

27th January 2021

Fran Gillon
Chief Executive
Intellectual Property Regulation Board
5th Floor, The Outer Temple
222-225 Strand
London
WC2R 1BA

Consultation on a sunset clause to end recognition of historic JEB examinations and IPReg approved courses

Dear Fran,

Thank you for the opportunity to respond to the consultation on IPReg's proposal to introduce a sunset clause to end recognition of historic JEB examinations and IPReg-approved courses. The Chartered Institute of Patent Attorneys (CIPA) is responding to the consultation in its capacity as the Approved Regulator for patent attorneys, as defined in the Legal Services Act 2007, and as the representative professional body for Chartered Patent Attorneys in the UK.

CIPA Council reviewed the consultation document and asked its Education Committee to prepare a response on behalf of Council.

Council would be interested to know why IPReg has decided it needs to address this matter now, given that a full review of the regulatory arrangements is due to commence soon. If specific issues have arisen out of the historic JEB examinations and IPReg-approved courses, could these be shared to aid understanding as to why this proposal is being made at this time? Council would also be interested in IPReg's impact assessment on the introduction of the sunset clause, in particular the number of people likely to be affected by ending the recognition of JEB examinations and other approved courses.

No reference is made to a notice period in relation to patent attorney qualifications, whereas a notice period of eighteen months is stated for trade mark attorney qualifications. CIPA takes the view that there should be a notice period of at least four years for those working towards qualification as a patent attorney. This is in recognition of the time it will take an individual who is going to be affected by these changes and has a current legitimate expectation that the qualifications achieved to date are assured, to prepare for any remaining examinations, take those examinations and, if necessary, attempt any resits.

It is worth noting that there is no sunset clause or similar provision in relation to the European Qualifying Examinations (EQE). A candidate with a historic EQE pass would be exempt from taking the FD2 and FD3 examinations, whereas a candidate with a historic JEB qualification will have to take the current equivalent to gain entry onto the Register.

CIPA
The Chartered Institute of Patent Attorneys

2nd Floor, Halton House
20-23 Holborn
London EC1N 2JD
T: 020 7405 9450
F: 020 7430 0471
E: mail@cipa.org.uk
W: cipa.org.uk

PATENTS
TRADE MARKS
DESIGNS
COPYRIGHT

It is not uncommon for individuals to take breaks from their careers for a substantial period of time. Career breaks may occur due to parental responsibilities, caring responsibilities, personal illness or disability, or another reason outside of the control of the individual concerned. Before ending the recognition of historic qualifications, CIPA urges IPReg to consider the impact on individuals who have taken career breaks and, in particular, ensure there is no potential discrimination towards persons with protected characteristics under the Equality Act.

CIPA notes that the proposal is made on the basis that these historic examinations/courses should no longer be considered acceptable for entry onto the Register and would apply to those who took the historic examinations or courses only and who did not enter onto the Register. We have concerns that it would be a matter for the Registrar's discretion on a case-by-case basis as to how long provisions might apply for those who were once entered onto the Register and are seeking readmission. There should be clear rules for readmission to the Register which enable individuals seeking readmission to demonstrate that they remain in good professional standing.

Whilst it is the case that the qualifications referred to predate the IPReg Accreditation Standards and Syllabus requirements, the law does not change significantly over time. Where there is a significant change, this is an issue for the entire profession and not just those who have started their training but who have not completed their exams. The foundation laws for intellectual property such as the Patents Act 1977, the Trade Marks Act 1994, the Designs Act 1949, and the Copyright, Designs and Patents Act 1988, are long-standing and are the core elements of the JEB foundation papers and university courses.

In discussing the currency of qualifications, the proposal states that "... their age mean[s] we cannot be wholly confident that they meet the regulatory objective of encouraging an independent, strong, diverse and effective legal profession nor that of protecting and promoting the consumer interest". Whilst this is important for designing the regulatory future of the profession, we are not sure how this applies to historic foundation level examinations or exemptions, or to JEB finals papers.

With regard to historic university courses, these provided exemption from the foundation examinations. The sunset clause removes the right to enter onto the Register with JEB examination passes. An individual who is exempt from the PEB foundation examination by way of a historic university qualification will still be required to take the higher PEB examinations to gain entry onto the Register. CIPA asks IPReg to consider if this is enough of a safeguard to guarantee suitability to be entered onto the Register, rather than require those with historic university qualifications to take the foundation examinations.

Please let me know if any of the points raised here require amplification or clarification. CIPA asks that IPReg does not make any final decision on introducing a sunset clause to end recognition of historic JEB examinations and IPReg-approved courses until this proposal has been discussed at the Regulatory Forum.

Yours sincerely



Lee Davies, Chief Executive