Editorial

This issue of QMJIP is a particular milestone for the team, rounding out the first three volumes of the journal. We want to thank our readers, authors, reviewers and the diverse and exciting community of intellectual property scholarship of which we are a part. And we would also like to thank Edward Elgar for the enormous support in launching and developing something of which the Queen Mary Intellectual Property Research Institute and all the QMJIP team are very proud.

The intriguing thread in this issue is that of intellectual property relationships through value, whether that is through the momentum of competition or the accounting of value in damages. The common ground in defining value is the way in which the relationship to the intellectual property is put to use, both in further innovation and in infringement. Significantly, value is thus generated and protected not only within legal frameworks but also within equitable and normative solutions.

Gustavo Ghidini and Emanuela Arezzo address the prospect of value in their analysis of dynamic competition in software development. Software provides a provocative object for this discussion in that both the object and the culture of the software industry have generated extensive discussion in the relevance and application of intellectual property law. At the same time, the debate over software protection also follows and maps a significant history in intellectual property development more widely. The authors identify patent protection as being increasingly important in software development, and investigate the overlap between patents and copyright in order to consider optimal strategies and normative solutions for enhancing innovation and competition in the software industry.

Phillip Johnson addresses the relationship between equity and law in accounting for value in infringement; that is, value as calculated in the award of an account of profits. He notes that the legal context for remedies and damages is complicated by the Enforcement Directive (2004/48) to which the law is subject (specifically Article 13, which provides for account of profits). The Court of Appeal's decision in *Hollister v Medik Ostomy* [2012] EWCA Civ 1419 is examined here, an example of the lack of clarity in the area of remedies and pursuing an English account of profits, notwithstanding uncertainty as to whether this is compatible with a European perspective. In the event of infringement, value indeed emerges through use in the wider cultural as well as legal sense.

Michel Vivant provides a new perspective upon trade marks with respect to their function in terms not only of origin but also of attraction. Indeed, the author expresses this 'attraction' in language consistent with notions of aesthetics and privilege, where the trade mark is in some sense not only a commercial tool but also a cultural marker of value in both the use and the user. Somewhat controversially, perhaps, the author advocates protection for the function of 'attraction' as a necessary socio-economic development in trade mark policy.

Gwilym Roberts addresses the significant area of patent landscaping from both a practical and conceptual perspective. As the author notes, the language and meaning in this area is unclear and inconsistent, creating a very difficult terrain for all users. Roberts provides an incisive and crucial examination of language and suggests a refined taxonomy.

Welcome to this issue of QMJIP. Value it highly and use it wisely.

Professor Johanna Gibson and Lord Hoffmann
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