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13 March 2009

LSB Business Plan – Comments

I am writing on behalf of the Chartered Institute of Patent Attorneys (CIPA), the Institute of Trade Mark Attorneys (ITMA) and the Intellectual Property Regulation Board (IPREG), first of all to thank you and your colleagues for meeting us on 26 February and secondly to set out our detailed comments on the draft Business Plan.

In general we welcome the Plan. From the standpoint of the Approved Regulators it sets out clearly the direction from which the LSB is coming and the role they expect them to play in the delivery process. Our comments on it centre around the three concerns which we set out at our meeting and which are:

- i) the fact that neither Patent Attorneys nor Trade Mark Attorneys have to be on the registers which will be kept by IPREG in order to practise in the United Kingdom; and that leads in to
- ii) over-regulation; and
- iii) costs;

either of which (over-regulation or costs) might cause individuals to remove themselves from the registers. Not only would that mean un-regulated Patent and Trade Mark practitioners practising in the UK, but it would negate one of the objectives of the Act which was to afford greater protection for the citizen through regulation. We were heartened to hear what you had to say on these points when we met, but feel there is an opportunity, in the plan, to be a little more explicit in your approach to them.

Our detailed comments are as follows:

Chapter 2 Vision

At 2.1 the goal set out implies that reform and modernisation is to take place, whether needed or not. Even though we recognise that the LSB does envisage significant changes, and is driven by the Act and the background to it, we should prefer a more proportionate aim, perhaps by the inclusion of the words in italics as follows eg –we will, *where it is needed*, reform and modernise.....

At 2.2 there is no recognition that regulation, under the LSB, could drive IP practitioners out of the regulated and into the un-regulated sector thus defeating some of the consumer driven objectives. Again, this risk is one which might at least be alluded to in Chapter 7 under Risk Management.

Chapter 3 The context

There is the opportunity at paragraph 19 to recognise that the framework of regulation in the IP field might be changed such that it would not be possible for unregulated persons to practise in this field; this might help to ensure that consumers receive the level of regulated service in this field which they are entitled to expect.

Chapter 4 Our role in future regulation

Also, there could be a greater emphasis on a proportionate regulatory regime. Though there is some recognition of the term in paragraph 28, it should be linked directly to the markets/users the regulated professions serve. In this way it will be clear that regulation is going to be proportionate to the relevant public.

Chapter 5D Developing excellence in legal services regulation

This is another area where there could be greater use and recognition of the word “proportionate”. We were pleased to hear at our meeting with you that you did not envisage that either regulation or the assessment of performance would be based upon a “one size fits all” set of criteria. Nevertheless, the assessment of the regulatory performance of the various professions and approved regulators is likely to prove problematical and care will need to be taken in determining an evaluation criteria and methodology to ensure that it is not an expensive paper chasing exercise for the Approved Regulators.

Chapter 7 Building our organization

In the section on Risk Management, as indicated earlier, we would like to see a mention of the risk that an overly complex and costly regulatory regime may drive some people out of the regulated sector and thus denying the citizen, and the users of the IP system the system of protection the Act envisages.

We look forward to the forthcoming consultation documents on the Levy and on securing independent regulation, both topics, as you know, are likely to be of particular significance to the smaller professions such as ours.

Once again, thank you for the meeting and we look forward to a continuing dialogue with you and your colleagues over the next year or so in order that we get the regulatory framework in place which meets all our objectives.

Michael Heap

Chairman