



**London 2019**

**Panel Session VII:  
Post grant amendments: flexibility or certainty?**

Patent claims may be amended post grant. Third parties that relied on a patent being invalid may suddenly be confronted with much stronger claims, and products that arguably did not infringe prior to the amendment may suddenly be within the scope of protection of the same patent. The situation may change during an infringement action, or it is only the amendment that paves the way for the initiation of an enforcement action. Conversely, a patent owner may be confronted with prior art that was unknown to him when the defendant counterclaims for revocation and wish to amend his patent so that it can be upheld.

This Panel Session will discuss to what extent post grant amendments are possible in the context of an infringement action and what impact such amendments may have on relief for the past (damages) and for the future (injunction). For example, are third parties liable for damages even if they rightfully relied on a patent being invalid in the granted form, or do they have to anticipate future amendments that will restore validity? What rule should apply if a product did not infringe a patent as granted but falls within the scope of an amended claim?