

Your message

Your reference

Our reference  
E3-SJPI-2024-000847

Attachment

**Information letter for patent attorneys and users of the Belgian patent system – entry into force of the second phase of the reform of the patent attorney profession in Belgium**Dear Madam,  
Dear Sir,

The Belgian Intellectual Property Office (IPObel) wishes to inform you of the entry into force of the second phase of the reform of the patent attorney profession in Belgium. This reform is stipulated in particular in the Law of 8 July 2018 'containing provisions to protect the title of patent attorney', partly in the Law of 25 September 2022 'introducing various provisions regarding intellectual property in book XI of the Code of Economic Law and in the Judicial Code', as well as in the corresponding implementing measures. The first phase of the reform entered into force on 1 December 2020 whereas the second phase comes into full effect on 1 April 2024.

This letter contains important information regarding the impact of the entry into force of the second phase, on the ability of free service providers to continue practising the profession of patent attorney in Belgium.

The following two sections provide information on the content of the reform and the details of the second phase.

**1. Content of the reform of the patent attorney profession***a) Law of 8 July 2018*

The profession of patent attorney was only partially regulated in Belgium before 1 December 2020. The legislation at the time focused mainly on the procedures relating to access to the profession and the actions of patent attorneys before the Intellectual Property Office. The **Law of 8 July 2018** which complemented the existing regulatory framework, contains three key elements to that end:

- The procedures for **access to the profession of patent attorney** in Belgium are further developed with regard to patent attorneys who are established in another Member State of the European Economic Area

and who wish to provide services in Belgium. They are made more consistent with the possibilities offered to Member States by the relevant EU legislation, including Directive 2005/36/EC on the recognition of professional qualifications.

- A **Belgian Institute for Patent Attorneys** is established. All patent attorneys listed in the Register of accredited patent attorneys and all patent attorneys providing temporary or occasional services in Belgium are members. In addition to representing the patent attorney profession, this Institute is responsible for the enforcement of the ethical rules and for the ongoing training of patent attorneys.

The Institute for Patent Attorneys possesses legal personality and is based in the Brussels Capital Region. It consists of three bodies:

- o A general assembly of all Institute members, which is responsible for the main 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 chaired by a magistrate or lawyer, tasked with the enforcement of the ethical rules applicable to patent attorneys.

A government commissioner supervises the actions taken by the Institute's general assembly and council.

- Being a **member of the Institute** for Patent Attorneys has four concrete consequences:
  - o Members must take out professional liability insurance.
  - o Within the framework of practising their profession, members hold the protected title of patent attorney in Dutch, French or German language. Institute members who provide services in Belgium on a temporary or occasional basis must use the professional title or title of formal qualification of the Member State where they are established.
  - o Members and European patent attorneys are subject to professional secrecy. A specific attorney-client privilege is applied. That privilege should facilitate their possibility to invoke the confidentiality of communication with their clients in the context of foreign patent disputes.
  - o Members and European patent attorneys authorised to represent parties before the Unified Patent Court have a right to speak in patent disputes before the Belgian courts, without prejudice to the lawyer's role as *dominus litis*. This enables them, among other things, to explain the technical aspects or certain legal aspects of a patent file.

#### b) Implementing measures

The reform of the patent attorney profession is accompanied by corresponding **implementing measures**. These are laid down, in particular, in the following two royal decrees:

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

In the context of the entry into force of the second phase, both royal decrees are amended to a certain extent by the Royal Decree of 19 October 2023 'on the implementation of the second phase of the reform of the patent attorney profession'.

## 2. Second phase of the reform of the patent attorney profession

### a) Phased entry into force of the reform

The reform of the patent attorney profession enters into force in phases. During the **first phase**, which started on 1 December 2020, in principle, the entire reform entered into force, except for:

- The new procedures for access to the profession of patent attorney in Belgium with regard to patent attorneys who are established in another Member State of the European Economic Area and who wish to provide services in Belgium.
- The obligation for members of the Institute for Patent Attorneys to take out professional liability insurance, the protection of the professional title of patent attorney, the professional secrecy, and the right to speak in patent disputes before the Belgian courts.
- The possibility to file complaints with the Institute's disciplinary commission.

These aspects, which are not part of the first phase of the reform, will enter into force during the **second phase**, which is scheduled on 1 April 2024. The Institute for Patent Attorneys needed to be sufficiently operational for the optimal implementation of these aspects.

### b) New registration procedure for patent attorneys-free service providers

The new registration procedure for free service providers distinguishes between:

- Patent attorneys who are nationals of a Member State of the European Economic Area, who are legally established in a Member State to practise their profession there and who move to Belgium to practise the profession temporarily or occasionally.
- Patent attorneys who are nationals of a Member State of the European Economic Area, who are legally established in a Member State to practise their profession there and who provide services in Belgium without moving to Belgian territory in person.

To be able to act as patent attorneys before IPObel, both of these categories of free service providers will have to submit a **written declaration** to IPObel as of 1 April 2024. The declaration must be accompanied by a number of supporting documents, particularly:

- Proof of nationality.
- An attestation certifying legal establishment in a Member State to practise the profession of patent attorney.
- Evidence of professional qualifications.
- Proof of at least one year of experience in practising the profession of patent attorney in a Member State during the previous 10 years, if the profession is not regulated in the Member State of establishment.

The declaration, along with the supporting documents, must be resubmitted if there have been material changes in the situation of the free service provider as substantiated in the last submitted declaration and supporting documents. Those practising the profession in Belgium temporarily or occasionally will have to renew their declaration annually if they intend to continue providing services on a temporary or occasional basis in the coming year.

Patent attorneys who practise the profession temporarily or occasionally in Belgium become members of the Institute. These attorneys have a series of rights and obligations that are the same (or similar) to those of the other members of the Institute.

**Free service providers who had already registered with IPObel before 1 April 2024, will retain their registration. However, their registration is subject to the following exceptions and transitional measures:**

- Free service providers who had already registered and who are located in Belgian territory on 1 April 2024 to practise the profession of patent attorney on a temporary or occasional basis, must submit the written declaration to IPObel by 31 December 2024.

- Free service providers who had already registered and who move to Belgian territory after 1 April 2024 to temporarily or occasionally practise the profession of patent attorney, must submit the written declaration to IPObel before providing their services.
- Free service providers who had already registered and who, on 1 April 2024, are legally established in a Member State of the European Economic Area where the profession of patent attorney is not regulated, must submit the written declaration to IPObel by 31 December 2024.
- Free service providers who had already registered and for whom there has been a material change after 1 April 2024 in the situation substantiated by the documents submitted to IPObel as part of their earlier registration with IPObel, must submit the written declaration to IPObel. In this context, a 'material change' refers to a change of nationality or a change regarding the Member State where the patent attorney is legally established in order to practise the profession of patent attorney there (e.g. when the patent attorney becomes subject to a professional ban in the Member State where he is established).

**Patent attorneys who had already registered with IPObel as free service providers before 1 April 2024 are called upon to check their situation under the new regulations and, if necessary, settle their situation. Free service providers whose situation is not timely settled, will no longer be able to act as patent attorneys before IPObel.**

If you have any questions regarding your registration, you can contact [piie.register@economie.fgov.be](mailto:piie.register@economie.fgov.be).

A template of the written declaration will be available as from 1 April 2024 in Dutch, French and German on the following website of the FPS Economy:

<https://economie.fgov.be/en/themes/intellectual-property/institutions-and-actors/commission-accreditation/accreditation-patent-attorneys>

c) *New rights and obligations for Institute members and for European patent attorneys*

As mentioned earlier, the second phase of the reform of the patent attorney profession focuses on the entry into force of the insurance obligation for members of the Institute, the protection of the professional title of patent attorney, the professional secrecy, and the right to speak in patent disputes before the Belgian courts.

**1° Firstly**, members of the Institute must cover their civil professional liability for the amount of at least 250,000 euros per claim. With the exception of temporary or occasional service providers, members of the Institute must prove to the Institute that they meet their **insurance obligations** by sending a certificate from their insurance company at the time of their registration as members. Those who were already members of the Institute before 1 April 2024, may provide this certificate within nine months from the date of amendment, renewal, extension or conversion of their current insurance contract. Each time there is a material change in the situation substantiated by the certificate, a new certificate must be submitted to the Institute. Temporary or occasional service providers must provide proof of their obligatory insurance by submitting the written declaration regarding their free provision of services to IPObel. The insurance obligation and the monitoring of compliance with this obligation provides consumers of services provided by patent attorneys with a better guarantee that any damage they incur as a result of professional misconduct by their patent attorney will be effectively compensated to a certain extent.

**2° Secondly**, Institute members, with the exception of temporary or occasional service providers, must use the **title of 'octrooigemachtigde', 'mandataire en brevets' or 'Patentanwalt'** while they practise the profession. The use of these titles in Belgium by persons other than these Institute members or the use of any other title giving the impression of practising the profession of patent attorney is prohibited. Misuse of the protected professional title is punishable by a criminal fine of 26 to 5,000 euros, multiplied by the appropriate legal charges. This sanction also applies to the illegal use of a title of European patent attorney in Belgium. The protected professional title allows users of the Belgian patent system to identify recognised patent attorneys in a simpler way, with all the guarantees offered by this recognition. Temporary or occasional service providers must, while practising in Belgium, use the professional title or, in absence thereof, the title of formal qualification of the Member State of establishment in an official language of that Member State, preceded or followed by a designation of that Member State.

3° **Thirdly**, the Institute members are subject to **professional secrecy**, which also entails the introduction of an **attorney-client privilege**. This privilege includes a prohibition of disclosure and a right to secrecy. On the one hand, no one may disclose the communication between the patent attorney and his client. On the other hand, no one may be forced to disclose the communication in a judicial or administrative procedure. However, the client may (partially) waive the privilege. European patent attorneys working in Belgium are also covered by professional secrecy, including the attorney-client privilege, albeit solely with regard to practising the profession of European patent attorney. Institute members, European patent attorneys, and their agents are subject to criminal sanctions if they breach professional secrecy. Professional secrecy and the attorney-client privilege allow consumers of the services of patent attorneys to be more confident that the communication they exchange in the context of their innovative activities will not be revealed against their will, even in foreign jurisdictions.

4° **Lastly**, the Institute members have a **right to speak** in patent disputes before the Belgian courts. The judge thus hears the patent attorney of a party who can give his explanations in writing or orally during the hearing. This right to speak may be requested by the party or by his lawyer, when submitting conclusions. However, the lawyer's (semi-)monopoly on representation within court proceedings remains unaffected. He remains the sole representative of the party and remains in control of litigation. European patent attorneys who are working in Belgium and who are authorised to represent parties before the Unified Patent Court also have the right to speak. This right allows a party to call on the expertise of a patent attorney in a more direct way at the hearing by having him personally provide certain explanations concerning facts, technical considerations or questions of law relating to the application of patent law.

d) Launch of the disciplinary commission

When the second phase of the patent attorney profession reform enters into force, it will also become possible to file complaints against members before the Institute's disciplinary commission.

Finally, a new ethical rule comes into force at the same time. Article 5/1 of the Royal Decree of 30 September 2020 'laying down the disciplinary rules applicable to patent attorneys' stipulates (free translation):

**Art. 5/1.** Except in the case of a procedure before the disciplinary commission, the member of the Institute must notify the council [of the Institute] immediately of any judicial, administrative or disciplinary proceedings pending against him and relating to practising the profession of attorney in the field of intellectual property.

The member must notify the council of the decision that was taken and that is no longer subject to appeal.

After the entry into force of the second phase on 1 April 2024, the reform of the profession of patent attorney in Belgium as foreseen in the Law of 8 July 2018 'containing provisions to protect the title of patent attorney', will be fully implemented. With the creation of its own Institute, as well as the introduction of rules of conduct, a permanent training obligation, an obligatory insurance, the protection of the professional title, an attorney-client privilege and a right to speak before the courts, the newly established framework provides better guarantees for a high-quality service by patent attorneys in Belgium.

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