

Oxford Intellectual Property Research Centre Annual Report for Academic Year 2018-19

I am privileged to have joined the Oxford Intellectual Property Research Centre. During my career I have interacted frequently with the Centre and its staff and I know that I am joining an incredibly vibrant intellectual community. Moving forward the challenge is to maintain that vibrancy while ensuring the Centre develops a distinctive intellectual agenda that shapes how intellectual property is conceptualised, researched and taught.

All of us who work in the intellectual property field have to face the challenge that there is so much going on that it is easy to slip into being entirely reactive. It is easy to spend all of our time worrying about the latest legislative developments or the latest trade negotiations in which IP rights are implicated. In so doing, we run the risk of neglecting the unique role that academic institutions can play in fostering a longer term and dispassionate view of whether the system is working as intended. Problems like climate change, antimicrobial resistance and sluggish economic growth make it more important than ever that we get the innovation policy landscape right. This means that we need to understand how the IP system relates to other policy interventions, such as R&D tax credits and innovation prizes. It also means that we need to draw from other disciplines in order to get a more accurate picture of the innovation landscape. The Centre's interdisciplinary nature means that it is ideally positioned to take the lead in these areas.

This report provides details of the events the Centre has run as well as the publications and speaking engagements of its members. There are, however, two things that deserve a mention here. The first is the publication by Professor Dev Gangjee and Dr Ilanah Fhima (UCL) of their monograph *The Confusion Test in European Trade Mark Law*. This is the first dedicated study of how the confusion test is being applied across the harmonised European trade mark regime and, as such, it marks an important contribution to our understanding of the operation of that system. The second is to say a few words about Sir Henry Carr. Sir Henry was a great friend to the Centre over many years. We were delighted that Sir Henry was able to judge the final of the Oxford IP Moot in March 2019 and it was with great sadness that we learned of his passing. He will be much missed by everyone in the IP community.

Robert Burrell

Professor of Intellectual Property and Information Technology Law

Michaelmas 2019

Members of the Centre

The Centre welcomed its first two post-doctoral research fellows in 2018/19. Dr Poorna Mysoor (DPhil alumni in the Law Faculty) was awarded the Leverhulme Trust Early Career Fellow for two years. Poorna is exploring 'how the structure of tangible property can be transposed to copyright to achieve a balance between ownership and user's rights'. The second post-doctoral research fellow was Dr Xiaoyan Wang who completed her PhD at Queen's University Belfast. Xiaoyan was awarded the ESRC post-doctoral research fellow. She researched on geographical indication protection in the UK after Brexit.

The Centre and the Law Faculty also welcomed the appointment of Professor Robert Burrell as the Chair of Intellectual Property and Information Technology Law. Professor Burrell also holds a professorship at the University of Melbourne.

Dr Carolyn Deere-Birkbeck, Senior Researcher, Global Economic Governance Programme, Department of Politics

Professor Robert Burrell, Professor of Intellectual Property and Information Technology Law; Director of OIPRC

Professor Dev S. Gangjee, Professor of Intellectual Property; Law Fellow, St. Hilda's College

Professor Christine Greenhalgh, Professor of Applied Economics (Emeritus), Department of Economics

Lord Leonard Hoffmann, Visiting Professor, Faculty of Law

Dr Javier Lezaun, Associate Professor, School of Anthropology and Museum Ethnography; Director of the Institute for Science, Innovation and Society

Professor Viktor Mayer-Schönberger, Professor of Internet Governance and Regulation, Oxford Internet Institute

Dr Poorna Mysoor, Leverhulme Trust Early Career Fellow

Professor Ansgar Ohly, Visiting Professor, Faculty of Law

Dr Robert Pitkethly, Official Fellow and Tutor of Management, St Peter's College

Dr Xiaoyan Wang, ESRC Post-doctoral Research Fellow

Research Fellows

Sara Ashby, Partner, Wiggin LLP

Professor Rochelle Cooper Dreyfuss, Pauline Newman Professor of Law, New York University School of Law

Dr Naomi Hawkins, Senior Lecturer in Law, University of Exeter

Dr Christian Helmers, Assistant Professor of Economics, Leavey School of Business, Santa Clara University

Dr Emily Hudson, Reader in Law, King's College, London

Professor Paul Jensen, Deputy Dean, Faculty of Business and Economics, University of Melbourne

Dr Barbara Lauriat, Senior Lecturer in Law, King's College, London; Academic Fellow, Honourable Society of the Inner Temple

Professor Frederick Mostert, Professor of Practice at the Dickson Poon School of Law, King's College, London; Research Fellow at Tsinghua University

Ms. Shira Perlmutter, Chief Policy Officer and Director for International Affairs, United States Patent and Trademark Office

Dr Graham Reynolds, Associate Professor, University of British Columbia

Dr Alison Slade, Lecturer in Intellectual Property Law, University of Leicester

Catriona Smith, Wiggin, Consultant to the Course Director of the PG Diploma in Intellectual Property Law and Practice, Oxford

David Stone, Partner, Allen & Overy LLP, Deputy High Court Judge

Dr Georg von Graevenitz, Senior Lecturer in Quantitative Methods, Queen Mary University of London

Professor Elizabeth Webster, Director of the Centre for Transformative Innovation and Pro Vice-Chancellor for Research Impact and Policy, Swinburne University of Technology

Research Student Members

Katharina Behrend (St Peter's)

Alvaro Fernandez de la Mora Hernandez (St Antony's)

Kathy-Ann Hughes (Wadham)

Alexandra Mogyoros (St Peter's)

Jane Parkin (St Catherine's)

Julia Osei-Tutu (Wadham)

Sanya Samtani (Magdalen)

Eva Stankova (St Cross)

Kiri Toki (Mansfield)

Robyn Trigg (Magdalen)

Completed DPhils 2018/19

Quentin Cregan (St. Hilda's)

Thomas Dysart (St. Peter's)

Henry Fraser (Exeter)

Luis Henrique Porangaba (Keble)

Andrea Zappalaglio (Sommerville)

Honorary Fellows

HH Judge Michael Fysh QC, SC
Professor Christine Greenhalgh
Lord Justice Mummery

Visiting Research Fellows

Professor Oki Suwano (Trinity Term 2019)

Administration

Mrs Ellen Moilanen, Administrator of the OIPRC and the Oxford Postgraduate Diploma in Intellectual Property Law & Practice

Ms. Jennifer Hassan, Administrative Assistant to the Intellectual Property Group

Management Committee

Professor Edwin Peel (Chair)
Professor Dev Gangjee
Dr Javier Lezaun
Professor Ian Loader
Professor Viktor Mayer-Schönberger
Dr Robert Pitkethly

Events Organised by the Centre

Conferences and Workshops

WIPO and its History

Faculty of Law, University Oxford
14 June 2019

A panel discussion on 'WIPO and its History', organized by Poorna Mysoor, chaired by Professor Sam Ricketson, Emeritus Professor of Intellectual Property Law, Melbourne Law School, and joined on the panel by Professor Robert Burrell, Professor of Law, Sheffield Law School, Professor Dev Gangjee, Professor of Intellectual Property Law at Oxford and Dr Emily Hudson, Reader, Dixon Poon School of Law, King's College, London.

Geographical Indication Protection in the UK and China: A Retrospective and Prospective Analysis

Faculty of Law, University of Oxford
24 June 2019

GI experts from academic and governments from the UK, China and France made thought-provoking presentations, followed by a round-table discussion which included other experts in the field. Professor Lianfeng Wang (East China University of Political Science and Law), Associate Professor Xiaobing Wang

(Law School of Shandong University) and Professor Xiuqin Lin (Xiamen University) started the day with presentations on the legal systems and case studies on GI protection in China. This was followed by Dr Gail Evans (Queen Mary University of London), Dr Simon Crabbe (DEFRA) and Dr Delphine Marie-Vivien (CIRAD) who gave presentations on the issue of genericness, GI policy in the UK after Brexit, and GI protection in Asian countries. This event was convened by Xiaoyan Wang.

The 2019 IP Moot

The 2019 Moot was an enormous success, attracting teams from all over the world. Once again, the quality of entries was extremely high and 28 teams were invited to participate in the oral rounds. This year's problem dealt with important but highly technical issues relating to how trade marks should be interpreted and we were honoured that Lord Kitchin and Lord Justice Floyd agreed to judge the final alongside with Mr Justice Carr. This year's competition was won by a team from City Law School, who edged out the team from the University of Ottawa in a closely fought final. Our thanks go to Dr Emily Hudson (KCL) for all of her hard work in running the competition. Our thanks go also to Funders: Allen & Overy, 8 New Square, Herbert Smith Freehills, Kirkland Ellis, Powell Gilbert, Hart Publishing; Edward Elgar Publishing; Cambridge University Press; Oxford University Press

Intellectual Property Invited Speaker Seminar Series 2018-2019

Venue: St Peter's College

Convened by: Prof. Dev Gangjee and Dr Robert Pitkethly

Intellectual Property Discussion Group

Venue: Faculty of Law, Oxford

Convened by: Katharina Behrend and Jane Parkin

Publications

Academic Members

Robert Burrell, 'Keyword Advertising and Actionable Consumer Confusion' in T. Aplin (ed), *Research Handbook on Intellectual Property and Digital Technologies* (Edward Elgar 2019) (with and Michael Handler)

Robert Burrell, 'Rethinking the Relationship between Registered and Unregistered Trade Marks' in G Austin et al. (ed), *Across Intellectual Property: Essays in Honour of Sam Ricketson* (CUP 2019)

Robert Burrell, 'Unpacking Constitutional Protection for Trade Marks: The Plain Packaging Disputes before National Courts ' in C. Heath and A. Kamperman Sanders (eds), *Intellectual Property and International Dispute Resolution* (Kluwer 2019)

Robert Burrell, 'Myths of the Medical Methods Exclusion: medicine and patents in nineteenth century Britain' (2018) 38(4) *Legal Studies* 607 (with C. Kelly)

Robert Burrell, 'Towards a New Relationship Between Trade Mark Law and Psychology ' (2018) 71(1) *Current Legal Problems* 87 (with K. Weatherall)

Graeme Dinwoodie, 'International Copyright: The Introduction' in Lionel Bently, Paul Geller and Melville Nimmer (eds), *International Copyright Law and Practice* (Lexis Nexis 2019)

Graeme Dinwoodie, 'Pluralism and Universalism in International Copyright Law: The Role of an International Acquis' in Tatiana Synodinou (ed), *Universalism or Pluralism in International Copyright Law* (Kluwer Law International 2019)

Graeme Dinwoodie and Rochelle Dreyfuss, 'Brexit and IP: The Great Unraveling?', 39 *CARD. L. REV.* 967-995 (2018)

Graeme Dinwoodie and Jens Schovsbo, 'Design Protection for Products that are "Dictated by Function" in THE EU DESIGN APPROACH – A GLOBAL APPRAISAL 142-171 (2018)

Dev Gangjee, 'Champagne' in Claudy Op Den Kamp and Dan Hunter (eds), *A History of Intellectual Property in 50 Objects* (CUP 2019)

Ilanah Simon Fhima and Dev Gangjee, *The Confusion Test in European Trade Mark Law* (OUP 2019)

Lionel Bently, Brad Sherman, Dev Gangjee and Phillip Johnson, *Intellectual Property Law* (5th edn OUP 2018)

Dev Gangjee, 'Paying the Price for Admission: Non-Traditional Marks across Registration and Enforcement' in Irene Calboli and Martin Senftleben (eds), *Non-Conventional Marks: Critical Perspectives* (OUP 2018)

Dev Gangjee, 'Trade Marks and Allied Rights' in Rochelle Dreyfuss and Justine Pila (eds), *The Oxford Handbook of Intellectual Property Law* (OUP 2018)

Javier Lezaun, 'The Deferred Promise of Radical Cure: Pharmaceutical Conjugations of Malaria in the Global Health Era', *Economy and Society*, 47(4), 547-571 (2018).

Poorna Mysoor, 'Does UK Really Have a 'Closed' List of Works Protected by Copyright?', 41 *European Intellectual Property Review* 474-479 (2019).

Poorna Mysoor, 'Proprietary Estoppel and Copyright Law', 29 *King's Law Journal* 470-495 (2018).

Mysoor P, Review of the edited volume by Enrico Bonadio and Nicola Lucchi, *Non-Conventional Copyright* (Edward Elgar Publishing, 2018) [2019] *Modern Law Review* 1192-1197

Ansgar Ohly, 'Free Riding on the Repute of Trademarks, does protection generate innovation?', in: J Drexler and A Kamperman Sanders (eds), *The Innovation Society and Intellectual Property*, (Edward Elgar, 2019), pp 146-159

Ansgar Ohly, 'Schutz von Kulturgütern durch das Markenrecht?' [Should trade mark law protect the cultural heritage?], in: F Hacker and F Thiering, *Festschrift für Paul Ströbele zum 75. Geburtstag* (Carl Heymanns, 2019), pp. 325-339

Ansgar Ohly, 'UWG-Rechtsschutz bei Verstößen gegen die Datenschutz-Grundverordnung?' [Does a violation of the General Data Protection Regulation constitute an act of unfair competition?] *Gewerblicher Rechtsschutz und Urheberrecht (GRUR)* 2019, 686-693

Ansgar Ohly, 'Das neue Geschäftsgeheimnisgesetz im Überblick' [The new German Trade Secrets Act: an overview], *Gewerblicher Rechtsschutz und Urheberrecht, GRUR* 2019, 441-451

Ansgar Ohly, 'Direct and indirect copyright infringement: proposal for an amendment of Directive 2001/29/EC (InfoSoc Directive)', [2019] *JiPLP* 182-186 (co-author: M Leistner)

Ansgar Ohly, Case note on the judgment of the German Federal Supreme Court (BGH) of 27 July 2018, case I ZR 67/17 – Dead Island [on the liability of WiFi access providers for copyright infringement], in: *Juristenzeitung (JZ)* 2019, 251-255

Ansgar Ohly, Case note on the CJEU reference of the German Federal Supreme Court (BGH) of 13 September 2019, case I ZR 140/15 – YouTube [on the liability of YT for communication to the public], in: *Gewerblicher Rechtsschutz und Urheberrecht, (GRUR)* 2018, 1139-1141

Ansgar Ohly, "'Buy me because I'm cool": the "marketing approach" and the overlap between design, trade mark and unfair competition law', in: A Kur, M Levin and J Schovsbo (eds), *The EU Design Approach – A Global Appraisal* (Edward Elgar, Cheltenham 2018), pp 108-141

Ansgar Ohly, 'Unmittelbare und mittelbare Verletzung des Rechts der öffentlichen Wiedergabe nach dem „Córdoba“-Urteil des EuGH' [Direct and indirect infringement of the right of communication to the public after the CJEU judgment in Renckhoff], in: *Gewerblicher Rechtsschutz und Urheberrecht (GRUR)* 2018, 996-1004

Research Fellows

Rochelle Dreyfuss and Siew Kuan Ng, *Framing Intellectual Property* (CUP 2018)

Rochelle Dreyfuss and Justine Pila, *The Oxford Handbook of Intellectual Property Law* (OUP2018)

Rochelle Dreyfuss, 'Harmonization: Top Down, Bottom Up—And Now Sideways? The Impact of the IP Provisions of Megaregional Agreements On Third Party States' in Benedict Kingsbury et.al. (eds), *Megaregulation Contested* (OUP 2019)

Rochelle Dreyfuss, 'In Praise of an Incentive-Based Theory of Intellectual Property Protection' in Rochelle Dreyfuss and Siew Kuan Ng (eds), *Framing Intellectual Property* (CUP 2018)

Rochelle Dreyfuss, 'International Divergence in Gene Patenting', 20 Annual Rev. Genomics & Human Genetics 541 (2019) (with Dianne Nicol, E. Richard Gold, Wei Li, John Liddicoat, and Geertrui Van Overwalle)

Rochelle Dreyfuss, 'Reconceptualizing ISDS: When is IP an Investment and How Much Can States Regulate It?', 21 VAND. J. ENTER. L. 377 (2018)(with Susy Frankel)(symposium issue)

Rochelle Dreyfuss, 'Patenting Nature—A Comparative Perspective,' 5 J.L. and the Biosciences 550 (2018) (with Jane Nielsen and Dianne Nicol)

Rochelle Dreyfuss, 'Brexit and IP: The Great Unraveling', 39 Cardozo L. Rev 967 (2018) (with Graeme Dinwoodie)

Frederick Mostert, 'Study - IP Enforcement Measures, Especially Anti-Piracy Measures in the Digital Environment' (2019) *World Intellectual Property Organization*

Frederick Mostert, 'The Internet: Regulators Struggle to Balance Freedom with Risk' Financial Times (London, 9 July 2019)

Frederick Mostert, 'Free Speech and Internet Regulation' (2019) 14 JIPLP

Frederick Mostert, 'The Application and Challenges of Blockchain in Intellectual Property Driven Businesses in China' (2018) *Tsinghua China Law Review* (with Jue Wang)

Frederick Mostert, 'The Global Digital Enforcement of Intellectual Property' (2018) *World Intellectual Property Organization*

Shira Perlmutter, 'Towards a Global Copyright Law?' in Robin Jacob (eds), *The Sir Hugh Laddie Lectures: The First Ten Years* (Intersentia, 2019).

Graham J. Reynolds, 'Recognizing the Relevance of Human Rights: The Application of the Presumption of Conformity in the Context of Copyright' (2018) 31 *Intellectual Property Journal* 63.

David Stone, 'Mr Justice Nugee Grants Philip Morris Ex Parte Pan-EU Preliminary Injunction for Heated Tobacco Device Design', (*IPKat*, January 2019)

<<http://ipkitten.blogspot.com/2019/01/mr-justice-nugee-grants-philip-morris.html>>

Beverly Potts, David Stone, Joachim Feldges, Keren Livneh and David Shen, 'Practical Preparations for Brexit: a Global Perspective', (*Managing IP*, May 2019)

< <https://www.managingip.com/Article/3871277/Practical-preparations-for-Brexit-a-global-perspective.html>>

David Stone, 'Brexit and IP', (*INTA Daily News*, May 2019)

David Stone and Beverly Potts, 'Declarations of Non-Infringement', (2019) 14 JIPLP 754

David Stone, 'Designs – Know Your Rights and how to Enforce Them', (*Lexology Learn*, November 2019)

<<https://www.lexology.com/learn/video/designs-know-your-rights-and-how-to-enforce-them>>

Presentations by Academic Staff

Robert Burrell, *Patents or Parliament? Intellectual Property and the Culture of Reward in Britain's Industrial Revolution*, CIPIL Seminar Series at the University of Cambridge, United Kingdom (May 2018)

Robert Burrell, participant and speaker at the 11th Trademark Scholars Roundtable at the University of Notre Dame, USA (March 2018)

Robert Burrell, *Advertising and Trade Mark Rights*, University of Hong Kong, Hong Kong (January 2019)

Robert Burrell, participant and speaker at the 12th Trademark Scholars Roundtable at Harvard University, USA (March 2019)

Robert Burrell, *Is the Trade Mark Register Cluttered?* presentation at the University of Melbourne, Australia (October 2019)

Robert Burrell, opening keynote address at the Northern IP Scholars Workshop, University of Sheffield, United Kingdom (October 2019)

Graeme Dinwoodie, *Re-setting the Relationship Between Trademark and Unfair Competition Law*, Annual Congress of ATRIP, USA (August 2019)

Graeme Dinwoodie, *Universalism in International Copyright Law Through the Lens of Marrakesh*, Workshop on Intellectual Property Ordering Beyond Borders, Germany (June 2019)

Graeme Dinwoodie, *Proving Consumer Confusion: A Comparative Perspective*, Conference on Proving IP, USA (May 2019)

Graeme Dinwoodie, *Territoriality in U.S. Trademark Law: Lessons for Europe?*, Trade Mark Law Institute Conference, Netherlands (March 2019)

Graeme Dinwoodie, *Non-Traditional Marks in Europe: Conceptual Lessons From Their Apparent Demise?*, Colloquium on Innovation Law, USA (February 2019)

Graeme Dinwoodie, *Geoblocking and U.S. Copyright Law*, Conference on Intellectual Property in a Globalized Economy: United States Extraterritoriality in International Business, USA (February 2019)

Graeme Dinwoodie, *Article 13 of the Proposed EU Directive on Copyright in The Digital Single Market*, Conference on Comparative Internet Regulation, Loyola Law School, Chicago (February 2019)

Graeme Dinwoodie, *Rogers and the Structure of Trademark Defenses (or Artistic Expression: Does the Ninth Circuit Give a S**t?)*, Conference on Trademark Exceptions and Limitations, Hong Kong (January 2019)

Dev Gangjee, Invited Expert, EUIPO and DG-Agri workshop on Trade Marks and Geographical Indications, Spain (Oct 2018)

Dev Gangjee, *Timeless Signs or Signs of the Times? Reconciling Innovation and Traditional for Geographical Indications*, Innovation Policy Colloquium at New York University, USA (April 2019)

Ansgar Ohly, *Hybrids between Intellectual Property and Unfair Competition Law*, Annual Intellectual Property Lecture at the University of Cambridge, United Kingdom, (March 2019)

Poorna Mysoor, *Implied Licence for Copyright Balance*, Intellectual Property Research Institute of Australia, Australia (March 2019)

Poorna Mysoor, *Contract Law as the Guiding Light for Implying a Copyright Licence*, Hong Kong Commercial and Maritime Law Centre, Hong Kong (February 2019)

Mysoor P, *Searching for Certainty in Implying a Copyright Licence*, 19th Annual Intellectual Property Scholars Conference, USA (August, 2019)

Presentations by Research Fellows

Naomi Hawkins, *Patents and non-invasive prenatal testing: an empirical study*, Society of Legal Scholars Conference 2018, London (September 2018)

Naomi Hawkins, *Carrots or sticks? Data sharing in genomics research*, Intellectual Property Works in Progress Workshop, Exeter (April 2018)

Frederick Mostert, *IP Enforcement Measures, Especially Anti-Piracy*, World Intellectual Property Organization, Switzerland (September 2019)

Frederick Mostert, *Measures in the Digital Environment*, World Intellectual Property Organization Advisory Committee on Enforcement, Switzerland, (September 2019)

Frederick Mostert, *Legal Aspects of Intermediary Responsibility*, World Intellectual Property Organization Inter-Regional Meeting on Voluntary Measures, Malaysia, (June 2019)

Frederick Mostert, *Digital Tools and Measures for Enforcing Copyright on the Internet*, World Intellectual Property Organization Inter-Regional Meeting on Voluntary Measures, Malaysia, (June 2019)

Frederick Mostert, *Looking into the Future*, Alibaba Business & IPR Protection Summit, United Kingdom, (June 2019).

Frederick Mostert, *Internet Regulation and Copyright*, Tsinghua University & Columbia Law School Annual Forum on Cyber Law, China, (May 2019).

Frederick Mostert, *Global Digital Enforcement of IP*, Gothenburg University, Sweden, (February 2019).

Graham J. Reynolds, *Copyright and Archives*, BC Provincial Archives Staff, Canada (14 June 2019).

Graham J. Reynolds, *The (New) Constitutionalization of Intellectual Property: A Canadian Perspective*, Canadian Law and Society Association (CLSA) Annual Conference, Canada (3 June 2019).

Graham J. Reynolds, *Copyright in Data and Databases*, 2018 Intellectual Property Institute of Canada Conference, Canada (11 October 2018)

David Stone, Panellist, Meet The Judges Roundtable, the Netherlands (January 2019)

David Stone, *EU Design Law*, Spain (March 2019)

David Stone, *EU and UK Design Law*, France (March 2019)

David Stone, *The place of knowledge and intention in remedies for infringement of IPRs*, CIPIL Spring Conference, United Kingdom (March 2019)

David Stone, *Evidence in trade mark proceedings: Practical tips from the UKIPO and the High Court*, CITMA Lectures, United Kingdom (September and October 2019)

David Stone, *Avoiding Design Patent Procurement and Enforcement Errors*, INTA Leadership Meeting, USA (November 2019)

David Stone, *Design Portfolio Management*, United Kingdom (December 2019)

Elizabeth Webster, *Working in Industrie 4.0*, Impact of Digitisation and the Future of Work, Conference Australia, (November 2018)

Other Activities and Information of Note

Rochelle Dreyfuss will be the Arthur Goodhart Visiting Professor in Legal Science at University of Cambridge for the academic year 2019/2020.

Dev Gangjee, ECTA Award, Best research paper - professional category, third prize (2018) (For 'From Geography to History' (2017), cited below)