

REPUBLIC OF SAN MARINO

REGULATION no. 5 of 2 July 2007

We, the Captains Regent of the Republic of San Marino

*Having regard to the Congress of State Decision no. 33 of 25 June 2007;
Having regard to art.5, paragraph 5, of Constitutional Law no. 185/2005 and art. 13 of Law no.
186/2005 passed by qualified majority;
Adopt, promulgate and make public the following regulation:*

REGULATION FOR THE PRACTICE OF THE PROFESSION OF INDUSTRIAL PROPERTY ATTORNEY.

TITLE I

Art. 1

Association of industrial property attorney

In compliance with art. 92 of Law no. 79 of 25 May 2005, as amended by art. 2 of Law no. 114 of 20 July 2005 concerning the representation before the Patents and Trade Marks State Office of the Republic of San Marino, while expecting that the conditions for the establishment of an appropriate professional Association laid down by the same law are determined, the activity of qualified industrial property attorney is regulated by the following rules.

Art. 2

Register of qualified industrial property attorney

Representation of natural or juridical persons before the Patents and Trade Marks State Office may only be undertaken by qualified consultants who are entered in the Register maintained by the Patents and Trade Marks State Office.

The Register is divided into two sections:

- a) List of industrial property consultants;
- b) Roll of industrial property consultants entitled to act before the Patents and Trade Marks State Office.

The control over the practice of the profession is exercised by the Secretariat of State for Industry, Handicraft, Trade through the Patents and Trade Marks State Office.

Art. 3

Requirements for the entry

The entry in the Register, as referred to in art. 2 above, shall be effected by the Patents and Trade Marks State Office upon request of the persons concerned who must present all the necessary documents to prove that they fulfil the following conditions:

1. to be a San Marino citizen or of any other country guaranteeing reciprocity of treatment to San Marino citizens;
2. to enjoy all civil and political rights and to be of good civil and moral conduct;
3. to be resident or to elect their professional domicile in San Marino;
4. to have acquired professional qualification as mentioned in art. 7 below.

Under Law no. 105 of 21 October 1988 the certification referred to in points 1, 2 and 3, may be replaced by equivalent declaration, produced on the forms drawn up by the Patents and Trade Marks State Office. The equivalent declaration is liable to stamp duty, which is paid by attaching a tax stamp of €10,00 to the documents.

False statements are punished through the removal of the person's name from the Register, as well as through the sanctions provided for in art. 297 of the Criminal Code.

Art. 4

Entitlement and subject matter of the activity

Only the persons included in the Register maintained by the Patents and Trade Marks State Office, provided for in art. 2 of this Regulation, are entitled to act as industrial property consultants.

The persons whose names appear in the Register shall act on behalf of any natural or juridical persons in accordance with the rules regulating the services related to industrial property matters.

Moreover, they are authorised on request and behalf of the persons concerned to conduct any other functions which are similar, connected or resulting from what is laid down in paragraph 2.

If the task is assigned to several qualified consultants, they may also act separately, unless otherwise indicated. If the task is assigned to several qualified consultants who are members of an association or a company, the task is considered to be assigned to each of them as acting within the association or company.

Art. 5

Incompatibility

The entry to the Register, as referred to in art. 2 of this Regulation, and the practice of the profession of industrial property consultant are incompatible with any other public or private employments or offices, with the exception of jobs or positions held in companies, offices or services which are specialised in the subject, both independent as well as organised in entities or companies, and the activity of teaching regardless of how it is performed; the exercise of industry, handicraft and trade, the activity of business agent or representative, broker, commission agent.

The entry to the Register, as mentioned in art. 2, and the practice of the profession of industrial property consultant is compatible, unless otherwise agreed and in accordance with paragraph 1, with the entry to other professional Registers and the practice of the related professions.

Industrial property consultants carrying out their activity in offices or services organised within entities or companies, i.e. consortiums or groups of companies, can only act in the name and on behalf of:

- a) the entity or the company where they are employed;
- b) the companies belonging to the consortium or group where they steadily work;
- c) companies or people which co-operate (including for purposes of research, technological production or exchange) with the entities or companies or groups or consortiums where the qualified consultant works.

Art. 6

Obligation of professional confidentiality

Industrial property consultants have the duty to maintain professional confidentiality and they are subject to the rules established by law and governing the matter.

Art. 7

Qualification for the practice of the profession

While expecting that the conditions for the establishment of an appropriate professional Association laid down by Law no. 79 of 25 May 2005 are determined, the qualification to practice the profession of industrial property consultant is recognised to persons who have passed the qualifying examination in the Italian Republic or in the Member States of the European Union, or the qualifying examination at the European Patent Office.

Art. 8

Exemption from qualification

San Marino citizens or residents having filled a managerial position at the Patents and Trade Marks State Office or acting as examiners or members of the Boards of Appeal at the European Patent Office, at the Office of Harmonisation for the Internal Market or at WIPO for at least five years are exempted from the requirement of professional qualification.

Art. 9

List and Roll of industrial property attorney

The List and the Roll of industrial property consultants which are provided for in art. 2 of this Regulation, shall indicate for every registered person their surname, given name, date and place of birth, educational qualification, date of registration, place of business, professional domicile or the location of the entity or company where they work.

The List and the Roll are divided into two sections which are respectively denominated patents section and trade marks section. The first section is dedicated to qualified consultants in the field of patent invention, and the second section is dedicated to consultants who are qualified to act in trade mark, design and model matters.

The date of registration determines consultants' seniority. Seniority of persons who are entered again on the list and roll after being removed is determined by deducting the duration of the interruption from the date of the first registration.

Art. 10

Disciplinary sanctions

If the consultants entered in the Register break their professional duties, they are subject to:

- a) censure in case of minor violations or faults;
- b) suspension for a maximum period of two years in case of serious violations;
- c) removal from the List and the Roll in case of behaviour which has seriously damaged the professional reputation and dignity.

The Patents and Trade Marks State Office is responsible for applying the sanctions.

Art. 11

Approval and denial of the admission to the Register

The persons who intend to be admitted to the Register of industrial property consultants shall apply for it to the Patents and Trade Marks State Office, presenting the documents which prove that they fulfil the requirements and conditions laid down in articles 3 and 13 of this Regulation. The application is liable to stamp duty, which is paid through a tax stamp of €10,00 attached to the documents.

If the requirements are satisfied, the Patents and Trade Marks State Office registers the applicant, whereas the admission is denied when the conditions under this Regulation are not fulfilled.

The Patents and Trade Marks State Office is authorised to issue, also by electronic means, a list with the names of the persons who appear in the Register of industrial property consultants.

TITLE II

Transitional provisions

Art. 12

Transitional rules

While expecting that the conditions for the establishment of an appropriate professional Association are determined, the representation under art. 2 is regulated by the following provisions.

Art. 13

Entitled subjects

By virtue of art. 12 above, representation before the Patents and Trade Marks State Office may be undertaken, besides the persons satisfying the requirements under art. 3 of this Regulation, by:

1. companies under San Marino law whose business purpose is exclusively the activity of industrial property consulting and which officially and promptly name and indicate one or more industrial property consultants acting for them. When these companies are verified to satisfy the requirements under art. 3 of this Regulation, they are entered in the Register of industrial property consultants.
2. industrial property consultants who are not resident in the Republic of San Marino and not designated by any companies under San Marino law, but qualified to exercise their profession in the Members States of the European Union and who temporarily provide industrial property consulting services in the Republic of San Marino, provided that:
 - a) the State from which they come grants the same right to San Marino industrial property consultants;
 - b) they provide the address of a San Marino professional or company as their address for services.

When these persons are verified to satisfy the requirements under art. 3 of this Regulation, they are entered on the Roll of industrial property consultants who are entitled to act before the Patents and Trade Marks State Office.

Art. 14

Final provisions

The provisions contained in this Regulation replace the provisions established by the previous Regulation approved by Decree no. 86 of 27 July 1999.

Done at San Marino on 2 July 2007 - 1706th year of the Foundation of the Republic

THE CAPTAINS REGENT
Alessandro Rossi – Alessandro Mancini

THE SECRETARY OF STATE
FOR INTERNAL AFFAIRS
Valeria Ciavatta

