**Response Document**

Call for evidence: Review of the UK Intellectual Property Enforcement Framework

The call for evidence will be open until 2 November 2020

**When responding please state whether you are responding as an individual or representing the views of an organisation:**

I am responding as an individual

I am responding on behalf of an organisation

What is the name of the organisation?

**Please check the box that best describes you as a respondent:**

**About you:**

Are you:

An individual

Micro business (10 employees or less)

Small Medium Enterprise (up to 250 employees)

Large business (over 250 employees)

Legal profession e.g. attorney or solicitor, barrister, judge

Representative group

Other

(Please describe) ………………………………………………………

**Please respond to the questions that are relevant to you.**

**When responding to the questions please specify which IP right(s) you are referring to.**

**Please return completed responses to** [**enforcement@ipo.gov.uk**](mailto:enforcement@ipo.gov.uk)**.**

**1. The cost of legal challenges**

1.1 Costs of taking action

1. What costs have you or your business incurred when protecting your IP right(s) from infringement? When you respond, please include the type of IP right(s) you were protecting. What was the outcome of the case?
2. Have you avoided making a claim or pursuing a case when protecting your or your business’ IP? If so, please explain your reasons. For example, was it because of the costs involved?
3. Which costs did you consider when deciding what action to take to protect your IP? For example, the cost of the time spent dealing with the infringement or the possibility of paying an expert?
4. Were you aware of or did you consider the use of protective measures such as IP insurance? For example, BTE (before the event), ATE (after the event), legal expenses insurance, or free legal advice through services like the Citizens Advice Bureau or IP pro bono?
5. Is there a reason you did not use protective measures such as IP insurance?

Costs from defending action

1. What costs have you or your business incurred when defending an accusation of alleged infringement? When you respond, please include the type of IP right(s) you were accused of infringing. What was the outcome of the case?
2. Could you provide some information on how you funded the case? For example, debt, using free legal services or insurance.

1.2 Pro bono publico

1. Have you considered or used IP pro bono or similar services to help with the costs of seeking legal advice? If so, please provide details of your case (this can be anonymised) and your overall experience.
2. Did anything prevent you using these services? Please provide details.
3. If you are aware of the service but have not used it please explain why not? For example, were you unable to get a referral to the IP Bar pro bono service?

**1. Accessibility and effectiveness of judicial processes**

1.1 Experience of the judicial system

1. Do you have experience of the judicial process? If you do, please provide details of your specific IP case. Please include whether you found the system easy to understand and use.
2. Were you aware of the different routes available to take to pursue the alleged infringement?
3. When your product or creation was being infringed, did you feel there was easy access to the court system? Was there easy access to information on which route would be the most suitable? Please explain what happened in your case.

1.2 Preliminary and out of court solutions available

1. Have you stopped infringement of your rights without taking the infringer to court?
2. Did you use an alternative dispute resolution (such as mediation or arbitration)? If so, please provide details of which service you used, your experience and the outcome.
3. How did you find out what route to take to enforcement?
4. What was your experience of using the chosen method?

**2. Suggested remedies**

2.1 Improvements to processes at Small Claims Track (SCT) at the Intellectual Property Enterprise Court (IPEC)

1. Have you used the small claims track? If you have, please describe what happened in your case? Did you find the available guidance easy to understand without the need to seek legal advice?
2. Have you looked into using the small claims track and decided not to use it? If so please provide details of what happened and your reason for not using the service.
3. Would providing examples of cases have helped when considering whether to use the small claims track and your understanding of the process?
4. If you have used the small claims track would you use it again for a future infringement case? Please explain your reasons for your decision not/to use the small claims track again?
5. Have you had experience of using the CE file application service to submit an IP claim? If so, please provide details of your experience, including whether it was submitted to one of the regional courts hearing SCT cases.

2.2 Introduction of a statutory damages regime

1. Have you had a case that resulted in damages being awarded? If You have, please explain on what basis the damages were awarded?
2. Do you think the introduction of a system such as statutory damages would help reduce barriers (if you believe there are any) for pursuing or defending legal action?
3. Do you consider that this could have a negative impact on the system? For example, an increase in false claims?
4. Do you think that there is a way that any negative impact of the implementation of statutory damages could be reduced? For example, the inclusion of a clause.

**Additional: Inclusion of registered designs within the scope of the small claims track (SCT) of the Intellectual Property Enterprise Court (IPEC).**

1. Have you previously used the small claims track to enforce an unregistered design? If so, please provide details of your experience.
2. Have you been involved in a dispute over a registered design that would have been suitable to be heard in the IPEC small claims track? If so, please provide details of your experience and the approximate damages sought.
3. Have the costs associated with legal action in IPEC’s multi-track prevented you from enforcing your registered designs? If so, please provide details and costs.
4. If registered design cases could be heard in the small claims track, would you use this route to enforce your design? Why would you use/not use it?
5. Do you have any concerns about including registered designs in the small claims track? If so, what are they?
6. Do you think there would be any impact on the court system in the UK if registered design cases were heard in the IPEC small claims track? If so, what would that be?

Please include any additional comments or examples, if you have them

Please return completed responses to [enforcement@ipo.gov.uk](mailto:enforcement@ipo.gov.uk).