



Dummett Copp LLP

PATENT & TRADE MARK ATTORNEYS

Members of

CHARTERED INSTITUTE OF PATENT ATTORNEYS

**INSTITUTE OF PROFESSIONAL REPRESENTATIVES BEFORE THE EUROPEAN
PATENT OFFICE**

INSTITUTE OF TRADE MARK ATTORNEYS

TERMS OF BUSINESS

Thank you for instructing Dummett Copp LLP to act as your Patent & Trade Mark Attorneys. As such we will provide you with confidential professional advice on intellectual property and related matters. Dummett Copp LLP is a Limited Liability Partnership registered in England under number OC351963.

We will carry out all work for you under these standard terms of business. We may also provide a letter setting out any further terms agreed between us, in which case that letter will take priority over these terms.

1 OBLIGATIONS OF THE FIRM

The term 'Partner' is used to refer to a Member of Dummett Copp LLP. Each of our Partners and qualified staff is a member of one or more of the governing bodies of our profession, including the Chartered Institute of Patent Attorneys, the Institute of Professional Representatives before the European Patent Office and the Institute of Trade Mark Attorneys, and will comply with their codes of professional conduct.

It is our responsibility to: (a) practise competently, conscientiously and objectively, putting the interests of our clients foremost while observing the law and our duty to any Court or Tribunal; and (b) avoid any conflict of interest.

We will perform the engagement with reasonable skill and care and acknowledge that we will be liable to you for losses, damages, costs or expenses caused by our negligence or wilful default.

2 INSTRUCTIONS

2.1 *Giving us instructions*

Unless otherwise agreed, we will assume that any person within your organisation may instruct us on your behalf, unless they clearly do not have the appropriate authority. Having said that, it is often helpful if you can nominate an individual within your organisation to act as a primary point of contact for us and keep us updated if this changes.

2.2 *Joint applicants*

Where two or more persons or concerns instruct us that they intend to be joint owners of a patent or other right, we will require those persons to nominate one among their number from whom we can and should take instructions, to the exclusion of the others.

2.3 Instructions from an Agent who is not a qualified professional representative

Our ultimate client in any matter is normally the owner of a patent or other right. When the owner wishes for us to receive instructions from a person, company or other legal entity acting on behalf of the owner, then the owner wishes for that person, company or other legal entity to be their Agent. When an Agent is not a qualified professional representative of the owner, we will require a written authorisation from the owner confirming the appointment of their Agent and agreeing that the Agent is our sole client in the matter.

2.4 *Timing and form of instructions*

We rely on our clients to give us timely, complete and accurate information and instructions. We prefer where possible to have oral instructions confirmed in writing in order to avoid any possible misunderstandings. If it is unavoidable for you to provide us with oral rather than written instructions, we will endeavour to confirm in writing the instructions we have received, as we understand them.

Intellectual Property Offices often impose time limits. Failure to meet these limits can be fatal to the rights concerned. Whilst it is our responsibility to keep you informed of any relevant time limits, we cannot accept any responsibility if you fail to provide us with instructions that are clear, complete and early enough for us to meet such time limits. We will endeavour to inform you of time limits and of actions or instructions that are required, but we do not undertake to give further reminders, incur costs on your behalf, or take other action in the absence of instructions from you to do so. In this situation, your rights may be lost irrevocably. Therefore, if we receive late instructions from you we may not be able to implement your instructions in time, in which case your rights may be lost irrevocably.

Please note that when we receive late instructions or late payments to us where we have asked for advance payment before taking action, urgency charges may be incurred which we shall have to pass on to you.

2.5 *Keeping us informed of changes in your contact details*

It is important that you inform us promptly of any change in relation to: (a) any primary contact; (b) your name, address, telephone/fax numbers and e-mail address; or (c) any change of ownership of your patent or other relevant rights. Many such changes have to be officially recorded. Please remember that obtaining registration of patents, trade marks and design rights can take years and that there may be little activity for long periods followed by a situation which requires immediate action. If we are unable to contact you owing to your failure to keep us informed of your current contact details, we will not be responsible for any consequent loss of your intellectual property rights.

2.6 *Electronic communications*

We will normally communicate with you by mail or fax; however, we may communicate with you by e-mail either in response to electronic communication from you or with your prior agreement. Given that e-mails sent over the Internet may lack security and jeopardise confidentiality, we cannot accept responsibility for any corruption in the information communicated to you or its disclosure to other parties as a result of the interception of such communication. Due to the very nature of the Internet, we cannot accept responsibility for non-receipt or late receipt by you of such communications.

We shall be responsible for carrying out regular virus checks; however, we advise you to carry out your own virus checks on any communications (whether in the form of computer disc, e-mail, Internet or otherwise). To the extent that we have fulfilled our obligation above, we cannot accept responsibility (including in negligence) for any viruses that may enter your system or data by these or any other means. Furthermore, whilst we observe reasonable precautions, we regret that we cannot guarantee the security of our IT systems.

3 **INSTRUCTION OF THIRD PARTIES TO ACT ON YOUR BEHALF**

During our work for you we may need to instruct third parties to act on your behalf, for example searching agencies, notaries, foreign lawyers or foreign patent and trade mark attorneys. You may need to sign a power of attorney or similar appointment to engage such a third party. We may instruct such third parties directly on your behalf.

Such third parties are not part of this Firm. Whilst we shall endeavour to select third parties as being of good quality, we will not be liable for any default or negligence by such third parties. We shall, of course, monitor such third parties on an ongoing basis to ensure that the required service is provided and that our performance standards are maintained.

4.3 Service charges

Service charges are related to the amount of administrative time incurred on any particular matter, the use made of our IT systems and administrative systems including our records management systems, and typical internal office expenses. Such service charges are normally fixed for any particular matter. Services charges may also include an element which is variable and related to the level of expenses which we incur in advance on your behalf.

4.4 *Payment of expenses*

You will be responsible for any expenses we incur on your behalf. These expenses may include Intellectual Property Office official fees, Counsel's fees, Court fees, and the costs of any external service suppliers such as translators, notaries, search agencies, draughtsmen, foreign lawyers or foreign patent and trade mark attorneys. There may also be expenses for such items as photocopying costs, couriers, travel and accommodation costs.

Whilst our fixed charges and hourly rates are predictable, you should appreciate that external service suppliers' charges and official fees are outside our control as these may be changed without notice and (in the case of foreign matters) vary with exchange rate fluctuations.

4.5 *Payments on account*

We may require payment on account, particularly in respect of large items such as charges and expenses to be incurred in foreign filings and actions. When we make such a request, we will usually not carry out any instructed work until the requested payment has cleared into our bank account, so good time should be allowed to ensure that we have received cleared funds in advance of any deadline. It is also essential that we receive written instructions confirming that payment has been made and that we should proceed with the matter for which payment is being made.

4.6 *Estimates*

If requested, we will give estimates of future charges in good faith based on our knowledge at the time. However, as charges may be affected by matters beyond our control and the amount of work involved often cannot be accurately forecast, such estimates will not be binding. Only some types of work are suited to a firm advance quotation.

If during the course of carrying out the work it becomes apparent to us that our actual charges are likely to exceed our estimate significantly, we will try to obtain your permission before exceeding our estimate.

If you would like to set an upper limit on the charges which may be incurred without prior reference to you, then please let us know.

4.7 *Invoicing*

We would be happy to render invoices to and accept payment from another person nominated by you (for example, another company in the same group). However, please note that ultimate responsibility for making such payment will remain with you.

If you have any query about any invoice, please contact us as soon as possible.

4.8 *Late payments*

We reserve the right to charge interest on amounts that are overdue for more than 28 days. Interest will be calculated at the annual rate of 5% above the base rate of Lloyds Bank from time to time.

If a requested payment on account is not made or if an invoice remains unpaid after the payment period on the invoice, we reserve the right to suspend all work on your behalf and the right to proceed against you for the full balance of the outstanding debt. This is without prejudice to our right to invoice for work undertaken before such suspension and to take legal action for the payment of our costs. You will be responsible for the consequences of the suspension of work, which may include the irrevocable loss of, or failure to obtain, rights.

5 **FILING AND OWNERSHIP OF FILES**

5.1 *Ownership of files*

Our files remain our property at all times. If you would like to transfer your work to other professional advisors, we will copy such of the files relating to your work as you request (at your expense) and release the copy file(s) when all our charges have been paid.

5.2 *Copyright*

Copyright in any documents prepared by us on your behalf will remain with us and will not pass to you unless we agree otherwise.

5.3 *Destruction of files*

After completing a matter for you we are entitled to keep all your papers and documents while there is money owing to us for our charges and expenses. We will keep our correspondence files, draft documents and other papers for seven years, and reserve the right to scan and electronically store all such papers for an indefinite period. Unless we agree otherwise with you, we have your authority to destroy our correspondence files, draft documents and other papers either when these are scanned for electronic storage or seven years after the date of the final bill we send to you for the particular matter.

6 **CONFIDENTIAL INFORMATION**

While acting for you, we are likely to receive information which relates to you as our client. We will keep such information confidential, except where disclosure is required by law or regulation, or in other exceptional circumstances.

In general, we recommend that you restrict the release of, and maintain strict control over, any information not already in the public domain connected with instructions we receive. We would be happy to advise on the desirability of releasing confidential information to the public in specific cases.

7 **DATA PROTECTION AND CONFIDENTIAL INFORMATION**

7.1 While acting for you, we are likely to receive information which relates to you as our client. Most of this information is covered by the Data Protection Act 1998. We will keep such information confidential, except where disclosure is required by law or regulation, or in other exceptional circumstances.

7.2 This firm has notified under the Data Protection Act 1998 and will comply with all relevant data protection legislation. By instructing us you are consenting to our use of relevant personal data as appropriate in the course of our professional services, including any transfers of such data outside the European Economic Area and sending you information which we think might be of interest.

8 **LIMITATION OF LIABILITY**

8.1 Our liability for any loss or damage suffered by you as a result of a breach by us of our terms of engagement or of negligence in the course of providing our services shall be limited to a just and equitable proportion of the total loss or damage having regard to the extent of your own responsibility and that of any other party who may also be liable to you in respect of it (and regardless of the ability of any such person to make payments). Where providing our service involves working with others, including other professional firms, who limit their liability in any way, our own liability shall be limited to an amount which would have applied had the other not so limited its liability.

8.2 You shall not bring any claim personally against any of our employees or consultants. Each such consultant and employee shall be entitled to the benefit of this provision under the Contracts (Rights of Third Parties) Act 1999.

9 **SEARCHES**

Any searches you request may be carried out by ourselves, by Intellectual Property Offices or by an independent specialist searching firm. Due to the limitations and occasional errors in classifications, indices, computer databases and official records, no search can be guaranteed for comprehensiveness or accuracy. We will endeavour to point out any particular limitations when reporting search results and may recommend extending the search.

10 **INDEMNITY FOR THREAT OF INFRINGEMENT PROCEEDINGS**

Before we send any warning on your behalf to a third party, we will ask you to indemnify us against the risks of our being sued for making an unjustified threat of infringement proceedings. The aim of this request is to maintain our objectivity in contentious matters, which would diminish if we were to become a party to any proceedings. We may refuse to act for you if you are not able to provide the requested indemnity.

11 **CLIENT'S PRIVILEGE**

In general, communications between a UK Patent Attorney and his client are privileged under Section 280 of the Copyright, Designs and Patents Act 1988. Similarly, communications from a UK Registered Trade Mark Attorney and his client are privileged under Section 87 of The Trade Marks Act 1994. This means that other people, including the courts, are not entitled to discover the content of such communications where they concern professional advice. However, you should note that there are circumstances in which the privileged status of a letter or other document can be lost. Please let us know if you would like us to give you further information on this area.

12 **CONFLICTS OF INTEREST**

We cannot act simultaneously for two clients whose interests in the matter on which we are advising conflict, unless (exceptionally) both clients consent to such an arrangement. When potentially taking on a new client, we try to identify conflicts of interest that may preclude us from acting. It is helpful if potential new clients identify to us any firms or companies for whom they believe we will be unable to act without a conflict of interest arising.

Sometimes, conflicts arise later because, for example, our clients acquire new companies or diversify into new areas of business. In such circumstances, we reserve the right to decline to act further, at least in relation to the area of conflict, for one of the clients in question, generally the client with the shorter relationship with us. Because of obligations of confidentiality it is often not possible for us to identify the other client or the subject matter involved when we advise a client that we can no longer act for them.

13 **CLIENT CARE AND COMPLAINTS**

We value our good relationships with our clients. However, we accept that from time to time, difficulties and misunderstandings may arise. If you have any problems, you should feel free to discuss your concerns with the member of our professional staff dealing with your work. If, after such discussions, you feel that the matter has not been adequately dealt with, please ask that person to refer you to the senior member of our firm appointed to handle clients' complaints.

If we cannot resolve the matter, individual clients and small businesses have the right to refer the matter to the Legal Ombudsman who may consider your complaint and seek to resolve the issue. Further information is available from the Intellectual Property Regulation Board (IPReg) at www.ipreg.org.uk, and from the Legal Ombudsman www.legalombudsman.org.uk.

14 **TERMINATION OF RELATIONSHIP**

You may terminate our relationship at any time by writing to us. We may decide to stop acting for you only with good reason, for example, if you do not pay a bill or comply with our request for payment on account, if you cannot give us clear and proper instructions on how we are to proceed, or if it is clear to us that you have lost confidence in how we are carrying out your work. We must give you reasonable notice of our intention to stop acting for you. In either case, if the relationship is terminated we will require you to pay our charges and expenses up to and including the date of such termination.

15 **THIRD PARTY RIGHTS**

We do not assume liability to any person other than you in relation to advice provided to you. No terms of our relationship shall be enforceable by a third party, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

16 **MONEY LAUNDERING**

