

STATUTORY INSTRUMENTS

S.I. No. 141 of 2006

European Communities (Patent Agents) Regulations 2006

PUBLISHED BY THE STATIONERY OFFICE DUBLIN

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(PRN. A6/0524)

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European Communities (Patent Agents) Regulations 2006

I, Micheál Martin, Minister for Enterprise, Trade and Employment, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No.27 of 1972) and for the purpose of –

(a) giving full effect to Article 49 of the Treaty establishing the European Community with regard to freedom to provide services to which the following regulations relate,

and

(b) making such incidental, supplementary and consequential provision as appear to me to be necessary for the purposes of those regulations,

hereby make the following regulations :

Citation.

1. These Regulations may be cited as the European Communities (Patent Agents) Regulations 2006.

Definition.

2. In these Regulations, “Act” means the Patents Act 1992 (No.1 of 1992).

Amendment of section 94 of Act.

3. Section 94 of the Act is amended by substituting the following subsection for subsection (3) :

“(3) In this section ‘patent agent’ means –

(a) a person registered as a patent agent in the register of patent agents,

(b) a company or partnership lawfully practising as a patent agent in the State,

(c) a person to whom section 106(3) applies,

or

(d) a person or partnership who satisfies the condition mentioned in subsection (1) or (3) of section 125.”.

Amendment of section 106 of Act.

4. Section 106 of the Act is amended by substituting the following subsections for subsection (3) :

“(3) Notwithstanding subsection (2) but subject to subsections (3A) to (3D), a

person established in a Member State of the European Community (other than the State) and qualified under the law of that state to act as a patent agent in that state –

(a) may carry on the business of acting as patent agent for others in connection with a patent or any procedure relating to a patent or the obtaining thereof, and

(b) may, accordingly, be the subject of an authorization referred to in section 105(1).

(3A) On or before the first occasion on which a person acts, in reliance on subsection (3), on behalf of another before the Controller in connection with a patent or any procedure relating to a patent or the obtaining thereof, the person shall provide to the Controller such evidence as may be prescribed relating to –

(a) the person's being established in another Member State of the European Community,

(b) the person's being qualified under the law of that state to act as a patent agent in that state, and

(c) whichever of the following is appropriate -

(i) the person's nationality, or

(ii) the person's falling within paragraph (b) of the definition of 'person' in subsection (3E).

(3B) In acting, in reliance on subsection (3), on behalf of another in connection with a patent or any procedure relating to a patent or the obtaining thereof, the person shall use the applicable professional title (if any) but its use in the State shall be subject to the following requirements -

(a) the title is to be expressed in the official language or one of the official languages of the Member State referred to in subsection (3), and

(b) in a case where the language in which the title is expressed is also an official language of the State, the use of the title is not such as is likely to be understood as indicating that the person is a patent agent registered under this Act.

(3C) It shall be sufficient compliance with subsection (3B)(b) if the use of the title concerned is accompanied by an indication of the Member State in which the person concerned is established as a patent agent.

(3D) If there is no applicable professional title, then the person, in acting as mentioned in subsection (3B), shall indicate that the person possesses the applicable qualifications and those qualifications shall be expressed in the official language or one of the official languages of the Member State referred to in subsection (3).

(3E) In this section –

'applicable professional title' , in relation to a person, means the

professional title that , by virtue of the person’s being qualified to act as a patent agent in the Member State referred to in subsection (3), the person is entitled to use in that state;

‘applicable qualifications’ , in relation to a person, means the qualifications that the person must possess, under the law of the Member State referred to in subsection (3), so as to be qualified to act as a patent agent in that state;

‘person’ means –

(a) in the case of an individual, a national of a Member State of the European Community, and

(b) in the case of a person which is not an individual, a company or firm (within the meaning of Article 48 of the Treaty establishing the European Community) formed in accordance with the law of a Member State of the European Community and having its registered office, central administration or principal place of business within the European Community.”.

Amendment of section 107 of Act.

5. Section 107 of the Act is amended, in subsection (1), by substituting the following paragraph for paragraph (b) :

“(b) has a place of business in the State or in such other state as may be prescribed,”.

Given under my Official Seal,

29 March 2006.

L.S.

Micheál Martin

Minister for Enterprise,

Trade and Employment

Explanatory Note

This note is not part of the Instrument and does not purport to be a legal interpretation

These Regulations, made pursuant to the European Communities Act, 1972, amend certain provisions of the Patents Act, 1992 in order to allow a person, established in another Member State of the European Community and qualified under the law of that State to act as a patent agent, to act for another person in relation to patent matters before the Controller of Patents, Designs and Trade Marks.