

The Patent Regulation Board and the Trade Mark Regulation Board

Agenda

Thursday 2 September 2021 at 12 noon

Online

1. Apologies
2. Notification of any conflicts of interest

PART A – NON-CONFIDENTIAL ITEMS

3. Minutes of July 2021 meeting and matters arising
4. Action Log (FG)
5. Other activities (not covered elsewhere):
 - a. 3 x CEOs: 28 July; 1 September (FG)
 - b. Regulatory Forum: 2 September (Chair)
6. Progress on Review of Regulatory Arrangements (EL)
7. Update on compensation arrangements (FG) – RSA correspondence; consultation document (for information)
8. 2022 practising fees, budget and business plan (FG/KD)

PART B – CONFIDENTIAL ITEMS

9. Complaints update (SE)

10. [REDACTED]

11. LSB issues (FG) – no paper

[REDACTED]

12. [REDACTED]

13. [REDACTED]

14. Regulatory Statement

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

IPReg Board Meeting Actions Log - New and Outstanding Actions

Date of Meeting in which action arose	Agenda Item	Action	Responsibility	Status	Notes/Update
July 2021 Board Meeting					
Jul-21	Education Working Group Update	Approach NR for interest in joining Working Group	CS/VS	Completed	NR has joined the Education Working Group
Jul-21	Higher Courts Advocacy Course Accreditation Application	Contact assessors/Nottingham regarding accreditation and learning materials	VS	Completed	The assessors gave assurance of sufficient information to provide confidence in appropriate coordination between the different parts of the course
Jul-21	Progress on Review of Regulatory Arrangements	Review principles	EL/AK	In progress	Our early engagement with stakeholders is giving us an opportunity to test the principles we have set for the review. We will make any refinements once the first wave of engagement concludes in mid-September.
Jul-21	Progress on Review of Regulatory Arrangements	Map key policy proposals with risk it seeks to address	EL	Open	Policy discussions on the key areas have looked at the risks we are trying to address. A summary will be provided to the Board in November ahead of us presenting our final proposals for consultation.
Jul-21	LSB Issues – Response to LSB Letter of 7 May	Finalise the response	Chair/FG	Completed	
Jul-21	LSB Issues – Changes to regulatory arrangements – LSB consultation	Send response to LSB	FG	Completed	

IPReg Board Meeting Actions Log - New and Outstanding Actions

Jul-21	BSB investigation report	Delegation Arrangements to be reviewed and paper to Board in due course	FG	Open	
Jul-21	Compensation Arrangements	Request extension from RSA	FG	Completed	Extension granted until 30 October 2021
Jul-21	Compensation Arrangements	Develop risk profile	JB/FG/MB	Open	
Jul-21	Compensation Arrangements	Provide one-page public facing version of the actuarial report	FG	Completed	
Jul-21	Compensation Arrangements	Issue compensation fund consultation	FG	Completed	
Jul-21	Governance	Advise Companies House of appointments	KD	Completed	
Jul-21	Finances	Sign and submit Financial Statements	Chair/KD	Completed	
May 2021 Board Meeting					
May-21	Consumer Bodies Engagement	Take forward engagement with consumer bodies	EL/ER	Ongoing	We have contacted a number of industry organisations (by email) that are likely to provide a consumer perspective of the IP legal market. We plan to follow up with named individuals (via Linked In) if we do not hear back from them.
May-21	Diversity - next steps - workshop feedback	Implement the diversity initiatives	FG	Ongoing	

IPReg Board Meeting Actions Log - New and Outstanding Actions

May-21	Diversity - Inclusive Language	Adopt and publish Inclusive Language Policy	FG	Open	
May-21	IPReg Limited - Auditors	Re-tender for auditors	KD	Ongoing	
May-21	IPReg Limited - Governance	Update Register of Interests	KH	Ongoing	Most responses now received
May-21	Complaints Update - debt recovery	Pursue bankruptcy petition	SE	Ongoing	[REDACTED]
May-21	Silent Cyber - Professional Indemnity Insurance	Consider whether the MTCs need to change to reflect PAMIA's affirmative endorsement	MB	Ongoing	Amended MTCs (incorporating PAMIA's affirmative wording) provided by Marsh (IPReg's insurance broker). MB to review and approve.
May-21	Silent Cyber - Professional Indemnity Insurance	Update the LSB	FG	Completed	
May-21	LSB Issues - regulatory performance framework	Draft a response to the LSB performance assessment letter for the July Board	FG	Completed	
March 2021 Board Meeting					
Mar-21	Regulatory Arrangements Review	Identify possible external bodies/individuals to support work on diversity and PII	FG	Ongoing	
Mar-21	IPReg Accreditation Handbook	Consult on Accreditation Handbook with qualification agencies	VS/CS	Ongoing	Consultation closes 20 May
Mar-21	Historic Examinations Exemptions Consultation	Take forward rule change application to LSB	VS/SE	In progress	Rule change application made; follow-up queries from LSB replied to; hope to be in receipt of decision shortly

IPReg Board Meeting Actions Log - New and Outstanding Actions

Mar-21	Mutual Recognition of Qualifications	[REDACTED]	SE	Ongoing	[REDACTED]
January 2021 Board Meeting					
Jan-21	Covid-19 – Impact on IPReg team	Report any relevant issues to LSB	FG	Ongoing	
Jan-21	LSB - Regulatory Performance Framework	Formalise process of considering whether to expedite complaints	SE/MB	Ongoing	
Jan-21	LSB - Regulatory Performance Framework	Continue to liaise with LSB on its survey on small businesses	VS/FG	Ongoing	Further discussion held 29 April
July 2020 Board Meeting					
Jul-20	Risk registers	Discuss how cyber risks should be added to the risk register and arrange for IPReg to undertake the Cyber Essentials programme.	IPReg team and SF	Ongoing	
January 2020 Board Meeting					
Oct-19	LSB CEO Meeting	Invite Matthew Hill to Board meeting	FG	Open	Discussed with Matthew. Date TBC
April 2019 Board meeting					

IPReg Board Meeting Actions Log - New and Outstanding Actions

Apr-19	Queen Mary University London - progress report	Continue to monitor and take action as required	Education Working Group	Ongoing	
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Board Meeting 2 September 2021

Review of regulatory arrangements – progress report

Agenda Item: 6

Author: Emily Lyn, Head of Regulatory Review (emily.lyn@ipreg.org.uk)

Summary

1. This paper reports on progress with the review of regulatory arrangements including our early engagement with stakeholders and initial feedback from our external legal advisors, Kingsley Napley. Now that stage 2 of the project (developing the draft framework) is complete, the Board is asked to consider the timing of stage 3 (consultation on proposed regulatory arrangements).

Recommendation(s)

2. The Board is asked to note the positive feedback on our approach from Kingsley Napley and agree that we proceed with instructing them to develop draft regulatory arrangements for consultation (see paragraphs 8-10).
3. The Board is asked to agree to amend the initial timetable for stage 3 of the project (see paragraphs 11 to 14).
4. The Board is asked to note progress with our stakeholder engagement plan (see paragraphs 15 to 17).

Risks and mitigations

<p>Financial</p>	<p>We have now agreed a structure for the legal fees as follows:</p> <ul style="list-style-type: none"> • Stage one – initial review of the draft framework (fixed fee of £4800 plus VAT) • Stage two – drafting of regulatory arrangements for consultation (fixed fee of £19,000 plus VAT) • Stage three - finalising the regulatory arrangements post consultation (fixed fee of £5,500 plus VAT) <p>This brings us within our allocated budget of £40k.</p> <p>We now have in place a small panel of expert advisors to provide challenge and support in key areas including PII, diversity and inclusion, and assessing the likely impact of alternative forms of regulation. The cost is anticipated to be c. £20k over the next 12 months (2 budget years).</p>
<p>Legal</p>	<p>[REDACTED]</p>

Reputational	This is a high-profile project that has been welcomed by many of those we regulate. The LSB is scrutinising our progress on this work. Achieving a comprehensive, principles-based approach to our “post-admission” regulatory arrangements will be a significant achievement and will enhance our reputation. Our progress with seeking early input from stakeholders is likely to enhance credibility of the project and our proposals.
Resources	The appointment of the expert advisors has enabled us to fill the gaps in our resources identified so far. The remaining area to consider getting external advice is on the economic impacts of any fee changes at the appropriate point.

Progress update and governance

5. Since the last Board discussion we have completed a number of milestones which taken together concludes stage 2 of the review (focused on developing the draft framework). These include:
 - Updating the draft framework to reflect the direction of travel agreed by the Board at the July meeting;
 - instructing Kingsley Napley to provide initial views on our approach and raise any legal issues in relation to the draft framework;
 - a number of discussions with stakeholders to share our early thinking and invite views on our approach;
 - a workshop with our external insurance expert to further explore the issues around Professional Indemnity Insurance (PII); and
 - a meeting of the Board sub-group to discuss progress and next steps for the project.
6. The Board will note that in May 2021, it agreed an indicative timetable for the project with specific review points at particular points in the timetable. This is intended to provide us with some flexibility to respond as the project develops. The transition from stage 2 to stage 3 is the first of these review points¹.
7. A change to the indicative timetable for stage 3 is therefore set out for the Board's consideration below.

Legal review of our approach

8. On 29 July we instructed Kingsley Napley to review an updated version of the draft framework. In particular we asked for their initial views on the following:
 - Our overall approach and structure for the new regulatory arrangements (a single framework document containing the "lifecycle" of our regulatory arrangements from admission, through the conduct requirements and concluding with the disciplinary process and exit from the register);
 - whether there is anything missing;
 - whether there is anything we propose to include in guidance that should be in rules/principles (and the opposite);
 - whether there are any vices or other legal issues with any of our proposals; and
 - a small number of specific technical points on our proposed disciplinary and appeals process (including compliance from a human rights perspective).
9. We received comments from Kingsley Napley on 18 August which on the whole endorsed our direction of travel in policy terms and focused on a number of technical issues as well as some structural and stylistic suggestions for the framework. We have since shared the comments with members of the Board sub-group who have provided some further comments for us to consider in our continuing discussions with Kingsley Napley.

¹ The Board will note that further review points occur at the post-consultation stage, LSB application and eventual go-live decision.

10. We are now seeking the Board's approval to proceed with instructing Kingsley Napley to begin the drafting process which will logically follow on from discussions in relation to the points they have raised.

Recommendation: The Board is asked to note the positive feedback on our approach from Kingsley Napley and agree that we proceed with instructing them to develop draft regulatory arrangements for consultation.

Timetable for stage 3 of the review: consultation on proposed regulatory arrangements

11. We will be taking an iterative approach to the drafting process whereby we work closely with Kingsley Napley to review and comment on drafting as it develops (rather than at the end of the process). While this is a more time consuming process in terms of overall duration, we are of the view that it is a more efficient one and is likely to lead to a better outcome overall.
12. We are therefore asking the Board to agree that we amend the timetable to allow sufficient time for the drafting process and ensure the Board sub-group has the opportunity to review the draft regulatory arrangements before they are presented to the Board for approval for consultation. This will mean that the full consultation documentation will come to the Board for approval on 9 December (rather than 2 November). Members of the sub-group will convene at an appropriate point to review the draft regulatory arrangements before they come to the Board (most likely late October).
13. In discussion with Board sub-group members, we have considered the impact of re-timetabling the consultation on those likely to respond to the consultation (as it will open closer to Christmas than originally envisaged). We are confident that the early stakeholder engagement we have done together with notifying people of the consultation ahead of time will mitigate the risk that the response rate is negatively impacted. Furthermore, the consultation will run over 12 weeks allowing plenty of time for those unavailable over Christmas to respond.

Recommendation: The Board is asked to agree to amend the initial timetable for stage 3 of the project.

Stakeholder engagement

14. As agreed by the Board we have dedicated some time over the summer to early stakeholder engagement to test our direction of travel on some of the key policy issues. At the time of the Board meeting we will have held a total of 10 meetings, predominantly with those that responded to the Call for Evidence (with a further one scheduled in September). We are also meeting with CIPA and CITMA in September and will be attending a CITMA Sole Practitioner's focus group to speak about the review. We have also contacted a number of industry organisations that are likely to have an interest in the IP sector from a consumer perspective, for example Licensing International and the Performing Rights Society. We will be following these up over the coming weeks.
15. Our discussions so far have been open and productive, raising a number of practical points and examples for us to consider. For instance, stakeholders have been far more open to a new approach to CPD than some of the written responses to the Call for Evidence might have suggested and have provided suggestions as to the type of support we may need to provide. Firms have also confirmed that the

current client money rules create burdens that, if possible, they would prefer to see removed. To this effect they have been quite open in relation to the way their current systems and processes work, including an indication of the amount of client money held. They have also raised new policy issues for us to consider such as the use of reciprocal arrangements in the IP sector (whereby firms refer out clients to certain firms and those referrals are reciprocated).

16. We have agreed a number of follow-up actions, including potential webinars (to take place during the consultation) and working with IP Inclusive and IP Federation to promote the consultation with their members.

Recommendation: The Board is asked to note the update on our stakeholder engagement activity.

Next steps

17. Subject to the Board's views, we will proceed with instructing Kingsley Napley to begin the drafting process in due course. We expect to convene the sub-group to discuss progress and review drafts (including the draft consultation document) in late October. We will provide a further update to the Board at the November meeting ahead of bringing final drafts for approval for consultation in December.

Board Meeting 2 September 2021

2022 budget, business plan and practising fees

Agenda Item: 8

Author: Fran Gillon, CEO (fran.gillon@ipreg.org.uk)

Summary

1. We have to consult on the level of the 2022 practising fee and budget/business plan. We are proposing a zero increase in fees. We are also proposing to keep in place the process which we introduced in 2021 to waive fees for attorneys who are in hardship and are not actively practising as a result of the pandemic.

Recommendation(s)

2. The Board agrees to:
 - delegate sign off for publication of the consultation document (**Annex A**) and draft budget (**Annex B**)¹ to the Chair and CEO. Also attached (**Annex C**) are projected reserves at 1 January 2021 and a revised Reserves Policy (**Annex D**);
 - consider the application to the LSB by email (or video conference if required) in advance of the next scheduled Board meeting.

Risks and mitigations

Financial	Practising fees are the main source of IPReg's income. They are collected mainly between January and March each year.
Legal	
Reputational	<p>We need to consult even though we are not proposing an increase in fees. The LSB has issued new Guidance on applications for approval of practising fees; this includes the requirement to undertake an equality impact assessment.</p> <p>We would have preferred to consult earlier in the year but the uncertainty caused by the pandemic meant that it was prudent to wait until later in the year. We are proposing a 4-week consultation period. This means that responses will be due around the beginning of October. The LSB takes around 4 weeks to make a decision on our practising fee applications. The next Board meeting is not until 4 November so in order to ensure we have sufficient time to deal with any queries raised by the LSB we will need Board consideration by email/video conference before the next scheduled meeting.</p>
Resources	The LSB application takes considerable resources each year, particularly those of the Chief Finance Officer and the CEO. As anticipated last year, the new Guidance has increased the resources required to draft the application.

¹ We will review/revise some of the detailed notes before publication.

Board Meeting 2 September 2021

Information paper: Complaints update

Agenda Item: 9

Author: Shelley Edwards, Head of Registration (shelley.edwards@ipreg.org.uk), Mark Barnett, Assurance Officer (mark.barnett@ipreg.org.uk).

Summary

1. This paper stands as an update on complaints received and processed by IPReg.

Risks and mitigations

Financial	None. Existing resources are dedicated to the oversight and administration of complaints received.
Legal	[REDACTED]
Reputational	In common with all regulatory bodies, we can expect that complainants who are disappointed with the outcome of their regulatory complaint may make a corporate complaint about IPReg's decision or processes. This reputational risk will be mitigated by the Corporate Complaint policy and procedure which is currently being developed. This will be published on the website and followed where applicable.
Resources	Whilst the overall number of complaints received about regulated persons is low (an average of around 7 complaints every year since 2010), the complaints that have been investigated and taken forward to CRC (and beyond) have been resource-intensive. The development and refinement of internal procedures, as well as the additional capacity to investigate and process cases in-house should assist. The need for external legal support should also be reduced due to increased internal capacity.

Recommendations

2. The Board is asked to note this paper.

Investigation Stages

Under Investigation

Information has been received which is being investigated under Rule 5 Disciplinary Procedure Rules (“DPR”) to determine whether it amounts to a Complaint. If it does not amount to a Complaint¹, the case will be closed. If it does amount to a Complaint, it moves to the Complaint Initiated stage.

Complaint Initiated

Information has been received which suggests a breach of IPReg’s regulatory arrangements under Rule 5.3 DPR. Further investigation and liaison with parties may be required at this stage, including obtaining brief and concise observations on the complaint from the respondent.

CRC

Case has been referred to or is being dealt with by the Complaints Review Committee under Rule 8 DPR. A case at this stage may be adjourned for further investigation, closed, dealt with summarily or referred to the JDP.

JDP

Case has been referred to or is being dealt with by the Joint Disciplinary Panel / Disciplinary Board. under Rule 9.10 DPR.

Appeal

The Disciplinary Board has made a decision following a disciplinary hearing, and this is under appeal or notice has been given that an appeal will be lodged under Rule 20 DPR.

Cases by numbers

Category	Number	Notes
Complaints received in last month (since last meeting)	2	
Total open cases	4	Under investigation = █ Complaint initiated = █ CRC stage = █ JDP stage = █ Appeal stage = █
Complaints closed in last month (since last meeting)	3	

Open cases

¹ For example, because information provided does not support an allegation of a breach of any of IPReg’s regulatory arrangements, no evidence has been provided to support any allegations made, allegations have been made prematurely (e.g. the firm’s complaints procedure has not been exhausted), the matter is not within IPReg’s jurisdiction (more appropriate to be dealt with by police, LeO, other regulator or organisation) etc

Case ref	Stage and Status
[REDACTED]	[REDACTED]

