

It's time to step up

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We knew this was coming. After almost 80 years, a woman has won a Fields Medal, what's often called the Nobel Prize for mathematicians under 40. In the United Kingdom, the government has put a woman in charge of its policy for intellectual property. At a time when both countries and companies increasingly recognise the importance of fostering scientific and technological advances, profound changes in IP and competition law in Europe are forcing them to rethink how to protect their investments. It shouldn't be a surprise that more women are stepping into the IP spotlight.

Maybe it's because of the adaptability and multitasking abilities — the famous *Lean In* — that women are supposed to show. In any case, the emergence of the Unified Patent Court will certainly require a good deal of each, and several recent cases gave us a glimpse of how the recourse to competition law can shake what has been the foundations of intellectual property law for more than a century.

Already this year, the European Commission, based on European competition law, has limited the possibility for two holders of intellectual property rights, Motorola and Samsung, to obtain court injunctions that would have enabled them to enforce their rights. To be sure, these two cases involved a specific sector — telecommunications, an area that involves thousands of essential patents, which makes it subject to the requirements imposed by standardisation. But it is easy to imagine how any technology or other protected creations could become essential for a market. And there is a referral pending before the European Court of Justice that could more generally restrict injunctions based on intellectual property rights, which would radically change how the contractual negotiations about essential patents are carried out. This means that our entire range of clients, from inventors to artists to software designers to corporations, will need new guidance and support from their intellectual property specialists.

But is new advice focusing on contract law enough? Probably not. Last year, the European Commission fined several pharmaceutical



companies for prorogating expired patents with contracts. This would appear to follow a trend set by the commission decades ago in the *Velcro* and *ChiquitaFyffes* cases, where contracts on intellectual property could not be a lawful basis to limit competition.

Finding the most productive and economical solutions for protecting intellectual property in the years ahead is going to require a return to the basics: hard work and an ability to adjust to a rapidly changing legal environment — one where competition law is clashing ever more often with intellectual property. In this area at least, women are not at a disadvantage. Across the professional spectrum, women may still have to prove themselves, but what is becoming exceptional is their absence of recognition or responsibility. And lawyers who know how to adapt are precisely the ones who will gain their clients' trust.