

The Patent Regulation Board and the Trade Mark Regulation Board

Minutes

Thursday 16 May 2024 at 1.00 p.m.

20 Little Britain, London EC1A 7DH

Attending:

Rt Hon Lord Smith of Finsbury / Chris Smith (IPReg Chair)
Justin Bukspan (Risk Working Group Member)
Alan Clamp (Education Working Group Member) – attending remotely from 2pm
Katerina Kolyva (Education Working Group Member) – attending remotely
Victor Olowe (Risk Working Group Chair and Governance Working Group Member)
Samantha Peters (Governance Working Group Chair and Risk Working Group Member)
Henrietta Rooney (Education Working Group Member)
Harpreet Dhaliwal – attending remotely
Gary Wilson

In attendance: Fran Gillon (CEO), Shelley Edwards (Head of Registration), Victoria Swan (Director of Policy), Ben Newman (Compliance and Authorisations Officer – for item 11)

1. The Chair welcomed the new Board members, Harpreet Dhaliwal and Gary Wilson.
2. No apologies had been received.
3. No conflicts of interest were declared.

Items for Decision/Discussion

4. Appointment of Harpreet Dhaliwal and Gary Wilson as Directors of the Intellectual Property Regulation Board Limited

- 4.1. The Board agreed to the appointments of Harpreet Dhaliwal and Gary Wilson.

Action: Chief Finance Officer to notify Companies House

5. Reappointment of Board members

- 5.1. The Board agreed to reappoint three Board members (Victor Olowe, Justin Bukspan and Samantha Peters) for a further three-year term.

Action: CEO to confirm reappointments

6. Minutes of March 2024 meeting and matters arising

- 6.1. A Board member queried the wording relating to the LSB's indications that IPReg should achieve green status in the next regulatory performance assessment. The Chair suggested adding quotation marks to clarify that these were the LSB's own words.

6.2. The Board approved the minutes subject to the above amendment.

7. IT system update

7.1. The Head of Registration reported that the system update was on track to occur on Tuesday 11 June. Most testing had been completed; IE Digital was still working on minor fixes. The website and CRM system would be down for 24 hours while the migration took place.

8. Education

Barriers to entry project

8.1. The CEO reported that Julia Gwilt had agreed to work with IPReg on a pro bono basis, conducting a mapping exercise to compare the patent attorney exams and the new European Qualifying Exams (EQE) modules. This would provide clarity to employers and candidates about the timescale and exemption framework of the new EQE system. Consultations would take place to ensure sufficient input from key stakeholders. An LSB rule change application would be required; this would be incorporated into the overall timescale of the project. The Education Working Group would provide advice and support.

8.2. A role profile had been developed for a project manager to work for three days a week on an employed basis. Thewlis Graham had offered to assist with the recruitment process at a rate of £[REDACTED] plus VAT. Discussion with Thewlis Graham had resulted a salary for the role of £90,000 FTE, which translated to £54,000 for three days. Last year's underspend was about £130,000 (subject to audit) and there were also reserves that could be used to mitigate any impact on the 2025 practising fees. There would be an open recruitment process, although Thewlis Graham had already identified two possible candidates.

8.3. A Board member asked about the duration of the appointment. The CEO stated that the appointment would be for an initial two-year fixed term, although it would be extendable.

8.4. A Board member commented on the complexity of the project and role. Registrants might need to provide support to the project, particularly in the context of task and finish focus groups and stakeholder management. The Chair noted the importance of identifying a candidate with strong stakeholder engagement capabilities.

Apprenticeships

8.5. The CEO reported that she had attended a discussion arranged by the Institute for Apprenticeships and Technical Education (IfATE) about developing an advanced paralegal apprenticeship Level 5 qualification, which might include an IP specialisation. There was strong support for this from attendees. In addition, the CEO reported that she had attended a trailblazer group to discuss how a patent attorney apprenticeship route might be developed. This had also been convened by IfATE who had emphasised that the development of an apprenticeship route must be employer-led. The trailblazer group had been put on hold pending a further discussion on 10 June, with the aim of ensuring broader stakeholder participation. IPReg's role was likely to be identifying (and removing where

possible) regulatory obstacles to implementation, particularly in the context of accrediting training providers. Regulatory arrangements such as criteria for admission to the register would probably need to change and would require a rule change application to the LSB.

- 8.6. A Board member noted that it was important to speak to the epi to ensure alignment between EU and UK qualifications.
- 8.7. A Board member asked if this would be an alternative pathway to the current examination system, or whether examinations would be retained. The CEO stated that the apprenticeship required knowledge, skills and behaviours framework would need to be developed by the trail blazer group.
- 8.8. A Board member noted that IPReg should be clear about the purpose of its support for apprenticeships, namely whether they were intended to widen access to the profession or to be used as an alternative pathway. Apprenticeships often encountered issues with finding an appropriate End Point Assessment Organisation.

Solicitors Qualifying Exams (SQE)

- 8.9. A Board member noted that concerns had previously been expressed that the SQEs might be less demanding than the previous solicitor qualification process. However, the pass rates of 59% for SQE1 and 69% for SQE2 demonstrated that the assessments were still demanding.

Accreditation of PEB Foundation Level Qualification Examinations

- 8.10. The Head of Registration reported that, as the previous external assessor was unable to undertake the accreditation of the PEB foundation level qualifications, a discussion had taken place with the other assessor to better understand the process and requirements for another assessor to be appointed. IPReg would arrange a high-level meeting with the PEB prior to the commencement of the recruitment process.
- 8.11. A Board member asked whether that other assessor could take on the lead assessor role. The Director of Policy stated that this was not feasible because the lead assessor had to be a legal education specialist, while the other assessor provided professional practitioner input.

PEB candidate complaint

- 8.12. The Head of Registration reported that a candidate who had recently failed the final exam FD2 had submitted a complaint about the PEB's review and appeal process. The complainant had referenced the recent accreditation recommendation to provide candidates with meaningful feedback. Part of the complaint was that the PEB had advised the candidate that this recommendation did not apply until March 2025. IPReg would be contacting the PEB to understand its position and to discuss IPReg's expectations.
- 8.13. A Board member noted that the PEB viewed itself as an examination board rather than an education provider. The Head of Registration stated that the PEB was the only

route by which people could enter the profession. In this case, the employer did not understand why the candidate had failed, and the PEB had failed to give the candidate any indications of how to improve. A Board member noted that people were often advised not to use the appeal process, which was rarely successful, and to focus instead on resitting the examinations. The review and appeal processes that were currently in place were rarely useful for candidates.

8.14. A Board member stated that it was important to clarify the PEB's understanding of the accreditation requirements. The Director of Policy noted that the rationale for the two-year timeframe to implement all the requirements had been to ensure that an independent verification process could be conducted in 2025 to assess whether the PEB had implemented all the recommendations.

8.15. The Board decided:

8.15.1. To endorse engaging with Julia Gwilt on a pro bono basis.

8.15.2. To approve Thewlis Graham conducting a recruitment process for the barriers to entry project.

8.15.3. To contact the PEB to clarify future expectations.

Action: CEO to take forward recruitment with Thewlis Graham

Action: Education and Diversity Officer to arrange a meeting with the IPReg Chair and PEB Chair

Action: Education and Diversity Officer to contact PEB re complaint

9. Risk Working Group

9.1. The Director of Policy and the Risk Working Group Chair presented the paper. The Director of Policy reported that the Risk Working Group had discussed the framing of risks, and how this would help to inform a risk policy. It had been decided that versions of the risk policy and risk register would be reviewed at the June meeting of the Risk Working Group; they would then be brought to the July meeting of the Board for decision.

9.2. The Risk Working Group Chair stated that the risk register would be an internal document. The risk register that had been devised was significantly different from risk registers in other organisations. It would not be a static document, but rather a starting point that would continue to evolve. The Director of Policy explained that, while the risk register would be an internal document, the risk policy would be published so that all stakeholders could see how IPReg was managing risk. The Chair noted that IPReg was committed to sharing red risks with CIPA and CITMA under the Internal Governance Rules delegation agreement. The Director of Policy confirmed that this commitment would be included in the updated risk policy.

9.3. The Board noted the update.

10. Legal Services Consumer Panel – Consumer Focused Regulation

10.1. The Director of Policy presented the paper. Previously, the Board had noted the examples of good practice that had been identified by the LSB's regulatory performance assessment. The LSB had commended the Bar Standards Board for its intention to benchmark its provision against the good practice indicators in the Legal Services Consumer Panel's report. The Board had decided that IPReg should conduct a high-level, proportionate benchmarking exercise against the report and its good practice indicators. This review had identified four recommendations for action: a complaints handling flowchart and FAQs; adding a 'Monitoring, evaluating and key metrics' heading to the Board paper template; capturing consumer interest and engagement as a potential risk on the risk register; and considering the segmentation of consumer type in IPReg's activities.

10.2. The Board discussed the following matters:

10.2.1. A Board member noted that many of the indicators and examples of good practice were focused on individuals rather than the business-to-business setting in which most IP advice was provided. More investment might be needed to understand relevant consumers. The Director of Policy reminded the Board that the LSB's small business survey had only identified 25 businesses which had an IP legal need (out of a 10,000 sample). This meant that the Legal Services Consumer Panel report was a useful proxy for indicators of consumer need and good practice to inform IPReg's proportionate and targeted approach to consideration of consumer issues.

10.2.2. A Board member commented that it should be emphasised that IPReg was planning a review of Board effectiveness in the next 12 months and that this should include consideration of IPReg's approach to consumer engagement. Although the definition of 'vulnerable' in the report was very unlikely apply to IPReg, it was still important to identify the types of relevant businesses that might be less able to obtain affordable IP legal services and IPReg might want to consider whether it should develop its own definition.

10.2.3. The CEO noted that the UK Regulators Network had undertaken work on vulnerable consumers in the context of economic regulators. IPReg should focus on unmet legal need in the IP sector and how to tackle it. The Director of Policy explained that the definition of 'vulnerable' applied by the BSB and the SRA was the British Standard. However, as the definition related to individual consumers, it had not been deemed proportionate or appropriate for IPReg to adopt it given the very small number of consumers who needed IP legal advice.

10.2.4. A Board member noted that the main risk was a lack of clarity regarding consumer interest and the identity of relevant consumers. Before seeing the new risk register at the July meeting, the Board should discuss the types of risks Board members were most concerned about. This would help to validity-test the new risk register.

10.3. The Board decided:

10.3.1. To agree the four recommendations in the paper.

10.3.2. To include a reference to the consumer focus of the Board effectiveness appraisal.

10.3.3. To consider further work on identifying business consumers of IP legal services, who might find it difficult to access advice.

11. Complaints Update

11.1. The Head of Registration presented the paper. There were eight open cases. Two had been closed since the previous meeting. Another case was likely to be closed next week. For those cases with a deadline of 13 May to determine the next steps, the deadlines had all been met.

11.2. The Compliance and Authorisations Officer explained that, regarding case 6355, which was a two-part case, the hearing for the first part of the case had taken place last week. The panel had made a removal order for the registrant. Next week, the panel would finalise the decision document and IPReg would publish its written determination. The removal order was accompanied by a costs award, which covered almost most of IPReg's costs on the investigation of the case. IPReg was discussing with our external legal adviser whether it would be in the public interest to proceed with the second part of the complaint.

11.3. The Compliance and Authorisations Officer noted that the hearing had been the first full oral hearing held under the new rules. The rules had been new for everyone involved in the proceedings, but there had been no issues with their application.

11.4. The Board discussed the following matters:

11.4.1. The Chair noted that, as the registrant had already been removed from the register in the first part of the case, it might not be sensible to become involved in another set of legal costs relating to the second part. The Head of Registration agreed that IPReg would be unlikely to receive a costs award for the second part of the case. Pursuing another case was likely to be seen as not being in the public interest, given that there was already a removal order. While the registrant might appeal against the costs award on the basis that they were no longer practising as an attorney, this ground of appeal was unlikely to succeed.

11.4.2. A Board member asked if there were any consistent themes in the types of complaints received by IPReg. The Head of Registration stated that it was difficult to identify themes due to the small number of cases. While there had previously been several complaints relating to practising without professional indemnity insurance, this was no longer the case. There were currently two cases relating to inappropriate workplace conduct; this was unusual compared to the nature of previous complaints.

11.5. The Board noted the update.

12. CEO's Report

Transparency

- 12.1. The CEO presented the paper. Following the compensation fund rule change application to the LSB, the LSB had sent two additional information requests to which IPReg had responded. IPReg had indicated that the requests and the responses to it would be published on the website as normal, but the LSB's lawyer had claimed that this was restricted information under Section 167 of the Legal Services Act and could not be published. IPReg had been advised by Kingsley Napley that the information was not restricted. In a meeting with the LSB, the LSB's lawyer had emphasised that the information should not be published. Other regulators had informed IPReg that they had not encountered similar issues when publishing information.
- 12.2. The CEO noted that IPReg had worked hard to improve its transparency. The information in question would have been published on the LSB's website if it had been included in the initial application; it also would have been published if IPReg had withdrawn and then resubmitted a revised application. The LSB's final decision had omitted important points such as how the eligibility tests to make a claim on the compensation fund were similar to existing SRA and CILEX regulations and that they had not changed since 2015.
- 12.3. A Board member asked why the LSB did not want the information to be published. The CEO stated that the LSB did not accept the argument that Section 167 of the Legal Services Act was designed only to prevent the disclosure of individuals' information. The LSB had received external advice but had declined to share a summary of that advice with IPReg. The Head of Registration noted that the LSB had never previously objected to IPReg publishing information, nor had it requested that IPReg take down information that had previously been published. The explanation provided by the LSB was that section 167 of the Legal Services Act was designed to protect the LSB in delivering its operational functions.
- 12.4. A Board member asked whether this issue related only to a specific piece of information, or whether it indicated that the LSB was adopting a new approach. The Head of Registration explained that the LSB had confirmed that there was no guidance on the application of Section 167; its application would be considered on a case-by-case basis. A Board member noted that the absence of any guidance might lead organisations to resubmit all applications to ensure that information was published in full. The CEO noted that eight out of the 10 rule change applications submitted to the LSB last year had had extension notices issued by the LSB. Currently, rule change applications were taking a long time to assess. If the LSB refused a rule change application in future, it would have to issue a warning notice, which itself would have to be published, along with any advice and representations that were received as a result of the notice.

- 12.5. The Board discussed whether the information should be published, either on the website or within the Board papers. The issue highlighted the importance of building a good relationship with the new LSB CEO. A Board member stated that, even if a decision was taken not to publish the information, IPReg could still comply with its transparency requirements by explaining the reasons why the information was not being published. A Board member suggested using this as an opportunity to emphasise IPReg's commitment to transparency.
- 12.6. A Board member asked about the possible risks if IPReg chose to publish the information. The CEO explained that the LSB might choose to launch a formal investigation into IPReg's governance processes. However, the LSB had not used its formal investigation powers under the Legal Services Act for some time. Instead, its approach was to launch "reviews" into aspects of a regulator's conduct which did not directly engage those powers.
- 12.7. A Board member asked why the LSB's response to the rule change application seemed to imply that IPReg was narrowing its eligibility to claim on the compensation fund. The CEO stated that IPReg's policy had always been that, in order to be eligible to claim on the compensation fund, losses incurred by the claimant needed to have caused hardship. There had been no change to this policy, but the requirement had been clarified in the drafting of the rules and this was what the LSB had queried. The requirement for a loss to have caused hardship the same as the rules used by CILEX and the SRA. One of our responses to the LSB's information request had explained that it would not be in the public interest to establish a fund that would pay compensation if there had been no hardship caused by a loss.
- 12.8. The CEO explained that, in the second information request, the LSB had stated because IPReg had made it difficult for people to make claims, this was the reason why no claims had been made. However, IPReg had explained to the LSB that the tests required before making a claim had not changed since 2015, when the compensation arrangements had originally been established under the previous insurance policy. IPReg had explained in its response to the LSB that no claims had been made because no events had taken place that could have triggered a claim on the compensation fund. As the firms regulated by IPReg did not hold significant amounts of client money, events that normally triggered regulatory interventions had not arisen in the IP sector.
- 12.9. A Board member noted that it was important to consider what could be done differently for the next application. The CEO explained that the next rule change application was likely to be in relation to first-tier complaints. On 15 May, the LSB had published statutory rules on what must be included in regulatory arrangements on first-tier complaints. According to the statutory guidance, IPReg would need to consult on this and undergo a full rule change application process by November 2025. IPReg's response to the LSB's initial consultation had suggested that there could be a general exemption direction, since regulators had a statutory obligation to include the LSB's requirements in their regulatory arrangements. This would be raised at the next relationship management meeting with the LSB.

Guidance on technology and innovation

12.10. The CEO reported that IPReg's external adviser had been asked to consider how IPReg could implement the LSB's new statutory guidance and this was included as an Annex. The paper proposed that IPReg should develop a roadmap that set out how it planned to implement the LSB's guidance; the roadmap could then be shared with the LSB to get its input on our proposed approach. The CEO suggested that it would be appropriate to establish a Technology and Innovation Working Group of the Board.

12.11. A Board member noted that many companies were reluctant to use the AI patent drafting tools that were already available. Some clients were specifying in their terms and conditions that AI tools were not to be used.

Thematic review of competency requirements

12.12. The CEO explained that the planned thematic review of the new competency requirements had been included in this year's business plan. The new requirements specified a need for general continuing competency rather than a 16-hour requirement. Two experienced external advisers had been approached to undertake the work and Dan Hill had agreed to undertake the work. The approach to sampling would take advice from David Bish to ensure that it was fair. The Board agreed that because this was the first time that this work had been undertaken, it would be appropriate to put its consideration of the results back to the September meeting (it was originally planned for July).

Practising fees

12.13. The CEO reported that 99.71% of the 2024 practising fees that had been budgeted for had been collected.

Justice Select Committee

12.14. The Board discussed the Justice Select Committee's recommendations about conducting a review the LSB. The Director of Policy explained that the attending organisations had been asked whether the LSB was fit for purpose and there should be a review. Some respondents were of the view that the LSB had gone beyond its remit and that a review would be appropriate. The consensus seemed to be that the Legal Services Act itself did not require a review at this point.

Decisions

12.15. The Board decided:

12.15.1. That despite the clear legal advice received and IPReg's commitment to transparency and accountability, the LSB's information requests about the

compensation fund and IPReg's replies would not be published given the LSB's views on LSA s167. However, the Board needed clarity on the circumstances in which the LSB considered that LSA s167 was engaged and would request this from the LSB;

12.15.2. To work on a roadmap on technology and innovation to enable compliance with the LSB's statutory guidance.

12.15.3. To form a Technology and Innovation Working Group comprising Gary Wilson, Justin Bukspan and Samantha Peters.

12.15.4. To engage Dan Hill to undertake the thematic review of the new competency requirements, with the work to be presented to the Board in September.

Action: CEO to write to the LSB on LSA s167

13. Diversity Survey and Data Analysis – provider procurement

13.1. The Head of Registration presented the paper. Three quotes had been obtained from companies to run the diversity survey, analyse the results, and provide a comparison with the 2021 results. Uptake in 2021 had been 33.5% and this was statistically significant; 37% would be a sufficient percentage for confident statistical analysis benchmarking, although the target was 40%. The paper recommended selecting Enventure Research, as the company had presented a comprehensive approach to the work with some novel ideas. It had also worked with CITMA recently and understood IPReg's work. Enventure Research's quote also fell within the budget.

13.2. A Board member asked about the level of Enventure Research's quote. The Head of Registration explained that the quote probably reflected the smaller size of Enventure Research as an organisation. The offering itself was comparable with the others. Board members noted that Enventure Research had seriously engaged with the brief and provided an application that was not only cost-effective but also of high quality.

13.3. A Board member asked if IPReg would pay the additional fee for the infographic report. The Head of Registration stated that this decision would be taken by the IPReg team. Another possible add-on was Enventure Research presenting its findings to the Board directly. Internal decisions would be made on both options.

13.4. The Board decided:

13.4.1. To approve contracting Enventure Research to conduct the diversity survey.

13.4.2. That an infographic report would be helpful, although this was a decision for the IPReg team to make.

Items to Note

14. Action Log

14.1. The action log was noted.

14.2. The Chair stated that, regarding the Board effectiveness review, suggestions for firms to include on the tender list should be submitted to the CEO.

15. Red Risks

15.1. The red risks were noted.

16. Finance Report

16.1. The finance report was noted.

16.2. The Board confirmed the extension of the auditors, Griffin Stone Moscrop & Co for a further two years.

16.3. The Board agreed to delegate the update of information for publication on the website to the CEO and CFO.

17. Regulatory Statement

17.1. It was confirmed that, except where expressly stated, all matters were approved by the Patent Regulation Board and the Trade Mark Regulation Board.

18. Any Other Business

18.1. There being no other business, the meeting closed at 15.50.