D YOUNG & CO PATENT NEWSLETTER no.114

August 2026
In this issue:

Made in space
The future of additive manufacturing?

Full Story Page 02

Editorial

The rapid pace of innovation across space and agritech continues to capture the attention of our clients and industry alike. As emerging technologies find new and diverse applications, the legal and commercial landscape evolves alongside them.

In this edition, we examine topics ranging from in-space manufacturing and UPC case law to recent developments in standard essential patents. We hope you find this newsletter both useful and thought-provoking.

Anthony Albutt, Editor

Events

IAM Live: SEP Summit Global 2026
09-10 September 2026, London UK
Attending: David Al-Khalili & Jonathan DeVile.

CIPA Congress 2026: Sustainability & IP
15 September 2026, Manchester UK
Attending: Andrew Cockerell.

ESA Industry Space Days 2026
15-17 September 2026, The Netherlands
Anthony Albutt, Molly Guy-Hickson, Ben Hunter, Robert Kelly and William Smith will be exhibiting/speaking.

Life Sciences Patent Network LSPN Europe 2026
21-23 September 2026, Basel Switzerland
Attending: Tamara Milton.

World Agri-Tech
22-23 September 2026, London UK
D Young & Co is sponsoring this event, with Tom Pagdin hosting a roundtable session.

IPO Annual Meeting 2026
27-29 September 2026, Toronto Canada
Attending: Andrew Cockerell.

www.dyoung.com/events

Subscriptions

Email subscriptions / mailing preferences:
subscriptions@dyoung.com

Read online and view previous issues:
www.dyoung.com/newsletters

Our privacy policy is published at:
www.dyoung.com/privacy

Follow us

LinkedIn: **dycip.com/linkedin**
Twitter: **@dyoungip**

Space tech / 3D printing

Made in space
The future of additive manufacturing?

This article looks at how additive manufacturing could support future space missions, from on-demand repairs and reduced launch mass to the construction of larger structures beyond Earth. It also considers the technical challenges of manufacturing in microgravity and, importantly, what the emerging patent landscape means for companies developing technologies in this sector. As in-space manufacturing moves from experimental demonstrations towards commercial application, understanding where patent protection may add value will be key for innovators looking to secure a strong position in the growing space economy.

Why in-space manufacturing matters for future missions

Every kilogram sent into orbit comes at considerable cost. Although launch costs have fallen an estimated 96% since 1960, transporting materials into space remains one of the greatest barriers to long-term exploration and commercialisation. Traditionally, every tool, spare part and structural component required for a mission has had to be designed, manufactured and launched from Earth, placing huge financial and logistical burden on mission planning.

As human activity in space expands beyond the International Space Station (ISS) and Tiangong Space Station (TSS) and towards lunar bases and eventually crewed missions to Mars, this approach becomes increasingly impractical. Instead of transporting everything required from Earth, future spacecraft and colonies may manufacture many of the components they need on demand. Additive manufacturing, more commonly known as 3D printing, is seen as being a key enabling technology for this shift. What was once science fiction is rapidly becoming a focus of research and commercial development.

What is additive manufacturing in space?

Additive manufacturing builds components layer by layer from a digital design using a raw material, such as a thermoplastic or metal. The technology is already widely used on Earth to produce complex components with minimal material waste, making it particularly attractive for space applications where every kilogram of payload is valuable.

Why manufacture in space?

Aside from the cost, long-duration space missions place significant demands on logistics and supply chains. While the ISS operates only around 400 km above Earth, delivering replacement equipment still requires dedicated launch capacity, extensive planning and significant risk. For future lunar outposts and Mars missions, resupply may be infrequent or impractical.

At the same time, launch vehicles impose strict limits on the mass and volume of payloads. Spacecraft designers must carefully balance the need for spare parts, scientific equipment and life-support systems within these constraints. Payload capacity is therefore a scarce resource.

As governments and commercial operators pursue longer missions and more ambitious infrastructure projects, reducing reliance on Earth-based supply chains is becoming an increasingly important objective. This has driven growing interest in technologies capable of manufacturing parts, tools and structures directly in space.

Reduced launch mass: rather than launching large inventories of spare components, spacecraft could carry raw printing materials and manufacture replacement parts only when required. Future systems may also recycle waste plastic into new printing feedstock, further reducing dependence on Earth-based resupply.

On-demand repairs: the ability to manufacture replacement parts during a mission could significantly improve operational resilience. Instead of waiting for a resupply mission, astronauts may be able to print replacement components or bespoke tools to address unexpected maintenance tasks.

Larger space structures: manufacturing directly in orbit could enable structures that are simply too large to launch from Earth. Redwire's Archinaut programme, for example, aims to use robotic additive manufacturing to produce large truss structures and other spacecraft components after launch that ordinarily would have to fit into the launch vehicle.

Useful links

Oxford Academic, PNAS NEXUS, From Sputnik to Starship - Estimating the experience curve of space launch technology: dycip.com/space-launch-tech-curve

ESA, Advanced Manufacturing: dycip.com/esa-advanced-manufacturing

ESA, 3D-printed metal - unlocking crew autonomy: dycip.com/esa-3d-printed-metal

NASA, Additive Manufacturing: dycip.com/esa-additive-manufacturing

Redwire, Additive Manufacturing Facility: 3D Printing the Future in Space: dycip.com/redwire-amf

Building beyond Earth: researchers are investigating the use of local resources such as lunar regolith to manufacture landing pads, radiation shielding and habitats. Known as in-situ resource utilisation (ISRU), this approach could reduce the amount of construction material that must be launched from Earth and support future lunar exploration.

While many of the benefits of in-space manufacturing relate to logistics, the unique conditions of the space environment can also enable entirely new manufacturing capabilities. Over time, we may see this impact additive manufacturing specifically.

Improved material properties: microgravity can enable the manufacture of materials with properties that are difficult or impossible to achieve on Earth. One example is ZBLAN, a heavy metal fluoride glass used to produce optical fibres. On Earth, gravity-driven convection during manufacture can lead to crystallisation and other defects that increase signal loss. In microgravity, these effects are significantly reduced, allowing higher-quality fibres to be produced with improved optical performance.

Container-less processing: microgravity also enables container-less processing, in which materials are melted and solidified without contacting a container. On Earth, molten materials typically require a crucible, which can introduce impurities or trigger unwanted crystallisation. In space, electromagnetic, electrostatic or acoustic levitation can suspend the material during processing, reducing contamination and enabling the production of higher-purity metals, glasses and other advanced materials with reduced impurities or changed properties.

Engineering challenges of additive manufacturing in microgravity

Adapting terrestrial manufacturing processes for microgravity presents significant engineering challenges.

One of the most fundamental differences is the behaviour of molten material. On Earth, buoyancy-driven thermal convection redistributes heat within the melt pool and influences solidification. In microgravity, these convection currents are largely absent, while surface tension and capillary forces become dominant. This alters melt pool dynamics, droplet formation, wetting and layer adhesion, thereby affecting the microstructure and mechanical properties of printed components. As a result, manufacturing processes developed for Earth cannot simply be transferred to space.

Thermal management also becomes more challenging. Without atmospheric convection, heat is removed primarily through thermal conduction and radiation, leading to different cooling rates and temperature gradients. Careful control of heat transfer is essential to minimise stresses, distortion and defects in printed parts.

Material handling presents further difficulties, particularly for metal additive manufacturing. Loose powders are difficult to contain and distribute in microgravity, making process stability and contamination control more challenging. Consequently, alternative approaches such as wire-fed systems, together with advanced process monitoring and autonomous control, are being developed to improve the reliability of in-space manufacture.

Latest advances in in-space additive manufacturing

Several organisations have already demonstrated important milestones towards manufacturing beyond Earth.

For example, the feasibility of the technology was first demonstrated in 2014 aboard the ISS, where a NASA astronaut used Redwire's printer to print an extruder faceplate for the printer itself.

Since then, the Redwire additive manufacturing facility (AMF) has been permanently installed on the ISS, which supports printing using multiple aerospace-grade polymers. The AMF is a commercial platform, and any organisation or institution can purchase print time. Most recently, ESA in collaboration with Airbus have successfully been testing the first metal 3D printer aboard the ISS.

These projects illustrate a transition from printing simple replacement parts towards a broader ambition for manufacturing more complex components and structures beyond Earth.

Patent trends and outlook

Although manufacturing in space remains at an early stage of development, progress over the past decade has been significant. The growing interest in this technology is reflected in both scientific research and patent activity. According to the World Intellectual Property Organization (WIPO), scientific publications relating to additive manufacturing in space have significantly increased since 2016, while the number of published patent families quadrupled between 2014 and 2023. Although patenting activity remains modest compared with more established manufacturing technologies, the rapid increase suggests that the field is moving from experimental research towards commercial deployment.

Key patent considerations for companies developing space manufacturing tech

As commercial activity in space expands, protecting innovation through patents is likely to become increasingly important. Indeed, the greatest value may lie not in the printer or printed component, but in the enabling technologies that make reliable production possible, particularly where innovations span multiple disciplines or have applications across both terrestrial and space-based manufacturing. For example, competitive advantage may instead lie in the autonomous control systems, qualification methods, process monitoring, digital manufacturing workflows and materials technologies that enable reliable manufacture in the space environment. Patent strategies should therefore focus on where innovation truly resides, provide suitable protection for a digital supply chain, and support dual use on Earth and space by providing in-space examples and avoiding unnecessarily limiting claims to Earth-specific operating conditions.

Companies developing enabling technologies should therefore consider their intellectual property strategy at an early stage. Those that establish strong patent positions around key technologies will be well-placed to benefit from the continued growth of the emerging space economy.

Author:
William Smith

The future of farming
Global patent trends in digital agriculture

Useful links
EPO, "Digital agriculture Towards sustainable food security", September 2025: dycip.com/epo-digital-agriculture

Related article
Precision farming: the patents behind Clarkson's Farm: dycip.com/precision-farming

By 2050, the world will need to produce roughly 70% more food than it did in 2009, on a planet with less spare land, less predictable weather, and less patience for the environmental cost of getting there. Consumer demand is shifting toward more sustainably and traceably produced food. Supply chains that looked resilient a decade ago have been tested repeatedly by pandemics, war and extreme weather, and political instability keeps rewriting the map of where food can reliably be grown, moved and sold.

Digital agriculture is one of the clearest technological responses to these pressures, and one of the fastest-growing areas of patent filing anywhere in the world. In 2025, the European Patent Office (EPO) published a technology insight report analysing exactly where that innovation is happening, who is driving it, and what it signals for anyone building or defending an IP position in the sector.

What is digital agriculture, and what is being protected?

The report structures the technology into four groups: crop agriculture (soil preparation, sowing, harvesting, post-harvest handling, forestry), artificial growing conditions (greenhouses, hydroponics and other controlled environments), livestock (herd management, automated milking) and supporting technologies such as precision irrigation, pest control and climate modification.

Common to all four are the same underlying technology areas:

1. sensors and imaging that measure soil, plant and animal conditions in real time;
2. AI and data analytics that turn that data into agronomic decisions;
3. robotics and autonomous machinery that execute those decisions; and
4. drones providing aerial monitoring at scale.

Two things stand out in the breakdown. First, filing volume doesn't track filing growth. Animal husbandry is the single largest category, making up over 23% of all filings, but the fastest growing cluster is plant agriculture: soil working, seeding and fertilising, harvesting, spoilage reduction and forestry combined. This cluster has grown roughly sevenfold in patent families since 2000, its growth rate more than doubling from 6% between 2000 and 2012, to 13% between 2012 and 2022. It is now increasing the average to approximately 9.4%.

Second, within each area the report tracks which specific digital technology is driving the filings. Sensing and imaging hold by far the largest share, forming the foundational layer that nearly every other invention builds on, and rising from roughly 600 international patent families a year in 2013 to over 1,300 by 2022. Treatment and automation is a clear second and growing fast. Data and artificial intelligence filings are smaller in volume but accelerating sharply since around 2018, recently overtaking environmental aspect technologies in annual filings for the first time. This is a sign that the AI and drone claim space, while still small, is where the competitive landscape is least settled.

Who is filing, and where?

Historically, EPO member states have been the largest source of applicants, and Europe still hosts the deepest supporting ecosystem, with nearly 320 startups and universities active in digital agriculture in EPO member states. But the growth curve is shifting eastward: Asian applicants have posted the fastest growth, at over 13% annually, overtaking North America around 2020. Latin America, led by Brazil and Mexico, is close behind at nearly 11%.

European companies innovating in this space should consider extending protection into these regions. Securing domestic protection is important, but these international markets increasingly hold the commercial value, meaning patent protection there matters just as much.

Filing activity is also becoming increasingly corporate. Rather than individual or academics, companies accounted for 88% of patent families by 2022, up from a much lower share pre 2012, and their own filing rate doubled from 5% to 10% across that period.

This is a clear sign that businesses see real commercial value in these innovations, and is a strong reason to build a diverse patent portfolio robust enough to withstand third party scrutiny.

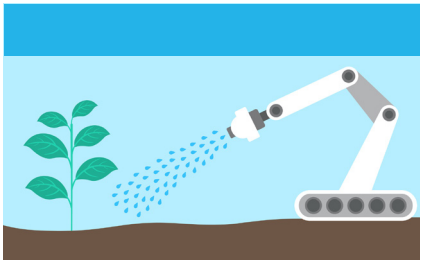
The bigger picture

The EPO frames all this against a pressing need: feeding a global population expected to exceed ten billion by 2050, without a proportionate increase in cultivated land, while reducing water use, chemical inputs and emissions. That explains why patenting has accelerated so sharply since 2012, and why the pace shows no sign of slowing.

For businesses in digital agriculture, the message is straightforward. This is now a crowded, fast moving and increasingly global filing landscape, and a defensible IP position depends on getting both the drafting and the jurisdictional strategy right from the outset.

Author:
Ben Hunter

Related article
D Young & Co, "Precision farming: the patents behind Clarkson's Farm", 07 July 2026.



From Diddly Squat to data-driven farming, agritech innovation is reshaping how land is managed and protected.

Ben Hunter takes a look at the latest precision farming tools featured in Clarkson's Farm, and highlights the importance of establishing a proactive, sophisticated European patent strategy early to help safeguard smart farming technology: *dycip.com/precision-farming*

How far does UPC Local Division jurisdiction extend? Sinocare v Abbott Diabetes Care clarifies non-European manufacturer risk

Case details at a glance
Jurisdiction: UPC
Decision level: Court of Appeal
Parties: Sinocare Inc A Menarini Diagnostics srl v Abbott Diabetes Care Inc
Citation: UPC_CoA_899/2025
Date: 30 March 2026
Decision: dycip.com/upc-coa-899-2025

The Unified Patent Court (UPC) Court of Appeal upheld The Hague Local Division's decision to award a preliminary injunction preventing the Chinese manufacturer Sinocare, and its European distribution partner Menarini Diagnostics, from selling its continuous glucose monitoring (CGM) device "GlucoMen iCan o3" in UPC contracting member states.

This decision notably affirmed that, despite Sinocare's manufacturing activity being based entirely in China, its involvement in marketing and preparing for sale in Europe brought them into the jurisdiction of the Local Division in the Hague.

The case is also notable for its decisions on broadly worded injunctions and expedience in applying for provisional measures.

Not discussed here, the case also covers the dismissal by the UPC of alleged procedural errors that are immaterial, and the inadmissibility of arguments raised for the first time at appeal.

Jurisdiction

Joint appellants Sinocare and Menarini argued that the Local Division did not have jurisdiction and competence with respect to the Chinese-based manufacturer Sinocare.

However, the Court of Appeal disagreed, due to Sinocare's involvement in marketing and preparation for sale in Europe, stating: "the role of [Sinocare] was not merely that of a China based manufacturer having a "standard supplier-distributor relationship" with [Menarini] without any involvement in Europe."

In justifying this view, the court cited Sinocare's "iCan" branding being present on the packaging and advertising materials, its listing as the manufacturer on both the packaging and the EUDAMED database, and its involvement in obtaining CE certification required for sale in Europe and affixing it to products.

The court held that this resulted in a "likelihood of damage to occur" in UPC member states, and therefore that the Local Division was correct to accept jurisdiction with respect to Sinocare.

This clearly signals to non-European manufacturers that the UPC can extend its jurisdiction to respond to acts including preparation for entering the European market, and even mere indicators of involvement in the infringing acts (for example, branding, recognition of manufacture).

Of note, Menarini also contested the jurisdiction of the Local Division with respect to its activities, but this objection was deemed inadmissible as it had not been raised in the first instance.

Expedience

The appellants also argued that there was unreasonable delay in Abbott's application for provisional measures (the application). The appellants suggested that Abbott should have been aware of the GlucoMen iCan product entering the European market from the public announcement on 03 December 2024, whereas the application was only filed on 04 July 2025.

The Court of Appeal dismissed this argument on several grounds. First, the patent encompassing the GlucoMen iCan product had only been granted a month prior to the application, inherently demonstrating Abbott's urgency.

Further, the court acknowledged the preparatory work done by Abbott prior to grant, which involved analysis of ordered samples to determine whether infringement had occurred. The court agreed with Abbott in this regard that the analysis could not have been performed before the product was made available in Europe.

In this case the UPC's assessment of expedience was not particularly strict, given that the mere advertisement of a product entering the European market is not enough to start the clock ticking for the assessment of expedience, and that allowing time for analysis of infringing goods constitutes a reasonable delay prior to filing.

This is in contrast to the court's later decision UPC_CoA_19/2026, in which the requirement for urgency was applied strictly. However, unlike the present case, the applicant had not adequately substantiated why there had been a delay in applying for provisional measures,.

Broad injunctions

The appellants also argued that the preliminary injunction issued by the Local Division covered not only the GlucoMen iCan product, but also the Sinocare iCan i3 product which had been on the European market since October 2023.

At the oral hearing, Abbott clarified that despite the wording of the injunction, the iCan i3 was not the intended target of the injunction, reflecting the absence of the iCan i3 in any of Abbott's prior submissions.

However, rather than amend the wording of the injunction to narrow its scope, the Court of Appeal merely stated that given Abbott's statement, the iCan i3 was not encompassed by the injunction despite its broad wording.

In explaining the rationale behind declining to amend the injunction, it cited the benefits of maintaining a broad injunction in preventing the circumvention of the injunction through minor modifications to the infringing product.

This demonstrates that even when the wording of the injunction appears overly broad, the UPC favours an approach that maintains its broad scope, while effectively issuing disclaimers to prevent unintended products from being targeted.

What are the practical implications of UPC-COA-0000899/2025?

This case notably serves to warn operators worldwide that even minor involvement in European infringing activities can fall within the jurisdiction of UPC Local Divisions. It also shows that the UPC's assessment of unreasonable delay is not strict if adequate reasoning can be shown, and demonstrates the UPC's preference for broadly worded injunctions, caveated by disclaimers where necessary.

Author:
Chris Sharrock

G1/26 referral
Relevance of claim interpretation (G1/24) to the assessment of added subject-matter

Since G1/24 on claim interpretation was issued, there has been significant debate about what "consulting the description and drawings" may actually mean for claim interpretation. This debate has now widened, with a referral to the European Patent Office (EPO) Enlarged Board of Appeal asking how the description is to be consulted in the assessment of alleged added subject-matter in claims.

Background

The EPO is renowned for its stringent approach to basis for claim amendments with its "gold standard" test being what a skilled person would derive directly and unambiguously, using common general knowledge, and seen objectively and relative to the date of filing, from the description as a whole; such that after amendment the skilled person may not be presented with new technical information. This test necessarily requires consulting the description at some level.

> In the now seminal decision G1/24, the Enlarged Board of Appeal held that: "The description and drawings shall always be consulted to interpret the claims when assessing the patentability of an invention under Articles 52 to 57 EPC…".

There have been many decisions subsequent to G1/24 that provide some guidance on how the consultation of the description should be applied to claim interpretation.

In our related article "*Claim interpretation: emerging trends on what 'consulting the description/drawings' in G1/24 may mean*" we discuss a selection of the decisions in which Boards have held that consulting the description generally does not mean that a claim can be construed more narrowly than the literal wording of the claim, and in our connected article "*G1/24 and claim interpretation: consulting the description/ drawings may broaden a claim*" we review several diverging decisions in which Boards have held that the description may be used to broaden the meaning of a claim beyond its literal reading. However, notably, G1/24 did not discuss how the description should be consulted in the context of added subject-matter. This is now considered in the recent referral.

T0873/24

G1/26 is a referral from T0873/24, an appeal concerning European patent EP3587104. The claims granted in EP3587104 relate to pre-coated steel strips wherein the base steel comprises various components by weight percent and the key issue concerns whether the omission of units from the feature "the ratio of titanium to nitrogen is in excess of 3.42" in claim 1 adds subject-matter.

The Opposition Division had maintained the patent in an amended form and held that, in view of the claims as a whole, the use of the unit "weight percentage" for the amounts of titanium and nitrogen when calculating the ratio was the only possible interpretation, and that this was confirmed by the description.

Unsurprisingly, the patentee maintained this position during the appeal, additionally arguing that the use of weight percentage was in accordance with standard practice. Conversely, the opponent argued that the ratio feature was not limited to a weight ratio but encompassed other options, such as molar ratio. This alternative interpretation is technically sensible. The Opponent further asserted that the standard practice of using weight percentages could not be relied upon to meet the requirements of direct and unambiguous disclosure.

In its interlocutory decision, the Board found that the case hinges on the extent to which information in the description may influence the interpretation of claim 1. In connection to this, the Board considered that there are three divergent approaches in the case law applying G1/24 as to how the description is to be consulted in the assessment of added subject-matter and that the approach taken would lead to different outcomes when applied to this case.

In the first line of case law, the description is consulted only to define the skilled person and establish common general knowledge. Under this approach, the board concluded that claim 1 would be deemed to add subject-matter as the skilled person would not be able to determine from the wording of the claim which kind of ratio is being referred to.

The second approach requires consulting the specification in order to exclude claim interpretations which are incompatible with the technical context provided by the specification such there is no broadening or narrowing of claims based on the description. Following this line of case law, the Board concluded that claim 1 would be deemed to add subject-matter because interpreting the open ratio as a weight ratio would be a restriction, since interpretating the open ratio as a molar ratio cannot be excluded as an interpretation that is incompatible with the general technical context provided by the specification.

The third line of case law requires a holistic approach, in which the claims and description are to be read as a whole (a unitary process) in order to derive the meaning a skilled person would attribute to terms used in the claim. This approach permits a broadening and/or narrowing of the claim interpretation in view of the specification and aligns with the approach adopted by the UPC. Under this approach, the Board concluded that claim 1 would be deemed not to add subject-matter because the ratio of titanium to nitrogen is only mentioned in the context of a weight ratio in the specification and, thus, when read in the context of the description claim 1 is to be interpreted more narrowly than the claim alone would suggest.

In view of this diverging case law, the Board

Related articles

Claim interpretation: emerging trends on what "consulting the description/ drawings" in G1/24 may mean: dycip.com/g124-claim-interpretation-consult

G1/24 and claim interpretation: consulting the description/drawings may broaden a claim: dycip.com/g124-claim-description

Case details at a glance

Jurisdiction: EPO
Decision level: Enlarged Board of Appeal
Parties: Philip Morris Products SA (applicant) and Yunnan Tobacco International Co Ltd (opponent)
Citation: G1/24
Date: 18 June 2025
Decision: dycip.com/epo-g1-24

Jurisdiction: EPO
Decision level: Technical Board of Appeal
Parties: ArcelorMittal (applicant) and POSCO (opponent)
Citation: T 0873/24
Date: 03 February 2026
Decision: dycip.com/epo-t0873-24

referred three questions to the Enlarged Board of Appeal, with the first question relating to a procedural point concerning when a Board is permitted to make referrals.

Questions referred to the Enlarged Board of Appeal

1. May a decision be considered to be "required" for the purposes of Article 112(1) EPC, if the referring Board demonstrates that the point of law in question arises out of the context of the case pending before it and, in the circumstances of the proceedings, it is reasonable for the Board to examine it and decide on it next?

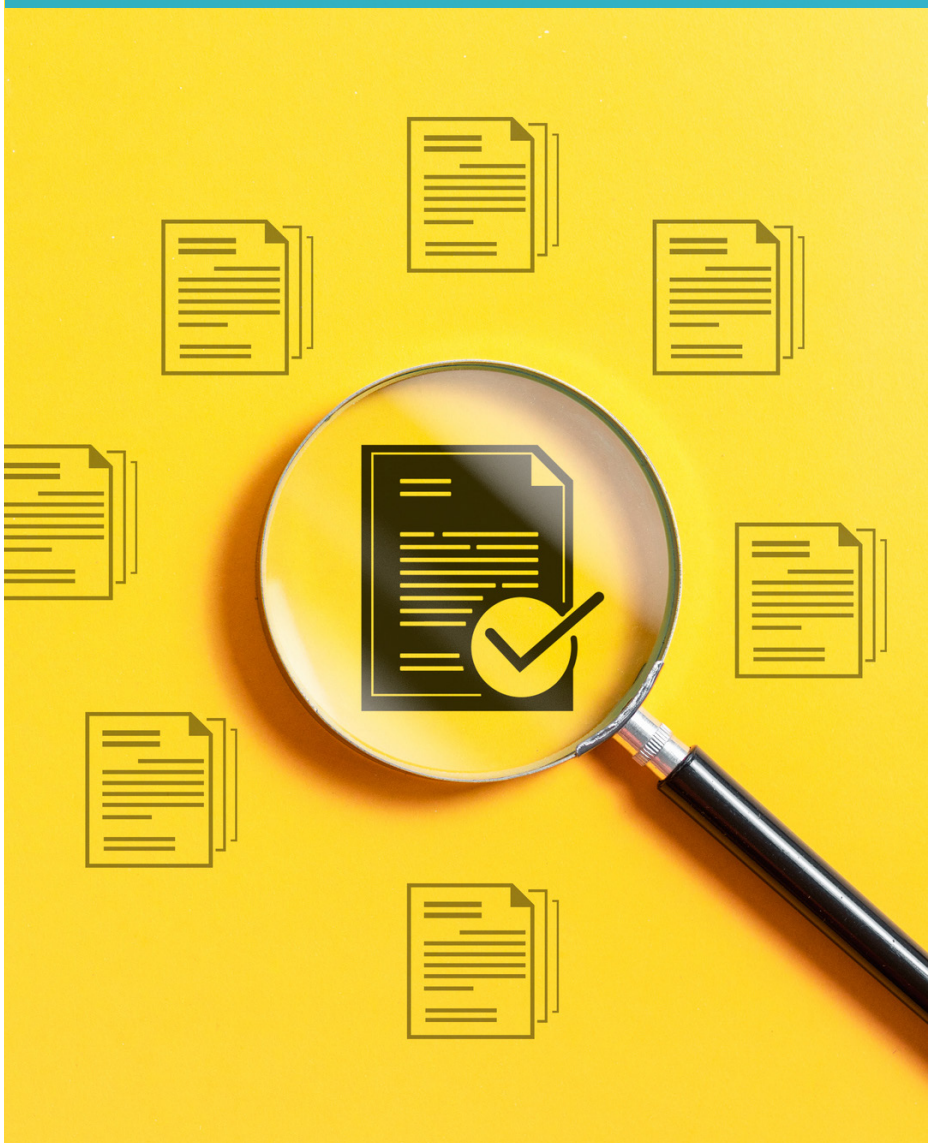
2.(a) Does the fact that the claims are the starting point and the basis for assessing the patentability of an invention generally preclude a feature which is only disclosed in the description or the drawings of a patent from being read into the meaning of a granted claim, in particular if this leads to a restrictive reading of terms used in the claim?

2.(b) If the answer to question 2.(a) is "no", is claim interpretation the result of both reading the claims and consulting the description and drawings as a unitary process and does the claim being the starting point and the basis for assessing the patentability rule out only those interpretations which can be derived from the patent as a whole but would clearly contradict the general technical understanding of the terms used in the claim?

3.(a) When assessing compliance with Article 123(2) EPC, must a term used in a claim be assessed against all interpretations that make technical sense to the skilled reader on the basis of the claim alone?

3.(b) If the answer to question 3.(a) is "no", is it sufficient that only the interpretations of the subject-matter of the claim established against the background of the patent specification as a whole are directly and unambiguously derivable from the application as filed?

G1/26 is a referral from T0873/24, an appeal concerning European patent EP3587104



Final comments

It remains to be seen whether the Enlarged Board of Appeal will accept the referral. If it does accept the referral, then the questions may be modified by the Enlarged Board of Appeal before they are answered.

In the meantime, the EPO has already confirmed that it will continue examination and opposition proceedings while referral G 1/26 is pending and that Examining and Opposition Divisions will continue to apply the practice outlined in the EPO guidelines.

Given the importance of this case on claim interpretation from the perspective of added subject-matter, this case is certainly one to watch.

Author:
Stephanie Wroe

UPC time limits
When procedural deadlines can be extended

Case details at a glance

Edwards Lifesciences: ORD_55287/2024
Adeia v Disney: UPC_CFI_665/2024
Shenzhen v Ericsson: UPC_CFI_850/2026
DexCom: ORD_61355/2024
Optopol v Topcon: UPC_CoA_56/2026
Valeo v Magna: UPC_CFI_459/2024
Maxeon v Aiko: UPC_CFI_336/2024
Orbisk: ORD_45347/2024
Snowpixie: ORD_68006/2024

The Rules of Procedure of the Unified Patent Court (UPC) allow for judges of the court to use their discretion in granting extensions for almost all time periods. Requests for extensions may often not be granted by the UPC, and therefore we take a look at some example decisions to help understand the circumstances which may lead to a successful request.

Rule 9.3 & 9.4 of the Rules of Procedure

The power of the court to extend, or shorten, a time limit in response to a reasoned request of a party is provided by Rule 9.3 of the Rules of Procedure (RoP) of the UPC.

Rule 9.3 RoP even allows for retrospective extension of a time limit and does not set a deadline for when such a retrospective request should be submitted.

> Rule 9.3 RoP is applicable to all time limits, except for a limited set of time periods, including the time limit for filing a statement of appeal, identified in Rule 9.4 RoP. Importantly, however, Rule 9.4 RoP does not prevent the filing of a reasoned request to extend the time period for filing the statement of **grounds** of appeal.

General principles

As set out in Edwards v Meril (ORD_55287/2024), "the court must account for the multiple purposes served by procedural deadlines; to ensure expeditious decisions, to safeguard the principle of fair trial, to protect the judicial impartiality, and to guarantee legal certainty by setting specific timeframes for procedural steps". The Edward v Meril decision also notes that the court should bear in mind that "it must be affirmed that the power to extend the time limit should only be used with caution and only in justified exceptional cases".

What circumstances may lead to a successful extension request at the UPC?

The following paragraphs identify a number of reasons for which the UPC have granted extensions to time limits.

Agreement of the parties

The apparent simplest justification for an extension to a time period is by agreement between all parties to a case. For example, in Adeia v Disney (ORD_5020/2025) and Shenzhen Transsion v Ericsson (UPC_CFI_850/2026) agreements were made between parties to harmonise the deadlines for multiple defendants to provide their statements of defence with counterclaims for revocation.

Fair treatment of each party

Agreeing an extension to a time period with a party could also have knock-on effects. In DexCom v Abbott (ORD_61355/2024) the UPC granted an extension for Dexcom stating it was "justified on the grounds of fairness and equity", even though Abbott did not consent to the extension. This was because Abbott had previously obtained a similar extension with DexCom's consent.

Hence, such an order suggests that it may be advantageous for a party to agree to another party's request for an extension, provided doing so does not disadvantage their case, to thereby set up a favourable assessment of any potential future request of their own.

Genuine mistake

The UPC may also be willing to grant extensions where a deadline has been missed due to a mistake on the part of a party.

For example, in Optopol v Topcon (UPC_ CoA_56/2026), an extension to a time limit was retrospectively extended after a human error involving the incorrect noting of the prescribed time period in a system on which a representative relied. It should be noted however that in this case, it was considered that the granting of the extension would not cause any delay in the proceedings.

Importantly, in contrast to re-establishment of rights under Rule 320 RoP, there is no requirement under Rule 9.3 RoP for a retrospective request for extension of a time limit to contain evidence for due care having been taken, nor for such a request to contain affidavits from all persons involved in the non-observance of the time-limit.

Holidays

In general, the UPC considers that the statutory time limits already take into account all relevant circumstances of a typical case, such as workload, possible holidays and holiday planning (see Valeo v Magna (UPC_CFI_459/2024)). However, there have been successful requests for extensions relating to either national holidays or representative holidays.

For example, in Maxeon v Aiko (UPC_CFI_336/2024) an extension could not be justified on the basis that the statutory time period encompassed Christmas, however the combination of Christmas (affecting both the representatives and the defendant) followed by Chinese New Year (affecting the parent company of the defendant) meant that there was a significant period of time in which parties weren't available. An extension of time was therefore granted, though the UPC considered that only a single week extension was justifiable.

Somewhat similarly, in Orbisk v Winnow (ORD_45347/2024), an extension of one week was granted to "give a few extra days after the summer holidays have ended" for a reply to a request to produce evidence under Rule 190 RoP.

Case details at a glance
Arm v ICPillar: ORD_40335/2024

Ill health of representative

Illness may also be a reason for requesting and granting an extension to a time limit.

For example, in Snowpixie (ORD_68006/2024), the ill health of an attorney on the final day for submitting pleadings was considered a suitable reason for an extension.

However, the UPC required substantiation of the health impairment to be provided along with the delayed pleadings by the new deadline.

Provision of facts or evidence

Extensions to time periods have also been granted in relation to the provision of facts or evidence.

In Arm v ICPillar (ORD_40335/2024) the Court of Appeal considered that due process required that access be provided to an unredacted version of a document submitted by ICPillar. Interestingly, an extension to a deadline for lodging a statement of response was granted that was defined in terms of a number of days from the day on which access was made available, rather than setting a specific deadline date.

Conclusion

It can therefore be seen that the UPC has shown a willingness to grant extensions for a variety of reasons, with an emphasis on accommodating the circumstances of a case without adversely biasing the proceedings against a relevant party. As such, the extensions granted are typically as short as reasonably possible, and the granting of such extensions should not cause any further delay in the proceedings.

Consequently, a pragmatic approach is to request extensions, first, by mutual agreement (if possible) with all affected parties, and second, by identifying any fairness inherent in the granting of the request, including potentially mitigating actions such as knock-on extensions to deadlines of another party.

Author:
Toby Willis

SEP / FRAND

Tesla v InterDigital and Avanci Licensing terms for standard essential patents

The Supreme Court's decision in Tesla v InterDigital & Avanci (UKSC/2025/0058/A) issued on 27 July 2026, addresses key questions of law concerning licensing terms for standard essential patents (SEPs) in which patent pools or platforms, like the Avanci platform, are used to offer licences for SEP owners to implementers on the same global rate. The licensing terms, according obligations required by standards setting organisations, like ETSI, must be fair reasonable and non-discriminatory (FRAND).

The judgment does not concern whether the existence of patent pools and the licensing rate set by patent pools can be considered as not complying with the requirements for FRAND. On the contrary, the Supreme Court recognised the practical solution offered by patent pools like the Avanci 5G platform by offering a licensing rate for all SEPs on the platform. However, the Supreme Court decided that it is a legitimate question for UK courts to consider whether a rate set by a patent pool is indeed FRAND, which can be challenged by an implementer being asked to take a license on a licensing rate set by the pool.

The Supreme Court was asked to address the following key legal questions:

1. Do English courts have jurisdiction to determine FRAND licensing terms for a multi-party global patent pool?

Historically, UK courts have set global FRAND rates for bilateral licenses between two individual companies as established in the landmark decision of Unwired Planet v Huawei.

The Supreme Court had to decide if it could extend this jurisdiction to declare a FRAND rate for a patent platform, like Avanci, as an intermediary or agent for SEP owners, even when those other owners are not parties to the lawsuit.

2. Do individual FRAND commitments apply to patent pools?

The Supreme Court had to determine whether SEP owners can circumvent their FRAND obligation by offering licences through patent licensing platform that offers only non-negotiable, flat-rate pricing. That is, does the FRAND obligation follow the patent into the pool? This is because it is the SEP owner that is bound by the FRAND terms, but does this extend to the patent licensing organisation setting the licensing rate?

3. Can an implementer proactively have a court determine a FRAND rate?

Can a UK court be used to evaluate whether a rate offered by a patent pool like Avanci complies with a FRAND rate?

4. Did Tesla's global licensing claims sufficiently "relate to" UK patents?

On more technical grounds, a UK court must first decide whether it can determine a global FRAND rate, according to established conditions or gateways, concerning whether the question relates to UK patents, and can therefore anchor the dispute in the UK. In other words, whether a dispute over a global pool license "relates to" specific UK patents enough to justify serving the judgement on foreign defendants, because both InterDigital and Avanci were not based in the UK.

5. Is the UK the appropriate venue for this dispute?

Related to the previous question 4, Tesla, InterDigital, and Avanci are all US-based corporate entities and so the Supreme Court had to determine whether the English High Court was the wrong venue, which had been argued by the defendants.

The Supreme Court ruled unanimously in favour of Tesla on all of these questions.

The court confirmed that English courts do have jurisdiction to set FRAND rates for global patent pools, that FRAND obligations **do** not disappear when patents are licensed via a pool, and that the UK is an appropriate forum for the dispute to proceed to a full merits trial.

Author:
Jonathan DeVile

Defining the UPC's long arm Fujifilm v Kodak

Related articles

Claim interpretation: emerging trends on what "consulting the description/ drawings" in G1/24 may mean: dycip.com/g124-claim-interpretation-consult

G1/24 and claim interpretation: consulting the description/drawings may broaden a claim: dycip.com/g124-claim-description

Case details at a glance

Decision level: UPC Court of Appeal
Parties: Kodak GmbH et al v Fujifilm Corporation
Citation: UPC-CoA-312/2025
Date: 02 June 2026
Decision: dycip.com/upc-coa-312-2025

Decision level: UPC Court of Appeal
Parties: Kodak GmbH v Fujifilm Corporation
Citation: UPC-CoA-880/2025
Date: 02 June 2026
Decision: dycip.com/upc-coa-880-2025

Patent litigation in Europe has historically operated along strictly territorial lines. However, this changed when the Unified Patent Court (UPC) opened its doors in June 2023, enabling an infringement action to be initiated that would have effect in every participating state. A primary aim was to reduce fragmentation of European patent litigation procedure, but few anticipated how freely the UPC would extend its reach beyond the borders.

The concept of "long-arm jurisdiction", a court's authority to adjudicate on alleged infringement of patents registered in countries outside its own jurisdiction, has become one of the defining and perhaps most controversial aspects of the UPC's emerging jurisprudence. A sequence of decisions over the past eighteen months has seen an expansion of the UPC's jurisdiction, with questions recently being referred to the CJEU on the matter of provisional measures (see our earlier article "How long are the arms of the UPC? UPC Court of Appeal's first referral to the CJEU": *dycip.com/upc-appeal-referral-cjeu*). However, the practicalities and limits of the UPC's long arm expansion are becoming more defined, particularly following the recent Court of Appeal decision in Fujifilm v Kodak.

The practicalities and limits of the UPC's long arm expansion are becoming more defined

The UPC's embrace of long-arm jurisdiction

In February 2025, the Court of Justice of the European Union (CJEU) handed down a pivotal ruling in BSH v Electrolux (C-339/22) finding that the court of an EU member state in which the defendant is domiciled, has jurisdiction to hear a patent infringement action concerning a patent granted in another EU member state or in a non-EU member state. The court came to a different position with respect to questions of validity, where jurisdiction to officially declare a patent invalid lies exclusively with the courts of the country where the patent is registered. In practical terms, this decision sets the precedent for patentees to consolidate multi-country infringement claims in a single forum, with bifurcated proceedings being necessary for defendants to plead invalidity of the patent(s) in question.

Following BSH v Electrolux, the UPC's Local Divisions sought to apply the CJEU's decision, such as in IMC v MUL-T-Lock, which ultimately found that the UPC was competent to hear infringement actions with respect to non-UPC European patent designations, even those outside of the EU and broader European socioeconomic frameworks, such as the European Economic Area (EEA). There has been some resistance to the expanding reach of the UPC's long arm, such as where a defendant is domiciled in a non-UPC jurisdiction (Adobe Inc et al v KeeeX SAS). However, the UPC Court of Appeal has now affirmed the UPC's competence to hear infringement actions with respect to non-UPC designations of European patents where the defendant is domiciled in a UPC contracting member state.

Background: Kodak's preliminary injunction

Fujifilm brought infringement proceedings before the Mannheim Local Division against three German entities in the Kodak group, alleging infringement of European Patent 3511174. The Local Division Mannheim maintained the patent in amended form and found infringement not only in Germany but also in the United Kingdom (a non-UPC designated state). Kodak subsequently appealed the decision.

UPC Court of Appeal affirms international jurisdiction

In arriving at its decision, the UPC Court of Appeal overturned the first instance decision on infringement. However, it also

Case details at a glance

Decision level: UPC Court of Appeal
Parties: Kodak GmbH et al v Fujifilm Corporation
Citation: UPC-CoA-333/2025
Date: 02 June 2026
Decision: dycip.com/upc-coa-333-2025

Decision level: UPC Court of Appeal
Parties: Kodak GmbH v Fujifilm CorporationCitation: UPC-CoA-882/2025
Date: 02 June 2026
Decision: dycip.com/upc-coa-882-2025

Decision level: UPC Paris Local Division
Parties: Mul-T-Lock France, Mul-T-Lock-Suisse v IMC Creations
Citation: UPC_CFI_702/2024
Date: 21 March 2025
Decision (PDF): dycip.com/upc-cfi-702-2024

Decision level: UPC Court of Appeal
Parties: Adobe Inc et al v KeeeX SAS
Citation: UPC_CoA_922/2025, UPC_CoA_923/2025, UPC_CoA_924/2025 & UPC_CoA_925/2025
Date: 13 March 2026
Decision: dycip.com/upc-coa-922-2025

Decision level: UPC Local Division Mannheim
Parties: Kodak GmbH et al v Fujifilm Corporation
Citation: UPC_CFI_365/2023
Date: 18 July 2025
Decision: dycip.com/upc-ord-33199-2025

Decision level: CJEU
Parties: Dreame International
Citation: C-196/26
Date: 11 March 2026
Referral: dycip.com/cjeu-c196-26

ruled on the UPC's jurisdiction to adjudicate patent infringement claims relating to the UK designation of the European patent.

Despite Kodak's arguments to the contrary, the Court of Appeal concluded that the wording of Article 34 Unified Patent Court Agreement (UPCA) did not restrict the UPC's jurisdiction to the UPC designated member states only. In this regard, Article 34 UPCA states that "[d]ecisions of the court shall cover, in the case of a European patent, the territory of those contracting member states for which the European patent has effect". Nevertheless, in applying the Brussels Regulations, the court held there was no indication that contracting member states, entering into the UPCA, wished to confer a more limited jurisdiction to the UPC. In the present case, the nominated Kodak entities are domiciled in a UPC contracting member state (Germany). As a consequence, the court held that, in principle, it had competency to adjudicate infringement claims relating to national parts of a European patent outside the UPC territory.

When setting out the principles by which the UPC should exercise its jurisdiction, the Court of Appeal presented a framework that was compliant with BSH v Electrolux to be adopted by the UPC divisions in relation to actions brought in relation to **non-UPC EU**/Lugano Convention European patent(s) and/or **non-UPC non-EU**/non-Lugano Convention European patent(s), such as the UK.

1. Revocation actions

In relation to standalone revocation actions, the UPC shall declare that it lacks jurisdiction to decide the action. This is based upon the principle in BSH v Electrolux that jurisdiction to decide on validity lies exclusively within the court of the country in which the patent is registered.

2. Infringement actions (patent infringed if valid)

When a UPC designated patent is found invalid, but would have been infringed if valid, and infringement proceedings also rely on a non-UPC designated patent, the patentee should be offered the opportunity to withdraw their claim of infringement in the non-UPC territory. If the patentee does not do so, the outcome is dependent on whether the non-UPC designated state is an EU member state or signatory to the Lugano Convention.

For European patents in non-UPC but EU or Lugano Convention territories, the UPC can give the defendant the opportunity to file a revocation action with the relevant competent national court, if one is not already pending. If a revocation action is already pending, the UPC can use its discretion to stay the infringement proceedings until a final decision has been rendered in the national revocation action. However, if the defendant does not lodge a revocation action before the national court, the UPC must assume the patent is valid and shall decide the infringement action on that basis.

For non-UPC and non-EU/non-Lugano Convention European patents, the infringement action will be dismissed, unless there are specific reasons not to do so (for example, if the claims in the non-UPC territory are different to that of the UPC designated claim).

3. Infringement actions (patent infringed & valid)

If the patent in force in the non-UPC territory is considered valid and infringed in the UPC territory, the UPC may issue conditional orders, depending on whether the patent is held to be wholly or partially invalid by the competent national court.

In the present case, the Court of Appeal found that a UK based Kodak company (Kodak Ltd) held the title to the alleged infringing articles, rather than one of the German-based Kodak entities party to the UPC proceedings. While the Court of Appeal confirmed that the UPC's jurisdiction extends to claims of "joint tortfeasorship", such liability must be established under the applicable national law. This was not demonstrated in the present case and the court nevertheless found that the UK designation of the patent was not infringed.

Maturing doctrine with strategic considerations

The Court of Appeal's decision undoubtedly clarifies a stakeholder's position where it comes to pan-European relief through a single UPC infringement action. While there are caveats, the UPC is actively embracing its role in cross-border patent litigation within Europe.

The Court of Appeal's decision is ostensibly patentee friendly, allowing for timely and geographically broad relief from the UPC, notwithstanding the fact that national courts will ultimately retain the final word on the validity of their patents. For defendants, contesting the substance of alleged infringement is now more important than ever as any decision from the UPC could have wider-reaching implications. As the Court of Appeal's framework establishes the basis upon which infringement claims in non-UPC jurisdictions can be assessed, disputing said claims on the basis of non-infringement only has become an increasingly risky strategy. Defendants of UPC infringement actions, particularly those claiming infringement in non-UPC jurisdictions, should therefore be considering counterclaims of revocation as part of their defence strategy against a UPC infringement action.

The established case law is consistent where the court's extraterritorial reach flows from the defendant's domicile, not necessarily from where patents are registered or where the claimants are based. Therefore, determining whether the correct defendant is identified in the infringement proceedings is imperative. For now, the UPC's long arm still ends at the border for defendants of UPC infringement actions, providing they are domiciled outside of a UPC member state and there is no UPC-domiciled "anchor" defendant to join the proceedings. However, there is a growing appetite to test how far long arm jurisdiction can be pushed. Indeed, the UPC's inaugural referral of questions to the CJEU (C-196/26) may shed light on how far the reach extends to non-EU defendants and what role EU-domiciled group entities or authorised representatives play in terms of anchoring the primary defendant to infringement actions within the UPC's jurisdiction. For now, we will continue to review and report on any updates as events unfold.

Authors:
Daisy Bethell & Stephen Solomon

And finally...

D Young & Co events

Dates for your diary
UPC & biotech webinars

Sign up to secure your webinar seat at www.dyoung.com/events

UPC Case Law, Observations & Analysis
1pm, 20 January 2027

Join our UPC specialists Rachel Bateman and David Al-Khalili for a practical overview of the year's most important judgments and procedural developments. Gain valuable insights into emerging trends and discover what the latest decisions could mean for your patent strategy in the future.

Sign up to secure your seat:
dycip.com/webinar-upc-jan2027

European Biotech Patent Case Law
9am, noon & 5pm GMT, 10 November 2026

From patent disputes to regulatory developments, our biotech case law webinar offers timely insights into the decisions shaping the life sciences landscape. Join Simon O'Brien and Matthew Caines for expert commentary on the cases that matter most to the biotech sector.

Book your place now:
dycip.com/webinar-biotech-nov2026

Subscriptions
Sign up to receive email invitations to future D Young & Co webinars by visiting our website **www.dyoung.com/subscriptions**. Alternatively you can send us your contact details by email at **subscriptions@dyoung.com**.

Contact details

London
Munich
Southampton

T +44 (0)20 7269 8550
F +44 (0)20 7269 8555

mail@dyoung.com
www.dyoung.com

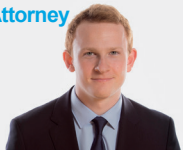
Contributors

Partner, Patent Attorney
Anthony Albutt
aja@dyoung.com
www.dyoung.com/anthonyalbutt


Patent Attorney
Daisy Bethell
drb@dyoung.com
www.dyoung.com/daisybethell


Partner, Patent Attorney
Jonathan DeVile
jdv@dyoung.com
www.dyoung.com/jonathandevile

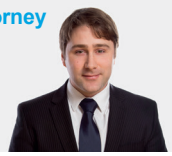

Patent Attorney
Molly Guy-Hickson
mgh@dyoung.com
www.dyoung.com/mollyguy-hickson


Senior Associate, Patent Attorney
Ben Hunter
bmh@dyoung.com
www.dyoung.com/benhunter


Technical Assistant
Chris Sharrock
cjs@dyoung.com
www.dyoung.com/chrissharrock


Associate, Patent Attorney
William Smith
wrs@dyoung.com
www.dyoung.com/williamsmith


Technical Assistant
Stephen Solomon
sys@dyoung.com
www.dyoung.com/stephensolomon


Associate, Patent Attorney
Toby Willis
tjw@dyoung.com
www.dyoung.com/tobywillis


Associate, Patent Attorney
Stephanie Wroe
sfw@dyoung.com
www.dyoung.com/stephaniewroe