

PROPOSED CODE OF CONDUCT
FOR
QUALIFIED PATENT INFORMATION
PROFESSIONALS

(Released on 11 May 2017 for public comment)



Qualified Patent Information Professional

www.qpip.org



Code of Conduct of the International Standards Board for Qualified Patent Information Professionals (ISBQPIP)

5 **1 Application of the Code**

This code applies to any person who has been registered as a Qualified Patent Information Professional [hereinafter "QPIP"] in accordance with Article 5.3 of the *Articles of the International Standards Board for Qualified Patent Information Professionals* [hereinafter: "Article" or "Articles"] and Rules 16 and 18 of the *Rules of the International Standards Board for Qualified Patent Information Professionals* [hereinafter: "Rule" or "Rules"] by:

- (a) successfully completing the certification examinations (see *Rule 16*); or
- (b) prior experience recognition (see *Rule 18*).

The code also applies to any QPIPs who maintain their registration as a QPIP in accordance with *Rule 22*.

20 **2 Definitions**

In this code, the following definitions are applicable:

"Client" means any natural person, legal entity or regulatory authority (such as a Patent Office or a legal body in a jurisdiction authorized to administer or regulate laws or procedures of that jurisdiction) who asks services of a QPIP;

"ISBQPIP" means the International Standards Board for Qualified Patent Information Professionals;

"Professional service provider" means any natural person or legal entity who provides services or goods to a QPIP; and

"Regulatory and Disciplinary Committee" means the Committee listed in *Article 10.6* of the Disciplinary Regulation.

35 **3 Objectives of the Code**

The objectives of this code are to:

- (a) explain the professional conduct required of QPIPs in their dealings with their clients, other professional service providers and regulatory authorities; and
- (b) inform clients or others who deal with a QPIP to understand the obligations of the QPIP under the code.

45 **4 Examples in the Code**

This code contains examples of behavior to assist QPIPs and their clients to understand this code and the conduct it covers. The examples are not limiting or exhaustive.

5 Core Obligations



QPIPs must act at all times:

- 5 (a) in accordance with the law; and
(b) in the best interests of all of their clients; and
(c) in the public interest; and
(d) in the interest of the QPIP profession as a whole.

10 If a QPIP is unable to act in accordance with these four core obligations, the QPIP has the right to refuse to act unless the conflict can be resolved.

QPIPs must serve the interests of their clients in a competent, honest and unbiased manner.

15 Example A- A QPIP should only conduct a search or review and/or analyse search results in a field of science or technology with which the QPIP is familiar or with which the QPIP is prepared to become familiar. In order to safeguard the client's interests, the QPIP should discuss with the client any unfamiliarity with the technology at hand in order to obtain the client's verbal or written informed consent should the client wish to proceed notwithstanding. In the absence of such consent, and if possible, the QPIP should refer the work to another QPIP who considers themselves to be competent in that field or technology.

20 Example B- A QPIP must not provide any legal advice to a client unless the QPIP is qualified to provide such legal advice or opinion such as in the case of a QPIP who is also a registered patent attorney.

25 Example C- If a QPIP, voluntarily or upon instruction, omits or obscures results of a search that would be adverse, or are perceived by the QPIP to be adverse to their client's interests, that conduct would be dishonest and would reflect poorly on the QPIP profession as a whole and would therefore constitute inappropriate behavior.

30 Example D- If a QPIP discovers or is informed of a mistake in performing their work, the QPIP must review the work and make attempts to rectify the mistake.

35 Example E- If a QPIP states that he or she has completed the necessary continued professional education as required by the *Rules*, but in fact has not, the QPIP has failed to act in the interest of the QPIP profession as a whole, because such misconduct undermines public confidence in the QPIP profession.

40 **6 Confidentiality**

45 A QPIP must not divulge or enable the disclosure, directly or indirectly, of any confidential information of a former, current or prospective client to third parties who is not the client, unless consent to divulge such information is obtained from the client. Confidential information includes the identity of the client as being a client of the QPIP, regardless of whether the client is a current, former or prospective client. Confidential information also includes draft or unpublished technical disclosures, draft or finalised manuscripts that have yet to be published, draft or unpublished claim sets, draft or unpublished patent applications, search strategies and search results.

50 A QPIP must put in place safeguards such that all employees, suppliers, subcontractors, outsourcing partners and associates of the QPIP uphold the confidentiality obligation under this Code.



A QPIP may not use or disclose any confidential information to benefit the QPIP's own benefit or the benefit of another person including but not limited to a member of the QPIP's extended family, friends, dependents and business associates or advisors such accountants, financial advisors, lawyers, or the benefit of a legal entity in which the QPIP has a stake.

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Example F- A QPIP must not share confidential information with any one including a family member, friend, dependent or business associate as it:

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- (i) may prejudice the outcome of a potential lawsuit;
- (ii) may warrant insider trading allegations;
- (iii) may jeopardize the ability to file a patent application;
- (iv) may divulge a trade secret; and/or
- (v) may cause any other issue that results from confidential information being shared with an unauthorized party.

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If the confidential information is subsequently published through no act of the QPIP, the QPIP no longer needs to keep the information confidential.

7 Advertisements and Promotion of Services

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Advertising of a QPIP's services must be true, objective and conform with basic principles such as integrity and compliance with confidentiality.

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Example G- A QPIP must not repeatedly contact prospective clients after an offer for service is declined as hounding and badgering of prospective clients reflects poorly on the QPIP profession as a whole.

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Example H- A QPIP must not make disparaging, discourteous or offensive comments about another QPIP or competitor in print, online, podcasts, interviews, or via social media.

Example I- Providing direct pricing comparisons with named competitors of the QPIP to attract or keep clients is not permitted.

8 Conflict of Interest

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Due to the confidential nature of the search and analysis services provided, a QPIP is required to determine and identify whether any potential conflicts of interest exist or may exist if the QPIP were to act on a client's instructions or request. For example, a QPIP may encounter a conflict if the QPIP must decide whether to act on a client's instructions which could harm or jeopardize another client's interests or enrich another client.

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Another scenario where a conflict may arise is if a QPIP has to decide whether to potentially harm the QPIP's relationship with their client or potentially harm the QPIP's livelihood or reputation by not acting on the client's instructions. A conflict of interest may also arise when a client's instructions or request conflict with work completed for another current or former client that is or may be a direct competitor of the client providing the instructions or making the request. When a conflict has been identified and the QPIP wishes to act on the instructions or request, the QPIP must inform both clients that a conflict exists and seek both clients' permission to act.

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Example J- If a conflict of interest is identified that would provide an unfair advantage to one client over another client of the QPIP, the QPIP must inform both clients that a conflict exists or may exist



without disclosing confidential information such as the identity of the parties involved or the specific features of the technology involved.

9 Supervision of associated persons

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A QPIP is responsible for the acts of assistants in their direct employ who are not QPIPs.

10 Outsourcing of services

10 A QPIP must take care in outsourcing work to third parties, as the QPIP is accountable to the client for their choice of the third party.

11 Fees and Payment

15 A QPIP must ensure that any funds of a client in their possession are kept and used only for the purposes for which the client provided the funds.

20 Example K- If a QPIP asks a client to pay a deposit or advance payment before services are to be performed, those funds must not be deposited into a personal bank account of a QPIP or a family member, friend or associate of the QPIP and must be applied to the client's balance owing in respect of the work for which the deposit was provided.

A QPIP must, as soon as practical, give a client any refund due to the client.

25 A QPIP should not charge a fee directly related to the outcome of the services he or she provides.

Example L- A QPIP should not charge a client on a contingency basis. For example, a client should not have to pay trailing fees on the success of a patent opposition for which the QPIP provided prior art.

30 12 Anti-competitive behaviour

A QPIP should not collude with competitors to set search related pricing or database subscription fees. QPIPs should not attempt to fix searching rates among themselves or engage in any other activity that could be deemed as anti-trust behaviour. To avoid antitrust allegations, QPIPs should avoid discussing or exchanging, by any means, with their competitors such business sensitive information as:

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- i. current pricing, changes in pricing, terms or conditions of sale;
 - ii. pricing policies or practices;
 - iii. forecasts of price increases or decreases
 - 40 iv. specific credit terms, discounts, rebates, profits, profit margins or costs, surcharges, market shares or sales territories
 - v. selection, rejection or termination of a QPIP's suppliers or clients
 - vi. production levels or schedules
 - vii. bids, or intent to bid or not to bid on a contract

45 Further examples of antitrust behavior include the following scenarios.

Example M- A QPIP who uses their position to gain unfair advantage by using resources not available to competitors.

50 Example N- QPIPs who collectively decide to allocate specific clients or classes of clients, or geographic territories among themselves.



Example O- A QPIP who refrains from bidding for work to enable another competitor to bid in exchange for a benefit.

5 Example P- A QPIP and one or more of the QPIP's competitors cannot sell their services through a common sales agent who sets the pricing for each competitor or who allocates to each competitor their permitted production level or who assigns clients to each competitor or who divides the sales territories among the competitors.

10 Example Q- A QPIP and one or more of the QPIP's competitors cannot agree to collectively refuse to serve particular clients or to collectively buy from particular suppliers.

