IPReg

Annex C

The Intellectual Property Regulation Board (incorporating The Patent Regulation Board and the Trade Mark Regulation Board)

Second & Final Consultation on Disciplinary Procedure Rules

Background

In June 2009 IPReg issued a draft set of Disciplinary Rules for consultation.[1] Following receipt of comments from interested parties the draft rules have been revised and as proposed in the initial consultation, the revised Rules have been reviewed by external specialist solicitors to ensure compliance with human rights legislation and for the Board's own internal governance.

The Rules, as revised by those solicitors, are published in the "Information for Professionals" section.

Substantively the Rules are very similar to those previously published. However a number of amendments have been made and the wording of the Rules has been clarified in the light of the comments previously submitted and the solicitor's review.

The changes can be summarised as follows:

Procedural:

- The jurisdiction of IPReg has been clarified (Rule 2)
- The ability of IPReg to deal with complaints arising before 1st January 2010 has been expressly stated (Rule19)
- IPReg has been given an express power to delegate(Rule 18)
- The powers of a Disciplinary Panel to recover costs has been expanded (Rule 15)
- Timescales have been adjusted (various Rules)

Substantive

[1] A copy of our previous consultation can be accessed on the IPRE website at: http://www.ipreg.org.uk/information/more_consultations.php?ID=105

- The initial review procedure has been clarified. An initial review of a complaint will be undertaken by a Complaint Review Committee which will consist of two lay members and a relevant professional member of the main IPReg Board. This committee will have power to determine prima facie cases (Rule 5).

- The appeal procedure is new (Rule 17). In summary any appeal will be heard by an adjudicator who will be a solicitor or barrister of at least 10 years standing (Rule 17.3). Except as provided the appeal will be a review of process and will not take the form of a fresh hearing(Rule 17.4) The adjudicator may remit the case back to the Disciplinary Board or a further Disciplinary Board (Rule 17.6) The adjudicator may impose more severe sanctions (also Rule 17.6). The decision of the adjudicator may be published (Rule 17.8)

Consultation

As the wording of the proposed rules has been amended compared to the earlier draft rules, IPReg have decided to undertake a further consultation to invite comments before the rules are finalised.

Any person wishing to make any comment on the Rules or any particular provision within the Rules is invited to do so by e mail to the Chief Executive at:

Ann.Wright@ipreg.co.uk

Correspondence will be acknowledged but no individual detailed responses will be given.

The consultation will close on **31 May 2010** after which date IPReg will consider the responses in formulating a final draft for submission to the Legal Service Board for approval.

The Legal Services Board estimate that it will take 90 days for the Legal Services Board to consider and approve the Rules at which time they will be published in the IPReg website.

19 April 2010

IPReg

The Intellectual Property Regulation Board (incorporating The Patent Regulation Board and the Trade Mark Regulation Board)

Final Draft Disciplinary Procedure Rules

The Patent Regulation Board of the Chartered Institute of Patent Attorneys and the Trade Mark Regulation Board of the Institute of Trade Mark Attorneys working jointly together as the Intellectual Property Regulation Board (the IPReg Board) now make the following provisions on behalf of their respective Institutes and under section 275A of the Copyright Designs and Patents Act 1988 and under section 83A of the Trade Marks Act 1994, respectively, pursuant to sections 185 and 184 of the Legal Services Act 2007.

Rule 1 – Interpretation

1. In these Rules, unless context otherwise requires:

"Adjudicator" means a person appointed in accordance with Rule 17.3;

"Appellant" means a person bringing an appeal under Rule 17.1;

"Case Manager" means a person appointed in accordance with Rule 6.1;

"CIPA" means The Chartered Institute of Patent Attorneys;

"Code of Conduct" means the rules of conduct for patent attorneys, trade mark attorneys and other Regulated Persons adopted from time to time by the IPReg Board and the litigation codes of conduct adopted by CIPA and ITMA in their roles as authorised bodies under the Courts and Legal Services Act 1990;

"Complainant" means a person making a Complaint (including a person making a complaint under an ombudsman scheme which is the subject of a report made by an ombudsman under section 143 (2) of the Legal Services Act 2007) and includes any person natural or legal;

"Complaint" means:

(a) a complaint under an ombudsman scheme which is the subject of a report made by an ombudsman in accordance with section 143 (2) of the Legal Services Act 2007;

(b) a complaint alleging a breach of the Code of Conduct by a Regulated Person;

(c) a complaint made in accordance with the Charter of CIPA or the Articles of Association of ITMA against a member of either Institute alleging conduct in breach of the Charter or Articles or any codes, rules, bye-laws or other standards thereunder as the case may be; or

(d) a complaint alleging misconduct in breach of any combination of the above;

"Complaint Review Committee" or "CRC" means the body appointed pursuant to Rule 5;

"Disciplinary Board" means a board of the JDP appointed in accordance with these Rules for the hearing of a Complaint or any matter connected with a Complaint;

"EPO" means the European Patent Office;

"General Complaint" means a Complaint that the Disciplinary Panel determines is not a Trade Mark Complaint or a Patent Complaint;

"The Institutes" means ITMA and CIPA;

"IPReg" means The Intellectual Property Regulation Board Limited (Company Number 6624948);

"The IPReg Board" means the Patent Regulation Board of CIPA and the Trade Mark Regulation Board of ITMA working jointly together as the Intellectual Property Regulation Board;

"ITMA" means the Institute of Trade Mark Attorneys;

"Joint Disciplinary Panel" or "JDP" means the body appointed pursuant to Rule 4;

"Manager" in relation to a body, has the same meaning as in the Legal Services Act 2007;

"OHIM" means the Office of Harmonization for the Internal Market;

"Parties", in relation to a Complaint or any proceedings under these Rules relating to a Complaint, means the Complainant and the Respondent, and "Party" means the Complainant or the Respondent;

"Patent Attorney Litigator" means a registered patent attorney holding a certificate issued by CIPA under section 28 of the Courts and Legal Services Act 1990 authorising its holder to conduct litigation;

"Patent Attorney Register" means the register kept under section 275 of the Copyright Designs and Patents Act 1988 as amended;

"Patent Complaint" means a Complaint exclusively or substantially concerning the practice or conduct of a Respondent as:

(a) a Registered Person entered in the Patent Attorney register, including a registered patent attorney working as a Patent Attorney Litigator;

(b) a Regulated Person regulated by virtue of their relationship with a Registered Person entered in the Patent Attorney register; or

(c) as a member of CIPA;

"Professional Principles" means the professional principles as defined in section 1 of the Legal Services Act 2007;

"Register(s)" means the Patent Attorney Register and/or the Trade Mark Attorney Register;

"Registered Person" means:

(a) a registered patent attorney;

(b) a registered trade mark attorney; or

(c) an entity (corporate or unincorporate)

entered in the Patent Attorney Register or the Trade Mark Attorney Register;

"Registrar" means a person appointed by the relevant Institute to maintain the Patent Attorney Register or the Trade Mark Attorney Register;

"Regulated Person" means a Registered Person, an employee of a Registered Person, or a Manager of an entity which is a Registered Person;

"Regulatory Objectives" means the regulatory objectives as defined in section 1 of the Legal Services Act 2007;

"Respondent" means any person against whom a Complaint is made;

"Trade Mark Attorney Register" means the register kept under section 83 of the Trade Marks Act 1994 as amended;

"Trade Mark Complaint" means a Complaint exclusively or substantially concerning the practice or conduct of a Respondent as:

(a) a Registered Person entered in the Trade Mark Attorney register, including a registered trade mark attorney working as a Trade Mark & Design Litigator,

(b) a Regulated Person regulated by virtue of their relationship with a Registered Person entered in the Trade Mark Attorney register, or

(c) a member of ITMA;

"Trade Mark and Design Litigator" means a registered trade mark attorney holding a certificate issued by ITMA under section 28 of the Courts and Legal Services Act 1990 authorising its holder to conduct litigation;

"UKIPO" means the United Kingdom Intellectual Property Office.

Rule 2 – Jurisdiction

2.1 These Rules apply to Complaints relating to a Regulated Person and any aspect of the conduct of a Regulated Person except for matters within the exclusive jurisdiction of the Legal Ombudsman.

2.2 At the request of CIPA and ITMA these Rules also apply to members of CIPA and/or ITMA.

Rule 3 – Administration

3.1 IPReg shall provide administrative and any other necessary support services to the JDP and Disciplinary Boards, including administering the handling of Complaints and all related materials, making arrangements for the conduct of hearings, the attendance of Parties, representatives and witnesses, the presentation of evidence and liaising (in particular in the receipt and transmission of correspondence) between the JDP, the Disciplinary Boards, the Institutes, the Registrars, Parties and any other interested persons in a timely and proportionate manner in accordance with the Regulatory Objectives.

3.2 Insofar as the same are not otherwise provided for in these Rules the IPReg Board, in consultation with the JDP and the Institutes, shall make regulations or other arrangements for:

3.2.1 the submission of Complaints and other pleadings, evidence or materials;

3.2.2 the determination of a *prima facie* case;

3.2.3 the giving of directions for the handling, management, hearing and determination of Complaints;

3.2.4 providing, or securing the provision of, advice to the JDP and Disciplinary Boards;

3.2.5 the drawing up of decisions and orders and sending the same to the Parties, the Institutes and the Registrars, and any other interested persons;

3.2.6 assessing and awarding costs pursuant to any power granted under these Rules or under the Bye-laws of the Institutes; and

3.2.7 the publication and enforcement of decisions.

Rule 4 – The Joint Disciplinary Panel

4.1 The IPReg Board shall through IPReg set up a Joint Disciplinary Panel consisting of at least three attorney members from each Institute, as well as at three lay members. None of the JDP members shall be sitting members of the IPReg Board or the Councils of either Institute.

4.2 The CIPA attorney members shall all be or have been registered patent attorneys. The ITMA attorney members shall all be or have been registered trade mark attorneys. All attorney members shall be recruited by the Institutes in accordance with open and competitive procedures which shall be agreed by IPReg from time to time.

4.3 The lay members shall be individuals none of whom are or have been registered patent attorneys or registered trade mark attorneys nor any other person who holds or has held a legal professional qualification of any description. The lay members shall be recruited by the IPReg Board using "Nolan" Principles of Public Life.

4.4 The initial appointments to the JDP when these Rules come into force shall be for 2, 3, or 4 years with each of the three CIPA attorney members, ITMA attorney members and the lay members being appointed for a different term. All subsequent appointments shall be for a term of 3 years.

4.5 The JDP shall appoint one of the lay members to be its chair to hold office for a period of 3 years. The chair shall have an additional casting vote in the event of any tied vote.

4.6 If at any time there is a shortfall of members of the JDP the IPReg Board may, in consultation with the chair of the JDP, and CIPA and ITMA, appoint temporary members to fill such vacancies as necessary, the maximum term of any temporary appointment being the balance of the term lying vacant.

4.7 The IPReg Board may at the request of the JDP or a Disciplinary Board co-opt members to a Disciplinary Board.

4.8 Members appointed or co-opted in accordance with Rules 4.6 or 4.7 shall be persons whose suitability for public appointment has previously been recognised by another public body.

Rule 5 – The Complaint Review Committee

5. The IPReg Board shall designate two of its lay members and one of its attorney members to be the Complaint Review Committee (CRC) in relation to a Complaint.

Rule 6 – Procedure on receipt of Complaints

6.1 Upon receipt of a Complaint, IPReg shall appoint a Case Manager to review the Complaint to establish whether the Complaint complies with any formalities or other requirements stipulated in accordance with regulations or other arrangements made under Rule 3.2.1.

6.2 If a Complaint does not comply with the formalities or other requirements stipulated in accordance with regulations or other arrangements made under Rule 3.2.1, the Case Manager shall inform the Complainant accordingly and invite the Complainant to remedy the deficiencies noted within a period of 14

days. The Case Manager may extend the period for providing information under this Rule 6.2 if the Respondent provides the Case Manager with good reasons for extending the period. Save in exceptional circumstances only a single extension of the period for providing information in mitigation shall be permitted. If the deficiencies are not remedied before the time limit (including any extension) expires, IPReg shall reject the Complaint without reference to the CRC.

6.3 If the Complaint is found to comply with the formalities or other requirements stipulated in accordance with regulations or other arrangements made under Rule 3.2.1, the Case Manager shall:

6.3.1 send a copy of the Complaint to the Respondent informing him that the matter is to be reviewed by the CRC and inviting him to file, within a period of 28 days from the date of the communication, brief and concise observations (which may include admissions) in order to assist the CRC to determine the status of the Complaint in accordance with Rules 7 and 8;

6.3.2 confirm to the Complainant that the Respondent has been sent a copy of the Complaint, that his observations have been requested and that the matter will be reviewed by the CRC.

6.4 Any observations filed shall be copied to the Complainant for information. Unless the Respondent provides the Case Manager with good reasons for extending the period for response under Rule 6.3.1 and the Case Manager agrees to the extension, any observations filed after the expiry of the 28 day period shall be ignored in the CRC's determination of a case to answer. Save in exceptional circumstances, only a single extension of the period of response shall be permitted.

Rule 7 – Initial processing by the Complaints Review Committee

7.1 The CRC shall review the Complaint and any observations received from the Respondent after the end of the period for filing observations referred to in Rule 6.4 to determine whether the Complaint is an admissible Complaint.

7.2 A Complaint shall be considered an admissible Complaint if:

7.2.1 it is received in time (see Rule 7.3); and

7.2.2 the subject matter of the Complaint falls within IPReg's jurisdiction (see Rule 7.5).

7.3 A Complaint is to be treated as received in time if

7.3.1 either, it was received by IPReg, CIPA,, ITMA or an ombudsman within the period of 12 months from the date on which:

(a) the matters giving rise to the Complaint occurred; or

(b) the Complainant first became aware that he had grounds for complaint;

7.3.2 or, it relates to matters not falling within the period set out in 7.3.1 above and the Complainant provides sufficient reasons why the Complaint could not have been brought earlier.

7.4 If a Complaint is received outside the period set out in Rule 7.3.1 above, the CRC shall inform the Complainant accordingly and invite the Complainant to provide, within a period of 14 days, reasons why the Complaint could not have been brought earlier. If no or insufficient reasons are provided before the period of 14 days expires, the CRC shall reject the Complaint as inadmissible.

7.5 The subject matter of the Complaint falls within IPReg's jurisdiction if it raises issues as to the professional conduct of a Regulated Person and is not purely a complaint about the level of service provided by such a person.

7.6 If the Complaint is not admissible within the meaning of Rule 7.2.2 and 7.5, the CRC shall reject the Complaint and inform the Complainant that the Complaint falls outside the jurisdiction of IPReg and refer the Complainant to the Office of the Legal Services Ombudsman.

7.7 If a Complaint is admissible, and the Complaint concerns the actions of any Regulated Person who is:

7.7.1 practising as a recognised sole practitioner regulated by the Solicitors Regulation Authority;

7.7.2 practising as a self-employed barrister regulated by the Bar Standards Board; or

7.7.3 a Manager or employee of an entity or person authorised by another approved regulator to carry on an activity which is a reserved legal activity;

the CRC shall refer the Complaint to the relevant regulator and suspend investigation of the Complaint until the investigation by the other regulator is concluded.

7.8 If a Complaint is admissible, and the Complaint concerns a Regulated Person who is subject to regulation by a professional regulator other than one to which Rule 7.7 applies, the CRC may suspend investigation of a Complaint if the CRC considers that the Complaint would be better dealt with by the other regulator and either:

7.8.1 a corresponding complaint is proceeding in front of the other regulator; or

7.8.2 the other regulator agrees to investigate the Complaint.

7.9 A Complaint suspended by virtue of Rule 7.7 or 7.8 shall be resumed when the investigation by the other professional regulator has been concluded. When determining whether or not a Complaint discloses a *prima facie* case under Rule 8.2 and whether or not a case is suitable for determination by a summary procedure under Rule 8.3, the CRC shall take into account the determination of the case by any other regulator. The result of the determination of the case by the other regulator shall also be included in the material submitted to a Disciplinary Board if the Complaint is referred to a Disciplinary Board.

Rule 8 Review and assessment of a *prima facie* case

8.1 This Rule applies where a Complaint has been found to be admissible under Rule 7.2 and the investigation of the Complaint:

8.1.1 has not been suspended by virtue of Rule 7.7 or 7.8; or

8.1.2 has been resumed under Rule 7.9.

8.2 If a Complaint is found to be admissible, the CRC shall review the Complaint and any observations received from the Respondent to determine whether or not the Complaint discloses a *prima facie* case. If the CRC determines that there is no *prima facie* case, the CRC shall issue a written decision rejecting the Complaint and the Complainant and the Respondent shall be notified forthwith of the CRC's decision.

8.3 If the CRC determines that a Complaint discloses a *prima facie* case, the CRC shall determine whether, in its opinion, the matter should be dealt with through a summary procedure.

8.4 A matter may be dealt with through a summary procedure where the CRC is of the opinion that, if the Complaint were upheld, the issuance of a notice, warning or reprimand under Rule 8.7 would be sufficient to deal with the matter and further proceedings would be disproportionate and unnecessary.

8.5 In determining whether, in its opinion, a Complaint should be dealt with through summary procedure the CRC shall:

8.5.1 have regard to the public interest, the Code of Conduct, the Regulatory Objectives and the Professional Principles; and

8.5.2 take account of all the circumstances of the case including, without limitation:

(a) whether any alleged breach is of a purely technical or trivial nature;

(b) the extent of any material prejudice or loss caused or likely to be caused to the Complainant or to any other person by reason of the Respondent's acts;

(c) whether the Complaint involves the integrity or honesty of the Respondent;

(d) the Respondent's standard of care and conduct in the matter leading to the alleged breach;

(e) whether the Respondent's handling of the matter, once drawn to his attention, was reasonable and what, if any, steps he has taken to terminate and prevent any repetition of the alleged breach;

(f) whether any material harm has been caused to the standing of the Respondent's profession;

(g) the past disciplinary record of the Respondent; and

(h) whether it is a case of doubt or difficulty or one which involves a matter of public interest.

8.6 If the CRC determines under Rule 8.3 that there is a *prima facie* case but that in its opinion, the matter would best be dealt with through a summary procedure, the CRC shall notify the Respondent of its opinion and invite the Respondent, within a period of 14 days, to:

8.6.1 elect, by informing the CRC in writing, that he wishes the matter to be heard by a Disciplinary Board; or;

8.6.2 accept that the Complaint may be dealt with through a summary procedure and provide the CRC with any further information the Respondent wishes to be taken into account in determining whether to uphold the Complaint and/or in mitigation of any penalty if the Complaint is upheld.

The CRC may extend the period for providing information under Rule 8.6.2 if the Respondent provides the Case Manager with good reasons for extending the period. Save in exceptional circumstances only a single extension of the period for providing information in mitigation shall be permitted.
Any communications under this Rule shall be copied to the Complainant for information.

8.7 If the Respondent does not elect for the matter to be referred to a Disciplinary Board, the CRC shall, after considering any additional information submitted by the Respondent and the Complainant, determine whether the Complaint is made out and, if it is:

8.7.1 issue a notice, warning or reprimand and send copies of the issued notice, warning or reprimand to the Respondent and Complainant ;

8.7.2 inform the Registrar(s) of the Register(s) in which the Respondent is registered that a notice, warning or reprimand has been issued and require that this be noted against the Respondent's entry in the Register(s) for a period of:

(a) 6 months in the case of a notice;

(b) 1 year in the case of a warning; and

(c) 3 years in the case of a reprimand; and

8.7.3 make such an order for payment of the Complainant's costs by the Respondent as the CRC considers appropriate and just.

8.8 If the CRC considers that there is a *prima facie* case, but that dealing with the matter through a summary procedure would not be appropriate**,** or if a Respondent has made an election under Rule 8.6, the CRC shall inform the JDP which will proceed promptly to appoint a Disciplinary Board to determine the matter. When informing the JDP, the CRC shall also inform the JDP whether, in the opinion of the CRC, the Complaint should be treated as a Trade Mark Complaint, a Patent Complaint or a General Complaint. The Complainant and the Respondent shall be notified of the CRC's decision to refer the matter to a Disciplinary Board.

Rule 9 – Disciplinary Boards

9.1 The Chair of the JDP will appoint Disciplinary Boards in accordance with the provisions of these Rules, drawn from the members of the JDP.

9.2 If the Chair of the JDP rejects the opinion of the CRC as to whether the Complaint is a Trade Mark Complaint, a Patent Complaint or a General Complaint he shall appoint two lay members of the JDP to make that determination with him.

9.3 A Disciplinary Board shall consist of three persons being two lay members, and one attorney member. If the Complaint is a Trade Mark Complaint the attorney member will be an ITMA appointed attorney member. If the Complaint is a Patent Complaint the attorney member will be a CIPA appointed attorney member. If the Complaint is a General Complaint the attorney member of the board may be selected by the Chair of the JDP in the exercise of his discretion or, at his option, by a vote of the JDP.

9.4 The members of the Disciplinary Board shall appoint one of their number as Chair. Decisions of a Disciplinary Board shall be taken by simple majority.

9.5 A Disciplinary Board may if it considers it appropriate appoint a legal adviser to assist it. The legal adviser shall be a practising barrister or solicitor and will sit with the Disciplinary Board but shall not have a vote.

Rule 10 – Pre-Hearing steps

10.1 Within 14 days of the constitution of a Disciplinary Board, IPReg will notify the Complainant and the Respondent of the commencement of the Disciplinary Board stage of the proceedings and will invite the Complainant to file within 28 days of the giving of such notice any further evidence (including witness statements of any person) or other matter on which it intends to rely.

10.2 Following receipt of the above, and in any event as soon as possible after the expiry of the period referred to in Rule 10.1, IPReg will serve on the Respondent any matter so filed by the Complainant and invite the Respondent to file within 28 days of such service any further evidence or other matter on which it intends to rely in its defence.

10.3 Following receipt of the above, and in any event as soon as possible after the expiry of the period referred to in Rule 10.2, IPReg will serve on the Complainant any matter so filed by the Respondent and shall invite the Complainant to file within 14 days of such service any further evidence or other matter, strictly in reply.

10.4 The Chair of the Disciplinary Board may, at the request of the Complainant or the Respondent, grant an extension of time both for the filing of further evidence or other matter and for the appointment of the date for the determination of the Complaint if the Party making the request provides a reasonable justification for such an extension.

10.5 Either Party may file further evidence or other matter with the leave of the Disciplinary Board.

10.6 The Disciplinary Board may give judgment on any admissions by the Respondent, without the need for an oral hearing, if it sees fit and if the Parties agree.

10.7 As soon as possible after the end of the period referred to in Rule 10.3, or of any extension granted under Rule 10.4, IPReg shall appoint a date for the determination of the Complaint, to be held as soon as is reasonably practicable. An oral hearing will take place only if a Party so requests by a date no later than 28 days before the date appointed for the determination of the Complaint. Otherwise the Disciplinary Board will be convened on the date appointed for the determination of the Complaint and the Complaint will be decided on the basis of the papers and materials before it.

10.8 If no oral hearing is requested IPReg shall invite the Parties to submit written arguments, to be filed no later than 7 days before the Disciplinary Board is to consider the Complaint.

10.9 If an oral hearing is requested, it will be held in public unless the Disciplinary Board determines that the press and other members of the public may be excluded from all or part of the hearing for reasons of public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the Parties so require, or to the extent strictly necessary in the opinion of the Disciplinary Board in special circumstances where publicity would prejudice the interests of justice.

Rule 11 – Miscellaneous procedural matters

11.1 Subject to the express provisions of these Rules, a Disciplinary Board shall have full powers to adopt such procedures as it thinks fit for the fair

determination of the issues before it, including powers to allow amendment of the Complaint and to adjourn its proceedings.

11.2 The Disciplinary Board may give any directions deemed necessary or appropriate for the determination of a Complaint before it. In the interests of procedural economy and if it is proportionate to do so, the Disciplinary Board may delegate its power to give directions to one of its number.

11.3 Without prejudice to Rule 11.1, directions may be made about documentation, inspection, statements, skeleton arguments and the place or time of any hearing.

11.4 IPReg may refer to the relevant Disciplinary Board any procedural matter in a particular case for a decision or directions; and the Disciplinary Board may itself or on the application of any Party make an order on such terms as it considers just:

11.4.1 to give consent to the withdrawal of an application or allegation in respect of which a *prima facie* case has been determined;

11.4.2 to adjourn any hearing listed for directions or for a substantive determination of the Complaint;

11.4.3 to agree to the amendment of any application or allegation or the correction of any matter;

11.4.4 to provide for the attendance of witnesses at any oral hearing;

11.4.5 to make any directions which shall appear necessary or appropriate to secure the timely determination of the matter.

11.5 In cases of doubt or uncertainty IPReg may ask the JDP to issue guidance or a ruling as to any general matter of procedure.

11.6 Any hearing under this Rule shall be held in public unless Rule 10.9 applies.

11.7 No Complaint which has been referred to the Disciplinary Board under Rule 8.8 may be withdrawn without the consent of the Disciplinary Board.

Rule 12 – Service of Documents

12.1 Any Complaint or other document required to be served under these Rules shall be served:

12.1.1 personally; or

12.1.2 by sending by guaranteed delivery post or other guaranteed and acknowledged delivery to the last known place of business or abode of the person to be served; or

12.1.3 in such other manner as the Disciplinary Board may direct.

12.2 Any document served in accordance with paragraph 12.1 shall be deemed served on the second working day following the day on which it is delivered, posted or transmitted.

12.3 A document delivered to the last known place of business or abode of the person to be served may be regarded by the Disciplinary Board as duly served if it is satisfied that it is reasonable to expect that the document has been received by or brought to the attention of the person to be served.

Rule 13 – Evidence

13.1 Unless otherwise ordered, evidence shall be given by witness statement, statutory declaration or affidavit, such evidence to have been filed with IPReg in accordance with these Rules and any directions given thereunder.

13.2 A Party wishing to call a witness or to seek a witness's attendance for cross examination shall seek a direction to that effect. In the event that a person directed to attend to give evidence fails to attend an oral hearing the person's evidence shall be inadmissible unless the Disciplinary Board otherwise directs.

Rule 14 – Oral hearings and determination of the Complaint

14.1 At an oral hearing the Parties may represent themselves or be represented through representatives of their own choosing. Parties may examine or have examined witnesses against them.

14.2 After completion of the matter, including any hearing which may be held, the Disciplinary Board shall give a reasoned written decision setting out the Complaint, its findings of fact, and its conclusion as to whether the Complaint has been proved.

14.3 In the event and to the extent that the Complaint is proved, the Disciplinary Board shall give the Respondent the opportunity to present to the Disciplinary Board, within such time as it may direct, an explanation of any mitigating circumstances which the Respondent would like to be taken in to account by the Disciplinary Board when deciding upon an appropriate sanction. After considering any such explanation, the Disciplinary Board may impose on the Respondent any one or more of the following sanctions:

14.3.1 a public notice, warning or reprimand to the Respondent stating the facts of the matter, the nature of the Respondent's breach and if appropriate a recommendation as to actions to be taken by the Respondent to avoid any repetition of the breach;

14.3.2 a suspension of the Respondent for such term and subject to such conditions as the Disciplinary Board thinks fit from practice as a Regulated Person;

14.3.3 a suspension of the Respondent for such term and subject to such conditions as the Disciplinary Board thinks fit from acting as a Trade Mark and Design Litigator and/or as a Patent Attorney Litigator;

14.3.4 if the Respondent is a Registered Person a direction that the Respondent's entry be removed from the relevant Register, either permanently or during such period and subject to such conditions (as to restoration or otherwise) as may be specified in the direction;

14.3.5 an order cancelling the Respondent's certificate to practise as a Trade Mark and Design Litigator and/or as a Patent Attorney Litigator;

14.3.6 an order requiring the Respondent to undertake training or other activities pertinent to any disciplinary breach or breaches found to have been proven by the Disciplinary Board;

14.3.7 notification of the decision to the UKIPO, EPO and/or OHIM together with a recommendation that the Respondent's recognition or authorisation should be withdrawn;

14.3.8 an order to pay a fine up to Level 5 of the standard scale of fines for summary offences as set out in section 37 of the Criminal Justice Act 1982 as amended from time to time;

14.3.9 a recommendation to the Councils of CIPA and/or ITMA that the Respondent be suspended from membership of the Institutes for such term and subject to such conditions as the Disciplinary Board thinks fit;

14.3.10 a recommendation to the Councils of CIPA and/or ITMA the Respondent be expelled from either or both Institutes;

14.4 In the event that the Disciplinary Board issues a notice, warning or reprimand, the Disciplinary Board shall inform the Registrar(s) of the Register(s) in which the Respondent is registered that a notice, warning or reprimand has been issued and require that this be noted against the Respondent's entry in the Register(s) for such a period as is set out in Rule 8.7.2.

14.5 The Disciplinary Board shall not make any order for redress to the Complainant or any other person.

14.6 If the Respondent does not comply with the any of sanctions imposed the Disciplinary Board may, of its own motion or on an application by any interested or aggrieved person, make an order suspending or striking the Respondent from the Register(s) or recommending suspending or excluding the Respondent from membership (including as a student) of the Institutes. The Disciplinary Board shall give the Respondent 14 days to provide any explanation for the failure to comply, and it shall take account of any such explanation when making its decision.

14.7 Any decision of the Disciplinary Board under Rule 14 shall be forwarded to IPReg, the appropriate Registrar and the relevant Institute (both CIPA and

ITMA in the case of a General Complaint), and served upon the Complainant and the Respondent. The decision shall be published on the Institute's website and in its journal, either in whole or in part, once it has become final, i.e. no appeal has been made within the time laid down by the Rules or any such appeal has been dismissed. The published version of the Board's decision may exclude any matters for reasons of public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the Parties so require, or to the extent strictly necessary in the opinion of the Disciplinary Board in special circumstances where publicity would prejudice the interests of justice. The notice of publication of the decision will in all cases include the names of the Respondent and the Complainant, save where exceptional circumstances exist.

Rule 15 – Costs

15.1 The Disciplinary Board may make such order as to costs as it shall think fit including an order:

15.1.1 disallowing costs incurred unnecessarily; or

15.1.2 that costs be paid by any Party judged to be responsible for wasted or unnecessary costs, whether arising through unreasonable, unnecessary or disproportionate conduct, non compliance with time limits or otherwise.

15.2 The Disciplinary Board may order that any Party bear the whole or a part or a proportion of the costs.

15.3 The amount of any costs to be paid shall be fixed by the Disciplinary Board.

15.4 The Disciplinary Board may also make an order as to costs under this Rule:

15.4.1 where any application or allegation is withdrawn or amended;

15.4.2 where no allegation of misconduct is proved against a Respondent.

15.5 An award of costs under this Rule may include costs and expenses incurred by IPReg in respect of the Case Manager, CRC and Disciplinary Board (including the costs of any legal adviser appointed in accordance with Rule 9.5) in connection with or preparatory to the determination of the Complaint.

Rule 16 – Mediation etc

16.1 Nothing in these Rules shall prevent the Parties agreeing to seek to resolve the matter by conciliation or other means at any time. However, other than by suspension in accordance with these Rules this shall not delay the JDP's consideration of the Complaint or the progress of proceedings before a Disciplinary Board.

16.2 Nothing in these Rules shall prevent either Institute offering a service for mediating or conciliating Complaints.

16.3 No resolution or other disposal of matter by the Parties shall prevent the continuance of disciplinary proceedings under these Rules where the CRC or the Disciplinary Board is of the opinion that the case concerns a matter of public interest.

Rule 17 – Appeals

17.1 The Complainant or the Respondent may appeal against a decision or order of the Disciplinary Board by giving notice in writing to IPReg setting out the decision or order appealed against and the grounds for appeal. Any such appeal must be received by IPReg no later than 21 days after the date on which the decision or order was served upon the Party appealing.

17.2 The only grounds for an appeal against a decision of a Disciplinary Board are one or more of the following:

17.2.1 the decision of the Disciplinary Board was wrong in that the Disciplinary Board gave insufficient weight to or drew incorrect conclusions from any material before it, which was or should have been material to its determination;

17.2.2 the decision was flawed because of a serious procedural or other irregularity in the proceedings before the Disciplinary Board;

17.2.3 the Appellant has acquired new evidence that:

(a) could not previously have been obtained with reasonable diligence; and

(b) if it had been before the Disciplinary Board, would have had an important influence upon the determination of the matter.

17.2.4 the Disciplinary Board did not have power to make the order appealed against;

17.2.5 the penalty imposed by the Disciplinary Board under Rule 14.3, or an order for costs under Rule 15 was excessive in light of the Disciplinary Board's decision on the facts or the Appellant's circumstances.

17.3 Upon receipt of an appeal, the IPReg Board shall appoint a person (an "Adjudicator") to determine the appeal. An Adjudicator shall be a solicitor or barrister of at least 10 years' qualification.

17.4 The Adjudicator may admit, or invite, further submissions from any Party to the proceedings. However an appeal shall be by way of review and, shall not by way of a rehearing (unless the Appellant is appealing under Rule 17.2.3). If the Appellant is appealing under Rule 17.2.3, fresh evidence may be not be admitted unless the Adjudicator is satisfied of the matters set out in 0 and 0.

17.5 In each appeal the Adjudicator will determine the procedure to be followed and may hold a preliminary hearing for determining issues relating to the production of fresh evidence and the conduct of the appeal.

17.6 The Adjudicator may affirm or vary the decisions and sanctions of the Disciplinary Board, may (on allowing an appeal under Rule 17.2.3) remit the matter for determination by the Disciplinary Board which determined the Complaint or a differently constituted Disciplinary Board, and may make such ancillary orders as the Adjudicator sees fit. For the avoidance of doubt, the Adjudicator may impose a more severe sanction than that imposed by the Disciplinary Board.

17.7 The Adjudicator may make such order as to costs as he thinks fit and Rule 15 shall apply as if references to the Disciplinary Board were references to the Adjudicator.

17.8 After completion of the procedure determined by the Adjudicator, if the appeal has not been withdrawn by the Appellant, the Adjudicator will issue a reasoned, written decision. The decision shall be pronounced publicly. The published version of the Adjudicator's decision may exclude any matters for reasons of public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the Parties so require, or to the extent strictly necessary in the opinion of the Adjudicator in special circumstances where publicity would prejudice the interests of justice.

Rule 18 – Delegation

18. The IPReg Board may delegate to an external body nominated by it responsibility for implementing this procedure or parts of this procedure to be undertaken by IPReg.

Rule 19 – Commencement

19. These Rules shall apply to all Complaints received on or after 1 January 2010 whether the subject matter of the Complaint arose or commenced before or after that date.