

Consultation on mandatory requirement for patent and trade mark agents to have professional indemnity insurance

Background

To act as a patent agent in Ireland a person must be on the Register of Patent Agents and abide by the terms and conditions set out in the Patent Act 1992 and the Register of Patent Agents Rules.

To act as a trade mark agents a person must be on the Register of Trade Mark Agents and abide by the Trade Mark Act 1996 and Trade Mark Rules 1996.

The legislation sets out the conditions relating to professional and educational qualifications, requisite fees and general fitness of individuals to be entered on the Registers but does not require an applicant to have professional indemnity insurance (PII). Under the current legislation the Controller has the power to take action in the case of an Irish patent agent being “guilty of conduct disgraceful to that person in his capacity as patent agent” (section 108(2) of the Patent Act 1992), by delisting or suspending an agent from the register. The Controller has similar powers in relation to trade mark agents under the Trade Marks Act 1996 Section 88(1).

Purpose of PII

Professional indemnity insurance is a form of liability insurance providing financial protection for those engaged in providing professional advice and services. PII provides professionals with a level of financial security when defending against a negligence claim and financial cover for any damages that may be awarded against them in relation to errors or omissions in the services provided by these professionals. From a client’s perspective, it acts as a pro-consumer measure by ensuring an aggrieved client has recourse to financial compensation in the event of malpractice by an agent.

Many professions e.g. legal, liquidators, medical are required by law to have PII in place and PII for patent/trade agents is a practice requirement in some EU Member States

Objective of consultation

The introduction of a requirement to have PII will provide a more secure and safer environment for agents to operate in. It will also be a positive consumer protection measure providing both clients and their agents with financial security in the event of negligence claim and contribute to a stronger regulatory regime.

On the negative side the requirement to have PII will add additional costs to those agents who do not already have PII.

The purpose of this consultation is therefore to explore whether or not there should be a requirement on patent and trade mark agents to have PII prior to their entry on the relevant Register.

If in the positive, should the legislation set the level of PII considered appropriate and if so, whether it is sufficient to provide proof of PII prior to the initial entry on the Register or also annually as part of the annual renewal process, is also of interest.

Submissions

The Department welcomes submissions in relation to this issue particularly in relation to:

- Should patent agents and/or trade mark agents be required to have PII,
- If PII is required, should there be a statutory minimum level, and
- Should proof of PII be part of the initial registration process for patent agents/trade mark agents or should it also be required during the annual renewal process.

In order to gauge the impact of such a requirement, information on whether patent and trade mark agents currently have PII in place and to what level would be welcomed.

Respondents are requested to make their submissions **by e-mail to ipu@dbei.gov.ie**

The closing date for receipt of submissions is **Friday, 26 January 2018**.

Any queries regarding the consultation should be emailed to ann.stapleton@dbei.gov.ie

Confidentiality of Submissions

Contributors are requested to note that it is the policy of the Department to treat all submissions received as being in the public domain unless confidentiality is specifically requested. Respondents are, therefore, requested to clearly identify material they consider to be confidential. Where e-mails include automatically generated notices stating that the content of the e-mail should be treated as confidential, contributors should clarify in the body of the e-mails as to whether their comments are to be treated as confidential.

Relevant provisions of Freedom of Information Act 2014

Respondents' attention is drawn to the fact that information provided to the Department may be disclosed in response to a request under the Freedom of Information Act. Therefore, please identify any information you consider commercially sensitive, and specify the reason for its sensitivity. The Department will consult with any potentially affected respondent regarding information identified as sensitive before making a decision on any Freedom of Information request.