

Section 275: The register of patent agents

275.01 This provides for the continued existence of a register of patent agents (other sections of Part V of the CDP Act and s.102A of the 1977 Act provide that those on the register are entitled to certain benefits not available to the lay person). Provision is made for the making of rules governing the keeping of the register and the circumstances in which names can be entered in, and erased from it. The rules may delegate to any person the keeping of the register and the making of regulations.

275.02 In addition to the rights of registered patent agents provided by statute, it has long been the accepted practice that in patent proceedings before the comptroller, and on appeals from any decision of his in those proceedings, counsel may be instructed by registered patent agents without the intermediary of a solicitor (confirmed by the Patents Court in *Reiss Engineering Co Ltd v G J Harris* [1987] RPC 171).

Section 275(1)

The Secretary of State may make rules requiring the keeping of a register of persons who act as agent for others for the purposes of applying for or obtaining patents; and in this Part a "registered patent agent" means a person whose name is entered in the register kept under this section.

275.03 The Secretary of State is empowered to make rules requiring the keeping of a register of patent agents. The equivalent provision in the old law is section 123(2)(k) of the Patents Act 1977. For the purposes of this Part "registered patent agent" is defined as a person whose name is entered in the register.

Section 275(2)

The rules may contain such provision as the Secretary of State thinks fit regulating the registration of persons, and may in particular -

(a) require the payment of such fees as may be prescribed, and

(b) authorise in prescribed cases the erasure from the register of the name of any person registered in it, or the suspension of a person's registration.

275.04 Subsection (2) sets out what the rules may cover. Included are provisions regulating the registration of patent agents, the payment of fees and the removal of names from the register.

275.05 The old rules made under the Patents Act 1977 were the Register of Patent Agents Rules 1978 (SI 1978/1093). These required the Chartered Institute of Patent Attorneys (C.I.P.A.) to keep the register and appoint the registrar. They also provided for the holding of examinations.

275.06 The new rules are the Register of Patent Agents Rules 1990 (SI 1990/1457) which came into force on 13 August 1990. Under rule 3 of these new Rules, the register kept by C.I.P.A. under the 1978 Rules continues as the register under the new Rules. It is to be kept by C.I.P.A. and maintained by a Registrar appointed by C.I.P.A. Rule 8 provides for qualifying examinations to be run by C.I.P.A.

275.07 A person aggrieved by any decision of C.I.P.A. or the Registrar under the new Rules may appeal to the comptroller in accordance with rule 19 of those Rules. In addition, rule 21 provides that the comptroller may from time to time give general

directions to C.I.P.A. as to any matters relating to the register and in respect of such matters as in his opinion will be conducive to the better regulation of any examinations held by C.I.P.A. Rule 22 requires C.I.P.A. to submit an annual report to the comptroller concerning the examinations, registrations, financial matters and anything else relating to these Rules which the comptroller may require.

275.08 Rules 14 to 17 relate to proceedings by the Secretary of State when inquiring into the misconduct of a person applying for registration or of a registered patent agent and for the erasure from the register of the name of a person on the ground of misconduct. Under rule 18, a person whose name has been erased may apply to the Secretary of State for its restoration.

[In view of the possible need for an inquiry by the Secretary of State under rule 15 of the Register of Patent Agents Rules, any queries relating to or actual allegations of misconduct should be referred to IPID.]

Section 275(3)

The rules may delegate the keeping of the register to another person, and may confer on that person -

- (a) *power to make regulations -*
 - (i) *with respect to the payment of fees, in the cases and subject to the limits prescribed by rules, and*
 - (ii) *with respect to any other matter which could be regulated by rules, and*
- (b) *such other functions, including disciplinary functions, as may be prescribed by rules.*

275.09 The keeping of the register may be delegated to any person. The power to make regulations about fees (within limits prescribed by rules) and other matters, and other functions including disciplinary functions, may be conferred on that person. It is necessary for the making of regulations to be explicitly provided for otherwise the rule against sub-delegation would operate to prevent the designated registration authority from making any regulations governing the day-to-day running of the register and the administration of examinations. The C.I.P.A. made their own analogous rules under the old provisions.

275.10 Rule 8 empowers C.I.P.A. to make regulations, after consultation with the Institute of Trade Mark Agents and with the approval of the comptroller, providing for such educational qualifications, training and qualifying examinations as it considers appropriate for the registration of persons under the new Rules. Subject to any such regulations and any general directions of the comptroller under rule 21 (see 275.07), C.I.P.A. has the entire management and control of such examinations. C.I.P.A. is also empowered, by rule 20, to make regulations with respect to fees for examinations, registration and practising as a patent agent.

Section 275(4)

Rules under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.