

**Practice Fees for Patent and Trade Mark Attorneys
and
Regulated bodies**

Submission to IPO and LSB

Summary

IPReg has been set up by CIPA and ITMA to regulate the Patent Attorney and Trade Mark Attorney professions to discharge their responsibilities under the Legal Services Act as Approved Regulators. As the independent regulator of those professions IPReg will have the responsibility, amongst other things, for determining the Practice Fees to be charged to the professions and to those bodies who wish to be regulated by IPReg. This submission seeks the approval of the IPO and the LSB to the proposed Fees to be charged for 2010. The structure has been the subject of an open consultation and the actual levels of the fees proposed to be charged (subject to the approval by IPO and LSB) have been notified to the Institutes, but not, as yet, to registrants.

The IPO and LSB are asked to agree these proposals by 25 September in order that arrangements can be put in place to notify registrants of the fees and collect them in time to meet the timetable for the payment of the LSB costs and Levy (February 2010). IPReg stands ready to meet and discuss the proposals with IPO and LSB

The background to the setting of the Practice fees for 2010 are set out in this document and the attachments. The Practice fees for which approval is sought are set out in the table below:

Practice Fees - 2010

	Fee £ One Reg	Fee £ Both Reg.
Attorneys who are retired, inactive or are employed solely in industry	125	200
All Other Attorneys	150	250
Sole Traders	250	350
Sole Trader Employing Others - Base	250	350
Attorneys/Professionals employed by sole traders	50 for each employed registered Attorney, plus 200 for each unregistered professional providing legal services	50 for each employed registered Attorney, plus 200 for each unregistered professional providing legal services
Entities Firms/Companies - Base	250	
Attorneys/Professionals employed in entities	50 for each employed registered Attorney, plus 200 for each unregistered professional practicing via entity	50 for each employed registered Attorney, plus 200 for each unregistered professional practicing via entity
Total Raised:		£ 467,000.00

Background

The designation of CIPA and ITMA as Approved Regulators under the Legal Services Act will take place early in 2010. At that time IPReg will formally be delegated the responsibilities of the Institutes and become the independent regulator of the two

professions. The delegation will be by means of a document signed by the three parties which will have regard to the rules on Regulatory Independence to be set down by the LSB

In order to meet the costs of this independent regulatory arrangement and the costs of the Levy to be charged by the LSB, under the Act, – to cover its start-up costs and running costs for the first quarter of 2010 – the Practice fees for 2010 need to be determined and approved (and collected by early 2010). Until CIPA and ITMA are designated as Approved Regulators the IPO, under the current legislation, continues to be responsible for the regulation of the professions and the practice fees for individual members of the Patent Attorney and Trade Mark Attorney professions have to be approved by them. Once the Institutes become Approved Regulators responsibility for the approval of Practice fees will fall to the LSB. The LSB will also be responsible for the approval of Practice fees that (for the first time in the IP professions) will fall to be paid by those bodies who wish to be regulated by IPReg i.e. firms of Patent and Trade Mark Attorneys.

Costs of Regulation

The costs of regulation, and therefore the amount to be raised from the Practice fees, are represented by the costs of IPReg and the LSB Levy to be imposed in 2010. The Budget for IPReg is set out at Annex A and amounts in total to £360,000. The LSB Levy, based upon the figures set out in the LSB's consultation document (and the fact that that IPReg will not be seeking to spread the sum over three years) is £113,819. A total of £473,819

These costs will have to be recovered from the (approx.) 2600 individual registrants on the Registers of Patent and Trade Mark Attorneys and those bodies which will seek to be regulated by IPReg; these are estimated to number about 270. There will of course be some individuals who will not wish to remain on the registers in the new regulatory regime and there will be bodies that will choose not to seek to be regulated. On the basis of anecdotal evidence from individuals and firms we have assumed that 15% of those individuals already registered and 15% of those bodies which could register will choose not to either remain or seek a place on the registers in 2010.

If the above estimate of “de-registration” is wrong then any shortfall in income will have to be met by trimming the IPReg Budget in year or seeking sums from ITMA and CIPA, because they underwrite the IPReg operation. If the 15% is an over estimation and income is higher than expected then that will be taken into account in setting the Budget for 2011 and may result in a lower practice fee in that year.

IPReg Budget

The bulk of the costs of IPReg are the costs of accommodation and services (provided currently by CIPA) staff costs (a CEO and Administrators), payments to CIPA and ITMA who will continue to maintain the registers on behalf of IPReg, and the costs of payments

and travel costs to the Board members (9 plus a chairman). This first year contains a lot of contingency because, of course, there is no track record on which a reliable estimate can be based. At Annex B is a note provided to the CIPA Council in response to their questions on the Budget in this regard.

Permitted Purposes

Under the Act the LSB have to make rules that specify the purposes for which monies raised by Practice fees may be applied. These must include the permitted purposes set out in Section 51(4) of the Act, but the LSB, in its consultation on Regulatory Independence has proposed that the regulatory objectives, set out in Section 1 of the Act might be a base on which the claims of a regulator in the application of Practice fees might be considered and the LSB rules might also include a specific provision for regulatory objective (g), increasing public understanding of the citizens legal rights and duties, to be a subject to which income from practice fees might be attached.

How is the IPReg Budget justified against the above?

The IPReg budget has been set against the need to have a regulatory framework which is proportionate to the burden which has to be placed on the two professions which provide specialist legal advice to, in most cases, an “intelligent user” of their services. At the same time neither profession is protected in that the provision of these services is not confined to those on the registers of Patent Attorneys or Trade Mark Attorneys so that the costs (and therefore practice fees) must be set at a level which encourages rather than discourage continued registration and attract firms to be regulated for the first time..

At the same time the permitted purposes and regulatory objectives set out in the Act and to which IPReg must adhere have influenced costs as have the proposals set out in the consultation document on Regulatory Independence.

The staff costs (CEO and Administrators) reflect that IPReg is in a start up situation and will need to put in place the administrative arrangements necessary to serve those who it regulates and specifically the Service Level Agreements with the Institutes on things like accommodation, services and the maintenance of the registers function and the appropriate monitoring arrangements There will be a need for the CEO and Administrators (as and when) to work with the LSB and other regulators on the development of the rules and plans for the implementation of the ABS regime and other issues which will surround the regulation of the Legal services professions. This will cover the bi-lateral discussions and arrangements between IPReg and the LSB on performance related issues and the management information on which this will be based.

Staff and Board members, in terms of the Board’s Committees will have to spend proportionately more time in the first year dealing with questions/cases arising from the introduction of a new joint regulatory regime for the two professions. For example there

is a new joint Code of Conduct, new joint Disciplinary procedures, which will exercise one Committee significantly in the first two to three years as the Code and procedures bed in. The Education/Training/Qualification/CPD Committee and staff will have to deal, in particular, with the new, joint, CPD arrangement for the professions which is likely to lead to a number of extra meetings in the first year of operation. There will also be the implementation of the decision by ITMA to outsource the training, education and qualification process for Trade mark Attorneys This will require a deal of monitoring and meetings with the “providers” and ITMA. It will require IPReg to set sooner rather than later the criteria against which the providers of training and education services may be judged. These activities will ensure the maintenance of the professional standard of the professions and over time there will be disappointment if they do not lead to improvements.

IPReg considers that the costs proposed to be incurred in regulating, independently from the two Institutes, CIPA and ITMA, represent the minimum that can be incurred in meeting the regulatory objectives set out in the Act and complying with the permitted purposes. The proportionate approach to the setting of the Budget, for the reasons indicated earlier, is matched by the realistic approach to the purposes for which the Budget will be used.

For example, there will be no significant sums, if any, spent on increasing the public’s understanding of the citizen’s legal rights and duties, nor is there likely to be in the near future. Promoting the benefits of regulation among the professionals who do not need to be registered to practice in the UK is as far as IPReg feels it should go. This will not only promote standards and professional principles but will help users of the IP system by ensuring that they have the degree of protection that regulation under the Act will provide.

The Budget for IPReg is proportionate to the limited goals of setting up the Board and the administrative arrangements to support it. The Board considers that it is sufficient for it to do its job and to ensure that there is robust and effective regulation of the Patent and Trade Mark Attorney professions.

The practice fee regime

IPReg has recently consulted on the structure of a practice fee regime. There were a number of comments and the proposed response to the consultation (which will be issued at the same time as the fees levels are published) is set out in the attached document (Annex C)

It should be noted that those Attorneys employed in private practice and to some extent in industry have their practice fees paid by their employer. Thus the burden of regulation falls on firms of Patent and Trade Mark Attorneys and on sole traders who will be responsible for their fees and the fees of those they employ. It is important therefore to ensure that the level of fees is such as to encourage firms to maintain the current practice of paying their employees fees as well as taking on the additional financial burden of

regulation for the firm itself.

This matrix of fees, which balances the position of the individual Attorney with the Sole Trader and the entity, is expected to raise, £470,000. This is a little less than the total cost of the estimated IPReg Budget and the LSB Levy and costs. However, as the income has been the subject of a 15% reduction on the expected de registration of individuals and the non take up by firms, and there is contingency in the IPReg Budget, these amounts are considered to be acceptable.

Timetable

Practice fees for 2010 should be notified to the professions at the end of October 2009.

It is proposed that the Notifications will be sent out in the first week of November to individuals and to the bodies to whom regulation under the act by IPReg will apply. Registration fees received from individuals will then be applied to the up-dating of the current registers. Monies and details received from bodies wishing to be regulated by IPReg as soon as the Order designating CIPA and ITMA Approved Regulators comes into place will be applied to the maintenance of an “interim” register until that comes about.