

Guidance for Applicants for a Grant of a Patent of Precedence

Up-to-date December 2022¹

You are Required to read this guidance before completing the application form.

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¹ This guidance will be updated from time to time. Please have regard to the Guidance for Applicants in force at the time of making your application.

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Introduction

The public interest in the integrity of the legal system is of paramount importance. The existence and availability of highly skilled and dedicated legal practitioners is an essential part of serving that public interest. The grant of a Patent of Precedence is a mark of excellence in the legal profession in the State which identifies those legal practitioners who provide outstanding legal services on the widest range of specialist advice and advocacy, written and oral, in all courts and fora in respect of national, European and international law. The grant of a Patent of Precedence gives rise to the expectation from clients, colleagues, the judiciary and the public of exceptional legal advice and advocacy, and the highest ethical standards.

On the 7 October 2019 the Minister for Justice and Equality signed the commencement order to commence Part 12 of the Legal Services Regulation Act 2015 ('the 2015 Act') which relates to Patents of Precedence.

Section 172 of the 2015 Act required the Legal Services Regulatory Authority ('the Authority' or 'the LSRA') to establish an Advisory Committee on the grant of Patents of Precedence ('the Committee').

On 2 April 2020, the Legal Services Regulatory Authority ('the Authority' or 'the LSRA') established the Committee under section 172(1) of the 2015 Act. The Committee consists of:

- (a) The Chief Justice (Chairperson of the Committee)
- (b) The President of the Court of Appeal
- (c) The President of the High Court
- (d) The Attorney General
- (e) The Chairperson of the Bar Council
- (f) The President of the Law Society and
- (g) Dr. Don Thornhill, a lay member of the Authority nominated by the Minister.

Following the establishment of the Committee, the Committee met to establish the criteria, based on the objectives set out in section 173(2) of the 2015 Act, to be met by a legal practitioner in order for a recommendation to be made by the Committee to the Government that a Patent be granted to him or her. The application form to which this guidance note relates, and the criteria set out below, is the product of those discussions.

The criteria by which an applicant will be assessed by the Committee are as set out in the objectives in section 173(2) of the 2015 Act. The objectives referred to in section 173(2) are, in relation to a legal practitioner seeking to have a Patent granted to him or her, that he or she:

- (a) has, in his or her practice as a legal practitioner, displayed—
 - (i) a degree of competence and a degree of probity appropriate to and consistent with the grant to him or her of a Patent,
 - (ii) professional independence, and
 - (iii) one or more of the following:
 - (I) a proven capacity for excellence in the practice of advocacy;
 - (II) a proven capacity for excellence in the practice of specialist litigation; or

(III) specialist knowledge of an area of law;

(b) is suitable on grounds of character and temperament;

(c) is in possession of a tax clearance certificate that is in force;

(d) is otherwise suitable to be granted a Patent.

Further detail in relation to these criteria is set out later in this guidance document.

Subject to meeting these criteria, a recommendation for a grant of a Patent of Precedence may be made to the Government in respect of an applicant who is a sole-practitioner, employed in a firm of solicitors, a member of the Law Library, a non-Law Library practising barrister, employed in the public sector, private sector, in academia or otherwise.

Who can apply?

LEGAL PRACTITIONERS

Applications are open to legal practitioners, as defined in the 2015 Act i.e. a practising barrister or a practising solicitor.

‘Practising solicitor’ is defined in the 2015 Act as meaning ‘*a person who has been admitted as a solicitor, whose name is on the roll of solicitors, who provides legal services and who –*

- (a) is, by reason of section 56 of the Solicitors (Amendment) Act 1994, required to hold a practising certificate, or*
- (b) is, by reason of that section, exempted from the requirement to hold a practising certificate.’*

‘Practising barrister’ is defined in the 2015 Act as meaning ‘*a person who –*

- (a) is a qualified barrister, and*
- (b) provides, or holds himself or herself out as providing, legal services as a barrister –*
 - (i) whether or not for a fee,*
 - (ii) whether or not under a contract of service or a contract of services, and*
 - (iii) whether or not, in so doing, he or she describes himself or herself as a, or otherwise uses the title of, “barrister”, “barrister-at-law” or “counsel”.*

A ‘qualified barrister’ is defined in the 2015 Act as ‘*a person who –*

- (a) has been admitted by the Honorable Society of King’s Inns to the degree of Barrister-at-Law or has been called to the Bar of Ireland, other than where, subsequent to his or her being admitted to that degree or being so called –*
 - (i) he or she has been admitted as a solicitor,*
 - (ii) he or she, before the date on which Part 6 comes into operation, has been disbarred by the Benchers of the Honorable Society of King’s Inns, where that disbarment remains in effect, or*
 - (iii) his or her name has been struck off the roll of practising barristers or the roll of solicitors by the High Court, which order remains in effect,*

or

(b) is a registered lawyer, having the same right of audience as a practising barrister or a solicitor qualified to practise by virtue of Regulation 10 of the European Communities (Lawyers' Establishment) Regulations 2003 (S.I. No 732 of 2003).'

Pursuant to section 133(1) the LSRA is obliged to set up and maintain a roll of practising barristers. A person who has been called to the Bar of Ireland and who intends to provide legal services as a barrister must have his or her name, and any additional information relating to him or her, entered on the roll (pursuant to section 134 of the 2015 Act).

If successful in receiving a grant of a Patent of Precedence, this will be issued to you in the name provided on your application form. Accordingly, please ensure that the surname and forename(s) you provide reflect your professional name.

APPLICANTS WHO PRIMARILY PRACTICE OTHER THAN IN IRELAND

Applications are invited from those who primarily practice in another jurisdiction subject to their meeting the definition of 'legal practitioner' in the 2015 Act as set out above. Applicants should note that they can only be recommended for a grant of a Patent of Precedence if the Committee is satisfied they meet the criteria relevant to practice in Ireland.

The Criteria

TAX CLEARANCE CERTIFICATE

All applicants must be in possession of a tax clearance certificate (meaning a certificate issued under section 1095 of the Taxes Consolidation Act 1997) that is in force.

Applicants are required to furnish a copy of a Tax Clearance Certificate that is in force with their application, or provide the relevant Tax Reference Number and Tax Clearance Access Number with their application.

FURTHER DETAIL ON THE CRITERIA AS SET OUT IN THE OBJECTIVES SPECIFIED IN SECTION 173(2) OF THE 2015 ACT

The qualities required to the highest standard before recommendation for a grant of a Patent of Precedence are:

- **Professional Experience, legal knowledge and probity²:**
 - Applicants must have a depth of professional experience and perspective acquired over a considerable period. Applicants must have up-to-date and expert legal knowledge. Applicants must always behave with probity.

- **Professional Independence³:**

² The objective (at section 173(2)(a)(i) of the 2015 Act) is that a legal practitioner has displayed in his or her practice 'a degree of competence and a degree of probity appropriate to and consistent with the grant to him or her of a Patent'.

³ The objective (at section 173(2)(a)(ii) of the 2015 Act) is that a legal practitioner has displayed in his or her practice 'professional independence'.

- Applicants must have independence of mind and moral courage. They must be willing to advance an argument that is not popular and be committed to their duty to the court, particularly where that duty may conflict with their client's interests.
- **Integrity, honesty and professional standing⁴:**
 - Applicants should be honest, trustworthy, have maturity of judgment and the ability to make objective, sound judgments in difficult situations. Applicants should command respect among their colleagues for adherence to the highest ethical standards. Applicants should create and maintain productive working relationships with clients, colleagues and the judiciary.

Matters that may affect suitability for recommendation include previous criminal convictions, findings of professional misconduct, bankruptcy and any other information that does or may affect suitability for appointment. It is essential that there is nothing in the conduct or affairs of an applicant which would make his or her appointment inappropriate.

In reaching an overall assessment of an application, the Committee may have regard to the applicant demonstrating ability in one or more than one of the criteria below:

- **Excellence in the practice of advocacy⁵:**
 - Applicants must display superior skill in advocacy. Written or oral advocacy skills should demonstrate an ability to digest complex material quickly, to analyse the material comprehensively, to incisively identify the best approach, communicate this persuasively and respond aptly to any counter arguments or questions.
- **Excellence in the practice of specialist litigation⁶:**
 - Applicants must be in a position of leadership in the practice of specialist litigation and must demonstrate unique knowledge in specialist litigation.
- **Specialist knowledge of an area of law⁷:**
 - Applicants must demonstrate specialist or unique knowledge in an area of the law and have a considerable experience in giving advice in a specialist area of the law.

Section 173(2)(d) of the 2015 Act provides that, in relation to a legal practitioner seeking to have a Patent granted to him or her, that he or she is also 'otherwise suitable' to be granted a Patent. Applicants may provide any additional information to the Committee, as per the application form, to demonstrate this. A non-exhaustive list of the matters the Committee may deem to render an applicant 'otherwise suitable' includes:

⁴ The objective (at section 173(2)(b) of the 2015 Act) is that a legal practitioner has displayed in his or her practice '*is suitable on grounds of character and temperament*'.

⁵ The objective (at section 173(2)(a)(iii)(I) of the 2015 Act) is that a legal practitioner has displayed in his or her practice '*a proven capacity for excellence in the practice of advocacy*'.

⁶ The objective (at section 173(2)(a)(iii)(II) of the 2015 Act) is that a legal practitioner has displayed in his or her practice '*a proven capacity for excellence in the practice of specialist litigation*'.

⁷ The objective (at section 173(2)(a)(iii)(III) of the 2015 Act) is that a legal practitioner has displayed in his or her practice '*specialist knowledge of an area of law*'.

- Leadership in setting and maintaining standards in the legal profession for the good of the administration of justice.
- A significant contribution to Irish society as a legal practitioner.
- A significant contribution to the Irish legal profession.
- Commitment to improving access to justice.

All applications will be assessed against the above criteria. To recommend an applicant for a grant of a Patent of Precedence, the Committee must be satisfied that there is compelling evidence of excellence in relation to the criteria.

Applicants must demonstrate how he or she meets the above criteria, by reference to an example or examples.

OTHER REQUIRED DOCUMENTATION

Section 174(2) further provides that *‘An application under subsection (1) shall be accompanied by such information and such fee as may be prescribed.’*

In addition to the matters set out in the application form, the Committee requires each applicant to provide, with their application:

- (i) Two references only, one of which is to be from a current or former judge at any level and one from a legal practitioner. These references should be no longer than 2 A4 pages in length and be dated within 9 months of the application date. References must be sent directly by referees for the attention of the Secretary to the Advisory Committee at patents@lsra.ie
- (ii) As above, a Tax Clearance Certificate that is in force. This must be included in soft copy with the Application Form. Alternatively, applicants can provide valid Tax Reference Number plus Tax Clearance Access Number with their application.

NOTE ON REFERENCES

Referees must be objective in their references and in that regard, applicants are advised not to rely on employer/in-house referees if this can be avoided. The Committee acknowledges that this may not be possible in all circumstances and that such a referee may be the most relevant. The applicants are advised to identify referees to whom the applicant’s relevant work is known.

The Committee relies on the relevance and standing of the referees and associated references provided. Applicants should take into account the fact that the award of a patent is an Irish process and that the referee’s understanding of the Irish Legal System is an important factor. The Committee is mindful however that external referees (e.g. at EU level) would be relevant in the context of certain applicants.

References are a very important element of the process. In that regard, references which are relevant to the applicant and their application and which provide an independent source of information in support of the applicant, with a focus on the applicant’s work in this jurisdiction, are key considerations for the Committee.

There is no fee in place for applications for the 2023 process.

DECLARATION

Applicants must complete and sign the declaration in the application form. Where the application is being provided electronically, which is the preferred method, applicants are requested to provide a signed, scanned version of the page containing the declaration.

The role of the LSRA in the application process

The LSRA Executive will provide such reasonable administrative and logistical assistance to the Advisory Committee, as is appropriate in line with its functions under the Act, any administrative, clerical and other assistance reasonably necessary to enable the Committee to fulfil its function of considering applications and, subject to meeting the criteria, recommending an applicant to the Government for the grant of a Patent of Precedence or where the criteria are not met, notifying the applicant in writing of its decision and of the reasons for it.

The application process

In completing the application form, applicants are expected to comply with requirements set out in the form in respect of word limits and the limits on numbers of examples to be provided in support of their application. Where an applicant provides more material than has been required, this material may be disregarded by the Committee.

In considering an application, the Committee will be cognizant of the ability of an applicant to present their application in a succinct, focused, relevant and clear manner.

The deadline for receipt of completed applications is **5pm on Thursday 16 February 2023**.

The Committee will not consider applications received after that date save for in exceptional circumstances. Incomplete applications may be rejected and returned.

Having particular regard to the need to manage and circulate documentation to the Advisory Committee, applications should be submitted in electronic format.

A legal practitioner who wishes to be granted a Patent must send (electronically):

- a. A completed application form including a signed and dated declaration;
- b. A Tax Clearance Certificate or Tax Reference No plus Tax Clearance Access No (or equivalent if outside the State) that is in force;
- c. Two references only, one of which is to be from a current or former judge at any level and one from a legal practitioner (references must be sent directly by the individual referees to patents@lsra.ie for the attention of the Secretary to the Advisory Committee) and
- d. Links to or pdf versions of any articles or publications, where relevant

by email to patents@lsra.ie

Important:

Applicants are asked to submit their applications in electronic format only. In advance of submitting an application, applicants are asked to contact the LSRA at patents@lsra.ie which will allow the LSRA to facilitate applicants in ensuring their application is received (note that

for large size files, applicants may get bounce back on their emails if attachments are too large). In this regard, arrangements may be made by the LSRA to facilitate uploading of applications to a secure portal.

The LSRA will acknowledge receipt of your application as soon as possible after receipt of same. Please note that this acknowledgement does not constitute an assessment by the LSRA that the application is complete.

The Committee will consider the applications received in accordance with the criteria set out above.

Canvassing

Canvassing will disqualify an applicant.

The Committee considers that it is inappropriate for an applicant to have contact with a member or members of the Committee in relation to their application once the application has been submitted.

The selection process

Where the Committee receives an application, it shall first be examined for completeness. Incomplete applications may be rejected and returned.

Where the Committee receives a completed application, it shall consider whether the application meets the criteria set out above. In accordance with section 174(3) of the 2015 Act, member of the Committee may consult in confidence with appropriate persons to assist the Committee in determining if a candidate meets the criteria established under section 173 of the 2015 Act.

All applications are judged individually against the established criteria.

The Committee is committed to equality of opportunity in this process.

From time to time the Committee may seek to interview an applicant. This will not occur in every case. The Committee may seek to interview an applicant where further evidence is sought in relation to the established criteria or to assist the Committee in relation to information already provided as part of the application form.

All proceedings of the Committee and all communications by and to the Committee, including consultations by the Committee under section 174(3), shall be confidential and shall not be disclosed except for the purposes of the Act (pursuant to section 172(9) of the 2015 Act).

Where the Committee determines that the legal practitioner meets the criteria, it shall recommend to the Government that the applicant be granted a Patent. The information you furnish as part of the application process may be provided to the Department of Justice and Equality and the Department of the Taoiseach. Pursuant to section 171 of the 2015 Act, the Government may, on the recommendation of the Committee under section 174, grant a Patent to a legal practitioner.

Where the Committee determines that the applicant does not meet the criteria it shall notify the applicant in writing of its decision and of the reasons for it. Applicants who are unsuccessful, may apply as many subsequent times as they wish. On each occasion the suitability of an applicant will be considered afresh.

All applications and accompanying information will be processed in line with the Data Protection Statement at Appendix 1.

The grant of a Patent of Precedence by the Government

In relation to applicants who are to be granted a Patent of Precedence, the Chief Justice will fix a date for a single ceremony for the presentation of Patents and a supplementary ceremony for those barristers who are to be called to the Inner Bar. It is anticipated that this ceremony will take place in the first week of October 2023.

Queries

GENERAL QUERIES

In the event of any queries in relation to the application form or the process, please contact the LSRA Executive, in their role as secretariat to the Committee, at patents@lsra.ie

DISABILITY

The Committee are committed to supporting candidates with disabilities. If you have particular needs and wish the Committee to make any reasonable adjustments for you (for example, seating or access in the event of an interview), please email patents@lsra.ie setting out any reasonable accommodations or adjustments you require.

PART A, SECTION 8 OF THE APPLICATION FORM

Senior Counsel must behave with probity at all times, so as to maintain public confidence. You are encouraged to disclose anything that could affect your suitability for the grant of a Patent of Precedence.

All or any proceedings against an applicant and/or all or any proceedings wherein an applicant suffered either wasted cost order or negative orders against him or her and/or which resulted in the institution of proceedings should be identified; pleadings and outcome of those subsequent proceedings, if any, should also be included; similarly so any complaint to a professional body, together with the outcome; any issues raised in respect of GDPR compliance should also be identified; any other matters which should be brought to the attention of the Committee.

Applicants should ensure that sufficient detail is provided in relation to matters which the applicant must raise in this section. If relevant matters are not set out clearly, the Advisory Committee will form an appropriate view on the application. Any matters not addressed will be treated very seriously by the Committee.

In this regard, Applicant's attention is drawn to section 175, and in particular section 175(6) of the Legal Services Regulation Act 2015, which deals with the revocation of the grant of a Patent.

If you have any queries in relation to Part A, Section 8 which relates to the objective of character and temperament, please email patents@lsra.ie who will bring any queries or requests for clarification to the attention of the Committee.

REQUEST FOR A RECUSAL

If you consider that a member of the Committee should be recused from considering your application and/or from interviewing you (where this occurs), you should notify the LSRA by email at the patents@lsra.ie. Your email should set out your reasons for suggesting the recusal. This

information will be carefully considered by the Committee and you will be advised of the outcome of your request.

Feedback on the process and related documentation

Any feedback you may wish to share in relation to the application form, this guidance and the process itself is welcome and will be carefully considered. Any feedback should be emailed to patents@lsra.ie and will be provided to the Committee anonymously.

Data Protection

The Committee are a data controller within the meaning of the General Data Protection Regulation ('GDPR'). The obligation in Articles 13 and 14 of the GDPR (i.e. the information to be provided where personal data are collected from the data subject and where personal data have not been obtained from the data subject) is met by the Data Protection Statement at Appendix 1 of this guidance. Please have regard to Appendix 1 for further details in relation to how your personal data is processed.

The LSRA are a data processor within the meaning of the GDPR and a data processing agreement is in place.

The Advisory Committee on the grant of Patents of Precedence.

Up-to-date December 2022

Appendix 1, Data Protection Statement

Data Protection Statement

Up-to-date December 2022

Introduction

This Data Protection Statement relates to processing of personal data by the Advisory Committee on the grants of Patents of Precedence ('the Committee') established by the Legal Services Regulatory Authority ('LSRA') pursuant to section 172(1) of the Legal Services Regulation Act 2015 ('2015 Act') on 2 April 2020. This Data Protection Statement provides information about the ways in which the Committee collects, stores and uses personal data relating to individuals ('data subjects').

The Committee are the 'data controller' as regards the processing of personal data described in this Data Protection Statement.

This Data Protection Statement is provided in accordance with Articles 13 and 14 of the General Data Protection Regulation ('GDPR') and relates to personal data received by the Committee where personal data is provided to the Committee directly (e.g. where data subjects contact the Committee directly) and where personal data is received by the Committee indirectly and has not been obtained from the data subject.

Data controller contact details

The Committee can be contacted:

- By email at patents@lsra.ie ;
- By post at Advisory Committee on Patents of Precedence, c/o Brian Doherty, CEO, The Legal Services Regulatory Authority, P.O. Box 12906, Dublin 7.

What is the purpose of the processing?

Personal data may be processed for the following purposes:

- a) To enable the Committee to perform the functions assigned to it under Part 12 of the Legal Services Regulation Act 2015 ('the Act') which include:
 - (i) Considering applications from legal practitioners to determine whether a legal practitioner meets the criteria established under section 173;
 - (ii) For the purposes of (i), consulting in confidence with such persons as it considers appropriate;
 - (iii) Recommending to the Government that an applicant be granted a Patent of Precedence ('a Patent') where it decides that an applicant meets the criteria;
 - (iv) Notifying an applicant in writing of its decision that the applicant does not meet the criteria;
 - (v) Considering applications that a grant of a Patent to a legal practitioner be revoked;
 - (vi) Recommending to the Government that a Patent be revoked.

- b) To address any queries raised in relation to an application for a recommendation to Government for a grant of a Patent of Precedence and/or the Committee's functions;
- c) To conduct statistical analysis related to applications received and the outcome of the application process;
- d) To manage, plan and administer the application process and any related tasks.

[What is the legal basis for the processing?](#)

The legal basis for this processing under GDPR is:

- a) Article 6(1)(c), GDPR - processing is 'necessary for compliance with a legal obligation to which the controller is subject' and/or
- b) Article 6(1)(e), GDPR - processing is 'necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller' and/or
- c) Section 38(1)(a), Data Protection Act 2018 – processing of the personal data shall be lawful to the extent that such processing is 'necessary and proportionate for (a) the performance of a function of a controller conferred by or under an enactment.'

The application form does not expressly seek any special category personal data. Where special category personal data is provided by an applicant and/or processed by the Committee, the legal basis for this processing under GDPR is:

- a) Article 9(2)(g), GDPR – processing is 'necessary for reasons of substantial public interest on the basis of Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of data the subject' and/or
- b) Article 9(2)(a), GDPR – the data subject has given explicit consent to the processing of those personal data for one or more specified purposes. Where personal data is processed on this basis, a data subject has the right to withdraw consent at any time, without affecting the lawfulness of processing based on consent before its withdrawal.

[What personal data is processed by the Committee?](#)

The personal data processed by the Committee includes:

- Personal data provided by applicants in application forms and any accompanying information. As appears from the application form, this personal data may include, but is not limited to your name, contact details, date of birth, qualifications, professional details, career history, information relating to offences and other information you may wish the Committee to take into account.
- Personal data contained in any communications with the Committee;
- Personal data arising on foot of such consultations as may occur, in confidence, with such persons as the Committee considers appropriate, pursuant to section 174(3) of the Act.

[Who are the recipients of personal data processed by the Committee?](#)

The recipients of your personal data are:

- The Committee;
- The Legal Services Regulatory Authority ('LSRA') Executive who provide the Committee with such reasonable administrative and logistical assistance as is appropriate in line with its functions under the Act;
- Any other persons the Committee considers appropriate, pursuant to section 174(3) of the Act;

- The Government, where a recommendation is made by the Committee that an applicant be granted a Patent.

How long will the Committee store the personal data?

The criteria used to determine the period for which the personal data will be stored by the Committee are based on the purpose for which the personal data processed. These time periods will take into consideration a number of factors which include legal and other requirements to retain information for specified periods.

What are your data protection rights?

Subject to certain restrictions, which are set out below, you can exercise the following rights in relation to personal data that is processed by the Committee:

- The right to access your personal data;
- The right to rectification of your personal data;
- The right to erasure of your personal data;
- The right to data portability;
- The right to object to processing of your personal data;
- The right to restrict processing of your personal data.

Restriction of data controller obligations and data subject rights

Under Article 23, GDPR and the Data Protection Act 2018 data subject rights can be restricted in certain circumstances. Section 60 of the 2018 Act provides for restrictions on the obligations of controllers and on the rights of data subjects for important objectives of general public interest. One of the restrictions, at section 60(3)(b), relates to personal data, relating to a data subject, which consists of an expression of opinion about the data subject by another person given in confidence or on the understanding that it would be treated as confidential to a person who has a legitimate interest in receiving the information. Where section 60(3)(b) applies, the rights of data subjects, and the obligations of the Committee, as a data controller, provided for in Articles 12 to 22, Article 34 and Article 5, GDPR (in so far as any of its provisions correspond to the rights and obligations in Articles 12 to 22) are restricted.

By way of example, the right of access under Article 15, GDPR, will not apply where your personal data consists of an expression of opinion about you by another person given in confidence or on the understanding that it would be treated as confidential. On receipt of a request by a data subject seeking to exercise his or her rights, the Committee will review all relevant personal data and, if appropriate, consider the application of the restriction under Section 60(3)(b), Data Protection Act 2018.

Your right to complain

If you have any queries in relation to how your personal data is processed please contact patents@lsra.ie

If you are dissatisfied with how the Committee processes your personal data, you have the right to complain to the Data Protection Commission, 21 Fitzwilliam Square, Dublin 2, D02 RD28. For further details please go to www.dataprotection.ie

Changes to this Data Protection Statement

This Data Protection Statement is a live document, is subject to change and will be updated from time to time.

Advisory Committee on the grant of Patents of Precedence,

Up-to-date as of December 2022