

## Annex 3 : Trade Marks Survey – Initial Results

### Sample and Response

- The sample was drawn from the Oxford Firm-Level Intellectual Property (OFLIP) database, a comprehensive database of UK firms (including SMEs). The database uses data on all UK firms over the period 2001 to 2005 and matches data on UK patents, EPO patents, UK trade marks and Community trade marks to these firms.
- The sample included 500 firms with registered trade marks.
- Despite multiple follow-ups (both by e-mail and by phone), the **response rate was very low**. Only 33 businesses accessed the survey, and only 11 completed all relevant questions.<sup>1</sup> This level of participation provides a limited sample and does not provide a reliable basis for extrapolating from the results.
- Over 85% of respondents<sup>2</sup> considered ownership of their own trade marks to be important (to some degree) to their company's success; with 50% considering this to be very important or critical.
- Similarly to the patent survey, responding businesses had had more favourable outcomes in disputes than unfavourable outcomes, which may indicate some self-selection bias.
- No firm had ever had a case in the Patents County Court. Their perception of the Patents County Court on a number of dimensions (pre-trial procedures, hearing procedures, speed, quality of judgment, costs and damages awarded) was overwhelmingly neutral.

### Respondent views on proposed changes

Respondents were asked about the following proposed changes to the Patents County Court:

- a. Limiting recoverable damages to a maximum of £500,000
- b. Capping recoverable costs on judgements related to breach of rights at £50,000
- c. Capping recoverable costs on enquiries as to damages or account of profits at £25,000
- d. Introducing a fast track option for claims of £5,000 - £25,000, in which recoverable costs would be fixed
- e. Introducing a small claims procedure (for claims up to £5,000) with minimal recoverable costs

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<sup>1</sup> The level of attrition is consistent with that expected given the nature of the survey.

<sup>2</sup> In this report, percentages are calculated based on the number of respondents who answered each individual question.

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### Cap on damages at £500,000

- **50% of respondents welcomed or strongly welcomed this proposal;** 50% were neutral; and no firms opposed or strongly opposed this proposal.
- 10% of respondents felt the changes would result in them bringing more cases to the Patents County Court; 60% felt these would have no impact; 30% felt they would bring fewer cases to the PCC.
- 11.1% felt they would defend more cases in the PCC if the changes were implemented; 77.8% felt these would have no impact; 11.1% felt they would defend fewer cases.

### Cap on recoverable costs at £50,000

- **50% of respondents welcomed this proposal;** 50% were neutral; and no firms opposed or strongly opposed this proposal.
- 10% of respondents felt the changes would result in them bringing more cases to the Patents County Court; 40% felt these would have no impact; 50% felt they would bring fewer cases to the PCC.
- 22.2% felt they would defend more cases in the PCC if the changes were implemented; 55.6% felt these would have no impact; 22.2% felt they would defend fewer cases.

### Cap on enquiries as to damages or profits at £25,000

- **44.4% of respondents welcomed this proposal;** 44.4% were neutral; 11.1% strongly opposed the proposal.
- 10% of respondents felt the changes would result in them bringing more cases to the Patents County Court; 40% felt these would have no impact; 50% felt they would bring fewer cases to the PCC.
- 22.2% felt they would defend more cases in the PCC if the changes were implemented; 55.6% felt these would have no impact; 22.2% felt they would defend fewer cases.

### Fast track option

- **77.7% of respondents welcomed or strongly welcomed this proposal;** 22.2% were neutral; no firms opposed or strongly opposed this proposal.
- 40% of respondents felt the changes would result in them bringing more cases to the Patents County Court; 60% felt these would have no impact.
- 44.4% felt they would defend more cases in the PCC if the changes were implemented; 55.6% felt these would have no impact.

## SABIP – Trade Mark Survey Initial Results

### Small claims court

- **80% of respondents welcomed or strongly welcomed this proposal.** 20% were neutral; no firms opposed or strongly opposed this proposal.
- 50% of respondents felt the changes would result in them bringing more cases to the Patents County Court; 50% felt these would have no impact.
- 44.4% felt they would defend more cases in the PCC if the changes were implemented; 55.6% felt these would have no impact.

### Estimation of future demand

- When asked to estimate, if the proposals were implemented, how many cases they would bring to the Patents County Court they would not otherwise have brought, respondents indicated that no extra cases would be brought within the next 5 years, regardless of venue.

### Conclusions

- The **results of SABIP's survey are inconclusive** given the extremely low response rate. This is consistent, however, with other surveys – SMEs are notoriously hard to survey.
- The few respondents to the survey were **supportive of proposed caps on damages or recoverable costs, fast stream and small claims options.** However, the results do not indicate that the demand for these is substantial (no firm indicated that the proposed changes would lead to more cases being brought).
- Trade mark is one of the areas which academics and policy-makers know the least about. SABIP's current work to explore the implications of IP enforcement costs for UK SMEs will be looking at trade marks along with other rights. This research will utilise a variety of methods, including surveys of legal professionals and interviews, which are likely to lead to more conclusive results than a survey alone.