

CODE OF CONDUCT
FOR
QUALIFIED PATENT INFORMATION
PROFESSIONALS



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 is registered as a Qualified Patent Information Professional [hereinafter "QPIP"].

10 2 Definitions

In this code, the following definitions are applicable:

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

20 "Legal advice or legal opinion" means providing verbal or written statements to a client that a patent claim may or may not be infringed or that a patent claim may or may not be anticipated or considered obvious in light of the search results.

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

25 3 Objectives of the Code

30 3.1 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.

35 4 Examples in the Code

40 This code contains examples of behaviour 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

45 5.1 QPIPs must act at all times:

- (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.

5.2 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.

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5.3 A QPIP must not provide any legal advice or legal opinion 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. A QPIP must also not rate patent publications according to the level of perceived infringement risk, for example by rating patent publications as posing a low, medium or high patent infringement risk. Although a QPIP should refrain from providing their opinion to their client on the references they find, if the QPIP is certain that the client is a patent attorney who is registered in the jurisdiction of concern, then the QPIP can provide their opinion, but only verbally.

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

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Example A- 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 behaviour.

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Example B-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.

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Example C-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.

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Example D- A QPIP should 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.

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6 Confidentiality

6.1 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 or an employee of the client who is bound by the client's corporate guidelines on confidentiality, 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.

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6.2 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.

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6.3 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.

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

- (i) may prejudice the outcome of a potential lawsuit;
- (ii) may warrant insider trading allegations;
- 10 (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.

15 6.4 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

20 7.1 Advertising of a QPIP's services must be true, objective and conform with basic principles such as integrity and compliance with confidentiality.

25 Example F- A QPIP must not badger prospective clients by repeatedly contacting a prospective client after the QPIP's offer for service is repeatedly declined by the prospective client as such behaviour reflects poorly on the QPIP profession as a whole.

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

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

8 Conflict of Interest

35 8.1 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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45 8.2 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 without disclosing confidential information such as the identity of the parties involved or the specific features of the technology involved and seek both clients' permission to act.

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Example I- If a client A requests a QPIP to conduct a search in order to invalidate a patent of another client B of the QPIP's, the QPIP should not act.

5 **9 Supervision of associated persons**

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

10 **10 Outsourcing of services**

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.

15 **11 Financial transactions**

11.1 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.

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Example J- 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.

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

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

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Example K- 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.

35 **12 Anti-competitive behaviour**

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12.1 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
- iv. specific credit terms, discounts, rebates, profits, profit margins or costs, surcharges, market shares or sales territories
- 45 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.



12.2 Further examples of antitrust behaviour include the following scenarios.

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

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

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Example N- 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.

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Example O- 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.

