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LETR team
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Dear LETR team

Discussion Paper 02/2012 (Key Issues II: Developing the detail)

I am writing on behalf of the Intellectual Property Regulation Board (IPReg). The letter is prompted by the LETR Discussion Paper 02/2012.

Whilst IPReg has previously welcomed the wide remit of the review of legal education and training, it does not believe the review is yet fully comprehensive. We say this as it appears that very limited attention has been paid thus far to the routes to intellectual property (IP) legal qualification.

IPReg feels sure that the academic and vocational education and training pathways for patent attorneys and for trade mark attorneys would be held up as exemplars of effective modularisation.

IP may be regarded as a "niche" legal market but nevertheless patent and trade mark attorneys are trained to an equivalent standard as solicitors and barristers and provide the same level of service. To exclude them from a broader consideration appears remiss.

To explain:

Entry for patent attorneys is via a non-law degree; typically an honours degree in science, mathematics, engineering or technology. Entry for trade mark attorneys is also possible via a non-law degree although they can and do enter with a law degree. Vocational training is either through LLM courses in intellectual property law or other similar post-graduate certificates, and subsequently undertaking the examinations administered for patent attorneys by the Joint Examination Board under powers delegated by the Council for Patent Attorneys (CIPA) and for trade mark attorneys by Queen Mary University of London and Nottingham Trent University.

The syllabus for patent attorney and trade mark attorney qualification is defined in detail. Only those topics relevant to the area of practice need be taken, examinations are divided into modules to facilitate this and exemptions from specific modules are given where a deemed equivalent competency exists.

There is no prescribed order in which the modules should be completed. Any paper may be taken without having passed any of the others with the exception of entry to the Advanced level when success at Foundation level must firstly be secured. The Foundation papers are taken usually after the first year in the profession, and the Advanced after approximately three years. IPReg is not prescriptive in terms of the time taken.

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Irrespective of the vocational examination route the individual is also required to undertake relevant supervised work. Success at the vocational level is coupled with at least two years practical training under professional supervision prior to acceptance on to the Register of Patent Attorneys or Register of Trade Mark Attorneys.

These attorneys have the same rights to conduct legal cases as solicitors and barristers, and as with those other professions, they can achieve higher rights of audience to conduct cases in the High Court with a further qualification.

The significant difference between these pathways and those of the solicitor or barrister is the modular approach to examination, training and qualification all of which can be undertaken whilst in employment.

I have provided further detail of the IP pathways and modular examinations in enclosures accompanying this letter.

It is also worth noting that most UK patent attorneys also submit to examination to qualify as European patent attorneys. The services provided by patent and indeed trade mark attorneys span a global market. For example, a patent European qualification gives exemption to two out of the four Advanced modules. So whilst the discussion paper comments upon the growing attraction of some to legal qualification from outside of the UK, a snapshot of IP qualification would more likely show the opposite trend occurring. A survey conducted by IPReg across all regulated IP entities identified a healthy market in internationally qualified patent and trade mark attorneys working in fee earning, client-facing roles whilst studying toward a UK qualification. This international dimension is vitally important for the conduct of IP legal services as there are specific jurisdictions defined by country borders necessitating patent or trade mark work being undertaken across the prevailing legislation and regulations. With this level of need IPReg would caution against moving too far away from the existing model of IP qualification and training due to the very division it would set between the UK, Europe and the rest of the world, both academically and in terms of reputation. Certainly if the review were to require a separate IP module which differs from the current UK & European requirements then we believe significant specialist input will be necessary.

Besides supervising those patent and trade mark attorneys to UK qualification, IP entities also employ, train and supervise Paralegals and Administrators. This latter group achieve qualification in their own right (Certificate in Patent or Trade Mark Administration), enabling them to undertake more routine client-facing activity such as the filing and renewing / re-registration of patents or trade marks. A further enclosure accompanying this letter provides more detail.

Paralegals, as you remark, are a rather nebulous group inasmuch that they comprise a wide range of legal and non-legally qualified individuals. Given the full breadth of all of those seeking qualification, training and / or supervision in patent and trade mark services, IPReg does not support the notion of separate registration and regulation of each of these allied roles. IPReg believes that entity regulation is

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sufficient. We do not believe a suitably strong case has been made why this group should be regulated and the suggestion of separate regulation goes against the ethos of reducing the burden of regulation. Unless made a voluntary requirement (and if it were to what end?), legislative change would be required to mandate qualification and professional standards which seems an overly cumbersome approach to achieving the regulatory objectives of the Legal Services Act.

Finally, you have proposed a public interest test that "*the benefit to the community of regulating exceeds its costs and is likely to have the greatest net public benefit of all alternative options considered*". This is but re-stating the principles of modern regulation; that it be proportionate, consistent, accountable, targeted and transparent. To these principles IPReg adds its corporate values of being independent, fair and risk-assessed outcomes focused. We promulgate these principles and values to our regulated entities through our Code: Rules of Conduct for patent attorneys, trade mark attorneys and other regulated persons. This Code is principles based and covers all of the ethical matters wrestled with by LETR under cover of another paper recently authored by Richard Morehead. We have offered to share our experience of three years regulating under a principles-based code.

Whilst an attempt to capture these principles and values in a single statement is indeed laudable, you will appreciate the difficulty this presents to the IP market given its global activity. We cannot see the merit in introducing an overarching public interest test until LETR better defines the benefiting community. Such a substantial part of the IP market is based upon international work that a danger exists for us at least of the "community" bringing a disproportionate focus for our regulatory efforts and resources.

Yours sincerely

Michael Heap

Michael Heap
Chairman

Encl: Pathways to qualification for patent attorney and trade mark attorney
Rules for examination and admission of individuals to the Registers of Patent and Trade Mark Attorneys 2011
Certificate in Patent Administration Syllabus 2012/13