

Our bodies patently lack protection

Intellectual property needs proper safeguarding, says **Edward Fennell**

The marriage of intellectual property (IP) and life sciences creates one of those niche practices of law that most solicitors like to avoid. But two events recently brought home the importance of this area of law.

First, the recommendation by the UK Human Fertilisation and Embryology Authority to permit human cloning for 'spare parts' is likely to create a huge wave of research leading to a flood of patent registrations and subsequent litigation. Penny Gilbert, of the IP firm Bristows, says that though the European Commission Biotechnology Directive specifically excludes human cloning processes from patentability, it does not apply to such parts of the human body as tissue. 'There are', she says, 'potentially valuable patents in this field and litigation between rival researchers is almost inevitable.'

Elsewhere in the market, the pharmaceutical companies Zeneca and Astra were deep in talks about a merger. Both face the imminent end of the patent on several drugs, and need more resources to plug the gaps. Patents are probably these companies' most important single resource and the big phar-

maceutical companies and life sciences firms jealously guard them. Larger law firms such as Cameron McKenna and Herbert Smith are often engaged in litigation to protect rights that may have been infringed.

Smaller research-based companies are not always so alert to the dangers and opportunities of patent law. A recent report, commissioned by Taylor Joynsen Garrett from the London Business School, says: 'There is evidence of a surprising lack of recognition of the importance of IP protection.' Almost a third of companies think their investors 'understand little' or 'not at all' the nature of their IP rights.

'Litigation between rival researchers is almost inevitable'

Only two-thirds of companies said that when it came to IP, due diligence¹ had been undertaken by their investors where it was relevant before financing their most recent investment.

Just over half the smaller companies have a programme in place to ensure that all IP rights pro-

duced by their research development are adequately protected. And many that have an IP protection programme do not produce a complete set of contractual documentation to cover dealings in IP rights, even though this is potentially the most critical component of all.

The report is a wake-up call to smaller research-based companies to take the legal implications of their work seriously. While there are bound to be ethical debates about the right to make money out of this kind of activity, there is no question that larger companies will have little hesitation in capitalising on discoveries not properly protected. Ms Gilbert believes that we are only starting to scratch the surface of developments in this field. How it turns out will be shaped as much by the application of the law as by the inventiveness of scientists. And though the Biotechnology Directive excludes human cloning processes from patentability, commercial companies will not stop doing the work, nor stop generating complex and puzzling legal issues.

¹ the opposite of *negligence*; used by auditors and lawyers to show they have checked very carefully all the available documents in order to determine if a fact or figure is correct, or who is the current and legal owner of land, property or ideas

Reading tasks

A Understanding main points

Mark these statements T (true) or F (false) according to the information in the text on the opposite page. Find the part of the text that gives the correct information.

- 1 Solicitors like very technical and specialised areas of law. *F*
- 2 It is legal to clone humans for spare parts at present in the UK.
- 3 Patents protect the formulae of drugs for ever.
- 4 Patent law is well understood by most small research companies in the UK.
- 5 The most critical part of an Intellectual Property protection programme is a complete set of contractual documentation.
- 6 The inventiveness of scientists will have to be matched by the changes in the law.

B Understanding details

Answer these questions.

- 1 What were the *two events* referred to in line 5?
- 2 How many official bodies are named that deal with cloning and genetics? What are they?
- 3 What do the firms need to produce if they want complete IP protection?
- 4 What kind of effect should this report have on the small research-based companies?
- 5 What kind of discussions are there likely to be about making money out of scientific research?
- 6 What might larger companies do if they find a discovery is not patented?
- 7 Which phrase in the last paragraph means the same as *see only the tip of the iceberg*?
- 8 What kind of legal issues does the cloning debate cause?

Vocabulary tasks

A Definitions

Match these terms with their definitions.

- | | |
|---------------------------------------|---|
| 1 proper safeguarding (title) | a) complete set of details about IP rights dealings |
| 2 niche practices (line 4) | b) break a law or regulation |
| 3 patent registration (line 14) | c) adequate protection |
| 4 patentability (line 20) | d) begin to understand something |
| 5 litigation (line 24) | e) taking advantage of a commercial opportunity |
| 6 infringe (line 42) | f) application for the sole rights of ownership |
| 7 due diligence (line 57) | g) allowing an invention to be registered |
| 8 contractual documentation (line 69) | h) bringing a lawsuit against someone |
| 9 capitalising (line 82) | i) thorough investigation |
| 10 scratch the surface (line 86) | j) specialised areas of expertise |

B Metaphors

Use an appropriate phrase from the box to complete each sentence.

wave of research flood of patent registrations stop the leak plug the gap
scratch the surface gone up in smoke avalanche of complaints
landmark case cast a shadow over dawned on

- 1 Permission from the European Courts to allow cloning will bring a *wave of research* which will lead to a *flood of patent registrations* ..
- 2 This problem is bigger than you think. We have only just begun to
- 3 Our rivals have copied our work. All our hopes have
- 4 The drug caused severe headaches and vomiting. There was an from doctors and patients.
- 5 The judges' decision was so important that it changed the way the law was to be interpreted. It was a
- 6 Information about the new drug was given to the press by a laboratory technician. The manager decided to sack him in order to
- 7 The tragic accident an otherwise happy event.
- 8 The major drugs companies need a way to replace the money they earn from patents that are expiring. They need new patents to
- 9 The law about intellectual property is very complex but essential to the success of the company. It finally the Managing Director that he should consult a legal expert.

C Definitions

Match these terms with their definitions.

- | | |
|---------------------------|-------------------------|
| 1 permit (line 10) | a) competing |
| 2 excludes (line 19) | b) creativity |
| 3 tissue (line 22) | c) allow |
| 4 rival (line 25) | d) safeguard |
| 5 protect (line 40) | e) aware |
| 6 alert (line 44) | f) skin and flesh |
| 7 investors (line 53) | g) leaves out |
| 8 inventiveness (line 90) | h) people risking money |

D Metaphors from water

English uses a lot of metaphors from water to describe the scale of events, like *a flood of complaints* and *a huge wave of research*. Complete these sentences with words from the box.

drop flood trickle stream torrents cascade

- 1 It was too little, too late – a *drop* in the ocean.
- 2 The complaints started off as a but soon became a flood.
- 3 The benefits down from the upper management to the whole workforce.
- 4 There was a steady of visitors when the new Centre was opened to the public.
- 5 The rain fell in such you could hardly see well enough to drive.
- 6 There was a of applications for the job when the salary was announced.

E Metaphors from the body

Match the parts of the body with the correct phrase.

- | | |
|--------------|-------------------|
| 1 head | a) of the law |
| 2 long arm | b) for fighting |
| 3 hand | c) of the company |
| 4 heart | d) of Fate |
| 5 no stomach | e) of the matter |