

**EIP**

# IP considerations arising from increased micro mobility competition

Following the Queen's Speech, and years of consultations and lobbying from the micro mobility sector, it looks like the e-scooter industry is in for a bumper year. The vehicles have until now been legal to buy, yet illegal to use on the UK's public roads except through authorised ride sharing schemes. However, this will now change through the creation of a new vehicle class for e-scooters specifically.

This is a positive development for the micro mobility sector overall, which in all likelihood will see an increased number of players vying for market share. Emerging start-ups will feel more confident to develop and launch innovative models and accessories, while already established sellers and the companies running ride sharing schemes will see it as an opportunity to quickly expand into what is already a substantial market.

An important aspect of this development, which must not be overlooked, is the role played by intellectual property (IP), and particularly patent and design protection, in how new and established companies shape the e-scooter market. Smaller players face an intense period of balancing the need to quickly grab market share, often using existing technologies, and the need to innovate. Elsewhere, more seasoned companies will want to protect themselves from edgy newcomers.

## Pre-emptive entrants

The importance of carefully managing risks posed by third parties' existing patents cannot be underestimated for e-scooter start-ups. Innovators will be monitored by established companies looking to outcompete them and cannot afford any costly and

time-consuming legal proceedings resulting from accusations of infringement. While some companies have these capabilities within their team, many will need support from the legal sector to ensure they are covered.

So, first and foremost, start-ups will be looking to confirm that they have Freedom to Operate (FTO). In other words, they will be checking that the products they want to launch in the UK will not infringe other companies' patents. Potentially infringing activities include making, selling, importing and storing infringing articles in the UK. All manner of aspects of scooters are subject to patent protection, such as folding mechanisms (see [GB2589813](#)) and accessory mounting devices (see [GB2591202](#)). Given patent rights are territorial, most will initially only have to focus on the UK, but companies looking to launch across many markets will face a more complex process of ensuring their FTO across territories.

Another factor to be considered is the future impact of invisible pending patent applications, resulting from the fact that patent applications are only published about 18 months after being submitted to the patent office. Given that the liberalisation of the market will have been foreseen by many, and that established players are already benefitting from the rapid growth in demand for e-scooters, there are likely to be many such applications submitted within the past year or so that are working their way through the patent examination system. Potential future costs of having to license a patent that is not yet enforceable at the time of a product launch need to be taken into account by new entrants. Having to modify products over time to avoid infringing patents is also more common than some might think. Key to success will be performing additional FTO checks periodically, primarily before, but also after, product launch.

Although less pressing than checking the FTO position, particularly if budgets are tight, innovative new entrants should at least consider patenting inventions in their products. Among the variety of benefits of having a patent portfolio is the "bargaining chip" they offer in case of a dispute with another patent holder. For example, if a patent infringement risk is identified by a new player, it might be possible to get the patent holder's permission to use their patented technology by granting them a cross-licence to something in the new player's own portfolio.

Many e-scooter companies will also look into registered design protection. This protects the appearance of a product, rather than its technical workings. For many companies whose differentiation will be largely tied to the design rather than the technical components of an e-scooter, registering designs might be the primary way to have enforceable protection against others, particularly copycats.

# Defensive giants

While established e-scooter vendors will have more experience and access to extensive support than start-ups, we are all entering an era where assertive patenting will play an increasingly important role in defending market share. Existing market players need to ensure that any unique features of their products are protected against bullish newcomers. In other words, we can expect an intensification in the pursuit of patents, which needs to be monitored carefully.

In the short term, the fact that patents can only be enforced once they have been granted will mean that many companies with pending patent applications will do what they can to speed up their ongoing application processes, so that they can take action against infringers quickly if necessary. Another road many will go down, and which start-ups need to be alert to, is to monitor the new competition very closely and strategically broaden or split their pending applications to try and widen their reach before they are granted. Both approaches could hurt start-ups that have developed products or business models that are very similar to those of already established companies.

## The pressure is on

This is an exciting time for anyone active in the micro mobility market, and it will be interesting to see what will come out of the e-scooter space following the Government's recent announcements. There are lots of causes for optimism for start-ups looking to make their mark, but the pressure is on for them to not only design and market their products innovatively but also to ensure they avoid potential legal pitfalls. In a few years' time, companies that rise to this challenge will be the ones reaping long-term success.

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