Submission from The Institute of Trade Mark Attorneys (ITMA) for the Legal Profession and Legal Aid (Scotland) Bill

We refer to the e-mail sent by Tracey Hawe to The Chartered Institute of Patent Agents (CIPA) regarding a call for evidence for the above Bill, a copy of which they forwarded to me as a Scottish member of The Institute of Trade Mark Attorneys (ITMA).

I have been liaising with the Scottish Executive on behalf of ITMA, in conjunction with CIPA, with regard to the commencement of Sections 25 to 29 of the Law Reform (Miscellaneous Provisions)(Scotland) Act, 1990 (“the 1990 Act”) to allow for Registered Patent Attorneys and Trade Mark Attorneys with the relevant qualifications and/or experience to have Rights of Audience before Scottish Courts in respect of intellectual property matters.

ITMA and CIPA have secured similar rights before the English Courts.

Having read the Bill and CIPA’s response, ITMA seconds that which has been said by CIPA, in that it is pleased to note that changes are proposed to be made to the law in Scotland to permit commencement of the 1990 Act, and that changes are to be made to the Solicitors (Scotland) Act, 1980 to permit this.

ITMA also has the following further comments to make:-

1. Although there are indirect references to the 1990 Act, there is no specific clause confirming that the 1990 Act will be commenced upon the entry into force of the Bill;
2. The present proposed makeup of the Scottish Legal Complaints Commission will effectively exclude representatives from either CIPA or ITMA for 10 years or more, given that no members of either institute currently are entitled to conduct litigation or a right of audience given that the 1990 Act has not yet been commenced, (Schedule 1, Article 2 (5) and (6)). ITMA is concerned that there will not therefore be the necessary expertise regarding the conducting of Patent and Trade Mark Attorney practises.