Patent Treatises and the Emergence of Patent Law

In order for intellectual property law to be capable of exerting control over inventions and stimulating circulation of industrial products, it is necessary to both determine the scope of the law and ensure that it is known and understood by all those involved in its application. The role of the legal writer is therefore paramount in the development of a comprehensive and accessible body of law. The early history of patent law in Britain was subject to frequent criticism from inventors who bemoaned a patent system which was expensive and provided little true protection to inventors in the event that their patent was challenged through the courts. Traditionally there was a tendency amongst writers to attribute these difficulties to the prejudicial attitudes of the judiciary towards monopolies in general, and patentees in particular. This interpretation has been questioned more recently by academics with acknowledgement that the problem was more significant than can simply be explained by a biased court system. One particular feature of this period however, was the lack of any comprehensive guidance on patent law in the legal literature. Monopolies were dealt with fairly briefly in general commentaries on the legal system but no effort was made to expound upon the requirements of the patent system in a manner which would be accessible to the non-legal reader. As Lord Chief Justice Eyre lamented in *Boulton and Watt v Bull*, "Patent rights are no where [sic], that I can find, accurately discussed in our books."[1] The development of the early patent system in Britain was largely a construct of the common law, with the courts clarifying the extent and limitations of the patent protection encompassed in the Statute of Monopolies. The impact of the 19th century treatise writers in supporting this process however, should not be underestimated. This paper will examine the central role which these writers played in helping to develop a coherent body of patent law, thus enshrining both the right of a patentee to control the commercial exploitation of his invention and his ability to protect his interests before the courts.

Dr Barbara Henry

Barbara is a principal lecturer and director of the LLB Programme at the University of Hertfordshire. She completed her PhD on the history of patent law in Britain during the nineteenth century at Queen's University Belfast. Her academic background encompasses degrees in History and Law and this is reflected in her research interests in the fields of patent law, space law and legal history. She teaches in the areas of Equity, public law and intellectual property law.

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[1] (1795) Dav PC 162, 205

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Education

Queen's University Belfast, School of Law

July 2012 DEL (Department of Employment & Learning) Funded PhD
The Development of the Patent System in Britain 1829-1851.
Supervisors: Professor Norma Dawson, Professor Jack Anderson
Examiners: Professor Lionel Bently, Dr David Capper

2006-2008: MA in Legal Science (Qualifying Graduate Law Degree) – 72%

Queen's University Belfast, School of History
2004-2005: MA in British History – 66%

Katholieke Universiteit Leuven, Belgium
2002-2003: MA in European Studies, *magna cum laude*

Trinity College, University of Dublin
1998-2002: BA Single Honours History 2:1

Employment

University of Hertfordshire **September 2012 – Present**

Principal Lecturer / LLB Programme Leader
Module Leader: Equity and Trusts, Intellectual Property (LLM)
Teaching: Constitutional and Administrative Law, Criminal Law, Intellectual Property Law
Supervision: LLM Dissertations

Queen's University Belfast **September 2009 – June 2012**

Teaching Assistant: Equity, Constitutional Law and Criminal Law.

Research

Current Research
The Development of the Patent System in Britain 1829-1851 – My PhD research examined the gradual creation of a more effective system of patent law in Britain during the early to mid nineteenth century. In the earlier part of this period, patent law was almost completely a construct of the courts and much of my work focused on examining case law and early patent treatises to gain a clearer picture of how the law was understood and applied by both the legal system and patentees themselves. The second part of the thesis concentrated on the beginnings of legislative reform in the 1830s that finally led to the Patent Law Amendment Act of 1852. This Act was the first major attempt by

Parliament to provide a coherent system of patent protection which would meet the needs of both inventors and the general public. I am preparing an article based on the first two chapters of my thesis for publication but, as a chronological study of a defined period in the history of patent law in Britain, my longer term plan is to extend my thesis to include the period after the 1852 Act and to publish the work as a monograph which I hope would be of interest to both lawyers and historians.

During the past year, I have been developing my research interest in space law, considering the issues of property rights and sovereignty.

Articles in Progress

Jurisdictional Boundaries of Prior Use within Britain: An analysis of the House of Lords' judgments in *Roebuck v Stirling* (1774) and *Brown v Annandale* (1842).

Testamentary Freedom – Response to *Ilott v Mitson.*

Conference Papers

July 2015: International Society for the History and Theory of Intellectual Property, University of Pennsylvania
'Jurisdictional Boundaries of Prior Use within Britain: An analysis of the House of Lords' judgments in *Roebuck v Stirling* (1774) and *Brown v Annandale* (1842)'

May 2011: School of Law Postgraduate Research Conference, Queen's University Belfast
'1830s – The Beginnings of Legislative Reform of the Patent System in Britain'

April 2011: *International Graduate Legal Research Conference*, King's College London
'19th Century Patent Law in Britain – The Case for Judicial Prejudice Against Patentees'

June 2010: School of Law Postgraduate Research Conference, Queen's University Belfast
'Development of the British Patent System in the 19th Century: Case Law 1800-1829'

Referees

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