

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

### Minutes

Thursday 25 April 2019 at 12 noon

The Seminar Room, Hardwicke Building, New Square, Lincoln's Inn, London WC2A 3SB

#### Attending:

Rt Hon Lord Smith of Finsbury (Chair)  
Alicia Chantrey  
Samantha Funnell  
Steve Gregory  
Keith Howick  
Emma Reeve  
Nigel Robinson  
Caroline Seddon  
Nick Whitaker

**In attendance:** Fran Gillon, Shelley Edwards, Mark Barnett, Karen Duxbury, Victoria Swan

#### 1. Apologies

Apologies were received from Alan Kershaw and Jonathan Clegg.

#### 2. Notification of any conflicts of interest

None.

#### 3. Minutes of March 2019 meeting and matters arising

3.1 The Board agreed the minutes of the February 2019 meeting subject to a slight amendment to item 5.1.

3.2 Matters arising – updates were given on the following items not covered elsewhere on the agenda:

a) Item 5.4 Compensation Insurance Policy [REDACTED]

**Action:** [REDACTED]

#### 4. Notes of March 2019 Strategy Day

4.1 The Board noted the paper on its March 2019 Strategy Day. In view of the number of issues concerning education, the Board agreed to set up an Education sub-committee comprising the Chair, CS, KH and AK.

4.2 The Chair commented that whilst changes to the frequency of Board meetings had already been agreed, IPReg should await the Legal Services Board's revised Internal Governance Rules decision before making any further changes.

#### 5. Action Log

5.1 The action log was noted. In addition, oral updates were made regarding:

Anti-Money Laundering – SE reported that the final draft Counsel's advice is to be discussed at a teleconference with Counsel, CIPA and CITMA on 29 April. A summary of the advice will be published.

2019 re-registration – SE reported that of the 19 requests to be removed from the Registers, the majority are retiring; 1 attorney has indicated a move to the unregulated sector and another is already registered with the SRA. The new process had been successful in ensuring that existing complaints were brought to light before a decision was made whether to agree that an attorney could be removed from a Register.

LSB Regulatory Performance Assessment – the Chair reported that individual appraisals of Board members would take place over the July-September 2019 period.

Charges for Higher Courts Certificates – so far £3200 is to be reimbursed to attorneys and £1200 donated to IP Inclusive (out of a total of £6600 over-charged). The closing date for refund applications is 20 May after which any remaining money will be donated to IP Inclusive.

IP Inclusive – IPReg has now signed the IP Inclusive Charter.

#### 6. Complaints Review Committee meeting 9 April – issues arising – no paper (Chair/KH)

6.1 The Chair reported that the most significant issue which arose from the CRC meeting related to run-off insurance. The Rules of Conduct are not explicit that attorneys must get run-off cover when they close their practice and there is no appropriate successor practice. The Board agreed that this issue was an important consumer protection matter and that a rule change should be proposed before the wider review of the regulatory arrangements took place. It was agreed that the issue of pro-bono work should also be included in this consultation to remove any actual or perceived ambiguity in the Rules of Conduct about in-house attorneys providing pro-bono advice.

**Action: FG and SE to take forward the consultation**

6.2 In relation to another case considered by the CRC, the Board agreed that it is important that information about how to make a complaint is provided at any time that it is requested by a consumer/client. This would be reinforced in the forthcoming guidance on price and service transparency.

## **7. IPReg Limited (KD/FG)**

### **a) 2018 Accounts and Reserves**

FG introduced the paper and emphasised that the accounts were subject to audit and that the audited accounts would be provided to the July Board meeting. [REDACTED]

[REDACTED]

Subject to the external audit, the Board agreed to the:

- Release of reserves as set out in the paper;
- Adjustment to the Reserves will be effective at 31 December 2018; and
- Reserves Policy is slightly amended to provide more flexibility in when the reserves can be adjusted by the Board.

**Action: KD to implement agreed changes**

### **b) 2019 Budget v Actual Comparison Q1**

KD presented the Budget v Actual Comparison for the first quarter of 2019. The Board noted the paper.

Karen Duxbury and Mark Barnett left the meeting.

## **8. Chair and CEO activities (not covered elsewhere):**

### **a) Legal Ombudsman Chair: 21 February (Chair)**

[REDACTED]

**b) MoJ Head of UK Legal Services Policy: 21 February (FG)**

[REDACTED]

**c) Regulatory Forum: 5 March (Chair) and d) 3 x CEOs: 5 March (FG)**

The Chair reported that both meetings had discussed:

[REDACTED]

**d) Consumer Panel Chair: 8 March**

The Chair and FG attended this meeting and had discussed:

[REDACTED]

**e) LSB CEO: 29 March (FG)**

[REDACTED]

**f) LSB relationship management: 12 April (FG)**

[REDACTED]

**9. Progress on new CRM system – no paper (SE)**

9.1 SE is working closely with Miller Tech, who are writing a programme to transfer the data cut provided by Reason Digital into code. The data migration exercise is a significant undertaking. There are ongoing data workshops with Miller Tech and the office is working with a test site. The project is proceeding as anticipated, scheduled to launch on 10 September 2019.

## **10. Queen Mary University London (QMUL) – progress report – no paper (Chair/CS/KH)**

10.1 The Chair advised that he, CS, KH, SE and VS met representatives of QMUL to discuss the disappointing student and committee member feedback that had been provided by CITMA’s student members on the Trade Mark Attorney Course. CS expressed concern about the apparent lack of a programme management review board to assure quality. A letter has been issued with specific suggestions about logistic/organisational future proof planning; creation of a programme board; programme syllabus mapping to evidence that the IPReg Accreditation Handbook requirements are being met; and student feedback mechanisms. A response is required from QMUL by the end of May and this will be considered at the July Board meeting. IPReg representatives are to meet QMUL representatives in the summer. Concern was expressed that the issues identified might not be confined to the Trade Mark Law and Practice Course, but could also affect the patent course provided by QMUL (and the Masters degree variant which potentially affords elements of exemption). It was considered that it was likely that the issues and the remedies to address them would cover all three courses.

**Action: Education sub-committee to continue to monitor and take action as required**

## **11. Nottingham University Course Accreditations (VS)**

### **a) Professional Certificate in Trade Mark Practice (PCTMP) – accreditation**

11.1 VS reported that Nottingham was the last of the Examination Agencies to go through an accreditation process against the IPReg Accreditation Standards set out in the Handbook. Nottingham’s course is currently the only advanced level qualification course for trainee Trade Mark Attorney and follows the QMUL or Bournemouth Foundation Level Qualification.

11.2 The course was inherited from the historic Joint Examination Board (JEB). A “Fast Track” iteration of the course was provided as a transitional arrangement for those who had passed elements of the JEB examinations for qualification previously in place. The Board recognised the risk posed to consumers by those who had passed examinations a significant time ago and who did not have recent practising experience. Given that more than 6 years had elapsed since the JEB examination pathway was live and the course had only ever been intended as a transitional arrangement, a sunset clause would be included in the regulatory arrangements review. In the meantime it is likely that new applications that raise these matters will be considered by the relevant Board.

11.3 VS reported that Assessors’ Reports endorsed accreditation of the PCTMP, the litigation module of the PCTMP and the two other Nottingham Basic Litigation Skills Courses. The had also made certain recommendations about the courses.

11.4 The Board considered that it would be appropriate to approve a five-year reaccreditation of the PCTMP, subject to:

- a satisfactory implementation plan that takes into account the Assessor Report Recommendations (except the recommendation on the fast track review and the litigation review, see item 11b) being provided by close of business Friday 31 May;

- that implementation plan to include the Assessors' additional recommendations:
  - a) Admissions – there is a duty of care for the admissions criteria to ensure trainees are not being set up to fail; this to be revisited with a view that it should be the programme leader who makes the final decision in such cases; and
  - b) Progression statistics – to take forward the report's assertion that "If the gap between the Foundation Level Qualification and the PCTMP is to be properly bridged full data needs to be collected and analysed re: trainee profiles, results and outcomes";
- an update on progress made against the implementation plan being provided by close of business Friday 30 August (i.e. ahead of October 2019 student cohort)
- an update on CITMA student feedback being provided by close of business Friday 31 May;
- the accreditation status being subject to review prior to the end of the 5-year timeframe in the event that IPReg considered it proportionate to do so to ensure that the regulatory objectives were being met.

**Action: VS to inform Nottingham of the Board's decision**

**b) Basic Litigation Skills Course – reaccreditation**

11.5 The Board approved the reaccreditation of Nottingham's litigation courses:

- Module 3 of the PCTMP (5 years)
- Module 3 of the PCTMP provided as a standalone Basic Litigation Skills Course to JEB transitioning individuals (until the end of the JEB transitional arrangements);
- Standalone Basic Skills Litigation Course for Patent Attorneys (5 years).

subject to:

- a satisfactory implementation plan being provided by close of business Friday 31 May that takes into account the Assessor Report Recommendation that the materials used for advocacy assessments do not exceed 30 pages ;
- a satisfactory commitment being provided by close of business Friday 31 May to review its course handout materials for spelling and inconsistency errors;
- agreement to providing an annual monitoring report to address matters such as: number of students enrolled, assessment pass rates, student and tutor feedback and steps taken to action this feedback – timing to be agreed with Nottingham based upon their Basic Skills Litigation Course cohorts;
- the accreditation status being subject to review prior to the end of the 5-year timeframe in the event that IPReg considered it proportionate to do so to ensure that the regulatory objectives were being met.

**Action: VS to inform Nottingham of the Board's decision**

**12. Price and Quality Transparency Guidance (VS/FG)**

12.1 FG presented the paper setting out the proposed Guidance which had been developed as a result of recommendations in the CMA Legal Services Market Study. The Guidance is focused on improving pre-engagement information to individuals and small businesses. The Guidance was

informed by CIPA and CITMA, the only two respondents to the most recent consultation, and both have offered to help promote it.

12.2 The Board agreed to:

- a. Delegate agreement on the final wording and publication of the Decision Document and Guidance to the Chair and CEO.

**Action: FG and VS to add key points and to issue the Guidance**

### **13. IPReg Registrar (FG)**

13.2 The Board agreed:

- a) The Registrar's appointment endures for as long as the current CEO is in post (without fettering the Board's discretion to revoke that appointment); and
- b) As part of the review of the regulatory arrangements IPReg will consider whether a distinct post of Registrar is necessary.

### **14. Complaints Update (SE)**

14.1 SE presented the paper, advising that there had been two new complaints since the previous Board meeting.

14.3 The Board noted the paper.

### **15. Risk Register (FG)**

15.1 [REDACTED]

15.2 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Board is conscious of the demands being made on staff and the stretched resources.

### **16. Any Other Business**

16.1 VS advised that IPReg had successfully applied for representation at the London Pride Parade on Saturday 6 July and asked that anyone interested in attending to contact her.

### **17. Regulatory Statement**

17.1 Confirmation that, except where expressly stated, all matters are approved by the Patent Regulation Board and the Trade Mark Regulation Board.