

IPReg Consultation – Implementing a change in regulations to allow for the power to suspend individual registrants from the register

1. Introduction

- 1.1 IPReg has the power to make regulations to suspend a person’s registration from the Register. This is provided for in the Copyright, Designs and Patents Act 1988, s275A(2)(e) (pursuant to the Legal Services Act at s 185) and the Trade Marks Act 1994 s83A(2)(e) (pursuant to the Legal Services Act at s184).
- 1.2 Although there are regulations in force providing for the suspension of registered bodies¹, IPReg currently has no power to suspend individual registrants. IPReg does, however, have the power to remove registrants (and entities) from the Register.
- 1.3 IPReg is considering applying to the Legal Services Board to seek approval to amend the Continuing Professional Development Regulations 2013 (“CPD Regulations”), and the Patent Attorney and Trade Mark Attorney Qualification and Registration Regulations 2009 (“Qualification and Registration Regulations”) to provide for the power to suspend registered individuals in the following circumstances:
 - i. Upon non-payment of practice fees;
 - ii. Where the registrant is non-compliant with or fails to provide evidence of compliance with CPD requirements;
 - iii. Where the registrant does not have, or fails to provide evidence of compliant Professional Indemnity Insurance arrangements.

Background

- 2.1 The IPReg Registered Bodies Regulations 2015 (“the Registered Bodies Regulations”) allow for the suspension of registered bodies (both traditional firms and licensable bodies) in a range of circumstances including where the body has failed to submit its self-assessment return, paid its annual registration fee or has failed to provide evidence of compliant Professional Indemnity Insurance (“PII”) arrangements.
- 2.2 IPReg considers that it would be consistent and proportionate to extend its power to enable it to suspend to individual registrants in similar circumstances for two reasons.
- 2.3 Firstly, IPReg’s powers in relation to bodies and individuals are currently inconsistent. IPReg considers that removal from the Register in the circumstances set out in paragraph 1.3 is, in most cases, a disproportionate regulatory tool. Not only does it impose a significant regulatory burden on the individual, it raises consumer protection issues because PII lapses upon deregistration. In addition, it means that one type of registered person (an individual) is treated more severely than another (a firm or ABS) as the latter can have its registration temporarily suspended whilst it works towards compliance.
- 2.4 IPReg considers removal from the register for failure to comply with renewal requirements can be a disproportionate measure which should only be exercised in the most serious cases of non-compliant conduct. The power to temporarily suspend non-compliant individual registrants from the register would allow IPReg the ability to work with non-compliant registrants towards compliance and return to safe and professional practice.

¹ IPReg Registered Bodies Regulations 2015, Regulation 10

- 2.5 Similarly, where a registrant fails to comply with CPD requirements, the regulations direct that the registrant should be referred to the Joint Disciplinary Panel for consideration of disciplinary proceedings. IPReg considers this can be disproportionate and onerous, and that temporarily restricting an individual's practice until they can achieve compliance can be a more proportionate approach which better serves to protect and promote the public interest and interests of consumers.
- 2.6 In 2016, 31 registered attorneys² had not paid their practice certificate fee by March (two months after payment was due) and were advised that IPReg would remove them from the register unless payment was made within 30 days. Two attorneys failed to pay following warnings, and were removed by IPReg.
- 2.7 In 2017, the number of attorneys that had not paid their practice certificate fee by March, rose to 57³. IPReg removed seven attorneys who had still failed to make payment following a further 30 day warning.

3. Proposal to amend regulations

- 3.1 IPReg proposes to seek the approval of the Legal Services Board to amend its regulations to allow for temporary (up to three months) suspension of an individual registrant's entry on the registers where the registrant has failed to comply with the following specific administrative requirements:
- i. where there has been a failure to pay the annual renewal fee within three months of the renewal date;
 - ii. where there has been a failure to comply with CPD requirements and where IPReg has not waived those requirements for due cause or granted an extension;
 - iii. where the registrant is unable to provide evidence of compliant Professional Indemnity Insurance arrangements.
- 3.2 A registrant will have the right to appeal the decision made to suspend their registration.
- 3.3 Suspension from the register will have the effect of suspending the registrant's right to conduct reserved legal activities during the period of suspension. The suspended registrant will remain on the statutory register and will remain entitled to refer to themselves as a registered attorney. IPReg will continue to have regulatory power over the suspended registrant during the period of suspension.

4. Consultation

- 4.1 IPReg would like to hear your views on the proposed amendment to regulations to bring its powers of suspension of individuals in line with its powers to suspended regulated bodies.
- 4.2 The proposed draft amendments to the Rules are attached as Annexe A.

² 14 were Trade Mark Attorneys, 17 were Patent Attorneys

³ 23 were Trade Mark Attorneys, 34 were Patent Attorneys

Question 1

Do you agree that an amendment to IPReg's regulations to allow for suspension of individual registrants is a proportionate measure to encourage regulatory compliance?

Question 2

Do you agree that the power to suspend a registrant should be exercisable in the following circumstances:

- i. Upon non-payment of practice fees;**
- ii. Where the registrant has been non-compliant with or fails to provide evidence of compliance with CPD requirements;**
- iii. Where the registrant does not have, or fails to provide evidence of compliant Professional Indemnity Insurance arrangements.**

Question 3

Do you have any comments on the proposed draft regulations?

This consultation opened on **1 December 2017** and will run until **10 January 2018**.

If you would like all or part of your response to be treated as confidential, please make this clear.

Responses and requests for meetings should be sent to **ipreg@ipreg.org.uk**.

Annexe A

Patent Attorney and Trade Mark Attorney Qualification and Registration Regulations 2009

Current:

Regulation 3 – Requirements [...]

- 3.4 A registered patent or trade mark attorney when applying to remain on one or both of the Registers in accordance with the Qualification and Registration Regulations must include an annual declaration of compliance with the CPD requirement of Regulation 3.1 and of 3.2 if applicable using the form prescribed in Schedule 1 hereto (or equivalent) and an undertaking to submit if required details of the CPD undertaken in the calendar year preceding the application [...]

Regulation 6 – Continuing Professional Development

- 6.1 PRB and TRB, separately or together as IPReg, shall after consultation with CIPA and ITMA make regulations governing such appropriate education and training as may be required as part of the continuing professional development of a person applying to remain on the Patent Attorney Register or the Trade Mark Attorney Register, respectively.
- 6.2 PRB and TRB, separately or together as IPReg, shall have the power for due cause to waive any or all of the requirements of Regulation 6.1 in whole or in part or to extend the time within which a registered patent or trade mark attorney must complete any of such requirements.
- 6.3 Instances of non-compliance with regulations made under Regulation 6.1 and which are not exempted by Regulation 6.2 hereof shall be referred to the Joint Disciplinary Panel established under the CIPA and ITMA Rules of Disciplinary Procedure

Regulation 7 – Renewal of Registration

- 7.1 Unless subject to a direction under Regulation 9.1, a person who continues to qualify for registration under Regulation 4 and satisfies the continuing professional development requirements of any rules made under Regulation 6 shall be entitled to remain on the relevant register on payment of the fee for renewal of registration prescribed in accordance with Regulation 12.
- 7.2 The relevant Registrar may, for the purpose of establishing that a person fulfils the requirements of Regulation 6, 4.2(d) or 4.3(d), require that the person submit evidence to that effect and may require such further particulars as are considered necessary. [...]
- 7.4 If a registered patent attorney or registered trade mark attorney fails to pay the fee prescribed for renewal of registration in accordance with Regulation 12 within two months from the day on which it becomes payable (the Renewal Date) or fails to provide the relevant Registrar with the evidence requested in accordance with Regulations 7.2 within one month of being asked to do so, the Registrar concerned shall notify the attorney at his business address (as shown in the Register) that his name will be removed from the relevant register within one month unless the required fee is paid and/or the requested evidence is supplied.
- 7.5 Within a period of six months from the Renewal Date, the name of a person removed from one or both of the Registers under Regulation 7.4 shall be restored on payment of the

unpaid fees and/or provision of satisfactory requested evidence, together with such further late payment fee as may be prescribed in accordance with Regulation 12.

- 7.6 Restoration of the name of a person removed from one or both of the Registers under Regulation 7.4 after a period of six months from the Renewal date shall be at the discretion of IPReg which may impose such further requirements as it considers appropriate which may include providing evidence of compliance with some or all of the initial registration requirements of Regulation 4.2 or 4.3. [...]

Proposed amended Regulations:

Regulation 3 – Requirements [...]

- 3.4 [remains the same]

Regulation 6 – Continuing Professional Development

- 6.1 [remains the same]

- 6.2 [remains the same]

- 6.3 Instances of non-compliance with regulations made under Regulation 3.4, 6.1 and/or 7.2 which are not exempted by Regulation 6.2 hereof shall ~~be referred to the Joint Disciplinary Panel established under the CIPA and ITMA Rules of Disciplinary Procedure~~ be considered by the Registrar who may suspend the registrant from the register for a period of up to three months.

- 6.4 If a registrant's name is suspended from the register under Regulation 6.3, the suspension will be lifted upon completion of the required CPD, the grant of an exemption under Regulation 6.2 and/or receipt of requested evidence.

- 6.5 If a registrant's name is suspended from the register under Regulation 6.3, and the required CPD is not completed and/or the requested evidence is not received within three months of the first day of the Registrant's suspension from the register, the Registrar shall refer the registrant to the Joint Disciplinary Panel established under the CIPA and ITMA Rules of Disciplinary Procedure.

- 6.6 If a registrant is referred to the Joint Disciplinary Panel under Regulation 6.5, the registrant's name shall remain suspended from the register until any disciplinary proceedings are concluded.

Regulation 7 – Renewal of Registration

- 7.1 ~~Unless subject to a direction under Regulation 9.1, a person who continues to qualify for registration under Regulation 4 and satisfies the continuing professional development requirements of any rules made under Regulation 6~~ A person shall be entitled to remain on the relevant register:

- (a) Upon payment of the fee for renewal of registration prescribed in accordance with Regulation 12;
- (b) If he can provide to the satisfaction of the Registrar, evidence that he has complied with Rule 17 of the Rules of Conduct for Patent Attorneys, Trade Mark Attorneys and Other Regulated Persons concerning Professional Indemnity Insurance; and

- (c) If he satisfies the continuing professional development requirements of any rules made under Regulation 6
- 7.2 [remains the same] [...]
- 7.4 If a registered patent attorney or registered trade mark attorney fails to:
- (a) pay the fee prescribed for renewal of registration in accordance with Regulation 12 within two months from the day on which it becomes payable (the Renewal Date);
 - (b) provide the relevant Registrar with the evidence requested in accordance with Regulations 7.2 within one month of being asked to do so; or
 - (c) provide evidence to the satisfaction of the Registrar that he has appropriate Professional Indemnity Insurance in place in accordance with Rule 17 of the Rules of Conduct for Patent Attorneys, Trade Mark Attorneys and other Regulated Persons,
- the Registrar concerned shall notify the attorney at his business address (as shown in the Register) that his name will be suspended for a period of three months or removed from the relevant register within one month, unless the required fee is paid and/or the requested evidence is supplied.
- 7.5 ~~Within a period of six months from the Renewal Date, the name of a person removed from one or both of the Registers under Regulation 7.4 shall be restored on payment of the unpaid fees and/or provision of satisfactory requested evidence, together with such further late payment fee as may be prescribed in accordance with Regulation 12.~~
- If a registrant's name is suspended from the register under Regulation 7.4, the suspension will be lifted upon payment of the unpaid fees and/or provision of satisfactory requested evidence, together with such further late payment fee as may be prescribed in accordance with Regulation 12.
- (a) If the payment required and/or information requested is not provided within three months of the first day of the Registrant's suspension from the register, the Registrar shall remove the Registrant's name from the register.
- 7.6 Restoration of the name of a person removed from one or both of the Registers under Regulation 7.4, 7.5 or 7.5(a) after a period of six months from the Renewal date shall be at the discretion of IPReg which may impose such further requirements as it considers appropriate which may include providing evidence of compliance with some or all of the initial registration requirements of Regulation 4.2 or 4.3. [...]

Continuing Professional Development Regulations 2013

Current:

Regulation 5 – Compliance [...]

- 5.3 Any non-compliance with these Regulations which is not satisfactorily addressed under Regulation 4 will be referred to the Joint Disciplinary Panel established under the CIPA and

ITMA Rules of Disciplinary Procedure and may result in the removal of the registered patent or trade mark attorney from the relevant Register

Proposed amended Regulations:

- 5.3 Any non-compliance with these Regulations which is not satisfactorily addressed under Regulation 4 will be ~~referred to the Joint Disciplinary Panel established under the CIPA and ITMA Rules of Disciplinary Procedure and may result in the removal of the registered patent or trade mark attorney from the relevant Register~~ considered by the Registrar who may suspend the registered patent or trademark attorney from the register for a period of up to three months.
- (a) If a registrant's name is suspended from the register under Regulation 5.3, the suspension will be lifted upon completion of the required CPD and/or receipt of requested evidence.
 - (b) If the non-compliance is not rectified within three months of the first day of the Registrant's suspension from the register, the Registrar shall refer the registrant to the Joint Disciplinary Panel established under the CIPA and ITMA Rules of Disciplinary Procedure.
 - (c) If the registrant is referred to the Joint Disciplinary Panel under Regulation 5.3(b), the registrant's name shall remain suspended from the register until any disciplinary proceedings are concluded.