

**IN THE MATTER OF THE INTELLECTUAL PROPERTY REGULATION BOARD JOINT  
DISCIPLINARY PANEL**

**THE PATENT REGULATION BOARD**

**APPLICANT**

**AND**

**NIGEL SAMUEL BROOKS**

**RESPONDENT**

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**JUDGMENT OF THE DISCIPLINARY BOARD**

**Dated: 9<sup>th</sup> September 2013**

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1. As a result of proceedings brought by the Patent Regulation Board against the Respondent, Mr Nigel Samuel Brooks, a meeting was convened of a Disciplinary Board on 9<sup>th</sup> September 2013 to consider the charge brought against the Respondent.
2. At that meeting the Board was presented with the Statement of Case and supporting evidence pursuant to Rule 10.1(a) of the Patent Regulation Board and The Trade Mark Regulation Board Disciplinary Procedure Rules. The Board was also provided with an Agreed Summary of Facts and a letter of mitigation provided by the solicitors acting for the Respondent. Further to these documents, the Board was provided with a paper entitled "Regulatory Settlement Agreement", which was unsigned but which appears to represent elements of an agreement between the Patent Regulation Board and the Respondent.

3. Having considered the legal advice provided by the Legal Advisor to the Board, the Board concludes that, as the charge brought by the Patent Regulation Board remained extant and had not been withdrawn by the Patent Regulation Board, this latter document did not bind the Board, but was a matter which should be taken into account.
4. The brief facts of the allegation are that the Respondent, a Chartered Patent Agent since 1980, failed to put in place a formal complaints procedure as was required of him under Rule 12 of the Rules of Conduct for Patent Attorneys, Trade Mark Attorneys and other Regulated Persons. This failure came to light as a result of a complaint made to the Patent Regulation Board initially by a former client of the Respondent which was taken up by the Patent Regulation Board.
5. The Agreed Summary of Facts, which is attached hereto, sets out in greater detail the events leading up to the bringing of proceedings and the convening of the Board. It has been made clear by both the Patent Regulation Board and those representing the Respondent that the charge against the Respondent was not challenged, and that the breach of the Regulations was accepted by him. Neither party elected to appear before the Board at its meeting, and both parties have indicated that they are content for the Board to reach a determination based upon the documents alone.

## **FINDINGS**

6. The Board finds the charge as set out in the Statement of Case to be proved. The facts of the case are agreed between the parties in the Agreed Summary of Facts appended to this decision and there is no dispute as to their accuracy. The Respondent has admitted that he failed to have an established procedure for dealing with complaints between 1 January 2010 and March 2012 and the Board finds that

he thereby acted in breach of Rule 12 of the Rules of Conduct for Patent Attorneys, Trade Mark Attorneys and other Regulated Persons.

## **MITIGATION**

7. In the course of its meeting the Board confirmed with the representatives of the Respondent that the letter submitted on behalf of the Respondent represented all of the mitigation which was to be advanced on his behalf. The Board notes the Respondent's statement that this is the first complaint he has received in more than 25 years of practice and that he is to provide a written apology to his lay client. The Board further notes that he has agreed to fully implement a complaints procedure compliant with the requirements of, and having regard to the guidance of, Rule 12 of the Rules of Conduct.
  
8. Whilst an apology goes some way towards acknowledging the breach of Rule 12, the Board concludes that the Respondent knew or ought to have known of his professional obligations with regard to a complaints procedure and ignored those obligations in his dealings with a client.

## **SANCTIONS**

9. The Board takes into account the proposed settlement agreement between the Patent Regulation Board the Respondent. The Board largely endorses this proposal, which includes the apology and a commitment to implement a complaints procedure. However, the Respondent's behaviour breached his professional obligations over a long period of time in a significant way and the Board therefore also imposes a fine in the sum of £500, to reflect the serious nature of this breach.

## **COSTS**

10. The Board notes that the Patent Regulation Board does not seek costs from the Respondent. The Board finds this surprising but accordingly makes no Order as to Costs.

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**REGULATORY SETTLEMENT AGREEMENT**

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Upon the parties agreeing the summary statement of facts at Annex A to this Regulatory Settlement Agreement and the Joint Disciplinary Panel having approved the summary statement of facts at Annex A it is Ordered by agreement and with the consent of the Joint Disciplinary Panel that: -

- (1) The Respondent shall by 5 September 2013 prepare and send to Mr A an apology in writing for the inappropriate tone and content of his correspondence to Mr A;
- (2) The Respondent shall by 5 September 2013 fully implement a complaints procedure compliant with the requirements of, and having regard to the guidance of, Rule 12 of the Code of Conduct for Patent Attorneys.
- (3) There be no Order as to Costs.

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JAMES RAMSDEN  
COUNSEL FOR IPREG

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CHARLES APTHORP  
COUNSEL FOR RESPONDENT

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**AGREED SUMMARY OF FACTS**

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**Professional Details**

1. The Respondent, Mr Brooks, was first registered as a Patent Attorney on or about 3 September 1980. His professional address is Hill Hampton, East Meon, Petersfield, Hampshire, GU32 1QN. The agreed facts occurred over a period including two events:
  - 1.1. Incorporation of Mr Brooks' practice. At all times, he was the sole, fully-qualified, responsible practitioner; and
  - 1.2. Coming into operation of the IPReg's regulatory regime.

**Summary of the facts**

2. In early January 2008, Mr A, the Respondent's client, an inventor of a product, instructed Mr Brooks in matters relating to his invention. Mr Brooks was initially instructed by Mr A to apply for a UK patent and to make a provisional patent application in the US.
3. Mr Brooks provided a quote for an international application which was duly filed. In his reporting letter, Mr Brooks set out the due dates for:
  - 3.1. The (optional) International Preliminary Examination; and
  - 3.2. The (non-optional) entry into the national and regional phases at the 30 month date of 17<sup>th</sup> July 2010.

The letter anticipated that reminder letters ("the Reminder Letters") would be sent.

Mr Brooks provided advice to Mr A to limit the application to the UK, and Mr A confirmed he required international protection. The applications were completed in accordance with Mr A's instructions.

4. In about November 2009, Mr A developed another product and agreed with Mr Brooks that a patent application should be made for this product.
5. In about March 2010, Mr A moved address, and advised Mr Brooks of his new contact details via email, and set up a re-direction service. Notwithstanding this, Mr A continued to receive mail from Mr Brooks which had been incorrectly sent to his previous address.
6. On or about 15 July 2010, Mr Brooks sought instructions from Mr A as to whether he still wished to proceed with the international phase of his first patent application. He advised him of the need for urgent action in entering the national and regional phases, by the 30 month due date of 17<sup>th</sup> July. In all the circumstances, including the nature of Mr A's business, and the nature of the invention, Mr Brooks advised that limited geographical protection be sought. However, Mr A asked for broad geographical protection.
7. Mr A was surprised by Mr Brooks' request for what were then urgent instructions within 2 days and was particularly concerned because he had not been reminded of this next phase in sufficient time to consider the position properly and to ensure that he had the necessary funds in place. Mr A submitted he had not received correspondence from Mr Brooks, by way of reminder letters or notifications regarding entry into the national and regional phases. Mr A was concerned to ensure that the international protection did not lapse.
8. Mr Brooks accepted that the Reminder Letters appeared to have not been sent and/or had gone awry.
9. It was Mr Brooks' practice to seek a sum equal to the likely disbursements to be paid on account at this stage of an international patent application. These equated to a five figure sum and approximately two thirds of the total cost. In recognition of the Reminders Letters going awry Mr Brooks agreed to proceed with the national and regional phases without monies on account and agreed with Mr A a payment plan for costs associated with the various international applications. Mr Brooks informed Mr A that the costs agreed were only estimates.
10. Mr A was unable to maintain his payments in accordance with the payment plan.
11. On 7 February 2011, Mr A returned a signed copy of Mr Brooks' terms of business. These terms of business do not contain any reference to the Legal Ombudsman.
12. A further payment plan was agreed with Mr A on 25 July 2011. Mr A was again, unable to maintain the payments in accordance with this plan. In about February 2012, Mr Brooks issued proceedings in Scotland to seek recovery of outstanding fees from Mr A.
13. Prior to February 2011 Mr Brooks did not provide Mr A with details of his complaints procedure.

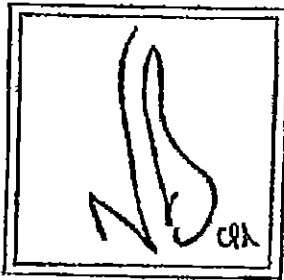
14. Prior to March 2012, Mr Brooks did not provide Mr A with information to enable Mr A to identify whether he had a right to complain to the Legal Ombudsman.
15. On 15 February 2012, Mr A wrote a formal letter of complaint to Mr Brooks. In his letter, Mr A said he had discovered that registered individuals are obliged to respond to complaints raised with them. Mr A set out a number of areas of complaint, and referred Mr Brooks to the requirement to provide him with details of his complaints procedure. Mr A stated he was not aware whether Mr Brooks had a complaints procedure.
16. Further, Mr A told Mr Brooks that he would be happy to follow an appropriate formal complaints procedure if Mr Brooks could provide him with details within seven days of the receipt of his letter. Mr A said that he hoped the issues he had raised in his letter could be resolved, but if not, then his letter would form the basis of a complaint to IPReg and the Legal Ombudsman.
17. Subsequently, in or around February 2012, Mr A made a complaint to the Legal Ombudsman. In due course Mr Brooks was invited by the Ombudsman to provide details of letters sent notifying due dates.
18. On 24 February 2012, Mr Brooks sent Mr A a detailed response to his letter of complaint. Mr Brooks has submitted that this letter to Mr A was in accordance with his complaints procedure in his Terms of Business.
19. Mr Brooks' letter of 24 February 2012 to Mr A is **attached** to the Summary of facts at Appendix 1.
20. It has been suggested that this letter was inappropriate.
21. Subsequently, on 29 March 2012, Mr Brooks' Solicitors wrote to Mr A enclosing a copy of Mr Brooks' updated formal Complaints Procedure, dated March 2012. In the letter, Mr Brooks' Solicitors enquired whether Mr A wished to enter mediation with regard to his complaint, in accordance with the updated Complaints Procedure. By that letter Mr Brooks acknowledged, having recently been contacted by the Legal Ombudsman, that the existence of the formal complaint to a Regulator had effectively circumvented his Complaints Procedure. However he was still willing to engage in mediation to seek to resolve the matter, which included the proceedings underway in Scotland.
22. Mr A, by his Solicitors' letter of 4<sup>th</sup> April 2012 indicated that in principle he saw no difficulty in entering into a mediation on the condition that this did not interfere with investigations of his complaints already made to the Legal Ombudsman and IPReg.
23. On 9<sup>th</sup> May 2012 Mr Brooks' then solicitors responded, on the basis that Mr A appeared amenable to the suggestion of mediation, inviting Mr A to withdraw his complaint as it would benefit neither party if there was a conflicting decision and as a further condition that as the substance of Mr A's complaint related to an allegation of professional conduct that both parties were clear that this did not



impinge on the outstanding disbursements already paid out by Mr Brooks on behalf of Mr A.

24. On 16 May 2012, the Ombudsman advised that Mr A's complaint could not be considered by the Legal Ombudsman, because of the time which had elapsed since Mr A's "first date of reasonable awareness".
25. Following the Legal Ombudsman's decision Mr A's solicitors wrote on 31<sup>st</sup> May 2012 confirming that Mr A understood that IPReg were now in the process of investigating his complaint and that he would be prepared to commence mediation only on the basis that the complaint to IPReg continues.
26. Mr Brooks' solicitors responded on 1<sup>st</sup> June 2012 stating that they anticipated Mr Brooks would be amenable to still engage in mediation (effectively withdrawing the condition that the complaint must be withdrawn).
27. On 12<sup>th</sup> July 2012 Mr A's solicitors responded stating that he was not prepared to accept liability for the disbursements mentioned and he would therefore inform IPReg that he has been unable to resolve the matter informally.
28. On 20 July 2012, Mr A's solicitor sent a letter of complaint on his behalf to the Applicant.
29. On 24 September 2012, Mr Brooks' solicitors sent a letter to the Applicant responding to the complaint.
30. The entire complaint was referred to the Complaints Review Committee ("CRC"). On 1 November 2012, the CRC determined that there was a *prima facie* case for breaches of Rules of Conduct 4, 6 and 12. The CRC noted that Mr Brooks had sought to impose conditions on the resolution of the complaint under his complaints procedure.
31. Subsequently, Mr Brooks to assist the Applicant provided advanced disclosure of relevant documents which addressed part of the complaint raised by Mr A.
32. Mr Brooks accepts that he failed to notify Mr A of his written complaints procedure compliant with Rule 12 from January 2010 until February 2011.
33. Mr Brooks accepts he did not notify Mr A of his right to complain to the Legal Ombudsman, and did not provide Mr A with details of how to contact the Legal Ombudsman as required by Rule 12, from January 2010 until March 2012.
34. Mr Brooks accepts that the tone and content of his letter of 24<sup>th</sup> February 2012 was at least in part inappropriate.
35. Mr Brooks acted in breach of Rule 12. To remedy this, Mr Brooks is to fully implement a Complaints Procedure that complies with the requirements of and has regard to the guidance in Rule 12 of the Code. Mr Brooks has also apologised to Mr A for the inappropriate tone of his letter of 24<sup>th</sup> February 2012.

" A "



Intellectual Property: Patents, Trade Marks, Designs, Copyright

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Your Ref:

My Ref:

24 February, 2012

Dear Mr A

**Re: Formal Complaint**

I am shocked and horrified after the extent that I have extended credit to you in your difficult circumstances that you should be accusing me of professional misconduct.

I am not going to answer every point that you make, but have the following comments:

1. Please let me know if you do not accept any of:
  - 1.1. Our contract is now regulated by the terms and conditions on my website, please let me know;
  - 1.2. You owe me a substantial sum of the order of £20,000;
  - 1.3. I am entitled to register my security assignment of your patent rights into my name.
2. If it is an IPREG requirement for me to notify you of a complaints procedure, that requirement did not exist when I started acting for you, because IPREG did not exist.
3. Whoever suggested that I should have quoted for every piece of work that I have done for you is in cloud cuckoo land. I have no idea when I file a patent application what objections will be raised in the patent application process. Quotations are not possible and this goes with the territory. I do give a lot more information than many of my professional colleagues. Please see

\* Nigel Brooks Chartered Patent Agent is a trade mark and a trading name of Hill Hampton Limited, registered in England and Wales, Company No 06707229. The company accepts liability for advice given in this name and the Nigel Brooks CPA name.  
Director: NS Brooks MA CPA EIPA AMIMechE.  
Senior Technical Assistant: JA Boynton D Phil CPA; Junior Technical Assistant: JM Spencer MPhys MSc.

<http://www.nbpat.co.uk/patents/uk-patent-application-process/typical-costs-for-a-uk-patent/> and related pages.

4. My debit notes are not always perfect. They do however nowadays break the fees down into different fee earner rates, service charges and disbursements and provide a reasonable amount of legend. No-one, but no-one has made the objection that you make in my 30 years in practice. I think that you are being totally unreasonable in your expectations.
5. I apologise if some mail was incorrectly addressed. Where there are many applications, getting everything to a new address is not always easy.
6. I am not aware of anything unusual about what you describe as a "Crisis on 15<sup>th</sup> July 2010". Many clients give instructions only at the last moment and meeting patent deadlines is extremely difficult at times. I send more reminders than some of my professional colleagues. I am not aware that any "wrongly addressed" reminders were returned here as "Gone Away".
7. There is no reason why I should have notified you of indemnity insurance. I have not been negligent. None of your applications have lapsed through my failure. You have no negligence claim against me nor my insurers whatsoever.
8. I am not going to challenge your detailed memory of events in July 2010. I am not in a position to since I very much doubt that I have the sort of contemporaneous notes that you seem to have kept. I have not looked at my emails in this connection.
9. I am simply surprised if I never pointed out to you that there are ongoing costs. This is made clear in the website page which I refer to at three above.
10. The varying practice in the EPO as regards date of issue of International Search Reports does make for considerable difficulties in make sure that applicants are aware of options in a timely and appropriate fashion. We try hard to accommodate all this. You may think not hard enough. Again I would say that very few clients have real complaints about this. Most simply appreciate that we are trying to provide a service in difficult circumstances to provide them with a useful business tool.
11. This is all I have ever done for you, Mr A. I do recall questioning my assistants about the number of countries that you were asking for patents and being told that you could not be dissuaded from applications that you have now given express instructions to abandon.
12. You make a specific allegation that the fees for the US provisional filing were unreasonable. They were not and you did instruct the filing.
13. Are you really surprised not to have received the most attentive service possible when you have consistently failed to meet promised payment schedules?? I know that you have had problems. Perhaps I am at fault for taking that into account in allowing you more and more time to pay. I have not exercised my right to take over your patents. I do not want to run a business. However, if you think that you can kick my efforts to help you in the teeth, you should take account of human nature, namely that I will have a sense of humour failure, register the assignment, if only to stop you running up more huge debts with some other mug. So get real Mr A, admit that you are in a mess and stop trying to bite the hand that has tried to help you. Yes, I am annoyed and have every reason to be so.

I am not however seeking to hold you over any barrel other than I need to try and get paid. £20,000 is £20,000.

14. Your point 8 is completely and utterly wrong. You have absolutely no justification for saying that standards of professional conduct do not apply to me. Nothing could be further from the truth. It is my guiding principle to give the best service to my clients that I possibly can. I do however, as everyone, have a sense of humour failure when I am not paid. I would repeat that knowing something of your personal circumstances I have been more patient than I might have been.
15. I find incredible your suggestion that my demands have been the cause of a downturn in your business. The reason is that you have not paid me. If you had been making regular payments I could accept that these had jeopardised other parts of the business. However you have made no significant inroads into the debt for many months. So your debt to me cannot have been the cause for you not to having been able to afford to develop the business. Put simply, I am not going to be the scapegoat for any lack of success of your business.

Mr A, it is for you to complain if you feel that you have reasonable grounds. You do not. I have done my best to protect your inventions and carry out your instructions to protect them internationally despite my misgivings at the wisdom of such extensive protection.

I have given you hugely long credit. I accept that there may have been an element of difficulty and misunderstanding. It goes with the field in which I practice. I am completely and honestly unaware of any unusual problems or failure of my practice in respect of your patent applications.

Complain, if you must. You will force me to defend myself, which I will have no difficulty in doing, because your allegations in their broad sweep – in particular that I have no thought for professional standards – are groundless.

In ending, I repeat that I am shocked and horrified after the extent that I have extended credit to you in your difficult circumstances that you should be accusing me of professional misconduct. The accusation is completely groundless.

Yours sincerely

NIGEL BROOKS



PS. As regards your application for legal aid, I have between withdrawing my debt recover action, because I think it is wrong to put the State to the expense, and thinking that you should not have the legal aid anyway, because when push came to shove the other day, you managed to come up with some cash to pay a renewal fee, albeit too little too late although I explained precisely what was required and when. The result was simply that you increased your indebtedness to me.