

Patents (Trans-Tasman Patent Attorneys and Other Matters) Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill proposes 3 main things—

- an amendment to the grounds on which a person can oppose the grant of a patent under the Patents Act 2013:
- a single patent application process and single patent examination process with Australia:
- a joint registration regime with Australia for patent attorneys.

Amendment to grounds of opposition

Since the Patents Act 2013 entered into force, an issue has been identified with the grounds on which third parties can oppose the grant of a patent on an accepted patent application. As enacted, the Patents Act 2013 allows a grant of a patent to be opposed on the ground that an accepted patent application claims patent protection for more than 1 invention (“lack of unity of invention”). This issue was not a ground of opposition under the Patents Act 1953, which was replaced by the Patents Act 2013. There was no policy intention to introduce lack of unity of invention as a ground of opposition in the Patents Act 2013. If this ground remains, patent applicants may be unfairly disadvantaged. The only way that patent applicants could deal with an opposition on this ground would be to amend the application so that patent protection is claimed for only 1 invention. The applicant would lose patent rights to the other invention or inventions. Under the Patents Act 2013, patents can only be granted for a single invention. However, if a granted patent is found to claim rights in more than 1 invention, the validity of the patent cannot be challenged on this ground. To address this issue, it is proposed to amend section 92(1) to explicitly exclude lack of unity of invention as a ground of opposition.

*Single patent application process and single patent examination process with
Australia*

Since the Patents Act 2013 entered into force, the documentation that must be provided for both Australian and New Zealand patent applications is essentially the same. The criteria for granting a patent are now similar to those in Australia, but there are some significant differences.

Much of the procedure for examining the 2 patent applications is the same. There is a significant degree of duplication of work between the Intellectual Property Office of New Zealand (**IPONZ**) and the Australian Patent Office (**IP Australia**) in examining corresponding applications. About 95% of the patent applications filed in New Zealand have a corresponding application filed in Australia.

This duplication of work increases costs and complexity for applicants, IPONZ, and IP Australia. Two initiatives have been proposed that go some way towards addressing this issue—

- a single patent application process (**SAP**):
- a single patent examination process (**SEP**).

The SAP and SEP are part of the Single Economic Market patents programme.

The SAP would be implemented by IPONZ and IP Australia establishing a single application portal on their Internet sites. Applicants wishing to apply for a patent for the same invention in both countries could visit either portal. Once there, applicants would file 1 set of documents and pay 1 fee. Once all the required information has been provided, the portal would generate 2 applications, a New Zealand application, which would be sent to IPONZ, and an Australian application, which would be sent to IP Australia, for further processing. As a result, applicants would have to provide information relating to the 2 applications only once, rather than having to do it twice, as at present. Applicants would not have to use the SAP, and the existing mechanisms for filing patent applications in Australia and New Zealand would remain in place.

Under the SEP, where there are corresponding applications, both could be examined by the same patent examiner. Corresponding applications examined under the SEP would be examined according to the law and practice of the country for which the application is filed. The examiner could be in either New Zealand or Australia, and the examiner would produce a single combined examination report covering both applications. Entry to the SEP is voluntary, so that patent applications would only enter the SEP if the applicant requested it or otherwise consented. Applicants could indicate their willingness to enter the SEP by ticking a box when filing an application or requesting examination of their application. Alternatively, entry to SEP could be compulsory, with the applicant being given no choice in the matter. IPONZ and IP Australia could identify pairs of corresponding applications that could be examined under the SEP, and these applications would be examined under the SEP.

The SEP would end when the fate of the 2 applications has been determined (accepted or refused). All processes following acceptance or refusal of an application, including the grant of a patent, would be handled in the country for which the applica-

tion was filed. There would be 2 separate patents granted, 1 for New Zealand and 1 for Australia.

The objectives of the SAP and SEP are as follows:

- reduction of time and resources spent by businesses applying for and obtaining patents in both New Zealand and Australia:
- minimising the administrative costs of running the patent regime:
- ensuring patents granted in Australia and New Zealand are of a similar, high-quality standard:
- ensuring examination approaches are consistent between Australia and New Zealand.

The SAP and SEP will improve efficiencies through joint processes and shared resources and will increase the robustness of patent examination. Single examination will make it easier for IPONZ to manage the increased workload resulting from the new and higher examination standards required by the Patents Act 2013 (as compared with the Patents Act 1953).

The SAP and SEP will be implemented in the Patents Act 2013 and regulations. The Bill will amend the Patents Act 2013 to—

- enable the Commissioner of Patents to delegate his or her statutory powers to personnel of IP Australia:
- enable regulations to be made allowing the Commissioner of Patents to receive Australian applications and associated documents, together with the appropriate fees, on behalf of IP Australia:
- enable regulations to prescribe that certain documents and fees relating to New Zealand patent applications filed with IP Australia are deemed to have been filed and received with IPONZ.

Joint registration regime with Australia for patent attorneys

Patent attorneys in New Zealand make up a small profession who provide specialist advice to businesses on obtaining and protecting intellectual property, especially on obtaining patents and registering trademarks. There are approximately 199 registered patent attorneys domiciled in New Zealand and 769 domiciled in Australia. Australia and New Zealand each currently maintain independent, but similar, registration regimes for patent attorneys. The majority of Australian and New Zealand patent attorneys are currently registered to practise in both Australia and New Zealand pursuant to the Trans-Tasman Mutual Recognition Act 1997.

In August 2009, Prime Ministers Key and Rudd endorsed the development of a single trans-Tasman regulatory framework for patent attorneys as one of the intellectual property outcomes for the Single Economic Market agenda.

In November 2011, Cabinet agreed that New Zealand and Australian patent attorneys are to be regulated under a single trans-Tasman regulatory framework in order to re-

duce registration costs for, and to promote competition between, New Zealand and Australian patent attorneys.

The single trans-Tasman regulatory framework contains the following key features:

- a single trans-Tasman register for patent attorneys:
- a single definition of patent attorney services that may only be performed by a registered patent attorney:
- a trans-Tasman governance body, comprising Australian and New Zealand members, responsible for educating and disciplining patent attorneys:
- a single trans-Tasman disciplinary regime, including a single code of conduct with which Australian and New Zealand patent attorneys must comply and a trans-Tasman disciplinary tribunal to determine complaints about patent attorneys and, where appropriate, discipline patent attorneys.

Departmental disclosure statement

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Bill. It provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2015&no=83>

Regulatory impact statement

The Ministry of Business, Innovation, and Employment produced regulatory impact statements in March 2010, February 2013, and December 2013 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of these regulatory impact statements can be found at—

- <http://www.med.govt.nz/business/intellectual-property/pdf-docs-library/proposal-for-trans-tasman-regulation-of-patent-attorneys/Trans-Tasman-regulatory-framework-for-PA.pdf>
- <http://www.med.govt.nz/business/intellectual-property/pdf-docs-library/proposal-for-trans-tasman-regulation-of-patent-attorneys/bilateral-arrangement-cabinet-paper.pdf>
- <http://www.med.govt.nz/business/intellectual-property/single-economic-market-intellectual-property-outcomes/sap-and-sep-cabinet-paper-and-ris-386-kb-pdf>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 relates to commencement.

Part 1 comes into force on the day after the Bill receives the Royal assent.

Part 2 comes into force by Order in Council. The reason for this is that the effective dates of the amendments in *Part 2* will need to align with the effective dates in Australia, and depend on the following:

- the commencement of the Australian implementing legislation. The Australian Intellectual Property Laws Amendment Act 2015 received its Royal assent on 25 February 2015. Schedule 4 of that Act provides for a single trans-Tasman patent attorney regime and commences on a day to be fixed by Proclamation (subject to a 24-month sunset clause);
- the entry into force of the 2 bilateral arrangements with Australia, after Australia and New Zealand have notified each other through diplomatic channels that their respective requirements for the entry into effect of the bilateral arrangements have been completed.

Part 2 will be repealed if it is not in force by the Australian sunset date of 24 February 2017.

Clause 3 provides that the Patents Act 2013 (the **Act**) is the principal Act being amended by the Bill.

Part 1

Amendments to principal Act including single patent application and examination process with Australia

Clause 4 amends section 92 of the Act to remove the right to oppose a grant of patent on the ground that the claim or claims relate to more than 1 invention, and to bring the law back to the position under the Patents Act 1953.

Section 39(2)(a) of the Patents Act 2013 still provides that a claim must relate to 1 invention (as did section 10(4) of the Patents Act 1953.) Section 104 of the Patents Act 2013 still provides that a patent must be granted for 1 invention only but that it is not competent for any person in an action or other proceeding to take any objection to a patent on the ground that it has been granted for more than 1 invention (as did section 29(4) of the Patents Act 1953).

Clause 5 inserts a *new section 220A* into the Act to allow the SAP and the SEP to operate in New Zealand, and allows matters to be delegated to the Australian Patents Commissioner, Deputy Commissioner, and persons working for IP Australia. Australia and New Zealand are developing a bilateral arrangement to support these processes, to develop the detailed framework of the SAP and the SEP. The Bill enables regulations to be made to implement that arrangement.

Part 2

Amendments to principal Act including joint registration regime with Australia for patent attorneys

Clause 6 inserts a *new Part 6* into the Act to give effect to a single joint regulatory framework for patent attorneys to register and practise between Australia and New Zealand. A single governance body will be responsible for patent attorney registration, training, and disciplinary standards across Australia and New Zealand. The new Part implements the *Arrangement between the Government of Australia and the Government of New Zealand Relating to Trans-Tasman Regulation of Patent Attorneys* (the **patent attorney bilateral arrangement**) signed in March 2013. The new single trans-Tasman regulatory framework will be based on the existing Australian registration regime, as amended in Australia to extend the regime to New Zealand-based patent attorneys.

A copy of the patent attorney bilateral arrangement can be found at <http://www.iponz.govt.nz/cms/pdf-library/iponz/bilateral-arrangement-signed-march-2013.pdf>

New section 268 sets out the purpose of the *new Part 6*.

New sections 269 and 270 are interpretation provisions for the *new Part 6*. Many of the defined terms take the meanings given to them by the patent attorney bilateral arrangement or in Australian law. For example, professional misconduct and unsatisfactory professional conduct are defined in the same way as in regulation 20.32 of the Patents Regulations 1991 (Aust). Many of the defined terms can be found on the Australian Commonwealth Law Internet site. For example, the Australian Code of Conduct for Patent and Trade Marks Attorneys 2013 can be found at <https://www.comlaw.gov.au/Details/F2013L01822>

New sections 271 to 273 provide that the joint registration regime with Australia applies in New Zealand. For example, a person providing patent attorney services in New Zealand must be registered under, and comply with, the joint registration regime.

New sections 274 to 281 contain offences and penalties that are substantially the same as those that will apply in Australia. For example, an unregistered individual who does patent attorney work commits an offence and is liable to a fine not exceeding \$6,000. Clause 3.3(e) of the patent attorney bilateral arrangement requires New Zealand to implement legislation to provide for substantially similar offences to those in Australia.

New section 282 provides for proceedings of the Disciplinary Tribunal and the Appeals Tribunal that are held in Australia in respect of New Zealand patent attorneys.

First, Part 4 of the New Zealand Evidence Act 2006 is applied to the Disciplinary Tribunal, by declaring it to be “an Australian court”. The effect is that various provisions of that Act will apply to the Disciplinary Tribunal, including the following:

- section 173 (Tribunal may take evidence and receive submissions by video link or telephone conference in New Zealand):
- section 174 (powers of Tribunal):
- section 175 (orders of Tribunal):
- section 176 (place where evidence given part of Tribunal):
- section 177 (privileges, protections, and immunities of Judges, counsel, and witnesses in Tribunal proceedings):
- section 178 (power of Tribunal to administer oaths in New Zealand).

The Appeals Tribunal was declared to be “an Australian court” on 19 March 2015, with effect from 31 March 2015. Section 152 of the Evidence Act 2006 provides that the Minister of Justice may, by notice in the *Gazette*, declare any tribunal of the Commonwealth of Australia to be “an Australian court”.

Secondly, *new section 282(3)* declares that the recognition and enforcement provisions of the Trans-Tasman Proceedings Act 2010 apply to both the Disciplinary Tribunal and the Appeals Tribunal.

In addition, remote appearances from New Zealand in a proceeding before the Disciplinary Tribunal or the Appeals Tribunal will be possible in accordance with the Australian Trans-Tasman Proceedings Act 2010 if Australia prescribes both the Tribunals to be Australian tribunals under subdivisions A and B of division 2 of Part 6 of that Act.

New sections 283 to 286 apply if the Disciplinary Tribunal sits in New Zealand. These new sections are based on Part 1A of the Judicature Act 1908, which provides for the Australian Federal Court to sit in New Zealand to hear a trans-Tasman market proceeding. The Bill uses this model to enable the Disciplinary Tribunal to sit in New Zealand because the Disciplinary Tribunal is constituted under Australian law and is therefore an Australian tribunal. The relevant provisions of the Judicature Act 1908 may move into the Trans-Tasman Proceedings Act 2010 if the Judicature Modernisation Bill 2013 is passed, and the Bill includes minor changes to wording and cross-references in anticipation of that move.

New section 287 clarifies the territorial scope of the *new Part 6* and deals with the jurisdictional overlap between New Zealand and Australia. *New section 287(2)* is consistent with the principle that, in general, New Zealand law does not automatically apply to activities, people, or property that are not within New Zealand’s territory.

New section 288 mirrors regulation 20.53 of the Australian Patents Regulations 1991, which provides that a registered patent attorney has the same right of lien over the documents and property of a client as a solicitor.

New section 289 requires a member of the Disciplinary Tribunal who is ordinarily resident in New Zealand to comply with an investigation under the Australian Freedom of Information Act 1982 or the Australian Privacy Act 1988.

New section 290 is a regulation-making power. Among other things, it enables regulations to be made to update the penalties for offences if the Australian penalty unit dol-

lar amounts are updated under section 4AA of the Australian Crimes Act 1914. Clause 3.3(e) of the patent attorney bilateral arrangement requires New Zealand to implement legislation to provide for substantially similar offences to those in Australia.

Clause 7 and new Schedule 1 provide for transitional matters. In particular,—

- patent attorneys registered under the Patents Act 1953 are deemed to be registered under the joint registration regime on the commencement of the Bill. Also, item 81 of Schedule 4 of the Australian Intellectual Property Laws Amendment Act 2015 (the **Australian Amendment Act**) requires the designated manager under the joint regime to register individuals who, immediately before the commencement of that item, were registered as a patent attorney under New Zealand law:
- there is a transitional period of 4 years for people currently sitting the existing professional qualification examinations. Also, item 82 of Schedule 4 of the Australian Amendment Act provides for this transitional period:
- existing disciplinary proceedings in New Zealand continue under the Patents Act 1953:
- other transitional provisions are in the Australian Amendment Act (*see* items 83 and 84 of Schedule 4).

Clause 8 repeals the Patents Act 1953. Most of this Act was repealed by section 247 of the Patents Act 2013. Section 248 preserved the patent attorney provisions. Those preserved sections, and therefore the whole Act, are now spent.

Clause 9 and Schedule 2 make consequential amendments to other enactments.

Hon Paul Goldsmith

Patents (Trans-Tasman Patent Attorneys and Other Matters) Amendment Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Patents (Trans-Tasman Patent Attorneys and Other Matters) Amendment Act **2015**.

2 Commencement 5

- (1) **Part 1** comes into force on the day after the date on which this Act receives the Royal assent.
- (2) **Part 2** comes into force on a date appointed by the Governor-General by Order in Council, and different dates may be appointed for different provisions.
- (3) If any provision of **Part 2** is not in force at the close of **24 February 2017**, it is repealed on the day after that date. 10

3 Principal Act

This Act amends the Patents Act 2013 (the **principal Act**).

Part 1

**Amendments to principal Act including single patent application
and examination process with Australia** 15

4 Section 92 amended (Opposition to grant of patent)

In section 92(1)(c), replace “subpart 2 (which relates to specification requirements)” with “any provision of subpart 2 (which relates to specification requirements) other than section 39(2)(a) (which requires claims to relate to one invention only)”. 20

5 New section 220A inserted (Single patent application process and single patent examination process with Australia)

After section 220, insert:

220A Single patent application process and single patent examination process with Australia 25

- (1) The purpose of this section is to provide for a single patent application process, and a single patent examination process, shared between IPONZ and IP Australia for certain prescribed matters and documents, that—
 - (a) may apply if an application is filed seeking patent protection in New Zealand for an invention and an application is filed seeking patent protection in Australia for the same invention; and 30
 - (b) would enable processing of the applications to be shared between IPONZ and IP Australia, but with each application to be processed ac-

- ording to the law of the country in which the application seeks patent protection.
- (2) In this section, unless the context otherwise requires,—
- Australian Commissioner** has the same meaning as **Commissioner** has in the Australian Patents Act, and includes the Deputy Commissioner within the meaning of that Act 5
- Australian Patents Act** means the Patents Act 1990 (Aust) (as amended by Schedule 4 of the Intellectual Property Laws Amendment Act 2015 (Aust))
- IP Australia** means the Patent Office established under the Australian Patents Act 10
- IP Australia official** has the same meaning as **employee** has in the Australian Patents Act
- New Zealand patents official** has the same meaning as in the Australian Patents Act.
- (3) For the purpose of this section, the Commissioner may delegate a matter under section 220 to the Australian Commissioner or any IP Australia official, in which case— 15
- (a) a prescribed document or fee is treated as having been received by the Commissioner if it is received by the Australian Commissioner or an IP Australia official in accordance with the delegation; and 20
- (b) a prescribed matter under this Act or the regulations is treated as having been done by the Commissioner if it is done by the Australian Commissioner or an IP Australia official in accordance with the delegation and this Act or the regulations.
- (4) A New Zealand patents official may receive, on behalf of the Australian Commissioner, any prescribed document or fee relating to a patent application under the Australian Patents Act. 25
- (5) A New Zealand patents official may accept a delegation made under section 209 of the Australian Patents Act.
- (6) A New Zealand patents official may act on behalf of the Australian Commissioner in respect of any prescribed document or prescribed matter in accordance with the delegation. 30
- (7) The Governor-General may, by Order in Council, make regulations for the purpose of this section, which regulations may include any matter for which regulations may be made under subpart 5 of Part 5. 35
- Compare: Patents Act 1990 ss 209, 214, 227, 227AA (Aust)

Part 2
**Amendments to principal Act including joint registration regime
with Australia for patent attorneys**

6 New Part 6 inserted

After Part 5, insert:

5

Part 6
Joint registration regime with Australia for patent attorneys

Preliminary provisions

268 Purpose of this Part

The purpose of this Part is to regulate the provision of patent attorney services by giving effect to the joint registration regime in accordance with the Arrangement.

10

269 Interpretation of this Part

(1) In this Part, unless the context otherwise requires,—

Appeals Tribunal means the Administrative Appeals Tribunal established by section 5 of the Administrative Appeals Tribunal Act 1975 (Aust)

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Arrangement means the arrangement entitled the *Arrangement between the Government of Australia and the Government of New Zealand Relating to Trans-Tasman Regulation of Patent Attorneys* signed in March 2013, as published by the Commissioner under **section 272(2)**

20

Australian Patents Act means the Patents Act 1990 (Aust) (as amended by Schedule 4 of the Intellectual Property Laws Amendment Act 2015 (Aust))

Board means the body continued in existence as the Trans-Tasman IP Attorneys Board by section 227A of the Australian Patents Act

Code of Conduct means—

25

(a) the code known as the *Code of Conduct for Patent and Trade Marks Attorneys 2013* made under the Australian Patents Act and the Trade Marks Act 1995 (Aust) by the Professional Standards Board for Patent and Trade Marks Attorneys (Aust); or

(b) the replacement for that code, or any subsequent code, that is issued by the Board under the joint registration regime

30

company means a company within the meaning of the Companies Act 1993

designated manager has the same meaning as in section 200A of the Australian Patents Act

Disciplinary Tribunal means the tribunal established by regulation 20.61 of the Patents Regulations 1991 (Aust) and to be known as the Trans-Tasman IP Attorneys Disciplinary Tribunal

incorporated law firm has the same meaning as in section 6 of the Lawyers and Conveyancers Act 2006 5

incorporated patent attorney means a company that is registered as a patent attorney

joint registration regime means the joint regime for patent attorneys to register and practise in Australia and New Zealand as constituted by—

- (a) Part 1 of Chapter 20 of the Australian Patents Act and any regulations made for the purposes of that Part; and 10
- (b) this Part; and
- (c) any other Acts of the Parliament of Australia or New Zealand, and any regulations made under them, that give effect to the Arrangement; and
- (d) the Arrangement 15

lawyer has the same meaning as in section 6 of the Lawyers and Conveyancers Act 2006

limited partnership means a limited partnership that is registered under section 51 of the Limited Partnerships Act 2008

ordinarily resident in New Zealand has the meaning given in **section 270** 20

patent attorney or **attorney** means an individual or a company that—

- (a) carries on business in New Zealand or Australia or both; and
- (b) undertakes patent attorney services

patent attorney director, in respect of an incorporated patent attorney, means an individual who is both a registered patent attorney and a director of the company 25

patent attorney services means the undertaking of any of the following services in Australia or New Zealand, or both, for gain:

- (a) applying for or obtaining a patent in Australia or New Zealand or elsewhere on behalf of another person; and 30
- (b) preparing or amending specifications or other documents for the purposes of the patent law of Australia, New Zealand, or any other country on behalf of another person; and
- (c) giving advice (other than of a scientific or technical nature) as to the validity of patents or their infringement— 35

and **providing patent attorney services** has a corresponding meaning

professional misconduct means—

<p>(a) unsatisfactory professional conduct that involves a substantial or consistent failure to reach reasonable standards of competence and diligence; or</p> <p>(b) any other conduct, whether occurring in connection with practice as an attorney or otherwise, that shows that the attorney is not of good fame, integrity, and character; or</p> <p>(c) any contravention of a law that is declared by the joint registration regime to be professional misconduct</p> <p>registered patent attorney means an individual or a company that is registered as a patent attorney under the joint registration regime</p> <p>unsatisfactory professional conduct includes conduct, in connection with practice as a registered patent attorney, that falls short of the standard of competence, diligence, and behaviour that a member of the public is entitled to expect of an attorney.</p> <p>(2) Any terms that are used but not defined in this Part, but defined in the joint registration regime, have the meanings given in that regime.</p> <p>(3) A reference in, or in any regulations made under, this Part to a repealed Australian enactment is a reference to an Australian enactment that, with or without modification, replaces, or corresponds to, the Australian enactment repealed.</p> <p>(4) Subsection (3) does not limit section 22 of the Interpretation Act 1999.</p> <p><small>Compare: 2010 No 108 s 5; Patents Act 1990 s 198, Schedule 1 (Aust); Patents Regulations 1990 (Aust); Arrangement between the Government of Australia and the Government of New Zealand Relating to Trans-Tasman Regulation of Patent Attorneys, 2013 cl 1</small></p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p>
<p>270 Meaning of ordinarily resident in New Zealand</p>	
<p>(1) For the purposes of this Part, an individual is taken to be ordinarily resident in New Zealand if—</p> <p>(a) the individual has his or her home in New Zealand; or</p> <p>(b) New Zealand is the country of his or her permanent abode even though he or she is temporarily absent from New Zealand.</p> <p>(2) However, the individual is taken not to be ordinarily resident in New Zealand if he or she resides in New Zealand for a special or temporary purpose only.</p> <p style="text-align: center;"><i>Joint registration regime applies in New Zealand</i></p>	<p>30</p> <p>35</p>
<p>271 Patent attorneys must comply with joint registration regime</p>	
<p>(1) A person providing patent attorney services must be registered under, and comply with, the joint registration regime.</p> <p>(2) Without limiting subsection (1), the following apply to a person who is ordinarily resident in New Zealand:</p>	<p>35</p>

(a)	no person may provide patent attorney services unless the person is a registered patent attorney; and	
(b)	a company may provide patent attorney services as long as the company is an incorporated patent attorney; and	
(c)	a partnership other than a limited partnership may provide patent attorney services as long as at least 1 member of the partnership is a registered patent attorney; and	5
(d)	a limited partnership may not provide patent attorney services; and	
(e)	the joint registration regime applies to the person and the person may be registered as a patent attorney under the regime; and	10
(f)	a registered patent attorney must co-operate with a request for information from the Board if the Board is investigating whether or not to commence proceedings against a registered patent attorney; and	
(g)	acts or omissions in New Zealand of the person have the same effect for the purposes of the joint registration regime as if they were acts or omissions in Australia; and	15
(h)	if the person's registration as a patent attorney is suspended or cancelled under the Australian Patents Act, the person's registration is suspended or cancelled (as the case may be) for the purposes of this Part; and	
(i)	the person must pay the fees to the designated manager that are prescribed under the joint registration regime.	20
	Compare: 1953 No 64 s 103(1); 1997 No 60 s 17; Arrangement between the Government of Australia and the Government of New Zealand Relating to Trans-Tasman Regulation of Patent Attorneys, 2013 cl 3.3	
272	Commissioner must provide information about joint registration regime	25
(1)	The Commissioner must provide information about the joint registration regime on an Internet site maintained by or on behalf of the Commissioner, including information about—	
(a)	the role of the designated manager (including registration requirements and processes):	30
(b)	the role of the Board (including the Code of Conduct):	
(c)	the consequences of professional misconduct and unsatisfactory professional conduct:	
(d)	how a person in New Zealand may make a complaint to the Board about a registered patent attorney in New Zealand:	35
(e)	the role and decisions of the Disciplinary Tribunal:	
(f)	how the Trans-Tasman Proceedings Act 2010, the Evidence Act 2006, and the Trans-Tasman Proceedings Act 2010 (Aust) apply to the joint registration regime:	

- (g) the role of the Appeals Tribunal:
- (h) the application of the Administrative Decisions (Judicial Review) Act 1977 (Aust).
- (2) The Commissioner must publish, on an Internet site maintained by or on behalf of the Commissioner, a copy of the Arrangement and Internet links to the Acts and regulations that comprise the joint registration regime. 5

273 Interface with Lawyers and Conveyancers Act 2006

- (1) **Section 271** does not prohibit lawyers—
 - (a) from providing legal services; or
 - (b) from taking part in proceedings under the Patents Act 2013 to the extent that they were entitled to do so before the commencement of this Part. 10
- (2) However, this section does not limit **sections 277(1) and 279**.
Compare: 1953 No 64 ss 101, 103(5)

Offences and penalties

274 Offences: unregistered persons practising, etc, as patent attorneys 15

Individuals

- (1) An individual commits an offence, and is liable on conviction to a fine not exceeding \$6,000, if—
 - (a) the individual carries on business, practises, or acts as a patent attorney; and
 - (b) the individual is not a registered patent attorney or a lawyer. 20
- (2) An individual commits an offence, and is liable on conviction to a fine not exceeding \$6,000, if—
 - (a) the individual describes himself or herself, or holds himself or herself out, or permits himself or herself to be described or held out, as a patent attorney or an agent for obtaining patents; and
 - (b) the individual is not a registered patent attorney. 25

Companies

- (3) A company commits an offence, and is liable on conviction to a fine not exceeding \$30,000, if—
 - (a) the company carries on business, practises, or acts as a patent attorney; and
 - (b) the company is not a registered patent attorney or an incorporated law firm. 30
- (4) A company commits an offence, and is liable on conviction to a fine not exceeding \$30,000, if— 35

(a)	the company describes itself, or holds itself out, or permits itself to be described or held out, as a patent attorney or an agent for obtaining patents; and	
(b)	the company is not a registered patent attorney.	
	<i>Partnerships other than limited partnerships</i>	5
(5)	A partner in a partnership commits an offence, and is liable on conviction to a fine not exceeding \$6,000, if—	
(a)	the partner carries on business, practises, or acts as a patent attorney; and	
(b)	none of the partners in the partnership is a registered patent attorney or a lawyer.	10
(6)	A partner in a partnership commits an offence, and is liable on conviction to a fine not exceeding \$6,000, if—	
(a)	the partner describes the partnership, or holds the partnership out, or permits the partnership to be described or held out, as a patent attorney or an agent for obtaining patents; and	15
(b)	none of the partners in the partnership is a registered patent attorney or a lawyer.	
	<i>Limited partnerships</i>	
(7)	A limited partnership commits an offence, and is liable on conviction to a fine not exceeding \$30,000, if the limited partnership carries on business, practises, or acts as a patent attorney.	20
(8)	A limited partnership commits an offence, and is liable on conviction to a fine not exceeding \$30,000, if the limited partnership describes itself, or holds itself out, or permits itself to be described or held out, as a patent attorney or an agent for obtaining patents.	25
	<i>Interpretation</i>	
(9)	For the purposes of this Part, a person is taken to carry on business, practise, or act as a patent attorney if, and only if, the person does, or undertakes to do, patents work in New Zealand.	
(10)	In this Part, patents work means 1 or more of the following done, on behalf of someone else, for gain:	30
(a)	applying for or obtaining patents in New Zealand or anywhere else:	
(b)	preparing specifications or other documents for the purposes of this Act or the patent law of another country:	
(c)	giving advice (other than advice of a scientific or technical nature) about the validity, or infringement, of patents.	35
	Compare: Patents Act 1990 ss 201, 201A (Aust); Arrangement between the Government of Australia and the Government of New Zealand Relating to Trans-Tasman Regulation of Patent Attorneys, 2013 cl 3.3(e)	

275 Exceptions for legal representatives and employees

Exception: legal representatives of deceased patent attorneys

(1) **Section 274(1), (3), and (5)** does not apply in relation to the business of a registered patent attorney who is deceased if the business—

- (a) is carried on, within 3 years after the death of the patent attorney or any further time allowed by a court, by the legal representative of the deceased registered patent attorney; and 5
- (b) is managed by a registered patent attorney on behalf of the legal representative. 10

Exception: employees

(2) **Section 274(1) and (2)** does not apply in relation to anything done by a person, as an employee,—

- (a) for his or her employer; or
- (b) if the person's employer is a member of a related company group, for another member of the group. 15

(3) **Section 274(3) and (4)** does not apply in relation to anything done by a member of a related company group for another member of the group.

Evidential burden

(4) The defendant must adduce or point to evidence that suggests a reasonable possibility that a matter in this section exists or does not exist, in order to rely on this section. 20

Whether company is related to another company

(5) In this section, **related company group** means a group of companies that comprises a company and its related companies within the meaning of section 2(3) of the Companies Act 1993. 25

Compare: Patents Act 1990 s 201 (Aust)

276 Incorporated patent attorney must have patent attorney director

Offence: failing to notify lack of patent attorney director

(1) An incorporated patent attorney commits an offence, and is liable on conviction to a fine not exceeding \$30,000, if the incorporated patent attorney— 30

- (a) does not have a patent attorney director; and
- (b) does not notify the designated manager of that within 7 days.

Offence: acting after 7 days without patent attorney director

(2) An incorporated patent attorney commits an offence, and is liable on conviction to a fine not exceeding \$30,000, if the incorporated patent attorney— 35

- (a) does not have a patent attorney director; and
- (b) has not had a patent attorney director during the previous 7 days; and

(c)	carries on business, practises, or acts as a patent attorney. Compare: Patents Act 1990 s 201B (Aust); Arrangement between the Government of Australia and the Government of New Zealand Relating to Trans-Tasman Regulation of Patent Attorneys, 2013 cl 3.3(e)	
277	Documents prepared by lawyers	5
(1)	No lawyer may prepare a specification or a document relating to an amendment of a specification (or make a representation, or permit another person to represent, that the lawyer is entitled to do so) unless the lawyer is—	
(a)	also a registered patent attorney; or	
(b)	acting under the instruction of a registered patent attorney; or	10
(c)	directed to do so by a court of New Zealand or elsewhere.	
(2)	A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$6,000. Compare: Patents Act 1990 s 202 (Aust); Arrangement between the Government of Australia and the Government of New Zealand Relating to Trans-Tasman Regulation of Patent Attorneys, 2013 cl 3.3(e)	15
278	Documents prepared by member of partnership	
(1)	A partner in a partnership (other than a limited partnership) who is not a registered patent attorney must not prepare a specification, or a document relating to an amendment of a specification, unless—	20
(a)	the person is acting under the instructions or supervision of a registered patent attorney; or	
(b)	the amendment has been directed by an order under section 89.	
(2)	A partner in a limited partnership who is not a registered patent attorney must not prepare a specification, or a document relating to an amendment of a specification.	25
(3)	A person who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding \$6,000. Compare: Patents Act 1990 s 202A (Aust); Arrangement between the Government of Australia and the Government of New Zealand Relating to Trans-Tasman Regulation of Patent Attorneys, 2013 cl 3.3(e)	30
279	Documents prepared by incorporated patent attorneys and incorporated law firms	
	An incorporated patent attorney or an incorporated law firm commits an offence, and is liable on conviction to a fine not exceeding \$30,000, if—	35
(a)	an employee or a member of the incorporated patent attorney or incorporated law firm prepares a specification or a document relating to an amendment of a specification; and	
(b)	the employee or member is not a registered patent attorney; and	

- (c) the specification or document is not prepared—
 - (i) under the instructions or supervision of an individual who is a registered patent attorney; or
 - (ii) as directed by an order under section 89.

Compare: Patents Act 1990 s 202B (Aust); Arrangement between the Government of Australia and the Government of New Zealand Relating to Trans-Tasman Regulation of Patent Attorneys, 2013 cl 3.3(e)

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280 Attendance at patent attorney’s office

A registered patent attorney commits an offence, and is liable on conviction to a fine not exceeding \$6,000, if—

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- (a) the registered patent attorney practises, acts, or holds himself, herself, or itself out as practising or acting, as a patent attorney at an office or place of business where specifications or other documents are prepared for the purposes of this Act; and
- (b) there is not an individual who is a registered patent attorney—
 - (i) in regular attendance at that office or place; and
 - (ii) in continuous charge of the patents work done at that office or place.

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Compare: Patents Act 1990 s 203 (Aust); Arrangement between the Government of Australia and the Government of New Zealand Relating to Trans-Tasman Regulation of Patent Attorneys, 2013 cl 3.3(e)

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281 Time limit for filing charging documents for offences

Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, the limitation period in respect of an offence under this Part ends on the date that is 5 years after the date on which the offence was committed.

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Compare: Patents Act 1990 s 204 (Aust)

Provisions that apply if Disciplinary Tribunal and Appeals Tribunal sit in Australia

282 Provisions that apply if Tribunals sit in Australia

- (1) The purpose of this section is to give the Disciplinary Tribunal and the Appeals Tribunal powers in respect of a person or persons that ordinarily reside in New Zealand to enable proceedings to be conducted in Australia.
- (2) For that purpose, the Disciplinary Tribunal is deemed to have been declared by the Minister of Justice to be an Australian court under section 152 of the Evidence Act 2006.

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Examples

Disciplinary Tribunal subpoenas may be served in New Zealand.

	The Disciplinary Tribunal may take evidence, and receive related examination and submissions, by audio link or audiovisual link from New Zealand.	
(3)	The Disciplinary Tribunal and the Appeals Tribunal are declared to be tribunals to which subpart 5 of Part 2 of the Trans-Tasman Proceedings Act 2010 applies, and all decisions of those Tribunals that are made in connection with proceedings to review decisions made under the joint registration regime are declared to be orders to which that subpart applies.	5
	Example	
	Certain Tribunal orders may be recognised and enforced in New Zealand.	
	Compare: Arrangement between the Government of Australia and the Government of New Zealand Relating to Trans-Tasman Regulation of Patent Attorneys, 2013 cl 3.3(c)	10
	<i>Provisions that apply if Disciplinary Tribunal sits in New Zealand</i>	
283	Provisions that apply if Disciplinary Tribunal sits in New Zealand	
(1)	The Disciplinary Tribunal may, at a sitting of that Tribunal in New Zealand that involves a patent attorney that is ordinarily resident in New Zealand, exercise all the powers of that Tribunal as if it were a sitting in Australia.	15
(2)	Without limiting subsection (1) , the Patents Regulations 1991 (Aust) that are applicable in relation to proceedings in Australia apply to the practice and procedure of the Disciplinary Tribunal at any sitting of that Tribunal in New Zealand.	20
(3)	Without limiting subsection (1) , the Disciplinary Tribunal may, at any sitting of the Tribunal in New Zealand,—	
	(a) direct that the hearing or any part of the hearing be held in private:	
	(b) require any person to leave the Tribunal:	
	(c) prohibit or restrict the publication of evidence or the name of any party or any witness.	25
(4)	Nothing in subsection (2) or (3) applies in relation to—	
	(a) the prosecution of any person for an offence committed as a witness; or	
	(b) the enforcement or execution of any judgment, order, injunction, writ, or declaration given, made, or granted by the Disciplinary Tribunal.	30
(5)	A decision made under subsection (3) may be enforced by a Judge of the High Court of New Zealand who, for that purpose, has and may exercise the powers, including the power to punish for contempt, that would be available to enforce the decision if it were an order that had been made by a Judge of the High Court in New Zealand.	35
	Compare: 1908 No 89 s 56J; 2010 No 108 s 87; Arrangement between the Government of Australia and the Government of New Zealand Relating to Trans-Tasman Regulation of Patent Attorneys, 2013 cl 3.3(c)	

284 Issue of summons by Disciplinary Tribunal

- (1) This section applies if the Disciplinary Tribunal, by instrument in writing signed by the President of the Disciplinary Tribunal, issues a summons that requires a person in New Zealand to appear before the Tribunal to give evidence and to produce documents or articles for the purposes of a sitting of the Tribunal in New Zealand. 5
- (2) The summons may be served on a person in New Zealand by leaving a copy of the summons with that person personally, together with a statement setting out the rights and obligations of that person, including information as to the manner in which application may be made to that Tribunal to have the summons set aside. 10
- (3) A person who has been served with the summons under **subsection (1)** may not be compelled to comply with the summons unless, at the time of service of the summons or at some other reasonable time before the hearing, allowances and travelling expenses or vouchers sufficient to enable that person to comply with the summons are tendered or paid to that person. 15

Compare: 1908 No 89 s 56K; 2010 No 108 s 88

285 Failure of witness to comply with summons

- (1) This section applies if the Disciplinary Tribunal, by instrument in writing signed by the President of the Disciplinary Tribunal, issues a certificate stating that a person named in the certificate has failed to comply with a summons referred to in **section 284(1)**. 20
- (2) The High Court may issue a warrant requiring any constable to arrest that person and bring that person before the court.
- (3) The High Court may, on the appearance of that person before the court, impose a fine not exceeding \$1,000 unless the court is satisfied that the failure to comply with the summons, the onus of proof of which lies with that person, should be excused. 25
- (4) In determining whether the failure to comply with the summons should be excused, the High Court may have regard to— 30
- (a) any matters that were not brought to the attention of the Disciplinary Tribunal, if the High Court is satisfied that—
- (i) the Disciplinary Tribunal would have been likely to have set aside the summons if those matters had been brought to the attention of that Tribunal; and 35
- (ii) the failure to bring those matters to the attention of the Disciplinary Tribunal was not due to any fault on the part of the person alleged to have failed to comply with the summons or was because of an omission by that person that should be excused; and

(b)	any matters to which the High Court would have regard if the summons had been issued by the High Court.	
(5)	For the purposes of this section, but subject to subsection (4) , a certificate from the Disciplinary Tribunal stating any of the following matters is conclusive evidence of the matters stated in it:	5
(a)	that the summons was issued by that Tribunal:	
(b)	that the witness failed to comply with the summons:	
(c)	the decision of that Tribunal, or any orders or findings of fact made by that Tribunal, in relation to any application made to that Tribunal to have the summons set aside.	10
(6)	Subject to subsection (4) , no findings of fact made by the Disciplinary Tribunal on an application to that Tribunal to have the summons set aside may be challenged by any person alleged to have failed to comply with the summons unless the Tribunal was deliberately misled in making those findings of fact.	
	Compare: 1908 No 89 s 56L; 2010 No 108 s 89	15
286 Other provisions about proceedings		
(1)	The provisions in subsection (2) apply with the following modifications if the Disciplinary Tribunal sits in New Zealand:	
(a)	references to the Federal Court of Australia must be treated as references to the Disciplinary Tribunal:	20
(b)	references to the court must be treated as references to the Disciplinary Tribunal:	
(c)	references to a Judge of the court must be treated as references to a member of the Disciplinary Tribunal:	
(d)	references to an Australian proceeding must be treated as references to a proceeding before the Disciplinary Tribunal in New Zealand.	25
(2)	The provisions are the following provisions of the Judicature Act 1908:	
(a)	section 56M(1)(a) and (2) (power to administer oaths in New Zealand):	
(b)	section 56N (orders not subject to review):	
(c)	section 56O (contempt):	30
(d)	section 56Q(1), (2)(a), (3)(a), and (4)(a) (privileges and immunities of Judges, counsel, and witnesses).	
<i>Miscellaneous provisions</i>		
287 Territorial scope and jurisdiction		
(1)	A registered patent attorney who is ordinarily resident in New Zealand is within the jurisdiction of the Disciplinary Tribunal and the Appeals Tribunal and must co-operate with an investigation by either Tribunal into his or her conduct.	35

(2) This Part does not apply to a person or company that is part of the patent attorney profession of a country outside New Zealand if—

- (a) the person or company—
 - (i) is resident or incorporated in a country other than Australia or New Zealand; or
 - (ii) has a principal place of business for undertaking patent attorney services in a country other than Australia or New Zealand; and
- (b) the patent attorney services provided by the person or company are in respect of the patent law of a country other than New Zealand or Australia.

Compare: 1961 No 43 s 7; Therapeutic Products and Medicines Bill 2006 cl 29; Arrangement between the Government of Australia and the Government of New Zealand Relating to Trans-Tasman Regulation of Patent Attorneys, 2013 cl 3.3(d)

288 Rights of patent attorney over documents and client property

A registered patent attorney has the same right of lien over documents and property of a client as a lawyer or incorporated law firm, as the case may be, has.

Compare: Patents Regulations 1991 (Aust) r 20.53

289 Investigations under Australian Acts

A member of the Disciplinary Tribunal who is ordinarily resident in New Zealand must co-operate with an investigation that is undertaken under the Freedom of Information Act 1982 (Aust) or the Privacy Act 1988 (Aust).

290 Regulations under this Part

The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:

- (a) prescribing matters that are necessary or desirable for the implementation of the Arrangement;
- (b) increasing or decreasing the fines for an offence under this Part to an amount that is consistent with the fines that apply under the joint registration regime after any alteration of the amount of penalty units under section 4AA of the Crimes Act 1914 (Aust);
- (c) prescribing any other matters that are required or permitted by the joint registration regime to be prescribed;
- (d) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

Compare: Arrangement between the Government of Australia and the Government of New Zealand Relating to Trans-Tasman Regulation of Patent Attorneys, 2013 cl 3.3(e), (f)

7 New Schedule 1 inserted

Before the Schedule, insert as Schedule 1 the Schedule 1 set out in **Schedule 1** of this Act.

8 Repeal of Patents Act 1953

- (1) The Patents Act 1953 (1953 No 64) is repealed.
- (2) However, the Patents Regulations 1954 continue in force (as amended by **Part 2 of Schedule 2** of this Act) and may continue to be amended or revoked under section 114 of the Patents Act 1953 as if it had not been repealed. 5

9 Consequential amendments

The enactments specified in **Schedule 2** are amended in the manner set out in that schedule.

Schedule 1
New Schedule 1 inserted

s 7

Schedule 1
Transitional, savings, and related provisions

5

s 11A

Part 1
Transitional and savings provisions arising from Patents (Trans-Tasman Patent Attorneys and Other Matters) Amendment Act 2015

- 1 Existing patent attorneys** 10
- (1) **Subclause (2)** applies to every person who, immediately before the commencement of **Part 6**, is registered as a patent attorney under the Patents Act 1953.
- (2) The person is, immediately after the commencement of **Part 6**, a registered patent attorney under the joint registration regime. 15
- Compare: Arrangement between the Government of Australia and the Government of New Zealand Relating to Trans-Tasman Regulation of Patent Attorneys, 2013 cl 9.1
- 2 Existing training and minimum knowledge requirements**
- Clause 9.2 to 9.7 of the Arrangement applies to persons in New Zealand. 20
- Compare: Arrangement between the Government of Australia and the Government of New Zealand Relating to Trans-Tasman Regulation of Patent Attorneys, 2013 cl 9.2–9.7
- 3 Existing disciplinary proceedings**
- (1) Despite **section 9** of the **Patents (Trans-Tasman Patent Attorneys and Other Matters) Amendment Act 2015**, the disciplinary regime under section 102 of the Patents Act 1953 continues to apply after the commencement of **Part 6** for actions and behaviours of patent attorneys in New Zealand before the commencement of **Part 6**. 25
- (2) The Commissioner must advise the designated manager if a New Zealand court determines that a person should not practise as a patent attorney in New Zealand. 30
- Compare: Arrangement between the Government of Australia and the Government of New Zealand Relating to Trans-Tasman Regulation of Patent Attorneys, 2013 cl 9.12

Schedule 2

Amendments to enactments

s 9

Part 1

Amendments to Acts

5

Lawyers and Conveyancers Act 2006 (2006 No 1)

In section 6, replace the definition of **patent attorney** with:

patent attorney has the same meaning as **registered patent attorney** in **Part 6** of the Patents Act 2013

After section 36(4), insert:

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(4A) A patent attorney does not commit an offence against any provision of sections 32, 33, and 35 by reason only of—

- (a) preparing documents, transacting business, and conducting proceedings for the purposes of the Patents Act 2013:
- (b) exercising any other rights and privileges as may be prescribed under the joint registration regime provided for in **Part 6** of the Patents Act 2013.

15

In section 36, compare note, after “(2)(a), (c)”, insert “; 1953 No 64 s 101(3)”.

Replace section 47(j) with:

- (j) the provisions of the joint registration regime for patent attorneys in **Part 6** of the Patents Act 2013; or

20

Patents Act 2013 (2013 No 68)

In section 3(e), after “countries”, insert “; and”.

After section 3(e), insert:

- (f) regulate the provision of patent attorney services by giving effect to the joint registration regime with Australia.

25

In section 4(1)(e), after “matters”, insert “; and”.

After section 4(1)(e), insert:

- (f) **Part 6** contains provisions relating to a joint registration regime with Australia for patent attorneys.

Repeal section 4(3).

30

In section 5(1), replace the definition of **patent attorney** with:

patent attorney has the same meaning as **registered patent attorney** in **section 269(1)**

In section 5(1), repeal the definition of **register of patent attorneys** or **patent attorneys register**.

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Patents Act 2013 (2013 No 68)—*continued*

After section 11, insert:

Transitional, savings, and related provisions

11A Transitional, savings, and related provisions

Schedule 1 contains transitional, savings, and related provisions relating to amendments made to this Act.

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Repeal section 218(d).

In section 247(1), delete “(except as set out in section 248)”.

Repeal sections 248 and 249.

Privacy Act 1993 (1993 No 28)

In Schedule 2, Part 1, delete the item relating to the Patents Act 1953, section 100. 10

Part 2

Amendments to legislative instruments

Lawyers and Conveyancers Act (Lawyers: Income sharing with Patent Attorneys) Regulations 2008 (SR 2008/220)

In regulation 3(1), revoke the definitions of **patent attorney** and **patent attorney firm**. 15

In regulation 3(1), insert in their appropriate alphabetical order:

patent attorney has the same meaning as **registered patent attorney** in **Part 6** of the Patents Act 2013

patent attorney firm means either of the following: 20

(a) an incorporated patent attorney within the meaning of **Part 6** of the Patents Act 2013:

(b) a partnership (other than a limited partnership) of which at least 1 member of the partnership is a registered patent attorney within the meaning of that Part 25

In regulation 4(e), replace “in a company carrying on business as a patent attorney pursuant to section 103(2) of the Patents Act 1953” with “in an incorporated patent attorney within the meaning of **Part 6** of the Patents Act 2013”.

Patents Regulations 1954 (SR 1954/211)

Revoke regulations 152, 153, 154, 161, 162, and 163. 30

In Schedule 1, revoke items 10, 11, and 12.

Trade Marks Regulations 2003 (SR 2003/187)

After regulation 23(a), insert:

Trade Marks Regulations 2003 (SR 2003/187)—*continued*

- (b) whose registration as a patent attorney is suspended or cancelled for the purposes of **Part 6** of the Patents Act 2013; or