

Title: Changes to references to "counsel" in the Patents Act 1977 IA No: RPC12-FT-BIS-1589 Lead department or agency: Intellectual Property Office Other departments or agencies:	Impact Assessment (IA)		
	Date: 13/02/2013		
	Stage: Final		
	Source of intervention: Domestic		
	Type of measure: Primary legislation		
Contact for enquiries: Debbie Cooke			

Summary: Intervention and Options	RPC Opinion: RPC Opinion Status
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Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£0m	£0m	£0m	Yes OUT

What is the problem under consideration? Why is government intervention necessary?

Previous legislative changes have introduced general rights of audience in proceedings before the Intellectual Property Office (IPO) and the courts, giving broader rights of audience to include solicitors and patent attorneys. Two references to "counsel" remain in the Patents Act 1977 which restrict who can (a) represent the Attorney General in matters before the court relating to compulsory licences and competition issues involving granted patents and (b) who can represent the parties involved in disputes before the courts on the Crown use of patented inventions. Amending these references through a change to the Patents Act 1977 will remove these restrictions.

What are the policy objectives and the intended effects?

The policy objective is to ensure consistency in the rights of audience in all disputes and appeals heard by the IPO and the courts. Amending the references to "counsel" in the Patents Act will bring it into line with the general powers of audience and will stop the restriction that only counsel can represent the parties involved in the specific types of disputes relating to compulsory licences and competition issues involving granted patents and disputes relating to the Crown use of patented inventions. This will give greater choice to the parties involved in such disputes by allowing solicitors and patent attorneys to represent them before the courts.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Alter sections 52(4) and 58(2) of the Patents Act 1977 to amend the references to "counsel" to allow more general rights of audience in proceedings before the courts in appeals relating to compulsory licences and competition issues and in appeals on the Crown use of patented inventions. To implement this change it is necessary to amend the existing regulation and therefore there are no other viable options.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 10/2018					
Does implementation go beyond minimum EU requirements?				N/A	
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro Yes	< 20 Yes	Small Yes	Medium Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)				Traded:	
				Non-traded:	

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible SELECT SIGNATORY: _____ Date: _____

Summary: Analysis & Evidence

Policy Option 1

Description: Alter sections 52(4) and 58(2) of the Patents Act 1977 to amend the references to “counsel” to give more general rights of audience in proceedings before the courts in appeals relating to compulsory licences and competition issues

FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: 0	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	0	0

Description and scale of key monetised costs by ‘main affected groups’

Zero

Other key non-monetised costs by ‘main affected groups’

Zero

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	0	0

Description and scale of key monetised benefits by ‘main affected groups’

Zero

Other key non-monetised benefits by ‘main affected groups’

Removing the restriction that only counsel can represent the parties involved in a dispute before the courts over the Crown use of a patented invention will provide greater choice for patent proprietors in the representation they appoint when dealing with disputes of this kind.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

It is assumed that the number of disputes brought before the courts in relation to the Crown use of patented inventions remain at the current, extremely rare, levels.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:	In scope of OIOO?	Measure qualifies as
Costs: 0 Benefits: 0 Net: 0	Yes	OUT

Evidence Base

1. The problem under consideration and the rationale for Government intervention

The Patents Act provides mechanisms for the granting of compulsory licences to allow third parties to legitimately make use of a patented invention or product and for the use of patented inventions by the Crown. Any disputes which arise over either the granting of a compulsory licence or Crown use can be brought before the courts.

In cases where the Attorney General is involved in an appeal in relation to the granting of a compulsory licence or a competition issue involving patent rights, the current patents legislation details that the Attorney General must be represented by counsel. Similarly, in disputes over Crown use, counsel must again be involved in representing the parties when the dispute is brought before the court.

Previous legislative changes under the Copyright Designs and Patents Act 1988, the Courts and Legal Services Act 1990 and the Legal Services Act 2007 have introduced general rights of audience in proceedings before the IPO and the courts and broadened the rights of audience on appeals from the IPO to include solicitors and patent attorneys. The two references to “counsel” which remain in the Patents Act 1977 appear to have been overlooked when these changes were introduced to broaden the general rights of audience and the current references to “counsel” are therefore inconsistent with those changes.

It is necessary, therefore, for amendments to be made to the relevant sections of the Patents Act 1977 to bring the references to “counsel” into line with the general rights of audience now in operation in other disputes and appeals brought before the IPO and the courts.

2. Policy objectives and intended effects

The policy objective is to ensure consistency in the rights of audience in all disputes and appeals heard by the IPO and the courts. Amending the references to “counsel” in the Patents Act will bring it into line with the general powers of audience and will stop the restriction that only counsel can represent the parties involved in the specific types of disputes and appeals detailed above. This will give greater choice to the parties involved in such disputes by allowing solicitors and patent attorneys to represent them before the courts.

3. Policy options considered, including alternatives to regulation

The IPO proposes to amend the references to “counsel” contained in sections 52(4) and 58(2) of the Patents Act to allow broader rights of audience before the courts. To implement this change the IPO will need to amend the existing regulation and therefore there are no other viable options.

4. Expected level of business impact

Amending the Patents Act to allow broader rights of audience on behalf of the Attorney General will have no impact on business. The references in the Patents Act only refer to who can represent the Attorney General and make no reference to the representation of the other parties involved in any appeal in relation to the granting of a compulsory licence or a competition issue involving patent rights. The Attorney General has been consulted on this proposal and has confirmed their agreement to the change.

Removing the restriction that only counsel can represent the parties involved in a dispute before the courts over the Crown use of a patented invention will provide greater choice for patent

proprietors. Bringing the Patents Act into line with the rights of audience set out in the other legislation governing the rights of audience detailed above will enable solicitors or patent attorneys to represent the parties involved when dealing with disputes of this kind.

The IPO recognises that this amendment could potentially result in a loss of earnings for those who act as counsel, as they will no longer benefit from the exclusive rights of audience which the Patents Act currently gives them. However, other legislative changes have broadened the general rights of audience and so those who act as counsel are now operating in a more competitive market. For those who operate competitive rates, the potential loss of earnings will therefore be negligible.

In practice, disputes over Crown use are rare and so the number of businesses affected by this change is very limited. Research has identified only two reported court cases (one in 1876 and one in 1967) in which a dispute over Crown use has been considered by the courts. The actual impact of this change on business will therefore be negligible but it will bring consistency in terms of the general rights of audience and who can represent the relevant parties in all types of disputes and appeals which can be brought before the IPO and the courts.

5. One In Two Out status and proportionality of the approach to this impact assessment

The change is designed to bring the current patents legislation in line with other existing legislation governing the general rights of audience by broadening the rights of audience available in two specific provisions of the Patents Act 1977. This proposal will have a negligible impact and will not impose any additional costs on business or the public. It will not impose any new information obligation because it merely clarifies the rights of audience before the courts in disputes over compulsory licences and competition issues and the Crown use of patented inventions. Consequently the level of analysis undertaken and the information included in this impact assessment reflects these negligible impacts.

Under the “One In, Two Out” rule, a measure that has a net cost to business must have a measure or measures of twice the equivalent cost removed in order to be implemented. This measure does not represent any additional costs to business as it merely brings the patents legislation into line with other legislation governing the general rights of audience before the IPO and the courts. Amending the patents legislation to remove the restriction that only counsel can be used as representatives for the Attorney General or for parties involved in disputes over the Crown use of patented inventions is deregulatory in that it broadens the rights of audience before the courts in specific circumstances. This measure is therefore considered to be an OUT with ZERO NET COST.

6. Evaluation

The proposed change is being introduced as part of a package of changes to the Patents Act 1977. The IPO will monitor and evaluate the impact of these changes on an on-going basis through regular discussions with stakeholder groups, monitoring of customer complaints and consideration of any legal decisions which make specific reference to the changes introduced and the impact they had had. A post implementation review will also take place to pull together any information gathered in respect of the changes and this is currently scheduled for 2018.