



Continuing Professional Education

These guidelines are published by the Trans-Tasman IP Attorneys Board (the Board) to assist registered attorneys to understand Continuing Professional Education (CPE) practise and procedure. Details are also provided about activities that the Designated Manager is satisfied are appropriate for an attorney to undertake as a means to maintain the currency of their professional qualifications. The guidelines may change from time to time.

Introduction

Registered patent attorneys and registered trade marks attorneys have a professional obligation to develop and maintain their knowledge and skills so that they can maintain high standards of service. CPE should present no challenge to the committed professional attorney who already spends considerable time keeping up with changes in both the domestic and international business environments. These attorneys are therefore aware of changes to legislation; case law; technology trends; and the laws and practices of major trading partners.

Legislative requirements

Registered attorneys should familiarise themselves with the CPE requirements set out in regulations 20.24 (number of hours), 20.25 (method of demonstrating CPE has been undertaken) and 20.28 (failure to comply with CPE requirements) of the *Patents Regulations 1991* (Cth). These Australian regulations also apply to New Zealand-resident patent attorneys by virtue of section 271 of the Patents Act 2013 (NZ).

The CPE requirements set out in the Patents Regulations also apply to trade marks attorneys by virtue of regulation 20.14 of the *Trade Marks Regulations 1995*.

The overarching requirement provided by regulation 20.24 is that single-registered patent attorneys or trade marks attorneys must complete 10 hours of CPE activities every year. A person who is registered as both a patent attorney and a trade marks attorney must complete 15 hours of CPE activities every year.

Meeting the CPE requirements

The CPE requirements may be met by a range of educational activities that relate to the work of a patent or trade marks attorney, including:

- Delivering lectures (including at a conference or in a formal study program). Attending lectures and workshops, viewing educational videos and participating in on-line activities such as webinars, podcasts, or study programs.
- Formal in-house training programs, lectures or seminars designed to update knowledge and skills within the profession.

- Courses of study at educational institutions insofar as the content is relevant to the work of the attorney.
- Participation in organised discussion groups on topics of professional interest.
- Service on technical committees of a professional body.
- Writing articles, papers or books with substantial technical content.
- Teaching in relevant courses, including award courses and continuing education programs relevant to the profession.
- Completion of a personal study program (see below).
- Other study, not included above, which can be demonstrated to achieve the desired outcomes of CPE.

There needs to be some formality or structure to each CPE activity that provides substance to the activity and evidence of its completion.

Attorneys should familiarise themselves with these guidelines and review them from time to time to ensure that their CPE activities are appropriate. Also, the Designated Manager issues a [Practice Note](#) following their annual audit of CPE activities.

When does CPE commence?

Where an attorney is registered for the first time, the requirement to undertake CPE does not commence until after the date that they first renew their registration. Hence, attorneys first registered between 1 July and 31 December will have no CPE requirement until their registration renewal on or after 1 July of the following year. Similarly, attorneys first registered between 1 January and 30 June will have no CPE requirement until their registration renewal on or after 1 July of the same year.

Achieving balance and breadth

The Board recommends that registered attorneys undertake a breadth of activities in any year, and there are a number of events/conferences that provide an appropriate breadth of activities. Patent attorneys should be aware that the trans-Tasman patent attorney regime requires patent attorneys to have knowledge and experience of IP law and practice in Australia and New Zealand. Therefore, irrespective of where they reside, patent attorneys should reflect this trans-Tasman requirement in their CPE activities.

For all registered attorneys, the Board believes that:

- Attorneys who hold a single registration shall complete at least 5 hours of CPE activities in the field of either patents or trade marks (depending on their specialisation).
- Attorneys who hold dual registration shall complete at least 5 hours of CPE activities in both fields of patents and trade marks (i.e. a total of 10 hours).
- All registered attorneys must include a minimum of 1 hour of professional conduct or ethics CPE activities.
- Up to 4 hours of CPE activities in other areas related to an attorney's practice (e.g. commercialisation, innovation funding, designs, copyright, branding, licensing, etc.) can count towards maintaining professional competence.

Within the 10-hour requirement, no more than 3 hours should be claimed for personal study (or no more than 4.5 hours of the 15 hour requirement for an attorney who holds dual registration).

What is meant by a personal study program?

An attorney may wish to follow a personal study program that includes relevant personal reading. Records should be maintained, setting out the nature and purpose of the study program and the hours expended.

Foreign attorneys

For the purposes of this document, a foreign patent attorney is a registered patent attorney who resides outside of Australia or New Zealand, whilst a foreign trade marks attorney is a registered trade marks attorney who resides outside of Australia.

All foreign patent attorneys and foreign trade marks attorneys are required to fully comply with the CPE requirements. Although they may not be able to attend relevant CPE activities for resident patent and/or trade marks attorneys, they can maintain the currency of their knowledge and skills via appropriate on-line activities. Some CPE activities undertaken by a foreign attorney can be relevant for their work in their resident jurisdiction. For example, an attorney resident in Hong Kong can claim CPE activities that relate to Hong Kong or Chinese attorney practices and related intellectual property laws. Foreign attorneys can also undertake personal study or on-line learning activities.

Because patent attorneys are registered to practise in both Australia and New Zealand, it is important for all foreign patent attorneys to maintain their knowledge of IP law and practice in both of these jurisdictions.

Part-time, semi-retired, retired attorneys

Attorneys who are not practising full-time are still required to fully comply with the CPE requirements. There is no concession to complete part of the CPE requirements.

Attorneys on sick leave, maternity leave, or other long-term leave

The legislation regulating registered attorneys does not provide any exemptions from CPE activities for attorneys who are on sick leave, maternity leave, or other forms of leave.

Attorneys who are not practising because they are taking these types of leave might like to consider voluntarily removing their name for the Register(s) under the provisions of regulation 20.26.

However, attorneys voluntarily removing their name from the Register(s) should note that they have a three-year 'window' under regulation 20.29 to seek restoration of their name to the Register(s). If they miss this window, then the more onerous restoration provisions of regulation 20.31 will apply – and not all attorneys will be able to satisfy these provisions. If restoration is not possible, then the attorney will need to apply for a new registration and satisfy the registration requirements provided by regulation 20.3 of the Patents Regulations or the Trade Marks Regulations.

Maintaining Records of CPE activities

Attorneys must maintain adequate records of their CPE activities that provide evidence of completion of the claimed activities and of their nature and duration.

These records may include, for example, receipts for course registration, course outlines, and letters of appointment to lecturing positions or to technical committees. Diary records can be of particular assistance in responding to an audit as long as they show the date, duration and nature of the activity. Records must be kept for a minimum of 3 years.

A template to assist attorneys in maintaining records of their CPE activities is attached at the end of these guidelines. This template can be completed by the attorney, or by a person with direct knowledge of the attorney's activities (e.g. the attorney's EA).

It is the attorney's responsibility to ensure that their CPE records are true and accurate. If an attorney fails to keep or maintain records of their CPE activities, then the Designated Manager may remove their name from the Register(s) for a period not exceeding 6 months (see subregulation 20.28(1)).

Non-Compliance with hours completed

The Designated Manager considers each case of non-compliance on its merits.

If an attorney's CPE record is non-compliant (i.e. they have not completed all of the required hours of CPE activities), then generally, their registration is renewed on the condition that they complete additional CPE activities in the next year to make good the short-fall in CPE activities. However, if the attorney fails to complete the required total hours of CPE within the conditional period, then the Designated Manager may remove their name from the Register(s).

It is important that attorneys are open and honest about their non-compliance. If the Designated Manager finds out that an attorney has provided a false CPE statement, then their name will be removed from the Register(s) for a period of at least 6 months (see paragraph 20.28(2)(a) and subregulation 20.28(3)).

Failure to produce CPE records on request

If an attorney fails to produce a record of their CPE activities following a request from the Designated Manager, then the Designated Manager will remove their name from the Register(s) for a period of at least 6 months (see paragraph 20.28(2)(b) and subregulation 20.28(3)).

CPE following restoration of registration

CPE assists attorneys maintain their professional qualifications. Under subregulation 20.29(3) of the Patents Regulations, the Designated Manager may impose a condition and ask an attorney seeking to have their name restored to the Register(s) to complete CPE activities in the period before their next registration falls due on the following 1 July. Depending on the timing of the restoration request, the maximum amount of this conditional CPE is the 'standard' 10 or 15 hours of CPE activities plus an additional one third of the hours (rounded down) that would have been completed over the time that the attorney was off the Register(s). The following tables set out the maximum amount of CPE that may be required to be

completed on return to the Register(s). The Designated Manager can always impose a lower total of CPE if she considers that this is reasonable in the circumstances.

Person registered only as a patent attorney or a trade marks attorney

Period off Register	Hours normally required during the period	1/3 of required hours	Maximum total hours for next registration
3 years	30	10	20
2 years	20	6	16
1 year	10	3	13

Person with dual registration as a patent and trade marks attorney

Period off Register	Hours normally required during the period	1/3 of required hours	Maximum total hours for next registration
3 years	45	15	30
2 years	30	10	25
1 year	15	5	20

Attorneys seeking restoration can count any relevant CPE activities completed during their period off the Register(s) towards satisfying any conditional CPE amount imposed by the Designated Manager. Evidence supporting such CPE claims should be submitted to the Designated Manager at the time of requesting the restoration so that it can be taken into account in assessing the quantum of any conditional CPE.

‘Double-dipping’– CPE and other professional development requirements

Attorneys can claim some CPE for learning activities claimed for other professions. Continuing Professional Development (CPD) for legal practitioners and migration agents may satisfy this requirement. The only condition for this ‘double-dipping’ is that the learning activity is relevant to a person practising as a patent or trade marks attorney (e.g. activities directed to professional conduct or ethics may be suitable).

However, attorneys must also complete satisfactory amounts of attorney-focused CPE activities (i.e. at least 5 hours of patents and/or 5 hours of trade marks activities).

Complying with an audit

CPE audits are conducted annually—usually around October. Attorneys should expect to be audited and should be prepared. Attorneys are generally selected randomly for auditing, but attorneys may be selected for other reasons (e.g. non-compliance in a previous audit).

If you have any concerns please contact the Secretary, Trans-Tasman IP Attorneys Board.

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