

## The Patent Regulation Board and the Trade Mark Regulation Board

### Application for Approval: Proposed Examination and Admission Rules

#### Background

Admission to the patent and trade mark profession is regulated by the Patent Attorney and Trade Mark Attorney Qualification and Registration Regulations 2009 (**Annex 1**).

Regulation 5 provides that the Patent Regulation Board and the Trade Mark Regulation Board

- may empower and accredit examination agencies; and
- is responsible for determining entry requirements, overall standards to be attained in and the general content of qualifying examinations.

For patent attorneys, examinations are set by the Joint Examination Board. The Joint Examination Body was originally a joint committee of The Chartered Institute of Patent Attorneys (CIPA) and the Institute of Trade Mark Attorneys (ITMA).

The education and examination arrangements for trade mark attorneys are currently in a transition period. Whilst current students will take examinations set by the JEB, new students will take examinations (and corresponding courses) set by Queen Mary College London with Nottingham University providing one course. This new system was developed and approved by ITMA before 2010.

Both CIPA and ITMA are “listed bodies” in Paragraph 2 of Part 1 of Schedule 4 of the Legal Services Act 2007 it.

Notwithstanding Paragraph 2 of Part 1 of Schedule 4 of the Legal Services Act 2007 it is considered desirable for the arrangements which had been put in place by the CIPA and ITMA pre 1<sup>st</sup> January 2010 be expressly recognised.

The new rules also address:

- the current requirement that patent applicants hold a science or technical first degree;
- the requirement that the period of relevant practice (supervised or unsupervised) prior to admission ordinarily be immediately before the application for admission

#### Consultation

A copy of the consultation is attached (**Annex 2**). The consultation was sent to all ARs, to CIPA and ITMA and placed on the consultation section of the IPReg website.

The consultation was for a period of 3 months.

IPReg received 20 responses with comments on the draft Rules. Of these, 15 were from qualified members of CIPA; a total of 23 individuals signed these responses. One student member of CIPA sent a response. There was also one response from an individual employed by an industrial concern regularly using patent attorney services.

Further responses were received from the President of CIPA, the Chief Executive of ITMA (both as representative bodies for the intellectual property profession) and a representative of Queen Mary, University of London.

No comments were received from any of the other Approved Regulators constituted under the Legal Services Act, 2007.

## **Overview of comments**

Most replies expressed concern about the proposed addition of examination agencies, in particular academic bodies, to the list of providers of Qualifying Examinations.

As provided above, currently qualification for admission to the UK Patent Register is through Final examinations administered by the Joint Examination Board. Concerns were raised about consistency of standards if additional Examination Agencies were approved for this role in future. It was also doubted whether there was the market to sustain several Examination Agencies of the appropriate standard in view of the relatively low student numbers for a small profession. Concerns were also raised about the JEB's capacity to survive in a competitive environment with other Examination Agencies.

Several replies doubted the suitability of academic institutions to act as Examination Agencies at Final standard; only actual practitioners were considered suitable to properly examine the practical skills tested at advanced level before qualification.

A further concern was the perceived limited capacity of IPReg, as the regulator, to award Examination Agency status and to approve any Qualifying Examinations.

Some respondents also queried the removal of the requirement that candidate patent attorneys must have a science or technology-based degree. It was also noted that such a degree would remain a requirement for any individuals wishing to qualify as European Patent Attorneys (a title governed by a separate, non-UK qualification system).

Some further comments on points of detail were made and these can be seen in the full set of responses which are available on the IPReg website ([www.ipreg.org.uk](http://www.ipreg.org.uk)).

## **IPReg comments on matters raised by respondents**

In considering its response to the consultation, IPReg has been guided by the overriding objectives set out in the Legal Services Act 2007, namely to act in a manner which will encourage an independent, strong, diverse and effective legal profession. At the same time, its actions need to be proportionate, taking account of the relatively small size of the UK intellectual property profession.

IPReg is aware of its regulatory duty to the public to ensure that all registered patent and trade mark attorneys are properly qualified and continue to meet the high standards necessary to provide appropriate professional advice to their clients. However, it does not accept that only intellectual property practitioners are able to provide and administer the advanced level examinations needed for admission to the Registers. Further, maintaining a monopoly supplier arrangement operated by the profession may be seen to be against the public interest by potentially restricting entry and lacking the necessary independence.

Nevertheless, IPReg decided to amend Schedule 1 in its revised Rules to reflect the "status quo" in terms of existing approved agencies and the scope of such approvals in connection with Foundation Level and Final Level Qualifying Examinations. However, IPReg (and/or the PRB or TRB, as appropriate) will consider new applications for approval of Examination Agencies to provide one or both Levels of Qualifying Examinations as they arise.

IPReg will continue to consult with both CIPA and ITMA (as required by the 2009 Qualification Regulations) when exercising its powers to manage and control the qualifying examination and admission systems, and to approve and regulate Examination Agencies. In this context IPReg will consider adopting as its preferred model a single set of qualifying examinations, to ensure consistency and standardisation of approach, such examinations to be administered by any Examination Agencies. It will also seek expert external assistance and advice when appropriate to inform its decision-making and supplement its internal resources.

IPReg considers that an important part of the overall attorney qualification system is and should remain the requirement for at least 2 years supervised (or 4 years unsupervised) full-time practice in intellectual property matters before candidates are admitted to the Registers. This requirement is designed to ensure the requisite level of technical competency and to give entrants exposure to the specialised practical skills which are central to success in this professional field. During this practice period, IPReg will require that adequate records are kept. IPReg will also encourage practicing professionals to have an active involvement in training to maintain proper standards and pass on their expertise.

IPReg considers that there is a general public interest in ensuring fair and open access to the professions. Thus, it has concluded that it would be inappropriate to limit the scope of applicants by preventing a holder of a non-technical degree from sitting Qualifying Examinations to become a UK Patent attorney. It is recognised that the likely number of such candidates may be small, but they should not be excluded from the possibility of demonstrating the necessary technical skills to pass the Qualifying Examinations. IPReg will welcome applications from commercial providers who could offer such candidates a basic course in such skills.

IPReg has revised its proposed Rules in further respects to reflect some points of detail raised in the responses to this consultation.

### **New Rules**

A copy of the proposed rules as amended is attached (**Annex 3**). As these are entirely new there is no earlier document against which a comparison could be provided.

In view of the relatively large numbers of responses to the consultation a formal response has been drafted and is attached. This will be published on the website once this application has been submitted (**Annex 4**).