Editorial

Intellectual property is often linked to the value of incentive in the context of the motivation to create and innovate. But perhaps less often discussed is the role of intellectual property in the efficacy of commercial incentives for responsible corporate governance.

In this issue of the Queen Mary Journal of Intellectual Property, the authors address this relationship between rules as to property and rules as to behaviour across a range of intellectual property and business.

In ‘Beyond Safe Harbour: Secondary Trademark Liability of Online Auction Sites in China’, Dong Zhu examines the ‘safe harbour’ in online auction sites and the potential negative impact on incentives towards cooperation to combat counterfeits. The author considers the exceptional approach in *Yinian v Taobao*, and the operator’s state of mind, and notes the practical challenges of applying this reasoning in reforming this complex area of trade mark protection.

The ‘promise doctrine’ in Canadian patent law is a controversial example (in fact now held by the Supreme Court of Canada to be ‘unsound’, in *AstraZeneca v Apotex*, 2017 SCC 36) of the relationship between patent law and the incentive to disclose. Further, the doctrine has had a significant impact on intellectual property assets in international investment agreements. Lisa Diependaele, Julian Cockbain and Sigrid Sterckx examine the doctrine in detail in ‘*Eli Lilly v Canada*: The Uncomfortable Liaison between Intellectual Property and International Investment Law’, and foreshadow the Supreme Court through a careful consideration of the role of intellectual property in this investment arbitration case, where investment becomes a route towards a paradoxical challenge to domestic patent law.

Qian Zhan considers the impact of consumers on litigation through the use of survey data in ‘Survey Evidence in China’s Trademark Lawsuits: An Empirical Study’. Undertaking a statistical analysis of trademark infringement cases in China, the research provides important insight into the relationship between consumer data and trade mark litigation, and the incentives to account for consumer perspectives, balanced against the financial and time resources required to obtain them, based on the case outcomes.

Famous or reputation marks in trade mark law, and the broader protection that attends such marks, not only reward success in the marketplace but also arguably provide an incentive to maximize the use of a trade mark in a consistent way that is compatible with better consumer protection and clearer consumer relationships. Joanna Sitko provides a comparative analysis of EU reputation and US famous marks in ‘Trade Marks with a Reputation and Famous Marks: Differences in Approach between the European Union, Poland and the United States in Relation to the Principle of Speciality’. The author notes that the principle of specialty is applied more extensively in the US and analyses the discrepancies in the legal and indeed policy differences in the practical interpretation of reputation and famous marks and the different scope of the relevant ‘public’.

Patent law has an important relationship with commercial research and development (R&D) and is often debated for its role or otherwise in the overall infrastructure for incentives to invest in innovation, as well as incentives for more efficient management of innovation. Tomasz Sierotowicz examines the economics of this supposed relationship in ‘The Economic Aspect of the Efficiency of Patent Activities based

on Case Studies of Leading ICT Enterprises' and investigates whether successful patent activity can be correlated with more efficient R&D.

Bringing together a range of perspectives, this issue's contributions investigate the substantial and important relationship between intellectual property and the broader ethics of corporate governance and economic responsibility in innovation. Incentive is often discussed in terms of innovation, and even in terms of competition. But the role of intellectual property as an incentive to act responsibly and sustainably is an important and perhaps somewhat overlooked dimension. We hope you enjoy these authors' perspectives.

As Ralph Waldo Emerson once said, 'What I need is someone who will make me do what I can'. Or something?

Professor Johanna Gibson
July 2017