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Attn:
Dr Belinda Hartmann
Trans-Tasman IP Attorneys Board

By email to secretary.ttipab@ipaustralia.gov.au

SUBMISSION ON THE BOARD'S DRAFT COMPETENCIES FRAMEWORK (ANNEXURE B) AND ANNEXURE C ARISING OUT OF THE 2025 COMPETENCIES REVIEW

We thank the Board for the opportunity to provide feedback on Annexure B - draft Competencies Framework and Annexure C - Competencies Consultation Paper arising out of the 2025 Competencies Review.

Introduction

This submission has been prepared by the New Zealand Intellectual Property Attorneys Inc (NZIPA).

NZIPA is an incorporated body representing a significant number of Trans-Tasman Patent Attorneys registered and practising in New Zealand and Australia, registered Australian Trade Mark Attorneys, and IP lawyers resident and practising in New Zealand.

The current membership of NZIPA comprises: 195 Fellows, 3 Honorary, 15 Students, 14 Non-resident, 22 Associates, and 3 Retired.

Annexure B - Competencies Framework

Trans-Tasman Patent Attorney Competencies and Practice Outcomes

The Board considers that Trans-Tasman Patent Attorneys and Australian Trade Mark Attorneys should maintain five domains of competency. We comment under each of the domains as follows:

I. Knowledgeable

NZIPA agrees that both Trans-Tasman Patent Attorneys and Australian Trade Mark Attorneys need to be knowledgeable in the laws, legal systems & processes, principles of securing IP rights.

However, we note that contrary to the requirements for Australian Trade Mark Attorneys, there appears to be no requirement for Trans-Tasman Patent Attorneys to have knowledge of ancillary legislation, such as competition law, privacy law, labelling laws, and consumer laws.

It is not clear why knowledge of ancillary legislation is relevant for Australian Trade Mark Attorneys but not a requirement for Trans-Tasman Patent Attorneys.

We believe that ancillary legislation is just as important for patent attorneys as it is for trade mark attorneys. Such examples might be marking and labelling of products, or the boundary between consumer laws, IP infringement and having (or not) Rights to Repair.

If the Board considers that this is not relevant to the scope of a Trans-Tasman Patent Attorney, then NZIPA considers that further guidance and clarification on practice boundaries is required in the Competencies Framework and Practice Guidelines.

II. Skilful

NZIPA agrees that Trans-Tasman Patent Attorneys and Australian Trade Marks Attorneys should be skilful.

We note that there is no requirement for Australian Trade Mark Attorneys to have a mandatory period of work prior to registration in order to obtain the requisite skills. Nor is there any requirement for Australian Trade Mark Attorneys to provide a Statement of Skill.

Registration as an Australian Trade Mark Attorney gives the public confidence in the profession, and confidence that the attorneys the public deal with are competent and experienced in their work and have been supervised during the initial stages of their career by a skilled and experienced professional.

However, this cannot be fairly said when there is no requirement to show experience and competence for registration as an Australian Trade Mark Attorney.

At the outset, Australian Trade Mark Attorneys are expected to understand when they may be "working within their own appropriate competencies with due skill and care" and when they are not. However, for someone newly registered, this can be hard to gauge. For those who have not undergone any supervision, this may not be recognised.

NZIPA considers that a period of supervision and the provision of a Statement of Skill should be mandatory in order to obtain registration as an Australian Trade Mark Attorney, the same as it is for Trans-Tasman Patent Attorneys. This provides confidence to the public.

III. Qualified

NZIPA has no additional comments to make.

IV. Current

NZIPA has no additional comments to make.

V. Principled

NZIPA has no additional comments to make.

<u>Practice Outcomes</u>

NZIPA broadly agrees with the requirement that Trans-Tasman Patent Attorneys and Australian Trade Mark Attorneys be skilful and exercise and maintain an understanding of legal frameworks relating to use of First Nations and Indigenous intellectual property which include but are not limited to Protocols for using First Nations Cultural and Intellectual Property in the Arts (Cth), Protecting intellectual

property with a Māori cultural element (NZ), WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge (GRATK), United Nations Declaration on the Rights of Indigenous Peoples (Article 31), and Nagoya Protocol.

Given that the patent attorney profession is a Trans-Tasman profession, we understand that these requirements apply to all patent attorneys, regardless of which country they are domiciled and practice.

We acknowledge that those who have recently cross trained with law degrees and completed post-study professional courses for admission will have gained some knowledge with respect to Protocols for using First Nations Cultural and Intellectual Property in the Arts (Cth) or the Māori cultural element (NZ).

However, many attorneys have been registered for some time, and we query how the Board expects New Zealand based attorneys to be up-skilled with respect to Protocols for using First Nations Cultural and Intellectual Property in the Arts (Cth) having little to no exposure to cultural requirements.

Similarly, we query how the Board expects Australian based attorneys to be up-skilled with respect to Māori cultural elements (NZ). Will the Board provide additional support required to up-skill the profession?

Additionally, we point out that there is no Trans-Tasman Trade Mark Attorney profession under the current regime. New Zealand trade mark attorney practitioners are not recognised by any regime – only Australian Trade Mark Attorneys are recognised by the current regime.

Given that there is a clear distinction between Australian and New Zealand trade marks practitioners, we query if it is even relevant for Australian Trade Mark Attorneys to be skilful and to exercise and maintain an understanding of Māori culture, and elements, when no Trans-Tasman regime for trade mark attorneys exists.

We also query whether there is any intention to implement a Trans-Tasman Trade Mark Attorney regime. If there is currently no plan, we request that this be considered, otherwise we see little point in Australian Trade Mark Attorneys being required to have knowledge of Māori cultural elements.

Annexure C - Competencies Consultation Paper

1. *Noting that it is possible to acquire dual registration as both a trade marks attorney and a patent attorney, how important is in-depth knowledge of trade marks law and practice for competent patent attorney practice?*

NZIPA considers that it is important for competent Trans-Tasman Patent Attorneys to have in-depth knowledge of trade marks to ensure they are upholding the Code of Conduct and acting in the best interests of the client, the public, and the profession. Or at the very least, a basic understanding of trade mark knowledge.

It would be remiss of a Trans-Tasman Patent Attorney to not adequately advise or seek a more qualified trade mark practitioner to provide advice to a client when their patentable subject matter should/could also enjoy trade mark protection, or that their intended branding of their patentable subject matter might infringe another party's registered and unregistered trade mark rights.

Over the years, the profession has changed substantially, in both Australia and New Zealand.

The New Zealand profession is no longer made up of large firms where practitioners are employed at a large firm for most of their career and are placed in a specific "practice area", limited to a very specific and narrow sub-set of work. An example of this "could be someone who has worked in a large firm, in a specific technical field such as biotechnology, and is limited to handling incoming prosecution work from overseas before IP Australia and the Intellectual Property Office of New Zealand.

The New Zealand and Australian professions are now more splintered. New Zealand particularly has a larger proportion of smaller firms than it does larger firms, and the work of an attorney in any of those smaller firms may touch on all aspects of IP.

Additionally, there is an increasing proportion of Trans-Tasman Patent Attorneys who work in-house, and who may need to advise more widely than just patents only or trademarks only. This appears to have been overlooked. The New Zealand profession also has a reasonable amount of movement of practitioners between larger firm, small firms, and in-house, and as such, people are no longer limited to the specific practice areas as they were in the past.

At April 2026, 19 % of NZIPA members were working as in-house Trans-Tasman Patent Attorneys. This number has increased from 16 % in 2021. Those Trans-Tasman Patent Attorneys that are in-house (and employed directly by the client) are expected, by the client, to be able to advise on all aspects of IP. Limiting the scope of knowledge available through training and the Competency Framework will be detrimental to the future of the profession, and the clients that it services.

Moreover, some smaller firms may deal with a larger proportion of local clients and start-ups than bigger firms do. These smaller clients, when dealing with a patent attorney for a patent application or design application, may also want to protect their business name as a trade mark, or the name of its products as trade marks. Small, financially constrained and time-poor clients do not necessarily want to engage extra firms more than necessary. In fact, it is often more useful for small clients and start-ups to consolidate with a particular attorney who has knowledge of its business. It is also important in this regard that attorneys at least have a basic knowledge of trade marks to know where their competency sits.

Consequently, Trans-Tasman Patent Attorneys have an increasing need to touch on many different areas of IP, to fulfil a client's expectations and needs, and this should be considered by the Competency Framework.

The proposed framework, while being more amenable to larger firms and the make up of the profession historically, is not necessarily suitable for the changing New Zealand profession or the in-house roles that many attorneys are now fulfilling. It is also not amenable to the future of the profession by providing overly narrow practicing areas and may result in the needs of clients being inadequately met.

We further submit that any changes should not expose the public or the profession to substandard practice, or a lack of appropriate advice.

In summary, NZIPA is not in favour of de-coupling patents and trade marks. We have significant concerns that to do so will negatively impact clients of the profession, and may damage the reputation of the profession. We are already a niche profession that operates in a small market. It is difficult to understand why it would be beneficial to narrow the scope of an IP attorney's expertise any further.

2. *In your experience, how strongly do clients rely on patent attorneys for trade marks work and advice?*

In some NZIPA members' experiences, at the very minimum, it is important that Trans-Tasman Patent Attorneys are able to advise clients on the process, benefits and disadvantages of protecting trade marks. In other members' experiences at larger firms, this is less so, but they know enough to understand the basics of trade marks, and to introduce the client to a colleague who specialises in trade marks in order to assist further.

However, in general, the experience of NZIPA members highlights that clients have often relied on Trans-Tasman Patent Attorneys in New Zealand for trade marks advice. NZIPA considers that this is important for the future of a changing profession.

NZIPA considers that, if changes are made, time and resources may need to be spent re-educating the public.

As mentioned above, New Zealand start-ups often come to Trans-Tasman Patent Attorneys looking for IP advice on all aspects of IP - from the patentability of their products and services to trade mark and brand protection. Prior to the implementation of the Trans-Tasman regime, the patent attorney qualification regime in New Zealand provided sufficient knowledge for those qualified to practice in both patents and trade marks.

We reiterate that small clients and start-ups do not necessarily want (and often cannot afford) to be dealing with multiple attorneys or multiple firms to service their needs. This is particularly relevant for small clients and start-ups who have limited money, time, and resources and do not want complexity associated with engaging multiple service providers. Given cash flow constraints, they are also more likely to steer away from the bigger full service large firms.

Similarly, those in-house in both Australia and New Zealand need to have sufficient knowledge to advise on patents, trade marks, and all aspects of IP as expected by their employers. De-coupling those skills does not support the profession, the public, or the clients.

NZIPA also considers that Australian Trade Mark Attorneys should be required to basic knowledge of patents and designs, as this may be equally required.

3. *Requiring supervised trade marks practice experience for registration as a trade marks attorney would create an additional barrier to entry into the profession. Would employment requirements increase the competency of the trade marks attorney profession, and if so, does it make the additional barrier a reasonable cost?*

NZIPA does not consider that requiring supervised trade marks practice experience for registration as an Australian Trade Mark Attorneys would create an unnecessary additional barrier to entry to the profession. On the contrary, it would ensure that they were working within their own appropriate competencies, and with due skill and care. We believe that most (if not all) members of the profession have found that passing the qualification exams to be a patent or trade mark attorney does not equip the person with the ability to practice. It is also necessary to understand how to communicate with the client and the IP office, handle payments (and non-payments), and how to respond in the many varying legal and technical situations that come with the role. Supervision by an experienced professional is essential in helping to develop these skills.

We question why this would be a bigger barrier for trade marks professionals than patent professionals who are required to have such supervision.

Furthermore, *most* people who register as Australian Trade Marks Attorneys will already be practicing under supervision at a firm prior to registration. Perhaps there are a few practitioners who are registered who may have no Australian or New Zealand practice experience. If that is the case, we believe that those who achieved registration without supervision may not actually be competent, acting in the best interests of their clients, or acting in compliance with the Code.

NZIPA considers that supervision, in order to achieve registration, is essential. The lack of supervision prior to registration creates an increased risk of harm to the public and the profession.

It is not clear why at present someone can hold themself out as being an expert and proficient in Australian trade mark practice when there is no requirement to have any hands-on experience in such matters.

This requirement exists for Trans-Tasman Patent Attorneys and should equally apply to Australian Trade Mark Attorneys so that the public can have confidence in the professional regime, and know that the person they are dealing with is competent and has the requisite skills and experience.

Yours faithfully
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