

Issue 55 www.wrti.org.uk

# Inventique®

The newsletter of Wessex Round Table of Inventors June 2005

— **Friday 24 June INNOVENTION 2005** [www.sehea.co.uk](http://www.sehea.co.uk) —

## Go through, please

WRTI INVENTORS CLINICS A RUNAWAY SUCCESS

**M**ANY INVENTORS struggle to put their ideas into practice and require 'hands-on' practical help, *writes Mike Overy.*

For such people, the WRTI Inventors Clinics are a great opportunity. Their objective is to help clarify what individual inventors want to achieve and provide recommendations to help them move forward.

### The WRTIng's on the wallboard

Members are first invited to present a brief outline of one of their inventions to a club meeting (without divulging proprietary information). A WRTI facilitator teases out key issues – which are displayed by a minute-taker as the clinic progresses – and then throws debate open to the floor, when

members ask questions, make suggestions and offer advice.

A report is later drafted which summarises the issues and recommendations: this is presented to the inventor. With his or her agreement, an outline summary is added to the 'Members inventions' page at [www.wrti.org.uk](http://www.wrti.org.uk)

### Dealing with reality

Few successful inventions result from someone 'just having an idea' and then wondering what to use it for. In most cases, a problem or need is identified and quantified, prior to working backwards to a solution.

A concept requires constant refinement until a potentially winning solution emerges; only once something with potential is apparent should the hard work start on proving it (*see* Invention Checklist, *right*).

Your priority should be to expose yourself to the lowest possible financial risk; patenting a concept without first proving that it works rarely makes financial or business sense.

● *WRTI Committee member Mike Overy is a wireless consultant, entrepreneur and inventor with several mobile phone and wireless positioning patents either granted or pending.* [mike.overy@zen.co.uk](mailto:mike.overy@zen.co.uk)

### INVENTION CHECKLIST

MANY APPARENTLY UNIQUE 'inventions' have already been invented or have insufficient potential to become successful. Early research (via [www.wrti.org.uk](http://www.wrti.org.uk) 'Inventors links' page, or search engines such as [www.google.com](http://www.google.com)) saves time and money. Being able to answer the questions below will inspire much more interest and confidence from potential partners, investors, licensees or distributors.

#### The invention

- What problem is being solved?
- What innovation is involved?
- What benefit(s) does the invention offer?
- What is its Unique Selling Point (USP)?
- What alternative solutions exist?
- Are intellectual property (IP) rights protected?
- Are third-party IP rights involved?
- How could the idea evolve in the future?

#### Market analysis

- What is the target customer profile?
- What is the target market sector and size?
- What are the key differentiating factors?
- Will market trends affect future prospects?
- What is your potential market share? Why?
- What barriers to entry exist?
- How would the product be marketed?
- How would price be determined?
- How much competition exists?
- How is it likely to react to your product?

#### Risk analysis

- What are the technical risks (unproven technology, product development etc)?
- How will these risks be managed (simulations, prototypes, back-up plans etc)?
- Do you have the expertise to start, implement and manage the business?
- What would be the impact of time delays?
- What would be the impact of cost overruns?
- How can they be avoided?
- What is to stop competitors copying it?
- What can go wrong with sourcing or distributing the product?
- Have legal considerations been addressed?

#### Financial analysis

- How will income and profit be generated?
- Can the product be licenced or franchised?
- How much capital will fund it until profit?
- What will be kept in-house or outsourced?
- What are the potential gross/nett returns?
- When will it come to market?
- Have grants been applied for or awarded?

#### SWOT analysis

- Define and address the concept's strengths, weaknesses, opportunities and threats. **MO**

### Next WRTI meeting WEDNESDAY 8 JUNE

Guest speaker Eric Lane of Gold Medal (Romsey) Ltd will advise on how to present products to large retail organisations. Room HC 017, Herbert Collins Building, Southampton Institute, commencing at 6.30pm. Guests welcome.

● [www.wrti.org.uk/events](http://www.wrti.org.uk/events)  
[www.goldmedalco.com](http://www.goldmedalco.com)  
Map: [www.streetmap.co.uk](http://www.streetmap.co.uk) (SO14 0RP)

Wessex Round Table of Inventors meet at 6.30pm on the second Wednesday of each month at Southampton Institute, East Park Terrace SO14 0RP

## VIEW FROM THE CHAIR

A FEW YEARS AGO I was invited onto a local radio chat show with a number of other inventors, ostensibly to talk about our inventions. As it turned out, we were really being asked along to represent that archetypal figure of fun, the English eccentric.

Partly as a result of such programmes, I'm convinced that many people still view inventors as a bunch of weird and wacky disciples of W. Heath Robinson, rather than the innovative modern entrepreneurs they often really are (step forward, James Dyson).

Wouldn't it be lovely if some of these people – I call them 'the doubters' – came along as guests to a WRTI club meeting? Last month's event was fantastic. We met in order to select two WRTI members' entries to support at the *Innovention 2005* exhibition being held at Winchester's futuristic INTECH science centre on 27 June.

Seven inventions were presented and, without exception, were based on solutions to real needs, with real potential markets. In addition to considering the merits of the ideas, members swapped contact details and gave advice on potential pitfalls, possible improvements and – perhaps most importantly – support.

The reason why inventors' clubs are so valuable is that they can provide the spur to get an idea started, refined and manufactured (we at the WRTI enjoy access to the wonderful technical facilities at Southampton Institute to aid design and development). Please do come along and join in – you'll find we're not wacky at all.

Sincerely, Richard

● **Innovention 2005:** [www.sehea.co.uk](http://www.sehea.co.uk)  
**INTECH centre:** [www.intech-uk.com](http://www.intech-uk.com)

**Note:** WRTI members Mike Overy and Brian Stickley were guests on BBC Radio Solent's 'Nick Girdler' morning programme on 11 May – a positive and fairly practical discussion on the trials, tribulations and practicalities of being an entrepreneurial inventor.

**RICHARD LITTLE, Acting Chairman**

**INVENTORATOR** John Mitchell

# Options for change

THE PATH TO VALID, LITIGATION-LITE PATENTS?

**L**AST MONTH I argued that the patent system needs a major overhaul. *The Patents Act 2004* did almost nothing to assist SMEs or inventors, but Labour was re-elected last month on the back of a manifesto declaring: 'We will modernise copyright and other forms of protection of intellectual property [IP] rights so that they are appropriate for the digital age.'

No doubt the government had an eye on the European Directive which came into force on 29 April 2004 concerning the enforcement of IPR, including patents. The Directive is clear that 'without effective means to enforce intellectual property rights, innovation and creativity are discouraged and investment diminished' (it also aims to eliminate exceptions by individual member states).

UK enforcement procedures for patents still differ from other IP despite the *Patents Act 2004*. The government therefore needs to address a number of implications arising from the Directive, as there is no question that innovation is currently often discouraged where patent 'protection' is important.

For example, the UK has the highest enforcement costs in Europe, which prevents many patent cases ever getting to Court: corporations use the cost barrier to effectively stifle SME competition.

## Responsibility-free zone

When infringed, it is a shock to discover that patent offices accept no responsibility for patent validity today (thereby almost encouraging litigation), so one major improvement could be to introduce a 'two-stage' patent. Many patents granted are unlikely to lead to a commercial product, so a rapid preliminary examination (perhaps confined to prior art searches of existing patent

and application databases) could lead to a preliminary patent grant with no assurance on validity.

For many, this preliminary patent would be sufficient – but there could also be an option to pay for a full examination within, say, three years of grant. If no prior art were then discovered, the Patent Office could declare the patent 'valid' with no option for contesting it after grant.

In 'the digital age' there would then be no excuse for inventors not to register their inventions and patent officials thus not to find 'prior art'. And any disputes would then be limited to examining infringement, not validity.

## Innovation synchronisation?

Similar systems already exist in several countries. In 2001, for example, Australia introduced 'innovation patents' ideally suited to products and processes with a short product cycle, specifically for SMEs and lone inventors. The new system has resulted in less litigation and far more licensing deals.

Another proposal that would fit the Directive and assist the UK economy would be for the creation of a robust Patent Defence Union (PDU) to support inventors who find their patents infringed – initially through mediation or arbitration, but ultimately through litigation.

The UK government has resisted funding a proper PDU, but an EU-wide model is now being considered, acknowledging the damage caused by (primarily non-European) patent infringement.

Watch this space... ●

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# SHAREHOLDERS' DISPUTES

**A** WELL-DRAFTED, signed shareholders agreement (SHA) is a common way of dealing with major disputes between shareholders, writes *Dr Rosanna Cooper*. Where an amicable solution cannot be reached, the SHA may also provide an exit strategy, enabling shareholders to leave the company with as little disruption as possible.

It is important to remember that a majority shareholder owns a 51% shareholding (or more) in a company and as a result has the right to remove a director from the board. If the other shareholders do not wish a majority shareholder to have or exercise such rights, then this should be agreed in a SHA, and the Articles of Association (Articles) amended to reflect its terms.

## Common areas of dispute

One area of dispute to which little thought is given is over the sale of a company's shares. As there are likely to be limited shares and shareholders, owning shares in a small private company can give a shareholder a degree of control. It becomes more important as the company grows that the right people exercise control over its expansion. Although standard Articles can deal with the issue of share sales, small company shareholders are not always aware of the workings of such Articles.

By way of example, an inventor sets up a company (NEWCO) to commercialise an invention with three other individuals, who all bring varying levels of expertise to the company, in which they all take shares. Through their joint efforts, NEWCO becomes very successful and begins to attract interest from investors and competitors.

One of the shareholders then wishes to retire and sell his shares. Given his contribution to the company and its vision, the existing shareholders do not wish him to sell his shares to a third party who has made no contribution to the

## ROSANNA COOPER CLARIFIES THE LEGAL POSITION FOR INVENTORS AND ENTREPRENEURS

development of the company, and who might now have a degree of influence over the company.

A comprehensive SHA will often contain a provision that, before shares are offered for sale to third parties, existing members would have the right to purchase such shares (right of pre-emption). This gives the existing members the option to keep control over the ownership of shares. Although pre-emption will usually be dealt with in the Articles, the terms of the SHA prevail over them, therefore the Articles should again be modified to reflect the terms of the SHA.

It is usually the position in the event of a shareholder's death that his or her shares will go to his or her estate; any surviving spouse would have the option to take his or her position at general meetings of the shareholders. A spouse with a certain level of control – and possibly very different ideas from the other shareholders – might then wish to make his or her presence felt. Clear express terms in a SHA would prevent such a situation from materialising.

## Minority Shareholders

It is important that minority shareholders' interests are protected as well as ensuring that they have a say in important company affairs – the point being that minority shareholders are most likely to be out-voted on important issues if they do not strengthen their position. As it is also common in small companies for shareholders to assume

the role of director-shareholders, an express term can be included in the SHA to avoid any dispute regarding the removal of minority shareholders or their directorships.

Ensuring that the issuing of new shares does not cause the value of the minority shareholders' shares to substantially diminish should also be addressed. SHAs commonly include provisions such as the requirement of unanimous voting to enable directors to issue new shares, or the right of first refusal to buy a number of shares to maintain the minority shareholding.

It is important to take legal advice in each particular case on the extent of minority protection that should be included in a SHA.

There is a need for shareholders in small private companies to have a greater degree of control over the way in which the company is committed to perform certain obligations. The SHA should provide for certain limits on contracts so that a director-shareholder, or even the majority of the board, could not bind the company in contracts where the financial value exceeds a set amount.

Although a few instances of using an SHA in the resolution of disputes are mentioned above, only a well-drafted agreement would ensure that founding members in particular are adequately protected. ●

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● *Dr Rosanna Cooper is a partner at RT Coopers, a commercial law firm focusing on inventors and business start-ups.*

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RT Coopers are offering comprehensive Shareholders Agreements to WRTI member companies for only £499 until 30 September

## EU DIRECTIVE ON THE PATENTABILITY OF COMPUTER-IMPLEMENTED INVENTIONS

INVENTIQUE REPRINTS EDITED EXTRACTS OF AN ARTICLE OUTLINING THE CRUCIAL IMPLICATIONS OF A EUROPEAN PARLIAMENT VOTE IN EARLY JULY

# The road to patent perdition

**T**HE EU COUNCIL adopted a Common Position on 7 March on what has turned out to be one of the most controversial, politically-charged and fiercely debated directive proposals of all time, on the patentability of computer-implemented inventions (CII), writes *Tim Frain*.

This is an issue of enormous concern to everyone involved in electronics, IT and telecoms – not least because the final vote on CII patents is due to take place in the European Parliament in early July.

There are significant differences between the Common Position adopted by the EU Council (which clarifies the current legal framework without moving the goalposts) and the text adopted by the European Parliament at first reading, which introduced many amendments proposed by opponents of CII patents; these dramatically changed the whole thrust of the Directive.

The result is a text which diminishes, virtually to vanishing point, effective patent protection in the digital technology industries.

### Eurostating the case

It was never envisaged that this proposal would ever become as controversial as it has. The original intention of the EU Commission in proposing the Directive was simply to harmonise the patentability of computer-implemented inventions law in Europe.

But the tremendous public and political furor surrounding the issue has even had an impact on patent office practice (the trend at both the UKPO and EPO has been towards stricter examination, making it more difficult to get a CII patent application allowed than it was a few years ago).

### CII PATENTS FACTFILE

The amended text adopted by the European Parliament at first reading suggests:

- Exempting from infringement the use of any 'patented technique' needed for a 'significant purpose'. (This would appear to encompass all useful patents – if there is no significant purpose there is probably no patentable invention – rendering them unenforceable.)
- That data processing is not considered to be a field of technology, and that innovations in the field of data processing are not considered to be inventions (this would appear to exclude all digital technology.)
- Outlawing one of the classic bases for establishing patentability, inventive step (specifically: improved efficiency in the use of resources within a data processing system. This would appear to exclude much computer hardware).
- Prescribing a test based on 'use of natural forces to control physical effects' (which would exclude patents for intangible inventions – speech coding, communication protocols, radio signal handling, error correction, data compression etc – all of which are currently patentable).
- That patent protection is no longer available when known hardware under the control of a computer program operates in a new way. **TF**

It seems safe to say that when advising a client on enforceability, patent attorneys will generally feel less confident today than they would have been three years ago that a CII patent granted by the EPO would be upheld in the courts of all European Member States.

### It's now or never

Opponents of CII patents have mounted an intense and highly effective lobbying campaign. All too often, the CII debate has been mis-represented by opponents – claiming to speak for the SME community – as pitting individuals and small companies against giant multinationals. It is fairer to say that most SMEs are ignorant of the debate and do not realise that they are effectively being misrepresented by anti-patent activists.

We have now entered a short but crucial stage in the legislative process. There is a very real danger that radical amendments could be

introduced which may survive in some form in any final enactment.

SMEs and inventors with CII patenting interests are urged to draw this issue to the attention of their MP and to write a letter, no matter how simple, to as many MEPs as possible, indicating their support for CII patents and the Common Position.

From today until 4 July is the time to lobby, especially MEPs. Contact details for all MEPs are available on: [http://www.europarl.eu.int/home/default\\_en.htm](http://www.europarl.eu.int/home/default_en.htm)

MEPs need to hear from pro-patent SMEs. Now is the time!

© *Tim Frain* 2005

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"Working together enhances all our prospects" – David Nicholas

# www.wrti.org.uk

THE INVENTORS WEBSITE

**CENTRE OF EXCELLENCE** Innovention 2005

## On your marks...

GO TO SOUTH'S PREMIER INVENTION SHOWCASE

**T**WO WRTI MEMBERS will be presenting their inventions on the WRTI stand at the *Innovention 2005* competition and exhibition, INTECH science and education centre, Winchester on Friday 24 June. In addition, a number of other club members will be hosting their own company stands, including an exclusive industry launch. WRTI members have won prizes of £5,000 and £10,000 at previous shows.

Now in its 14th year, *Innovention's* track record of success is such that the event is usually over-subscribed. A process has been introduced to ensure that

high-quality, commercially viable ideas are displayed. With a prize pool of over £25,000, *Innovention 2005* offers innovators from across the UK a golden opportunity to get their ideas into the market.

Winners will be announced and presented with their prizes at the exhibition, which is sponsored by InventThat.com, Rothman Pantall, University of Portsmouth, Blake Laphorn Linnell, Harbour Economic Development Forum, Business Link Wessex, Fareham Borough Council, IP Consult, Hampshire County Council, Basepoint Plc and HATRICs.

● [www.sehea.co.uk](http://www.sehea.co.uk) [www.intech-uk.com](http://www.intech-uk.com)

**THE DAVID NICHOLAS INNOVATION AWARD 2005**, sponsored by the WRTI, will be presented to the BEng or BSc student exhibiting the most innovative final year project at Southampton Institute's invitation-only Technology Degree Show on Friday 17 June. The award comprises a cheque for £250, one year's free WRTI membership and a scroll to be presented on graduation day at Southampton Guild Hall. During the free membership year, assistance with the development of the winning project will utilise the resources of the WRTI and the technical facilities at Southampton Institute. [www.wrti.org.uk](http://www.wrti.org.uk)

### WINNING A DTI GRANT

THESE BUSINESS LINK Wessex afternoon seminars give an invaluable insight into the process of producing a high quality, well-structured and polished proposal to boost your chances of being awarded a grant.

Thursday 21 July, SET Squared Centre, Southampton University:  
[www.businesslinkwessex.co.uk/events/display.asp?date\\_id=2069](http://www.businesslinkwessex.co.uk/events/display.asp?date_id=2069)

Tuesday 26 July, The Ark, Basingstoke:  
[www.businesslinkwessex.co.uk/events/display.asp?date\\_id=2068](http://www.businesslinkwessex.co.uk/events/display.asp?date_id=2068)

### WEBSITE OF THE MONTH

[http://www.bbc.co.uk/pressoffice/pressreleases/stories/2004/12\\_december/09/dyson.shtml](http://www.bbc.co.uk/pressoffice/pressreleases/stories/2004/12_december/09/dyson.shtml)

The transcript of the 2004 Richard Dimbleby lecture *Engineering the Difference* by James Dyson, founder of Dyson Limited, which was broadcast last December.

### Junk me now

**SURGICAL INSTRUMENTS** have to be disposed of after a certain number of heat-sterilisation cycles. Staff may not remember to mark every instrument every time, so Ross Electro-medical of Mere, Wiltshire, has developed a mechanical tag designed to mark itself (GB patent application 2407187).

The tag, which is fixed to the instrument, is like a small plastic fob watch with an index wheel marked from 0 to whatever number of sterilisation cycles is considered safe. A plastic spring inside the index wheel heats up during each cycle and expands by just enough to push a ratchet around by one click. When it reaches the preset limit, the instrument is junked.

● Ross Electro-medical Limited  
Units K1 & K2

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