

**The Patent Regulation Board
and
The Trade Mark Regulation Board**

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 as the Intellectual Property Regulation Board (IPReg) now make the following provisions under:

- (i) section 275A of the Copyright Designs and Patents Act 1988;
- (ii) section 83A of the Trade Marks Act 1994; and
- (iii) Part 5 and Schedule 11 of the Legal Services Act 2007.

Rule 1 – Interpretation

In these Rules:

“ABS” means a licensable body as defined in section 72 of the 2007 Act;

“Administrator” means a person appointed in accordance with Rule 7.1;

“Appellant” means a person bringing an appeal under Rule 20;

“Case Manager” means a person appointed in accordance with Rule 9.10(e) or where Rule 9.10(f) applies, the Complainant;

“CIPA” means the Chartered Institute of Patent Attorneys;

“Complainant” means a person (natural or legal) making a Complaint, including:

- a) 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 2007 Act); and
- b) the Registrar, where IPReg submits a matter to the CRC under Rule 5.

“Complaint” means:

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

- b) a complaint, including by IPReg under Rule 5.3, alleging a breach by a Regulated Person of IPReg's Regulatory Arrangements, including but not limited to a breach of the Rules of Conduct or a term or condition of a Registered Person's registration; or
- c) a complaint involving any combination of a) and b) above.

"Complaint Review Committee" or "CRC" means the body appointed pursuant to Rule 6;

"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;

"Disqualification Review Committee" or "DRC" means the body appointed pursuant to Rule 17.3;

"Disciplinary Undertaking" means an arrangement where:

- a) the Regulated Person gives an undertaking to do (or cease doing) anything specified in the undertaking; and
- b) breach of the undertaking is liable to result in the imposition of one or more other disciplinary sanctions;

"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;

"HoFA" means a Head of Finance and Administration within the meaning of Paragraph 13(2) of Schedule 11 to the 2007 Act;

"HoLP" means a Head of Legal Practice within the meaning of Paragraph 11(2) of Schedule 11 to the 2007 Act;

"The Institutes" means ITMA and CIPA, and "Institute" should be construed accordingly;

"IPReg" means the Patent Regulation Board of CIPA and the Trade Mark Regulation Board of ITMA working jointly 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 section 207 of the 2007 Act;

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

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

“Patent Attorney Litigator” means a registered patent attorney authorised by IPReg to conduct litigation and/or exercise rights of audience, “authorised” having the meaning given to it in section 18 of the 2007 Act;

“Patent Attorney Register” means (together) in respect of Registered Persons other than ABS, the Register kept under section 275 of the Copyright Designs and Patents Act 1988 as amended and in respect of ABS, is part of IPReg’s register of licensed bodies for the purpose of section 87 of the 2007 Act;

“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 an ABS, entered in the Patent Attorney Register; or
- b) a Regulated Person regulated by IPReg by virtue of that person’s relationship with a Registered Person entered in the Patent Attorney Register;

“the Professional Principles” are those set out in section 1(3) of the 2007 Act;

“the Register” means the combined register kept by IPReg comprising, as sub-registers, the Patent Attorney Register and the Trade Mark Attorney Register;

“Registered Body” means a body (corporate or unincorporated), including an ABS, within the meaning of a Registered Body in the IPReg Registered Bodies Regulations;

“Registered Person” means:

- a) a registered patent attorney;
- b) a registered Trade mark attorney; or
- c) a Registered Body;

and “registration” and “registered” shall be construed accordingly;

“Registrar” means the person who has been appointed by IPReg on behalf of CIPA and ITMA to maintain the Register;

“Regulated Person” means a person who at the time of the act or omission giving rise to a Complaint is a Registered Person, or an employee or a Manager of a Registered Person, and includes HoLP and HoFA of a Registered Person;

“Regulatory Arrangements” has the meaning given to it by section 21 of the 2007 Act;

“the Regulatory Objectives” are those set out in section 1 of the 2007 Act;

“Respondent” means any person against whom a Complaint is made;

“Trade Mark Attorney Register” means (together) in respect of Registered Persons other than ABS, the Register kept under section 83 of the Trade Marks Act 1994 as amended and in respect of ABS, is part of IPReg’s register of licensed bodies for the purpose of section 87 of the 2007 Act;

“the Rules of Conduct” means IPReg’s Rules of Conduct for patent attorneys, trade mark attorneys and other Regulated Persons and the Special Rules of Professional Conduct applicable to Regulated Persons conducting litigation or exercising a right of audience before the Courts adopted from time to time by the IPReg Board;

“Statement of Case” means a formal charge detailing particulars of the Complaint including details of the alleged breaches of the Rules of Conduct, any terms or conditions of registration or any other rules or obligations, and the legal and factual reasons which are considered to lead to the conclusion that any alleged breaches have occurred;

“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 an ABS, entered in the Trade Mark Attorney Register; or
- b) a Regulated Person regulated by IPReg by virtue of that person’s relationship with a Registered Person entered in the Trade Mark Attorney Register;

“Trade Mark and Design Litigator” means a registered trade mark attorney authorised by IPReg to conduct litigation and/or exercise rights of audience, “authorised” having the meaning given to it in section 18 of the 2007 Act;

“UKIPO” means the United Kingdom Intellectual Property Office; and

“the 2007 Act” means the Legal Services Act 2007.

Rule 2 – Jurisdiction

2.1 These Rules apply to Complaints relating to any aspect of the conduct of a Regulated Person except to the extent that any matter is within the exclusive jurisdiction of the Legal Ombudsman.

Rule 3 – Administration

3.1 IPReg shall provide such administrative and other support services to the JDP and the Disciplinary Boards as necessary in a timely and proportionate manner.

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

- a) the submission of Complaints and other pleadings, evidence or materials;
- b) the determination of a *prima facie* case;

- c) the giving of directions for the handling, management, hearing and determination of Complaints;
- d) the provision of advice to the JDP and Disciplinary Boards;
- e) the drawing up of decisions and orders and their transmission to the Parties, the Institutes and the Registrar, and any other interested persons;
- f) the assessment and award of costs pursuant to any power granted under these Rules; and
- g) the publication and enforcement of decisions.

Rule 4 – The Joint Disciplinary Panel

- 4.1 IPReg shall set up a Joint Disciplinary Panel consisting of at least three attorney members from each Institute and at least three lay members. None of the JDP members shall be sitting members of the Board of IPReg or the Council 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 IPReg on behalf of the Institutes in accordance with open and competitive procedures agreed 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 IPReg using the “Nolan” Principles of Public Life.
- 4.4 Appointees to the JDP under these Rules shall retire after they have heard 3 cases or at the end of 3 years whichever is the later. The term of any appointment made before the commencement of these rules shall be determined in accordance with the disciplinary procedure rules in place at the time of the appointment.
- 4.5 The JDP shall appoint one of the lay members to be its chair. The chair shall hold the office for a period of 3 years and shall have an additional casting vote in the event of any tied vote.
- 4.6 A meeting of the JDP shall be quorate provided that at least one lay member, one CIPA attorney member and one ITMA attorney member must be present.
- 4.7 If at any time there is a shortfall in the requisite membership of the JDP, IPReg may, in consultation with CIPA, ITMA and the chair of the JDP, appoint temporary members to fill the vacancy or vacancies, the maximum term of any temporary appointment being the balance of the term of the position lying vacant.

- 4.8 IPReg may, at the request of the JDP or a Disciplinary Board, co-opt members to a Disciplinary Board.
- 4.9 Lay members co-opted in accordance with Rule 4.8 shall be persons whose suitability for public appointment has previously been recognised by another public body.

Rule 5 – IPReg investigations and complaints

- 5.1 IPReg may, at any time and in its complete discretion, carry out an investigation into the practice and conduct of a Regulated Person in order to determine whether that person should be the subject of a Complaint under Rule 5.3.
- 5.2 IPReg may require a Regulated Person to provide it with such information or explanation as IPReg considers appropriate for the purpose of its investigation under Rule 5.1. For the avoidance of doubt, the failure by a Regulated Person to comply, or fully comply, with a request by IPReg under Rule 19 of the Rules of Conduct for the said information or explanation may in itself form the basis of a Complaint under Rule 5.3.
- 5.3 IPReg may initiate a Complaint where it considers that, based on the information available to it, a Regulated Person may have breached any provisions in IPReg's Regulatory Arrangements, including but not limited to any requirements in the Rules of Conduct or any terms or conditions of a registration.
- 5.4 Where the outcome of an investigation is a Disciplinary Undertaking the costs incurred by IPReg in undertaking the investigation will be paid by the Regulated Person and such costs will be:
 - a) limited to the external third party costs incurred by IPReg; and
 - b) due within the time prescribed for payment as set out in the Disciplinary Undertaking.

Rule 6 – The Complaint Review Committee

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

Rule 7 – Procedure on receipt of complaints

- 7.1 Upon receipt of a Complaint, or initiation of a complaint under Rule 5, IPReg shall appoint an Administrator to handle that Complaint.
- 7.2 Except where Rule 5 applies, the Administrator shall determine whether the Complaint complies with any formalities or other requirements specified by IPReg

pursuant to Rule 3.2(a). If the Complaint does not comply with the applicable formalities or other requirements, the Administrator shall inform the Complainant accordingly and invite the Complainant to remedy the identified deficiencies within a period of 14 days. The Administrator may extend the said time limit if the Complainant provides the Administrator with good reasons for the extension. Save in exceptional circumstances, no more than one extension shall be given. If the deficiencies are not remedied before the expiry of the time limit (including any extension), IPReg shall reject the Complaint without reference to the CRC.

7.3 If the Complaint is found to comply with the formalities or other requirements specified in Rule 7.1, or if the Complaint was made under Rule 5, the Administrator shall:

- a) send a copy of the Complaint to the Respondent informing them that the matter is to be reviewed by the CRC and inviting them 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 8 and 9; and
- b) confirm to the Complainant that the Respondent has been sent a copy of the Complaint and has been invited to file observations and that the matter will be reviewed by the CRC.

7.4 A copy of any observations filed by the Respondent shall be sent to the Complainant for information. Unless the Respondent provides the Administrator with good reasons for extending the period for response under Rule 7.3(a) and the Administrator 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 said period shall be permitted.

Rule 8 – Initial processing by the Complaint Review Committee

8.1 After the end of the period for filing observations referred to in Rules 7.3(a) and 7.4, the CRC shall review the Complaint and any observations received from the Respondent to determine whether the Complaint is admissible.

8.2 A Complaint shall be considered admissible if:

- a) it is received in time (see Rule 8.3); and
- b) the subject matter of the Complaint falls within IPReg's jurisdiction (see Rule 8.5).

8.3 A Complaint is to be treated as received in time if:

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

- i. the matters giving rise to the Complaint occurred; or
 - ii. the Complainant first became aware that they had grounds for complaint;
or
 - b) it relates to matters not falling within the period set out in 8.3(a) above and the Complainant provides sufficient reasons why the Complaint could not have been brought earlier.
- 8.4 If a Complaint is received outside the period set out in Rule 8.3(a) 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.
- 8.5 The subject matter of a Complaint falls within IPReg's jurisdiction if it raises issues as to the professional conduct or practice of a Regulated Person.
- 8.6 If the Complaint is not admissible within the meaning of Rule 8.2(b) and 8.5, 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 Legal Ombudsman.
- 8.7 If a Complaint is admissible and concerns the acts or omissions of a Regulated Person who is acting in their capacity as:
- a) a recognised sole practitioner regulated by the Solicitors Regulation Authority;
 - b) a self-employed barrister regulated by the Bar Standards Board; or
 - c) a manager or employee of a body or other 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 its investigation of the Complaint.
- 8.8 If a Complaint is admissible and concerns a Regulated Person who is regulated by another professional regulator and Rule 8.7 does not apply, the CRC may suspend its investigation of the Complaint if the CRC considers that the Complaint would be better dealt with by the other regulator and either:
- a) a corresponding complaint is proceeding in front of the other regulator; or
 - b) the other regulator agrees to investigate the Complaint.
- 8.9 If a Complaint is admissible and concerns a matter in respect of which a complaint is being investigated by the Legal Ombudsman, IPReg may suspend its investigation of the Complaint.

- 8.10 If a Complaint is admissible and the Complaint either:
- a) is the subject of pending litigation between the Complainant and the Respondent; or
 - b) concerns the actions of a Respondent conducting litigation in their capacity as an authorised litigator;

the CRC may suspend the investigation of the Compliant but the CRC shall only suspended the investigation of the Complaint under this Rule if the CRC is satisfied neither the client nor the Respondent nor any opposing parties, nor the Court, will suffer any detriment if the client continues to be represented by the Respondent.

- 8.11 A Complaint suspended under one of Rules 8.7 to 8.10 above shall be resumed when the investigation by the other regulator or the Legal Ombudsman or the litigation (as applicable) has concluded.

- 8.12 The CRC shall take into account any determination of the case by any other regulator or the Legal Ombudsman or the outcome of any litigation under Rule 8.10(a) when:

- a) determining whether or not a Complaint discloses a *prima facie* case or whether or not processing a case further would be disproportionate or otherwise not in the public interest under rule 9.2; or
- b) determining whether or not a case is suitable for determination through the summary procedure under rule 9.5.

If the Complaint is referred to a Disciplinary Board, the result of the determination of the case by the other regulator or the Legal Ombudsman shall be included in the material submitted to the Disciplinary Board.

Rule 9 - Review and assessment of a *prima facie* case and summary proceedings

- 9.1 This Rule applies where a Complaint has been found to be admissible under Rule 8.2 and the investigation of the Complaint:

- a) has not been suspended; or
- b) has been resumed under Rule 8.11.

- 9.2 If a Complaint is found to be admissible, the CRC shall review the Complaint and any observations received from the Respondent to determine:

- a) whether the Complaint fails to disclose a *prima facie* case; and
- b) whether progressing the Complaint further would be disproportionate.

- 9.3 In determining whether progressing a Complaint further would be disproportionate the CRC shall:
- a) have regard to the public interest, the Rules of Conduct, the Regulatory Objectives and the Professional Principles; and
 - b) take account of all the circumstances of the case including, without limitation:
 - i) whether any alleged breach is of a purely technical or trivial nature;
 - ii) 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 or omissions;
 - iii) whether the Complaint calls into question the integrity or honesty of the Respondent;
 - iv) the Respondent's standard of care and conduct in the matter leading to the alleged breach;
 - v) whether the Respondent's handling of the matter, once drawn to their attention, was reasonable and what, if any, steps they have taken to terminate and prevent any repetition of the alleged breach;
 - vi) whether any material harm has been caused to the standing of the Respondent's profession;
 - vii) the past disciplinary record of the Respondent; and
 - viii) whether it is a case of doubt or difficulty or one which involves a matter of public interest.
- 9.4 If the CRC determines that a Complaint fails to disclose a *prima facie* case or that progressing the Complaint further would be disproportionate, the CRC shall issue a written decision rejecting the Complaint, and the Complainant and the Respondent shall be notified of that decision forthwith.
- 9.5 If the CRC determines that a Complaint discloses a *prima facie* case and that progressing the Complaint further would not be disproportionate, the CRC shall decide whether, in its opinion, the Complaint is suitable to be dealt with through the summary procedure.
- 9.6 A Complaint may be dealt with through the 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 9.9 would be sufficient to deal with the matter and further proceedings would be disproportionate and unnecessary. In deciding whether, in its opinion, a Complaint should be dealt with through the summary procedure, the CRC shall consider all the matters set out in Rule 9.3.

9.7 If having determined that the Complaint discloses a *prima facie* case and that progressing it further would not be disproportionate, the CRC is of the opinion that the Complaint would best be dealt with through the summary procedure, it shall notify the Respondent of that opinion and invite them to elect, by informing the CRC in writing within 14 days, whether:

- a) they wish the Complaint to be heard by a Disciplinary Board; or
- b) they accept that the Complaint may be dealt with through the summary procedure, without recourse to appeal;

and if they elect the summary procedure, to provide the CRC within the said time period with any further information they wish to be taken into account in determining whether to uphold the Complaint and/or in mitigation of any penalty if the Complaint is upheld.

9.8 The CRC may extend the period for providing further information under Rule 9.7 if the Respondent provides the CRC with good reasons for an extension. Save in exceptional circumstances, only a single extension of the period for providing information in mitigation shall be permitted. Copies of any communications under this Rule shall be sent to the Complainant for their information.

9.9 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, determine whether the Complaint is made out and, if it is:

- a) issue 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 any actions to be taken by the Respondent to avoid a repetition of the breach;
- b) send copies of the issued notice, warning or reprimand to the Respondent and the Complainant;
- c) inform the Registrar that a notice, warning or reprimand has been issued and require that this be noted against the entry, in the Patent Attorney Register and/or the Trade Mark Attorney Register, of the Respondent and/or of any Registered Person of whom the Respondent is an employee or manager (as applicable), for a period of:
 - i) 6 months in the case of a notice;
 - ii) 1 year in the case of a warning; and
 - iii) 3 years in the case of a reprimand; and
- d) make such order for payment of the Complainant's and/or IPReg's costs by the Respondent as the CRC considers appropriate and just, subject to such scales and limits as are published by IPReg from time to time. An order for costs under

this Rule may require the Respondent to pay all or part of IPReg's costs in investigating a matter under Rule 5.

9.10 If the CRC determines that there is a *prima facie* case, but that dealing with the Complaint through the summary procedure would not be appropriate or if a Respondent has elected, under Rule 9.7, for the Complaint to be heard by a Disciplinary Board:

- a) the CRC shall notify the Complainant and the JDP of that fact, and the JDP shall proceed promptly to appoint a Disciplinary Board;
- b) the CRC shall advise the JDP whether in the CRC's opinion the Complaint should be treated as a Patent Complaint, a Trade Mark Complaint or a General Complaint;
- c) subject to Rule 9.10(d), from the date of the CRC's determination under this Rule, the Registrar will become the Complainant if they are not already the Complainant pursuant to Rule 5;
- d) within 7 days of the notice given by the CRC under Rule 9.10(a), the original Complainant (other than IPReg) may, by informing the CRC in writing, elect to pursue the Complaint in their own name but if such election is made, the Registrar may require the Complaint to be brought in the joint names of the original Complainant and the Registrar;
- e) where a Complaint is then brought by the Registrar (either solely or in joint names), the Registrar will appoint a Case Manager to bring the Complaint to the JDP; and
- f) where Rule 9.10(e) above does not apply, references in the remainder of these Rules to a Case Manager shall mean the Complainant.

9.11 If the CRC is unable to reach a unanimous decision under Rule 9, the matter must be referred to a Disciplinary Board.

9.12 Any decisions made by the CRC under this Rule shall be final and neither a Complainant nor a Respondent may appeal against such a decision.

Rule 10 – Disciplinary Boards

10.1 Disciplinary Boards will be appointed by the Chair of the JDP in accordance with these Rules, and their members will be drawn from those of the JDP.

10.2 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, they shall appoint two lay members of the JDP to make that determination with them.

- 10.3 Each 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 their discretion or, at their option, by a vote of the JDP.
- 10.4 The members of each Disciplinary Board shall appoint one of their number as Chair. Decisions of a Disciplinary Board shall be taken by simple majority but if any one member is incapacitated or otherwise unable to vote, that member will be deemed to have abstained and the decision of the remaining two members must then be unanimous.
- 10.5 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 shall sit with the Disciplinary Board but shall not have a vote.

Rule 11 – Pre-Hearing steps

- 11.1 Within 28 days of the appointment of a Disciplinary Board, the Case Manager will:
- a) notify the Complainant and the Respondent of the commencement of the Disciplinary Board proceedings;
 - b) serve on the Respondent:
 - i) a Statement of Case; and
 - ii) the evidence (including any witness statements) on which the Case Manager intends to rely; and
 - c) invite the Respondent to file, within 28 days of the giving of the notice in Rule 11.1(a), any further evidence (including any witness statements) on which the Respondent intends to rely in their defence.
- 11.2 Unless Rule 9.10(f) applies, the Case Manager shall provide the original Complainant with a copy of the papers served on the Respondent and shall keep them informed of all subsequent developments.
- 11.3 Following the receipt of any further evidence from the Respondent under Rule 11.1(c), and in any event within 14 days of the expiry of the period referred to in the said Rule, the Case Manager will serve on the Respondent any further evidence strictly in reply.
- 11.4 As soon as possible after the end of the period referred to in Rule 11.3, or of any extension granted under Rule 11.5, IPReg shall appoint a date for the determination of the Complaint, to be held as soon as reasonably practicable.

- 11.5 The Chair of the Disciplinary Board may, at the request of either Party, grant an extension of time both for the filing of further evidence 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.
- 11.6 Notwithstanding the remainder of Rule 11, the Disciplinary Board may grant either Party leave to file further evidence at any time if it considers it fair and appropriate to do so.
- 11.7 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.
- 11.8 An oral hearing will take place only if a Party so requests in writing by no later than 28 days before the date appointed for the determination of the Complaint. Otherwise, the Disciplinary Board will convene on the appointed date and determine the Complaint on the basis of the papers and materials before it.
- 11.9 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.
- 11.10 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 12 – Miscellaneous procedural matters

- 12.1 Subject to the express provisions of these Rules, the 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.
- 12.2 The Disciplinary Board may give any directions that it considers necessary or appropriate for the determination of a Complaint before it, including directions about documentation, inspections, witness statements, skeleton arguments and the place or time of any hearing. In the interests of procedural economy and if it considers it proportionate to do so, the Disciplinary Board may delegate its power to give directions to one of its members.

- 12.3 The Disciplinary Board may, itself or on the application of any Party, make an order on such terms as it considers just:
- a) allowing the withdrawal of an application or allegation in respect of which a *prima facie* case has been determined;
 - b) adjourning any hearing listed for directions or for the substantive determination of the Complaint;
 - c) allowing the amendment of any application or allegation or the correction of any matter;
 - d) concerning the attendance of any witnesses at an oral hearing; and/or
 - e) making any directions which appear necessary or appropriate to secure the appropriate and timely determination of a matter.
- 12.4 IPReg may:
- a) refer any procedural matter in a particular case to the relevant Disciplinary Board for a decision or directions; and
 - b) in cases of doubt or uncertainty, ask the JDP to issue guidance or a ruling as to any general matter of procedure.
- 12.5 Any hearing under this Rule shall be held in public unless the exceptions in Rule 11.10 apply.
- 12.6 No Complaint which has been referred to the Disciplinary Board under Rule 9.10 may be withdrawn without the approval of the Disciplinary Board.

Rule 13 – Service of documents

- 13.1 Any Complaint or other document required to be served under these Rules shall be served:
- a) personally;
 - b) by sending the same 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
 - c) in such other manner as the Disciplinary Board may direct.
- 13.2 Any document served in accordance with paragraph 13.1(b) and (c) shall be deemed served on the second working day following the day on which it is delivered, posted or transmitted.
- 13.3 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 the Board

considers it reasonable to expect that the document has been received by or brought to the attention of the said person.

Rule 14 – Evidence

- 14.1 Unless otherwise ordered, evidence shall be given by witness statement, statutory declaration or affidavit, and shall be filed with IPReg in accordance with these Rules and any directions given hereunder.
- 14.2 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 an oral hearing to give evidence fails to do so, that person's evidence shall be inadmissible unless the Disciplinary Board otherwise directs.
- 14.3 Decisions of the Disciplinary Board may only be based on evidence which has been put, orally or in writing, to the Respondent and to which the Respondent has been given an opportunity to respond. If reliance is to be placed on any matter in a document, the relevant section of the document must be brought to the attention of the Respondent and they must be given an opportunity to comment on it. If any opinion as to the actions required of a practitioner acting with reasonable skill is relied upon, appropriate expert evidence must be tendered in support.

Rule 15 – Oral hearings and determination of the complaint

- 15.1 At an oral hearing, the Parties may represent themselves or be represented by representatives of their own choosing. Parties may cross-examine any witnesses giving evidence against them.
- 15.2 Following the conclusion of the proceedings before it, 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 as set out in the Statement of Case has been proved.
- 15.3 In the event and to the extent that the Complaint as set out in the Statement of Case is proved, the Disciplinary Board shall give the Respondent the opportunity to present to the Board, within such time as it may direct, an explanation of any mitigating circumstances which the Respondent would like to be taken into account by the Board when deciding upon an appropriate sanction.

Rule 16 – Sanctions

- 16.1 After considering any such explanation under rule 15.3, the Disciplinary Board may impose on the Respondent any one or more of the following sanctions as applicable:

- a) 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 any actions to be taken by the Respondent to avoid a repetition of the breach;
- b) a suspension of the Respondent from acting as a Trade Mark Litigator and/or as a Patent Attorney Litigator, for such term and subject to such conditions as the Disciplinary Board thinks fit;
- c) an order cancelling the Respondent's certificate to practise as a Trade Mark and Design Litigator and/or as a Patent Attorney Litigator;
- d) a direction that the Respondent's entry be removed from the Patent Attorney Register and/or the Trade Mark Attorney Register, either permanently or for such period and subject to such conditions (as to restoration or otherwise) as may be specified in the direction;
- e) an order requiring the Respondent to undertake training or any other action pertinent to any disciplinary breach found proved by the Disciplinary Board;
- f) notification of the decision to the UKIPO, EPO and/or OHIM together with a recommendation that the Respondent's recognition or authorisation be withdrawn;
- g) a fine of such amount as the Disciplinary Board considers appropriate but not exceeding:
 - i) in the case of a penalty imposed on a Registered Person who is an individual, £5 million;
 - ii) in the case of a penalty imposed on a Regulated Person, £5 million; and
 - iii) in the case of a penalty imposed on a Registered Body, £25 million unless that Registered Body is an ABS when the maximum level of fine is set by the Legal Services Board;
- h) 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;
- i) a recommendation to the Councils of CIPA and/or ITMA that the Respondent be expelled from either or both Institutes;
- j) a referral of any matter concerning the conduct of the Respondent to any person who exercises regulatory functions in relation to the carrying on of legal activities by that person or, as appropriate, to the Legal Services Board;
- k) an order disqualifying the Respondent from being an employee, a manager, HOLP or HOFA of a Registered Person under Rule 17.

- 16.2 In considering whether to impose a fine, and the amount of a fine, under Rule 16.3(h), the Disciplinary Board shall take into account all relevant circumstances including the following factors:
- a) any penalty imposed should be proportionate to the breach or misconduct and the harm caused by it, and to the financial means of the person directed to pay it;
 - b) the penalty should be of an amount that is likely to deter repetition of the misconduct by the person and by others;
 - c) any mitigating factors, including whether the misconduct or breach was identified and reported by the Respondent and the steps taken to rectify the misconduct or breach and to mitigate the harm caused thereby;
 - d) any aggravating circumstances, including the Respondent's disciplinary record or bad faith; and
 - e) relevant guidance issued by IPReg from time to time.
- 16.3 In the event that it issues a notice, warning or reprimand, the Disciplinary Board shall inform the Registrar of that fact and require the notice, warning or reprimand to be noted against the entry, in the Patent Attorney Register and/or Trade Mark Attorney Register, of the Respondent and/or of any Registered Person of whom the Respondent is an employee or manager (as applicable), for the period set out in Rule 9.9(c).
- 16.4 The Disciplinary Board shall not make any order for redress to the Complainant or any other person.
- 16.5 If the Respondent does not comply with the sanctions imposed under Rule 16.1, the Disciplinary Board may, of its own motion or on an application by any interested or aggrieved person, make an order:
- a) directing that the Respondent's entry be removed from the Patent Attorney Register and/or the Trade Mark Attorney Register, either permanently or during such period and subject to such conditions (as to restoration or otherwise) as may be specified in the direction;
 - b) recommending the suspension or exclusion of the Respondent from the membership (including as a student) of the Institutes; and/or
 - c) disqualifying the Respondent from being an employee, a manager, HOLP or HOFA of a Registered Person under Rule 17.

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.

- 16.6 With regard to a direction of the Disciplinary Board under Rule 16.1d) or 16.5a) in respect of a Respondent who is a Registered Body:
- a) when making such a direction, the Disciplinary Board must also stipulate that one or more of the criteria in Regulation 11.1 of the IPReg Registered Bodies Regulations apply.
 - b) where the Disciplinary Board makes such a direction, IPReg shall give effect to that direction in accordance with Regulation 11 of the IPReg Registered Bodies Regulations.
- 16.7 Any decision of the Disciplinary Board under Rule 16 shall be forwarded to the 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 IPReg's website, 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.
- 16.8 Where it considers appropriate, IPReg may request either or both of the Institutes also to publish any decision through their website(s) and/or Journal(s).

Rule 17 – Additional sanctions - disqualifications

- 17.1 The Disciplinary Board may, under Rule 16.1, in addition make an order disqualifying a Respondent from acting as HoLP or HoFA, or being a manager or an employee of a Registered Person if it is satisfied that the person has:
- a) breached a duty imposed on them under sections 90 and 176 of the 2007 Act;
 - b) in the case of a HoLP or HoFA, breached a duty imposed on them in the Rules of Conduct and/or in the conditions of registration of the related Registered Body;
or
 - c) caused or substantially contributed to a significant breach of the terms or conditions of a Registered Person's registration;
- and the Disciplinary Board is satisfied that it is undesirable for that person to be a HoLP, HoFA, manager or an employee (as applicable) of a Registered Person.
- 17.2 A disqualification order shall remain in force until it is revoked by IPReg following a review under Rule 17.5.

- 17.3 A person who has been disqualified under this Rule may apply to IPReg for a review of the disqualification after a period of 12 months from the date of the decision to disqualify or the date of the determination of the most recent review of the disqualification order, whichever is the latest. Upon receipt of such an application, the JDP shall designate two of its lay members and one of its attorney members to be the Disqualification Review Committee (DRC) in relation to the application.
- 17.4 The DRC may require the applicant or any other person to provide it with such other information as it sees fit, and shall, as soon as reasonably practicable following its designation and receipt of any further information, review the material before it and determine the application.
- 17.5 The DRC may decide to revoke the disqualification order if it is satisfied that:
- a) it is no longer undesirable for the disqualified person to be a HoLP, HoFA, manager or an employee (as applicable) of a Registered Person; and
 - b) it is proportionate and in the public interest to revoke the disqualification order.
- 17.6 Where the DRC decides not to revoke a disqualification order, it must issue a written reasoned decision.
- 17.7 IPReg will keep and publish lists of all persons who are disqualified under this Rule and will, in respect of disqualifications relating to ABS, notify the Legal Services Board of any decision to impose a disqualification order and the outcome of any reviews and of any appeals against a disqualification order or review decision.

Rule 18 – Costs

- 18.1 The Disciplinary Board may make such order as to costs as it thinks fit including an order:
- a) requiring the Respondent to pay IPReg’s costs of undertaking an investigation which gave rise to a Complaint made under Rule 5.3;
 - b) disallowing costs unnecessarily incurred; or
 - c) that costs be paid by any Party judged to be responsible for wasted or unnecessary costs, whether arising through that Party’s unreasonable, unnecessary or disproportionate conduct, non compliance with time limits or otherwise.
- 18.2 The Disciplinary Board may order that any Party bear the whole or a part or proportion of the costs.
- 18.3 The amount of any costs to be paid by a Party shall be determined by the Disciplinary Board subject to any scales or limits published by IPReg from time to time.

- 18.4 The Disciplinary Board may also make an order as to costs under this Rule:
- a) where any application or allegation is withdrawn or amended; or
 - b) where no allegation of misconduct is proved against a Respondent.
- 18.5 An award of costs under this Rule may include costs and expenses incurred by IPReg in respect of the Administrator, Case Manager, CRC and the Disciplinary Board (including the costs of any legal adviser appointed in accordance with Rule 10.5) in connection with or in preparation for the determination of the Complaint.

Rule 19 – Mediation, etc.

- 19.1 Nothing in these Rules shall prevent the Parties from seeking to resolve the matter underlying a Complaint by mediation, conciliation or other means. However, this shall not delay the progress of the Complaint proceedings at any stage, unless the CRC or the Disciplinary Board agrees to suspend any proceedings before it.
- 19.2 No resolution or other disposal of the 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.
- 19.3 Nothing in these Rules shall prevent either Institute from offering a service for the mediation or conciliation of Complaints.

Rule 20 – Internal Appeals

- 20.1 Subject to Rules 20.2 and 20.3, the Complainant (other than IPReg) 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.
- 20.2 A disqualified person may appeal against a decision of the DRC under Rule 17.6 not to revoke the order disqualifying him, and the provisions of this Rule (including Rule 20.3) shall apply as if references to the Disciplinary Board were to the DRC and references to the Complaint were to the disqualified person's review application.
- 20.3 The only grounds for an appeal against a decision of a Disciplinary Board are the following:
- a) the decision of the Disciplinary Board was wrong in that the Board gave insufficient weight to or drew incorrect conclusions from any material before it, which was or should have been material to its decision;
 - b) the decision was flawed because of a serious procedural or other irregularity in the proceedings before the Disciplinary Board;

- c) the Appellant has acquired new evidence that:
 - i) could not previously have been obtained with reasonable diligence; and
 - ii) if it had been before the Disciplinary Board, would have had an important influence upon the determination of the matter;
 - d) the Disciplinary Board did not have the power to make the order appealed against;
 - e) the penalty imposed by the Disciplinary Board, or the order made for costs was excessive in light of the Disciplinary Board's decision on the facts or the Appellant's circumstances.
- 20.4 Upon receipt of a notice of 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' experience following qualification.
- 20.5 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 be by way of a rehearing (unless the Appellant is appealing under Rule 20.3(c)). If the Appellant is appealing under Rule 20.3(c), fresh evidence may not be admitted unless the Adjudicator is satisfied of the matters set out in Rule 20.3(c)(i) and (ii).
- 20.6 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.
- 20.7 The Adjudicator may affirm or vary the decisions and sanctions of the Disciplinary Board, may (on allowing an appeal under 20.3(c)) 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.
- 20.8 The Adjudicator may make such order as to costs as they think fit and Rule 18 shall apply as if references to the Disciplinary Board were references to the Adjudicator.
- 20.9 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 21 - External appeal

21.1 A Regulated Person who is the subject of a determination or order under Rule:

- a) 15 and/or 16 (and also 17.1 to the extent that an additional determination or order is made pursuant to 16); or
- b) 17.6;

and whose has appealed that decision under Rule 20, may, in accordance with the timescales for such appeals prescribed in the rules issued by the Legal Services Board dated 10 July 2014¹, appeal that determination to the General Regulatory Chamber of the First-tier Tribunal.

21.2 The appeal right in Rule 21.1 is subject to the rules of the First-tier Tribunal, the provisions of the 2007 Act (including such of the provisions of the 2007 Act which stipulate the grounds for appeal) and any other relevant enactments and any rules or orders made thereunder.

Rule 22 – Delegation

22 The IPReg Board may delegate responsibility for implementing any or all aspects of the procedures set out in these rules to another Approved Regulator.

Rule 23 – Commencement

23 These Rules shall apply from 1 January 2015 and to any Complaints received on or after that date, whether the subject matter of the Complaint arose or commenced before or after that date.

¹ Please follow the links to “Schedule 13: Rules for the prescribed period for the making of appeals against licensing authority decisions relating to ownership of licensed bodies” and “Rules on the period for the making of appeals against decisions of a licensing authority in relation to financial penalties” that are published on IPReg’s website.