

28 September 2017

Trans-Tasman IP Attorneys Board
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NZIPA Submissions on the Draft for Public Consultation on the Code of Conduct for Patent & Trade Marks Attorneys 2018 and the accompanying draft Guidelines to the Code of Conduct for Trans-Tasman Patent and Trade Marks Attorneys 2018

Introduction

The following submissions are made on behalf of the New Zealand Institute of Patent Attorneys (“NZIPA”).

NZIPA was incorporated in 1912 and represents most, although not quite all, New Zealand patent attorneys that are resident and practising in New Zealand.

The current membership of NZIPA comprises 152 Fellows, 2 Honorary, 60 Students, 18 Non-resident, 14 Associates and 7 Retired. The membership comprises virtually the whole of the senior professional staff of all of the firms of registered patent attorneys practising in New Zealand comprising more than one partner, plus most of the registered patent attorneys who practice as sole practitioners. In addition, a number of our Fellows are partners or senior staff solicitors in the intellectual property law sections of some major law firms in New Zealand.

Comments on the Draft Code of Conduct for Patent & Trade Marks Attorneys 2018

NZIPA generally supports the code of conduct as outlined in the draft, however, the NZIPA provides the following comments:

1. The definition of *staff attorney* (section 4) is defined as being limited to someone who is employed by an *incorporated patent attorney*, however *staff attorney* is used in section 12(2)(b) in relation to the responsibilities of a registered patent attorney who is a *director*. For consistency perhaps the definition for *staff attorney* should also refer to someone who is *employed by a director*.

2. It would seem that the passage in section 19(5) of “*where the registered attorney knows the clients’ interests are or are likely to be adverse*” could be open to misinterpretation. If a registered attorney who acts for two or more clients in the same matter which is proceeding before a court, tribunal or like adjudicative body then it should be clear that any one of the clients’ interests could be adversely affected if the registered attorney acted in any matter in respect of the proceedings.

NZIPA recommends that section 19(5) be just a clear statement that a registered attorney must not act for two or more clients in the same matter in proceedings before a court, tribunal or like adjudicative body.

Comments on the Draft Guidelines to the Code of Conduct for Trans-Tasman Patent and Trade Marks Attorneys 2018

NZIPA generally supports the Guidelines to the Code of Conduct as outlined in the draft, however the NZIPA provides the following comments:

1. Section 6.2 mentions that the word “attorney” can only be used if a person is a registered patent attorney or registered trade mark attorney. However, in respect of trade marks there is no provision under New Zealand law preventing the use of trade mark attorney for persons working in trade marks.

NZIPA recommends that section 6.2 be amended to reflect the New Zealand situation in respect of trade marks and the use of the word attorney which is currently allowed.

2. Section 19.2(b) introduces the term “friend”, however, no such definition of what constitutes a friend has been previously provided. The concern NZIPA has with the term “friend” as it used in context of section 19(2)(b) is how it is to be interpreted, especially as the term friend is used very loosely now in social media, such as Facebook friends which some or most are not friends in the old and true sense. Is it intended that section 19(2)(b) apply to an attorney’s Facebook friends?

NZIPA recommends that a definition of what is envisaged and intended to be a friend be included in the guideline definitions.

3. NZIPA considers that it would be beneficial that the guidelines also include some guidance around the following:
 - a. “Relationship with other Professionals”
 - b. “Fees”
 - c. “Complaints handling”
 - d. “Liens”
 - e. “Continuing professional development”
 - f. “professional indemnity”
 - g. “publicity”

The provision of such for those listed above (in the same/similar fashion as that in the UK IPReg Rules) would provide clarity and understanding of those matters to which issues regularly arise.

We trust these submissions are of assistance and are more than happy to answer any questions in relation to them or be contacted by officials should the need arise.

Thank you for considering our submissions. For any questions or any further information on the above submissions, please contact:

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Yours Sincerely

A handwritten signature in black ink, appearing to read 'Tom Robertson', is positioned above the printed name.

Tom Robertson
Councillor

