

Michael Mackay
Legal Services Board
One Kemble Street
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WC2B 4AN

20 February 2014

Dear Mr Mackay

This submission is filed on behalf of the Chartered Institute of Patent Attorneys (CIPA), the representative body for Registered Patent Attorneys in industry and private practice. CIPA is an approved regulator and has delegated its regulatory responsibilities to the Patent Examination Board, which together with the Trademark Regulation Board, is administered by the Intellectual Property Regulation Board (IPReg). Further details of CIPA are presented in Annex 1.

CIPA would like to make the following comments on the Review of the levy rules Consultation document issued on 18th December, 2013. We apologise that this submission is filed after the deadline set in the Consultation document but ask that the points made below be considered.

Before answering the specific questions set out in the Consultation document, CIPA would like to make three general comments.

CIPA would firstly note that the statistics in the Consultation document show that very few problems arise from the practice of Registered Patent Attorneys. IPReg has received very few complaints and so far only one has led to any significant action. This continues the regime established by CIPA over many years before the implementation of the Legal Services Act. Very few Registered Patent Attorneys have been subject to any disciplinary action and even fewer (none in the past twenty years) have been struck off the register. Thus, there is very little need for any regulation of Registered Patent Attorneys.

CIPA would secondly note that the majority of work carried out by RPAs is for enterprises, not for individual persons. Many RPAs are employed in-house by medium-sized or large enterprises and are often not allowed to work for individuals. Many RPAs in private practice work for medium-sized and large enterprises, many of which are foreign enterprises. Quite often, in-house RPAs employ RPAs in private practice for selected types of work. Thus, in the main, the work of RPAs is involved in business-to-business relationships where there is a low likelihood of any complaints arising.

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CIPA would thirdly note that RPAs rarely handle client monies. The vast majority of the transactions between RPAs and their clients are on the basis of billing for work done and fees paid and does not require any handling of client money. Thus, the risk of mishandling of client monies is very low.

CIPA therefore considers that RPAs represent a very low risk profession and so feel that continued light touch regulation is appropriate for RPAs and the rules on the levy should reflect this. Thus, it should be ensured that the levy for the Patent Regulation Board should be as low as possible so as not to impose undue financial burdens on RPAs.

As regards Question 1, CIPA is not in favour of a “do nothing approach”. Rather CIPA considers that it should be investigated whether the levy rules can be amended take account of risk on the basis of historical data. In this respect, the representative bodies no doubt have historical data going back before the establishment of the LSB and so it should be possible to extend the data further back in time to enable a reasonable assessment of risk to be made.

As regards Question 2, CIPA has no view on this point.

As regards Question 3, CIPA considers that a three year period is not appropriate. CIPA considers that it should be possible to use the statistics as they accumulate and as they have already been accumulated by the Approved Regulators before the inception of the LSB. If all available historical data is used, any temporary swings in risk will be smoothed out. It is certainly considered that a three year period is too short as it allows unusual years to skew the general trends.

As regards Question 4, CIPA considers that a fixed minimum contribution is not appropriate. As can be seen from the statistics given in the Consultation document, this is unfair on those Regulators with zero or very low numbers of complaints. CIPA considers that the costs for the Legal Ombudsman should be apportioned according to the number of complaints. CIPA has no comment on the proposed changes to the rules.

If CIPA can be of any further assistance, please do not hesitate to contact me.

Yours sincerely

Lee Davies
Chief Executive