

# Professional Standards Board for Patent and Trade Marks Attorneys

## PRACTICE NOTE

### No 1. 2010

To all registered patent and trade marks attorneys:

The Professional Standards Board for Patent and Trade Marks Attorneys (the Board) has the sole responsibility for discipline matters relating to Australian registered patent and trade marks attorneys.

The Board is intending to issue practice notes to provide guidance to attorneys, and to minimise the number of cases prosecuted before the Patent and Trade Marks Attorneys Discipline Tribunal. It is expected that these practice notes will expand on the matters outlined in the Patent and Trade Marks Attorneys Code of Conduct and will reflect issues causing concern to clients, other practitioners, IP Australia or other users of the attorney services.

### No 1. 2010 – FEES AND CHARGES

The Code of Conduct at paragraph 3.2.5 provides as follows:

*iv. An attorney must make available to a client, information regarding the implications of having the attorney act on the behalf of the client in a matter, in terms of procedures, cost and timing. This will ensure that the client is made aware of the likely costs of the actions that are necessary or recommended by the attorney.*

*v. At the request of a client, an attorney must provide a detailed estimate of the cost of acting for the client in a particular matter.*

The Board has received a number of complaints in relation to fees. There are a number of areas causing the Board concern.

**Telephone enquiries:** There have been a number of instances where a person has been billed following an initial enquiry of an attorney firm. The enquiry may relate to whether or not the firm handles that particular technology or provides particular services. Following this telephone call the enquirer is often shocked to receive an invoice and, in some cases, to learn of the commencement of work, with possible high costs. If the attorney intends to charge a fee for information provided in response to an initial enquiry, he or should tell the enquirer and ask if the person agrees. If the caller does not agree, the call should be terminated or a time should be made for an appointment at which advice can be given and an appropriate fee charged – with the full knowledge and consent of the client.

**Itemised costs:** A client should be aware of how he is to be charged and the likely costs. It is not helpful to provide an underestimation of charges. A full frank disclosure of possible costs will avoid misunderstandings and later disputes. The Board acknowledges that it may not be possible to outline all expected costs accurately, but a client should be given a realistic estimate. The client should be promptly informed when it appears likely that the costs will exceed the estimates provided by the attorney.

27 January 2010