

MERCER REVIEW RECOMMENDATIONS - IPREG POSITION

There can be no doubt that much energy, work and enthusiasm has gone into the Mercer Review. We look forward to working together with other stakeholders where improvements can be made to regulatory standards. To that end, we are deliberately limiting our comments to those areas on which we should be commenting as regulator of the patent and trade mark professions, and not on those which are a matter for the representative body. As the legal regulator, IPReg's responsibilities cover a broad range of activities including:

- education and training requirements for qualification as an attorney;
- requirements for admission to the register for attorneys and firms;
- keeping the registers of attorneys and firms;
- setting the requirements for continuous professional development so that the knowledge, skills and expertise of attorneys is maintained at an appropriate level;
- setting and enforcing rules and regulations which set out the standards required of those we regulate; and
- handling complaints of misconduct made against an attorney or firm regulated by IPReg.

The report is welcome in several respects, not least that IPReg had deliberately scheduled relevant work to occur following the report's publication. We note the very laudable points listed in the Executive Summary, although they do not appear to directly reflect the recommendations and conclusions in each of the chapters. We are pleased to see that the research we previously commissioned and reported on in 2017 was included in the reference materials. We welcomed the dedicated CIPA webinar which expanded on many of the issues raised by the review and brought them to life. As with so many systems and processes, the Covid-19 pandemic has been a disrupter and, despite the great deal of difficulty encountered, especially in the early months, this has also provided a catalyst for some positive changes and we welcome these where they have occurred, particularly in the online delivery of examinations.

The recommendations regarding the Final Diploma examinations will help inform the scheduled 2022 IPReg accreditation assessment of those examinations. In turn, those accreditation processes, along with the Mercer Review recommendations regarding the Foundation and Final syllabi, will help inform the 2022-23 scheduled independent specialist review of the [IPReg Accreditation Handbook](#). This root and branch review will cover the standards set

out in the Handbook, define the syllabus of the Advanced Level Qualifications (both patent and trade mark), and review the syllabus of the Foundation Level Qualifications. Please note that the position given at 3.3.2 of the Review is incorrect: the accreditation standards, criteria and process set out in the IPReg Accreditation Handbook, apply to both the Foundation and Final examinations, as they do all other IPReg accredited qualifying pathways. The Handbook currently does not define the syllabus of the Advanced Level Qualification syllabus, which the independent review will address.

CHAPTER 1 SKILLS AND KNOWLEDGE

SKILLS AND KNOWLEDGE	
Mercer Review Recommendation	IPReg Position
<p>1. The Foundation Certificate examinations should focus on the core knowledge and skills required by a patent attorney. This will include some basic knowledge of trade mark, design and copyright law, but this should be commensurate with what a patent attorney is likely to face in day-to-day practice. However, the syllabus should include all the ‘black-letter’ law (basic standard elements or principles) which is relevant for the LSC, so that this law does not need to be duplicated by the LSC.</p>	<p>IPReg position set out in response: Mercer Review recommendations regarding the Foundation and Final syllabi, will help inform the 2022-23 scheduled independent specialist review of the IPReg Accreditation Handbook. This root and branch review will cover the standards set out in the Handbook, define the syllabus of the Advanced Level Qualifications (both patent and trade mark), and review the syllabus of the Foundation Level Qualifications. Please note that the position given at 3.3.2 of the Review is incorrect: the accreditation standards, criteria and process set out in the IPReg Accreditation Handbook, apply to both the Foundation and Final examinations, as they do all other IPReg accredited qualifying pathways. The Handbook currently does not define the syllabus of the Advanced Level Qualification syllabus, which the independent review will address.</p>
<p>2. The scope of the International Law syllabus be revised to focus on core areas (EP, PCT, US, JP, CN) and instances where there are significant/important differences in patent law (e.g. 30 vs 31-month national phase entry, allowability of method of treatment or second medical use claims, allowability of computer programs as such). Questions should be structured to give sufficient choice for candidates working in different sectors, where the relative importance of countries may differ. We also questioned to what extent it is necessary to examine international law relating to trade marks, designs and copyright.</p>	<p>As at item 1 above.</p>
<p>3. All candidates should have a good knowledge of professional ethics prior to registration, and before undertaking the LSC.</p>	<p>As at item 1 above.</p>

<p>4. All candidates should have a good knowledge of evidence for the UK court system as it applies to patents and before undertaking the LSC.</p>	<p>As at item 1 above.</p>
<p>5. FD2 should be limited to drafting a patent application, relating to generally-accessible technology, suitable for filing at the IPO in a form where the claims are clear, novel and arguably inventive over the prior art presented in the question and where the description is sufficient.</p>	<p>IPReg position set out in response: recommendations regarding the Final Diploma examinations will help inform the scheduled 2022 IPReg accreditation assessment of those examinations. In turn, those accreditation processes, along with the Mercer Review recommendations regarding the Foundation and Final syllabi, will help inform the 2022-23 scheduled independent specialist review of the IPReg Accreditation Handbook. This root and branch review will cover the standards set out in the Handbook, define the syllabus of the Advanced Level Qualifications (both patent and trade mark), and review the syllabus of the Foundation Level Qualifications.</p> <p>We will welcome the Patent Examination Board's (PEB's) response to those [FD4 recommendations], and other Final Diploma recommendations, through the IPReg accreditation of the PEB Final Diploma Examinations, which will be our next step.</p>
<p>6. FD3 should be limited to answering an official letter from the IPO which raises novelty and inventive step objections and providing a set of claims which deals with the objections and which does not add matter or lack clarity.</p>	<p>As at item 5 above.</p>
<p>7. FD4 should be limited to requiring the candidates to demonstrate that they can construe a set of claims according to the case law in the UK, evaluate prior art, determine whether the claims as construed are novel and inventive over that prior art and determine whether the activities of a potential infringer</p>	<p>As at item 5 above.</p> <p>Additionally, position set out in response: on specific recommendations, the FD4 Infringement and Validity examination would seem the right place to start given it was issues with this examination which led to CIPA commissioning the broader Mercer Review. We would support everything said about improving this examination and endorse simplifying what FD4 covers and ensuring no overlap, the practical proposal of</p>

<p>are infringing acts under UK law and should not require detailed advice on points not relevant to the main topics.</p>	<p>shortening the examination to 4 hours¹ and the continuing provision of online examinations.</p> <p>We agree that examiners should take a holistic approach, determining a candidate's overall competence rather than hanging marks on particular items; and providing transparency on what an individual needs to do in broad terms to pass the examination. We will welcome the Patent Examination Board's (PEB's) response to those, and other Final Diploma recommendations, through the IPReg accreditation of the PEB Final Diploma Examinations, which will be our next step.</p>
<p>8. FD1 should not cover any of the areas covered by the other examinations but should include at least one question about a situation which could arise in litigation of a patent in the UK courts, involving application of the black-letter law on litigation which should be part of the FC syllabus (see above).</p>	<p>As at item 5 above.</p>
<p>9. Similarly, FD2, FD3 and FD4 should not require advice on points which are examined in FD1; there should be less overlap between the content of the syllabi and examinations.</p>	<p>As at item 5 above.</p> <p>Additionally, IPReg position set out in response: we would support everything said about improving this examination and endorse simplifying what FD4 covers and ensuring no overlap, the practical proposal of shortening the examination to 4 hours² and the continuing provision of online examinations.</p>
<p>10. Any changes to the syllabi for the Foundation and Final examinations should be reviewed to ensure that, as far as</p>	<p>IPReg position: see item 48, Equality, Diversity and Inclusion, of the IPReg Accreditation Handbook:</p>

¹ We acknowledge the examination may have grown to 5 hours out of a desire to help candidates, but suggest that the longer format likely tests stamina to an inappropriate degree.

² We acknowledge the examination may have grown to 5 hours out of a desire to help candidates, but suggest that the longer format likely tests stamina to an inappropriate degree.

possible, they encourage an increase of diversity and inclusion in the profession.

“Equality, Diversity and Inclusion

48. IPReg is committed to working with all stakeholders to promote a diversity of patent attorneys and trademark attorneys. There is an expectation that all stakeholders will have up to date EDI policies and procedures that are compatible with the IPReg EDI aims. These could include, but are not limited to, policies aimed at widening access and supporting students from non-traditional backgrounds to enter on IP qualifications and also breaking down barriers for students/candidates with protected characteristics who are currently under-represented on the IP qualification to enter on IP programmes of study and/or entry to the accredited Examinations.

49. IPReg also requires as part of the annual report mechanism a diversity profile of students/candidates being examined on the qualifying pathways”.

IPReg position set out in response regarding qualification pathway routes and EDI: IPReg considers that the examinations-only approach proposed may potentially create an access barrier, putting at a real disadvantage those in a poorer training environment whose employer may not support them to access additional, non-compulsory courses. The professional members of the Board agreed with opinions provided in the CIPA dedicated webinar which illustrated that the variance of training and qualification courses provides opportunities to build long-lasting relationships across firms, learn about how other businesses operate, and build industry confidence with peers. The regulated community is richer for all trainees having parity of opportunity, which is not synonymous with homogeneity. Whilst an examinations-only pathway may suit the learning of some people, it won't suit others and IPReg is clear that a diversity of qualifying pathways, both at Foundation and Advanced Level, is central to promoting the regulatory objective and to providing equity of outcomes.

CHAPTER 2 TRAINING

TRAINING	
Mercer Review Recommendation	IPReg Position
1. CIPA should provide better information on its website about what is required to enter the profession and to progress in the profession and keep such information under review.	Not within regulatory ambit.
2. CIPA should provide such information to careers services.	Not within regulatory ambit.
3. The PEB should make its website easier to navigate.	Not within regulatory ambit.
4. IPReg should support registrants in making available to any possible recruit details of the training scheme which the recruit will follow, preferably in the form of a training contract.	IPReg position: IPReg is not prescriptive in terms of the way an attorney may undertake their supervised practice, but rather publish a voluntary agreement that employers/attorneys can adopt if they wish. See the IPReg Training Protocol template and IPReg Patent Competency Framework provided at Training and Supervision webpage provide information on training expectations/guidance. This flexible approach reflects the wide variation in supervised practice environments.
5. The Informals should continue, with the support of CIPA, its efforts to assist possible recruits in understanding such information.	Not within regulatory ambit.
6. A common examination should be passed by all candidates at each stage.	IPReg position set out in response: not in agreement/insufficient evidence provided. The primary catalyst for change in the education standards and structure must be an identifiable, verifiable, risk to the regulatory objective to encourage an independent, strong, diverse and effective legal profession. That must be evidence-based, and we note that there are instances in the report where the findings are not corroborated,

	<p>nor do the author's recommendations appear to flow from, or correlate with, reported findings³.</p> <p>An example of this is the recommendation that individuals seeking to qualify as patent attorneys should be required to take common examinations as exclusively provided by the PEB. The report did not provide any evidence that there is a significant risk to the regulatory objective to encourage an independent, strong, diverse and effective legal profession to justify this recommendation. Even if there were, IPReg would not see a return to centralised examinations as the solution to it and rather consider it to be a retrograde step, returning to the situation of 20-30 years ago, which was criticised in the independent Sherr Review. IPReg sets accreditation standards which must be met by all delivery agents, and we can see no evidence for the argument that those standards are not being met by the qualification providers. This lack of evidence in support of the recommendation, together with what we understand to have been a very wide range of often conflicting consultation responses from stakeholders⁴, would suggest there is not a clear evidence base upon which IPReg could rely as a key driver of regulatory reform.</p> <p>IPReg notes the rationale for reintroducing the common examination-only approach is the FD1/FD4 pass rate, with the assertion that the pass rate was higher in those that undertook the PEB Foundation examinations. Given the limited statistical analysis in forming this assertion, and the consistently low FD4 pass rate across all candidates, we would not consider the argument for a common examinations-only route to be made out.</p> <p>Further, IPReg considers that the examinations-only approach may potentially create an access barrier, putting at a real disadvantage those in a poorer training environment</p>
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³ Or where a finding/evidence base is not provided, or is limited.

⁴ As was made apparent in the Mercer Review webinar 29 October 2021.

	<p>whose employer may not support them to access additional, non-compulsory courses. The professional members of the Board agreed with opinions provided in the CIPA dedicated webinar which illustrated that the variance of training and qualification courses provides opportunities to build long-lasting relationships across firms, learn about how other businesses operate, and build industry confidence with peers. The regulated community is richer for all trainees having parity of opportunity, which is not synonymous with homogeneity. Whilst an examinations-only pathway may suit the learning of some people, it won't suit others and IPReg is clear that a diversity of qualifying pathways, both at Foundation and Advanced Level, is central to promoting the regulatory objective and to providing equity of outcomes.</p> <p>IPReg notes that the Solicitors Regulation Authority has moved to adopt a common examinations approach and so there may be appetite for such a model in another part of the legal services sector. However, the success of this approach is yet to be tested, and there is no evidence that what may be suitable for solicitors, and the broad network within which they operate, is automatically appropriate for the smaller, specialist patent profession. It is worth noting also that the solicitor examinations will be set and administered by the regulatory body, not the professional body.</p> <p>IPReg position: see the defined Foundation Level Qualification syllabus as set out at Schedule A/item 50 of the IPReg Accreditation Handbook.</p>
<p>7. IPReg should accredit the syllabi for the FC and FD examinations and the PEB for setting the FC and FD examinations.</p>	<p>IPReg position set out in response: the recommendations regarding the Final Diploma examinations will help inform the scheduled 2022 IPReg accreditation assessment of those examinations. In turn, those accreditation processes, along with the Mercer Review recommendations regarding the Foundation and Final syllabi, will help inform the 2022-23 scheduled independent specialist review of the IPReg Accreditation Handbook. This root and branch review will cover the standards set out in the</p>

	<p>Handbook, define the syllabus of the Advanced Level Qualifications (both patent and trade mark), and review the syllabus of the Foundation Level Qualifications.</p> <p>Please note that the position given at 3.3.2 of the Review is incorrect: the accreditation standards, criteria and process set out in the IPReg Accreditation Handbook, apply to both the Foundation and Final examinations, as they do all other IPReg accredited qualifying pathways. The Handbook currently does not define the syllabus of the Advanced Level Qualification syllabus, which the independent review will address.</p> <p>IPReg position: See the defined Foundation Level Qualification syllabus as set out at Schedule A/item 50 of the IPReg Accreditation Handbook against which the Foundation Certificate examinations have been accredited.</p>
<p>8. IPReg should require all candidates to take the PEB FC and FD examinations.</p>	<p>IPReg position set out in response: - not in agreement/insufficient evidence provided - see response at item 6 above.</p>
<p>9. Any provider should be allowed to provide training for the FC and FD examinations without requiring any accreditation.</p>	<p>IPReg position set out in response: not in agreement/insufficient evidence provided - see response at item 6 above.</p>
<p>10. CIPA and the Informals should co-operate to determine what formats of training are lacking and encourage providers to provide such training.</p>	<p>Not within regulatory ambit.</p>
<p>11. CIPA and IPReg should encourage its members and registrants to adopt career progression systems which are not solely linked to examination success and training systems which encourage candidates to make use of the modular system so that they take any particular examination only when they appear to be ready to take that examination.</p>	<p>Not within regulatory ambit.</p>

<p>12. The Litigation Skills Certificate (LSC) course should be cut down to the practical matters of advocacy and the preparation for advocacy.</p>	<p>IPReg position set out in response: Responses to the IPReg Call for Evidence on the regulatory arrangements have prompted IPReg internal discussions and those with stakeholders regarding CPD and on how and when litigation skills should be taught and assessed. Our consultation regulatory arrangements consultation launched on 17 December proposes a form of the litigation skills course as a prerequisite to registration and we look forward to receiving views on how and in what form the course might be delivered going forward. It also looks to strengthen the onus for carrying out CPD on the Registrant.</p>
<p>13. The black-letter law content of the LSC should be transferred to the FC syllabus and examination, the application of the black-letter law in giving written advice to a client should be transferred to the FD1 syllabus and examination and the practical aspects of the course should be retained in a reduced assessed LSC.</p>	<p>IPReg response made – see item 12 above.</p>
<p>14. There should be a CPD requirement for all registrants and it should be compulsory to report on meeting the CPD requirement to IPReg. We consider that the onus for carrying out CPD should be on each registrant individually and that each registrant should be prepared to provide details of her or his CPD to IPReg on a random basis.</p>	<p>IPReg response made – see item 12 above.</p>
<p>15. There should be opportunities for registrants to expand their areas of expertise but these should generally be voluntary. We welcome CIPA’s decision to make all its webinars more widely available and to expand the scope of the webinars. IPReg and</p>	<p>IPReg response: – not in regulatory ambit.</p> <p>IPReg does not limit what CPD should cover, or who should provide it, with the emphasis upon the individual attorney determining what is in the best interests of their clients.</p>

<p>CIPA should also encourage other providers to offer training in non-examined areas.</p>	
<p>16. IPReg, CIPA and CITMA should investigate whether there should be a route to registration as a trade mark attorney other than via a university course, for instance by an advanced examination at the same level of the FD examinations or by following an assessed training course.</p>	<p>IPReg position: insufficient evidence provided.</p> <p>See Chapter 2, item 6, where IPReg is clear in its commitment to a diversity of qualification pathways; any qualification provider can make an accreditation application to IPReg.</p>
<p>17. As regards practical litigation skills, it is considered that it should be compulsory for all registered patent attorneys to complete an assessed course on this subject. However, this course should be limited to the practical aspects of litigation skills and that the other parts of the present course should be incorporated into the FC and FD syllabi and examinations (see above).</p>	<p>IPReg position set out in response: Responses to the IPReg Call for Evidence on the regulatory arrangements have prompted IPReg internal discussions and those with stakeholders regarding CPD and on how and when litigation skills should be taught and assessed. Our consultation regulatory arrangements consultation launched on 17 December proposes a form of the litigation skills course as a prerequisite to registration and we look forward to receiving views on how and in what form the course might be delivered going forward. It also looks to strengthen the onus for carrying out CPD on the Registrant.</p>
<p>18. As regards higher court advocacy, we consider that the training for this subject should remain as it is, with a requirement to follow an assessed training course before the grant of a certificate.</p>	<p>IPReg position: an observation of the current provision, not a recommendation.</p>

CHAPTER 3 ASSESSMENT

ASSESSMENT	
Mercer Review Recommendation	IPReg Position
1. IPReg, CIPA and the PEB investigate whether early registration of candidates should be implemented.	IPReg position: – not in regulatory ambit
2. Qualification for the Foundation Certificate should be via the PEB FC examinations, with all course providers teaching to the same syllabus.	<p>IPReg position set out in response: not in agreement/insufficient evidence provided.</p> <p>The primary catalyst for change in the education standards and structure must be an identifiable, verifiable, risk to the regulatory objective to encourage an independent, strong, diverse and effective legal profession. That must be evidence-based, and we note that there are instances in the report where the findings are not corroborated, nor do the author’s recommendations appear to flow from, or correlate with, reported findings⁵.</p> <p>An example of this is the recommendation that individuals seeking to qualify as patent attorneys should be required to take common examinations as exclusively provided by the PEB. The report did not provide any evidence that there is a significant risk to the regulatory objective to encourage an independent, strong, diverse and effective legal profession to justify this recommendation. Even if there were, IPReg would not see a return to centralised examinations as the solution to it and rather consider it to be a retrograde step, returning to the situation of 20-30 years ago, which was criticised in the independent Sherr Review. IPReg sets accreditation standards which must be met by all delivery agents, and we can see no evidence for the argument that those standards are not being met by the qualification providers. This lack of evidence in support of the recommendation, together with what we understand to have been a very wide range of often conflicting consultation responses from stakeholders⁶, would</p>

⁵ Or where a finding/evidence base is not provided, or is limited.

⁶ As was made apparent in the Mercer Review webinar 29 October 2021.

suggest there is not a clear evidence base upon which IPReg could rely as a key driver of regulatory reform.

IPReg notes the rationale for reintroducing the common examination-only approach is the FD1/FD4 pass rate, with the assertion that the pass rate was higher in those that undertook the PEB Foundation examinations. Given the limited statistical analysis in forming this assertion, and the consistently low FD4 pass rate across all candidates, we would not consider the argument for a common examinations-only route to be made out.

Further, IPReg considers that the examinations-only approach may potentially create an access barrier, putting at a real disadvantage those in a poorer training environment whose employer may not support them to access additional, non-compulsory courses. The professional members of the Board agreed with opinions provided in the CIPA dedicated webinar which illustrated that the variance of training and qualification courses provides opportunities to build long-lasting relationships across firms, learn about how other businesses operate, and build industry confidence with peers. The regulated community is richer for all trainees having parity of opportunity, which is not synonymous with homogeneity. Whilst an examinations-only pathway may suit the learning of some people, it won't suit others and IPReg is clear that a diversity of qualifying pathways, both at Foundation and Advanced Level, is central to promoting the regulatory objective and to providing equity of outcomes.

IPReg notes that the Solicitors Regulation Authority has moved to adopt a common examinations approach and so there may be appetite for such a model in another part of the legal services sector. However, the success of this approach is yet to be tested, and there is no evidence that what may be suitable for solicitors, and the broad network within which they operate, is automatically appropriate for the smaller, specialist patent profession. It is worth noting also that the solicitor examinations will be set and administered by the regulatory body, not the professional body.

<p>3. The PEB has as a continuing task of ensuring that the content of each FD examination remains limited to its core area.</p>	<p>IPReg position set out in response: we will welcome the Patent Examination Board's (PEB's) response to those, and other Final Diploma recommendations, through the IPReg accreditation of the PEB Final Diploma Examinations, which will be our next step.</p>
<p>4. The PEB has a continuing task of ensuring that the length of all the FD examinations is maintained in a defined size range from year to year.</p>	<p>IPReg position set out in response: see Training Recommendation 6 above.</p>
<p>5. The PEB does not make available marking schedules (as occurs with the EQEs) to candidates but provides more detailed examination reports and provides train-the-trainer sessions immediately after release of the results for any FD paper.</p>	<p>IPReg position set out in response: see Training Recommendation 6 above.</p>
<p>6. The PEB should make it clear that, for each of papers FD2, FD3 and FD4 and for each questions in paper FD1, the examiners are looking to see whether the answer as a whole merits a passing mark so that candidates do not concentrate on 'mark gathering'.</p>	<p>IPReg position set out in response: we agree that examiners should take a holistic approach, determining a candidate's overall competence rather than hanging marks on particular items; and providing transparency on what an individual needs to do in broad terms to pass the examination. We will welcome the Patent Examination Board's (PEB's) response to those, and other Final Diploma recommendations, through the IPReg accreditation of the PEB Final Diploma Examinations, which will be our next step.</p> <p>IPReg position set out in response: see Training Recommendation 6 above.</p>
<p>7. When taking the FC and FD examinations, candidates should have read-only access to a limited selection of sources to be determined by the PEB.</p>	<p>IPReg position set out in response: we will welcome the Patent Examination Board's (PEB's) response to those, and other Final Diploma recommendations, through the IPReg accreditation of the PEB Final Diploma Examinations, which will be our next step.</p>

<p>8. The FC and FD examinations should continue to be held online and, if appropriate , should use the same system as is used for the EQE.</p>	<p>IPReg position set out in response: As with so many systems and processes, the Covid-19 pandemic has been a disrupter and, despite the great deal of difficulty encountered, especially in the early months, this has also provided a catalyst for some positive changes and we welcome these where they have occurred, particularly in the online delivery of examinations.</p> <p>IPReg position: see Assessment Requirements at items 19-21, Assessments and Appeals, of IPReg Accreditation Handbook.</p>
<p>9. The PEB, together with IPReg and CIPA, should investigate the use of the electronic examination system used for the EQE to see whether it can be adapted to meet the requirements of the FC and FD examinations and allow read-only access to selected sources.</p>	<p>IPReg position: IPReg has required all accredited qualification agencies, as a dedicated item, to report on their proposed arrangements for online assessments, including quality assurance, and to review the arrangements as part of their annual reporting to IPReg.</p>
<p>10. The PEB should adapt the examinations and marking schedules as necessary so that the maximum working time for any examination can be limited to four working hours, excluding any additional time that is required for e.g. students with reasonable adjustments, breaks, or uploading/downloading time.</p>	<p>IPReg position set out in response: we would support everything said about improving this examination and endorse simplifying what FD4 covers and ensuring no overlap, the practical proposal of shortening the examination to 4 hours⁷ and the continuing provision of online examinations.</p> <p>We will welcome the Patent Examination Board's (PEB's) response to those, and other Final Diploma recommendations, through the IPReg accreditation of the PEB Final Diploma Examinations, which will be our next step.</p>
<p>11. The PEB and IPReg should consider whether the invigilation system used by the system is sufficient.</p>	<p>IPReg position: IPReg has required all accredited qualification agencies, as a dedicated item, to provide information on their proposals for online assessments, including</p>

⁷ We acknowledge the examination may have grown to 5 hours out of a desire to help candidates, but suggest that the longer format likely tests stamina to an inappropriate degree.

	quality assurance, and to review the arrangements as part of their annual reporting to IPReg.
12. The PEB, IPReg and CIPA should encourage employers to support their candidates in effective use of the modular examination systems without affecting career progression.	IPReg position: not regulatory ambit
13. The PEB, IPReg and CIPA should look at the scheduling of the UK examinations once more is known about how the proposed changes to the EQEs will be implemented in 2024 and beyond, so as to avoid potential clashes.	IPReg position: the EQEs are being remodelled, should that impact upon their scheduling, the PEB will need to take this into account.
14. The PEB, IPReg and CIPA should investigate whether having two sittings a year is a practical proposition.	IPReg position set out in response: we will welcome the Patent Examination Board's (PEB's) response to those, and other Final Diploma recommendations, through the IPReg accreditation of the PEB Final Diploma Examinations, which will be our next step.
15. The examinations should be spread over two weeks so that there is a gap of a day between each FD paper and there is only one FC paper per day.	IPReg position set out in response: we will welcome the Patent Examination Board's (PEB's) response to those, and other Final Diploma recommendations, through the IPReg accreditation of the PEB Final Diploma Examinations, which will be our next step.
16. IPReg, with the assistance of the PEB and CIPA, should investigate whether the exemptions from FD2 and FD3 in light of a full pass of the EQE are appropriate.	IPReg position: the EQEs are being remodelled, as at item 13, meaning mapping work will need to be undertaken at the time at which the EPI makes formal announcements confirming changes.
17. Any changes should be reviewed to ensure that, as far as possible, they encourage an increase of diversity and inclusion in the profession.	IPReg position set out in response regarding qualification pathway routes and EDI: IPReg considers that the examinations-only approach proposed may potentially create an access barrier, putting at a real disadvantage those in a poorer training environment whose employer may not support them to access additional, non-compulsory courses.

The professional members of the Board agreed with opinions provided in the CIPA dedicated webinar which illustrated that the variance of training and qualification courses provides opportunities to build long-lasting relationships across firms, learn about how other businesses operate, and build industry confidence with peers. The regulated community is richer for all trainees having parity of opportunity, which is not synonymous with homogeneity. Whilst an examinations-only pathway may suit the learning of some people, it won't suit others and IPReg is clear that a diversity of qualifying pathways, both at Foundation and Advanced Level, is central to promoting the regulatory objective and to providing equity of outcomes.

IPReg response: See item 48, Equality, Diversity and Inclusion, of the [IPReg Accreditation Handbook](#):

“Equality, Diversity and Inclusion

48. IPReg is committed to working with all stakeholders to promote a diversity of patent attorneys and trademark attorneys. There is an expectation that all stakeholders will have up to date EDI policies and procedures that are compatible with the IPReg EDI aims. These could include, but are not limited to, policies aimed at widening access and supporting students from non-traditional backgrounds to enter on IP qualifications and also breaking down barriers for students/candidates with protected characteristics who are currently under-represented on the IP qualification to enter on IP programmes of study and/or entry to the accredited Examinations.

49. IPReg also requires as part of the annual report mechanism a diversity profile of students/candidates being examined on the qualifying pathways”.

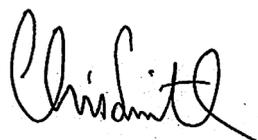
Also see IPReg response at item 6 of the Training Recommendations.

CHAPTER 4 GOVERNANCE

GOVERNANCE	
Mercer Review Recommendation	IPReg Position
<p>1. IPReg should review, with CIPA, the requirement for the PEB to be independent of CIPA in terms of its governance and financial control.</p>	<p>IPReg position set out in response: this recommendation cites the examinations for legal executives as being set and administered by the Chartered Institute of Legal Executives Limited (CILEx), the professional body:- it is the case that the legacy knowledge qualification, which is currently being phased out, has resided with CILEx, but we understand there to be significant governance, permission and reporting requirements placed upon the CILEx Qualification Committee, on which a member of CILEx Regulation Limited sits, underlining the fact that standards of education and training are regulatory matters. In any event, the new education standards for Chartered Legal Executives, approved by the Legal Services Board in June of this year, will bring the qualifications back to CILEx Regulation Ltd, the regulatory body, which will be accredit qualification providers.</p> <p>Entry of attorneys to the register and the maintenance of the registers' integrity are core regulatory functions and lie wholly with the independent regulator acting to promote the regulatory objectives set out in the Legal Services Act. IPReg would be concerned if a perception developed that a professional membership body controls entry to the profession.</p>
<p>2. IPReg should create a set of occupational standards for patent attorneys.</p>	<p>IPReg position: Insufficient evidence provided</p>
<p>3. IPReg should test the agility of the existing examination system, to ensure that it can be responsive to a rapid change in the skills and knowledge required by the patent attorney profession.</p>	<p>IPReg position: see annual reporting requirements upon accredited qualification agencies, 2021 desktop review of the IPReg Accreditation Handbook and the scheduled 2022/23 independent specialist review of IPReg Accreditation Handbook.</p>

Conclusion - it is clear that there are many persons working diligently and passionately across the patent attorney profession, to deliver and assess the PEB Examinations, to support trainees, and to inform and author the Mercer Review report. We welcome the potential improvements that the report's recommendations may bring to the FD4 Infringement and Validity Examination, the issues with which were the trigger for the review; and we look forward to working with stakeholders where improvements can be made to regulatory standards, through the ongoing regulatory arrangements review, the 2022 scheduled accreditation assessment of the PEB's Final Diploma Examinations and the planned independent review of the IPReg Accreditation Handbook.

Lord Smith of Finsbury

A handwritten signature in black ink, appearing to read 'Chris Smith', written in a cursive style.

Chair, Intellectual Property Regulation Board

23 December 2021