

The Patent Regulation Board and the Trade Mark Regulation Board

Minutes

Thursday 7 December 2023 at 1.00 p.m.

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

Attending:

Rt Hon Lord Smith of Finsbury / Chris Smith - (IPReg Chair)
Justin Bukspan (Risk Working Group Member)
Alan Clamp (Education Working Group Member)
Sam Funnell (Data Working Group Chair and Risk Working Group Member)
Katerina Kolyva (Education Working Group)
Victor Olowe – Attending Remotely (Risk Working Group Chair and Governance Working Group Member)
Samantha Peters – Attending Remotely (Governance Working Group Chair and Risk Working Group Member)
Emma Reeve (Education Working Group and Governance Working Group Member)
Henrietta Rooney – Attending Remotely (Education Working Group Member)

In attendance: Fran Gillon (CEO), Shelley Edwards (Head of Registration), Victoria Swan (Director of Policy), Gurdas Sually (Education and Diversity Policy Officer)

1. No apologies had been received.
2. No conflicts of interest were declared.

Items for Decision/Discussion

3. Minutes of November Meeting and Matters Arising

- 3.1. The Board approved the minutes, subject to a minor amendment in paragraph 12.1.

4. Governance Action Plan Implementation

- 4.1. The CEO introduced the paper, which updated the Board on progress in implementing the steps agreed in the Governance Action Plan. Annex A showed progress made up to 24 November 2023. Five working groups had been set up to support and challenge the Executive Team on specific projects or areas of work. Each working group had its own terms of reference (ToRs), which had been re-drafted into a standard format for consistency and would be reviewed by the Board at the current meeting. The ToRs for the Review of regulatory arrangements working group had not been provided as there was a proposal to this meeting that it should be formally ended now that the new arrangements had been commenced.
- 4.2. The Board discussed the following matters:

- 4.2.1. Regarding the progress update, it was unclear what the process was for whistleblowers following them contacting the CEO. Drafting of the section about malicious claims could be softened and some sections could be expanded without having to set specific timelines. It should also be clarified that the whistleblower would be kept updated with the progress of the investigation. It would be beneficial to look at the whistleblowing policies of other organisations in the sector. The CEO explained that the current wording had been taken from the Practical Law template to ensure compliance with statutory requirements, but she would consider the approach of other organisations.
- 4.2.2. Regarding the ToRs for the Education Working Group (EWG), it was important that renewal of accreditation was included.
- 4.2.3. A Board member noted that the scale of responsibilities of the EWG was significantly higher than other working groups. The nature of the work undertaken and the impact it had on regulatory responsibilities and external stakeholders meant that it might be beneficial to have formal meeting minutes instead of informal meeting notes, which could be disclosed if an entity or individual challenged the Board's decision-making process. The Board discussed this point and noted that external support would be needed if formal minutes were required. It noted that, like all the working groups, the EWG was not a decision-making body. Decision making was the role of the Board rather than the EWG and the minutes of Board meetings should contain all information about how it had reached its decision. There had never been concern from the Board that working group recommendations were not well reasoned, but the Board reached decisions independently. The Board decided that formal minutes of the EWG were not currently needed as it did not take decisions, but the Board would keep this under review.
- 4.2.4. Regarding the ToRs for the Data Working Group, the Board agreed that they should clarify that the approach to data management, analysis and use of data included internal and external data.
- 4.2.5. Regarding the ToRs for the Governance and Transparency Working Group, the Board noted that its work had not yet been completed. The Board would reflect in due course about the impact that the Group's recommendations had on IPReg's approach to transparency and governance.
- 4.2.6. In terms of progress on the Action Plan, a progress report on EDI would be presented at the January Board meeting. At that point, the Board would decide whether further work was required and, if so, would extend the timescale for its completion.
- 4.2.7. Regarding the ToRs for the Risk Working Group, no issues were raised.
- 4.2.8. Regarding the draft policy for complaints about Board members' conduct, if there was a complaint against a professional member on their fitness to practise, then a decision would be made on a case-by-case basis whether IPReg's disciplinary procedures

and/or the Board member complaints procedure were engaged. Past Board members would be dealt with in the same way as any other attorney on the register unless (for example) they were trying to influence inappropriately current Board members. If the registrant was employed, their employer's disciplinary process might also be engaged.

4.2.9.A Board member would need to disclose whether they were being investigated by another regulator. Disclosures for professional Board members were done on an annual basis as part of the Annual Return process.¹

4.2.10. A Board member queried the drafting which stated that complaints should "ideally" be made within 6 months of the issue that gave rise to the complaint as it potentially presented an element of discretion. Any complaint would be considered as to its seriousness and whether it needed a formal investigation. Discretion needed to be included because an issue could be raised after, say, six months and one day that was extremely serious. Reasons would always be provided if complaints were not taken further and IPReg's decision-making policy was likely to be helpful in that process.

4.2.11. Regarding the draft stakeholder engagement strategy, Board members considered that its ease and simplicity ensured that everyone could use it and understand it. The Board considered that not every stakeholder needed to be treated the same, as it would be an ineffective use of resources. For example, IPReg had responsibilities under the Internal Governance Rules to the Chartered Institute of Trade Mark Attorneys (CITMA) and the Chartered Institute of Patent Attorneys (CIPA) that would make them more significant stakeholders. Some changes to the tone of the document could be undertaken to make it less formal and more inclusive.

4.3. The Board:

4.3.1. Noted progress implementing the Action Plan;

4.3.2. Agreed the Terms of Reference for each Working Group and that these would be published on the website together with membership of each group;

4.3.3.Appointed Alan Clamp to the Data Working Group;

4.3.4.Agreed that the Regulatory Arrangements Review Working Group should be formally ended;

4.3.5.Adopted the procedure for complaints about Board members, subject to the changes discussed;

¹ Subsequent note: On an annual basis, all Board members and staff are now required to make a declaration as part of the renewal process for IPReg's insurance policies. Prior to 2023, this applied to all Board members, the CEO and CFO.

4.3.6. Adopted the stakeholder engagement strategy, subject to the changes discussed.

Action: KK and FG to work on the wording of the stakeholder engagement strategy.

Action: CEO to arrange for documents to be published

5. LSB Draft Narrative Assessment of IPReg's Performance

5.1. VS presented the paper. The July 2023 Board meeting had considered an assurance mapping exercise which considered its level of assurance against each of the 15 characteristics which underpinned two standards in the LSB's performance assessment framework. The Board had decided that, in its judgement, it had green/full assurance on standard 1 (well led), and amber/partial assurance on standard 2 (effective approach to regulation).

5.2. On 15 November 2023 the LSB had sent its draft narrative assessment that set out its view of IPReg's regulatory performance. Its view was that there should be amber/partial assurance for both standards. IPReg had until 12 December to provide the LSB with any comments on its findings, including any factual inaccuracies or confidential/sensitive material. The LSB planned to publish final versions of its narrative assessments before the end of January 2024.

5.3. The Board discussed the following matters:

5.3.1. The LSB's draft could be interpreted as saying that IPReg had indicated that it had provided partial assurance against both standards, which was incorrect.

5.3.2. The assessment had been a six-month assessment from November 2022 to May 2023, but the LSB's response could be interpreted as saying that it had been for a full year. In addition, the response included matters that were outside the assessment timeframe which appeared to have influenced the LSB's conclusion (for example the Governance Action Plan was not due to be completed until January 2024). Clarity on this point was vital for the Board to understand what the LSB required for IPReg to achieve a green rating, especially as we were seeking continuous improvement as an organisation and require the flexibility to re-prioritise workstreams and review target dates when it was appropriate to do so.

5.3.3. That seven characteristics under the well-led standard were considered to be green in IPReg's original submission. In the Board's judgment, it still had green assurance that it was well led.

5.3.4. The need for further clarity about what elements of the framework the LSB would require information about when the next information request was due (May 2024).

5.4. The Board:

5.4.1. Noted the LSB's draft narrative assessment of IPReg's performance and approved the proposed response to the LSB, subject to including the points discussed and emphasis

on the fact that the Board considered that its confidence in its future work plans was well-placed.

Action: Director of Policy to finalise document and send to the LSB

6. Complaints Update

- 6.1. The Head of Registration presented the paper. As of 30 November 2023 there were six open cases. Three cases had been opened since the last meeting and one had been closed. There had been 11 cases received in the year-to-date and 10 had been closed. No referrals from the legal ombudsman had been received since the last meeting.
- 6.2. The Board congratulated the Team for ensuring that 60% of cases were now resolved in 12 weeks, compared to 2019 when only 10% of cases had been resolved in 12 weeks.
- 6.3. The Board noted the complaints report.

7. IT Upgrade – Progress Update

- 7.1. The Head of Registration reported that phase 1 of the migration (the switch to a new provider) had been completed successfully. The annual renewal process had started on 6 December 2023 and 27% of attorneys had already completed their annual returns. £37,000 of fees had been generated and the mandatory CPD declaration was now included as part of the annual return. Very few IT issues had been seen.
- 7.2. The Chair asked if the shift would be paused while the fee collection process took place. The Head of Registration explained that phase 2 was the migration from Drupal 7 to Drupal 10 and would take place once the bulk of fee collection was complete.

8. 2024 Fee Collection Process – Progress Update

- 8.1. The Board noted that this had been discussed as part of agenda item 7.

9. CEO's Report

- 9.1. The CEO introduced the paper.

Meetings - CIPA and CITMA

- 9.2. The Regulatory Forum with the Chartered Institute of Patent Attorneys (CIPA) and CITMA had taken place on the morning of 7 December 2023. The meeting had discussed:

9.2.1. LSB oversight;

- 9.2.2. IPReg's Articles of Association and whether CIPA and CITMA wished to continue as guarantors of IPReg Ltd. IPReg was getting advice from Kingsley Napley on this issue as well as on the fact that it was currently outside the scope of VAT and was therefore unable to reclaim it. The Board discussed whether the SRA's recent change of structure to a charity could be of relevance to this issue.

9.2.3.The new regulatory objective in the Economic Crime and Corporate Transparency Act 2023 to promote the prevention and detection of economic crime;

9.2.4.The impact of AI;

9.2.5.The IT upgrade;

9.2.6.IPReg Board member recruitment;

9.2.7.The start of the 2024 fee collection process.

Action: CEO to take forward discussions with Kingsley Napley.

Contracts

9.3. IPReg had asked Thewlis Graham to conduct the recruitment process to replace Sam Funnell and Emma Reeve when their second terms expired at the end of March 2024. The cost would be [REDACTED] plus VAT.

9.4. IPReg had asked Bob's Business to provide some cybersecurity training on phishing. The cost would be [REDACTED] plus VAT and the exercise would take place over 12 months.

Sanctions

9.5. The Head of Registration provided an update. 14 firms had been identified as potentially being named as representing sanctioned individuals or companies. IPReg had contacted all of those firms and had received 12 responses. 11 of those firms explained that although there was some similarity with the names identified, they did not represent sanctioned individuals or companies; [REDACTED]
[REDACTED] IPReg was due to hear from the remaining two companies by 8 December.

Conferences - Westminster Policy Forum: the future of AI in legal services

9.6. On 6 December the Head of Registration and the Director of Policy had attended the Westminster Policy Forum event which had focused on the future for AI in legal services.

9.7. The Director of Policy explained that some individuals at the event had considered that AI would meet unmet legal needs, increase diversity and relieve pressure on lawyers. There had been a suggestion that regulators needed to be open and lead the revolution. Others had been concerned that AI could widen the gap, particularly given the level of digital exclusion. Discussions had taken place around:

9.7.1.predictive AI being biased;

9.7.2.the need to be clear with a client when AI was used;

9.7.3.changes would be needed to qualification pathways;

9.7.4.businesses would need an AI usage policy and guidance;

9.7.5. lawyers needed to understand generative AI and to develop their own tools to use it.

9.8. The Head of Registration noted that there had also been a discussion that billing by hours would significantly change as a result of AI. The CEO added that insurers were focusing on the use of AI and its impact on PII if AI was used. That matter would be raised at the relationship management meeting with the LSB.

Justice Select Committee

9.9. The Justice Select Committee had held two evidence sessions on the regulation of the legal profession. The first session had been held on 28 November and had been attended by the Bar Council, Bar Standards Board, CILEx and CILEx Regulation. The CEO provided an update on what had been discussed at that session.

9.10. The second session had taken place on 5 December and had been attended by the SRA, the Law Society and the LSB. The Head of Policy provided an update on what had been discussed at that session.

9.11. The Board:

9.11.1. Noted the paper;

9.11.2. Agreed the re-cast strategic objectives that were attached to the paper;

9.11.3. Agreed to donate £2,500 to IP Inclusive to fund its operating costs in 2024.

Action: CEO to notify IP Inclusive of decision on funding

10. Risk Working Group

10.1. The Risk Working Group Chair presented the update. A consultant from Sayer Vincent, had been identified as an appropriate adviser; his cost would be [REDACTED] an hour, which was significantly lower than other quotes IPReg had received.

10.2. The Board agreed:

10.2.1. To appoint Sayer Vincent to advise on its work on risk management.

Action: CEO to finalise contract with Sayer Vincent for support on risk management

11. Education Working Group

11.1. The Chair of the Education Working Group (EWG) and the Education and Diversity Policy Officer presented the update. The EWG was recommending to the Board that it should adjust the timetable of reaccreditations to reflect the fact that the Patent Examination Board (PEB) work would take a significant amount of time. It proposed that the PEB foundation level reaccreditation would take place in 2024. However, Nottingham and Bournemouth universities had not raised any significant risks and their accreditation could therefore be delayed.

11.2. The Board requested an update for a future meeting on the PEB progress in implementing its action plan, noting that it was currently busy marking the recent exams.

11.3. A team workshop had taken place around the barriers to entry for patent attorneys project.

Action: Education and Diversity Policy Officer to request update from the PEB in late January.

Action: Education and Diversity Policy Officer to notify education providers of the revised reaccreditation timetable.

12. Action Log

12.1. The action log was noted.

13. Full Risk Register

13.1. The full risk register was noted, along with the one red risk.

14. Complaints about IPReg

14.1. There had been no complaints about IPReg.

15. Regulatory Statement

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

16. Any Other Business

16.1. There being no other business, the meeting closed at 15.56.