

## The Patent Regulation Board and the Trade Mark Regulation Board

### Minutes

Thursday 12 September 2024 at 1.00 p.m.

Gatehouse Chambers, Gray's Inn, 1 Lady Hale Gate, London WC1X 8BS

#### Attending:

Rt Hon Lord Smith of Finsbury (IPReg Chair and Education Working Group)  
Justin Bukspan (Risk Working Group, Education Working Group, Technology and Innovation Working Group)  
Alan Clamp (Education Working Group)  
Victor Olowe (Risk Working Group Chair)  
Samantha Peters (Risk Working Group, Technology and Innovation Working Group)  
Henrietta Rooney (Education Working Group)  
Harpreet Dhaliwal  
Gary Wilson (Technology and Innovation Working Group)

**In attendance:** Fran Gillon (CEO), Shelley Edwards (Head of Registration), Victoria Swan (Director of Policy), Sally Gosling (Head of Education Review) Karen Duxbury (Finance Officer – attending virtually)

1. Apologies were received from Katerina Kolyva.
2. No conflicts of interest were declared.
3. The Chair welcomed colleagues from Independent Audit who were observing the meeting as part of the Board effectiveness review.

#### **Items for Decision/Discussion**

#### **4. Minutes of July 2024 Meeting and Matters Arising**

- 4.1. A Board member stated that section 5.4.8 could be expanded upon in relation to the discussion on registrant fees. The Chair stated that he would discuss a material amendment to the minutes with the CEO.
- 4.2. A Board member stated that the wording under section 5.4.2 should be amended. In the statement 'IPReg had substantial reserves', the use of the term 'substantial' did not reflect the situation accurately. The CEO stated that the term 'sufficient' would be an appropriate replacement. The Board members agreed.
- 4.3. Subject to these amendments, the minutes were approved.
- 4.4. There were no matters arising.

## 5. 2025 Business Plan, Budget and Practising Fees – Outcome of Consultation

5.1. The Board considered the responses to the consultation, the matters that had been raised by respondents and the changes that had been made to the business plan and budget as a result of the consultation. They discussed the following matters:

5.1.1. Whether there should be a section to demonstrate fees over time, perhaps adjusted for inflation, which could help to manage feedback on value for money.

5.1.2. That two individual trademark attorneys had commented on the business plan being focused on patented attorneys.

5.1.3. The point had been made by CIPA about whether the forecasting expected number of attorneys was sufficiently robust. The Finance Officer explained that IPReg's methodology was based on previous years' admissions and removals and had proved quite accurate over time. The estimated total number of attorneys was then used to calculate the expected income.

5.1.4. That there had been a healthy level of engagement with the consultation but there was a diversity of views around apprenticeships. The Chair stated that apprenticeships would be addressed in the next item.

5.2. The Board decided to:

5.2.1. Submit a draft application to the LSB for a 3% increase in practising fees in 2025.

5.2.2. Delegate authority for finalising the formal application to the Chair and the CEO once the LSB's initial comments on the draft had been received.

**Action: CFO to submit the draft 2025 practising fee application to the LSB.**

## 6. Education

*Education Working Group (EWG) meeting on 18 July*

6.1. The Head of Registration stated that the main purpose of the EWG meeting had been to review the annual reports of Brunel, Nottingham Trent University, CPD Training, Bournemouth, Queen Mary and the PEB.

6.2. An example of a good report had been circulated amongst the providers for reference. All providers had been thanked for their reports, with nothing of concern to highlight.

6.3. The PEB had published a consultation in July on the proposed changes to the syllabus for its four final diploma exams. The PEB had stated that its interpretation of the recommendations arising from the assessors' report, (which was considered by the Board meeting in January 2023) had been that IPReg required significant changes to these examinations. IPReg had clarified to the PEB at a meeting in July 2024 that it was not seeking significant changes to the syllabus itself, but a review of the PEB's exam methodology and process. The PEB had proceeded with its proposed changes, and the new

syllabi would be published in late September. There would be an opportunity to provide feedback to the PEB until the end of November.

6.4. The Board discussed the following matters:

6.4.1.A Board member asked whether quality concerns had arisen from the reports. The Head of Registration stated there were no quality concerns other than the format of one report being difficult to follow. The information provided by way of the reports was encouraging, and Queen Mary's progress had been particularly impressive. Diversity data would be reviewed to see if the information could be extrapolated to indicate the future of the registrant base. The Head of Registration noted that Nottingham Trent University had pointed out the difficulty of retrieving diversity data at the time of IPReg's request as the information was stored by the university and not at course level.

6.4.2.A Board member asked whether a financial update would be required in the annual reports. There were financial pressures on universities and a potential impact on quality could have a knock-on impact. The Chair stated that the financial issues were related to the general student body and fees rather than specialised courses.

*Barriers to Entry project*

6.5. The CEO explained that the Head of Education Review had started in post that well. She would be developing a project plan, including key points for consultations, stakeholder engagement, and data gathering. The project would include apprenticeships, the competency framework and the accreditation handbook. There would be a focus on engaging with those who did not agree with the proposals to understand their views in more detail. There would also be focus groups on particular topics, possibly involving external academics with an IP background or a wider education background in the legal sector, to challenge IPReg's thinking.

6.6. A further key issue was the importance of mapping the changes to the European Qualifying Exams (EQEs) against the IPReg exemptions framework and consulting on IPReg's approach to exemptions. Students were currently exempt from FD2 and FD3 exams if they had passed elements of or all the EQEs. Any changes would need to go through the rule change application process with the LSB.

6.7. The Board discussed the following matters:

6.7.1. A Board member stated that for German students, a minimum requirement was a master's degree, which indicated a move away from apprenticeships. The CEO stated that this point would be visited in future meetings. The epi required three years' experience before sitting their exams, which played into how long the apprenticeship route would take, how the STEM degree could be integrated and the overall pressure on trainees before being able to take the EQEs. There was also some significant opposition to apprenticeships, with people expressing the view that they would lower standards.

6.7.2.A Board member asked if there had been any engagement with the epi. The CEO stated that to her knowledge there had not been any engagement to date.

#### *Apprenticeships*

6.8. The CEO updated the Board on progress on apprenticeships and explained that a more detailed update would be provided to the November Board.

#### *PEB Annual Report*

6.9. The Chair reported back on a discussion at the Regulatory Forum with CIPA and CITMA that morning. The meeting had agreed that there was an opportunity for IPReg, the PEB and CIPA to work more closely together in future. The CEO stated that IPReg had established a good dialogue with the new chair of PEB and had emphasised the importance of collaboration.

6.10. The Head of Registration explained that the PEB's annual report had not been received by IPReg until after the EWG meeting. The report was comprehensive, and included all the information that had been requested as part of the 2022 accreditation exercise even though the PEB had previously indicated that it was unable to provide the information to IPReg due to GDPR limitations. Much of the information provided in the annual report would feed into the reaccreditation of the PEB's foundation examinations.

6.11. From the report, it was clear that while pass rates on FD4 seemed to be improving, pass rates for FD2 had declined. Students could be exempted from FD2 if they had completed the EQEs, but many either did not take this route, or did both sets of exams. The report demonstrated that retake levels for FD2 were on the rise.

#### *PEB Action Plan implementation*

6.12. The Head of Registration stated that each quarter, the PEB was required to provide IPReg with an update on how it was achieving success against the 19-point action plan. The latest report suggested that progress was on track. Two items were outstanding and awaiting September meetings at the PEB and CIPA. However, the reports and the information contained in the action plan were brief, which was why IPReg had been unaware of the extent of the proposed changes to the examinations. A learning point for IPReg was to encourage ongoing dialogue with PEB.

6.13. The Board noted the positive developments in terms of dialogue with the PEB.

## **7. PII Sandbox application**

7.1. The CEO reminded Board members that the PII Sandbox was established to encourage competition by allowing firms onto the register that could not get PII that was compliant with IPReg's minimum terms and conditions. The initiative had been welcomed by the LSB and the Legal Services Consumer Panels. The intention was to bring enough entrants into the Sandbox to start drawing out issues with the minimum terms and conditions that prevented other insurers from offering PII in the sector.

- 7.2. IPReg had been in discussion with the epi for a number of years, and had successfully negotiated changes to its standard policy to make it more appropriate for the UK market. The final two outstanding issues were the cyber endorsement and run-off cover, which had now been resolved.
- 7.3. The CEO explained that the applicant firm was well established in its own country and internationally. If the waiver was granted, the firm would apply to IPReg to be admitted to the register. The recommendation was to grant the waiver. The CEO noted that each application would be considered on its merits, and would be brought to the Board if there were any novel or contentious issues.
- 7.4. The Board discussed the following matters:
- 7.4.1. A Board member asked why PAMIA did not insure the applicant firm. The CEO stated that the applicant had explained that its broker had advised that it would be unlikely to be eligible for PAMIA membership because its parent company was not based in UK.
  - 7.4.2. The Head of Registration stated that, in relation to cost, PAMIA tended to represent the lowest price for a firm or for a sole trader. Allianz was significantly higher for both. The epi policy would be in the middle range.
  - 7.4.3. A Board member asked at what point an insurance expert should be relied upon for the analysis for future applications. The CEO stated that expert advice could be sought if required.
- 7.5. The Board decided:
- 7.5.1. To approve, in principle, the application to waive the standard requirements and permit entry of the PII Sandbox to the applicant firm.
  - 7.5.2. To require the applicant firm to report to IPReg on the six items areas set out in the paper.
  - 7.5.3. To require the applicant firm to take out run-off cover policy with the epi in the event that they ceased to practice.
  - 7.5.4. To require the applicant firm to ensure that epi cover included the cyber-risk endorsement.

**Action: Head of Registration to inform the applicant firm of the Board's decision**

### **2024 Diversity Survey results**

- 7.6. The Chair stated that the 2024 survey had a 39% response rate which was statistically significant and an increase of 2% over the 2021 survey. The good response rate was due to concerted awareness raising and encouragement from CIPA, CITMA and the IP Practice Directors.

- 7.7. The CEO drew the Board's attention to the fact that a question about neurodiversity had been included in the latest survey. Advice had been taken from IP Inclusive groups on the wording, and the question itself had been welcomed. There had not been a significant change in socio-economic statistics from the previous survey, but ongoing work could change this going forward. The survey would probably be repeated in the coming two or three years.
- 7.8. The firm that had conducted the survey had been very responsive. CIPA and CITMA had stated that they would share their own survey data with IPReg.
- 7.9. The Board discussed the following matters:
- 7.9.1. The Chair stated that 13% of respondents considered themselves to be neurodivergent, 43% were the first in their families to go to university, and 33% had caring responsibilities, all of which were significant statistics.
- 7.9.2. A Board member asked whether the survey was anonymous. The CEO stated that it was. It had been conducted by an external party, and email addresses had not been associated with responses. The level of 'prefer not to say' responses was relatively low, compared to the PEB's diversity report which had a 'prefer not to say' response rate of 9-12%; the reason for the difference was unclear.
- 7.9.3. The Chair stated that making the completion of the survey a feature of re-registration might be helpful, and asked whether this would have a negative effect. A Board member stated that rather than making the completion of the survey a requirement, the registrants could instead click through the survey in order to complete it. The Head of Registration stated that consideration would need to be given to the number of questions asked as well as to GDPR requirements on special category data.

**Action: Head of Registration to finalise the diversity survey, publish it on the website and notify stakeholders**

## **8. Diversity Action Plan Update**

- 8.1. The update was noted.

## **9. Continuing competence thematic review outcomes**

- 9.1. The Chair stated that, as part of the regulatory process review, the CPD requirements had been changed. The change had mostly been well received.
- 9.2. The Head of Registration stated that the majority had appropriately understood and complied with the new process, and there were some examples of good practice, which could possibly be anonymised and used in the new guidance. Disappointingly, some attorneys had not understood the requirements and the records they provided were merely records of activities undertaken with no evidence of reflection or evaluation. The recommendation was for tailored emails to be sent to those individuals to explain their non-compliance, to request confirmation of their understanding and to request them to

provide their continuing competence records to us as part of their 2025 registration renewal.

9.3. The recommendation was to repeat the exercise again in three to five years' time. The Head of Registration would review the records received to identify other skills that attorneys were developing, and the extent to which attorneys were looking at complaints handling and training in handling difficult scenarios given that good customer service was an increasing focus of the LSB's work. The report had made recommendations on how to improve guidance by adopting the changes and redrafting, as well as amending the templates.

9.4. The report is in draft and there were a few matters of clarification to be taken up with the report author before finalisation and publication.

9.5. The Board discussed the following matters:

9.5.1.A Board member stated that a three-year gap between exercises seemed lengthy. The CEO stated that the rationale for timescale was due to the sheer workload on education. The Head of Registration explained that there was an option to ask for CPD records at any time. If there was a sense that people were refusing to engage, IPReg would have the power to request records to confirm compliance.

9.5.2.A Board member stated that it was helpful to get a snapshot of what people were doing via the thematic reviews, and asked whether there was another tool that effectively evaluated the impact and benefit of the new arrangement. The CEO stated that the effectiveness of the new requirements should come through in the attorneys' reflections on the usefulness of their course. There had been no negative feedback from employers. The next thematic review would be on transparency requirements, which would be easier to assess in terms of proper implementation and their impact, such as a drop in complaints about cost.

9.5.3.A Board member stated that under the fifth recommendation, there was a reference to CILEX, and asked whether this was a reference to the regulation or the professional body. The Head of Registration stated that she would double-check this.

9.5.4.A Board member suggested that a two-year review point would be appropriate. The Chair stated that if CIPA and CITMA told us that their members were having any problems then the Board could discuss what action IPReg might take. The three-year timeline would be appropriate, with a check in two years' time to consider whether earlier action was needed.

**Action: Head of Registration to finalise the report and publish it on the website**

## **10. Response to LSB information request on Internal Governance Rules (IGRs)**

10.1. The CEO introduced the paper which set out the response to the LSB's information request about how the IGRs were working in practice. IPReg's view is that the IGRs were working

well and that working relationships between CIPA, CITMA and IPReg were positive and constructive. The CEO explained CIPA and CITMA would respond in a similar vein.

10.2. The Board discussed the following matters:

10.2.1. Whether the fact that IPReg had no shared services with either CIPA or CITMA was one reason why the IGRs worked well.

10.2.2. The Chair stated that it would be sensible for IPReg to set out its approach along the lines of the paper, ensuring that it was specific to IPReg and the representative bodies, rather than a more general approach.

10.3. The Board decided:

10.3.1. To approve the finalisation of the response.

**Action: CEO to finalise the response and send to the LSB**

## **11. Response to LSB information request on Consumer Empowerment**

11.1. The Director of Policy stated that the LSB had issued a request to all front-line regulators for assurance on their levels of compliance by 30 September 2024. A draft response had been discussed at the July Board meeting, which had been updated in light of the constructive discussion on first-tier complaints and quality indicators. Work had been done on complaints FAQs, and the LSB had issued a first-tier complaints policy statement, LSA section 112 rules and statutory guidance, on which the Director of Policy would bring a paper to the November Board meeting. The proposed response for the LSB was included in the annex.

11.2. The Board discussed the following matters:

11.2.1. The Chair stated that the LSB was very focused on the way first-tier complaints were handled by law firms. This seemed to be driven by complaint numbers from sectors other than IP. There had only been four complaints about IPReg-regulated attorneys to the ombudsman in the past five years, none of which had been upheld. It was important that there was not a one-size-fits-all approach because the regulated IP sector was largely business to business.

11.2.2. The Director of Policy explained that the LSB's requirements are predominantly prescriptive with limited discretion for regulators to adapt the requirements to their particular sector.

11.3. The Board decided:

11.3.1. To approve the finalisation of the response.

**Action: Director of Policy to finalise the response and send to the LSB.**



## 12. Response to LSB information request on Regulatory Performance Assessment (RPA)

12.1. The Director of Policy explained that an information request from the LSB was expected in September; it would cover all three regulatory standards and their 20 characteristics.

12.2. The LSB would also require updates on specific points such as EDI, progress against the action plan provided to them in the last RPA round, governance and building IPReg's evidence base. Common themes had been identified in the regulatory performance assessment, such as the transparency of decision making, which IPReg had been commended for. There would be an emphasis on innovation and technology, and first-tier complaints. The request would be likely to take the form of a specific set of questions on IPReg's performance against the points identified in the most recent regulatory performance assessment, questions on common themes, and assurance mapping.

12.3. In the previous assessment, the IPReg Board's judgement was that it met the green level for regulatory standard 1 (well-led), and amber on regulatory standard 2 (effective approach to regulation), particularly based on the work required on EDI and building its evidence base. Whilst the LSB's February 2024 assessment of IPReg had determined amber assurance for both regulatory standards 1 and 2, it had acknowledged IPReg's hard work on progress and introduction of tangible actions to improve its regulatory activities which it considered should enable us to provide sufficient assurance against all three standards by the time of the next assessment.

12.4. The Board discussed the following matters:

12.4.1. A Board member stated that more evidence of the impact is needed under Characteristics 4 (Understands the needs of consumers and the public interest and assesses the impact of its work in meeting its interest) and 11 (Understands the range of formal (e.g. rules) and informal (e.g. influence) regulatory levers at its disposal and how to make best use of them; implements appropriate regulatory interventions, and evaluates their impact, changing the approach where necessary to improve outcomes).

12.4.2. A Board member stated that Characteristics 4 (see above) and 9 (has a comprehensive understanding of the market it regulates, including the consumers of services, and proactively identifies risks to the regulatory objectives; has a clear programme of activity to address those risks) seemed to be a lighter green rather than a strong green, because IPReg is still undertaking work to understand better the needs of individual consumers and small businesses who need/use IP legal services. The narrative needed to reflect the current position and the scope for, and ongoing enhancement of, those areas.

12.4.3. It was suggested that the Board Evaluation Review could be included under Characteristic 8 (Has fit for purpose governance systems that align to good practice) and the EDI action plan would be useful evidence under Characteristics 14 (Committed to improving the diversity of, and reducing inequalities in, the profession at all levels

and implements actions to reduce barriers to equality and inclusion) and 15 (Committed to improving, and reducing inequalities in, access to services for the public and consumers in all their diversity).

12.4.4. The Director of Policy stated that the exercise was worthwhile and meaningful in terms of self-reflection. Although improvements were still required, the great deal of work that IPReg had done needed to be recognised.

12.4.5. The Chair praised the Director of Policy for her work.

### **13. Complaints Update**

13.1. The Head of Registration stated that a complaint had been received late on 8 September but had been quickly assessed and closed. Overall, there were five closed complaints since the previous Board meeting.

13.2. The Head of Registration reported that an attorney who had been removed from the register following a disciplinary hearing in May, had originally appealed the finding and costs order. The appeal had been withdrawn and he had been directed to pay £47,500 in costs. He had already paid £23,500 and would pay £2,000 a month from December onwards.

13.3. Of the existing four open cases, three were expected to be open for longer due to awaiting responses from external agencies. In one of the cases, the attorney had indicated that they would appeal the decision, which IPReg needed to be mindful of. Another case would probably go to a full disciplinary hearing.

### **14. CEO's Report**

#### *Meetings (CIPA and CITMA)*

14.1. The CEO stated that the Regulatory Forum had been held that morning. Participants had been interested in IPReg's new risk policy and red risks. The CEO had explained the rationale for developing a new approach and had drawn participants' attention to the controls in place. Participants had been updated on the practising fees consultation and the Board effectiveness review. CIPA had proposed organising an informal discussion on artificial intelligence and its use in the IP legal sector which Board members would be welcome to attend.

#### *LSB engagement*

14.2. The relationship management meeting on 6 September with the LSB had been constructive. The CEO would have an in-person meeting with the new chief executive on 19 September. The Board agreed that the CEO should extend an invitation to the new LSB Chief Executive to attend an IPReg Board meeting.

*All Chairs' meeting on 9 September*

14.3. The Chair stated that the discussion at the All Chairs' meeting had predominantly been about first-tier complaints, part of which was a presentation by the chief legal ombudsman. There had also been a discussion on the new government's priorities in relation to legal services including access to justice issues.

14.4. The Board discussed the following matters:

14.4.1. The increasing scrutiny on lawyers' moral compass, which had become a theme in regulation.

## **15. IT System Update**

15.1. The Head of Registration stated that there were two outstanding issues. One was in relation to the finance output file. The Finance Officer was working closely with IE Digital on the matter. Another ongoing issue was the ability to save emails directly from inbox to the CRM, which was currently not working as it should. The issue was being investigated.

15.2. The Board discussed the following matters:

15.2.1. A Board member started that one of the requirements in the LSB's performance assessment was the access to accurate registers, and asked whether traffic data could be gathered for this. The Head of Registration stated that a free trial of an analytical data package had been provided, which included number of hits and most viewed pages. The Head of Registration had inquired about further analytics possibilities to explore for the future.

## **16. IPReg Limited – new Articles of Association**

16.1. The CEO stated that the new Articles of Association had been drawn up by Kingsley Napley. There had been discussions with CIPA and CITMA on whether they wanted to continue to be guarantors of IPReg Limited. CIPA had formally confirmed its intention to withdraw. CITMA would consider the issue at its next council meeting on 24 September, and was expected to reach a similar decision. The CEO would inquire with Kingsley Napley about the next steps.

## **Items to Note**

### **17. Action Log**

17.1. The action log was noted.

### **18. Red Risks**

18.1. The Chair stated that there were three new red risks. The IT system risk was no longer red.

18.2. The CEO stated that the team had monthly meetings to review the risk register, and any significant changes would be reported to the Board.

18.3. The Board discussed the following matters:

18.3.1. The Chair asked if the risk register had been shared with the LSB. The CEO stated that it had never been shared with LSB, but red risks were shared with CIPA and CITMA at the Regulatory Forum, which had asked to share the register with their Councils. The CEO had agreed to this, as long as the red risks remained confidential.

## **19. Regulatory Statement**

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

## **20. Any Other Business**

20.1. There being no other business, the meeting closed at 16.17.