

Title: Work Sharing with International Partners IA No: BIS 0381 Lead department or agency: Intellectual Property Office (IPO) Other departments or agencies:	Impact Assessment (IA)		
	Date: 14/3/2013		
	Stage: Final		
	Source of intervention: Domestic		
	Type of measure: Primary legislation		
Contact for enquiries: Debbie.Cooke@ipo.gov.uk			
Summary: Intervention and Options			RPC Opinion: GREEN

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?
£35.86m	£35.90m	£-3.82m	No

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

Applying for a patent can be a lengthy and complex process. UK patents only give protection in the UK. Businesses seeking global protection need to file patent applications for the same invention in many countries, resulting in patent offices building up significant backlogs of unprocessed patent applications. This impacts the economic benefits businesses can derive from patent rights and creates uncertainty. Sharing information on unpublished patent applications between offices can reduce duplication of work and cut these backlogs. Current legislation prevents the sharing of information at a timely stage in the patenting process. Changes are needed to facilitate more effective work sharing and information exchange.

What are the policy objectives and the intended effects?

The objective is to increase the level of work sharing and re-use of information between national patent offices to help reduce current patent backlogs. Amending Patents legislation to allow the IPO to share information on unpublished patent applications enables other national patent offices to re-use the information. This reduces the level of duplication, speeds up the patenting process in other national offices and reduces the backlogs of applications. Quicker patent processing can result in less market uncertainty, new products reaching markets quickly, more research and development into further innovations being undertaken resulting in new products in the market, increasing economic growth for UK businesses.

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

Option 1 - do nothing.
Option 2 - amend the Patents law to allow the IPO to share information on unpublished patent applications with other national patent offices to allow the use of the information at a timely stage in their patent processing.
Option 3 - amend secondary legislation to extend the definition of the term "bibliographic data" contained in the Patent regulations to cover search results.
Option 4- increase publicity to encourage patent applicants to give consent to share information on their unpublished patent applications with other national offices.

Option 2 is the preferred option as it thought to deliver the strongest benefits and meets the policy objective.

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	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A		Non-traded: N/A

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: _____ Date: _____

Summary: Analysis & Evidence

Policy Option 1

Description: Do Nothing

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	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'

Without action, costs resulting from patent backlogs are expected to increase year on year. For third parties, the uncertainty of the scope of a pending patent can result in lost innovation as further developments are not taken forward. For patent applicants, this is the cost in the delays in gaining a granted patent and the potential increased litigation costs as discussed in page 18 of the evidence base.

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'

Zero

Key assumptions/sensitivities/risks

N/A

Discount rate (%)

3.5

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	No	NA

Summary: Analysis & Evidence

Policy Option 2

Description: Amending the Patents Act 1977 to allow greater sharing of information on unpublished patent applications

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 13.94	High: 54.11	Best Estimate: 35.86

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.025	0	0.025
High	0.045	0	0.045
Best Estimate	0.035	0	0.035

Description and scale of key monetised costs by 'main affected groups'

The proposed changes will facilitate the sharing of information on unpublished patents between national offices without any additional costs to patent applicants. The IPO has previously set up specific systems to share information on published patents and we estimate the costs for any new system to share information on unpublished patents would be similar. These are estimated to be between £25,000 and £45,000 based on the systems set up with the EPO and WIPO as discussed on page 11 of the evidence base.

Other key non-monetised costs by 'main affected groups'

The IPO will need to inform customers, stakeholders and other national patent offices of the changes. This will be done through existing communication channels and networks including the IPO website and stakeholder and international forums. The cost of this communication work will be negligible.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	1.6	14.0
High	0	6.3	54.1
Best Estimate	0	4.2	35.9

Description and scale of key monetised benefits by 'main affected groups'

UK businesses who also apply for international patent protection will benefit indirectly from work sharing between offices as processing times are reduced, giving quicker patent protection. UK businesses who also apply for European, US and Japanese patents may see the value of their patents increase by a best estimate of £4.2m per year. See pages 13 to 16 of the evidence base. UK businesses would potentially see even greater benefits as work is shared with other patent offices, but information to monetize is limited.

Other key non-monetised benefits by 'main affected groups'

The level of duplicated work at national patent offices around the world will be reduced. This will help decrease backlogs of patents which in turn will benefit UK businesses who apply for global patent protection by ensuring the timely grant of their international patents which may improve opportunities for export to global markets; help secure investment in their products; help the defence of their patented products against infringement and provide opportunities for licensing and royalties.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
Risks: confidential, unpublished information could incorrectly become publicly available through another national patent office; personal information in a patent application could be at risk due to inadequate levels of protection as defined in the Data Protection Act in the countries with which the IPO shares information. Assumptions: unpublished information will be used to reduce duplication and speed up patent processing.		

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0.0	Benefits: 3.8	Net: 3.8	No	

Summary: Analysis & Evidence

Policy Option 3

Description: Amend legislation to extend the definition of "bibliographic data"

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 13.94	High: 54.11	Best Estimate: 35.86

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.025	0	0.025
High	0.045	0	0.045
Best Estimate	0.035	0	0.035

Description and scale of key monetised costs by 'main affected groups'

The proposed changes will facilitate the sharing of information on unpublished patents between national offices without any additional costs to patent applicants. The IPO has previously set up specific systems to share information on published patents and we estimate the costs for any new system to share information on unpublished patents would be similar. These are estimated to be between £25,000 and £45,000 based on the systems set up with the EPO and WIPO as discussed on page 11 of the evidence base.

Other key non-monetised costs by 'main affected groups'

This will involve a change to secondary legislation which will be undertaken as business as usual with negligible costs to the IPO. The IPO will inform customers, stakeholders and other national patent offices of the changes. This will be done through existing communication channels and networks including the IPO website and stakeholder and international forums. The cost of this communication work will be negligible. If the definition cannot be changed fully there will be a loss in benefits and a cost of further amendments.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	1.6	14.0
High	0	6.3	54.1
Best Estimate	0	4.2	35.9

Description and scale of key monetised benefits by 'main affected groups'

UK businesses who also apply for international patent protection will benefit indirectly from work sharing between offices as processing times are reduced, giving quicker patent protection. UK businesses who also apply for European, US and Japanese patents may see the value of their patents increase by a best estimate of £4.2m per year. See pages 13 to 16 of the evidence base. UK businesses would potentially see even greater benefits as work is shared with other patent offices, but information to monetize is limited.

Other key non-monetised benefits by 'main affected groups'

The level of duplicated work at national patent offices around the world will be reduced. This will help decrease backlogs of patents which in turn will benefit UK businesses who apply for global patent protection by ensuring the timely grant of their international patents which may improve opportunities for export to global markets; help secure investment in their products; help the defence of their patented products against infringement and provide opportunities for licensing and royalties.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
Risks: The definition will not be sufficiently changed to include the relevant information to allow effective work sharing; confidential information could be incorrectly be made publicly available; personal information could be at risk due to inadequate levels of protection as defined in the Data Protection Act in non-EEA countries which share the information. Assumptions: unpublished information will be used to reduce duplication and speed up patent granting.		

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:	In scope of OIOO?	Measure qualifies as
Costs: 0	No	
Benefits: 3.8		
Net: 3.8		

Summary: Analysis & Evidence

Policy Option 4

Description: Increase publicity to encourage patent applicants to consent to share information with other national offices

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 4.33	High: 35.81	Best Estimate: 17.69

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	0.0	0.1
High	0	0.1	0.5
Best Estimate	0	0.0	0.3

Description and scale of key monetised costs by 'main affected groups'

Processing, storing and identifying individual applications where consent has been given before the application data can be utilised in any work sharing initiatives with other national offices is estimated to cost the IPO £9,000 if the current 13.5% of customers continue to provide consent; £28,000 if 50% of customers provide consent and £55,000 if 100% of customers provide consent. These figures are based on an assumption that the IPO will share information on a monthly basis. See page 12.

Other key non-monetised costs by 'main affected groups'

Increased publicity will encourage IPO customers to consent to share the information on their unpublished patents through the IPO website, stakeholder meetings and the use of leaflets issued to all customers who are not professionally represented. Existing IPO communication channels will be used for this work with negligible costs. Applicants and their professional representatives will have to actively consider whether they wish to consent to share and indicate this on the relevant IPO form.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0.6	4.8
High	0	0.42	35.9
Best Estimate	0	2.1	17.9

Description and scale of key monetised benefits by 'main affected groups'

This option is not expected to be as beneficial as Option 2 and therefore, the best estimate of £4.2m for Option 2 is deemed to be the high estimate for this option. . The best estimate for this option assumes benefits of £2.1m as this is 50% of Option 2. The lower estimate is considered to be 13.5% of the best estimate for Option 2 giving, £0.6m benefits per year. See page 17.

Other key non-monetised benefits by 'main affected groups'

The level of duplicated work at national patent offices around the world will be reduced. This will help decrease backlogs of patents which in turn will benefit UK businesses who apply for global patent protection by ensuring the timely grant of their international patents which may improve opportunities for both domestic activity and export to global markets; help secure investment in their products; help the defence of their patented products against infringement and provide opportunities for licensing.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
Risks: confidential, unpublished information could incorrectly be made publicly available; personal information contained within a patent application could be at risk due to inadequate levels of protection of personal information as defined in the Data Protection Act in the countries with which the IPO shares information. Assumptions: the level of consent given will increase as a result of publicity from the current 13.5% of customers to 50% of customers; information will be shared with other patent offices on a monthly basis.		

BUSINESS ASSESSMENT (Option 4)

Direct impact on business (Equivalent Annual) £m:	In scope of OIOO?	Measure qualifies as
Costs: 0	No	
Benefits: 1.9		
Net: 1.9		

Evidence Base (for summary sheets)

Introduction – problem under consideration

Applying for a patent can be a lengthy and complex process. UK patents only give protection in the UK, so businesses seeking global protection have to file patent applications for the same invention in many different countries. As a result, major national patent offices have built up significant backlogs of patents waiting to be processed and there is currently an estimated global backlog of over 4 million unprocessed patent applications¹. These backlogs can impact on the economic benefits businesses can derive from their patent rights.

Background - Rationale for intervention

Before a patent is granted an application must go through preliminary examination, search and substantive examination. Generally the Intellectual Property Office (IPO) will publish a patent application in the Patents Journal within 18 months of it being filed unless it has been refused or withdrawn by the applicant. The publication takes place after the search has been carried out but usually before it is fully examined to assess whether or not it is compliant with the legal requirements for a patent.

The global patenting system operates on a similar basis and the search and examination activities carried out in the IPO are also conducted in patent offices throughout the world. Patents are territorial and protection is only granted within national borders and this means that UK businesses seeking to gain global protection must file patent applications for the same invention in many different countries. This results in the same patent application being examined many times over by examiners in different countries. A recent study by London Economics into Patent Backlogs and Mutual Recognition² estimated that 34% of patent applications to ten different patent offices around the world, including the IPO, are duplicate applications.

This duplication of work is said to be affecting the backlog in patent processing which is causing delays. The London Economics study considered the levels of backlogs across 7 of the major patent offices throughout the world and estimated the number of “backlog months” in terms of the time it would take to clear the existing stocks of pending applications. Current global levels are estimated to stand at 35 backlog months.

Trends in patenting suggest the number of patent applications is likely to continue rising as countries such as China and India increase their patenting activity. The London Economics study therefore anticipates that the estimated number of backlog months will increase by an additional year to 48 months by 2015 at the current rates of growth.

The delays in processing as a result of these backlogs can impact UK business in several ways as discussed in both the London Economics Study and the recent independent review of intellectual property by Professor Hargreaves - “Digital Opportunity, a review of intellectual property and growth”³:

- It prevents new products (for example, in telecommunications and climate change technology) from reaching their intended markets quickly
- It can deter research and development and reduce the incentive to create and innovate

¹ See; <http://www.ipso.gov.uk/pro-types/pro-patent/p-policy/p-policy-backlog.htm> for IPO information on Patent Backlogs

² <http://www.ipso.gov.uk/p-backlog-report.pdf>

³ www.ipso.gov.uk/ipreview-finalreport.pdf

- It can deter innovations being developed on existing applications if a patent is subject to lengthy delays in processing before it is granted. Many patents are incremental, building on previous ideas. The opportunity for such incremental developments, however, can be hampered while a patent is pending or if the patent never grants due to the level of uncertainty of the scope of the protection in the existing application
- This level of uncertainty can also reduce investment in research and development as potential innovators are less likely to commit to developmental costs in areas where patents may be granted in the future
- The increased pressure on patent offices to speed up their patent processing and reduce the backlogs may result in lower quality patents being granted. This could then lead to increased litigation and infringement due to uncertainty about the scope of protection and possible questions around the validity of the patents which have been granted.

In terms of the global economy, the London Economics study estimated that delays in processing patents cost £7.6 billion for every extra year patents are delayed in the US, Japan and Europe, of which £6 billion is through lost innovation. The impact of these delays has been widely acknowledged and the need for global co-operation and work sharing has been recognised by the Five IP Offices (IP5)⁴ whose objective is to address the increasing patent backlogs at the world's five largest IP offices. IP5 have recognised the benefits which can be gained through the elimination of unnecessary duplication of work and the enhancement of patent examination efficiency and quality of work and they have initiated a number of projects⁵ designed to facilitate work sharing by enhancing the quality of patent searches and examinations and building mutual trust in the work produced in each patent office.

The mutual recognition of the search and examination work undertaken by individual patent offices and the sharing of information at a timely stage in the patent process is recognised as one way of reducing the current delays in the global patenting system. By making use of each other's work, this reduces the time spent on examining and so speeds up the time in which a patent is granted. London Economics suggest that if the time spent on examining duplicate applications could be reduced by 25%, the predicted growth in backlogs detailed above could be avoided.

The benefits of mutual recognition and work sharing were also highlighted by Professor Hargreaves in his independent review of intellectual property. This recognised that the increasing numbers of patent applications being filed together with the pace of change in digital technologies has meant that patent offices have an increasing level of information to consider when searching. The work is often duplicated at many other offices around the world as the same information is considered as part of the patenting process. As patent offices try to cope with these increased pressures through increased productivity, this could lead to a reduction in the quality of granted patents.

To address this, Professor Hargreaves highlighted the value of work sharing agreements between patent offices to help reduce the level of duplication and pressures which they are facing⁶. In his report he encouraged the IPO to continue its work in this area, acknowledging that international co-operation is a key way to reduce patent backlogs.

The IPO is committed to increasing the levels of international co-operation and is already working on a number of work sharing initiatives. These include:

⁴ www.fiveipoffices.org/obj.html

⁵ www.fiveipoffices.org/projects.html

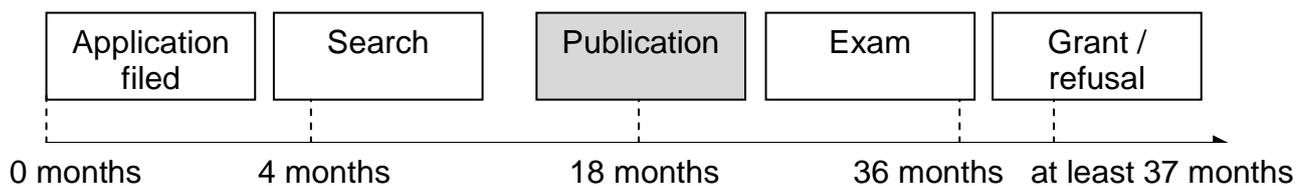
⁶ See paragraphs 6.9 to 6.12 on pages 55 and 56 of the Hargreaves review

- Collaborating with the United States Patent and Trade Mark Office (USPTO) on a three year work sharing initiative to re-use each other’s examination work
- Working with the intellectual property offices in Australia and Canada to explore the benefits of using the work carried out by the other offices
- Sharing search and examination reports on published patent cases through a centralised database (WIPOCASE) for use by the Australian and Canadian Offices
- Encouraging patent applicants to accelerate the examination of their application if examination has already been conducted at another intellectual property office with a Patent Prosecution Highway (PPH) agreement. This allows the accelerated processing of an application in a second patent office where one set of patent claims have been found to be allowable at a first patent office.

All of these initiatives involve sharing or using information on published patent applications and have proved to be successful in encouraging co-operation between patent offices to help reduce duplication in work and therefore reduce patent backlogs.

The timing of when this information on published patents can be shared is not, however, always optimal to allow other patent offices to make use of the IPO’s work at the most appropriate point in the patenting process. The patent process consists of several stages laid out in Figure 1 below. After an application is received the office will first ‘search’ the application to establish whether the invention is novel. It will then publish this search report, within 18 months of receiving the application, and when the applicant pays a fee, the office will then ‘examine’ the patent to establish the scope of the eventual protection.

Figure 1: The simplified patent process



At the moment the IPO cannot make available any information available to other patent offices before publication (highlighted in grey above) other than limited amounts of bibliographical data. Current UK legislation prevents the sharing of information on unpublished patent applications, except where the applicant has given their express consent for this to happen or, since before March 2012, where the IPO is sharing information with the European Patent Office (EPO). The IPO is able to share unpublished information with the EPO under the European Patent Convention, but not other offices, and wishes to extend that ability to improve work-sharing.

Policy Objective

The overall policy objective is to increase the level of work sharing and reuse of information between other patent offices by sharing information earlier in the patenting process. Although this will not benefit the IPO as there will be no reduction in processing times for UK patent applications, it will help reduce current patent backlogs and speed up the patent granting process at other offices. This will be of benefit to UK businesses in that it will help reduce the time it takes to gain patent protection in the global market.

Description of options (including do nothing)

Option 1 – do nothing

The IPO will continue with the work sharing initiatives detailed above by providing other national offices with information on published patents.

Option 2 – amend legislation to allow the IPO to share information on unpublished patent applications

This is the preferred option and will allow the IPO to share search and examination information on unpublished patent applications which is produced by the IPO with other NPOs. These offices will then be in a position to make use of the information at a timely stage in their patenting processing, reducing the level of duplicated examination which will help speed up the patent granting process.

Option 3 – amend secondary legislation to allow the term “bibliographic data” to include information on the search work carried out by the IPO

The law currently allows the IPO to share bibliographic data, but this is defined in the Patents Regulations as⁷:

- the name of the applicant
- the title of the invention
- the number and date of filing of the application
- details of any earlier application which is used to claim priority from in terms of the earliest date of the patent
- information on whether the application is terminated or withdrawn
- information on whether the application has been transferred to another party or has a licence or mortgage recorded against it

It may be possible to use secondary legislation to allow the IPO to redefine the term “bibliographic data” to include information on the classification of the type of invention included in the patent application, information on the fields of search which are undertaken by the patent examiner and details of the numbers of citations of prior art (earlier inventions or publications that impact the ‘novelty’) which are found on the patent application. Whilst all of this information would be useful to patent examiners in other national offices, details of the actual citations of prior art which are found, and copies of the prior art documents would be more beneficial in any work sharing between offices.

As bibliographic information is generally considered to be data which helps identify or classify a particular application, it may not be possible to extend the definition to include all the relevant materials. It is also highly unlikely that the definition could be extended to include the more substantial search information on the actual citations which have been found and as this the most beneficial information in terms of effective work sharing, this option does not seem the most appropriate way to fully meet the policy objective.

Option 4 – increase publicity to encourage applicants to give consent to share the information on unpublished applications

Since October 2009, the IPO has been asking applicants to give their consent to allow the IPO to share information on their patent applications prior to publication. Take up on this has been relatively low with only 13.5% of Patent Forms opting in and providing consent.

⁷ See section 118 of the Patents Act 1977, and rule 55 of the Patent Rules 2007

One option to allow the IPO to share information on unpublished patents would be to increase the IPO's activities to raise awareness of this facility. Although this would be a relatively easy option to take forward, this does create an extra burden for both customers and the IPO.

For customers, asking the question on the Patents Form increases the burden of completing the search request form and also means they have to actively consider whether they want to provide their consent. The relatively low numbers who have indicated their agreement to IPO sharing their information would seem to show that many customers take a cautious approach when directly asked for their consent to share their information. In contradiction to this, the lack of complaints in relation to the IPO sharing information on unpublished patents with the EPO would suggest that customers are content for the Office to share information, but when specifically asked for consent, they will err on the side of caution and not give it. This result is similar to many other cases of consumer choice where framing the choice as an "opt-in", results in take-up of 10%-25% while the same choice framed as an "opt-out" results in 70%-90% take-up⁸. The possibility of implementing an "opt-out" system has been considered, however legal advice has concluded that full compliance with all aspects of the Data Protection Act is only achieved if the IPO's customers proactively provide their permission for personal data to be shared with another party. Customers must therefore consider the question fully and provide their consent through an opt-in mechanism rather than an opt-out mechanism.

For the IPO, whilst gaining consent to share unpublished information allows the IPO to meet its policy objectives, it also creates extra burdens in terms of the processing and utilisation of this information. The IPO maintains individual records for each patent application which includes the information on whether consent has been provided. To actively use this information, the individual patent application records must be updated to show the consent, identified prior to sharing the information and each individual record must then be located and collated to send to the relevant national office.

This option does not, therefore, easily facilitate sharing information to help speed up the patenting process. It also increases the potential for error where an incorrect application is identified and the information is shared with another patent office, even though the applicant has not given their consent.

Impacts, Costs and Benefits

Costs

Option 1: non-monetised costs

The IPO proposes to continue with the existing work sharing initiatives which will incur no additional costs for the IPO.

Without action, patent backlogs are expected to increase year on year and this will add to the costs for both third parties interested in the patent and the patent applicant themselves. For third parties, the uncertainty of the scope of a pending patent can result in lost innovation as further developments are not taken forward. For patent applicants, patent backlogs can be costly in terms of the time delays in gaining a granted patent. In connection with this, as backlogs increase at national patent offices, this can lead to an increase in pressure to speed up the patenting process which can in turn lead to a decrease in the quality of work produced. Lower quality granted patents can then lead to uncertainty about the scope of protection and

⁸ The classic examples include mailing list participation, organ donation (cf. Thaler, Richard and Cass Sunstein. 2009. *Nudge: Improving decisions about health, wealth and happiness*. London: Penguin Publishers) and how to organise state pensions systems (cf. Thaler, Richard. 2004. "Save More Tomorrow™: Using Behavioral Economics to Increase Employee Saving" *Journal of Political Economy*, Vol. 112(S1), pp. S164-S187).

raise questions around the validity of the patents which have been granted. This can then result in increased litigation costs as the scope of the patent is not clearly defined.

We have been unable to quantify these costs but, as the London Economics Study estimated that delays in processing patents cost the global economy £7.6 billion for every extra year patents are delayed in the US, Japan and Europe, of which £6 billion is through lost innovation. From this, we can see that there is likely to be an expected cost for UK businesses, although we cannot monetise it.

Option 2 – monetised costs:

The proposed changes will facilitate the sharing of information on unpublished patent applications between patent offices. Applicants who use the patenting system will see no difference in the costs or requirements of what is needed to apply for a patent and therefore there will be no additional costs to applicants.

Sharing the information on unpublished patents will require appropriate systems to ensure the information is transmitted and stored securely at each office. The exact nature and costs of these systems will depend on the level of work sharing which is undertaken, the amount of information which is exchanged and the ways in which the information is collated and transmitted.

As mentioned above, the IPO has previous experience of setting up electronic systems for the exchange of information between patent offices and has recently implemented a system to allow information on unpublished patents to be shared with the EPO. The costs of this were estimated to be £25,000. Similarly, the IPO worked with WIPO to implement the WIPOCASE system which enables the IPO to share information on published patents with the Australian and Canadian offices. The costs to implement this system are estimated to be around £45,000.

Given the high estimate of £45,000 and the low estimate of £25,000, a best estimate of the costs of implementing any new work sharing initiatives could be estimated as the midpoint, £35,000 for each country with which the IPO would share information. This could, however, be reduced if the existing systems were utilised for more than one national office.

The security arrangements for the sharing of unpublished information will also need to be fully considered, taking into account aspects such as data protection issues and the secure exchange and storage of information. This work will be undertaken as part of the day to day activities of the IPO and does not represent any additional costs to those of implementing any electronic exchange of information.

Option 2 – non-monetised costs:

Information on the extension of the IPO's work sharing activities to include the sharing of unpublished patent information will need to be communicated to all customers, stakeholders and patent offices. This will be done through the IPO's existing communication channels and networks, including the IPO website and stakeholder and international forums. The costs of this communication work will be part of normal operations with no additional costs to the office.

Option 3 – monetised costs

The monetised costs of option 3 would be the same as for option 2, as the information would be shared using the same IT infrastructure.

Option 3 – non-monetised costs:

The proposal to amend secondary legislation to broaden the definition of "bibliographic data" will be done as part of the day to day activities of the Patents Legal Section within the IPO. As such, this work does not represent any additional costs to the IPO. Similarly, the necessary communications work would be part of normal operations.

The outstanding risk that the definition may not be changed sufficiently to allow effective work sharing is present. If this occurs then the benefits would be reduced and result in further costs in amending the legislation once again.

Option 4 – monetised costs:

Once consent has been given to share information, the IPO will need to store this data and identify the relevant cases where the information can be shared with other national offices. As the IPO uses individual records for each patent application, this will add to the time spent collating information for other national offices to use.

Using the average number of search requests filed between 2007 and 2011, and the current IPO costs of managing the forms as well as collating and retrieving the details on the individual applications on which consent has been given we can calculate the costs of managing this system if all applicants had granted consent. These figures are calculated on the basis that the IPO will share information on a monthly basis.

Processing costs to record consent from each form filed	£3.39 per form	
Average Number of forms ⁹ per annum (2007-2011)	15,760	
Variable cost (£3.39 x 15,760)	£ 53,426.40	
Monthly processing costs to collate individual consent cases	£134.48	
Fixed costs (12 months x £134.48)		£ 1,613.76
Total costs if 100% of applicants consent		<u>£ 55,040.16</u>

Costs if 13.5% of applicants provide consent

Variable cost (£53,426.40 x 13.5%)	£7,212.56	
Fixed cost	£1,613.76	
Total		£8,826.32

Costs if 50% of applicants provide consent

Variable cost (£53,426.40 x 50%)	£26,713.20	
Fixed cost	£ 1,613.76	
Total		£28,326.96

The work of managing and collating the applications on which consent has been given is unnecessary for options 2 and 3 as this uses a system with the information on all applications automatically being shared and would not require the IPO to manage which applicants have consented and which have not.

Option 4 – non-monetised costs:

Encouraging IPO customers to give their consent for the information on their unpublished applications to be shared with other national offices will be done through a combination of:

- additional publicity on the IPO website
- discussions at a range of existing stakeholder forums
- a targeted publicity campaign using leaflets and flyers aimed at unrepresented applicants

These activities would be undertaken within the IPO's business as usual activities with negligible costs.

⁹ In particular, this is form 9A which is the search request form where applicants can provide their consent. Data is from the IPOs facts and figures published on <http://www.ipo.gov.uk/ourpublications-review>

Asking applicants to give their consent to share creates another question which must be considered and completed when filing a request for a search on a patent application. This increases the time taken to complete the form.

Benefits

Option 1 – monetised benefits:

As option 1 represents the base for comparison, the do nothing option will present no monetised benefits.

Option 1 – non-monetised benefits:

As option 1 represents the base for comparison, the do nothing option will present no indirect or non-monetised benefits.

Option 2 – monetised benefits:

Reducing duplication of work and reducing patent backlogs

Trained patent examiners consider similar information and carry out similar searches and examinations to ensure a patent is granted within the terms of their particular national law. For many of these cases, the work of the office where the patent is first filed could be reutilised by other patent offices to help speed up the search and examination of the patent. This would bring efficiencies to the global patenting system and help reduce the current worldwide backlog of patents.

The IPO is currently involved in several work sharing initiatives in which quantitative results can be seen in terms of the time saved through sharing information between patent offices.

“Utilization Pilot Project” (UPP):

Between 2007 and 2008 the IPO participated in the Utilisation Pilot Project (UPP)¹⁰ run by the European Patent Office (EPO). This project tested whether work done by four national offices in Europe could be utilised to make the granting process at the EPO more efficient. The results indicated that, on average, a time saving of 2.7% was made; with 54% of the EPO patent examiners involved stating that the access to the work of other examiners at other offices improved the quality of their own search results.

Although the results of this pilot project produced relatively small time savings, the utilisation of work from other offices was deemed to be beneficial to the European patent system. This then led to the agreement to share unpublished information on specific patent applications with the EPO. Since its implementation on 24 March 2012, the IPO has, on average, shared information on six patent applications a day with the EPO.

“Patent Prosecution Highway” (PPH) agreements with other national offices:

Under this system, offices have agreed to use the outcome of successful patent examinations from other patent offices in order to help with their own assessment of an equivalent patent application. This can result in a reduction of the number of office actions taken when processing a patent application and whilst in many cases the

¹⁰ For details see paragraph 2.4.4 of the London Economics Study on Patent Backlogs and Mutual Recognition, <http://www.ipo.gov.uk/p-backlog-report.pdf>

reduction is negligible, for some offices, such as the Canadian Office, the use of PPH agreements has halved the number of office actions and helped speed up the granting process¹¹. Similarly, applications processed under the PPH at the Japanese Patent Office (JPO) based on US patent applications have an average pendency time of 1.8 months as compared to 29.1 months for similar non-accelerated applications¹².

The reductions in time saved on both of these initiatives may seem relatively small in comparison to the four million outstanding patent applications. But it should be borne in mind that the UPP project was a pilot in which only four national offices participated so the opportunity for time savings was limited. For PPH, the reliance on applicants voluntarily agreeing to participate and file claims which have already been found to be allowable can affect the amount of time savings which can be made. Although only small time savings are demonstrated, these reflect the positive impact where patents offices work together and make use of each other's information in order to work more effectively.

This idea is reinforced by the predictions made in the London Economics study where an estimate of the impact of mutual recognition on predicted patent backlogs is made¹³. Taking current patent activity into account, the study felt that by 2015, patent backlogs would reach 48 backlog months. However, if a percentage of the work in the patenting process was avoided through work sharing and mutual recognition of the work conducted by other offices, the backlogs are likely to reduce as follows:

- If 25% of processing time is saved there is likely to be a reduction to 38 backlog months
- If 60% of processing time is saved there is likely to be a reduction to 25 backlog months
- If 100% of processing time is saved there is likely to be a reduction to 11 backlog months

Even a 2.7% reduction in processing time could therefore have a very real impact on the expected number of backlog months.

Reduced pendency time (the time taken between application and the grant of a patent)

As patent backlogs are reduced, UK businesses are likely to gain quicker patent protection overseas. This is another direct benefit which can be gained from work sharing between patent offices as demonstrated by the current work of the PPH. Applicants who make use of a PPH agreement can benefit from a greatly reduced pendency time, fewer office actions as mentioned above and a higher likelihood that the application will be granted at the first office action.

Estimating the monetised benefits to UK businesses: Central estimate

Estimating the financial benefits which UK businesses will specifically gain from the proposed changes is difficult and will depend on a number of factors such as the extent to which UK businesses seek global patent protection, the countries in which they seek it and the pendency times at each of the relevant offices.

It is clear, however, that each additional year of pendency reduces the time in which patent proprietors can realise the benefits of patent protection. The London Economics study looked at

¹¹ See the Patent Prosecution Portal website www.ipo.go.jp/cgi/cgi-bin/ppph-portal/statistics/statistics.cgi

¹² See the Patent Prosecution Portal website www.ipo.go.jp/cgi/cgi-bin/ppph-portal/statistics/statistics.cgi

¹³ See paragraph 5.4.4 of the London Economics Study on Patent Backlogs and Mutual Recognition, <http://www.ipo.gov.uk/p-backlog-report.pdf>

the impact on patent values and the estimated costs of lost innovation as a result of increased pendency times.

Taking data on the average lifetime of a patent at the three major patent offices, they estimated that each additional year of pendency reduces the benefits associated with patent protection as follows¹⁴:

- Reduction of around 9% at the European office (EPO)
- Reduction of around 7% at the U.S. Office and (USPTO)
- Reduction of around 6% at the Japanese Office (JPO)

Using figures from a previous study, The PATVAL survey¹⁵, they also estimated that the average monetary value of a patent granted by the EPO, the USPTO and the JPO was £2.7m, £2.7m and £0.7m respectively. The PATVAL study took place in 2005, so to inflate these to 2012 values results in the average value of a granted patent of £3.4m for the EPO, £3.4m for the USPTO and £0.9m for the JPO¹⁶.

If this data is considered in conjunction with the data collated through the UPP project, it is possible to estimate the potential monetary value of a patent at each of these offices when savings are made through work-sharing.

The London Economics Study¹⁷ gives estimates of current total patent backlogs as;

EPO	- 45 months
USPTO	- 32.5 months
JPO	- 33 months

The UPP project demonstrated that by sharing information on unpublished patents, a time saving of approximately 2.7% was made. The London Economics Study showed that average pendency times in 2007 at the EPO stood at around 45 months so 2.7% time savings would equate to approximately a 1.215 months reduction in this pendency time.

In terms of the impact this time saving would have on the monetary value of a patent granted by the EPO, the London Economics Study showed that an additional year of pendency costs business 9% of the value of the patent so 1.215 months of pendency would therefore cost 0.91%. This is calculated by $9\%/12(\text{months}) \times 1.215 = 0.91\%$.

The PATVAL study considered the value of a patent granted at the EPO to be £3.4m so a time saving of 2.7% could lead to an additional benefit to business of approximately £31,254 (0.91% of £3.4m), as the reduction in the benefits associated with the patent would lessen due to the reduced pendency time to gain patent protection.

Details from the World Intellectual Property Indicators 2011¹⁸ published by the World Intellectual Property Organisation (WIPO) show that between 2004 and 2008, 17,630 patent families¹⁹ of UK origin were filed at the EPO. Patent families refer to a set of patent applications which are

¹⁴ See section 4, table 5 of the London Economics Study on Patent Backlogs and Mutual Recognition, <http://www.ipa.gov.uk/p-backlog-report.pdf>

¹⁵ See <http://www.alfonsogambardella.it/PATVALFinalReport.pdf>

¹⁶ To inflate these values the annual Retail Price Index (RPI) was used <http://swanlowpark.co.uk/rpiannual.jsp>. The main difference between the RPI and Consumer Price Index (CPI) is that the RPI includes property prices. As owning property/land can be an important part of patentable innovation, e.g. the laboratory where the innovation is created, the factory in which it is produced, the RPI is used.

¹⁷ See page 98 (EPO), page 118 (USPTO) and page 108 (JPO) of the London Economics Study on Patent Backlogs and Mutual Recognition, <http://www.ipa.gov.uk/p-backlog-report.pdf>

¹⁸ See; http://www.wipo.int/export/sites/www/freepublications/en/intproperty/941/wipo_pub_941_2011.pdf

¹⁹ See pages 56 to 59 of the World Intellectual Property Indicators 2011 for the definition of a patent family

filed in a number of different countries to protect a single invention or inventive concept. This represents 3.15% of all the patent families filed at the EPO. Taking this percentage of the 1,948 UK originating patents granted at the EPO²⁰ in 2011, the potential benefits to those businesses who file at the UK and then file at the EPO could total approximately £1.9m if the pendency times on each of these applications is reduced as indicated above. This is calculated by taking 3.15% of 1,948 applications and multiplying by the value of each as £31,254 = £1,917,816

Assuming the time savings of 2.7% achieved through the UPP project could also be replicated if the IPO shared unpublished information with the USPTO and the JPO. The additional benefits to businesses would be approximately £17,556 at the USPTO and £3,961 at the JPO for each patent application, based on the details included in the London Economics Study.

The percentages of UK originating patent families filed at each of these offices as detailed in the World Intellectual Property Indicators 2011, show that 2.96% of patent families filed at the USPTO and 2.05% of patent families filed at the JPO are of UK origin. Taking these percentages of the 4,307 UK originating patents granted at the USPTO in 2011²¹ and the 176 granted at the JPO in 2010²² and using the same calculation process as described for the EPO, this gives us potential benefits of £2,238,208 for those businesses who file at the UK office and then at USPTO and £14,293 for those who file at the UK office and then at the JPO.

For UK businesses seeking global patent protection, patent applications are likely to be subsequently filed at each of these three major patent offices. This combination of patent protection would therefore give potential combined benefits of £4.17m, (£1,917,816 + £2,238,208 + £14,293).

High and Low estimates

If we look back over the granting trends at the EPO, USPTO and JPO between 2006 and 2011, we can see that the lowest number of UK originating granted patents at each of these Offices was 1,658 grants at the EPO in 2009, 3,087 grants at the USPTO in 2008 and 157 grants at the JPO in 2007. Taking these low figures along with a lower estimate of 1.35% time saving (-50% of 2.7%) we can arrive at lower estimates using the same calculations as previous;

- £816,155 for those UK businesses who file at the UK IPO and then at the EPO
- £802,107 for those UK businesses who file at the UK IPO and then at the USPTO
- £6,375 for those UK businesses who file at the UK IPO and then at the JPO

This would give a total combined benefit of £1.62m.

Conversely, the highest numbers of UK originating granted patents at each of these Offices between 2006 and 2011 was 1,969 grants at the EPO in 2008, 4,307 grants at the USPTO in 2011 and 196 grants at the JPO in 2006. Taking these high figures along with a higher estimate of 4.05% time saving (+50% of 2.7%) we can arrive at higher estimates again using the same calculations as previous;

- £2,907,736 for those UK businesses who file at the UK IPO and then at the EPO
- £3,357,312 for those UK businesses who file at the UK IPO and then at the USPTO
- £23,876 for those UK businesses who file at the UK IPO and then at the JPO

This would give a total combined benefit of £6.28m.

²⁰ See <http://www.epo.org/about-us/office/annual-report/2011/statistics-trends/granted-patents.html> for details of the numbers of EP patents granted in 2011

²¹ http://www.uspto.gov/web/offices/ac/ido/oeip/taf/cst_utl.htm

²² http://www.jpo.go.jp/cgi/linke.cgi?url=/shiryou_e/toushin_e/kenkyukai_e/annual_report2011.htm

The varying levels of benefits would therefore appear as:

Low	High	Best Estimate (based on 2010/2011 figures discussed above)
£1.62m	£6.28m	£4.17m

These are based on the assumption that the proposed changes introduced through policy options 2 or 3 will allow the IPO to share information on 100% of patent applications which are filed at the IPO and then used as the originating application for patent filings at other offices.

These figures represent an annual benefit to UK businesses. Individuals will only benefit once from the implementation of this initiative, however future applicants will each receive this one-off benefit in all future years. Therefore the saving will be repeated each year as all those applying for patents would have done so anyway and shall now receive the benefit.

UK businesses who are seeking global patent protection could also file at a variety of other national patent offices. This could result in further financial benefits where work sharing between offices is adopted. However, due to a lack of data on the specific value of the patents granted by these other offices, it difficult to estimate the additional monetary value which could be gained.

Option 3:

The monetised benefits for option 3 will be the same as outlined in Option 2 benefits (Page 13-176). Options 2 and 3 ensure the IPO can maximise its work sharing activities by exchanging information on all of the applications which are filed at the IPO and subsequently filed at another NPO.

Option 4:

This option aims to achieve the levels of benefits discussed under options 2 and 3 above but the IPO recognises that this is dependent on the levels of consent the IPO can receive from its customers. The assumption is that the IPO will receive consent to share information on between 13.5% of Patent Forms (as it currently does) and potentially 100% of Patent Forms if publicity is increased. The best estimate assumes that achieving consent to share information with other national offices from 50% of customers is an attainable target. This will reduce the level of benefits as follows:

Low 13.5%;	£0.6m
High 100%;	£4.2m
Best Estimate 50%;	£2.1m

This option is therefore considered to be less effective than either option 2 or 3.

Indirect or non-monetised benefits for options 2, 3 and 4:

The direct benefits of increased work sharing with other offices focus on improvements to the patenting process. These improvements should have a positive impact on the levels of backlogs of patents and therefore on the time it takes for UK businesses to gain patent protection abroad.

As a result of this, UK businesses will also benefit indirectly through a range of increased business opportunities and the potential reduction in certain legal costs associated with

patenting. Policy options 2, 3 and 4 will provide these indirect benefits; although the extent to which these benefits can be realised will depend on certain factors such as; the technology in question and the appetite within each business to take up the opportunities which can be derived from a granted patent. This makes it difficult to accurately predict and extract any monetised benefits which could be derived from the following indirect benefits:

Increased quality of granted patents and the impact on litigation

Both the London Economics study and the review by Professor Hargreaves recognised the impact patent backlogs can have on the quality of the patents being granted. As patent offices have to cope with increasing workloads, this can result in patent examiners processing patent applications more quickly in order to reduce pendency times and backlogs which can then have a negative impact on the quality of work they produce.

Lower quality granted patents can lead to uncertainty about the scope of protection and raise questions around the validity of the patents which have been granted. This can result in increased infringement and the need for litigation. Estimating the costs of litigation can be difficult but a typical challenge on the validity of a patent could cost a party approximately £30,000 at the IPO, £50,000 at the Patents County Court and between £200,000 and £500,000 at the High Court²³. These options are costly to business and can be avoided if high quality patents are granted which clearly define the scope of the protection awarded.

Work sharing between patent office's can help maintain the quality of patents as demonstrated in the work sharing initiative recently undertaken between the IPO and the U.S. Patent Office. In March 2010, the two offices agreed to a framework to promote work sharing, including measures to make greater use of each other's work on commonly filed patent applications. The aim of this was to increase efficiency and the quality of the patent examination process whilst reducing any duplication of work in each office.

The Preliminary Progress Report²⁴ on these work sharing initiatives was published in April 2012 and the analysis highlighted some qualitative benefits for examiners from both offices. For the U.S. examiners, having access to the search reports from the IPO provided additional context which they felt provided more insight on the relevance of a particular reference cited during the examination of the patent application. For the IPO examiners, they found that they frequently cited extra documents (an average of 1.6 extra documents per case where the citations were thought to be useful) which suggests the quality of results produced by the IPO examiners were improved as a result of considering the work produced by the USPTO.

Increased opportunities to export their products overseas

By gaining patent protection in a range of countries, UK businesses can ensure the products they export are adequately protected from infringement. As detailed in Professor Hargreaves review of Intellectual Property and Growth, it is important that UK firms are able to enforce their IP rights in overseas markets. In 2009, the UK's IP rights reliant business sectors exported over £113 billion of goods and services²⁵ and it is important these businesses can obtain the patent protection they need quickly and effectively.

Increased opportunities for licensing and royalties

Once a patent is granted, UK businesses can licence the use of their product to other parties who in return can pay royalty fees. Licensing can be a lucrative business opportunity and as

²³ <http://www.dyoung.com/article-patentrevocation>

²⁴ <http://www.ipo.gov.uk/worksharing-ukipo-uspto.pdf>

²⁵ See chapter 3 of www.ipo.gov.uk/ipreview-finalreport.pdf

highlighted in the Hargreaves Review²⁶, global trade in patent and creative industry licences is worth more than £600 billion a year and this figure is rising.

Increased opportunities for further innovation and product development

Many patents are incremental, building on previous ideas with further innovation. While a patent is pending, the opportunities for further innovation are often hampered as the scope of protection of the existing application is unclear or may never be defined if the patent fails to grant. This lack of clarity on the scope of the invention can prevent new products and technologies being developed and brought to market. Exact figures on the number of patent applications that build on existing patent applications are not readily available and it would require extensive research to obtain. For this reason, the IPO has been unable to monetise this benefit.

Reduced legal fees

Many applicants make use of qualified professional patent attorneys to file and prosecute their applications. The average hourly cost for using a patent attorney is estimated to be between £100 and £200 and so the costs of using such a professional will add to the costs for UK businesses. Although using a Patent Attorney is not absolutely necessary, many customers feel that using a professional can help guide them through the complexities of patenting system. This is especially true when they are required to file in a number of different countries to ensure they obtain adequate protection for their invention and they are faced with different legislative requirements depending on the national patent office which is used.

As demonstrated by the use of PPH agreements, the re-use and consideration of work from other national offices can reduce the amount of interactions needed to progress an application to grant. This can have an effect on the costs associated with using a professional patent attorney. The number of times an attorney needs to respond to an office action can be greatly reduced and this has the potential to lower the overall fees associated with using professional representation.

Due to a current lack of information it has not been possible to monetise the potential level of benefits that reduced legal fees would derive.

Assumptions

It has been assumed that other offices will want to actively take part in work sharing and that they will make use of the unpublished information which the IPO will make available to them to reduce any duplication in their search and examination processes. This should reduce the levels of work and it is assumed they will use any additional time to reduce patent backlogs and speed up their patenting processes.

It has also been assumed that the other national patent offices will store any information which is shared with them securely and confidentially.

It has also been assumed that UK businesses seeking global patent protection would look to gain a package of protection using a business strategy of filing applications at the UK patent office and then at the EPO, the USPTO and the JPO and that their business strategies are such that they wish to gain patent protection as quickly as possible.

²⁶ See chapter 1 of www.ipo.gov.uk/ipreview-finalreport.pdf

The numbers of patent applications and the patent pendency times used in the benefits modelling on pages 13 to 17 do not take account of any growth in the rate of patent filings and the associated impact on pendency times. The rates of growth in patent filings vary depending on the country in question and the economic climate at any given time and it would therefore not be prudent to forecast the rates of growth. It has been assumed that the IPO and other national patent offices will continue to work together on a variety of initiatives to ensure that patent backlogs are reduced and do not rise above the levels estimated for the year 2015 by the London Economics Study.

Risks

The risks relate to the secure storage and use of the information which is shared with other national offices:

- There is a risk that confidential, unpublished information which the IPO has shared with another office will be made publicly available before the patent application has been officially published.
- There is a risk that the countries with which the IPO is sharing information have inadequate levels of protection of personal information as defined and required by the Data Protection Act 1988.
- There is a risk of litigation against the IPO if confidential, unpublished information which has been shared with another office is made publicly available before the patent application has been officially published.

These risks will be mitigated through the use of confidentiality contracts, working agreements or memoranda of understanding together with secure electronic transfer and storage of the information between the IPO and other participating patent offices, as is the case today.

One in, two out

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. The costs and benefits are indirect and so this measure is out of scope from OITO.

Wider impacts

Although the proposals relate to UK domestic legislation, they are designed to facilitate the sharing of unpublished work with other national patent offices to help reduce duplication of work, speed up the patent granting processes and reduce patent backlogs in patents offices across the world. The proposal is therefore designed to have as wide an impact as possible to ensure that global patent backlogs are reduced.

Summary and preferred option; implementation plan

The preferred option is option 2 which amends legislation to allow the IPO to share information on unpublished patents with other national offices. This will allow the IPO to exchange information with a range of patent offices at a time which is the most effective to ensure that the IPO’s work is re-used to help reduce processing times and therefore help reduce global patent backlogs. The IPO will ensure that any information shared will be transferred and stored securely and confidentially with each national patent office.

Although option 3 would also allow the IPO to share information on unpublished patents with other national offices, it is highly unlikely that the definition of the term “bibliographic data” could be sufficiently extended to include all the relevant information which is needed to ensure work

sharing is effective. Given this, this option does not seem the most appropriate way to fully meet the policy objective.

Evaluation of preferred option

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.