

**EXPLANATORY MEMORANDUM TO**  
**THE HIGH COURT AND COUNTY COURTS JURISDICTION (AMENDMENT)**  
**ORDER 2005**

**2005 No.587**

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Description**

- 2.1. This instrument extends jurisdiction to hear all trade mark matters, with the exception of appeals, to a patents county court and 7 other specified county courts.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1. None.

**4. Legislative background**

- 4.1. This instrument is being made as a consequence of the Institute of Trade Mark Attorneys Order 2005 (SI 2005/240) which grants the Institute of Trade Mark Attorneys (ITMA) authorised body status.
- 4.2. The Institute of Trade Mark Attorneys Order 2005 (SI 2005/240) was brought forward under section 17(1) of the Courts and Legal Services Act 1990. Section 17(1) provides a statutory objective to develop legal services in England and Wales by making provision for new or better ways of providing such services and a wider choice of persons providing them.

**5. Extent**

- 5.1. This instrument applies to England and Wales only.

**6. European Convention on Human Rights**

- 6.1. The Lord Chancellor is satisfied that this instrument complies with the government's obligations under the European Convention on Human Rights.

## **7. Policy background**

7.1. Jurisdiction in trade mark cases is currently limited to the High Court.

7.2. Section 17(1) of the Courts and Legal Services Act 1990 provides a statutory objective to make provision for new or better ways of providing legal services and a wider choice of persons providing them.

7.3. Following an application from ITMA, the Institute of Trade Mark Attorneys Order 2005 (SI 2005/240) will allow the Institute to grant suitably qualified members rights of audience in both the High and county courts. However, a significant limitation on the effectiveness of this authorisation is the current limit on jurisdiction to hear trade mark cases which confines them to the High Court only. As a result, while Trade Mark Agents would nominally be able to bring cases in the county court, given the specialised nature of their work, it is highly unlikely that they would actually be able to bring any cases. As such, they would remain at a disadvantage to patents agents who have been able to bring patents cases in the county courts for some time. Therefore, in order to ensure a more even balance between the two sectors it is necessary to extend the jurisdiction of the county courts to allow them to hear trade mark cases.

7.4. However, while SI 2005/240 will permit ITMA to grant rights of audience in all county courts, the specialist nature of trade mark litigation renders it unsuitable to be heard in the majority of county courts. Following consultation with the senior judiciary and in order to avoid any potential confusion, it has therefore been decided to specifically limit jurisdiction in trade mark matters to:

- patents county courts (currently, there is only one patents county court, the Central London County Court), which is already hearing a wide range of Intellectual Property litigation; and,
- those county courts where there is a District Registry of the Chancery Division and there is Circuit Judge who is also authorised to sit as a High Court Judge in the Chancery Division under section 9(1) of the Supreme Court Act 1981 and is already able to hear trade mark matters in that capacity.

## **8. Impact**

8.1. No separate RIA has been prepared for the changes introduced by this SI which are entirely consequential to SI 2005/240.

## **9. Contact**

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