

## The Patent Regulation Board and the Trade Mark Regulation Board

### Application for Approval of Practice Fees for 2016

#### Summary - Level of Practice Fees for 2015

This application is for **approval to increase the practice fees by c5%** for all individual registrants and also for firms.

This is directly the consequence of increased staffing levels. The numbers and, more particularly, the responsibilities of the IPReg Officers are now exactly aligned with the commitments made to the LSB in the Licensing Application regarding resources.

*(see Licensing Application May 2013 page 38)*

Otherwise the budget levels are substantially unchanged.

The practice fees were increased for the first time since 2011 in 2015. However, the 2015 increase simply represented the aggregated year-on-year cost of living increase from 2011. The 2015 increase was applied to registrants (with the exception of those who are retired or inactive) and firms.

#### 1. Developing the Application/Setting the Budget

- The 2015 fees matrix as submitted to the LSB for approval at the end of 2014 is again attached (**Annex 1**) with the proposed 2016 figures in **purple**.
- The practice fees have been increased by c5% across all fee paying categories (individuals and entities).
- The IPReg Board has determined that the level of increase as necessary and appropriate in order to manage the increased budget.

#### Setting the Budget

In June the IPReg Governance Committee undertook a review of the IPReg Business Plan for 2016 and the consequential budget. At the IPReg Board meeting on 9<sup>th</sup> July, the 2016 Business Plan and Budget, as developed and recommended by the Governance Committee, were approved by the full Board subject to consultation.

The following points were factors in setting the 2016 Budget:

- IPReg appointed an Authorisations Officer in September 2014 and an Assurance Officer in January this year to meet the increased regulatory requirements. Both Officers are solicitors and their salaries sit mid-range in the LSB “SMT/Head of” salary band (2014).
- IPReg has also recently appointed a Director of Policy to deal with education and policy planned activities at a salary which sits mid-range in the LSB “Project Manager” salary band.
- The IPReg Board has determined not to manage a deficit budget even though there are ring-fenced reserves built up from operating surpluses and did not wish to utilise the relatively small operational surpluses to meet the deficit or part of it.

- **Reserves:**

IPReg became a Designated Licensing Authority on 1 January 2015. The designation has strengthened the Board’s resolve to ensure that supporting reserves are in place to cover any unforeseen operational risks.

- The IPReg Board has previously built up ring-fenced reserves from operating surpluses. The 2014 operating surplus was £77,675 (largely as a result of the deferment on a new member of staff/Assurance Officer) and the total surplus to date was £177,482.
- The Board transferred £152,063 into allocated reserves:
  - i. £50,000 to create a Projects (including Research) Reserve. This has replaced the “Education” budget line recognising that this was largely a discretionary spend (and easing the likely increase in the overall budget).
  - ii. increased the Board Appointments Reserve from £22,937 to £50,000 to include the Chairman’s Appointment – an event falling due in 2016. This has enabled the Board Replacement budget line to be maintained at the same figure as in 2015.
  - iii. £75,000 to create a Legal, Disciplinary and Litigation Reserve (which will also address any external costs associated with the implementation of the Assurance Policy).

As a consequence the increase in the 2016 Budget from the 2015 has been minimised.

- In 2014, there was an unspent £50,000 Planned Office Restructuring Reserve (for a move to larger offices which ultimately proved unnecessary). The Board determined to reallocate this reserve to meet additional ABS Licensing costs e.g. The First Tier Tribunal set up costs (£40,000) and additional (s69 related) Counsel Fees (as reported in the 2015 Fees application);
- Due to unexpected (and welcome) significant savings on the cost of the FTT set up, this contingency was underspent and has been transferred to the General Contingency Reserve.
- The policy is to maintain a contingency reserve reflecting c6months of operation but to build up to that figure, using where possible any operating surpluses.
- The Reserves at 1 January 2015 are annexed (**Annex 2**)
- **Contingencies:**
  - Each year IPReg provides for a small operational contingency. This has not been called on in the 5 years of operation to date. The 2016 Budget line is £10,000 (as in 2015).
  - Additionally a small contingency in respect of practice fee support (IPReg Pro) of £10,000 has been provided largely now to cover transaction fees for “Worldpay”.
  - IPReg has provided for the cost of major projects over two budgets. Provision for a new website was made over 2011/2012 and, in fact, the unspent amount of £16K has been carried forward to 2015.
  - In 2010 IPReg determined that over a period of four years it would build a general contingency reserve of £100,000 against wind up and significant unexpected costs. This was increased to £175,000 in 2014 following the IPReg Board’s decision to increase the contingency to reflect additional office and staff costs. The IPReg Board undertook the same exercise at the end of 2014 and the general contingency is now £225,000 (see the relevant point in the earlier Reserves section). This contingency represents c6months of operation.
- **Differential between practice fee categories:**

The Board determined to maintain the current differential between the various fee paying categories.

The Board considered that the increase to £197 from £187 for attorneys in private practice compared favorably to Solicitors’ fees (£320).

- **The 2016 Business Plan** is annexed (**Annex 3**). This is the first plan for a number of years where the Licensing Application has not dominated the planned activities. Also for the first time, planned activities in education are included in this annual plan; previously there was a 3-year Education Plan.
- The 2016 Budget is annexed (**Annex 4**) showing a budget figure of **£728,870, an increase of £41,350 from the 2015 Budget of £687,520 (Annex 5)**. This largely represents the **increased salary costs** resulting from the additional staff member, the Director of Policy. IPReg expects this budget line to stabilise moving forward.
- The format of the budget was changed to show the payment of the Legal Services Board's and Legal Ombudsman's levies more prominently (the 2015 Budget has also been as a result of the feedback from the LSB research into the costs of regulation.
- The consultation confirmed that the estimated income for 2016 is **£729,000**.
- **Consultation Process**
  - On 5 August, the CEOs of both CIPA and ITMA were given 24 hours' notice of the consultation. On 6 August, an email titled "IPReg 2016 Business Plan, Budget and Practice Fees" was sent to all registrants directing them to the "Consultations" section on the IPReg website – link noted below:  
  
<http://ipreg.org.uk/public/about-us/consultations/2016-business-plan-budget-and-practice-fees/>
  - The Consultation included a letter from the Chairman drawing attention to the encouragement from the Legal Services Board to match the regulatory presence of some of the other regulators. The Chairman also emphasised that the cash increase is modest and that the practice fees payable by IP professionals compare well with others  
  
**(Annex 6 contains the email as circulated and all the material as published).**
  - The Consultation specifically noted the points raised in the "Setting the Budget" section above i.e. the Reserves, General Contingency policy and staffing levels.
  - IPReg received only 2 responses to the consultation:
    - From ITMA
    - From CIPA

Both welcomed the new Business Plan but also commented on the increase in the staff costs and queried whether a smaller increase were possible.

This feedback is, of course, predictable, given any increase in practice fees would be commented on by the representative bodies although the necessary increase in resource has long been identified.

The comments were reviewed at the Board meeting on 17 September. The Board considered and rejected a possible reduction in the practice fee increase to 3% as a result of a budget reduction of £15K (by reducing the IPReg Pro Support contingency to £5K and removing the general contingency budget line).

- The Board again determined not to run a deficit budget or to draw down on reserves. As previously stated, the actual increase in the budget was a result of IPReg meeting the increased regulatory burden by employing an additional member of staff. They determined no adjustment was necessary to either the Business Plan or the Budget.

#### Finances and further clarification

- At 9 October 2015, income is £671K. Additional projected income from transitioning firms is £87K (including first application licensing fees).
- A copy of the 2015 Budget v Actual expenditure report as at 30 September (**Annex 7**) and the Balance Sheet at the same date (**Annex 8**) are annexed.
- (by way of background) the total income figure for 2014 can be verified by reference to the IPReg audited accounts (*see point 4*).
- In January 2015 we posted the 2015 Budget on the website (**Annex 5**) and the 2016 Budget will be posted at the start of 2016.

## 2. Permitted Purposes - Allocation of Income

In 2015 all income has been applied and in 2016 all income will be applied solely for the permitted purposes. The budgets/comparisons, which are provided, evidence that the expenditure principally comprises:

- the levy to the LSB and for LeO.
  - the salaries of the now five part time members of staff and one full time member of staff.
  - the remuneration and expenses of the Chairman and Board members.
  - accommodation and other office costs.
  - provision for education and research projects. The research into unregulated IP service providers was deferred from 2015 due to difficulties in the collection of the necessary data.
- Two lay board members retired in March 2015 and one will retire in March 2016. One professional board member will retire in March 2016. The Chairman will retire in 2016 and there is a provision of £10,000 in the 2016 budget together with brought forward reserves of £50K to meet this recruitment.

The 2015 budget again contains a modest allocation for IPReg “events” consisting principally of presentations.

IPReg has continued to provide for disciplinary costs at the same level as in 2014 but has also created a Legal Disciplinary and Litigation Reserve to support any unforeseen costs in excess of the budget.

The 2015 budget (£687,520), the expenditure for 2015 as at 30 September and the proposed 2016 budget (£728,870) in pie chart form are attached (**Annex 9,10 & 11**).

### 3. Regulatory Functions

#### Administration of the data for the Registers

As advised in the 2013 application, the shared services between IPReg and CIPA and ITMA, respectively, ceased in 2014. This is the second year that IPReg, via “IPReg Pro” online accounts, managed the collection of practice fees and the administration of the Registers.

#### Sources of Income

All income is derived from the practice fees charged by IPReg to registered attorneys and entities. Since January 2010 IPReg has received no financial assistance from CIPA and ITMA. IPReg is financially independent.

### 4. Clarity and Transparency

In the spring this year, IPReg advised the registrants that its 2014 annual report was posted on the website

<http://ipreg.org.uk/public/about-us/annual-report/annual-report-2014/>

Links to our finance section on the website are noted within the report.

The IPReg audited financial statements for the year ended 31 December 2014 confirms income and identifies separately the contingency sums held by IPReg. (**Annex 12**).

### 5. Regulatory and Diversity Impact Assessments

#### Fees Matrix

As described in the 2012 application, the fees matrix is structured to ensure that UK registered attorneys and attorneys who are solely European registered attorneys (operating in the UK) and other professionals (lawyers) regulated by us, effectively pay the same practice fees to IPReg.

For example (shown overleaf):

UK RPA/RTA – individual fee of £197 plus the entity pays £64 for each UK attorney in its employ – total £261.

EPA/ETA – entity pays fees of £261 for each other lawyer in its employ.

### **Is there an adverse impact on particular sectors of the Community?**

IPReg's comments, made in its 2012 application, continue to apply. There are no new issues.

IPReg remains satisfied that the matrix is robust and currently fair and understood. As indicated, IPReg will (but in due course) undertake a separate consultation on a possible change of the practice fee matrix for entities to one based on turnover.

### **Special Bodies**

IPReg does not regulate any special bodies and has not, therefore, been required to consider any departure from the general practice fees rules for any one special body or groups of special bodies.

### **Regulatory Objectives and Better Regulatory Principles**

As stated above, in the 2013 Budget IPReg provided for the commissioning of research. This work is being undertaken jointly with the IPO (and now with the LSB also). The research into unregulated IP service providers was deferred from 2015 due to difficulties in the collection of the necessary data.

## **6. Consultation with non-commercial bodies and the Consumer Panel**

IPReg has not consulted with non-commercial bodies. Intellectual Property legal services are specialist services and are not provided by non-commercial bodies such as Law Centres.

The work is primarily “business to business” with only a very small number of individual inventor-clients.

That having been said all the financial information is available on the IPReg website including its management accounts, annual budget and accounts and business plans. IPReg is entirely transparent regarding its finances and financial management.

IPReg is content for the Legal Services Board to consult with the Consumer Panel to the extent this is considered necessary or appropriate.

## **Conclusion**

We believe that the 2016 Business Plan can be implemented subject to (with the approval by the LSB) an increase of c5% on practice fees for registrants and firms.

Our submission to the LSB for approval of the 2016 fees structure reflects our continuing strategic view to maintain a “lean” approach to the provision of a well-focused regulatory capability.

We respectfully request approval of the above proposals.

**Karen Duxbury – Chief Finance Officer**

**Ann Wright – Chief Executive**

**26 October 2015**



## **Annexed Documents**

### **Developing the application/Setting the Budget**

- 1 2016 Fees Matrix
- 2 Reserves at 1 January 2015
- 3 2016 Business Plan
- 4 2016 Budget
- 5 2015 Budget
- 6 Letter from Chairman to Registrants (and balance of Consultation documents as published)
- 7 2015 Budget v Actual Expenditure as at 30 September 2015
- 8 Balance Sheet as at 30 September 2015

### **Permitted Purposes - Allocation of Income**

- 9 Pie chart showing the allocation of the 2015 Budget
- 10 Pie chart showing 2015 expenditure as at 30 September 2015
- 11 Pie chart showing the allocation of the proposed 2016 budget

### **Clarity and Transparency**

- 12 IPReg Financial Statements as at 31 December 2014