

The Patent Regulation Board and the Trade Mark Regulation Board

Minutes

Thursday 7 November 2024 at 1.00 p.m.

Orwell Room, 20 Little Britain, London EC1A 7DH

Attending:

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

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

1. There were no apologies.
2. No conflicts of interest were declared.

Items for Decision/Discussion

3. Minutes of September 2024 Meeting and Matters Arising

- 3.1. The minutes of the meeting were approved as an accurate record.
- 3.2. There were no matters arising.

4. Education

Scoping the Education Review

- 4.1. The Chair stated that the Head of Education Review had written a comprehensive paper which could bring about fundamental changes, and asked the Head of Education Review to highlight significantly important points.
- 4.2. The Head of Education Review stated that the paper sought to test the scope and explore appetite for IPReg's planned education review. The review would be ambitious and would explore what improvements should be made to the way in which attorneys qualified.
- 4.3. An Annex to the paper set out potential achievements and outcomes for different stakeholders, which would be helpful to consider in terms of appetite for change and what

could be achieved. The review focused on meeting the needs of profession, taking into account changing needs in practice and looking at current issues of sustainability.

4.4. The paper highlighted some of the risks of not undertaking the review. One of these was the risk associated with a single route to qualification. The Head of Education Review emphasised the importance of building constructive, positive stakeholder relationships, the need for collaboration throughout the project and the importance of EDI issues to inform the work being undertaken.

4.5. A key aspect of the review would cover what timescales would be appropriate for existing arrangements to be phased out and the need for appropriate transitional arrangements.

4.6. More detail about the project and how it would be undertaken would be in a fully detailed project initiation document to be brought to the Board.

4.7. The Board discussed the following matters:

4.7.1. The Chair stated that Board needed to consider the relatively limited numbers entering the profession and the impact on education providers. The Head of Education Review stated that sustainability was a consideration for both the trade mark and patent attorney professions; horizon scanning to identify possible future requirements would be important. Current discussions on apprenticeships were also considering this issue.

4.7.2. A Board member asked whether establishing a separate working group from the EWG for the project would carry a risk of duplication. A Board member suggested that the project risk format should align with the format of the risk register for cohesion and simplicity. The Head of Education Review stated that the EWG would be key in the progression of the review, but it should be considered whether a discrete steering group informed by the EWG should be established.

4.7.3. The Chair stated that the EWG had a heavy workload, and asked whether the EWG would have bandwidth to be the task group overseeing the review. A Board member stated that creating separate group would create more resource pressures, and suggested that the review should be kept within the EWG, with separate groups established for stakeholder engagement.

4.7.4. A Board member thanked the Head of Education Review for the speed, rigour and evidence-based approach she had brought to this piece of work.

4.8. The Board decided:

4.8.1. To approve the proposed approach in the Education Review paper and for the Head of Education Review to write up a detailed set of issues for Board to consider in the coming months.

4.8.2. That the EWG would oversee the project.

The Head of Education Review left the meeting.

Approach to the PEB re-accreditation requirements

4.9. The Head of Education Review stated that the original reaccreditation exercise of the final diploma exams had taken place in 2022. The reaccreditation had been ratified, subject to 19 requirements being met and two recommendations being addressed. The scale of work was substantial, with a deadline set for March 2025 for the PEB to implement the requirements and consider the recommendations.

4.10. The paper set out the approach to the reaccreditation exercise, which was consistent with IPReg's approach to accreditation. The reaccreditation process would be conducted by independent consultants and would be managed to ensure that it was robust and proportionate.

4.11. IPReg would meet the PEB on 13 November 2024 to discuss the intended approach with a view to maintaining close contact with the PEB throughout the process.

4.12. The Board discussed the following matters:

4.12.1. The Chair emphasised the importance of maintaining a positive and constructive relationships with the PEB. This would include providing the PEB with a draft of the assessors' report to check for factual inaccuracies.

4.12.2. A Board member asked how the overhaul of FD exams would be taken into account because the changes were currently subject to consultation. The Head of Registration stated that this would be discussed at the meeting with the PEB. A previous update from the PEB had indicated that all the proposed changes were in line with the recommendations that IPReg had made, and that the changes were not fundamental in nature.

4.12.3. A Board member asked about contingency plans if the assessors did not consider that all the requirements had been implemented adequately. The Director of Policy explained that it would be for the IPReg Board to determine whether enough confidence had been provided for the standard five-year accreditation timeframe to apply.

Approach to the PEB Foundation Certificate review

4.13. The CEO stated that the PEB had indicated that documentation for the review was ready and that they were awaiting IPReg's decision when the work would start. Hook Tangaza had been appointed to conduct the review and the process would be discussed with the PEB at the meeting on 13 November.

4.14. The Head of Registration stated that the PEB's most recent annual report provided good assurance on the foundation examination, such as good pass levels and fewer resits. There was generally good feedback from stakeholders.

Apprenticeships

4.15. The CEO stated that the Head of Education Review had attended a recent meeting with the nascent trailblazer group which was progressing the work.

4.16. The Board discussed the following matters:

4.16.1. The Chair asked whether specific proposals for apprenticeships would need to be responded to while considering broad issue as part of the review. The CEO stated that this was correct. IPReg's competency framework had a large part to play in how knowledge, skills and behaviours for apprenticeships were developed. Part of the Head of Education Review's work was to identify interdependencies and the likely sequence of changes.

European Qualifying Exams

4.17. The Head of Registration reminded the Board that the epi was fundamentally changing the approach to the EQE, with a different approach and syllabi. Sample papers were being released in stages. From the information currently available, the M3 exam was most likely to be the equivalent of the current FD2 and FD3 exemptions, but a copy of this paper would not be available to view until Q1 2025. IPReg was therefore not in a position to understand how closely the new M3 exam would meet current exemption framework. A detailed progress plan had been presented at the last EWG, but proposed dates could change depending on when the M3 sample paper would become available. The proposed changes to the PEB's FD exams would also have to be taken into account once they had been finalised.

Report from EWG on 16 October

4.18. The Chair of the EWG gave an overview of the most recent meeting that had not already been discussed by the Board. Issues that had been discussed included the need to balance regulatory requirements for entry into the profession against ongoing development and improvement after qualification. The meeting had also discussed the need to improve diversity and how this should be included in the project.

4.19. The Board then discussed the most appropriate way to ensure adequate resources for the project.

5. Feedback from Strategy Morning

5.1. The Chair reported on the main decisions that had been taken at the Board-only discussion following the presentation by Independent Audit of the Board effectiveness review. These included:

5.1.1. to support the recruitment for a new Chair, a working group would be established to lead the process. The role profile would highlight the need for charring skills, people skills and regulatory experience, but not necessarily in the field of legal regulation. The role would be advertised in January, and there would be an opportunity for

shortlisted candidates to individually meet with stakeholders and the executive team. Bids to run the process would be invited from recruitment consultants.

5.1.2. The recommendations suggested by Independent Audit about the way Board meetings and papers should be structured would be introduced. There would be a meeting with Independent Audit and the CEO to discuss how to take this forward.

5.1.3. The capacity within the staff team had been discussed including whether there was sufficient resource to do work required. The Board asked the CEO to consider this matter further.

Action: CEO to take forward changes to Board meeting structure and papers.

Action CEO to consider resourcing issues.

6. IT System Update

6.1. The Head of Registration stated that the one issue remained in relation to email storage. The project was therefore nearing the end. IE Digital had begun compiling a suite of next steps in relation to further enhancements and had provided a reasonable quote. These enhancements would improve the user experience internally and for users of the portal.

6.2. The Chair thanked the Head of Registration for guiding the IT project to satisfactory completion.

6.3. The Board discussed the following matters:

6.3.1. A Board member stated that, from experience of IT systems, using external companies to fix issues could cause issues with translation into business requirements, and the user would suffer as a result. Another point was that solutions that appeared cost-effective were often designed in a certain way or the IT company took control of the database. The Head of Registration stated that the project had not been to build a new system, but a new provider had rebuilt the existing system. IPReg had essentially received their old system with enhancement. The move to the new provider had given IPReg the necessarily experience needed of leaving the old provider.

6.3.2. The CEO added that there was an ongoing project simulating phishing emails to team members in order to raise awareness, and there had been good results so far. Conversations were ongoing with the supplier in relation to how this could be continued. Training had been scheduled on cyber attacks for the coming months.

6.3.3. A Board member asked if Board members would also receive phishing emails. The CEO stated that the exercise could be expanded to include Board members.

Action: CEO to expand cyber awareness phishing exercise to include Board members.

7. Technology & Innovation Working Group Meeting

- 7.1. The Head of Registration stated that the working group had originally been formed to guide improvements in our evidence and data gathering. Given the overlaps, the paper recommended that the Data Working Group should be merged into the Technology and Innovation Working Group to form the Technology, Data and Innovation Working Group.
- 7.2. The working group did not yet have a Board member to chair, and the Board was asked to consider who may wish to take on this role.
- 7.3. The proposed Terms of Reference were attached to the main paper and the Board was asked to endorse them.
- 7.4. The Board discussed the following matters:
 - 7.4.1.A Board member stated that in the performance assessment grid, there was a reference to an innovation policy, and asked whether a deliverable on the creation of relevant policies should be included in the Terms of Reference. The Chair stated that the new working group could consider this question.
 - 7.4.2.The desirability of having Board member capacity and expertise in relation to technology and innovation.

8. Regulatory Performance Assessment – LSB information request

- 8.1. The CEO thanked the Director of Policy for her continuing hard work in drafting a detailed response to the LSB's information request which required assurance mapping from all regulators against the three regulatory standards. For transparency, IPReg had decided to assurance-map against each of the 20 characteristics.
- 8.2. The Director of Policy explained that the LSB had sent a number of IPReg- specific information requests but others were common themes raised to all regulators. Responses to all the requests had been included in the document for the Board to consider.
- 8.3. The regulatory performance information request covered all three regulatory standards for the period from June 2023 to September 2024. IPReg had delivered a significant amount of work in the timeframe. Examples included the completed governance review and action plan, the Risk Working Group, EDI policies and surveys.
- 8.4. The Board discussed the following matters:
 - 8.4.1.Whether we should collect diversity data on complainants and who they complained about. The Board noted that this could be a difficult exercise and given the very small number of complaints it might not be possible to identify any particular patterns.
 - 8.4.2.The Chair stated that, in relation to AI and innovation, reference should be made to the newly-established Technology, Data and Innovation Working Group. The Director

of Policy stated that this could be provided even though it was not implemented during the specified timeframe.

8.4.3.A Board member stated that the paper was well-written and clear, and suggested that some additional information about purpose and objectives could be included to frame IPReg's answers.

8.4.4.A Board member stated that would be helpful to see how other regulators had written their documents in terms of narrative framing to assist in presenting the information in the document. This point would be more relevant for any requests from the LSB in 2025.

8.4.5.A Board member asked whether the findings from the Independent Audit report could be included to boost well-led evidence in the document, noting that the assessment had been conducted during the time period, even though the report had been received afterwards.

8.4.6.A Board member noted that there was a question about how IPReg demonstrated its use of informal and formal regulatory levels appropriately. Regulatory levers perhaps meant IPReg's influence and use of its soft powers, such as its work with professional bodies, and this could be reflected in the answer. The Chair agreed and suggested that this could refer not just to formal forums with CIPA and CITMA, but the more informal meetings of the CEOs. The articles that the Chair wrote every half-year for the CIPA and CITMA journals could also be referenced.

8.4.7.A Board member suggested that additional information could be added to the response on risk assessment.

8.4.8.The Head of Registration suggested that learnings from success stories, such as IPReg's approach to the Regulatory Arrangements Review, could be taken forward to future projects such as the Education Review, and this could be demonstrated in the document.

8.5. The Board decided:

8.5.1.To approve the finalisation of the response subject to the amendments.

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

9. IPReg Ltd Articles of Association

9.1. The Finance Officer stated that CIPA and CITMA had decided to resign as members of the limited company, and they had provided resignation letters to begin the process. The December Board meeting would include a procedure for the resignations to be formalised, for the IPReg Board members to be appointed as members of the Company, and a written resolution to adopt new Articles would be circulated at that meeting.

10. Complaints Update

- 10.1. The Head of Registration stated that there were currently three open cases. One was being actively investigated and two were awaiting external organisations to provide additional information.
- 10.2. In relation to the first case, the allegations and the bundle of evidence had been sent to the respondent. The respondent had an opportunity to provide observations which would go to the case examiners, who would be asked to make a decision on whether IPReg's rules had been breached.
- 10.3. In relation to the Legal Ombudsman complaint numbers, earlier in the week there had been confirmation that a complaint had been received by the Legal Ombudsman at the end of August about an IPReg-regulated attorney. From a review of information about the complaint, it seemed unlikely that it would be taken further.
- 10.4. The paper was noted.

11. IP Inclusive Funding Request

- 11.1. The Chair stated that there had been a proposal for a donation of £4,500. IP Inclusive did excellent work as a key part of the diversity strategy.
- 11.2. The Board decided to:
- 11.2.1. Approve the proposal.

12. CEO's Report

Meeting with new LSB CEO

- 12.1. The CEO stated that she had met with the new LSB CEO on 19 September 2024. The meeting had been very positive. The CEO had extended an invitation to the LSB CEO to an IPReg Board meeting.

2025 practising fees

- 12.2. The LSB had approved the 3% increase in practice fees. Fee collection should start in December 2024. There had been an issue with Worldpay and the Finance Officer had found a potential new provider.

Horizon scanning and research

- 12.3. An external consultant would review the Axiom Ince report with a view to extract any lessons learned for IPReg.

Contracts and other expenditure

- 12.4. The CEO stated that four organisations had been invited to submit their bits for the transparency thematic review. One organisation had declined, two had submitted their

bid, and the one had not responded. The CEO recommended that the contract should be awarded to Frontier Economics to benefit from the diversification it would bring and it would be valuable for IPReg to get another organisation's perspective on the IP sector.

12.5. The Board decided:

12.5.1. To endorse the recommendation of the use of Frontier Economics.

13. Full Risk Register

13.1. The Board discussed the following matters:

13.1.1. A Board member asked whether the risk about resourcing was sufficiently targeted and that it should be drafted with a focus on having the right resources, capacity and expertise to be an effective organisation, and the mitigation of risk would therefore be to assess current resource and reflect this through the strategy.

Action: CEO to reconsider this risk once the review of resources had been completed.

Items to Note

14. Action Log

14.1. The action log was noted.

15. Finance Report

15.1. The Finance Officer presented the report, noting that a cost award for £47,000 from a disciplinary case had been recognised. There was a payment plan for the cost award in place, and if there was any default on this plan, there would be an accounting provision for recovery, which would be treated as an expense and released as payments were received.

15.2. The Board discussed the following matters:

15.2.1. The Chair asked the Finance Officer if a calculation had been done on the cost of the increase in employers National Insurance. The Finance Officer said that it had. The total increase was approximately £10,700. When considering the Employment Allowance of £10,500, there was a negligible impact on budget. There had been no change to Corporation Tax rate.

15.2.2. The Finance Officer stated that she had spoken with Elavon, formerly Sage Pay, as an alternative to Worldpay. She was progressing the application to Elavon. It would take up to a week for Elavon to review the application, and it would take two weeks on average for Elavon to set up.

16. Regulatory Statement

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

17. Any Other Business

17.1. There being no other business, the meeting closed at 15.43.