

Hearings Office
Technical Focus Group (TFG) Meeting Minutes

Date/Time	Thursday 4 May 2023 10:30am
Location	Ministry of Business, Innovation & Employment 15 Stout Street, Wellington Room G.13
Teleconference/ Video conference details	Click here to join the meeting
Apologies	Becky White Nilu Ariyaratne Greg Arthur Sheana Wheeldon, Quay Chambers Jenni Rutter, Dentons Victoria Argyle

Participants

MBIE / Intellectual Property Office of New Zealand ("IPONZ")	TFG Members
Steffen Gazley, Hearings Manager Cat O'Donnell, Principal Hearings Case Officer Craig Tolson, Principal Hearings Case Officer Samantha Carr, Senior Hearings Case Officer Warren Hassett, Senior Policy Advisor Ellen Gray, Team Coordinator (minutes)	Kate Duckworth, Kate Duckworth Intellectual Property Marcus Caufield, FB Rice Nick Holmes, Davies Collison Cave Thomas Huthwaite, AJ Park Peter Ryan, IPTA Elena Szentiványi, NZIPA Richard Watts, Simpson Grierson Jane Glover, New Zealand Law Society Ian Finch Aparna Watal Garry Williams

Agenda

Time	Topic	Speaker
10.30am	Welcome	Steffen
<ul style="list-style-type: none"> Opening welcome from Steffen 		
10.35am	Review of Previous Meeting Action Points	Steffen
Action		Status

Amend the Evidence Information Sheet to provide flexibility for cases with exceptional circumstances, before adopting initiative.	On agenda.
IPONZ to provide substantive case by case Hearings data, to give a clearer picture of average time-frames for the next Technical Focus Group meeting or prior.	Completed, data sent 4/05/2023.
IPONZ to circulate minor updates regarding “how you can be heard” to members prior to publication on the IPONZ website.	Completed.
IPONZ to complete formality step of removing unsworn evidence as an option on the IPONZ website.	Completed.
IPONZ to provide an update on Patent Proceeding Document Visibility in the next TFG.	On agenda.
IPONZ to provide updated guidelines on Alternative Dispute Resolution with members once finalised. Action on Members to share any contributions to future practice with IPONZ.	In progress, intend to have some content on IPONZ website by end of June.
Members to answer IPONZ query regarding which technology they find useful for Hearings, e.g., Zoom, screen sharing.	Still open to provide feedback on technology. Member raised issue locating embedded meeting links in documents and suggests calendar invites are to be sent to meeting participants. IPONZ note this feedback and will consider including calendar invites as an option upon confirmation parties are providing the correct email addresses.
MBIE Policy Team update	Warren Hassett
<p>Warren Hassett substituting for George Wardle.</p> <p>The MBIE Policy Team’s focus is on a Cabinet paper on the signature and ratification of EU-NZ Free Trade Agreement and in particular policy approvals for the implementation of new obligation on the protection of EU geographical indications (GIs) required under the agreement. The agreement requires us to protect 1,975 EU GIs and the Geographical Indications (Wine and Spirits) Registration Act 2006 is to be amended to accommodate this requirement.</p> <p>The Copyright Act review remains on hold.</p> <p>Member raised question regarding Dominic Kebell and the position of the Corporate Governance and Intellectual Property Policy Manager. Gillian Sharp, previously acting for Dominic Kebell, has been permanently appointed to CGIPP Manager. Gillian to be invited to the next TFG meeting for introduction.</p>	

IPONZ update	Steffen Gazley
<p>IPONZ have permanently moved buildings to 15 Stout Street.</p> <p>The Hearings Office is in the recruitment process for an Associate Hearings Case Officer to help manage the volume of hearings and assist with general case work.</p> <p>Discussion Hearings figures circulated 4 May 2023. High level summary of latest trends in time frames is presented.</p> <ul style="list-style-type: none"> • Scheduling of hearing is approximately nine months out for 2022/2023, the office is continuing to work towards a four-month target. The number of older cases has reduced. • The increase in the timing to issue a decision is due to the Hearings Office effort to close old cases. Cases have gone from 15 to 4, with the last 4 expected to be closed by end of June. The Office should meet the 80% within 60 working days timeframe for the following quarter. The next focus is to improve movement on the timeline of scheduling. • The Office has received a high number of Trade Mark cases, consistently 7 or 8 from August 2022. IPONZ are mindful of how to manage cases and do not expect the time frame to worsen. • There has been a significant increase of decisions issued between 2021 to 2022. Trade Marks have slowed down due to complex cases however we expect an increase on this figure in 2023. • The trend in patent proceedings filed are low, with 7 examination hearings requested and 7 patent oppositions (including under both the 1953 and 2013 Act) filed since July 2022. • Noting IPONZ's original figures were incorrect, member questioned (<i>last slide</i>) if figures only refer to oppositions under the 2013 Act. IPONZ confirm the figures do not include possible oppositions that have not proceeded further. Member also suggests trend to include re-examinations in the stats. 	
Stay of proceedings	Elena Szentiványi
<p>Elena raised item regarding the Hearings Office practice relating to stays of proceedings following the filing of an appeal of a decision of the Commissioner.</p> <p>High Court says an appeal does not operate as a stay. Elena's understanding is the party needs to request a stay of the proceedings rather relying on the Office. Current IPONZ approach is that the decision states that it is pending and not in force until the appeal period has passed and no appeal has been filed.</p> <p>Action for members to provide feedback to IPONZ and IPONZ to review current approach.</p>	
Updates to evidence guidelines	Cat O'Donnell
<p>The Hearings Office is looking to make a couple of minor updates to our evidence guidelines. These updates were sent by email to members prior to TFG and can be viewed at Schedule 2.</p> <p>The first update notes that where a party is seeking to file evidence out of time, the scope of the evidence concerned should be clearly identified. Generally, the Office would expect to see this as a standalone statutory declaration, however as long as the evidence is clearly identified this should not be of issue. Members note their thanks and find this helpful for IPONZ to take account of.</p> <p>The second update clarifies our existing practice that case officers will not make a decision on what is deemed to be evidence in reply. This decision will be made by an Assistant Commissioner and generally at a substantive hearing. The Evidence Fact Sheet has been amended to reflect comments from the previous TFG, including the section on confidential evidence.</p>	

Unsworn evidence guidelines in place from COVID-19 lockdowns have now been withdrawn. IPONZ have given a three-month grace period to file based on old guidelines. The grace period will expire 14 July 2023.

IPONZ raise question regarding earlier comment on sending calendar invites and query if there is additional information that would be helpful for setting appointments. Members reiterate the importance of easily locating the online meeting links in addition to all the appointment details being included in one letter. IPONZ note this feedback and will ensure all appointment details are received in one letter.

Trends in patent proceeding filings

Steffen Gazley

IPONZ raised question to members around patent applications, and the lack of examination hearings requested.

Members suggest question is best raised at a Patents TFG meeting due to their own involvement occurring after the client wishes to begin proceeding filing.

Public inspection of patent proceeding documents

Craig Tolson

IPONZ has proposed a system update to allow proceeding documents to be visible in patent proceedings.

The status of this update is currently with the IPONZ Business Systems team, looking into document naming conventions. There is a question if this will be opened for public inspection on a case-by-case basis or for all historical documents. An update and change in Ptolemy will be implemented once work is completed however it is still a work in progress at the stage.

IPONZ have received feedback regarding this update and note the benefit for this information being available. IPONZ will notify members once concrete time frames are in place and when the update will be introduced.

Aotearoa best practice dispute resolution framework¹

Steffen Gazley

Aotearoa best practice dispute resolution framework is a relatively new framework that has come out of the Government Centre for Dispute Resolution. It is a framework developed with MBIE stakeholders which provides guidance on what good dispute resolution looks like. IPONZ are planning an audit on the entire proceedings process against this particular framework.

IPONZ are mindful that subject matter is slightly more technical, however, we are keen to identify any areas where they do not meet the framework, especially in areas such as treaty obligations and accessibility.

IPONZ invite members to discuss their thoughts on the framework itself or any potential opportunities for IPONZ Hearings functions.

Members have received feedback on whether the board should facilitate a type of negotiated settlement between plaintiffs and attorneys, noting this could be applicable to IPONZ. Members note hearings and the costs involved can be complicated for the layman to understand and comply with. Suggestion for IPONZ to encourage settlements between parties or investigate options for alternative dispute settlement.

Members note from a cost perspective, IPONZ have been reluctant in the past to put funding towards the facilitation of alternative dispute settlements. Suggestion from member for the Hearings Office to issue a letter considering alternative dispute resolution options to parties after the evidence filing is completed, with resources to mediators as a “free” method to encourage parties to explore.

¹ [Aotearoa best practice dispute resolution framework \(the Framework\) | Ministry of Business, Innovation & Employment \(mbie.govt.nz\)](https://www.mbie.govt.nz/aotearoa-best-practice-dispute-resolution-framework-the-framework)

IPONZ note this suggestion and agree this may be a beneficial option as not all cases necessitate a hearing. IPONZ question members if they have noted any use of alternative dispute resolutions or any other alternatives to a hearing.

Members are aware alternative dispute resolution is compulsory in some countries however do not agree with this approach as it could lead to delays. Member raises issue with IPONZ running a parallel function as this may also cause delays and place burden on IPONZ when the initiative should be dealt with between parties.

Alternative dispute resolution

Steffen Gazley

IPONZ are working with WIPO Arbitration Mediation Centre around content on the IPONZ Website and are aiming to post light content by the end of June.

Any other Business

- Proposed date for next meeting is Thursday 19 October 10.30am-12:00pm.
- IPONZ invite members to send TFG agenda items for discussion at any point, particularly pressing issues that require attention prior to the next meeting.

11.30am

Close of Meeting

Summary of Action Points

Owner	Action	Status
IPONZ	IPONZ to provide updated guidelines on Alternative Dispute Resolution with members once finalised. Action on Members to share any contributions to future practice with IPONZ.	In progress, intend to have some content on IPONZ website by end of June.
Members	Provide feedback to IPONZ regarding Stay of Proceedings.	
IPONZ	IPONZ to notify members on Patent Proceeding Document Visibility update once concrete time frames are in place.	
IPONZ	IPONZ to invite Gillian Sharp to next meeting.	