







IPM

# STRATAGEM

INTELLECTUAL PROPERTY MANAGEMENT

# NEWSLETTER

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Welcome to the second issue of 2023. Every year, Stratagem raises money for a selected charity; this year, we have chosen MIND, a mental health charity. You can read more about our charity and volunteering contributions on [Page 2](#).

Artificial Intelligence (AI) has been frequently mentioned in the news; find out more about patenting AI inventions in the UK and Europe on [Page 3](#). A unitary patent is a new type of patent right that came into force on 1 June this year; read more about Stratagem obtaining some of the first unitary patents on [Page 4](#).

Apple Inc. has been fighting for the exclusive rights to use the "iPhone" brand in Brazil for over ten years; [Page 5](#) discusses the race for trade mark rights.

From the Stratagem team, we wish you all a wonderful holiday season and a prosperous New Year!

We hope you enjoy the contents of this newsletter. If you have any questions, please do not hesitate to get in touch.



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# STRATAGEM

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## STRATAGEM'S CHARITY AND VOLUNTEERING CONTRIBUTIONS

### RAISING MONEY FOR OUR SELECTED CHARITY

Every year, Stratagem selects a charity to raise money for. This year, we chose MIND. MIND is a mental health charity in England and Wales. Their mission is to provide advice and support to empower anyone experiencing a mental health problem. For more information about MIND, please click [here](#).

Our Social Committee organised a Sunflower Competition for summer, providing red sunflower seeds to employees who participated in growing the best-looking or tallest sunflower. Stratagem donated money for every employee who participated in growing sunflowers. Below is a stunning red sunflower grown by Yvette Spring, Senior Trade Mark Attorney.



Stratagem donated £5 for each Employee Survey that was completed. We were incredibly pleased with an 82% response rate. Our results mean that we were in the top quartile (for culture and values scores) and were invited to apply for accreditation. We are pleased to share that we received a Gold Accreditation at the Best Employers 2023 Eastern Region awards in October. Our people make Stratagem a success, so this recognition is fantastic, and a huge thank you goes to everyone in the company.

### VOLUNTEERING AT THE NATURE RESERVE

In July, six members of the Trade Mark team (pictured above) spent an afternoon volunteering at Littleworth Nature Reserve, located near the Oxford office just outside Wheatley. Yvette, Addy, Jamie, Grace, Gina, and Abi worked alongside other volunteers to clear paths from advancing weeds, including stinging nettles and bracken. It was a good break from the office and lovely to get out in the fresh air. The hard work resulted in many clear paths, nettle-stung arms, and sore muscles from swinging scythes and operating clippers!

### FOOD BANK DONATIONS

The Cambridge foodbank is part of a nationwide network of foodbanks supported by The Trussell Trust. They aim to reduce poverty and hunger across the UK by providing local people with three days of emergency food and support.

With the cost of living crisis, there has been an increase in people needing to call upon the support of food banks. With that in mind, Stratagem has set up a collection point for employee food and hygiene product donations.

If you would like more information on the fantastic work that the Foodbank does or more information about donations, please click [here](#).

Stratagem continues to encourage employees to volunteer and we look forward to our future charity events.





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## PATENTING AI INVENTIONS IN THE UK AND EUROPE

Artificial Intelligence (AI) has been frequently mentioned in the news, from catching law-breaking drivers to winning photography competitions. Whilst AI-based technologies have an essential role in advancing the boundaries of innovation, several challenges arise for innovators seeking to protect their AI-based work.

In particular, both the European Patent Convention 2000 and the UK Patents Act 1977 include exclusions in respect of subject matter relating to mathematical methods and programs for computers 'as such'. Given the emphasis on computational models and algorithms in AI-based technologies, the route to patent protection requires careful navigation.

Fortunately, the European Patent Office (EPO) and the UK Intellectual Property Office (UK IPO) have acknowledged the increasing importance of AI-based inventions and sought to provide applicants with improved guidance relating to patentability issues in this domain.

### Europe

The European approach to assessing the patentability of AI and machine learning innovations is provided in the EPO's Guidelines for Examination, Part G, Chapter II, 3.3.1. There, it is explained how computational models and algorithms are per se of an abstract mathematical nature. Consequently, the EPO applies the same well-established tests for assessing potential inventions with a mathematical component to AI-based inventions. In such cases, the assessment of the inventive step is based on all features which contribute to the technical character of the invention. Therefore, when it can be shown that any -

-mathematical methods contribute to an invention's technical character; they may help in pursuing a positive assessment of the inventive step. In this regard, the technical character of an AI-based invention might be emphasised by specifying the technical application or technical implementation when claiming the invention.

### UK

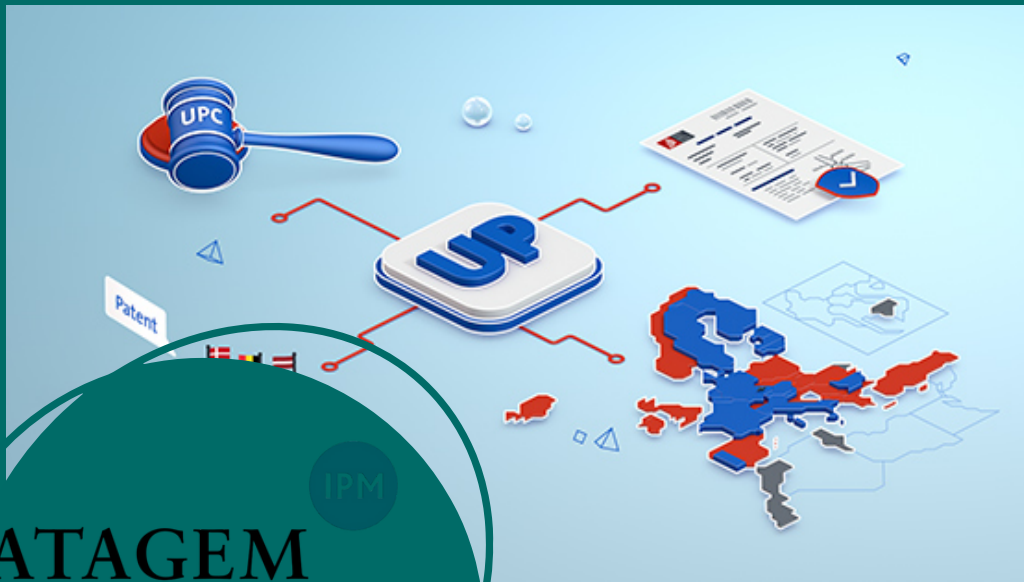
The UK IPO set out its enhanced guidance in September 2022, reiterating the importance of the well-established Aerotel test and the AT&T/HTC signposts in determining the technical contributions of AI-based inventions. Helpfully, they also provided several examples showing both scenarios likely to reveal a technical contribution and scenarios unlikely to reveal a technical contribution. Following the issuance of the enhanced guidance, it is clear, at least from several Hearing Officer Decisions (BL O/0706/23, BL O/0705/23, BL O/0007/23), that the scenarios are routinely being referred to as part of the consideration of excluded subject matter in relation to AI-based inventions in the UK.

Whilst the EPO Guidelines and the UK IPO enhanced guidance provide applicants with an excellent starting point in understanding the likelihood of patent protection being achievable for their AI-based innovations, each case must be considered on an individual basis.

We would be happy to discuss your particular situation and guide you through the issues of obtaining patent protection for your AI-based inventions. Please contact your usual attorney or e-mail us at [mail@stratagemipm.co.uk](mailto:mail@stratagemipm.co.uk).

*Written By David Nicholls (Patent Managing Attorney)*





# STRATAGEM

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## STRATAGEM OBTAINING FIRST UNITARY PATENTS

Stratagem IPM is pleased to announce that we have successfully obtained some of the first Unitary Patents in existence for several of our clients.

This is exciting news because a Unitary Patent is a new type of patent right that only recently became available with the entry into force of the Unified Patent Court Agreement (UPCA) on 1 June of this year.

Conventionally, if you wanted protection for your invention in a particular European member state, you had to obtain a national patent either by filing a national patent application or by validating your European Patent there once it was granted.

Now, however, you have a third option: to obtain a Unitary Patent, if desired, based on a granted European Patent. Instead of providing legal effect in only one country, a Unitary Patent provides uniform legal effect in multiple European Union member states. This does not mean that conventional routes of protection are no longer useful: they are still essential in countries that are not party to the UPCA, such as the UK, or as alternatives to a Unitary patent in member states that are party to the UPCA.

-opportunity to obtain these Unitary Patents for our clients because they informed us of their intentions well before the grant of their European Patents, meaning we were able to ensure that the grant took place after the date of entry into force of the UPCA.

We then had systems in place to enable us to meet the short 1-month timeframe for filing a request for unitary effect and a translation of the patent once their European Patents were granted.

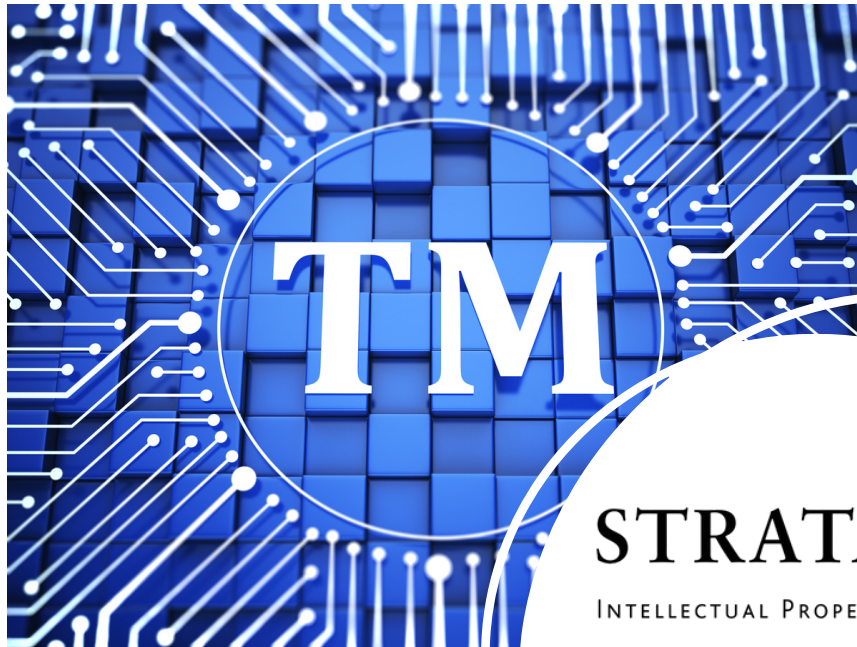
With these Unitary Patents, our clients now have uniform protection for their inventions in 17 European Union member states for a fraction of the cost it would have taken to validate them. In addition, each of these Unitary patents will be cheaper to maintain over its lifetime than conventional national patents in just four of those same 17 member states.

If you have any questions about the pros and cons of a Unitary Patent or would like to know more about how to obtain one, please speak with one of our patent attorneys.

*Written By Gwion Harfoot (European Patent Attorney)*

Stratagem IPM was able to open up the -





## THE RACE FOR TRADE MARK RIGHTS

The fast food chain Burger King is called Hungry Jack's in Australia. The deodorant brand LYNX is called AXE in most places outside of the UK. Apple Inc. has been fighting for the exclusive rights to use the "iPhone" brand in Brazil for over ten years. Even corporate giants can lose the race to acquire their trade mark rights first!

Some countries operate on a "first-to-use" system, where trade mark rights are granted to the person who started using the mark first; while a larger proportion of countries operate on a "first-to-file" system, where rights are granted to the person who first filed for a trade mark application.

The UK and the EU are "first-to-file" territories. An advantage of this system is that once a trade mark registration is granted, it provides a good level of security to businesses, that they can use their chosen mark with minimal risks. Examples of the benefits of trade mark registration:

- Prevent a third party from using the same or a similar trade mark, for the same or similar goods/services;
- Prevent a third party from applying for registration of the same or a similar trade mark, for the same or similar goods/services;
- Rely on the registration as a defence against infringement proceedings, which could result in a business being forced to rebrand and pay damages;

- Prevent squatters from acquiring rights in the trade mark, and seeking a sale of such rights at an inflated price;
- Use the registration as a ground to assert rights in a domain name dispute;
- Make an Application for Action, which, once granted, will allow the Border Force to detain goods suspected of infringement, e.g. counterfeit goods.

There are circumstances in the UK and EU where the person who first used a trade mark can claim rights to it. However, providing sufficient and relevant evidence of use is often difficult, costly and time-consuming, with no guarantee of success.

It is worth mentioning that having a company name registration differs from having a trade mark registration. The former does not provide the business with the rights to use the company name as a trading name.

While there is no time limit for a business to apply for a trade mark registration, this should be done as soon as a brand name or a logo has been chosen (before time and money are spent on marketing or package design) to protect itself for the reasons discussed.

*Written By Grace Mok (Trade Mark Attorney)*

