

IPReg Consultations – reducing notice of suspension for non-payment of fees and service of documents

1. Introduction

- 1.1 IPReg has the power to make regulatory arrangements. This is provided for in the Copyright, Designs and Patents Act 1988, s275A(2)(e) (pursuant to the Legal Services Act 2007 (LSA) at s185), the Trade Marks Act 1994 s83A(2)(e) (pursuant to the LSA at s184) and the LSA (s21).
- 1.2 The Legal Services Board (LSB) must approve (or exempt) changes to regulatory arrangements before they can come into effect.¹

Proposal #1 - notice of suspension for non-payment of fees: reduction to one month

2. Background

- 2.1 In February 2018, the LSB approved a change to our regulatory arrangements that allowed us to suspend individual registrants from the register(s).² If an individual fails to pay their practising fee on the renewal date (1 January) we currently write to them two months after the renewal date warning them that suspension will follow in one month if the fee remains unpaid.
- 2.2 During the 2018 annual return/re-registration process, it became clear that a number of firms and individuals make a conscious choice to delay completing that process until as late as possible, exploiting the fact that the current rules allow 3 months³ before an attorney is suspended from the register.
- 2.3 We consider that the new power to suspend individuals in certain circumstances did improve completion rates. However, reducing the time allowed to pay practising fees to 1 month should provide an additional incentive for compliance which would help increase consumer protection (by enabling us to identify attorneys with possible financial difficulties earlier) and should help to reduce the overall resources we use during this process (because it would be completed more quickly). Our aim is to start the annual return reminder process earlier in the preceding year to try and encourage increased levels of compliance.
- 2.4 IPReg is therefore considering applying to the LSB to seek approval to amend the Patent Attorney and Trade Mark Attorney Qualification and Registration Regulations 2009 to reduce to one month the time before a warning letter is issued.
- 2.5 The proposed changes are set out at Annexe A.

¹ LSA Schedule 4 paragraph 19

² http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/2018/20180208_Decision_Notice.pdf

³ Currently 2 months to pay and then 1 month's notice of suspension

Proposal #2 – service of documents by email only

3. Background

- 3.1 IPReg’s regulatory arrangements make various provisions for the service of correspondence and/or notices that we can give to individual registrants and entities. They all require service of documents personally or by mail with proof of postage. During the 2018 re-registration process, we spent around £500 on postage for letters relating to non-payment of fees, non-compliant CPD and non-compliant PII. Additional resources are also used because a member of the IPReg team has to go to the Post Office. Streamlining the service of documents to allow us to send them by email only (but with the discretion to use physical post if required) will help to improve efficiency and reduce costs. This is particularly relevant if we tighten up on timescales for compliance (see Proposal #1) as there are likely to be increased numbers of letters being sent out.
- 3.2 IPReg is therefore considering applying to the LSB to seek approval to amend its regulatory arrangements to enable service of documents by email only. However, this does not preclude service by other means specified in the rules if IPReg considers it is appropriate in the particular circumstances of a case.
- 3.3 The regulatory arrangements affected are the:
- Patent Attorney and Trade Mark Attorney Qualification and Registration Regulations 2009;
 - Rules of Conduct for Patent Attorneys, Trade Mark Attorneys and other Regulated Persons; and
 - Disciplinary Procedure Rules 2015.
- 3.4 The proposed changes are set out at Annexe A.

Question 1

Do you agree with the proposed amendments in relation to the length of suspension?

Question 2

Do you agree with the proposed amendments in relation to service of documents?

Question 3

Do you have any comments on the proposed draft regulations?

If you have any comments on this consultation, please send them to:

info@ipreg.org.uk

by 12 noon on Thursday 11 October 2018

Annexe A

NB. These two proposals are linked and the overall changes proposed are shown in red text

Rules of Conduct for Patent Attorneys, Trade Mark Attorneys and other Regulated Persons

Rule 3 – Service of Documents

Any notice or other document required by or for the purposes of these Rules or any other regulatory arrangements made by IPReg to be given or sent to a must be notified to the regulated person ~~may be~~ in writing. IPReg's notification in writing may be:

- by any form of electronic communication normally used for business purposes such as email;
- given to them personally; or
- sent by mail to their last known address with proof of such postage by Royal Mail "Signed for 1st Class" (or equivalent product), in which case the document is treated as received on the second calendar day (not including bank holidays) after posting.

Patent Attorney and Trade Mark Attorney Qualification and Registration Regulations 2009

Regulation 7 – Renewal of Registration

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7.4 If a registered patent attorney or registered trade mark attorney fails to:

- (a) pay the fee prescribed for renewal of registration in accordance with Regulation 12 within ~~two~~one months from the day on which it becomes payable (the Renewal Date);
- (b) provide the relevant Registrar with the evidence requested in accordance with ~~Regulations~~ 7.2 within one month of being asked to do so; or
- (c) provide evidence to the satisfaction of the Registrar that he has appropriate Professional Indemnity Insurance in place in accordance with Rule 17 of the Rules of Conduct for Patent Attorneys, Trade Mark Attorneys and other Regulated Persons,

the Registrar concerned shall notify the attorney at his business address in accordance with Rule 3 of the Rules of Conduct for Patent Attorneys, Trade Mark Attorneys and other Regulated Persons (as shown in the Register) that his name will be suspended for a period of three months or removed from the relevant register within one month, unless the required fee is paid and/or the requested evidence is supplied.

Disciplinary Procedure Rules 2015

Rule 13 – Service of documents

13.1 Any Complaint or other document required to be served under these Rules shall be served in accordance with Rule 3 of the Rules of Conduct for Patent Attorneys, Trade Mark Attorneys and other Regulated Persons. :-

a) ~~personally~~

b) ~~by sending the same by guaranteed delivery post or other guaranteed and acknowledged delivery to the last known place of business or abode of the person to be served; or~~

c) ~~in such other manner as the Disciplinary Board may direct.~~

~~13.2—Any document served in accordance with paragraph 13.1(b) and (c) shall be deemed served on the second working day following the day on which it is delivered, posted or transmitted.~~

~~13.3—A document delivered to the last known place of business or abode of the person to be served may be regarded by the Disciplinary Board as duly served if the Board considers it reasonable to expect that the document has been received by or brought to the attention of the said person.~~