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Enclosure

Information letter for patent attorneys and users of the Belgian patent system – entry into force of the Law of 8 July 2018 laying down provisions for the protection of the title of patent attorney – reform of the patent attorney profession in Belgium

Dear Madam, Sir,

The Intellectual Property Office would like to inform you about the reform of the patent attorney profession in Belgium and the creation of a Belgian Institute for Patent Attorneys. This reform is provided for in the Law of 8 July 2018 laying down provisions for the protection of the title of patent attorney and its implementing measures. The reform's first phase will enter into force on 1 December 2020.

The following three sections set out the reform's content, the next steps and some points of attention for patent attorneys in Belgium.

1. Content of the reform of the patent attorney profession

To date, the patent attorney profession has only been partially regulated in Belgium. The existing legislation mainly deals with procedures relating to the access to the profession and the patent attorneys' intervention before the Intellectual Property Office. The **Law of 8 July 2018** complements the existing regulatory framework and is built around three key elements:

- The fine-tuning of the procedures for accessing the patent attorney profession in Belgium for patent attorneys established in another Member State of the European Economic Area and wishing to provide services in Belgium. The procedures will become more consistent with the possibilities offered by relevant EU legislation to the Member States, *inter alia* Directive 2005/36/EC on the recognition of professional qualifications.
- The creation of a Belgian Institute for Patent Attorneys, whereof all patent attorneys entered in the register of recognised attorneys and all patent attorneys providing services in Belgium on a temporary

or occasional basis shall be members. Beside representing the patent attorney profession, this Institute will ensure the enforcement of the deontological rules and will coordinate permanent training for patent attorneys.

The Institute for Patent Attorneys will have legal personality, will be self-sustaining and will have its head office in the Brussels-Capital Region. It will consist of three bodies:

- o A general assembly of all members of the Institute, which has the responsibility of making the most important decisions.
- o A council of four members elected from the general assembly, tasked with the Institute's management.
- o A disciplinary commission of three members elected from the general assembly and a magistrate or lawyer as chairman, which shall ensure the enforcement of the deontological rules applicable to patent attorneys.

A government commissioner will monitor the actions taken by the Institute's general assembly or council. He may appeal to the Minister of Economy against the execution of decisions taken by one of those bodies that are contrary to a legal or regulatory provision.

- The membership of the Institute for Patent Attorneys has four concrete consequences for its members:
 - o Members have to take a professional liability insurance.
 - o When exercising their profession, members shall carry the protected title of "octrooigemachtigde" in Dutch, "mandataire en brevets" in French or "Patentanwalt" in German. Members of the Institute who provide services in Belgium on a temporary or occasional basis shall carry the professional title or formal qualification of the Member State of establishment.
 - o Members and European patent attorneys shall be subject to professional secrecy and there shall be a specific attorney-client privilege. This privilege should make it easier for them to invoke the confidentiality of communication with their clients in foreign patent disputes.
 - o Members and certain qualifying European patent attorneys shall have a right to speak in patent disputes before the Belgian courts, without prejudice to the role of the lawyer as *dominus litis*. This enables them to explain, *inter alia*, the technical aspects or certain legal aspects of a patent file.

The Law of 8 July 2018 is accompanied by **implementing measures**. These consist of two Royal Decrees:

- The Royal Decree of 30 September 2020 concerning the representation in patent matters. This decree consolidates the existing implementing provisions of the legislation on the representation of persons in patent matters before the Intellectual Property Office. It also contains the implementing provisions for the Law of 8 July 2018, except the disciplinary rules.
- The Royal Decree of 30 September 2020 laying down the disciplinary rules applicable to patent attorneys, which contains the most important rules of conduct and the disciplinary procedure before the disciplinary commission of the Institute for Patent Attorneys.

2. Next steps in the reform of the patent attorney profession

The reform of the patent attorney profession provided for in the Law of 8 July 2018 will enter into force in phases. In principle, the reform will fully enter into force during the **first phase**, which will start on 1 December 2020, with the exception of:

- The new procedures for accessing the patent attorney profession in Belgium for patent attorneys established in another Member State of the European Economic Area and wishing to provide services in Belgium.
- The obligation for the members of the Institute for Patent Attorneys to take a professional liability insurance, the protection of the professional title, the professional secrecy and the right to speak in patent disputes before the Belgian courts.

Aspects that are not part of the reform's first phase will enter into force during a **second phase**, which, for now, is expected in the second half of 2021. The Institute for Patent Attorneys needs to be sufficiently operational in order for those aspects to be implemented the best way possible.

As from the entry into force of the reform's first phase, the Institute for Patent Attorneys shall be established. In principle, the **first meeting of the Institute's general assembly** will take place between 1 March 2021 and 31 May 2021. At this meeting, the chairman and vice-chairman of the general assembly, the members of the council and three members and deputy members of the disciplinary commission will be elected. In addition, the general assembly will draw up the Institute's rules of procedure and draw up a proposal regarding the amount of the annual contribution fee of the Institutes' members. They both will be submitted subsequently to the Minister of Economy for approval. The Intellectual Property Office may add additional points on the agenda.

At the entry into force of the first phase, patent attorneys entered in the register of recognised attorneys will be members of the Institute for Patent Attorneys and, consequently, of the general assembly. The Intellectual Property Office shall invite those persons by registered mail no later than three months prior to the first meeting of the general assembly. The agenda of the meeting shall be communicated. Any person wishing to be elected for one of the Institute's various positions shall declare their candidacy to the Office, no later than two months before that meeting. At the latest one month before the meeting, the Office shall communicate by registered mail the documents to be discussed.

3. Points of attention for patent attorneys in Belgium

Patent attorneys entered in the register of recognised attorneys should take into account the following five points of attention regarding the entry into force of the first phase of the reform of the patent attorney profession:

1° First, the Intellectual Property Office will invite the patent attorneys entered in the register of recognised attorneys no later than three months prior to the first meeting of the general assembly by registered mail. The registered mail will be sent to the addresses entered in the register of recognised attorneys. Patent attorneys entered in that register are responsible for the accuracy of their details in the register. **Patent attorneys are hereby requested to check their details in the register and to notify any changes without delay.**

The register of recognised attorneys is available on the following website of the FPS Economy:

https://economie.fgov.be/sites/default/files/Files/Intellectual-property/Liste_mandataires_brevets.pdf

Changes to the details in the register can be requested via piie.register@economie.fgov.be

2° Secondly, Article XI.64/1 of the Code of Economic Law expressly provides that anyone who establishes himself in Belgium in order to exercise the patent attorney profession must be entered in the register of recognised attorneys prior to that exercise. This provision clarifies the existing legislative framework: it confirms that any such person cannot rely on the possibility given to free service providers in Article XI.62, § 5, of the Code of Economic Law.

As from the entry into force of the second phase, patent attorneys exercising the profession in Belgium on a temporary or occasional basis will also become members of the Institute. Under current legislation, these patent attorneys are authorised to intervene before the Intellectual Property Office by virtue of the aforementioned Article XI.62, § 5. As from the second phase, once they have become members of the Institute, the Institute's council will be competent to assess the temporary or occasional nature of the provision of services on a case-by-case basis, in particular in relation to its duration, its frequency, its regularity and its continuity. Where the provision of services is no longer only temporary or occasional, the membership of the Institute will end and the member will have to apply for registration in the register of recognised attorneys if he wishes to continue exercising the profession in Belgium.

3° Thirdly, each member of the Institute for Patent Attorneys (during the first phase, these are the persons entered in the register of recognised attorneys) must comply with Article XI.75/11, § 1, of the Code of Economic Law, and hence with the disciplinary rules, the rules of conduct, the regulations governing the organisation of permanent training, and the rules of procedure. With the exception of the disciplinary rules, these regulations will be drawn up by the Institute's general assembly at its first meeting or within three months of that meeting and subsequently submitted to the King or the Minister of Economy for approval.

The disciplinary rules, on the other hand, are determined by the King and contain rules of conduct that the members of the Institute must comply with, with regard to:

- The exercise of the patent attorney profession with dignity and integrity, in compliance with the legal and regulatory provisions applicable to the exercise of the profession.
- The duty of discretion.
- The refusal or termination of an assignment and abstention in the event of a conflict of interest.
- The limitation of professional civil liability.

You will find an extract of these rules of conduct in annex.

Failure to comply with these rules by a member of the Institute may lead to a disciplinary action taken by the Institute's disciplinary commission, at the end of which one of the disciplinary penalties provided for in Article XI.75/8, § 5, of the Code of Economic Law may be pronounced.

4° Fourthly, pursuant to Article 12 of the Royal Decree of 30 September 2020 concerning the representation in patent matters, each person entered in the register of recognised attorneys must notify the Intellectual Property Office of any change to his surname or name(s) and complete address within fifteen days. In addition, he must notify the Office of any changes in his situation relating to the conditions to register as a recognised attorney laid down in Article XI.66, § 1, of the Code of Economic Law.

An extract of Article 12 of the aforementioned Royal Decree and of Article XI.66, § 1, of the Code of Economic Law can be found in annex.

5° Fifthly, the first meeting of the general assembly of the Institute is scheduled for 22 April 2021. Invitations and more information regarding this meeting will follow in due course.

Jérôme DEBRULLE
Counsellor-General

Extracts (free translation)

Article 2 of the Royal Decree of 30 September 2020 laying down the disciplinary rules applicable to patent attorneys:

Art. 2. § 1. The member of the Institute shall exercise the patent attorney profession and, where applicable, his functions within the Institute with dignity and integrity. He shall comply with the legal and regulatory provisions relating to the exercise of his profession and his functions, in particular the provisions of Book XI, Title 1, Chapter 3, of the Code of Economic Law and its implementation decrees.

The member of the Institute shall behave in such a way as not to compromise the confidence placed in the profession.

§ 2. The member of the Institute ensures that his employees who assist him in the exercise of his profession, comply with his legal and disciplinary obligations.

Article 3 of the same Decree:

Art. 3. Without prejudice to the legal obligations imposed on the member of the Institute with regard to professional secrecy, the member is bound by an obligation of discretion.

This obligation of discretion implies that the member of the Institute must keep secret all information expressly or tacitly entrusted to him in his capacity as patent attorney, as well as other confidential information in connection with the exercise of his profession.

The member of the Institute is not obliged to observe the obligation of discretion in the following cases:

1° if he is called to testify in court;

2° if the legal or regulatory provisions oblige him to communicate all or part of this information;

3° in the exercise of his personal defense in judicial or disciplinary proceedings;

4° if, insofar as it is a matter which concerns his principal, the latter explicitly lifts the obligation of discretion.

Article 4 of the same Decree:

Art. 4. The member of the Institute shall notify the principal without delay if he refuses a mandate or, where applicable, if he wishes to terminate it. In the second case, he shall take all measures to enable the principal to avoid any possible prejudice.

Refusal is mandatory in the event of a conflict of interest.

The member of the Institute shall also refrain from giving advice or taking any other action in the event of a conflict of interest.

Article 5 of the same Decree:

Art. 5. The member of the Institute shall not limit its professional civil liability in relation to its principal to an amount lower than the amount of the basic cover of its professional liability insurance.

The member of the Institute does not charge the deductible to his principal.

Article 12 of the Royal Decree of 30 September 2020 concerning the representation in patent matters:

Art. 12. The person entered [in the register of recognised attorneys] shall notify the Office, within 15 days, of any change in his surname, name(s) and full address.

The person entered shall notify the Office of any change in his status as regards the conditions for registration in the register of recognised attorneys referred to in Article XI.66, § 1, of the Code of Economic Law.

Article XI.66, § 1, of the Code of Economic Law:

Art. XI.66. § 1. Any person wishing to be entered in the register of recognised attorneys must meet the following conditions:

1° be a natural person;

2° be a national of a Member State and to be domiciled in a Member State;

3° not be subject to a judicial protection measure as referred to in Article 492/1 of the Civil Code;

4° not to be in a state of prohibition within the meaning of Articles 31 to 34 of the Criminal Code;

5° not to have undergone any conviction in Belgium or abroad for one of the offenses specified in Royal Decree No. 22 of 24 October 1934 relating to the judicial ban imposed on certain convicted persons and bankrupts from exercising certain functions, professions or activities.

The conditions laid down in paragraph 1, 2°, must not be met by a person who is exempted from them by virtue either of an international convention or of an exemption granted by the King on the grounds of reciprocity.