

## Hearings Office

### Technical Focus Group (“TFG”) Meeting Minutes

<b>Date/Time</b>	2 July 2020, 11.00am
<b>Location</b>	Ministry of Business, Innovation and Employment (“MBIE”) 15 Stout Street, Wellington
<b>Room</b>	Rutherford Room
<b>Apologies</b>	John Landells (IPTA) Jason Wach (James & Wells) Marcus Caulfield (IPTA) Clive Elliot (QC) Thomas Huthwaite (Baldwins) Tanya Carter (IPONZ)

#### Attendees

MBIE / Intellectual Property Office of New Zealand (“IPONZ”)	Other
Steffen Gazley (chair) Samantha Carr Stephanie Randle Matthew Currie Monique Cardy (minutes)	Greg Arthur (NZLS)
	<b>Video Conference</b>
	Kate Duckworth (Kate Duckworth IP) Nick Holmes (IPTA) Richard Watts (Simpson Grierson) Sheana Wheeldon (NZLS) Elena Szentivanyi (NZIPA) Andrew Brown (QC) Ian Finch (James & Wells) Kate McHaffie (AJ Park) Garry Williams (Barrister)

Item	Speaker
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<b>Welcome</b>	<b>Steffen Gazley</b>
<b>Hearing Office Update</b>	<b>Steffen Gazley</b>
<ul style="list-style-type: none"> <li>• The Hearings TFG observed the passing of long-standing member Dan Winfield and acknowledged his contribution to the TFG and the IP profession.</li> <li>• Members were provided an update on the Hearings Office and the impacts of the COVID-19 pandemic and lockdown. While recruitment for Assistant Commissioner's was completed in early 2020, delays in hearings scheduling were compounded by the pandemic and the March/April lockdown. This also delayed some key IT infrastructure upgrades to support the automated scheduling the hearings.</li> <li>• Improvements to scheduling timeframes is still expected as the recent recruitment of Assistant Commissioners for both trade mark and patent cases has resulted in significant extra capacity to hear cases.</li> <li>• Members thought that the level of resourcing was still insufficient. The Hearings Office noted that the new Assistant Commissioner resourcing is an approximate doubling of capacity to hear cases. The COVID-19 pandemic has had a significant impact on both the Hearings Office and parties, so it was too early to determine whether resourcing is insufficient. The Hearings Office agreed to continue to closely monitor that meaningful progress is being made and did not rule out investigating additional temporary appointments, if needed. Members requested that the list of upcoming hearings be distributed.</li> </ul>	
<b>Electronic Case Files</b>	<b>Steffen Gazley</b>
<ul style="list-style-type: none"> <li>• Hearings are one of last paper-based procedures at IPONZ. The recent roll-out of video-conference facilities for Hearings in 2019 has been working well and were timely with the recent pandemic. However paper-based documents are less suited to hearings conducted in this format.</li> <li>• This has meant that work on investigating electronic case files is being prioritised. The Hearings Office would like to have some future discussion around how electronic case files would best work at a hearing.</li> <li>• Greg Arthur added that the courts have been using electronic files and that would be a good starting point but noted the expense of this.</li> <li>• Members were encouraged to provide their thoughts and the Hearings Office would prepare a draft guideline for discussion at the October 2020 TFG.</li> </ul>	
<b>Automatic Extensions of Time</b>	<b>Steffen Gazley</b>
<ul style="list-style-type: none"> <li>• Currently, a number of tasks across IPONZ are being automatically extended. This was implemented to help mitigate the significant impact the pandemic has had on business operations, both in New Zealand and overseas. In the Hearings context, all proceeding tasks, which require the submission of evidence (with the exception of Trade Mark revocation counter-statement and evidence tasks), were covered by the automatic extension. The procedure was due to run until 31 July 2020.</li> <li>• IPONZ was considering whether this should continue beyond 31 July and invited feedback from members.</li> </ul>	

The preliminary view of the Hearings Office was that the automatic procedure could end on 31 July, with an understanding extension of time policy, if a party was impacted by the pandemic.

- Greg Arthur advised that, within the NZLS, there was a diverse response to the extension. Whilst some are grateful for it, others are concerned about delaying matters further, resulting in parties that do not want the extension, waiting longer for a hearing. Elena thanked IPONZ for implementing this extension and asked whether it would be possible for a party to file for an extension, in advance of the automatic extension.

#### Practice guideline updates

**Steph Randle & Sam Carr**

#### Update to Security for Cost guidelines

- Steph Randle outlined a proposed guideline on Security for Cost, which had been amended to reflect recent legislative updates.
- Elena asked why the timing of application for security was a relevant consideration. The Hearings Office wanted to encourage parties to request security as early as possible and requests at a particularly late stage (e.g. close to the substantive hearing), might be declined.
- The guideline was approved, but the members were invited to provide feedback on the wording of the guideline over the following week.

#### Scale of Costs in Geographical Indication (GIs) proceedings

- Sam Carr outlined a new costs schedule for GI proceedings.
- The costs schedule was approved.

#### Hearing fees in multiple proceedings

**Steffen Gazley**

- The Hearings Office is reviewing its approach on requiring multiple hearing fees in all cases, even when these are being heard together, with similar issues. Guidance will be presented at the next TFG.

#### Close of Meeting

#### Summary of Action Points

Owner	Action	Status
IPONZ	Send Members list of upcoming hearings	Complete
All	Provide feedback on electronic case files for hearings.	In progress