



## **Legal Services Board – Decision Notice issued under Part 3 of Schedule 4 to the Legal Services Act 2007**

### **The Intellectual Property Regulation Board application for approval of changes to Regulatory Arrangements for the Examination and Admission of Individuals to the Registers of Patent and Trade Mark Attorneys 2011.**

The Legal Services Board (“LSB”) has approved the application by The Intellectual Property Regulation Board (“IPReg”) for changes to its Examination and Admission of Individuals to the Registers of Patent and Trade Mark Attorneys Rules 2011 (“Examination and Admission Rules 2011”). This Notice sets out the basis for the LSB approval and the decision taken, including a brief description of the changes.

#### **Introduction**

1. The LSB is required by Part 3 of Schedule 4 of the Legal Services Act 2007 (“the Act”) to review and approve (in whole or part) or reject alterations to the Regulatory Arrangements of the Approved Regulators. IPReg is an Approved Regulator.
2. Paragraph 25 of Schedule 4 explains that the LSB must approve a proposed change to the Regulatory Arrangements unless we are “...satisfied that...” the approval would fall within one or more of the criteria specified in sub paragraph 25(3) (and listed in the footnote below<sup>1</sup>). If the LSB is not satisfied that one or more of the criteria are met, then it must approve the application in whole, or at least the parts of it that can be approved when only part of the application meets the criteria.
3. As provided for by paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules about how the application to alter the Regulatory Arrangements must be made including the contents of that application. The rules highlight the applicant’s obligations under section 28 of the Act to have regard to the Better Regulation Principles. The rules also require that the applicant provides information about the nature and effect of each proposed change and of appropriate consultation undertaken. Sub paragraph 25(3)(f) requires that each proposed alteration has been

---

<sup>1</sup> The Board may refuse the application only if it is satisfied that—(a) granting the application would be prejudicial to the Regulatory Objectives, (b) granting the application would be contrary to any provision made by or by virtue of the Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator, (c) granting the application would be contrary to the public interest, (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator, (e) the alteration would enable the approved regulator to license persons under Part 5 to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.

made or is likely to be made in accordance with the procedures which apply in relation to making of the alteration. This includes the LSB's rules.

4. The LSB will approve Regulatory Arrangements in so far that they appear to achieve their intended outcome and satisfy the sub paragraph 25(3) criteria. Most notably there must be no adverse impact on the Regulatory Objectives overall and the alterations and the process by which they have been produced must be consistent with Better Regulation Principles.
5. We confirmed receipt of IPReg's application for approval of changes to regulatory arrangements relating to the Examination and Admission Rules 2011 on 1 April 2011. This is the Decision Notice in relation to that application. The chronology for handling of this application can be found towards the end of this Decision Notice.

## **Decision**

6. IPReg's application was for approval for changes to the following regulatory arrangements: IPReg's Examination and Admission of Individuals to the Registers of Patent and Trade Mark Attorneys.

### *Current arrangements*

7. Admission to the patent and trade mark profession is regulated by the Patent Attorney and Trade Mark Attorney Qualification and Registration Regulations 2009. Under Regulation 5 of these regulations the Patent Regulation Board and the Trade Mark Regulation Board:
  - May empower and accredit examination agencies and make any additional regulations for that purpose; and
  - Are responsible for determining entry requirements, overall standards to be attained and the general content of qualifying examinations.
8. A Joint Examination Board (JEB) sets examinations for patent attorneys and is a joint committee of the Chartered Institute of Patent Attorneys (CIPA) and the Institute of Trade Mark Attorneys (ITMA).
9. The new rules elaborate 'Regulation 5 – Qualifying Examinations' of The Patent Attorney and Trade Mark Attorney Qualification and Registration Regulations 2009 to provide more detailed regulations on:
  - The qualifying examinations and examination agencies which are accredited and empowered (Rule 3).
  - The necessary academic qualifications (Rule 4 and Schedule 2 to the rules)
  - The form of application for recognition of European professional qualifications (Rule 5)
  - The period up to which "substantial experience" is defined and the evidence required for the Registrar to assess such experience (Rule 6).
  - The provisions under which exemptions and deemed passes made be made (Rule 7).

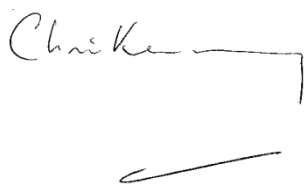
- The appeal arrangements against a formal decision of an Examination Agency (Rule 8).
- The transitional provisions to enable an individual who has started authorisation to become a patent or trade mark attorney or has entered for any appropriate qualifying exams, to complete the necessary qualifying examinations

*Effect of rule changes*

10. The principle effect of the new rules is to extend the number of examination agencies, including academic bodies, to the list of providers of Qualifying Examinations. Four additional bodies listed in Schedule 1 to the Rules will provide qualifying examinations at Foundation Level. In addition, Nottingham Law School Limited - Nottingham Trent University will provide qualifying exams at both Foundation and Final level for trade mark attorney qualifications only. The JEB will continue to be the examination agency for both Foundation and Final Level for trade mark and patent attorneys.
11. Each examination agency will be required to publish in advance details of its Qualifying Examinations and any required qualifying courses. This will include information on the syllabus and other relevant details, specified in the rules, and pass these details to IPReg for publication on its website.
12. In assessing the application we identified no major issues.
13. As a result of the review, IPReg made one minor alteration to Rule 8. Rule 8 deals with the appeals mechanism and has been altered to clarify that an appeal by a candidate against a decision of an Examination Agency must be conducted in accordance with the appeal process of that agency. This is in order to make clear the distinction between the examination agencies' appeal processes and those of IPReg, the Patent Regulation Board (PRB), the Trade Mark Regulation Board (TRB) or the Registrar, which are defined under IPReg's Administration Appeals Regulations.
14. Copies of the final rules agreed with IPReg are attached.
15. We are satisfied that, having considered the application in the context of Schedule 4 sub paragraph 25(3) criteria, we have no grounds for refusing the application made in relation to IPReg's Disciplinary Procedure Rules.

## Chronology

- The LSB confirmed receipt of an application from IPReg on 1 April 2011 for changes to IPReg's Examination and Admission Rules.
- The 28 day initial decision period for considering the application was extended to 31 May 2011 on 28 April 2011 and to 29 June 2011 on 26 May 2011 to allow time for IPReg and LSB to agree whether there should be further amendments to the rules.
- This Decision Notice will be issued to IPReg on 14 June 2011.
- This Decision Notice will be published on the LSB's website on 16 June 2011.

A handwritten signature in black ink, appearing to read "Chris Kenny", with a horizontal line extending to the right and a vertical line dropping down from the end of the horizontal line.

**Chris Kenny, Chief Executive**  
**Acting under delegated authority granted by the Board of the Legal Services Board**  
**14 June 2011**

## Rules for the Examination and Admission of Individuals to the Registers of Patent and Trade Mark Attorneys [May 2011]

**Pursuant to Sections 185 and 184 respectively of the Legal Services Act 2007, 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 IP Regulation Board, now make the following rules pursuant to Regulations 4 and 5 of the Patent and Trade Mark Attorney Qualification and Registration Regulations [2009].**

### **1 Commencement**

- 1.1 These Rules came into force on [1 Sep 2011] and may be referred to with the short title: "Examination and Admission Rules 2011" (hereafter referred to as the Rules).
- 1.2 These Rules supersede all previous rules relating to the examination and admission of individuals to the Registers of Patent and Trade Mark Attorneys except as provided in Rule 8 below.
- 1.3 Nothing in these Rules is intended to vary, or shall have the effect of varying, the provision for recognition of European professional qualifications in accordance with European Communities (Recognition of Professional Qualifications) Regulations 2007 (SI 2007 No. 2781), as may be amended from time to time, concerning applications for admission to the Registers of Patent and Trade Mark Attorneys.

### **2 Interpretation**

- 2.1 In these Rules, unless the context otherwise requires:
- "2009 Regulations" means the Patent & Trade Mark Attorney Qualification and Registration Regulations 2009, and references to "2009 Regulation" are construed accordingly;
- "CIPA" means the Chartered Institute of Patent Attorneys;
- "ITMA" means the Institute of Trade Mark Attorneys;
- "PRB" means the Patent Regulation Board of CIPA;
- "1991 Regulations" means the Regulations for the Examinations of Patent Agents & Trade Mark Agents 1991 as amended and including, but not limited to, the June 2010 Transitional Provisions of the JEB;
- "TRB" means the Trade Mark Regulation Board of ITMA;
- "IPREG" means PRB and TRB working jointly together as the IP Regulation Board;

“JEB” means the Joint Examination Board representing CIPA and ITMA as constituted in September 2007;

“patent attorney register” means the register kept under section 275 of the Copyright Designs and Patents Act 1988 as amended by Section 185 of the Legal Services Act 2007;

“trade mark attorney register” means the register kept under section 83 of the Trade Marks Act 1994 as amended by Section 184 of the Legal Services Act 2007;

“the Registers” means the “patent attorney register” and the “trade mark attorney register”;

“Registrar” means a person appointed in accordance with the 2009 Regulations to maintain the patent attorney register or the trade mark attorney register.

### **3 Qualifying Examinations and Examination Agencies**

- 3.1 For the purposes of 2009 Regulation 4.2(b) and 4.3(b) (and subject to Rule 9 below) in relation to the admission of an individual to the patent attorney register or the trade mark attorney register, respectively, Qualifying Examinations consisting of Foundation level and Final level examinations (including any qualifying course which may be required in connection therewith) shall be those which:
- (a) are managed and controlled by an Examination Agency; and
  - (b) have been determined by PRB and TRB (separately or together as IPReg) pursuant to 2009 Regulation 5.2 on the application of the relevant Examination Agency as meeting the requisite overall standard and general content.
- 3.2 An Examination Agency may be empowered and accredited as such for the management and control of either or both Foundation and Final level examinations pursuant to 2009 Regulation 5.1 and Rule 3.1 above.
- 3.3 The agencies empowered and accredited as Examination Agencies for the management and control of either or both Foundation and Final level examinations pursuant to 2009 Regulation 5.1 and Rule 3.1 above shall be those set out in Schedule 1 to these Rules subject to any amendment which may be issued from time to time.
- 3.4 Each Examination Agency shall publish in advance details of its Qualifying Examinations and any required qualifying courses including details of the syllabus, time and place and conduct of, the Qualifying Examinations and shall supply these details to IPREG for publication on the IPREG website.
- 3.5 A candidate applying to sit a Qualifying Examination (or any part thereof) shall provide the relevant Examination Agency with contact details including his or her full name and address (permanent or for correspondence) and satisfactory proof of his or her academic qualifications and, where applicable, a copy of any confirmation of any deemed pass issued under Rule 7

below, and such other pertinent information as the Examination Agency or the Registrar may require.

- 3.6 The Registrar may require a copy of any information supplied in connection with an application made under Rule 3.5 above.
- 3.7 Examination Agencies shall ordinarily hold Qualifying Examinations at least once annually.

#### **4 Requirements for Academic Qualification**

- 4.1 For the purposes of 2009 Regulation 4.2(a) and 4.3(a) (and subject to Rule 9 hereafter) the “necessary academic qualifications” shall be those set out in Schedule 2 to these Rules.

#### **5 Recognition of European Professional Qualifications**

- 5.1 Any application in accordance with 2009 Regulation 4.4 for consideration by the PRB or TRB of recognition of a European professional qualification shall be made in writing to the relevant Registrar giving such detailed information as may be required.

#### **6 Persons with Substantial Experience**

- 6.1 For the purpose of 2009 Regulation 4.2 (c) and 4.3 (c) “substantial experience” shall ordinarily mean the period ending immediately before the application for admission to one or both of the Registers.
- 6.2 The Registrar may require such evidence in whatever form the Registrar considers appropriate and reasonable of “substantial experience” and before exercising any discretion in determining when the period of “substantial experience” in Rule 6.1 ends.

#### **7 Exemptions and Deemed Passes**

- 7.1 With the agreement of PRB and/or TRB, an Examination Agency may establish a provision under which an individual is exempt from sitting or is deemed to have passed one or more of its Qualifying Examinations or a part thereof as a result of passing another relevant examination as stipulated in Schedule 3 to these Rules.
- 7.2 Details of any provision made under Rule 7.1 above shall be supplied to IPREG for publication on the IPREG website.

- 7.3 Any amendments to Schedule 3 which may be made from time to time will be subject to sufficient advance notice so that intending candidates for a Qualifying Examination already on a course affected by such amendment can complete such course or pursue an alternative course.

## **8 Appeals**

- 8.1 Any appeal by a candidate against a decision of an Examination Agency (including an appeal relating to marks awarded in an examination carried out by such an Agency) shall be conducted by the Examination Agency in accordance with the appeal processes of such Agency.
- 8.2 Any appeal against any decision of IPReg, PRB, TRB or the Registrar under these Rules shall be submitted to IPREG within one month of the date of such decision and will be conducted in accordance with the IPREG Administrative Appeal Regulations.<sup>2</sup>

## **9 Transitional Provisions**

- 9.1 In relation to 2009 Regulation 4 PRB, working together with TRB as IPREG, hereby recognises the courses and examinations conducted under the 1991 Regulations and the course and examination approved by CIPA and known as the Advanced Training for Qualifying Examination P6, provided by Queen Mary, University of London.
- 9.2 In relation to 2009 Regulation 4 TRB, working together with PRB as IPREG, hereby recognises the courses and examinations conducted under the 1991 Regulations and the course and examination approved by ITMA and known as the Registered Trade Mark Attorney Intensive Qualification Course, provided by Nottingham Trent University.
- 9.3 Pursuant to Rule 9.1 and 9.2 hereof, the exemptions and deemed passes available under the examinations conducted under the 1991 Regulations shall continue to be available until further notice.
- 9.4 No further amendment or addition to the 1991 Regulations recognised in this Rule 9 will be permitted except with the consent of PRB and/or TRB as appropriate.

## **10 Schedules and Power to Amend**

- 10.1 The Schedules below form part of these Rules and may be amended from time to time as necessary by the Registrar and without the need to seek re-approval of the Rules but the Registrar

---

<sup>2</sup> LSB have pointed out that the IPReg regs do not refer to decisions of Examination Agencies. On reflection should IPReg be the appellant body for the decisions of the examination agencies – hence the redrafted 8.1?



will notify CIPA and ITMA in advance of enactment of any changes to any Schedule and will publish details of such changes on the IPREG website.

## Schedule 1

### Examination Agencies

At the date of commencement of these Rules the following are designated as Examination Agencies for the provision of one or both levels of Qualifying Examination in accordance with Rule 3.1 hereof:

Name of Examination Agency	Qualifying Examination(s)
Bournemouth University	Foundation level
Brunel University	Foundation level
the Joint Examination Board (JEB)	Foundation and Final level
Nottingham Law School Limited, Nottingham Trent University	Foundation and Final level (for trade mark attorney qualification only)
Queen Mary, University of London	Foundation level
University of Manchester	Foundation level

subject to any deletions or additions from time to time made pursuant to Rule 10 of these Rules.

---

## Schedule 2

### Necessary Academic Qualifications

Necessary academic qualifications are:

- a a degree conferred by a University or Higher Education Institution in the United Kingdom (UK), or by the Open University Validation Service, or a licence awarded by the University College of Buckingham before that College was granted University status;
- b a degree conferred by the Council for National Academic Awards before 1992;
- c a pass in the Final Examination of the Law Society or the Law Society of Scotland or in the Bar Final Examination; or

- d any other qualification, whether obtained in the UK or elsewhere, which the Examination Agency concerned will accept as providing a suitable basis for entry into the patent or trade mark professions; and subject to any deletions or additions from time to time made pursuant to Rule 10 of these Rules.

## Schedule 3

**Exemptions and Deemed Passes**

Examination Agencies may provide for the following examinations or qualifications to be deemed equivalent to some of the requirements of part of their Qualifying Examinations. As a result individuals with these qualifications or having passed these examinations may be exempt from, or deemed to have passed, some of the Qualifying Examinations as published by the relevant Agency and detailed on the IPREG website.

<b>Qualification/Examination</b>
Law Degree (note 1)
Law Degree with an assessed IP option covering UK Intellectual Property Law (note 2)
Law Society or Law Society of Scotland Final Examination
Bar Final Examination
Queen Mary, University of London Certificate in Intellectual Property
University of Manchester Diploma/LLM in Intellectual Property
Bournemouth University Postgraduate Certificate/Postgraduate Diploma/LLM in Intellectual Property
Brunel University Postgraduate Certificate in Intellectual Property Law
European Qualifying Examination for European Patent Attorneys

Note1. A law degree awarded by a UK Higher Education Institution, or a law qualification recognised by the Law Society or the Law Society of Scotland for the purposes of practising as a solicitor in

England and Wales or in Scotland, respectively. Where a test in Common Law is required to secure such recognition, such a test shall have been taken and passed.

Note 2. IPREG reserves the right to review the content of any IP option put forward to satisfy itself that both the breadth and depth of the materials studied and any assessment adequately cover the syllabus and content of the Qualifying Courses.