



LEGAL SERVICES  
**BOARD**

Legal Services Board  
One Kemble Street  
London  
WC2B 4AN

[www.legalservicesboard.org.uk](http://www.legalservicesboard.org.uk)

02 July 2018

### **Freedom of Information Act request (Ref: 20180502/01)**

The Legal Services Board's ("LSB") response to your request for information of 2 May 2018 made under the Freedom of Information Act 2000 ("FOIA") is set out below.

#### FOIA request and response

As advised on 19 June 2018, we have (under s10(3) FOIA) extended the 20-day time limit for a response to allow us to consider whether the balance of the public interest test is engaged in relation to documents which fall within the scope of your request. We now set out our response as follows to your FOIA requests.

#### ***"1. for all documents that relate to the notion that IPREg Ltd are the named regulator under the CPDA as they declared or even under the LSA 2007"***

Please find the enclosed the documents listed below which fall within the scope of this request:

Agreement between the Chartered Institute of Patent Attorneys, the Institute of Trade Mark Attorneys and Intellectual Property Regulation Board Limited, dated 2 December 2009  
Amended Delegation Agreement between the Chartered Institute of Patent Attorneys, the Institute of Trade Mark Attorneys and Intellectual Property Regulation Board Limited, dated 23 May 2012  
Email from chief executive of IPReg, dated 22 July 2013  
IPReg position paper approved regulators forum, dated 23 January 2017

Exempt information has been redacted under s40 of FOIA as that information constitutes personal data.

#### ***"2. Documents that in any way confirm that the Secretary of State consulted LSB in this matter or laid order before Parliament"***

The LSB does not hold the information requested. We have no record of the LSB being consulted by the Secretary of State on any order made pursuant to s275(4) of the Copyright, Designs and Patents Act 1988 to amend s275(3) of that Act so as to require the register to be kept by the person specified in such an order.

If you are dissatisfied with the way we have handled your request, you may request a review of our decision or make a complaint. Our complaint procedure is set out at:

[http://www.legalservicesboard.org.uk/can\\_we\\_help/lbs\\_policies\\_procedures/freedom\\_of\\_information/index.htm#Complaints](http://www.legalservicesboard.org.uk/can_we_help/lbs_policies_procedures/freedom_of_information/index.htm#Complaints)

If you are dissatisfied with the outcome of your complaint, you may refer the matter to the Information Commissioner for a decision. Please be aware that the Commissioner will be unlikely to make a decision until you have been through our internal complaints procedure first.

You can write to the Commissioner at:

FOI/EIR Complaints Resolution  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Please quote the above reference number in all communications on this request.

25 November, 2009

FINAL

No. 322  
Date. 25/11/2009 Time.  
Title. 091125 Delegation Document -  
File. Final MoU  
Org & Inst  
Sub. Del.-Doc. Class. Official Doc.

## AGREEMENT

2nd December 2009

The Chartered Institute of Patent Attorneys

The Institute of Trade Mark Attorneys

Intellectual Property Regulation Board Limited

**THIS AGREEMENT** is made the 2nd day of December 2009

**BETWEEN:**

- (1) The Chartered Institute of Patent Attorneys;
- (2) The Institute of Trade Mark Attorneys (Company number 00294396); and
- (3) The Intellectual Property Regulation Board Limited (Company number 06624948).

**PREAMBLES:**

- (A) CIPA and ITMA are to be designated, and will incur obligations, as approved regulators under the Legal Services Act.
- (B) CIPA and ITMA will continue to be the persons responsible, respectively, for the registration and regulation of Patent Attorneys and Trade Mark Attorneys under the Copyright Designs and Patents Act 1988 ("CDPA") and the Trade Marks Act 1994 ("TMA") as amended by the Legal Services Act.
- (C) CIPA and ITMA have entered into a memorandum of understanding to establish a Trade Mark Regulation Board, a Patent Regulation Board and a joint board, the IP Regulation Board, and to set out arrangements for co-operation between the Patent and Trade Mark Regulation Boards, to which this agreement is intended to reflect and give effect.
- (D) CIPA and ITMA have sponsored the creation of the Company as a company limited by guarantee.
- (E) CIPA and ITMA will incur duties under the Legal Services Act, as approved regulators, in particular to act in a way which is compatible with the regulatory objectives under the Legal Services Act and which CIPA and ITMA consider most appropriate for the purpose of meeting those objectives.
- (F) CIPA and ITMA will be subject to the terms of rules (Internal Governance Rules) made by the Legal Services Board under section 30 of the Legal Services Act which are made for the purpose of ensuring that an approved regulator's regulatory functions are not prejudiced by its representative functions, and that, so far as practicable, decisions relating to the exercise of an approved regulator's regulatory functions are taken independently of its representative functions.
- (G) This agreement is intended to put into effect arrangements which will comply with those Internal Governance Rules.
- (H) The Internal Governance Rules are intended to establish a principle of regulatory independence, as set out in Schedule 2, which is applicable to CIPA and ITMA in their role as approved regulators.

**THE PARTIES HEREBY AGREE**

**1. DEFINITIONS**

1.1 In this agreement

**Acts** means Legal Services Act 2007, the CDPA and the TMA

**Boards** means the IPReg, PRB and TRB

**CDPA** means the Copyright, Designs and Patents Act 1988

**CIPA** means the Chartered Institute of Patent Attorneys

**Company** means the Intellectual Property Regulation Board Limited

**Disciplinary Arrangements** means the disciplinary arrangements devised by IPReg, PRB and TRB as the same may be amended, modified or replaced from time to time in the exercise of the Boards' regulatory functions in accordance with this agreement.

**Effective Date** means the date set out at the head of this agreement

**IPReg** means the Intellectual Property Regulation Board

**ITMA** means the Institute of Trade Mark Attorneys

**Legal Services Act** means the Legal Services Act 2007

**LSB** means the Legal Services Board constituted under the Legal Services Act

**OLC** means the Office of Legal Complaints constituted under the Legal Services Act

**Party** means any of the Company, CIPA and ITMA and **Parties** means all three of the Parties

**Patent Attorney** means a person who is registered or registrable by the PRB under the CDPA

**PRB** means the Patent Regulation Board

**Registers** means the statutory registers operated on behalf of CIPA and ITMA respectively by the PRB and the TRB for the purposes, as appropriate, of the CDPA, the TMA and the Legal Services Act

**Registrant** means a person entered or previously registered in one of the Registers and a "relevant authorised person" for the purposes of section 112 of the Legal Services Act

**Reserved Matters** are the matters referred to in clause 2.8

**Schedule** means a Schedule to this agreement

**TMA** means the Trade Marks Act 1994

**Trade Mark Attorney** means a person who is registered or registrable by the TRB under the TMA

**TRB** means the Trade Mark Regulation Board

## 1.2 Interpretation

In this agreement, unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine. Any reference to a named body or organisation includes that body or organisation by whatever name subsequently known or the successor to that body or organisation, and any reference to an enactment includes that enactment as amended or re-enacted from time to time.



**2. PRB, TRB AND IPREG**

- 2.1 In pursuance of the requirements of the Acts, CIPA and ITMA have respectively established PRB, TRB, and jointly established IPReg, and CIPA and ITMA respectively appoint PRB and TRB as their regulatory Boards and IPReg as a joint board comprising TRB and PRB.
- 2.2 The Parties hereby agree that PRB, TRB and IPReg shall be constituted in accordance with Schedule 1. The Parties agree that Schedule 1 may be modified by written agreement between the Parties at any time, whether prior to or after the coming into effect of relevant provisions of the Legal Services Act, and agree that Schedule 1, as amended from time to time, shall contain the formal constitutions of the Boards.
- 2.3 In pursuance respectively of Article 4(a) of the Charter of CIPA and Clause 3(B)(a) of the Memorandum of Association of ITMA, CIPA and ITMA hereby delegate the power to make decisions relating to the exercise, and the exercise of, their respective regulatory functions arising from their designations as approved regulators under the Legal Services Act to PRB and TRB, in accordance with this agreement and in particular clauses 2.6 and 2.7 below; provided that any action or decision of PRB and TRB which is, or to the extent that it includes, a decision relating to, or exercise of, such regulatory functions under any of the Acts shall be taken, respectively, in the names of CIPA and ITMA.
- 2.4 The Parties agree, subject to clause 6 below, that IPReg shall sit as a joint body of members of the other Boards and shall be responsible for facilitating and co-ordinating the functioning of the PRB and TRB and that, subject to clause 2.8, PRB and TRB may respectively delegate from time to time such of their powers and functions under this agreement as each may determine to IPReg.
- 2.5 The Boards are appointed in accordance with, and to give effect to, and must comply with the provisions of the Acts and with the Internal Governance Rules and Practice Fee Rules as promulgated from time to time by the LSB under the Legal Services Act.
- 2.6 The Parties agree, subject to 2.8 below, that PRB shall be responsible for:
- (a) the Register or Registers of Patent Attorneys for the purposes of the Acts;
  - (b) collection of registration or other fees relating to registration or regulation of Patent Attorneys and accounting for them and otherwise discharging, on behalf of CIPA, the requirements of the Acts in respect of such fees;
  - (c) dealing with complaints against registered Patent Attorneys in accordance with the Disciplinary Arrangements;
  - (d) making, maintaining and enforcing regulations relating to the registration of Patent Attorneys for the purposes of section 275A of CDPA (Regulation of Patent Attorneys);
  - (e) ensuring that Registrants who are Patent Attorneys are compliant under the terms of section 112(1) of the Legal Services Act (Complaints procedures of authorised persons); and
  - (f) amending, revising or replacing the Disciplinary Arrangements.
- 2.7 The Parties agree, subject to 2.8 below, that TRB shall be responsible for:
- (a) the Register or Registers of Trade Mark Attorneys for the purposes of the Acts;

- (b) collection of registration or other fees relating to registration or regulation for Trade Mark Attorneys and accounting for them and otherwise discharging, on behalf of ITMA, the requirements of the Acts in respect of such fees;
- (c) dealing with complaints against registered Trade Mark Attorneys in accordance with the Disciplinary Arrangements;
- (d) making, maintaining and enforcing regulations relating to the registration of Trade Mark Attorneys for the purposes of section 83A of the TMA (Regulation of Trade Mark Attorneys); and
- (e) ensuring that Registrants who are Trade Mark Attorneys are compliant under the terms of section 112(1) of the Legal Services Act (Complaints procedures of authorised persons); and
- (f) amending, revising or replacing the Disciplinary Arrangements.

2.8 The Parties hereby further agree that the PRB and TRB shall, in relation respectively to the regulation of Patent Attorneys and the regulation of Trade Mark Attorneys, have power to make regulations pursuant to their powers under this agreement.

They shall also have exclusive responsibility for the following Reserved Matters:

- (a) the formulation of policy and regulations in respect of the standards and other requirements for education, training and qualifications of persons for the purpose of registration or authorisation under the Acts;
- (b) any other matter from time to time on which either Board (PRB or TRB) asks for a declaration from the Chairman of IPReg that it is a matter which uniquely or exclusively relates to, affects or concerns the regulation of persons regulated by that Institute or which should otherwise be a matter reserved to that Board's consideration;

provided that any matter which is a reserved matter by virtue of 2.8(a) and 2.8(b) above may be modified in scope or removed by resolution of either PRB or TRB in relation to its own responsibilities, or by agreement between CIPA and IPReg or ITMA and IPReg as appropriate.

### **3. REGULATORY DUTIES OF THE BOARDS**

3.1 The Parties acknowledge that CIPA, ITMA, the Boards and the Board members shall be under a duty to act in accordance with the regulatory requirements set out in the Legal Services Act as set out in Schedule 2 para 1.

### **4. REGULATORY OBLIGATIONS OF CIPA AND ITMA**

4.1 The Parties acknowledge that CIPA and ITMA have responsibilities in accordance with the Act to observe and support the principle of regulatory independence as set out in Schedule 2 para 2.

4.2 The Boards shall, without prejudice to or fetter on their right of independent access to other persons in accordance with clause 5, inform and consult with ITMA and CIPA in any case in which they consider there is or may be a breach of clause 4.1.



## 5. ACCESS TO REGULATORY BODIES

- 5.1 The Parties hereby agree that IPReg, the PRB and the TRB and any member of those Boards shall be able to make representations to, be consulted by and enter into communications with any person(s) including but not limited to the LSB, the Consumer Panel, the OLC and other Approved Regulators.

## 6. PROCEDURES OF THE BOARDS

- 6.1 The Company shall determine the procedure to be followed by the Boards, shall ensure the Boards maintain appropriate records of their proceedings and shall ensure that:

- (a) IPReg approves proper audited accounts for PRB and TRB or consolidated accounts for the Boards and that such accounts are, promptly on their completion, made available to ITMA and CIPA; and
- (b) a draft consolidated annual budget for the Boards is prepared at least three months in advance of the financial year of IPReg, to be submitted for consideration and agreement by CIPA and ITMA and thence submitted to the LSB. Subject to the provisions of section 51 of the Legal Services Act (Control of practising fees charged by approved regulators) and of any rules made thereunder, the budget shall include, in respect of the three following financial years:
  - (i) estimates of running costs for IPReg, (PRB and TRB);
  - (ii) estimates of the costs of operating the registers;
  - (iii) estimates of fee income; and
  - (iv) proposals for practice fees (so far as they relate to registration or regulation),

and shall provide such additional information in support of the draft budget as may reasonably be requested by CIPA and/or ITMA.

Provided that in the event that either CIPA or ITMA is unable to agree or approve the draft budget under this clause because it does not support the objectives of the Boards or will not provide value for money or believes that it indicates any form of non-compliance with the Acts, or otherwise, it shall notify its concerns to the Chairman of IPReg so that the budget can be re-considered. If the matter is not resolved, a mediator shall be appointed by CIPA and/or ITMA, together with IPReg, in conjunction with the LSB, to help seek agreement. In exercising their right of approval in relation to the budget, CIPA and ITMA shall have due and proper regard to their duty to take such steps as are reasonably practicable to ensure that they make available to PRB and TRB such resources as are reasonably required for or in connection with the exercise of their respective regulatory functions.

- (c) the Boards shall provide to CIPA and ITMA not less than every three months, management accounts in such form as may reasonably be agreed and that they shall notify CIPA and ITMA promptly if they become aware that there is likely to be a material variance from budget, or that they have or forecast that they may have insufficient funds to meet their liabilities as they fall due.
- (d) subject to confidentiality in respect of individuals' details, such minutes, agendas, papers and other records as are made available to Board members for the purpose of formal meetings of Board members shall be available to CIPA and ITMA observers and may be provided by the CIPA and ITMA observers to CIPA and ITMA.



- 6.2 The Company shall further ensure that IPReg, PRB and TRB function in accordance with the following clauses 6.2(a) to 6.2(h):
- (a) unless otherwise determined by IPReg with the agreement of the Company, the financial year of IPReg, PRB and TRB shall run from January to December;
  - (b) IPReg, and TRB and PRB (where relevant) shall meet at least once a year;
  - (c) IPReg shall produce an Annual Report which shall be sent to CIPA, ITMA and the LSB and which shall include details (in respect of IPReg, PRB and TRB) of matters considered and decisions reached and implemented, statistics in relation to the Registers, and such details of disciplinary cases and complaints as may lawfully be communicated to those bodies;
  - (d) the Presidents of CIPA and ITMA and their representatives shall be invited to attend meetings of IPReg, PRB or TRB as observers, but may speak only at the invitation of the Chairman or the person chairing the meeting;
  - (e) the quorum for meetings of IPReg shall be four including at least one Patent Attorney, at least one Trade Mark Attorney, and either the Chairman or at least one of the persons appointed under paragraph 1(d) of the Schedule 1, and in the absence of the Chairman the chair shall be taken by the person appointed under paragraph 1(d) of the Schedule 1 who has been the longest in office or if any two or more of such persons present have been in office for an identical period then the chair shall be taken by one of them by agreement between such persons;
  - (f) the quorum for meetings of PRB or TRB shall be four, including respectively two Patent Attorneys or two Trade Mark Attorneys and two persons appointed under paragraph 1(d) of the Schedule 1;
  - (g) IPReg may make regulations pursuant to its powers under this agreement and may establish, regulate and dissolve committees:
    - (i) for any purpose relevant to the business of IPReg, consisting of one member of IPReg who is a Patent Attorney, one member of IPReg who is a Trade Mark Attorney and one of the persons appointed under paragraph 1(d) of the Schedule 1, and chaired by the person appointed for this purpose by the chairman of IPReg;
    - (ii) to assist it, as Expert Committees, consisting of one or more Patent Attorneys and one or more Trade Mark Attorneys (who are not members of IPReg) and other persons.
  - (h) any motion or other item of business of IPReg requiring a vote shall be determined by simple majority vote of the members other than the Chairman. In the event of an equality of such votes the Chairman shall exercise a casting vote.

## 7. IMPLEMENTATION

- 7.1 CIPA and ITMA have put the Company in funds for the purpose of setting up and maintaining the Boards.
- 7.2 The Company undertakes to set up the Boards in consultation with the other Parties.
- 7.3 Prior to the first and each subsequent anniversary of the Effective Date, or if different a reasonable time prior to any requirement to provide a certificate of compliance or the like to the LSB, the Chairman of IPReg will, on request from CIPA or ITMA, provide a report to ITMA and CIPA on

the operation of the arrangements under this agreement, and any issues or concerns relating to the operation, and in particular as to their effectiveness in supporting achievement of the regulatory objectives and the principles of regulatory independence (as set out in Schedule 2), and the Parties shall review together whether any amendment or alteration to the arrangements is necessary or desirable. Provided that no amendment or alteration shall take effect unless and until this agreement is amended in accordance with its provisions.

#### **8. CONDITIONS PRECEDENT**

The provisions of this agreement have effect subject to the coming into force of provisions of the Legal Services Act relevant to any of the Parties and to any formal approvals necessary under the Legal Services Act or otherwise.

#### **9. WARRANTIES**

The Parties hereby warrant that they have full power and capacity to enter into this agreement and to undertake the obligations set out in it.

#### **10. PUBLICATION**

This agreement shall be published by the Parties in such manner as shall be agreed between them.

#### **11. TERMINATION AND WITHDRAWAL**

- 11.1 This agreement may be terminated as applicable to any Party or as applicable to all Parties if a Party gives another Party 28 days notice of material breach and such breach is not rectified within 28 days of receipt by a Party of such notice.
- 11.2 CIPA or ITMA may withdraw from the arrangements established by this agreement at any time provided that twelve months' notice is given to the other Parties. A lesser period of notice may be agreed between the Parties.
- 11.3 This agreement shall lapse automatically if the Legal Services Act is repealed or if it is modified to an extent which the Parties agree in writing renders the agreement otiose.
- 11.4 In any of the events in clauses 11.1, 11.2 or 11.3, the Parties shall ensure that the Boards continue to operate for so long as it is reasonably necessary to dispose of outstanding business and to complete the process of dealing with any outstanding complaint against a Registrant.

#### **12. NO PROCEEDINGS**

The Parties undertake not to issue any proceedings against another Party in pursuance of any right or claimed right or obligation under this agreement.

**13. DISPUTE RESOLUTION**

- 13.1 Any dispute regarding the terms of or compliance with this agreement shall be addressed in the first instance through negotiation between the Parties to the dispute.
- 13.2 If a dispute between Parties cannot be settled by negotiation, the Parties to the dispute agree to appoint jointly a mediator to assist the negotiation.
- 13.3 In the event that a dispute is not settled under clause 13.1 or 13.2 above the Parties agree to jointly appoint an arbitrator whose decision in relation to the matter of dispute shall be final and binding on the Parties.

**14. GENERAL**

14.1 This agreement and the Disciplinary Arrangements referred to above represent the entirety of the arrangements between the Parties in pursuance of the matters specified in the Preamble but this agreement and the said Arrangements may be amended from time to time by written agreement between the Parties either to refer to other documents pertinent to those arrangements or in any other respect agreed by the Parties.

14.2 Notices:

- (a) Any notice to be given under this Agreement shall be in writing and shall be delivered by hand, sent by first class post or sent by facsimile to the address of the other Party set out in this Agreement or sent by e-mail to the email address of the other Party (or such other address or email address as may have been notified) provided that in the case of notice served by facsimile or by e-mail, such notice is confirmed by letter posted within 12 hours.
- (b) Any such notice or other document shall, unless the contrary is shown, be deemed to have been served: if delivered by hand - at the time of delivery; if sent by post - upon the expiration of 48 hours after posting; and if sent by facsimile or by e-mail - at 9.00 am on the next business day after the facsimile or email was dispatched provided that:
  - (i) in the case of facsimile transmission, a transmission report is generated by the sender's fax machine recording a message from the recipient's fax machine, confirming that the fax was sent to that number and that all pages were successfully transmitted; and
  - (ii) in the case of e-mail transmission:
    - (A) where a delivery receipt has been requested by the sender, that such delivery receipt has been received by the sender; or
    - (B) where no delivery receipt has been requested by the sender, that no notification of non-delivery has been received by the sender.

(c) The Parties addresses are as follows:

**CIPA:**

The Chartered Institute of Patent Attorneys  
95 Chancery Lane  
London WC2A 1DT

fax: 020 7430 0471

e-mail: [mail@cipa.org.uk](mailto:mail@cipa.org.uk)



**IPReg:**

Intellectual Property Regulation Board Limited  
3rd Floor,  
95 Chancery Lane  
London WC2A 1DT

Facsimile: 020 7440 9374

[email: [ipreg@ipreg.org.uk](mailto:ipreg@ipreg.org.uk)]

**ITMA:**

The Institute of Trade Mark Attorneys  
Canterbury House  
2-6 Sydenham Rd  
Croydon  
Surrey  
CRO 9XE

Fax: 020 8680 5723

email: [tm@itma.org.uk](mailto:tm@itma.org.uk)

- 14.3 No Party may assign or purport to assign its rights and obligation under this agreement.
- 14.4 This agreement shall be construed in accordance with the Law of England.
- 14.5 The waiver of any right under this agreement by a Party shall not imply the waiver of any other right or of the agreement as a whole. If a provision of this agreement is found to be unlawful it shall not affect the validity of any other provision in the agreement.
- 14.6 This agreement may be executed in any number of counterparts each of which when signed by or on behalf of the Parties shall be equally valid.



Signed for and behalf of the Chartered Institute of Patent Attorneys

[Redacted]

Date

2-2-2010

Witness

[Redacted]

Signed for and behalf of the Institute of Trade Mark Attorneys

[Redacted]

Date 4/2/2010

[Redacted]

Witness

Signed for and behalf of the Intellectual Property Regulation Board Limited

[Redacted]

Date 4/2/2010

[Redacted]

Witness

## SCHEDULE 1

## CONSTITUTION OF BOARDS

**Intellectual Property Regulation Board (IPReg)**

1. IPReg shall consist of
  - (a) a Chairman, who is not a Patent Attorney or a Trade Mark Attorney;
  - (b) three Patent Attorneys;
  - (c) three Trade Mark Attorneys;
  - (d) three persons who are not Patent Attorneys or Trade Mark Attorneys

Provided that no person may be appointed to the Board under paragraphs 1(b) to 1(d) who is regulated by an approved regulator under the Legal Services Act, other than CIPA and ITMA, unless they are also regulated by CIPA and/or ITMA.
2. The persons referred to in 1(a), (b), (c) and (d) shall be appointed to serve for a period of up to 4 years, and may be re-appointed for one further period of up to 3 years.
3. Appointment of a Chairman after the Effective Date shall take place after open competition and a selection process undertaken by a panel consisting of representation from CIPA and ITMA and two independent panel members appointed to the panel jointly by CIPA and ITMA in consultation with the LSB. One such independent person, shall, if practicable, be a person appointed under paragraph 1(d) above.
4. Appointment after the Effective Date of any further persons set out in 1(b), (c) and (d) shall take place after open competition and a selection process undertaken by a panel consisting of the Chairman of IPReg, representation from CIPA (in the case of Board members under paragraph 1(b) or 1(d)) and ITMA (in the case of Board members under paragraphs 1(c) or 1(d)), and independent panel member(s) appointed by IPReg. Unless IPReg otherwise agree, the number of CIPA and/or ITMA representatives shall be the same as the number of such independent members. Appointments to the panel, and the selection process shall be in accordance with such procedure as may be determined by CIPA (in the case of Board members under paragraph 1(b) or 1(d)) and/or ITMA (in the case of members under paragraphs 1(c) and 1(d)) in each case in consultation with IPReg. In all cases the procedure shall comply with the provisions of the Legal Services Act and such rules as may be made under the Legal Services Act and CIPA and ITMA shall take due account of all observations made by IPReg. In making such appointments, the panel shall have regard to the desirability of securing a diverse board with a broad range of skills.
5. Re-appointment of the Chairman will be determined by the President of CIPA and the President of ITMA (acting together) in consultation with the persons appointed under paragraph 1(d) above.
6. Re-appointment of the persons set out in 1(b), (c) and (d) shall be subject to the agreement of the Presidents of CIPA and ITMA, as appropriate, and the Chairman of IPReg. Decisions on reappointments shall be guided by objective appraisals and the desirability of ensuring a balance between regular turnover and continuity.

**Patent Regulation Board**

7. PRB shall consist of the Chairman of IPReg, the three persons appointed to IPReg under paragraph 1(b) above and the three persons appointed to IPReg under paragraph 1(d) above. The members of PRB shall serve so long as they are members of IPReg.

**Trade Mark Regulation Board**

8. TRB shall consist of the Chairman of IPReg, the three persons appointed to IPReg under paragraph 1(c) above and the three persons appointed to IPReg under paragraph 1(d) above. The members of TRB shall serve as long as they are members of IPReg.

**Contracts of appointment**

9. Members of IPReg shall have contracts of appointment in respect of IPReg which shall be issued by Company. Such contracts shall specify that members of IPReg are required to observe the duties of the Boards in accordance with this agreement, and a code of conduct issued and maintained by IPReg. This shall include provision for the dismissal of Board members for misconduct.

**Remuneration**

10. The Chairman and members of IPReg shall be paid an annual fee, paid quarterly in arrears, determined by IPReg in association with CIPA and ITMA and in consultation with the LSB, and shall be entitled to claim re-imbursment of reasonable expenses incurred in the course of their duties in accordance with procedures determined by the Company.

## SCHEDULE 2

### 1. REGULATORY RESPONSIBILITIES

CIPA, ITMA and the Boards and Board members, in discharging their regulatory functions are under an obligation, so far as reasonably practicable, to act in a manner:

- (a) which is compatible with the regulatory objectives, and
- (b) which is considered as most appropriate for the purpose of meeting those objectives, namely:
  - (i) protecting and promoting the public interest;
  - (ii) supporting the constitutional principle of the rule of law;
  - (iii) improving access to justice;
  - (iv) protecting and promoting the interests of consumers;
  - (v) promoting competition in the provision of services within section 1(2) of the Legal Services Act;
  - (vi) encouraging an independent, strong, diverse and effective legal profession;
  - (vii) increasing public understanding of the citizen's legal rights and duties;
  - (viii) promoting and maintaining adherence to the professional principles;

and in doing so they shall have regard to:

- (I) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and
- (II) any other principle appearing to them to represent the best regulatory practice;
- (III) any other rules which may from time to time be prescribed in accordance with the Legal Services Act.

### 2. REGULATORY INDEPENDENCE

CIPA and ITMA are under a duty in accordance with the rules currently made by the LSB under the Legal Services Act to put in place arrangements for the Boards that observe and respect the principle of regulatory independence; and at all times to act in a way which is compatible with the principle of regulatory independence and which they consider most appropriate for the purpose of meeting the principle of regulatory independence, and in particular that structures and persons having representative functions for CIPA or ITMA do not exert, and are not permitted to exert, undue influence or control over the performance of regulatory functions of the Boards, or any person(s) discharging those functions.



# **AMENDED DELEGATION AGREEMENT**

Amended with effect from **23 May 2012**

**The Chartered Institute of Patent Attorneys**

**The Institute of Trade Mark Attorneys**

**Intellectual Property Regulation Board Limited**

**THIS AGREEMENT** is effective the 23 day of May 2012

**BETWEEN:**

- (1) The Chartered Institute of Patent Attorneys;
- (2) The Institute of Trade Mark Attorneys (Company number 00294396); and
- (3) The Intellectual Property Regulation Board Limited (Company number 06624948)

**PREAMBLES:**

- (A) CIPA and ITMA have been designated, and incur obligations, as approved regulators under the Legal Services Act 2007 (the "Legal Services Act").
- (B) CIPA and ITMA will continue to be the persons responsible, respectively, for the registration and regulation of Patent Attorneys and Trade Mark Attorneys under the Copyright Designs and Patents Act 1988 ("CDPA") and the Trade Marks Act 1994 ("TMA") as amended by the Legal Services Act.
- (C) CIPA and ITMA have entered into a memorandum of understanding to establish a Trade Mark Regulation Board, a Patent Regulation Board and a joint board, the IP Regulation Board, and to set out arrangements for co-operation between the Patent and Trade Mark Regulation Boards, to which this agreement is intended to reflect and give effect.
- (D) CIPA and ITMA have established the Company as a company limited by guarantee for the purpose of undertaking their respective regulatory responsibilities, in the manner set out in this Agreement.
- (E) CIPA and ITMA have duties under the Legal Services Act, as approved regulators, in particular to act in a way which is compatible with the regulatory objectives under the Legal Services Act and which CIPA and ITMA consider most appropriate for the purpose of meeting those objectives.
- (F) CIPA and ITMA are subject to the terms of rules (Internal Governance Rules) made by the Legal Services Board under section 30 of the Legal Services Act which are made for the purpose of ensuring that an approved regulator's regulatory functions are not prejudiced by its representative functions, and that, so far as practicable, decisions relating to the exercise of an approved regulator's regulatory functions are taken independently of its representative functions.
- (G) CIPA and ITMA have put the Company in funds for the purpose of setting up and maintaining the Boards.
- (H) The Delegation Agreement is intended to put into effect arrangements which will comply with those Internal Governance Rules.
- (I) The Internal Governance Rules are intended to establish a principle of regulatory independence, as set out in Schedule 2, which is applicable to CIPA and ITMA in their role as approved regulators.

- (J) This Amended Delegation Agreement replaces, with effect from the Effective Date the unamended Delegation Agreement.

## **THE PARTIES HEREBY AGREE**

### **1. DEFINITIONS**

#### **1.1 In this agreement**

**Acts** means Legal Services Act 2007, the CDPA and the TMA

**Boards** means the IPReg, PRB and TRB

**CDPA** means the Copyright, Designs and Patents Act 1988

**CIPA** means the Chartered Institute of Patent Attorneys

**Company** means the Intellectual Property Regulation Board Limited

**Disciplinary Arrangements** means the disciplinary arrangements devised by IPReg, PRB and TRB as the same may be amended, modified or replaced from time to time in the exercise of the Boards' regulatory functions in accordance with this agreement.

**Effective Date** means the date set out at the head of this agreement

**IPReg** means the Intellectual Property Regulation Board

**ITMA** means the Institute of Trade Mark Attorneys

**Legal Services Act** means the Legal Services Act 2007

**LSB** means the Legal Services Board constituted under the Legal Services Act

**OLC** means the Office of Legal Complaints constituted under the Legal Services Act

**Party** means any of the Company, CIPA and ITMA and **Parties** means all three of the Parties

**Patent Attorney** means a person who is registered or registrable by the PRB under the CDPA

**PRB** means the Patent Regulation Board

**Registers** means the statutory registers operated on behalf of CIPA and ITMA respectively by the PRB and the TRB for the purposes, as appropriate, of the CDPA, the TMA and the Legal Services Act

**Registrant** means a person entered or previously registered in one of the Registers and a "relevant authorised person" for the purposes of section 112 of the Legal Services Act

**Reserved Matters** are the matters referred to in clause 2.8

**Schedule** means a Schedule to this agreement

**TMA** means the Trade Marks Act 1994

**Trade Mark Attorney** means a person who is registered or registrable by the TRB under the TMA

**TRB** means the Trade Mark Regulation Board

## 1.2 Interpretation

In this agreement, unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine. Any reference to a named body or organisation includes that body or organisation by whatever name subsequently known or the successor to that body or organisation, and any reference to an enactment includes that enactment as amended or re-enacted from time to time.

## 2. PRB, TRB AND IPREG

- 2.1 In pursuance of the requirements of the Acts, CIPA and ITMA have respectively established PRB, TRB, and jointly established IPReg, and CIPA and ITMA respectively appoint PRB and TRB as their regulatory Boards and IPReg as a joint board comprising TRB and PRB.
- 2.2 The Parties hereby agree that PRB, TRB and IPReg shall be constituted in accordance with Schedule 1. The Parties agree that Schedule 1 may be modified by written agreement between the Parties at any time and agree that Schedule 1, as amended from time to time, shall contain the formal constitutions of the Boards.
- 2.3 In pursuance respectively of Article 4(a) of the Charter of CIPA and Clause 3(B)(a) of the Memorandum of Association of ITMA, CIPA and ITMA hereby delegate the power to make decisions relating to the exercise, and the exercise of, their respective regulatory functions arising from their designations as approved regulators and (with effect from approval of any application to become the same) licensing authorities under the Legal Services Act to PRB and TRB, in accordance with this agreement and in particular clauses 2.6 and 2.7 below; provided that any action or decision of PRB and TRB which is, or to the extent that it includes, a decision relating to, or exercise of, such regulatory functions under any of the Acts shall be taken, respectively, in the names of CIPA and ITMA.
- 2.4 The Parties agree, subject to clause 6 below, that IPReg shall sit as a joint body of members of the other Boards and shall be responsible for facilitating and co-ordinating the functioning of the PRB and TRB and that, subject to clause 2.8, PRB and TRB may respectively delegate from time to time such of their activities under this agreement as each may determine to IPReg.
- 2.5 The Boards are appointed in accordance with, and to give effect to, and must comply with the provisions of the Acts and with the Internal Governance Rules and Practice Fee Rules as promulgated from time to time by the LSB under the Legal Services Act.
- 2.6 The Parties agree, subject to 2.8 below, that PRB shall be responsible for:
- (a) the Register or Registers of Patent Attorneys for the purposes of the Acts;
  - (b) collection of registration or other fees relating to registration or regulation of Patent Attorneys and accounting for them and otherwise discharging, on behalf of CIPA, the requirements of the Acts in respect of such fees;
  - (c) dealing with complaints against registered Patent Attorneys in accordance with the Disciplinary Arrangements;



- (d) making, maintaining and enforcing regulations relating to the registration of Patent Attorneys for the purposes of section 275A of CDPA (Regulation of Patent Attorneys);
- (e) ensuring that Registrants who are Patent Attorneys are compliant under the terms of section 112(1) of the Legal Services Act (Complaints procedures of authorised persons);
- (f) amending, revising or replacing the Disciplinary Arrangements; and
- (g) undertaking the statutory and other obligations of the licensing authority, as a regulator, as required by the licence.

2.7 The Parties agree, subject to 2.8 below, that TRB shall be responsible for:

- (a) the Register or Registers of Trade Mark Attorneys for the purposes of the Acts;
- (b) collection of registration or other fees relating to registration or regulation for Trade Mark Attorneys and accounting for them and otherwise discharging, on behalf of ITMA, the requirements of the Acts in respect of such fees;
- (c) dealing with complaints against registered Trade Mark Attorneys in accordance with the Disciplinary Arrangements;
- (d) making, maintaining and enforcing regulations relating to the registration of Trade Mark Attorneys for the purposes of section 83A of the TMA (Regulation of Trade Mark Attorneys); and
- (e) ensuring that Registrants who are Trade Mark Attorneys are compliant under the terms of section 112(1) of the Legal Services Act (Complaints procedures of authorised persons);
- (f) amending, revising or replacing the Disciplinary Arrangements; and
- (g) undertaking the statutory and other obligations of the licensing authority, as a regulator, as required by the licence.

2.8 The Parties hereby further agree that the PRB and TRB shall, in relation respectively to the regulation of Patent Attorneys and the regulation of Trade Mark Attorneys, have power to make regulations pursuant to their powers under this agreement.

They shall also have exclusive responsibility for the following Reserved Matters:

- (a) the formulation of policy and regulations in respect of the standards and other requirements for education, training and qualifications of persons for the purpose of registration or authorisation under the Acts;
- (b) any other matter from time to time on which either Board (PRB or TRB) asks for a declaration from the Chairman of IPReg that it is a matter which uniquely or exclusively relates to, affects or concerns the regulation of persons regulated by that Institute or which should otherwise be a matter reserved to that Board's consideration;

provided that any matter which is a reserved matter by virtue of 2.8(a) and 2.8(b) above may be modified in scope or removed by resolution of either PRB or TRB in relation to its own responsibilities, or by agreement between CIPA and IPReg or ITMA and IPReg as appropriate.

### **3. REGULATORY DUTIES OF THE BOARDS**

- 3.1 The Parties acknowledge that CIPA, ITMA, the Boards and the Board members shall be under a duty to act in accordance with the regulatory requirements set out in the Legal Services Act as set out in Schedule 2 para 1.

### **4. REGULATORY OBLIGATIONS OF CIPA AND ITMA**

- 4.1 The Parties acknowledge that CIPA and ITMA have responsibilities in accordance with the Act to observe and support the principle of regulatory independence as set out in Schedule 2 para 2.
- 4.2 The Boards shall, without prejudice to or fetter on their right of independent access to other persons in accordance with clause 5, inform and consult with ITMA and CIPA in any case in which they consider there is or may be a breach of clause 4.1.
- 4.3 In order to facilitate the necessary regulatory oversight of the Boards by CIPA and ITMA there shall be established an AR Forum consisting of the Presidents or persons representing the President for the time being of CIPA and ITMA who are officers of CIPA or ITMA or past presidents of CIPA or ITMA who have been standing members of the AR Forum and have been approved by the AR Forum, one other member of CIPA and ITMA, not being a member of either Council, appointed by CIPA and ITMA respectively, the Chairman of IPReg and one (other) lay member of either the PRB or the TRB. The AR Forum shall meet regularly, and subject to agreement to the contrary by the members of the AR Forum, at least once every three months, to discuss and review matters relating to the implementation and performance of the ITMA and CIPA's obligations and duties under the Legal Services Act including the meeting of the regulatory objectives.

### **5. ACCESS TO REGULATORY BODIES**

- 5.1 The Parties hereby agree that IPReg, the PRB and the TRB and any member of those Boards shall be able to make representations to, be consulted by and enter into communications with any person(s) including but not limited to the LSB, the Consumer Panel, the OLC and other Approved Regulators.

### **6. PROCEDURES OF THE BOARDS**

- 6.1 The Boards shall determine the procedure to be followed by the Boards, and the Company shall ensure the Boards maintain appropriate records of their proceedings and shall ensure that:
- (a) IPReg approves proper audited accounts for PRB and TRB or consolidated accounts for the Boards and that such accounts are, promptly on their completion, made available to ITMA and CIPA and in such other manner as the Boards may determine.
  - (b) a draft consolidated annual budget and business plan for the Boards for the following calendar year will be prepared by the Boards and provided to the AR Forum a reasonable time in advance of being finalised by the Boards. The drafts, amended in such manner as the Boards consider appropriate will be published for consideration and comment by registrants and CIPA and ITMA prior to finalisation. The Boards will consider all comments received and will prepare final documents for submission to the LSB. The timetable for the preparation consideration and submission of the budget will be determined by IPReg in order to meet deadlines set by the LSB and will be published early in each calendar year, so far as practicable to provide sufficient time for comment. Subject to the provisions of section 51 of the Legal Services Act (Control of practising fees charged by approved regulators) and of any rules made thereunder, the budget shall include, in respect of the following financial year:
    - (i) estimates of running costs for IPReg, (PRB and TRB);

- (ii) estimates of the costs of operating the registers;
  - (iii) estimates of fee income; and
  - (iv) proposals for practice fees (so far as they relate to registration or regulation),
- (c) the Boards shall make available to CIPA and ITMA not less than every three months, management accounts in such form as the Boards shall determine and they shall notify CIPA and ITMA promptly if they become aware that there is likely to be a material variance from budget, or that they have or forecast that they may have insufficient funds to meet their liabilities as they fall due.
- (d) (subject to confidentiality in respect of individuals' details) such minutes, agendas, papers and other records as are made available to Board members for the purpose of formal meetings of Board members shall be made available to CIPA and ITMA members of the AR Forum, and, subject to such confidentiality limitations as IPReg may specify, such members may make the same available to CIPA and ITMA.

6.2 The Company shall further ensure that IPReg, PRB and TRB function in accordance with the following clauses 6.2(a) to 6.2(g):

- (a) unless otherwise determined by IPReg with the agreement of the Company, the financial year of IPReg, PRB and TRB shall run from January to December;
- (b) IPReg, and TRB and PRB (where relevant) shall meet at least once a year;
- (c) IPReg shall produce an Annual Report which shall be sent to registrants, to CIPA and ITMA and the LSB and which shall include details (in respect of IPReg, PRB and TRB) of matters considered and decisions reached and implemented, statistics in relation to the Registers, and such details of disciplinary cases and complaints as may lawfully be communicated to those bodies;
- (d) the non-Council members of the AR Forum shall be invited (and one such non-Council member representing each of CIPA and ITMA shall be entitled) to attend meetings of IPReg, PRB or TRB as observers, subject to agreement to the contrary from time to time, but may speak only at the invitation of the Chairman or the person chairing the meeting, subject to the Chairman's discretion to exclude them from any part of the meeting where their presence is considered to impair the independent operation of the Boards;
- (e) the quorum for meetings of the PRB and TRB shall be four including respectively at least one Patent Attorney (for PRB) and at least one Trade Mark Attorney (for TRB), and either the Chairman or at least one of the persons appointed under paragraph 1(d) of the Schedule 1, and in the absence of the Chairman the chair shall be taken by the person appointed under paragraph 1(d) of the Schedule 1 who has been the longest in office or if any two or more of such persons present have been in office for an identical period then the chair shall be taken by one of them by agreement between such persons;
- (f) IPReg may make regulations pursuant to its powers under this agreement and may establish, regulate and dissolve committees:
  - (i) for any purpose relevant to the business of IPReg, consisting of one member of IPReg who is a Patent Attorney, one member of IPReg who is a Trade Mark Attorney and at least one of the persons appointed under paragraph 1(d) of the Schedule 1, and chaired by the person appointed for this purpose by the chairman of IPReg;

- (ii) to assist it, as Expert Committees, consisting of one or more Patent Attorneys and one or more Trade Mark Attorneys (who are not members of IPReg) and other persons.
- (g) any motion or other item of business of IPReg requiring a vote shall be determined by simple majority vote of the members other than the Chairman. In the event of an equality of such votes the Chairman shall exercise a casting vote.

## **7. IMPLEMENTATION**

- 7.1 The Company undertakes to set up the Boards in consultation with the other Parties.
- 7.2 Prior to the first and each subsequent anniversary of the Effective Date, or if different a reasonable time prior to any requirement to provide a certificate of compliance or the like to the LSB. The Chairman of IPReg will provide a draft certificate to the CIPA and ITMA members of the AR Forum on the operation of the arrangements under this agreement, and any issues or concerns relating to the operation, and in particular as to their effectiveness in supporting achievement of the regulatory objectives and the principles of regulatory independence (as set out in Schedule 2), with a view to preparing (in such manner as may be prescribed therein) a certificate or report as required in accordance with any rules prescribed by the LSB, and a report to CIPA and ITMA on compliance with its responsibilities. IPReg will consider comments made by the AR Forum in respect of such certificate, prior to publication for consultation. The Boards will publish such (draft) certificate for consultation in such manner as they consider appropriate and consider representations from registrants, and from CIPA and ITMA on the certificate of compliance (or will follow such other process as is set out by the LSB) before submitting a final certificate to the LSB. The Boards will cooperate in such manner as may reasonably be required by the CIPA and ITMA members of the AR Forum respectively, to the extent that any such certificate is requested or intended to be submitted jointly with CIPA or ITMA, or, if they are not able to agree with CIPA and ITMA any part of the content of such certificate, make clear on the face of the certificate that such part is not endorsed by CIPA or ITMA as the case may be.

## **8. CONDITIONS PRECEDENT**

The provisions of this agreement have effect subject to the coming into force of provisions of the Legal Services Act relevant to any of the Parties and to any formal approvals necessary under the Legal Services Act or otherwise.

## **9. WARRANTIES**

The Parties hereby warrant that they have full power and capacity to enter into this agreement and to undertake the obligations set out in it.

## **10. PUBLICATION**

This agreement shall be published by the Parties in such manner as shall be agreed between them.

## **11. TERMINATION AND WITHDRAWAL**

- 11.1 This agreement may be terminated as applicable to any Party or as applicable to all Parties if a Party gives another Party 28 days notice of material breach and such breach is not rectified within 28 days of receipt by a Party of such notice.
- 11.2 CIPA or ITMA may withdraw from the arrangements established by this agreement at any time provided that twelve months' notice is given to the other Parties. A lesser period of notice may be agreed between the Parties.



11.3 This agreement shall lapse automatically if the Legal Services Act is repealed or if it is modified to an extent which the Parties agree in writing renders the agreement otiose.

11.4 In any of the events in clauses 11.1, 11.2 or 11.3, the Parties shall ensure that the Boards continue to operate for so long as it is reasonably necessary to dispose of outstanding business and to complete the process of dealing with any outstanding complaint against a Registrant.

## 12. NO PROCEEDINGS

The Parties undertake not to issue any proceedings against another Party in pursuance of any right or claimed right or obligation under this agreement.

## 13. DISPUTE RESOLUTION

13.1 Any dispute regarding the terms of or compliance with this agreement shall be addressed in the first instance through negotiation between the Parties to the dispute.

13.2 If a Dispute between the parties cannot be solved by negotiation, the Parties to the dispute agree to refer the matter to mediation with the assistance of the LSB or a neutral person appointed by the LSB.

## 14. GENERAL

14.1 This agreement and the Disciplinary Arrangements referred to above represent the entirety of the arrangements between the Parties in pursuance of the matters specified in the Preamble but this agreement and the said Arrangements may be amended from time to time by written agreement between the Parties either to refer to other documents pertinent to those arrangements or in any other respect agreed by the Parties.

14.2 Notices:

(a) Any notice to be given under this Agreement shall be in writing and shall be delivered by hand, sent by first class post or sent by facsimile to the address of the other Party set out in this Agreement or sent by e-mail to the email address of the other Party (or such other address or email address as may have been notified) provided that in the case of notice served by facsimile or by e-mail, such notice is confirmed by letter posted within 12 hours.

(b) Any such notice or other document shall, unless the contrary is shown, be deemed to have been served: if delivered by hand - at the time of delivery; if sent by post - upon the expiration of 48 hours after posting; and if sent by facsimile or by e-mail - at 9.00 am on the next business day after the facsimile or email was dispatched provided that:

(i) in the case of facsimile transmission, a transmission report is generated by the sender's fax machine recording a message from the recipient's fax machine, confirming that the fax was sent to that number and that all pages were successfully transmitted; and

(ii) in the case of e-mail transmission:

(A) where a delivery receipt has been requested by the sender, that such delivery receipt has been received by the sender; or

(B) where no delivery receipt has been requested by the sender, that no notification of non-delivery has been received by the sender.

(c) The Parties addresses are as follows:

**CIPA:**

The Chartered Institute of Patent Attorneys  
95 Chancery Lane  
London WC2A 1DT

fax: 020 7430 0471

e-mail: [mail@cipa.org.uk](mailto:mail@cipa.org.uk)

**IPReg:**

Intellectual Property Regulation Board Limited  
5th Floor  
Outer Temple  
222-225 Strand  
London WC2R 1BA

[email: [ipreg@ipreg.org.uk](mailto:ipreg@ipreg.org.uk)]

**ITMA:**

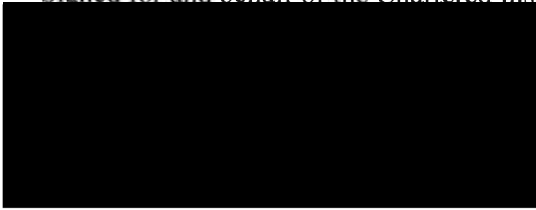
The Institute of Trade Mark Attorneys  
5th Floor  
Outer Temple  
222-225 Strand  
London WC2R 1BA

Fax: 020 7101 6099

email: [tm@itma.org.uk](mailto:tm@itma.org.uk)

- 14.3 No Party may assign or purport to assign its rights and obligation under this agreement.
- 14.4 This agreement shall be construed in accordance with the Law of England.
- 14.5 The waiver of any right under this agreement by a Party shall not imply the waiver of any other right or of the agreement as a whole. If a provision of this agreement is found to be unlawful it shall not affect the validity of any other provision in the agreement.
- 14.6 This agreement may be executed in any number of counterparts each of which when signed by or on behalf of the Parties shall be equally valid.

Signed for and behalf of the Chartered Institute of Patent Attorneys



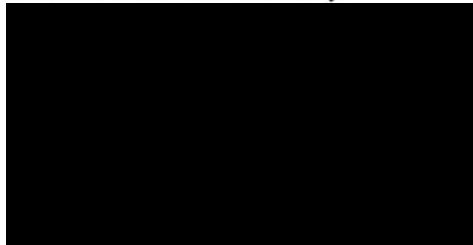
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23 MAY 2012

Witness



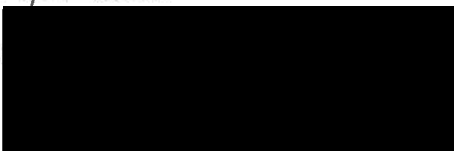
Signed for and behalf of the Institute of Trade Mark Attorneys



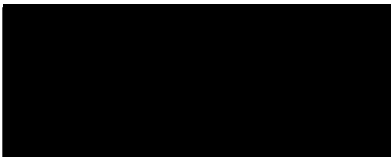
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Date

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Witness



Signed for and behalf of the Intellectual Property Regulation Board Limited

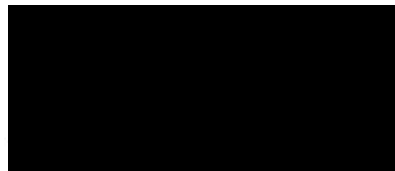
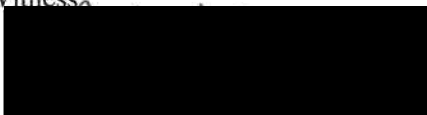


[Director]

Date

23/5/12

Witness

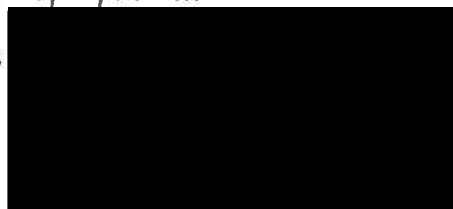


[Director]

Date

23/5/12

Witness



## SCHEDULE 1

### CONSTITUTION OF BOARDS

#### **Intellectual Property Regulation Board (IPReg)**

1. IPReg shall, subject to such amendment as may be agreed between the parties, consist of
  - (a) a Chairman, who is not a Patent Attorney or a Trade Mark Attorney or qualified as a lawyer (as defined in the Legal Services Act);
  - (b) three Patent Attorneys;
  - (c) three Trade Mark Attorneys;
  - (d) at least three persons who are not Patent Attorneys or Trade Mark Attorneys

Provided that no person may be appointed to the Board under paragraphs 1(b) to 1(d) who is regulated by an approved regulator under the Legal Services Act, other than CIPA and ITMA, unless they are also regulated by CIPA and/or ITMA.

2. The persons referred to in 1(a) and (d) shall be appointed to serve for a period of up to 4 years, and may be re-appointed for one further period of up to 3 years. The persons initially appointed under clauses 1(b) and (c) will serve a period of between 2 and 4 years.
3. Appointment of a Chairman shall take place after open competition and a selection process undertaken by a panel consisting of one representative from each of the ITMA and CIPA members of the AR Forum and two independent panel members appointed by IPReg. One such independent person, shall, if practicable, be a person appointed under paragraph 1(d) above.
4. Appointment of any further persons set out in 1(b), (c) and (d) shall take place after open competition and a selection process undertaken by a panel consisting of the Chairman of IPReg, one professional member representative from the PRB (in the case of Board members under paragraph 1(b) or 1(d)) and the TRB (in the case of Board members under paragraphs 1(c) or 1(d)), and independent panel member(s) appointed by IPReg. One of either the CIPA or ITMA members of the AR Forum may participate in the interview as an observer and be given prior access to documents relevant to such interview. Appointments to the panel, and the selection process shall be in accordance with such procedure as may be determined by IPReg in consultation with the CIPA and ITMA members of the AR Forum. In all cases the procedure shall comply with the provisions of the Legal Services Act and such rules as may be made under the Legal Services Act. IPReg shall take due account of all observations made by the LSB. In making such appointments, the panel shall have regard to the desirability of securing a diverse board with a broad range of skills.
5. unless otherwise agreed with the LSB, for the initial period during which Michael Heap is Chairman of IPReg the number of persons appointed under paragraph 1(d) shall be four.

#### **Patent Regulation Board**

6. PRB shall consist of the Chairman of IPReg, the three persons appointed to IPReg under paragraph 1(b) above and the three persons appointed to IPReg under paragraph 1(d) above. The members of PRB shall serve so long as they are members of IPReg.

### **Trade Mark Regulation Board**

7. TRB shall consist of the Chairman of IPReg, the three persons appointed to IPReg under paragraph 1(c) above and the three persons appointed to IPReg under paragraph 1(d) above. The members of TRB shall serve as long as they are members of IPReg.

### **Contracts of appointment**

8. Members of IPReg shall have contracts of appointment in respect of IPReg which shall be issued by Company. Such contracts shall specify that members of IPReg are required to observe the duties of the Boards in accordance with this agreement, and a code of conduct issued and maintained by IPReg. This shall include provision for the dismissal of Board members for misconduct.

### **Remuneration**

9. The Chairman and members of IPReg shall be paid an annual fee, paid quarterly in arrears, determined by IPReg after consultation with the AR Forum and LSB, and shall be entitled to claim re-imbursement of reasonable expenses incurred in the course of their duties in accordance with procedures determined by the Company.



## **SCHEDULE 2**

### **1. REGULATORY RESPONSIBILITIES**

CIPA, ITMA and the Boards and Board members, in discharging their regulatory functions are under an obligation, so far as reasonably practicable, to act in a manner:

- (a) which is compatible with the regulatory objectives, and
- (b) which is considered as most appropriate for the purpose of meeting those objectives, namely:
  - (i) protecting and promoting the public interest;
  - (ii) supporting the constitutional principle of the rule of law;
  - (iii) improving access to justice;
  - (iv) protecting and promoting the interests of consumers;
  - (v) promoting competition in the provision of services within subsection;
  - (vi) encouraging an independent, strong, diverse and effective legal profession;
  - (vii) increasing public understanding of the citizen's legal rights and duties;
  - (viii) promoting and maintaining adherence to the professional principles;

and in doing so they shall have to regard to:

- (I) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and
- (II) any other principle appearing to them to represent the best regulatory practice;
- (III) any other rules which may from time to time be prescribed in accordance with the Legal Services Act.

### **2. REGULATORY INDEPENDENCE**

CIPA and ITMA are under a duty in accordance with the rules currently made by the LSB under the Legal Services Act to put in place arrangements for the Boards that observe and respect the principle of regulatory independence; and at all times to act in a way which is compatible with the principle of regulatory independence and which they consider most appropriate for the purpose of meeting the principle of regulatory independence, and in particular that structures and persons having representative functions for CIPA or ITMA do not exert, and are not permitted to exert, undue influence or control over the performance of regulatory functions of the Boards, or any person(s) discharging those functions.

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**From:** Ann Wright [REDACTED]  
**Sent:** 22 July 2013 13:36  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Initial comments on IPReg order

Good afternoon

I am sorry for the slight delay in responding but I have been away on leave.

Just to clarify "IPReg" is the joint working name for the Patent Regulation Board and the Trade Mark Regulation Board. The PRB was established by CIPA and the TRB was established by ITMA each to be the independent regulator for patent attorneys and trade mark attorneys respectively.

In response to your questions, I should explain that it is IPReg's agreed policy that all firms regulated by IPReg will be subject to the same rules and sanctions and, equally, clients of those firms will enjoy the same protections and rights of redress whether or not these firms are wholly owned and managed by regulated persons or are ABS (that is licensed bodies).

We strongly believe that clients will not choose (and nor will we expect them to choose) intellectual property firms based on whether they are wholly owned by regulated persons or are ABS. Clients will expect all firms to be the same in terms of regulation, rights and redress.

Thus we will expect all firms to appoint a Head of Legal Practice and a Head of Finance and Administration. We will expect all firms to contribute to our proposed compensation arrangements. Even though, at present, these are only ABS – Legal Services Act requirements.

IPReg regulates registered patent firms under **s275 the Copyright Designs and Patents Act 1988** as amended by s185 of the Legal Services Act 2007.

IPReg regulates registered trade mark firms under **s83 the Trade Mark Act 1994** as amended by s184 of the Legal Services Act 2007.

The purpose of the s69 Order in relation to the CDPA and the TMA is to incorporate statutory powers over non ABS firms equivalent to those powers already expressly set out in the 2007 Act in relation to ABS licensed bodies. IPReg will then have statutory powers in relation to non ABS under the CDPA and the TMA as (subject to IPReg being appointed as a licensing body) IPReg will automatically have in relation to ABS under the Legal Services Act.

Thus we are not "going beyond" the arrangements in the LSA but seeking to harmonise the two regulatory regimes in a clearly defined and transparent way.

It might be argued that s275 of the CDPA and s83 of the TMA (as amended by ss184/5 of the Legal Services Act 2007) are so widely drawn:

*"those regulations may, amongst other things make ....."*

that a s69 order is unnecessary and IPReg has scope to effect harmonisation simply by issuing appropriate regulations under these statutory provisions. We have, however, had clear advice from counsel that the powers should be expressly stated because of their nature (and precedent having been set by other legal regulators). That a s69 order is necessary is clearly a view shared by the LSB who have applied to you on our behalf.

We are, therefore, seeking a s69 Order to amend the CDPA and the TMA as there is significant doubt whether s275 of the CDPA and s83 of the TMA, despite being widely drawn, provide statutory vices

for IPReg to issue regulations that will harmonise the regulation of firms wholly owned and managed by regulated persons with the regulation of ABS licensed bodies.

Finally I attach the following:

- Consolidated version of s275
- Consolidated version of s83
- The compensation arrangements as they are proposed to be incorporated into the CDPA as a new additional s275B (the drafting to be replicated mutatis mutandis for the TMA). In relation to this document counsel has said:  
“As the wording which is being incorporated takes the form of a modification, inserting the new text is not as straightforward as it is for ordinary textual amendment. The marked up version therefore contains some detailed provisions which are necessary to make sense of a consolidated provision as it would (hypothetically) appear in the Act in question. This includes things like including definitions which appear in the draft Order but which would not appear in the marked up version simply because the substantive provisions are in the Order (not in the modified version)”

I hope that assists you. We would be very happy to attend a meeting to discuss. Equally we would be very happy to arrange for counsel, [REDACTED] to call or meet you if you wish to discuss the detailed drafting with her.

Regards

**Ann Wright**  
Chief Executive

Intellectual Property Regulation Board  
T. [REDACTED]

*Please note that I do not work on Tuesdays and Fridays and will not be able to reply to your e mail until my return to the office*

## Approved Regulators Forum – 23<sup>rd</sup> January 2017

### IPReg Position re: Vires in Scotland (& Northern Ireland)

At the AR Forum meeting on 23<sup>rd</sup> January 2017, for the avoidance of doubt, CIPA requested IPReg document its view with regard to vires in Scotland (and Northern Ireland).

#### Copyright Designs & Patents Act 1988 (CPDA) & Trade Mark Act 1994 (TMA)

s304 of the Copyright Designs & Patent Act 1988 (CPDA) and s108 of the Trade Mark Act 1994 (TMA) each have an express jurisdiction provision to include Scotland & Northern Ireland, (excluding special provisions, relating to County Patent Courts).

- s275(1) of the CPDA expressly states that a register of patent attorneys is to be maintained and
  - s275(3) states that the register is to be maintained by CIPA
  - s275(A) states that the person who keeps the register under s275 may make regulations which regulate
    - *“the keeping of the register and the registration of persons”*
    - *“the carrying on of patent work by registered persons”*
  - s275A further states that the person who keeps the register may, amongst other things, make under s275A(2)(b):
 

*“provisions as to the requirements which must be met by a body (corporate or unincorporate) before it is registered and for it to remain registered including provision as to the management and control of the body”*
  
- s83(A) of the TMA expressly states that a register of trade mark attorneys is to be maintained and
  - s83(3) states that the register is to be maintained by ITMA
  - s83(A) states the person who keep the register under s83 may make regulations which regulate
    - *“the keeping of the register and the registration of persons”*
    - *“the carrying on of trade mark agency work by registered persons”*
  - s83A further states that the person who keeps the register may, amongst other things, make under s83(2)(b)
 

*“provisions as to the requirements which must be met by a body (corporate or unincorporate) before it is registered and for it to remain registered including provision as to the management and control of the body “*

## 2012 Delegation Agreement between CIPA, ITMA & IPReg

Recital B makes clear that the Delegation Agreement deals with the registration and regulation of Patent Attorneys (and Trade Mark Attorneys) under the Copyright Design and Patent Act 1988 and the Trade Marks Act 1988 (as amended)

In the definitions, the Acts are defined as consisting of **all of** the Legal Services Act 2007, the CDPA and the TMA.

s2.1 of the Delegation Agreement delegates CIPA's Regulatory Authority and Registration of Patent Attorneys to the PRB & TRB as their regulatory boards and IPReg as a joint board comprising TRB and PRB to meet the requirements of the Acts.

The operative provisions of the Delegation Agreement expressly provide that:

- (Clause 2.6 to be read in conjunction with Clause 2.8) the Patent Regulation Board (PRB) is responsible for *“making, maintaining and enforcing regulations relating to the registration of Patent Attorneys for the purposes of section 275A of CDPA (Regulation of Patent Attorneys)”*.
- (Clause 2.7 again to be read in conjunction with Clause 2.8) the Trade Mark Regulation Board (TRB) is responsible for *“making, maintaining and enforcing regulations relating to the registration of Trade Mark Attorneys for the purposes of section 83A of the TMA (Regulation of Trade Mark Attorneys)”*.

## **Licensed Bodies (ABS)**

There is an inconsistency regarding ABS. Their licensing arrangements (as expressly stipulated in the Legal Services Act 2007) requires the practice to have a place of business in England or Wales. Hence licensed ABS cannot be based solely in Scotland or Northern Ireland. In contrast regulations under issued under s275A of the CDPA and under s83A of the TMA have no such fetter.