

# THREE NEW SQUARE

INTELLECTUAL PROPERTY



**CHARLES BRABIN**

Year of Call: 2013

## PRACTICE AREA

All aspects of Intellectual Property law, including patents, trade marks, passing off, copyright, designs, confidential information and contractual disputes involving intellectual property or technical subject matter.

## EDUCATION AND TRAINING

2016-2017: Pupillage with Miles Copeland, Geoffrey Pritchard, Simon Malynicz and Dominic Hughes

2013-2014: Paralegal at leading London specialist IP firm

2012-2013: BPTC, College of Law

2011-2012: GDL, College of Law

2007-2011: DPhil Biochemistry (Genetics), University of Oxford

2004-2007: BA (Hons) Biological Sciences, First Class, University of Oxford

## BACKGROUND

Prior to being called to the Bar, Charles studied Biological Sciences at undergraduate level, staying on to complete a DPhil in developmental genetics under Prof. Alison Woollard. Charles' research involved using molecular biology, comparative genomics and bioinformatics to elucidate the mechanisms of stem cell development in the nematode worm *Caenorhabditis elegans*.

## CASE EXPERIENCE

Charles' practice is in line with Chambers' specialisms; he has been involved in cases spanning a broad range of IP areas, including patents, copyright, trade marks, passing off and registered and unregistered national and Community designs. Charles has been involved in proceedings in IPEC, the High Court and the Court of Appeal and the UKIPO; subject matter has extended to parallel imports, competition law, jurisdiction and remedies, Norwich Pharmacal relief, customs seizures, the concept of 'image rights' and sound trade marks. In addition to publicly referenced cases, Charles has worked on numerous matters which have not reached court.

### Selected Cases

*Alcatel Lucent v Amazon Digital UK Ltd and ors* (on-going)

Acting for claimant in patent infringement proceedings relating to the provision of streaming video services.

*Heraeus Noblelight v First Light Lamps* [2023] EWHC 1950 (Pat)

Junior counsel acting for Heraeus in High Court patent litigation reaching trial in June 2023, in relation to arc lamps for uses including laser pumping and hair removal.

*NHS Scotland v Warner-Lambert* (settled in summer 2023, shortly before trial)

Junior counsel in damages inquiry arising from cross-undertakings given in the litigation over the second medical use patent for pregabalin: [2021] EWHC 2182 (Ch); [2022] EWHC 189 (Pat); [2022] EWHC 1856 (Ch).

Sound trade mark: '*Intel bong*' (2022)

Sole counsel appearing before UKIPO for Intel, defending the trade mark application against refusal on absolute grounds.

Sound trade mark: '*L&G jingle*' (2022)

Sole counsel appearing before UKIPO for L&G, defending the trade mark application against refusal on absolute grounds.

*Fiberweb v Geofabrics* (settled January 2022, shortly before trial)

Junior counsel acting for Fiberweb in seeking a declaration of non-infringement in relation to their Hydrotex 4 product, a geocomposite railway trackbed liner, following finding of infringement by Fiberweb's Hydrotex 2 product.

*Geofabrics v Fiberweb* [2022] EWHC 2363 (Pat)

Junior counsel acting for Fiberweb in the damages inquiry arising from finding of infringement of Geofabrics's patent by Fiberweb's Hydrotex 2 product.

*International Pipeline Limited v IKUK and ors* (trial vacated July 2022, shortly before trial)

Acting for defendants in proceedings involving allegations of conspiracy, breach of contract, breach of confidence as well as of infringement of patents, copyright and design rights.

'ZÜRICH' Trade Mark Application (2021)

Sole counsel appearing before UKIPO, representing Birkenstock, defending the trade mark application against refusal on absolute grounds.

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*IP Bridge v Huawei (2022)*

Junior counsel acting for IP Bridge in relation to multiple applications within FRAND proceedings.

*Centrix Inc v Kwikbolt Ltd* (trial vacated in July 2021, shortly before trial)

Junior counsel in patent infringement action, acting for the patentee, relating to a system for non-permanently fastening together panels, in particular in the context of the aerospace manufacturing industry.

*Optis v Apple (2021)*

Junior counsel in High Court application relating to US and UK confidentiality regimes and disclosure in the context of patents declared essential to telecommunications standards.

*Conversant v Huawei and ZTE [2020] EWHC 14 (Pat)*

Second junior counsel in High Court trial concerning infringement, validity and essentiality of multiple patents relating to mobile telecoms.

*Conversant v Huawei and ZTE (2020; settled prior to appeal hearing)*

Junior counsel in appeal and cross-appeal of *Conversant v Huawei and ZTE [2020] EWHC 14 (Pat)*.

*Conversant v Apple (2018-2020; settled prior to trial)*

Junior counsel in High Court case concerning infringement and validity of a patent relating to the remote control of electronic devices.

*Huntapac Produce Ltd v Kettle Produce Ltd (2020)*

Sole counsel for Kettle in UKIPO opposition proceedings (see O-258-20).

*Dansac and Hollister v Medik* (settled in 2020, shortly before trial)

Junior counsel in High Court trade mark infringement action relating to parallel importation of medical products, including strike-out/summary judgment application ([2019] EWHC 104 (Ch)) based on the recent CJEU judgment in *Junek v Lohmann & Rauscher*. This is believed to be the first case addressing the implications of this CJEU ruling, which affects the rights of trade mark owners and parallel importers, in particular the relevance of the 'BMS criteria', including the need to give notice.

*Quest v PopSockets* (settled in 2019, shortly before trial)

Junior counsel in High Court patent dispute relating to popular multifunctional accessories for sticking to the back of smartphones.

*'MODERN ROMANCE' Trade Mark (2019)*

Sole counsel in trade mark dispute (see IPO Decision O-226-19) between members of the 1980s Modern Romance pop band, concerning ownership of goodwill and the ability of respective members to register the band's name as a trade mark.

*Kallo v Whole Earth Sweetener Company* (settled in 2019, shortly before trial)

Junior counsel in High Court trade mark and passing off dispute relating to household food products.

*'MINIKICKS' Trade Mark (2018)*

Sole counsel in Trade mark dispute, heard in the IPO (see O-826-18) between MiniKicks and Little Kickers, both of which offer football-based activities for children.

*Huntapac Produce Ltd v Kettle Produce Ltd (2018)*

Sole counsel representing Kettle at the UKIPO in trade mark dispute involving consolidated opposition and cancellation proceedings relating to marks for, *inter alia*, vegetables and vegetable derived-products.

*Glaxo Wellcome UK Ltd (t/a Allen & Hanburys) & Anor v Sandoz Ltd & Anor [2017] EWCA Civ 227*

Pupil involved in trade mark-related appeal dealing with the issues of joint tortfeasance and limitation period.

*Glaxo Wellcome UK Ltd (t/a Allen & Hanburys) & Anor v Sandoz Ltd [2017] EWCA Civ 335*

Pupil involved in trade mark appeal, focussing on the concept of colour marks, specifically colour combination marks and colour marks applied to objects.

*Azumi Ltd v Zuma's Choice Pet Products Ltd [2017] EWHC 609 (IPEC)*

Pupil involved in trade marks case focussed on claims of dilution and tarnishment by the operator of high-end Japanese restaurants against a dog food company and its sole director and shareholder, the latter appearing as a litigant in person at trial. Unjustified threats and the scope of the own name defence were also in issue.

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*Fujifilm Kyowa Kirin Biologics Co Ltd v Abbvie Biotechnology Ltd* [2017] EWHC 395 (Pat)  
Pupil involved in this trial, which followed the Court of Appeal's judgment (*Fujifilm Kyowa Kirin Biologics Co Ltd v Abbvie Biotechnology Ltd* [2017] EWCA Civ 1) which held that 'Arrow declarations' – which state that a product was not novel or was obvious in patent law – can, as a matter of principle, be granted by the courts. It was held that in the circumstances of the case, the declaration sought should be granted. The facts of this case and motivation for the declaratory relief sought were different to those in *Arrow*, hence case has given rise to the term 'Fujifilm Declaration'.

*Edwards Life Sciences v Boston Scientific Scimed* [2017] EWHC 405 (Pat)  
Pupil involved in patent case on the validity and infringement of patents for transcatheter heart valves.

*Merck v Shionogi* [2016] EWHC 2989 (Pat)  
Pupil involved in patent case on the validity and infringement of a patent covering a class of HIV integrase inhibitors, with issues focussed on Markush formulae, insufficiency and plausibility.

## RELEVANT PUBLICATIONS

- Brabin, C. 2023. 'Sounding Off' – Review of industry trends and legal developments and challenges in relation to sonic branding and sound trade marks (<https://www.citma.org.uk/resources/sounding-off-review0323.html>)
- Brabin, C. 2018. The Nagoya Protocol: the legal framework and challenges ahead. RHS Yearbook.
- Brabin, C. 2015. Toxic traces of autumn: will exDNA make it from the forest floor to the pharmacy shelf? Life Sciences Intellectual Property Review. April Issue.
- Brabin, C. 2014. Nagoya Protocol: searching for living gold. Life Sciences Intellectual Property Review. November Issue.
- Brabin, C. 2014. Intellectual property law in the realm of biology - striking the right balance. European Intellectual Property Review. 36:11

## PERSONAL INTERESTS

Beekeeping, sheep husbandry, photography, botany and the natural world in general

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