

The Patent Regulation Board and the Trade Mark Regulation Board

Agenda

Thursday 13 January 2022 at 12 noon

By Video Conference

1. Apologies
2. Notification of any conflicts of interest

PART A – NON-CONFIDENTIAL ITEMS

3. Minutes of December 2021 meeting and matters arising
4. Action Log (FG)
5. Progress on Review of Regulatory Arrangements (EL) – no paper
6. Annual renewal process update (SE) – no paper
7. Other activities (not covered elsewhere) - none to report

PART B –CONFIDENTIAL ITEMS

8. Complaints update
(SE)
9. LSB engagement (FG)



10. Education update (VS) – no paper
11. Finance update (KD) – paper to follow on Monday
12. Corporate risk register (FG)

13. 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
December 2021 Board Meeting					
Dec-21	Consultation on Review of Regulatory Arrangements	Provide more context on evidence bases and add specific evidence gathering questions on client monies and client base	EL	Ongoing	Included question in consultation document
Dec-21	Consultation on Review of Regulatory Arrangements	Create common questions format and provide a distinct questions section	EL	Closed	
Dec-21	Mercer Review – Proposed IPReg response	Reinforce the statement in the response regarding not being able to comment in some places due to insufficient evidence	VS/CS	Closed	IPReg Response made to the Mercer Review 23 December 2021 included reinforcement of this
Dec-21	Mercer Review – Proposed IPReg response	Create a table as to each Mercer Review proposal and IPReg position on it, if any	VS	Closed	IPReg Position on Mercer Review Recommendations Summary Table provided as attachment the IPReg Response.
Dec-21	LSB Engagement	Sign up to regulators' joint statement and to seek clarity from the LSB on what the statement seeks to address	FG	Closed	Responses provided to LSB. BSB and others have subsequently raised a number of queries which the LSB is considering.
Dec-21	LSB Engagement	Submit IPReg response to LSB Consumer Empowerment Consultation	FG	Closed	
Dec-21	LSB Engagement	Submit factual check response to the LSB	FG	Closed	
Dec-21	LSB Engagement	Submit regulatory performance response to the LSB	Chair/FG	Closed	

IPReg Board Meeting Actions Log - New and Outstanding Actions

November 2021 Board Meeting					
Nov-21	Compensation arrangements – rule change submission to the LSB	Chair to write to the LSB	Chair	Ongoing	January Board
Nov-21	Mercer Review	EWG to draft response to Mercer Review	EWG	Closed	December Board
Nov-21	Governance Matters	Chair and Board to programme in appraisals	Chair/Board	Ongoing	
Nov-21	Governance Matters	FG to develop an Escalation Policy/Procedure (similar to “Speak Up Guardian”) and share with Team and Board	FG	Ongoing	
Nov-21	Governance Matters	FG to amend risk profile wording regarding management and oversight responsibilities	FG	Closed	
Nov-21	Governance Matters	FG to ask auditors to review financial controls and report to Board	FG	Ongoing	
Nov-21	Governance Matters	Governance documents to be published	FG	Closed	
Nov-21	Governance Matters	Governance documents to be reviewed in 2 years’ time	FG	Open – Nov-23	
September 2021 Board Meeting					
Sep-21	Covid Impact upon IPReg Team	Liaise with OsIT regarding IPReg office options	FG	Closed	New licence to be signed

IPReg Board Meeting Actions Log - New and Outstanding Actions

July 2021 Board Meeting					
Jul-21	Compensation Arrangements	Develop risk profile	FG/SE/MB	Ongoing	To be developed over next 2 years
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 will write to these bodies as part of the consultation and hope to obtain some feedback.
May-21	Diversity - next steps - workshop feedback	Implement the diversity initiatives	FG	Ongoing	
May-21	Diversity - Inclusive Language	Adopt and publish Inclusive Language Policy	FG	Open	
March 2021 Board Meeting					
Mar-21	Mutual Recognition of Qualifications	[REDACTED]	SE	Ongoing	[REDACTED]

IPReg Board Meeting Actions Log - New and Outstanding Actions

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	Continue to liaise with LSB on its survey on small businesses	VS/FG	Ongoing	Contacted Tom May on 8 October, who advised a slight delay on delivery of the dataset to the LSB, expects to provide IPReg with access well ahead of Christmas, which did not transpire; VS to contact LSB for update.
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	Date TBC
April 2019 Board meeting					
Apr-19	Queen Mary University London - progress report	Continue to monitor and take action as required	Education Working Group	Ongoing	Reaccreditation application made in December; incomplete; requested outstanding documentation for 3 January. As at 5 January, the internal quality assurance reports for the past 3 years, pass and fail rate for the last 3 years, progression awards and destinations data and External Examiners Reports remain outstanding. The lead assessor has

IPReg Board Meeting Actions Log - New and Outstanding Actions

					gone back to QMUL requesting the External Examiners Reports (or equivalent statement), as a bare minimum, by 11 January, otherwise it is considered that the application cannot progress.
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Board Meeting 13 January 2022

Information paper: Complaints update

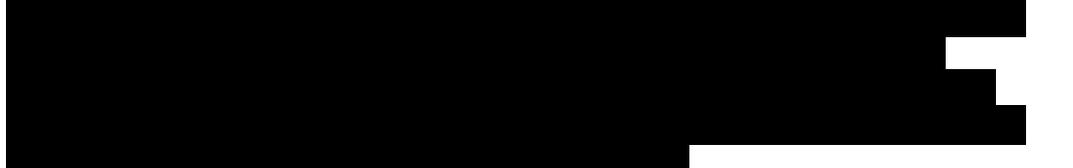
Agenda Item: 8

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

Regulatory Objective(s)	<ul style="list-style-type: none"> • <u>Protecting and promoting the interests of consumers</u> • <u>Increasing public understanding of the citizen's legal rights and duties</u> • <u>Promoting and maintaining adherence to the professional principles</u> <p>- Complaints handling and disciplinary action against regulated persons is designed to protect the public and uphold public confidence in the professions and in the provision of intellectual property legal services by regulated persons.</p> <p>Information given to complainants ie generally consumers of IP legal services, on receipt of a complaint, informs them of their rights (and obligations) when something has gone wrong.</p> <p>- Investigating alleged breach(es) of the Rules of Conduct (or any of our regulatory arrangements) may lead to a written finding of no misconduct and explanation given to both the complainant and the subject individual or firm, thereby increasing the public's knowledge and understanding of what legal regulation is and how it works, and promoting adherence to the professional principles to regulated person (more so if ethical advice is also given).</p> <p>- Investigations leading to disciplinary action against a regulated person(s) will lead to a published decision which, in the case of a finding of breach and sanction, will protect the public and also act as a deterrent to the professions. Or where no breach is found, there will be transparency and clarity on what level of professional standards is regarded as reasonable and acceptable.</p>
Financial	None. Existing resources are dedicated to the oversight and administration of complaints received.
Legal	
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.
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Recommendations

- 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	

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

	<p>[REDACTED]</p> <p>[REDACTED]</p>
[REDACTED]	<p>[REDACTED]</p> <p>[REDACTED]</p>
[REDACTED]	<p>[REDACTED]</p> <p>[REDACTED]</p>

Closed cases in last month (since last meeting)

[Redacted]	[Redacted]
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Recommendation

The Board is asked to note this information paper.

Board Meeting 13 January 2022

LSB Regulatory Performance Assessment 2021

Agenda Item: 9a

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

Summary

1. The December 2021 Board meeting considered the draft response to the LSB's draft regulatory performance assessment. We subsequently sent the LSB our comments and suggestions on the draft. The LSB's response is at **Annex A**. The final assessments for all regulators have now been [published](#) on the LSB's website. Legal Futures has also [published](#) an article on the overall assessments.
2. The LSB has asked for a response from IPReg by 31 January. A draft response for the Board to consider is at **Annex B**. Also attached (**Annex C**) is an updated version of the Data Group forward work plan which was agreed in principle at the November 2021 strategy day.

Recommendation(s)

3. The Board considers the draft response and delegates authority to the Chair and CEO to finalise it.

Risks and mitigations

Regulatory Objective(s)	The LSB's regulatory performance framework was published in 2017 and states: The regulatory objectives were considered in the development of the standards. Efforts undertaken by the regulator to meet the standards are likely to promote achievement of the regulatory objectives.
Strategic objective(s)	This paper considers the response to the LSB and so is not linked directly to IPReg's strategic priorities, although our overall approach to regulation is designed to encourage and support innovation.
Financial	We have allocated £15k from reserves to fund research. We are able to allocate more if required, although the LSB has criticised the approach that we take to the allocation of reserves and the flexibility that it gives us.
Legal	[REDACTED].
Reputational	The LSB has criticised specific aspects of IPReg's work and has raised questions about the Board's approach to governance. This is a clearly a reputational risk.
Resources	The proposed research will be undertaken as part of our business as usual activities.

By e-mail only

Fran Gillon
Chief Executive
Intellectual Property Regulation Board



Legal Services Board
3rd Floor, The Rookery
2 Dyott Street
London
WC1A 1DE

T 020 7271 0050

www.legalservicesboard.org.uk

16 December 2021

Dear Fran

Regulatory Performance Assessment 2021 – IPReg

We are now in the closing stages of this year's performance assessment exercise and we are preparing to publish our report. In line with our general practice, we will provide an embargoed copy of the LSB's Annual Regulatory Performance Assessment Report for 2021 ahead of publication to you and the other regulators.

Response to fact check

I would like to thank you for responding to our request to fact-check the draft assessment that we sent to you on 8 December. We carefully considered your response dated 15 December and the additional information that you provided.

We concluded that our assessment of the five outcomes that we reviewed should not change as a result of the information provided in your fact check response. However, as you will see in the revised performance assessment attached (Annex A), we have adjusted the drafting in a number of places to reflect the information contained within your response.

In your response, you noted the following:

The LSB has not provided evidence to support its assertion that there is a lack of transparency with IPReg's regulatory approach or its decision-making. Please provide specific examples so that we can consider them in full and respond.

The draft performance assessment that you were commenting on included a number of examples and sources of evidence that we relied upon to make our assessment of IPReg's performance against WL3. These are also mainly areas that have already been communicated to IPReg during the year, through correspondence and decision notices. For ease of reference, however, I have

listed below the evidence that is referred to in the performance assessment, and, in case it is helpful, offered some additional detail and examples.

Plans to ensure IPReg has an adequate evidence base

- IPReg has not provided a detailed plan to the LSB (or publicly) for how it will meet RA3, including clear commitments to complete specific activities, deliverables and timeframes for relevant research and data gathering. We have previously raised our concerns about the need for a coherent and comprehensive plan, including at a meeting on 5 May 2021 and in a letter dated 7 May.
- IPReg later identified in a letter dated 21 July 2021 that, following advice from an actuary, it will need to complete significant additional data gathering to establish a full risk model to support its compensation fund. While there is reference to possible areas of research and a forward work plan agreed by IPReg's Data Group in IPReg's 4 November 2021 response to our information request, there is no information available about the specific activities that will be undertaken in IPReg's publicly available material, or otherwise provided to the LSB.

IPReg's establishment of a new compensation fund

- In its September 2021 application to the LSB, IPReg proposed to narrow significantly the eligibility of claimants in revising its compensation arrangements, but did not provide evidence of the impact this would have on consumers of IP services. IPReg was unable to provide data about the percentage of individuals and microenterprises that consumer IP services, and as such, could not provide transparency of the practical effect of the changes. We set out our concerns in the decision notice dated 29 October 2021.

IPReg's 2022 PCF application

- We raised three transparency issues in IPReg's October 2021 application for approval of its 2022 PCF, relating to:
 - (1) IPReg's use of reserves;
 - (2) how the IPReg Board reached the decision to maintain fees at 2021 levels; and
 - (3) IPReg's funding of its regulatory performance commitments.
- IPReg's subsequent response, dated 11 November 2021, provided some additional details about the use of reserves and the board's considerations, which provided some clarity. However, we noted in the decision notice dated 22 November 2021 our concern that IPReg's management of reserves could be seen as making the overall position harder to understand and therefore less accessible and transparent.
- In the decision notice we also noted our outstanding concerns about how IPReg would fund its regulatory performance commitments and that there was little detail provided about what specific activities would be undertaken to make progress on its RA3 actions.

Provision of publicly available information about regulatory performance

- In IPReg's published board papers and minutes, 'LSB issues' are typically fully redacted, which means there is little transparency of the regulatory performance related concerns we have raised about IPReg. For example, in the 21 January 2021 board minutes, the record of the board's discussion of the then newly assessed unmet outcomes was redacted.
- We note that some performance information was provided in the 4 November 2021 board papers, which appears to be a positive improvement in transparency in this regard, and we hope to see this continue in the future.

Further exploration of the well-led standard

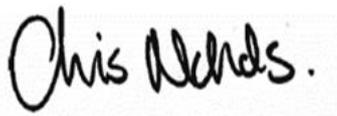
Your response requested an explanation of what is meant when we say we have assessed that further exploration of the well-led standard is likely to be necessary. Under the performance framework, we have a range of tools available to seek assurance that regulators meet the standards. This ranges from our ongoing monitoring and annual assessment process, to issuing an information request or initiating a review when we do not have sufficient assurance about an area of a regulator's performance, or identify an area as one of concern.¹

At this time, due to the concerns we have raised about IPReg under the well-led standard, we are considering whether we will need to use any of these tools to seek assurance that IPReg meets the well-led outcomes. We will be informed by the response that we have requested from the IPReg board by 31 January 2022 on the actions needed relevant to WL1 and WL3.

Next steps

Please let me know urgently if anything remains factually incorrect in the assessment (as opposed to instances where there is a difference in opinion or the interpretation of information between the LSB and IPReg) and in any event, no later than 5pm on Tuesday 21 December.

Yours sincerely

A handwritten signature in black ink that reads "Chris Nichols." The signature is written in a cursive, slightly slanted style.

Chris Nichols
Director, Policy and Regulation

¹ LSB (2017), [Regulatory performance assessments: the process](#)