

# THE CHARTERED INSTITUTE OF PATENT ATTORNEYS

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## Dealing With Complaints About Patent Attorneys

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# Dealing with Complaints about Patent Attorneys

## *Introduction*

Before you pursue a complaint about a patent attorney (who may also be described as a patent agent), please read the following notes. They are intended to save you time and trouble. All firms of patent attorneys should have in place an internal complaints procedure to seek to resolve disputes between the client and the patent attorney. Please therefore consider again whether discussion with the patent attorney, the Institute, or both can resolve the problem informally. Nearly always it can, bringing matters to a conclusion satisfactory to all parties without the time and work, not least a complainant's, that the formal procedure requires.

## *Register of Patent Agents*

Although it is permissible for anyone to practise before the British Patent Office, almost everyone practising as a patent attorney in the U.K. is on the Register of Patent Agents. Only those so registered are entitled to use the titles "patent agent" or "patent attorney". Registration is possible only after taking and passing comprehensive examinations. All registered patent agents must abide by the Register of Patent Agents Rules 1990 (the RPA Rules), issued by the Secretary of State for Trade and Industry and available from HMSO (the Stationery Office). Briefly, these Rules give to the Secretary of State the power to suspend or remove from the Register any patent agent who has been guilty of conduct discreditable to a patent agent.

Any complaint against a registered patent agent who is not a member of the Chartered Institute of Patent Attorneys (the Institute) must be referred to the Comptroller-General of Patents, Trade Marks & Designs, the Patent Office, Cardiff Road, Newport, NP9 1RH (the Comptroller), whose office will investigate the complaint on behalf of the Secretary of State.

Complaints about patent attorneys who are members of the Institute will normally be dealt with under the procedures below. However, if in the consideration of the complaint the Institute believes that the matter is of such seriousness that consideration should be given to striking the patent attorney off the Register, the Institute will itself refer the matter to the Patent Office and will suspend its consideration of the case.

It is also open to you to refer the matter directly to the Patent Office.

## *Unregistered persons*

Further, the Comptroller has certain powers under Part V of the Copyright, Designs and Patents Act 1988 with respect to unsatisfactory conduct on the part of anyone who practises before the Patent Office but is not entered on the Register. If you have a complaint against such a person, you must refer it to the Comptroller at the address given above.

*The Chartered Institute  
of Patent Attorneys*

This leaflet is concerned primarily with the Rules of the Chartered Institute of Patent Attorneys, applicable to registered patent agents who are members of the Institute. Membership of the Institute, which is voluntary, is available to all registered patent agents who have passed the necessary examinations.

Every patent attorney who is a member of the Institute has undertaken to abide by the high standards set by its Rules as made under the authority of the Institute's Charter (hereinafter referred to as the CIPA Rules). It is one of the most important duties of the Institute to ensure that all do so.

The CIPA Rules apply to members in the course of work concerned with patents, trade marks, designs or copyright.

In addition, the Institute can grant to suitably qualified members certificates entitling them to conduct litigation (ie to run cases) in the High Court. Such members have agreed to be bound by an additional set of Rules (the Special Rules) relating to their conduct in litigation work. The Special Rules also apply to all members of the Institute when they are acting as litigators in the Patents County Court, this activity being permitted to all registered patent agents.

Complaints alleging breaches of either set of Rules are dealt with under a common procedure.

*Rules of Conduct*

There are two general rules and a number of particular ones subject to them. The general rules are, first, that a member shall practise competently, conscientiously and objectively, putting clients' interests foremost and respecting clients' confidence while observing the law and the member's duty to any Court or Tribunal, and secondly that a member's conduct shall be such as to promote well-founded public confidence in the intellectual property system, in the Institute and in its members.

Particular rules, for example, concern the position of a member unwilling to provide services or finding he must withdraw them, or a member finding conflict between his own and a client's interests or between the interests of different clients. A copy of the Rules and the Guidelines issued under them is included in this leaflet.

*Powers of the  
Chartered Institute*

The Institute's powers to discipline members are laid down by the Charter and the By-laws.

The Institute cannot:

- (a) consider any matter that is essentially a dispute between patent attorneys' clients;

- (b) remove a member from the Register of Patent Agents (only the Secretary of State can do that);
- (c) usurp the powers of the Court to deal with matters of alleged professional negligence or breach of contract; or
- (d) take any part in a professional indemnity insurance claim.

The sanctions which the Institute can impose are:

- (a) an unpublished warning;
- (b) a public reprimand;
- (c) an order to pay a fine to CIPA up to £5,000;
- (d) an order to take remedial action;
- (e) an order to forego or, if appropriate, to repay some or all of the charges rendered in connection with the work complained of;
- (f) an order to pay compensation to the complainant up to £5,000;
- (g) an order to pay a proportion of or the full costs of the disciplinary procedure;

#### *Making a complaint*

If you have a complaint against a patent attorney and happen to have obtained this leaflet other than from the Institute, first of all find out if the attorney is a member of the Institute. This may be done by contacting the Institute or by looking on its website. The following procedure applies, of course, only to members.

#### *Procedure*

Anyone wishing to complain about the actions of a member of the Institute may telephone the Secretary of the Institute to discuss the matter and the Secretary will advise the complainant whether the matter is one the Institute can deal with. The complainant will be asked to complete a complaints form and to write to the Secretary detailing the matter and sending relevant correspondence and other documents to support the complaint. The Secretary will review the papers and, if appropriate, will seek to bring about conciliation, but if it does not prove possible for the matter to be resolved between the client and the member, and it appears to the Secretary of the Institute that there may have been a breach of the CIPA Rules, he will forward the written complaint to the member for comment. On receipt of the member's comments, the Secretary will again review the papers and if it still appears that there may have been a breach of the CIPA Rules, the complaint will be sent to the Chairman of a Disciplinary Panel

appointed by the Institute to handle complaints against members of the Institute.

If the Secretary has decided that the complaint should not be sent to the Disciplinary Panel, he will explain his reasons in writing. If, after due consideration of the Secretary's letter, the complainant still feels that the matter should be referred to the Disciplinary Panel, then within one month he or she must write to the Secretary insisting that it be so referred, and the Secretary will do so.

*Disciplinary Panel's Action*

On receipt of notification of a complaint, the Chairman of the Disciplinary Panel will appoint a Case Manager, who will also consider whether the case may be resolved by conciliation. If not, the Case Manager will prepare a full Statement of Case, including details of the complaint and of any possible misconduct by the member. The Statement of Case will be prepared within 21 days of the appointment of the Case Manager, or a longer period if agreed with the Chairman of the Panel. The Statement of Case will be sent to the Chairman of the Panel, and to the complainant and the member.

The Chairman of the Disciplinary Panel will then appoint a Disciplinary Board to consider the complaint. The Board will include patent attorneys, a lay member and a legally-qualified member.

After the Board has been appointed, it will invite each party to submit in writing within one month any comments on the Statement of Case. All submissions will be copied to the complainant and to the member. The Board will appoint a date for a Hearing between two and three months from receipt of the Statement of Case. The Hearing will only take place if the Case Manager or the member so requests by a date not later than one month before the date set for the Hearing. The time limits may be extended by the Chairman of the Board on the request of the complainant or the member.

If a Hearing is not requested, the Board will decide the complaint on the basis of the papers before it.

The Hearing will normally take place in public, unless the member requests that it be held in private, but all or part of the Hearing may be held in private if the interests of justice require it. The complainant may attend the Hearing and may be heard. The member may be legally represented if he wishes, and may call witnesses.

The Disciplinary Board will give a reasoned decision, which will be sent to both the complainant and the member. If the Board finds that there has been a breach of the CIPA Rules it can impose one or more of the sanctions listed above.

At the conclusion of the proceedings, including any appeal, the conclusions of the Board will be published with the names of the parties and an abridgement of the decision in sufficient detail to allow the facts of the case to be identified. Some or all of the facts may be withheld from publication if the interests of justice require it.

If the member complained of refuses to accept the imposition of the sanctions, or fails to comply with them, or if the Disciplinary Board believes that expulsion or suspension from membership of the Institute is appropriate, it will refer the matter to the Council of the Institute for adjudication. Again, the decision of the Council will be in writing with reasons and will be sent to both the complainant and the member.

#### *Appeal*

The member has a right of appeal against the decision of the Board, and the appeal will be heard by an independent Appeal Panel consisting of an independent legally-qualified Chairman a Fellow of the Institute and a lay member. The Appeal Panel may confirm, vary or set aside the decision of the Disciplinary Board. It will issue a reasoned decision, which will be published in the same way as the decision of a Disciplinary Board.

#### *Other Professional Bodies and Official Registers*

Many members of the Chartered Institute are in addition members of the Institute of Trade Mark Attorneys (ITMA) and are bound by its rules of conduct and by rules made in relation to the Register of Trade Mark Agents corresponding to the Register of Patent Agents. Any complaint of infringement of those rules should be addressed to The Institute of Trade Mark Attorneys, Canterbury House, 2/6 Sydenham Road, Croydon, Surrey, CR0 9XE ([www.itma.org.uk](http://www.itma.org.uk)).

Further, many members of the Chartered Institute are members of the Institute of Professional Representatives before the European Patent Office, which maintains a list of such representatives and also has a code of conduct. Any complaint of infringement of that code should be addressed to that Institute at Postfach 26 01 12, D-80058 Munich, Germany ([www.patentepi.org](http://www.patentepi.org)).

Any complaint to the above bodies is independent of a complaint to the Chartered Institute, which cannot advise in relation to their rules, nor provide copies.

#### *The Legal Services Ombudsman*

The Legal Services Ombudsman has been appointed by the government to ensure that complaints about professionals who provide legal services are dealt with fairly, thoroughly and reasonably.

As a consequence of the Chartered Institute being given powers to grant to suitably-qualified members the right to conduct litigation in the High Court, and because all patent attorneys have the right to conduct litigation and to appear in the Patents County Court, the Ombudsman can now investigate complaints about how the Chartered Institute has

dealt with individual complaints about members who hold Litigator Certificates.

If the Ombudsman finds that your complaint has not been handled properly, he can recommend that we reconsider your complaint. He also has the power to recommend, or in some cases to order, that either we or the patent attorney complained about pay compensation to you for the loss, distress or inconvenience that you have suffered. There is no limit on the amount of compensation that can be proposed by the Ombudsman.

The Ombudsman can be contacted at 3rd Floor, Sunlight House, Quay Street, Manchester, M3 3JZ; tel: 0161 839 7262; fax: 0161 832 5446; email: [lso@olso.gsi.gov.uk](mailto:lso@olso.gsi.gov.uk); website: [www.olso.org](http://www.olso.org)