be affordable and delivered quickly. The court will need to deliver reliable and consistent decisions at reasonable cost and within reasonable timeframes.

For the Community patent, this will mean increased sharing of patent processing work between the EPO and national patent offices.

I see this happening when they are able to meet the required quality standards, to avoid patent backlogs increasing even more. It will also mean affordable translation requirements and fees that make EU-wide patenting much more affordable while still covering costs.

For the court, I want to ensure wide access to affordable litigation. The court needs to be specialist to deliver judgments that businesses will trust.

It will also need efficient and well-managed procedures to ensure parties aren't able to unfairly exploit them to their own advantage. Judgments will need to be delivered quickly and without unnecessary cost.

I'm glad that our UK patent judges and litigation experts are closely involved in these discussions, as they have a lot of valuable practical experience to contribute on how to run a court well, while keeping the needs of business in mind.

Many people in industry frequently claim that politicians and other decision makers in Europe do not "get" patents and how important they are to Europe's future prosperity, and that because of this they are happier leaving patent-related issues to expert and technical committees. How do you respond to this?

I would disagree; I believe we do understand the importance of patents to achieving prosperity in the UK and Europe.

Of course, it makes sense for expert and

technical committees to take the lead when the finer, more technical details are being discussed; but when it comes to the overall policy and the direction of travel we want to take, policy makers in the UK and EU – and by that I mean politicians and officials – are definitely clued up.

For instance, I'd point to our position on the European patent court and the Community Patent: we in the UK are recognised as being among the leading exponents. There's also our new fast-track scheme for green patents – early signs are promising and other countries have expressed an interest in adopting similar schemes.

Do you think you get enough useful feedback from industry about patents – for example, in terms of meaningful studies and statistics that demonstrate their importance? What kind of information would you like?

We very much welcome views and information from industry to build the evidence base we need for specific policy interventions and government positions in international negotiations. It's particularly important for us to have a balanced picture of the different circumstances and opinions that may arise. The IPO, of course, understands that some data may be commercially sensitive, and treats it accordingly. However, sometimes we may ask for figures which are not readily available, in which case the closest relevant information can still be helpful. And if consultation requests don't immediately get to the right person, it is very useful if they can be forwarded on.

Alison Brimelow has recently stated that she will be standing down as the President of the European Patent Office next year. What attributes do you think the next President of the EPO should possess?

Well, I'd like to firstly say that Alison has done a sterling job as president and I do wish her well for the future.

In terms of attributes for the post, I think a suitable candidate will need to have the relevant managerial and organisational skills to lead the organisation through a period of substantial change. They should also have experience of working at a senior level in a political and international arena. But first and foremost, the UK wants to see the new EPO president appointed on merit and ability to do the job, rather than nationality.

What do you regard as the most pressing issues facing the EPO and how would you like to see these tackled?

I think the essential task for all of us in Europe is to provide a European patent system which supports innovation, balancing the interests of patent holders, their competitors and European consumers.

Now more than ever, during an economic downturn, this is even more important, as investment in research and patent protection can help businesses to survive.

One of the most pressing issues for the EPO, I think, would be the need to establish a sustainable financial basis for the organisation. This will lead to income from fees fully covering the cost of operations.

The need for sustainable financing is important not just for the existing European patent system, but also for the future Community patent which will be delivered by the EPO.

Of course, in the drive for improvement it is important to remember that the EPO is staffed by professional people who are committed to the success of the European patent system. For the benefit of us all, I want to ensure that best use is made of their efforts and talents for the future competitiveness of Europe.

The Enlarged Board of Appeal of the EPO is considering the issue of the patentability of computer-implemented inventions. Do you believe that Europe needs greater certainty in this area?

First, let me say that no matter what the area of technology may be, business and the public need to have a clear idea about what inventions can and cannot be patented.

Without this, it's difficult to identify areas where there is freedom to work, make educated decisions about R&D investment and ultimately attract investment and create jobs.

The varied interpretation of the European Patent Convention's provision, that excludes computer programs patentability, causes uncertainty for applicants. The divergence between the EPO and national jurisdictions approach does not lessen this uncertainty. Inconsistencies within the EPO itself are said to be the main reason for the referral to the Enlarged Board of Appeal, in fact.

If the board does give a ruling on the case, I look forward to the decision because it has the potential to provide a clear European benchmark. *iam*