

**CONSULTATION ON THE LEVEL OF THE FEE FOR HOLDERS OF
MARKS PROTECTED AT COMMUNITY LEVEL TO OPT-IN TO THE
PROPOSED NOTIFICATION SYSTEM**

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RELATIVE GROUNDS FOR REFUSAL – NOTIFICATION OPT-IN FEE

INTRODUCTION

Summary and purpose of consultation

In December 2006 the UK Intellectual Property Office (then known as the Patent Office) consulted on the draft legislation required to change the registrar's role in the raising of relative grounds objections to the registration of new trade marks (refusal because of earlier conflicting trade marks) to a "search and notify" role. The relevant section of the previous consultation on draft legislation can be seen at Annex A and our Minister's subsequent response on what legislative changes are needed to support the policy can be seen in Annex B.

One of the issues consulted on was the proposal that Community Trade Mark ("CTM") proprietors and proprietors of International trade marks protected in the European Community as a whole ("International-EC") would only be notified of any relevant new national applications if they opted in to a notification system subject to the filing of a particular form and fee. This proposal was widely supported. We are now consulting on the fee required for opting in and the period that this will cover.

Responding to the consultation

We welcome your views on this issue. Please send any comments to the postal or e-mail address given below:

Louise White
Trade Marks Registry
Concept House
Cardiff Road
Newport NP10 8QQ

E-mail: consultation@ipo.gov.uk

Given that this consultation is a follow-up to an earlier consultation where the issue of an opt-in fee was proposed (a proposal which received widespread support), we would like to have your comments within 6 weeks of the launch of this consultation, namely, by **20 June 2007**. This timeframe will also allow us to publicise the availability of notification opt-in as widely as possible before the proposed regime change in October 2007.

Responses are welcomed from any individual, organisation, company or firm. Copies of this document, including large print versions, are available from the contact address given above. A full list of the organisations and individuals being sent this document is given at Annex D.

Impact assessment

A partial regulatory impact assessment (RIA) has been produced and can be seen at Annex E. The RIA sets out our assessment of the impact that the new legislation will have on our users. Please take the time to read this document and let us have any comments you have on any aspect of its contents. After considering any comments we receive, the RIA will be finalised and will accompany the legislation, when forwarded to the responsible Minister, in order that he can confirm that the benefits of the legislation justify any costs that the legislation will introduce.

Openness/Confidentiality

This is part of a review exercise, the results or conclusions of which may be published. As such, your response may be made public. If you do not want all or part of your response or name made public, please state this clearly in the response. Any confidentiality disclaimer that may be generated by your organisation's IT system or included as a general statement in your fax cover sheet will be taken to apply only to information in your response for which confidentiality has been requested.

Information provided in response to this review, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want other information that you request to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding.

The UK Intellectual Property Office will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

RELATIVE GROUNDS FOR REFUSAL – NOTIFICATION OPT-IN FEE

Background

We propose to introduce a fee for holders of CTMs and International-EC marks wishing to `opt-in' to the new search and notification system proposed to be implemented in October 2007. Holders of earlier UK marks and International marks protected specifically in the UK will be notified automatically by the Office about any subsequent requests by third parties to protect later filed conflicting marks at national level. Holders of such marks will not have to ask to receive such notifications or pay any new fees.

We have already decided that in order to receive notifications, CTM and International-EC trade mark holders must opt-in to the new system subject to the payment of a fee. The purpose of raising the matter again here is to seek your views on the level of the fee payable.

Proposal

It is proposed that the opt-in procedure will be reviewed again within the ten year period commencing October 2007. If there is shown to be sufficient demand for this service, it is our intention to introduce a rule permitting requests for notification to be renewed. There will be further consultation about the level of any renewal fee. In the meantime, and without precluding the possibility of changes to the law being made before the expiry of the ten year period, it is proposed that the fee covers the cost of sending notifications to the holders of CTMs and International-EC marks that have opted in for a period of ten years, starting with the date that the request is filed. The cost to the Office over this period of time could be significant. We therefore propose to set the opt-in fee at £200 in order to cover the likely costs. This will be a fee per trade mark (regardless of the number of classes).

ANNEX A TO THE CONSULTATION ABOUT THE LEVEL OF OPT-IN FEE – EXTRACTS FROM THE PREVIOUS CONSULTATION DOCUMENT SETTING OUT THE EARLIER POLICY PROPOSAL FOR AN OPT-IN FEE

RELATIVE GROUNDS FOR REFUSAL – PROPOSED LEGISLATIVE CHANGES

INTRODUCTION

Summary and purpose of consultation

Earlier this year the Patent Office consulted on how, in the future, the relative grounds for refusal contained in the Trade Marks Act 1994 (“the Act”) should be dealt with. After taking into account the views expressed in response to the consultation we then published our Minister’s decision on how we should proceed (see Annex A). In summary, the Registrar of Trade Marks will no longer refuse to register a new trade mark application in the face of an earlier conflicting trade mark unless the owner of the earlier mark successfully opposes the new application. The Registrar’s examiners would, nevertheless, still conduct a search as part of the examination process and would inform both the applicant for registration of the results of the search and also the owners of earlier conflicting trade marks identified in it if, and when, the application proceeds to publication.

Having decided what the policy should be, consideration has now been given to the legislative changes that are required to bring this policy into practice. This consultation document therefore sets out draft legislation to show how the new regime will operate. Explanations of the changes and the effects they will have are also included.

RELATIVE GROUNDS FOR REFUSAL – PROPOSED LEGISLATIVE CHANGES

SECONDARY LEGISLATION

Section 78 of the Act provides the power to make secondary legislation to regulate practice and procedure. The following is a draft set of amendment rules that will further amend the Trade Mark Rules 2000 (as amended) (“the Rules”):

“Changes following end of ex officio refusal on relative grounds; s 37

3.—(1) After rule 11, insert—

“Notifying results of search; s 37

11A.—(1) Where, following any search under section 37, it appears to the registrar that the requirements for registration mentioned in section 5 are not met, she shall notify this fact to—

- (a) the applicant; and
 - (b) the proprietor of any earlier trade mark in relation to which at the time of acceptance of the trade mark it appears that the conditions set out in section 5(1) or (2) obtain.
- (2) But the registrar has no duty to notify an excluded proprietor.
- (3) An excluded proprietor is—
- (a) in relation to a mark which is an earlier registered trade mark or an international trade mark (UK) as defined in section 6(1)(a), 6(1)(ba)

and 6(2), a proprietor who has notified the registrar in writing that he wishes to be excluded; and

(b) in relation to an earlier Community trade mark or international trade mark (EC), as defined in section 6(1)(a), 6(1)(b) and 6(2), a proprietor who has not filed a request to be notified on Form TMXX in relation to that mark.

(5) Rule 54 shall not apply to any decision made in pursuance of this rule.

(6) No decision made in pursuance of this rule shall be subject to appeal.”.

(2) In rule 13, for paragraph (1) substitute—

“(1) Any notice to the registrar of opposition to the registration, including the statement of grounds shall be filed on Form TM7.

(1A) The time prescribed for the purposes of section 38(2) shall be the period of three months beginning with the date the application was published.”.

Transitional provisions

Rule 3 shall not apply to a pending application which was accepted before the coming into force of the 2007 Order.”

Explanations and rationale

Rule 3 of the draft amendment rules introduces a new Rule 11A to the Rules and, furthermore, amends Rule 13 of the Rules. The various impacts of these changes can be broken down as follows:

Rule 11A (1), (2) and (3) – These rules set out who will be notified as a result of the search carried out under the provisions of Section 37(1). The applicant for registration will be notified of any earlier marks which at the time of examination appear to the Registrar on the face of things to provide a ground of objection under Section 5(1) or 5(2) of the Act. The applicant will decide whether his mark proceeds to publication in the light of this information. If the trade mark is published, the Registrar will notify the proprietor (except an “excluded proprietor”) of any earlier mark identified in the search which still appears to the examiner to provide a basis for an objection under these parts of section 5.

The above rules define an “excluded proprietor” as two things. Firstly, it is a proprietor who has informed the Registrar in writing that he wishes to be excluded from receiving such notifications. This enables a proprietor who would otherwise receive a notification to “opt-out” of receiving them. This rule retains the flexibility for a proprietor who may, for example, conduct his own watching service to opt-out of receiving official notifications.

The second category of “excluded proprietor” consists of the proprietors of Community Trade Marks (“CTM”) and international trade marks which have designated the Community as a whole for protection (International–EC) who have not asked to be notified of such matters (by filing a Form TMXX). We do not propose to notify these categories of proprietors of earlier marks unless they opt-in to receiving notifications. We see this as necessary for a number of reasons:

- a) As opposed to proprietors of UK marks or International marks that have specifically designated the UK, proprietors of CTMs or International-ECs cannot be presumed to have a specific interest in the UK market. The enlargement of the European Community means that more and more trade marks protected at Community level are not in use in every member state. For this reason we do not consider it appropriate to send what would be significant numbers of notifications to proprietors of earlier marks protected at Community level who may well have no interest in receiving such information.
- b) Notification is, effectively, an information service to assist the applicant and the proprietor of the earlier mark. The provision of such a service obviously costs the Patent Office and this cost will be met by the revenue that the Patent Office receives from its statutory fees. Whilst applicants and proprietors of UK marks (and International marks designating the UK) pay UK statutory fees to the Patent Office, proprietors of CTMs and International-ECs do not. Not requiring such proprietors to opt-in to the notification system (and to pay a fee for doing so) would mean that users of the UK registration system would be subsidising this information service for the benefit of proprietors of CTMs and International-ECs.
- c) What we have proposed is a mirror of the way in which the CTM registration system operates. Only proprietors of earlier CTMs are notified by OHIM as a result of their searches; proprietors of national marks are not. We therefore believe that this proposal aligns the UK regime with the one operated by OHIM at Community level and, furthermore, we are satisfied that it accords with the relevant legislation and does not discriminate against the rights of CTM proprietors.

In summary, we consider it right only to notify proprietors of CTMs and International-ECs if they opt-in to the notification system for any particular mark or marks in respect of which they are interested in receiving such notifications. Although the particular request form will attract a modest fee, we believe that the ability to opt-in to our notification system provides a proportionate and balanced solution.

The amendment rules do not place any consequences on an applicant for registration who does not respond to being notified of an earlier mark. The absence of any consequences means that an application for registration will proceed automatically to publication unless the applicant requests its withdrawal. In practice, we will allow a period of time (two months if there are no other objections to registration) between issuing the examination report and accepting the application and arranging for its publication. This period of time (which can be extended) can be used to amend or withdraw the application.

Rule 11A (5) and 11A(6) – These rules stipulate that any decision to notify under Rule 11A may not be the subject of a hearing or appeal. For example, the applicant for registration may not appeal the Registrar's decision to notify the proprietor of a particular earlier trade mark identified in the examiner's search.

We consider it inappropriate that an applicant for registration should be able to challenge a decision to notify the proprietor of an earlier mark as this decision is partly for the benefit of the proprietor of the earlier mark. Further, a decision to issue a notification has no substantive effect on the rights or interests of the applicant for registration. A decision of that kind will only be made if the proprietor of the earlier trade mark objects to registration by filing a notice of opposition, in which case the

Registrar will not be bound or fettered by the earlier decision to issue (or not to issue) a notification to the opponent.

We do not want to issue notifications which are not necessary. Accordingly, we will, in practice, allow the applicant an opportunity to restrict his specification in order to avoid the need to notify the proprietor of any earlier trade mark identified in the search report sent to the applicant. Further, the applicant will be permitted to make one written submission in response to the search report drawing attention to any marks which the applicant believes were included in the search report in error. If, as a result of a restriction of the application and/or of any arguments submitted on behalf of the applicant, the examiner decides that the list of conflicting earlier marks should be amended, he will proceed accordingly. The examiner will not, in any circumstances, enter into a continuing dialogue/argument as to the continued relevance of any earlier mark.

Amendment to Rule 13 – The amended rule is simply a re-draft to take into account that the right to oppose is no longer applicable to “any person”

Transitional provisions – as with the primary legislation, the changes will apply to applications that were pending when the rules come into force, except for pending applications that have already been accepted for registration.

**ANNEX B TO THE CONSULTATION ABOUT THE LEVEL OF OPT-IN FEE –
EXTRACTS FROM THE RESPONSE DOCUMENT TO THE PREVIOUS
CONSULTATION SETTING OUT THE EARLIER POLICY PROPOSAL FOR AN
OPT-IN FEE**

RELATIVE GROUNDS FOR REFUSAL – PROPOSED LEGISLATIVE CHANGES

RESPONSE DOCUMENT

Background

Having already decided (following a consultation in February 2006) to change how the relative grounds for refusal contained in Section 5 of the Trade Marks Act 1994 (“the Act”) are dealt with, a further consultation was published in December last year outlining draft legislation to give effect to these changes. The period for responding to this further consultation ended on 12 March 2007. This response document provides a summary of the responses received together with our conclusions.

The scope of the consultation was limited to the way in which the legislative framework needed to be amended to implement the policy agreed after earlier consultation. A few of the responses focused on the policy objectives themselves rather than the required legislative changes; responses of this nature have not been included in this response document.

Responses

A total of 15 responses were received. Although not a high response rate, this was not surprising given that the consultation was looking simply at the detailed legislative changes required to bring an already agreed (and consulted on) set of objectives into law. It should be noted that as well as responses from individuals and legal firms, detailed responses were received from the major professional representative bodies.

The issues that emerged from the consultation responses are outlined below. Our responses to them are similarly outlined. For ease of information, the issues are broken down by category.

Issues and conclusions

“Opting in” and “opting out” of receiving notifications

The requirement for Community Trade Mark owners and International-EC holders to opt-in (by filing a form and fee) to the notification system.

This received widespread support and therefore this proposal will go ahead. Prior to the new regime coming into force we will consult users on the level of the fee to be charged and the duration of the service offered.

One respondent asked whether there could be a “lead-in period” for the filing of forms prior to the change taking effect. We cannot levy and accept any statutory fees before the new legislation comes into effect. Accordingly, an earlier lead-in period for filing opt-in forms will not be possible. However, given that cases accepted on the basis of the new regime will take at least three weeks before being published, this does allow an opportunity for opt-in forms to be filed before the first marks accepted under the new regime are published in the Trade Marks Journal and notifications sent to the owners of any earlier conflicting marks.

What happens if a Community mark whose owner has opted in to the notification system is assigned?

Our records are automatically updated to take account of changes in the international and Community registers. Accordingly, if the proprietor and/or his address for service changes, our postal notifications will be suitably re-directed as soon as our records are updated. However, if the original proprietor has asked to be notified by e-mail the new proprietor will have to inform us of any new e-mail address to which he wishes new notifications to be sent.

Can a replica opt-in form be used?

Yes, in principle Rule 3(2) permits this. In fact, we intend that the opt-in form will be an electronic form hosted on our website.

Will we notify CTMs with a seniority claim from an earlier (now lapsed) UK registration?

No, we do not intend to do so as a matter of course. Proprietors of such marks may nevertheless opt- in to receiving notifications.

Is there any point in allowing parties to “opt-out” of notification?

One respondent felt that there was little point in administering the option of “opting out” of receiving notifications as it was difficult to see why anyone would wish to do so. We agree that not many proprietors will opt-out of the notification system, however, we are aware that many proprietors operate their own watching systems and that they may not require our own notifications to be sent. We therefore intend to retain this as an option. From an administrative point of view, retaining this option is not problematic. Also, CTM and International-EC proprietors who have opted in may change their mind and opt back out.

What is the procedure for opting out in terms of fees etc? Can you opt back in once you have opted out?

All that needs to be done is to make a request in writing informing us that notifications are no longer required in relation to a particular trade mark. There will be no fee for opting out. A proprietor who has opted out may opt back in; for proprietors of UK and International-EC marks this will be done by putting the request in writing, again, no fee is payable. CTM and International-EC proprietors opting back in will need to submit the form and fee again.

NEXT STEPS

We aim to bring the legislative changes into force on 1 October 2007. If the Order is passed, the new relative grounds regime will operate from this date. We are required to provide our users with three months notice of the changes; we hope to be in a position to do this on 1 July 2007 via the UK-IPO web-site.

ANNEX C TO THE CONSULTATION ABOUT THE LEVEL OF OPT-IN FEE

General Principles of Consultation

This consultation is being conducted according to the Code of Practice on Written Consultation issued by the Cabinet Office (available from the Cabinet Office web site). This recommends the following criteria:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

Comments about the consultation process

If you have any comments or complaints about how this consultation process is being handled, please tell the UK Intellectual Property Office's Consultation Co-ordinator, who is:

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ANNEX D TO THE CONSULTATION ABOUT THE LEVEL OF OPT-IN FEE

List of consultees

The following is a list of organisations and individuals to whom a copy of this consultation document has been sent. It is also available on the UK Intellectual Property Office website and can be viewed and commented upon by anyone accessing it:

The Council on Tribunals
The Law Society
The Law Society of Scotland
The Bar Council
The Institute of Patentees and Inventors
Trade Marks, Patents and Designs Federation
Confederation of British Industry
University of London, Queen Mary
British Retail Consortium
Incorporated Society of British Advertisers
Chartered Society of Designers
Chartered Institute of Patent Agents
Institute of Trade Mark Attorneys
Association of British Chambers of Commerce
Consumer's Association
National Consumers Council
Federation of Small Businesses
Licensing Executives Society
International Federation of Industrial Property Attorneys
International Chambers of Commerce
Association of the British Pharmaceutical Industry
Intellectual Property Institute
London Chamber of Commerce and Industry
Institute of Practitioners in Advertising
Anti-Counterfeiting Group
Intellectual Property Lawyers Association
British Brands Group
Patent and Trade Mark Group, Institute of Information Scientists
The Patent Judges
The Intellectual Property Sub-Committee of the City of London Law Society
British Pharma Group
The British Agrochemicals Association Limited
British Generics Manufacturers Association
British Library
Centre of Research for Intellectual Property & Technology (SCRIPT)
EC Laws Committee - LES Britain & Ireland
The Appointed Persons

ANNEX E TO THE CONSULTATION ABOUT THE LEVEL OF OPT-IN FEE – PARTIAL REGULATORY IMPACT ASSESSMENT

1. Title of Proposal

The Trade Marks Fees (Amendment) Rules 2007

2. Purpose and intended effect

- Objective

The objective of the regulations is to introduce a fee to enable proprietors of Community Trade Marks (“CTMs”) and International Trade Marks that are protected in the Community as a whole (“International-EC”) to opt-in to a system of receiving notifications about later filed conflicting national trade marks.

- Background

It is proposed that trade mark applications will no longer be refused because of an earlier conflicting mark unless the owner of that earlier mark successfully opposes it. We will, however, introduce a system whereby owners of existing marks are notified of later filed applications. It has also been proposed that proprietors of UK trade marks and International marks protected in the UK will receive such notifications automatically without having to pay a fee whereas the proprietors of CTMs and International-EC trade marks will only be notified if they have opted in to receiving notifications and paid a fee for doing so. Both of these proposals have been consulted on extensively and are proceeding. The purpose of these regulations is simply to set the fee.

- Rationale for government intervention

A fee is required to cover the cost of sending notifications. Unlike the proprietors of trade marks registered or protected in the UK as such, the proprietors of CTM and International-EC trade marks do not contribute to the cost of running the UK national registration system. The UK Intellectual Property Office operates as a trading fund and is required to cover its costs from the income it receives from fees. If the proprietors of CTMs and International-EC trade marks do not pay a fee then the users of the national registration system will effectively be subsidising the cost of providing a notification service to CTM and International-EC trade mark proprietors. Further, requiring these proprietors to opt-in to the notification service will mean that we will be targeting notifications to those proprietors that require the service – we know that many CTM and International-EC trade mark owners have no specific interest in the UK market and will not appreciate notifications being sent to them automatically.

3. Consultation

- Within government

The following government agencies have been involved in the consultation process and we have taken their views into account in the decision making process and the drafting of the relevant legislation:

Small Business Service
DTI Better Regulation Team

- Public consultation

We have already consulted on the principle of requiring an opt-in fee. We are currently conducting a public consultation on the level of fee to be charged.

4. Options

There are three options. First, we could set the opt-in fee at nil. This would encourage those who need the service to use it but would effectively transfer the cost of providing it to users of the national system, a higher proportion of whom are small or medium size businesses. We do not consider that this would be fair and we have therefore rejected the option of not charging.

Secondly, we could set the fee at a lower rate with the intention of providing the initial notification service for a shorter period. This would reduce the initial cost of accessing the service, but it would increase the overall cost because it would mean the Office handling more frequent renewal requests. All trade marks are protected for renewable ten year periods. It would be administratively too complicated to align the notification service with the renewal period of the subject CTM or International-EC trade mark. Nevertheless, the standard period for protecting trade marks appears to us to be a suitable benchmark for the cycle for renewing the notification service. We are therefore proposing a fee that will cover 10 years of notifications.

We also considered permitting proprietors of CTMs and International-EC trade marks to opt-in for notifications in respect of all their trade marks rather than in relation to particular trade marks. We rejected this because 1) it is likely that such proprietors will have an interest in being alerted to potential conflicts with some of their marks but not others, 2) if we charged per proprietor rather than per trade mark, those proprietors with many trade marks would pay no more than those with just one. However, the cost of providing the service will be proportionate to the number of marks being watched. This approach would not therefore match fees to costs.

We will, of course, review further options depending on the outcome of the public consultation.

5. Costs and benefits

- **Sectors and groups affected**

Potentially all business sectors are affected as trade mark registration covers the full range of goods and services that are traded in. All groups are also likewise affected as trade mark registration may be sought from sole traders to large multi-nationals, both with and without legal representation. However, the fee applies (and then this is optional) only to CTM and International-EC trade mark proprietors. These are, more commonly, larger corporations rather than small businesses.

- **Benefits**

There are a number of benefits. Firstly, it should be noted that many systems that operate on a notification basis will only notify proprietors of earlier trade marks secured through that particular system. For example, whilst the Community Trade Mark Office (OHIM) notifies proprietors of earlier CTMs, they do not notify the proprietors of national marks despite the fact that CTMs are valid in all member states. Therefore, the option to opt-in at all is a benefit to proprietors of CTMs and International-EC marks who are interested in the notification service.

Secondly, there is also the benefit that CTM and International-EC proprietors will be contributing to the cost of the notification service and, therefore, they are not being subsidised in the service they receive by fee paying proprietors of UK national marks.

- **Costs**

Clearly, any proposed fee equates to a cost. However, this is an optional cost that no one is obliged to pay. Nevertheless, for CTM and International-EC trade mark proprietors (many of whom will not be UK businesses) who wish to receive notifications, the proposed fee equates to £20 per annum for, effectively, a watch of the UK register. This, we believe, compares extremely favourably with commercial watching services who may charge up to £100 for a similar level of service.

6. Consultation with small businesses - Small Firms Impact Test

Our previous consultations (which included the proposal to charge an opt-in fee) have been widely circulated within the small business world and have been the subject of a stage 1 impact test with small firms. The responses led us to conclude that none of the changes would have a significant or disproportionate impact on small business. In view of this, we do not plan to conduct a separate impact test on the level of fee, particularly as this is an optional fee which merely covers the cost of the service being provided. The consultation document will, nevertheless, be placed on the web-site of the Small Business Service and sent to those groups who have expressed an interest in seeing consultations in this field.

7. Competition assessment

We consider that the changes will have no effect on competition between right holders or between firms of legal representatives. We do not consider that a company or firm will be placed at a disadvantage as a result of the changes; neither do we consider that any new start up company or firm will be prevented from entering the marketplace.

8. Enforcement, sanctions and monitoring

This is an optional fee and as such there are no enforcement procedures. As there are no specific enforcement procedures then no specific sanctions against non-adherence (or mechanisms to monitor non-adherence) apply.

9. Implementation and delivery plan

It is our intention for the fee to be introduced in October 2007. Guidance on the new regime, including the availability of opting in, will be produced and will be available prior to the change.

10. Post-implementation review

This is a new service which we intend to monitor both in terms of take-up and also in terms of ensuring that our estimate of cost recovery is correct. Review will take place well before the end of the 10 year period from the filing of the initial opt-in requests.

11. Summary and recommendation

Taking into account the information provided above, the UK Intellectual Property Office strongly recommends that the changes embodied in the legislation be adopted.

Declaration and publication

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Signed

Date

Minister's name, title and department

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