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Hargreaves Review

Brian Cordery (Bristows) · Monday, June 6th, 2011

The Hargreaves Review, or to refer to it by its official title, “*A Review of Intellectual Property and Growth*” by Professor Ian Hargreaves, was commissioned by the UK coalition government in 2010 to report on various issues pertaining to intellectual property with a particular focus on copyright, particularly in the online environment, as well as enforcement and growth of IP. However, patents also get a brief mention, with increasing patent applications being blamed for an increase in backlogs and the emergence of patent thickets to obstruct market entry and impede innovation. The Review concludes that more international co-operation is required, possibly with a view to weeding out “lower value patents”.

The main recommendations to the government in respect of patents are threefold:

1. To promote international efforts to cut backlogs and manage the boom in patent applications by work sharing between patent offices, in particular to increase the quality of prior art searches.
2. To ensure that patents are not extended into sectors, such as non-technical computer programs and business methods, without clear evidence of benefit.
3. To investigate ways to limit the adverse consequences of patent thickets.

In relation to the second point, the exclusion from patentability of software and business methods under EPC Article 52, the UK Courts have not always agreed with the European Patent Office. This is particularly the case in relation to ICT patents. Nevertheless, the exclusion is firmly entrenched in the legislation and any narrowing of the exclusion by the UK Courts appears unlikely for the time being. The Review supports the approach currently adopted by the UK Courts (and thus IPO) and encourages the UK government to persuade its European partners to adopt the English approach to implementation of Articles 52(2) and 52(3). Professor Hargreaves also recommends that Europe should continue to resist the case for business method patents.

As to decreasing the effect of patent thickets, Professor Hargreaves suggests a reform of the structure of patent office fees internationally, perhaps set by reference to innovation and growth goals rather than simply the administrative costs of prosecuting patent applications. Reform of renewal fees is also mooted, to discourage maintenance of lower value patents. One suggestion is increase renewal fees, particularly after the sixth year, and potentially in conjunction with reform of the provisions on licences of right to ensure that smaller companies are not discouraged from maintaining their lower value, but nevertheless commercially important patents.

Whether the Review will lead to concrete change in the field of patents seems unlikely – international consensus will be required to implement most of the recommendations. Although Professor Hargreaves’ evidence-based approach is to be commended, the UK’s European partners in particular will be more likely focused on progressing the thorny issue of a European patent and patent litigation system.

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