

To:	Board		
Date of Meeting:	24 March 2010	Item:	Paper (10) 20

Title:	IPREG practising certificate arrangement for 2010		
Workstream(s):	Securing independent regulation		
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Status:	Unclassified		

Summary:

As a transitional arrangement, the Intellectual Property Regulation Board (**IPREG**) has submitted an application to the LSB to consider with the view of approving the fees for registered bodies for 2010 (a full copy of the application is available on request). The proposed practising fees to be charged to registered bodies (or entities including sole traders) is a base fee of £250 per entity (or £350 for a sole trader on both the Patent Attorney and Trade Mark Attorney registers) plus £50 for each employed registered Attorney and £200 for each unregistered professional practising via the entity. (**Annex A** sets out the full practice fees for 2010).

The application has been the subject of extensive correspondence between the LSB and IPREG over recent months. In terms of consultation with the persons paying the practising fees, IPREG conducted a consultation process on their practising fee framework in May 2009; LSB was provided with the opportunity to view and comment.

As background to this application, the Intellectual Property Office (**IPO**) has approved IPREG's individual practice fees under the current legislation – Copyright, Patents and Designs Act 1988 and the Patents Act 1977. The fee is set at £150 per individual Patent and Trade Mark Attorney in 2010. This fee has decreased from the previous year's practising fee for individual Patent and Trade Mark Attorneys, which was set at £165 in 2009.

The LSB welcomes IPREG's move toward the entity and individual split as it mirrors and supports the move toward entity regulation. There are some unusual features of the methodology for calculating entity fees, which it could be argued may have the effect of disincentivising non intellectual property lawyers entering multi-disciplinary partnerships. In turn, this is bound up with the wider question of protection of title for intellectual property work. We will consider these issues further in the coming year and any decision will need to make clear that, in approving the current application as 'a one-off' because of its unusual timing, we are not fettering our discretion to reach a different view once we have developed a fuller framework for practice fee approval when applications are received from all Approved Regulators (**AR**) later in the year.

Risks and mitigations

Financial: See paragraph 4.

FoIA:	N/A.
Legal:	N/A.
Reputational:	N/A.
Resource:	N/A.

Consultation	Yes	No	Who / why?
Board Members:		✓	
Consumer Panel:		✓	
Others:	N/A.		

Recommendations:
<p>The Board is invited:</p> <ol style="list-style-type: none"> (1) to approve IPREG’s application for the proposed practising fees to be charged to registered bodies (or entities including sole traders) of a base fee of £250 per entity (or £350 for a sole trader on both the Patent Attorney and Trade Mark Attorney registers) plus £50 for each employed registered Attorney and £200 for each unregistered professional practising via the entity; and (2) to note that there is potential for the £200 fee for each unregistered professional practising via the entity to act as a disincentive for new entrants to multi-disciplinary practices. The LSB will explore the formula for calculating entity based practising fees for all relevant applications going forward to ensure the framework is both fair and transparent.

LEGAL SERVICES BOARD

To:	Board		
Date of Meeting:	24 March 2010	Item:	Paper (10) 20

IPREG practising certificate arrangement for entities for 2010

Executive Summary

Recommendation(s)

The Board is invited:

- (1) to approve IPREG's application for the proposed practising fees to be charged to registered bodies (or entities including sole traders) of a base fee of £250 per entity (or £350 for a sole trader on both the Patent Attorney and Trade Mark Attorney registers) plus £50 for each employed registered Attorney and £200 for each unregistered professional practising via the entity; and
- (2) to note that there is potential for the £200 fee for each unregistered professional practising via the entity to act as a disincentive for new entrants to multi-disciplinary practices. The LSB will explore the formula for calculating entity based practising fees for all relevant applications going forward to ensure the framework is both fair and transparent.

Background

1. Where an AR proposes to charge practising fees as a part of its regulatory arrangements, it must apply to the LSB for approval of the level of that practising fee. On 1 January 2010, the LSB received its full powers and now has the authority to consider applications for practising fee arrangements from ARs.
2. On 6 August 2009, a joint application was sent to the LSB and the Intellectual Property Office (IPO) in respect of IPREG's practice fee arrangements for Patent and Trade Mark Attorneys for the calendar year 2010. On 26 September 2009, the IPO approved part of the joint application that relates to the practice fees charged to Patent and Trade Mark Attorneys who are individuals on registers.
3. On 1 January, the Chartered Institute of Patent Attorneys (**CIPA**) and the Institute of Trade Mark Attorneys (**ITMA**) became ARs under the Legal Services Act 2007. As the regulation body of both CIPA and ITMA, IPREG will now look to the LSB to approve the matrix level of practising fees to facilitate 'entity regulation' in April 2010. A fee will be paid by an entity and a register of entities will be established.
4. IPREG has indicated that the flow of individual fees will be sufficient to meet its running costs for the first quarter of 2010 as well as to meet the costs of the LSB Levy paid in February 2010. The balance of IPREG's costs will then be met from the flow of regulated bodies' fees from April 2010 onwards.

Approval mechanism

5. In September 2009, the LSB took the position that it would be difficult to consider and approve IPREG's proposed practising fee application in the absence of a settled LSB framework. However, as the practising fee framework and rules have been finalised

(Board approval was given on 9 December 2009), the LSB is now in the position to consider IPREG's practising fee application for entities in full.

6. The LSB's framework for practising fee rule approval requires that 'monies raised through practising fees must not be applied for any purposes other than one or more of the permitted purposes'.
7. The criteria that the LSB will use to decide the application includes:
 - a) Evidence that reasonable care was taken in settling the application in the context of the budget
 - b) Evidence that revenue raised through practising fees is applied to permitted purposes only
 - c) Clarity and transparency over revenue raised through practising fees that is applied to permitted purposes that are regulatory functions and that are not regulatory functions
 - d) Evidence that the persons paying practising fees will have explained to them how revenue raised through the charging of practising fees will be applied to regulatory and other functions.
8. The evidence that the LSB will use to decide the application includes:
 - a) A description of how the application was developed and settled including the consultation process
 - b) A budget showing anticipated income from practising fees, all other expected income and planned expenditure
 - c) An explanation of how the cost to each regulated person is to be broken down between income to regulatory functions and income related to other functions
 - d) Evidence of how the previous year's practising fee income was allocated only to permitted purposes
 - e) A regulatory and diversity impact assessment.
9. This application is a one-off consideration for the Board as a fuller framework for practice fee approval will be developed when applications are received from ARs later in the year. Therefore, the finalised rules mentioned in paragraphs 6, 7 and 8 are applied retrospectively to IPREG's application.

IPREG position

10. In September 2009, IPREG submitted its application to the LSB for the approval of practising fee arrangements for entities and provided the necessary documents to support the application.
11. The application has been the subject of extensive correspondence between the LSB and IPREG over the previous months. The previous Chief Executive of IPREG, Mike Knight, met members of the LSB Senior Management Team (**SMT**) to discuss outstanding issues arising from the application.
12. In terms of consultation with the persons paying the practising fees, IPREG conducted a consultation process on its practising fee framework in May 2009; LSB was provided with the opportunity to view and comment.

13. Submissions to the consultation were summarised in a post-consultation document that concluded that the structure of the fees regime will remain as proposed. The majority of the responses to the consultation were directed towards the position of sole traders, in particular that the proposed structure might put an undue financial burden on this group of individuals and that there was no real evidence that sole traders were at a greater risk than other individuals or bodies. The position was then amended so that the fees payable by sole traders should be proportionate to that payable by other entities, but they should not pay significantly more than an individual employed in private practice.
14. IPREG has requested individual registrants to pay their practising fees by 1 January 2010 and entities (subject to Board approval) to pay their practising fees in April 2010.

LSB analysis

15. The LSB explored the option of IPREG applying directly to IPO for consideration of approval of both the entity and individual registrants' practising fee arrangement. It was found that the IPO does not have the mandate to approve practising fee arrangements for entities as the rules governing Patent and Trade Mark Attorneys only considers the registration and regulation of individuals. Therefore, consideration of IPREG's entity based practice fee regime has fallen to the LSB.

16.

[REDACTED]

17. It was agreed in the meeting that IPREG would wait for LSB to settle its framework and acquire its powers. A formal application would be submitted seeking the approval of the individual practising fee element from the IPO, and LSB approval of the entity fee element in early 2010, by which time consideration and approval will be possible. IPREG will then ask individual registrants to pay sums due by 1 January 2010 and entities to pay sums due in April 2010 (assuming LSB approval). It was also agreed that both IPREG and LSB would work together on the basis of the above understanding.
18. IPREG has engaged early in the process of determining their practising fee arrangements and provided the necessary documentation for the Board to consider the application. The LSB also welcomes IPREG's move towards entity and individual split as it mirrors and supports the LSB's move toward entity regulation.

19.



20. It is important to note that this application is a one off consideration for the Board and is applied in retrospect to the rules listed in the approval mechanism section of this paper. The application has been the subject of extensive correspondence with the LSB. The application has also been the subject of a full consultation process with those persons paying the fees. In addition, both institutes, CIPA and ITMA, have also been consulted and have approved the IPREG budget for 2010 which forms the base for the costs which have to be met from the sums raised through practice fees.

Framework for considering the approval of practice fees for ARs for 2011

21. The framework provided by the practising fee rules is high-level and designed to meet the varying needs of the AR-community. As such, it leaves a lot of detail to be decided under the framework of the rules. The LSB is currently working with each AR to ensure effective determination of applications for the practising fee regimes for 2011 are submitted under these rules.
22. The focus for the practising fee approval will be to ensure the ARs get their processes right for determining their practising fee arrangements for 2011. The LSB will be seeking key elements to be present within each application, including: the necessary consultation processes with their regulated community; clear independence from representative and regulatory arms; and the fee regime has adequate transparency with clear links from strategy to budget.

15.03.10

ANNEX A – IPREG’s Practice Fees for 2010

Practice Fees - 2010		
	Fee £ One Register	Fee £ Both Registers.
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

Definitions:

‘One Register / Both Registers’

An individual or entity can be entered on the register of Patent Attorneys and/or the register for Trade Mark Attorneys and therefore regulated by IPREG.

‘Registered Attorney and unregistered professional practising via entity’

It is proposed that an entity (or a sole trader) will pay two rates of additional fees (on top of the base fee of £250 per entity):

- A relatively low fee (£50 each) in respect of employed registered Patent Attorneys and registered Trade Mark Attorneys; and
- A higher rate fee (£200 each) for all other professionals¹.

It is noted a charge of £350 for a sole trader on both the Patent Attorney and Trade Mark Attorney registers.

¹ This higher rate fee would be at around the combined level of the low fee rate plus the individual attorney registration fee. For the purposes of establishing the fees due from an entity, it is proposed that the following would count as ‘other professionals’: any individual, other than a registered Patent Attorney or registered Trade Mark Attorney, who provides legal services to the public in the UK via a registered body who is qualified as (1) a European Patent Attorney; (2) a European Trade Mark Attorney; (3) a Barrister; (4) a Solicitor; or (5) anyone who is qualified to be a registered Patent Attorney or registered Trade Mark Attorney but chooses not to be registered.