

BIA submission to the IPReg consultation on pro bono advice October 2019



About the BIA

Established over 25 years ago at the infancy of biotechnology, the BioIndustry Association (BIA) is the trade association for innovative life sciences in the UK representing approximately 200 SMEs and larger life science companies as well as over 100 firms and associations that support and service the sector. Our goal is to secure the UK's position as a global hub and as the best location for innovative research and commercialisation, enabling our world-leading research base to deliver healthcare solutions that can truly make a difference to people's lives.

Our members include:

- Start-ups, biotechnology and innovative life science companies
- Pharmaceutical and technological companies
- Universities, research centres, tech transfer offices, incubators and accelerators
- A wide range of life science service providers: investors, lawyers, IP consultants, and IR agencies

We promote an ecosystem that enables innovative life science companies to start and grow successfully and sustainably.

Within the sector, as well as large established life science companies, the UK has a vibrant community of bioscience start-ups and SMEs that are developing innovative new medicines. The UK has the strongest research and development (R&D) pipeline among such companies in Europe, with 479 products in development in 2017.¹

The sector is heavily dependent on patents: the significant investment required for the R&D of medicines, including clinical trials, is made possible by the commercial incentive provided by patent protection. The availability of patent protection for innovative products is essential for ensuring investment in such products. For smaller companies the ability, in particular, to attract investment at an early stage of R&D is key. Patent portfolios are often their most valuable asset and a key consideration of the measure of the company's value, which in turn affects the funding available for R&D from investors. It is therefore extremely important that companies are able to access high-quality advice regarding their IP portfolio and strategy in the earliest stages of their development as well as throughout their lifecycle.

The BIA is therefore grateful for the opportunity to provide views to IPReg's consultation. Our position has been developed by the BIA's IP Advisory Committee, which is composed of leading patent attorneys and IP solicitors from the life sciences sector working in-house and in private practice.

¹ BIA (2018), *Pipeline Progressing: The UK's Global Bioscience Cluster in 2017*: <https://bit.ly/2LIPo4J>

Response to the IPReg consultation

The BIA welcomes this consultation, which proposes to change IPReg rules to remove some of the current restrictions on in-house patent attorneys, and hence allow them to provide pro bono advice.

The BIA believes that in-house attorneys could provide a valuable contribution in advising pro bono clients and considers that patent and trade mark attorneys should not be under any greater regulatory burden in this regard than that required by the Legal Services Act. The BIA supports the IPReg in providing access to CIPA members with different perspectives and skill sets.

We consider that entrepreneurs and start-ups could benefit from the possibility of accessing, in the first instance, good quality business-savvy advice from discussions with in-house attorneys who would hopefully provide an additional commercial focus compared to private practice attorneys.

It would be generally beneficial to the sector as a whole if life sciences companies with in-house experience could allow their advisers to provide advice pro bono. In particular, multi-national pharma companies who provide support to life sciences hubs and incubators (e.g. by offering mentoring, use of labs, etc. to growing businesses) may be able to offer life sciences start-up companies much needed legal advice from their in-house functions. Similarly, it would be helpful if in-house attorneys could contribute to CIPA clinics and IP Pro Bono's case officer roles.

One of the BIA's key functions as a life sciences trade association is to nurture young entrepreneurs and support start-ups. We do this by utilising our extensive network of experts within our member companies. For example, we run the "Programme for Up and coming Life Sciences Entrepreneurs" (PULSE) in collaboration with Europe's largest public biomedical research facility, The Francis Crick Institute. This three-day boot camp provides knowledge and insight to scientists and entrepreneurs through interactive workshops, one-to-one advice, and talks with sector experts, who provide their time for free.

Under proposed IPReg rule changes, it is not clear whether activities such as boot camps, CIPA IP clinics and other activities involving small commercial entities and micro enterprises would fall within the concept of pro bono advice, or if pro bono advice is limited to advice to individuals, charities and community groups. The BIA encourages the IPReg to amend its rules so as to state clearly that permitted pro bono advice is not limited to advice given to individuals, charities and community groups, but can extend to advice given to young entrepreneurs and start-ups. If IPReg were simply to permit pro bono work without this clarification, then ambiguity remains as to whether any help can be given to entrepreneurs and start-ups whose goal is ultimately to generate profits.

IPReg's proposed conditions to Rule 22 requires any pro bono work to be covered by professional indemnity insurance (PII). The proposed requirement for the individual attorney to obtain PII needs to be appropriately managed so that it does not limit in-house attorneys' ability to support pro bono activities. It is impractical and unworkable for patent attorneys employed by companies to arrange and take out PII personally. Similarly, small company employers may find the costs and logistics prohibitive to their attorneys supporting this activity. We therefore ask IPReg to seek solutions that would allow in-house attorneys to obtain PII coverage in a cost effective manner. IPReg may wish to explore introducing for its members a scheme similar to LawWorks' Professional Indemnity Insurance Scheme. This was introduced by LawWorks earlier this year to encourage in-house lawyers to undertake pro bono legal work. The PII Scheme provides free professional indemnity insurance to lawyers who are members of LawWorks and work on pro bono projects approved and registered by LawWorks.

For any further information on the contents of this submission please contact Dr Martin Turner, Head of Policy and Public Affairs, by emailing mturner@bioindustry.org