

In February 2022, development work was carried out on the systems that support committees' websites. During this work, a human error was made, resulting in some written submissions to committee inquiries not being transferred to committee teams. This error came to light in April-May 2023. New guidance and processes have now been put in place around development work which should prevent the problem from happening again. This submission was initially made to the International Trade Committee's inquiry into the [UK's trade negotiations with India](#) and, as that Committee has since dissolved, has been published by the Business and Trade Committee.

### **IP Federation response to the House of Commons International Trade Committee Call for Evidence on UK trade negotiations: Agreement with India**

The IP Federation welcomes the opportunity to respond to House of Commons International Trade Committee's call for evidence on UK trade negotiations: Agreement with India. This response reflects our core expertise and focuses primarily on IP aspects of a potential Free Trade Agreement (FTA) with India.

The UK is one of the most innovative and creative nations in the world, ranked in the top four of the *Global Innovation Index 2020*<sup>1</sup>. It also has one of the most well-developed and respected IP systems. IP suffuses every aspect of industry, commerce, and everyday life, and the IPR system is a crucial driver and enabler of progress and prosperity. It is no coincidence that IP provisions are almost universal in trade agreements. Yet IPRs are too often overlooked, treated as second order, or even misunderstood in debates on all these subjects. An example might help explain what IPRs are.

If you are reading this submission on a tablet or smartphone, you are engaging with and benefitting hugely from IPRs. For a start, how your device works - including speed, graphics, connectivity - depends on hundreds of thousands of patents which protect the inventions relating to its component parts and processes. The shape and how it looks, key to many consumer purchasing decisions, are protected by registered designs. Your device will undoubtedly carry a trade mark, which signifies its manufacturer, carries their reputation and is a powerful marketing tool. And the content you consume on that device, be it music, video or text, will be protected by various copyrights. There are other IPRs that arise in more specialist areas; they may be less obvious, but are no less important. One such is the Supplementary Protection Certificate, which plays a key role in the pharmaceutical innovation life cycle.

There are five general principles which the IP Federation believes should apply to all of the UK's trade negotiations, including those with India:

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<sup>1</sup> [https://www.wipo.int/global\\_innovation\\_index/en/2020/](https://www.wipo.int/global_innovation_index/en/2020/)

1. There is a crucial relationship between world-leading innovation and a system of IPRs which is robust, balanced, understood, and enforceable.
2. The Government should have the ambition of exporting the UK's world-class IP system in all its FTAs.
3. Multilateral and bilateral trade agreements both have their place; some issues are better dealt with multilaterally than bilaterally, and vice versa.
4. The value of existing agreements should not be undermined. In this regard, the IP Federation welcomes the Government's previous assurances, especially in relation to the UK's membership of the European Patent Convention.
5. The UK should be active in the World Trade Organization, the World Intellectual Property Organization and other international fora involved in IP policy discussions.

Turning specifically to India, a UK-India FTA that addresses the significant IP concerns of UK businesses could significantly improve the innovative landscape in India and promote access for innovative British products to the Indian market, particularly as the IP system in India is widely regarded as having serious shortcomings. For example, the United States recently maintained India on its Priority Watch List in the "2021 Special 301 Report" of the Office of the United States Trade Representative<sup>2</sup>; and the European Commission expressed concerns in its "Report on the protection and enforcement of intellectual property rights in third countries"<sup>3</sup>.

The US Trade Representative highlights that India remains "one of the world's most challenging major economies with respect to protection and enforcement of IP", commenting specifically that:

"The potential threat of patent revocations, lack of presumption of patent validity, and the narrow patentability criteria under the India Patents Act burden companies across different sectors. Moreover, patent applicants continue to confront costly and time-consuming pre- and post-grant oppositions, long waiting periods to receive patent approval, and excessive reporting requirements. Stakeholders continue to express concerns over vagueness in the interpretation of the India Patents Act".

According to the European Commission Report, India is included as a "Priority 2" country indicating "Serious systemic problems...in the area of IP protection and enforcement...causing significant harm to EU businesses. Compared to the previous report [published December 2019] [India has] made no progress or only limited progress in addressing these concerns." Such concerns include a "high level of formality" and "Restrictive patentability criteria combined with difficulties to enforce patents granted, as well as broad criteria for revoking patents, make effective patent protection difficult in India, notably for sectors where local production is being promoted".

Moreover, the Parliament of India's Department Related Standing Committee on Commerce, in its Report No 161 *Review of the Intellectual Property Rights Regime in India* published in July 2021<sup>4</sup>, was "... of the opinion that a review of IPR policy should be undertaken", and "... that strengthening IPRs in India

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<sup>2</sup> [https://ustr.gov/sites/default/files/files/reports/2021/2021%20Special%20301%20Report%20\(final\).pdf](https://ustr.gov/sites/default/files/files/reports/2021/2021%20Special%20301%20Report%20(final).pdf)

<sup>3</sup> [https://trade.ec.europa.eu/doclib/docs/2021/april/tradoc\\_159553.pdf](https://trade.ec.europa.eu/doclib/docs/2021/april/tradoc_159553.pdf)

<sup>4</sup> [https://rajyasabha.nic.in/rsnew/Committee\\_site/Committee\\_File/ReportFile/13/141/161\\_2021\\_7\\_15.pdf](https://rajyasabha.nic.in/rsnew/Committee_site/Committee_File/ReportFile/13/141/161_2021_7_15.pdf)

would also spur economic development”. This recognition by the Parliament of India, in a report of 144 pages, that various aspects of its country’s IPR policy should be addressed provides an excellent opportunity for the UK Government to raise IP issues in its trade negotiations with the Indian Government.

The experience of IP Federation members is entirely consistent with these reports, with the difficulty in obtaining patents and then being able to enforce them posing significant problems. The Federation wishes to reinforce the gravity of concerns linked to the IP environment in India and strongly encourages the UK Government to continue to engage closely with industry stakeholders to ensure that their needs are adequately captured in the UK’s strategic approach to trade negotiations with India.

The negotiation of a FTA with India provides an outstanding opportunity for the UK Government to prompt major changes in the Indian IP system which will be critical for innovative British companies to succeed in that market, while also being beneficial to Indian innovation and business. IP is an essential foundation for business as it encourages investment and creativity, and IP protection in India should be strengthened to promote the creation of high-quality innovative products. The UK should be confident in the design of its domestic IP rights and connected regimes, such as enforcement mechanisms, and ensure they are respected and adopted in any trade agreement with India. At the same time, suitable exceptions to copyright law that enable the use of high-quality information and data, such as fair use exceptions in India, should be maintained. This will in turn enable innovation in areas such as AI.

The IP Federation believes that improvements in the Indian IP system are necessary, reasonable, and would offer strong support to innovative British industry working in and trading with India. Such improvements would promote access for innovative British products to the Indian market by inhibiting unfair competition from imitative products, the production of which does not involve the cost and risk of investment in innovation and which, while protected by IP in the UK, are not protected by IP in those markets. We therefore welcome that, in its policy paper *UK approach to negotiating a free trade agreement with India*, published on 13 January 2022, the Government’s negotiating objectives recognise that IP issues in India are important.

It is crucial that the UK Government is ambitious in seeking the greatest alignment possible of Indian IP standards with those of the highly respected UK IP system, reducing trade barriers and boosting competitiveness. Failing to do so risks not maximising the benefits to a global Britain, and its ambitions as a science superpower, that can be achieved from an optimal FTA with India.

### ***About the IP Federation***

The IP Federation represents the views of UK industry in intellectual property rights (IPR) policy and practice matters within the UK, Europe and internationally. We believe that a cost effective, high quality IPR framework is a critical component in industry’s present and future successes in the global economy. Our membership of 42 influential IP-intensive companies has wide experience of how IP works in practice to support the growth of technology-driven industry and generate economic benefit. This includes companies which are active in India, both as local manufacturers, with research and development bases in India, and importers to India. Thus, the members of the

IP Federation have extensive knowledge of the UK and Indian markets, and the IP system, as well as being contributors to the UK and Indian economies. Details of the IP Federation membership are given at the end of this submission.

IP Federation  
11 February 2022

## IP Federation members 2022

The IP Federation membership comprises the companies listed below. The UK Confederation of British Industry (CBI), although not a member, is represented on the IP Federation Council, and the Council is supported by a number of leading law firms which attend its meetings as observers. The IP Federation is listed on the joint Transparency Register of the European Parliament and the Commission with identity No. 83549331760-12.

AGCO Ltd  
Airbus  
Arm Ltd  
AstraZeneca plc  
Babcock International Ltd  
BAE Systems plc  
BP p.l.c.  
British Telecommunications plc  
British-American Tobacco Co Ltd  
Canon Europe Ltd.  
Caterpillar U.K. Ltd  
Cummins Ltd.  
Dyson Technology Ltd  
Eisai Europe Limited  
Eli Lilly & Co Ltd  
Ericsson Limited  
GE Healthcare  
GlaxoSmithKline plc  
Hitachi Europe Ltd  
HP Inc UK Limited  
IBM UK Ltd  
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Microsoft Limited  
Mundipharma  
NEC Europe  
Nokia Technologies (UK) Limited  
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Pfizer Ltd  
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Pilkington Group Ltd  
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