

**The Patent Regulation Board and the Trade Mark Regulation Board****Minutes****Thursday 14<sup>th</sup> July 2022 at 1.30pm****Gatehouse Chambers, Gray's Inn, 1 Lady Hale Gate, London, WC1X 8BS****Attending:**

Rt Hon Lord Smith of Finsbury (Chair)  
Justin Bukspan (attending remotely)  
Sam Funnell  
Alan Kershaw  
Victor Olowe  
Samantha Peters  
Emma Reeve  
Caroline Seddon (attending remotely)

**In attendance:** Fran Gillon, Shelley Edwards, Emily Lyn, Karen Duxbury, Victoria Swan

- 1. Apologies** – apologies were received from Nigel Robinson.
- 2. Notification of any conflicts of interest** – none declared.

**PART A – NON-CONFIDENTIAL ITEMS****3. Financial Statements (IPReg Ltd), Directors Report and Letter of Representation**

3.1 Richard Hill (of Griffin Stone Moscrop & Co) presented the Financial Statements for the year ended 31 December 2021 and explained that no formal management letter is required because no significant weaknesses had been identified. One small adjustment was made to the management accounts - a write back of a provision for recoverability of a cost award of £3,391 as this remaining balance had been received. The adjustment increased the operating surplus to £45,162.

3.2 RH commented that IPReg is an entity with strong reserves and there are no going concern issues. He commented that IPReg had been transparent in its allocation of reserves and that he regarded this as a prudent approach. RH noted that the timing of practising fee renewals, which starts in the year under review but relates to the following year. This means that the level of deferred income and debtors can vary from year to year. He also noted an increase in cash and cash equivalents of £86k and confirmed that there had been no claims made on the new Compensation Fund Reserve.

3.3 RH commented that in common with many small organisations, there is a limited amount of segregation of duties with the Chief Finance Officer dealing with all aspects of finance. The controls in place such as the authorisation of expenditure are an appropriate safeguard in such circumstances. The accounting package is due to be upgraded and this is likely to provide additional benefits. The financial procedures “manual” will be updated.

3.4 The Board approved the Financial Statements and agreed that the Chair could sign the Letter of Representation.

**Action: KD to update financial procedures**

RH and KD left the meeting.

**4. Minutes of 19 May 2022 meeting and matters arising**

4.1 The Board agreed the minutes of the 19 May 2022 meeting subject to minor amendments.

**5. Action Log**

5.1 The Board noted the action log. SE reported on the recruitment of Joint Disciplinary Panel members which took place over nearly a week and involved IPReg Board members. There had been 19 candidates interviewed for the 12 available roles (3 patent, 3 trade mark and 6 lay members). Thewlis Graham led a very successful exercise and are taking up references. A training session will take place on 28 July.

**6. Progress on Review of Regulatory Arrangements**

6.1 AK and EL presented the papers: response to the consultation, post-consultation impact assessment, core regulatory framework and glossary and a confidential note from our legal advisers on public/private life boundaries. EL explained that response document reflected the May Board discussions and consultation feedback. Changes made to the documents have been tracked to show how we had taken into account the responses and suggestions that we had received. The Board agreed that the proposals on the diversity monitoring and the timing of the requirement to obtain a litigation certificate for patent attorneys are to be subject to further consultation and will be taken forward on a longer timescale than the other changes; the Board did not consider that this would have any impact on implementing the other changes arising from the Review. In response to feedback there will be a transitional period of 18 – 24 months for the requirements for Continuing Professional Development.

6.2 EL reported that the meeting with the Legal Services Board (LSB) to discuss the process for it to consider a draft application had been very helpful. The LSB had explained that it would provide feedback on the draft application within a week of receiving it. On that basis, the Board agreed that it would be appropriate to make a draft application as the LSB had suggested. The Board also agreed that it would be beneficial to ask Kingsley Napley (KN) to review all the documentation once it had been finalised. The Board noted that the draft application would be brought to the September Board meeting for consideration.

6.3 The stakeholder engagement roundtable on 27 July will set out at high level what has been changed and our approach on the issues raised in responses to the consultation. The Board agreed that the amended regulatory arrangements would be published at the point of submission to the LSB.

6.4 Regulatory sandbox: the Board discussed the proposed professional indemnity insurance (PII) regulatory sandbox and discussed whether it should be open to all applicants rather than restricting it to firms who could not get PII that is compliant with IPReg's Minimum Terms and Conditions (MTC). The Board considered that, in its judgment, it would be appropriate for all firms to be eligible to apply to enter the sandbox, in particular it could be useful for firms that were considering becoming Alternative Business Structures (and therefore may not be able to obtain MTC-compliant insurance in future). The Board considered whether applicants should be charged to enter the sandbox (e.g. to cover the cost of any external advice that IPReg might need for a complex application). The Board took the view that there were potential benefits to all registrants of the evidence that could be obtained from the sandbox and that it was therefore appropriate to absorb any costs within its overall budget. The Board noted that in due course some systems would need to be put in place to consider applications to the sandbox and that guidance would also be published.

6.5 Principle 6 "encouraging" Equality, Diversity and Inclusion: EL reported that consultation responses had included concerns that regulatory activity extending to private life events and had raised concerns about whether this might breach the Human Rights Act and offend some religious beliefs. The Board therefore discussed the terminology and language to be used in this Principle, taking into account that there had been significant feedback on the issue of how far this requirement could impact on regulated persons' private lives. The Board considered whether using the term "equal" would raise more concerns than "equality" and that the requirement needs to be clearer as to what it hopes to achieve. The Board discussed the issues that can occur when linking private life to the reputation of the profession. The Board agreed that the wording of the Principle should include an attorney's private life and noted that it should be made clear the extent to which this could apply to private life. The Board agreed that in light of such concerns it was important for the wording of the principle and the pre-ambule to be reviewed again by external experts.

**Action: review wording of Principle 6 (EL)**

6.6 Multi-Disciplinary Practices (MDP): the Board discussed its approach to regulating MDPs which would provide firms with the opportunity to provide more services to clients. It was agreed that the general principle would be to continue with our current approach and not regulate services that are not ancillary intellectual property. However, if firms wished to provide additional services to clients (such as tax advice) then they should be able to do so.

6.7 Continuing Professional Development: the Board agreed the proposed approach to CPD which would not specify a number of hours. It also agreed that IPReg should put in place transitional arrangements with support and guidance to help the individual attorney meet their responsibilities.

6.8 The Board agreed that the response to consultation and the revised impact assessment should be published. Based on the one-week turnaround time for the LSB to consider a draft application,

the Board agreed to make a draft application to LSB for feedback following a final review at the September Board meeting.

**Action: publish response to consultation (EL)**

**7. Other activities not covered elsewhere**

7.1 3 x CEOs: FG reported on the 27 May meeting which had included discussions on:

- the upcoming Regulatory Forum;
- sanctions – a discussion about payments to Rospatent which banks at the Central Bank of the Russian Federation which is subject to sanctions. CIPA had shared advice that it had obtained and IPReg had now included this on its website;
- the forthcoming Legal Services Board's (LSB) Ongoing Competence Statement;
- the proposed changes to the European Qualifying Examination proposals and the likely impact on IPReg's approach to exemptions;
- a possible complaint;
- red risks;
- the performance management dataset;
- progress on the regulatory arrangements review.

7.2 FG reported on the 30 June meeting which had included discussions on:

- sanctions;
- meeting with IP Inclusive and the IP Federation to consider sector-wide diversity work;
- IPReg's response to regulatory performance framework.

7.3 Regulatory Forum: the Chair reported on the meeting of 27 June, with IPReg attendance by Shelley Edwards and the Chair, which had included discussions on:

- progress on the regulatory arrangements Review;
- the meeting of the LSB and IPReg Boards;
- consultation on 2023 fees;
- Continuing Competence/Continuing Professional Development – including CIPA concerns about revalidation;
- response to regulatory performance framework;
- assistance with the JDP recruitment.

**8. Education Working Group (EWG) Update**

8.1 VS presented the EWG update paper covering the:

8.2 Queen Mary University London (QMUL) reaccreditation assessment response – the independent specialist accreditation assessment report endorsed previously by both the EWG and Board specified a number of Mandatory Requirements and Recommendations for consideration by QMUL. QMUL were tasked with providing a detailed, time-scaled implementation plan demonstrating that these were to be taken forward in time for the September 2022 student cohort. The Board discussed the

QMUL response which was found to be high-level and lacking in both detail and definitive timescales. The Board noted that the formal review by independent specialist assessors scheduled for March 2023 has the potential, should it not provide IPReg with the necessary confidence, to result in an accreditation period less than the typical 5 years status. The Board determined it would be beneficial for a meeting of the EWG with QMUL representatives to discuss the response and QMUL's direction of travel.

**Action: VS to arrange a meeting with QMUL senior staff**

8.3 European Qualifying Examinations (EQEs) – the qualifying examinations for European patent attorneys are currently subject to consultation. Two of the four current papers, or the EQE as a whole, provide exemption from two of the Patent Examination Board (PEB) Final Diploma examinations. The consultation proposes replacement of the four EQE papers with six modules. Upon announcement of the definitive version of the examinations, expected later this year, it is anticipated that an IPReg consultation and/or other activity with stakeholders will commence on IPReg's future approach to exemptions.

8.4 The Board noted that the proposals for EQE reform appeared a cost effective way to run the (online) examinations and the proposed configurations. The Board discussed at a high level whether the Advanced Level Qualification (ALQ) for patent attorneys might adopt the new EQE syllabus (albeit that there would need to be some modifications to include necessary UK focus). It was agreed that the specialist independent review of the IPReg Accreditation Handbook would include defining the ALQ syllabus including benchmarking against the EQE syllabus.

8.5 PEB – earlier in July, and after a number of Zoom discussions, the PEB submitted a reaccreditation application for the Final Diploma examinations (ALQ level). This timeframe had been agreed to follow the Mercer Review (a CIPA-commissioned review of examinations, education and training). The review was triggered initially by a significant concern about the marking of the Final Diploma examination on Infringement and Validity (FD4). Accordingly, the PEB was asked to include in its accreditation application its position on the Final Diploma recommendations relating to content, assessment and governance made in the Mercer Review. The application is currently being reviewed by the independent specialist assessors. The assessment visit to the PEB and discussions with examination candidates are scheduled for late September.

8.6 Additionally, the PEB proposed a tailored approach to supervision of the online patent examinations. The Foundation Level Qualification examinations are to be subject to proctoring software. This because their subject matter relies on knowledge recall and may therefore make them more susceptible to a candidate cheating through accessing a textbook or online resource during an examination. Conversely, as the ALQ examinations assess the application of knowledge and a candidate's analysis of the issue they are not considered to be as susceptible to cheating. Therefore they will be invigilated on Zoom by PEB-trained invigilators. The proposal had been reviewed by the EWG and recommended to the Board for approved. The Board agreed this approach.

**PART B –CONFIDENTIAL ITEMS****9. Complaints Update**

9.1 SE presented the complaints paper with 2 complaints closed in the last month. [REDACTED]

9.2 The Board noted the complaints paper.

**10. Governance and Transparency Working Group (GTWG) – Report on findings and recommendations**

10.1 SP presented the report. The GTWG had undertaken had intensive discussions which took into account how other regulators (in the legal sector and elsewhere) undertake their governance activities. The Action Plan set out on the paper is designed to provide IPReg with good governance systems and meet the requirements in the LSB’s performance assessment framework.

10.2 The Board noted that the Action Plan proposed a number of changes including an external triennial review of Board effectiveness, changes to the Board paper templates and the content of Board papers, changes to the approach to minuting Board meetings and a fully documented Governance Handbook which could include changes to the Board Code of Conduct. The Board considered that an external minute taker might be appropriate. It considered whether a senior independent Director should be appointed from the current Board members but overall it seemed that this was probably not necessary due to the small size of the organisation.

10.5 The Board agreed to adopt the governance action plan and to publish it with the Board papers.

**Action: FG to take forward Action Plan including regular updates to Board meetings**

**11. LSB engagement**

11.1 Board to Board meeting 1 June: the Chair reported the meeting had been constructive; it was framed as looking to the future and had included discussion about the LSB’s wish to adopt a principles based approach to the revised regulatory performance framework.

11.2 Response to LSB - performance framework report: FG presented the proposed response which would be updated to include the GTWG Action Plan that the Board had just adopted. The Board agreed the approach and delegated responsibility to FG and the Chair to finalise it for submission to the LSB.

**Action: submit response to LSB performance assessment framework (FG)**

11.3 LSB Statement of Policy – empowering consumers: FG presented the paper setting out the LSB’s proposed statement of policy and the “gap analysis” that the LSB’s Market Transparency Coordination and Oversight Group (MTCOG) requires from all of the legal regulators.

11.5 The Board proposed including in the gap analysis the fact that there had been no complaints to the Legal Ombudsman about attorneys in the last 3 years.

11.6 The Board agreed the gap analysis subject to agreed amendments.

**Action: FG to submit amended gap analysis to the LSB.**

11.7 Sanctions – action plan: FG reported that Matthew Hill of the LSB had expressed an element of dissatisfaction with the IPReg letter and sanction plan. This has since been echoed in the discussion on 1 July (item 11.8)

11.8 Sanctions - discussion with LSB 1 July: FG reported on a meeting with LSB representatives. The LSB considered that IPReg did not have sufficient evidence to conclude that the regulated IP sector was at low risk of breaching the financial sanctions framework. FG had explained that IPReg had emailed all registrants individually to draw to their attention the need for a licence from OFSI in certain circumstances and to inform IPReg if they applied for a licence; this information is now on the IPReg website as well. Although some regulators are undertaking supervisory checks on firms, the LSB said that it does not expect IPReg to do these.

**Action: FG to send sanctions letter to LSB setting out actions taken**

11.9 Sanctions – meeting with Ministry of Justice (MoJ) 25 May: FG reported that the meeting had discussed MoJ's approach to ensuring that regulators had sufficient powers to help reduce the likelihood of the sector being used as a facilitator for economic.

11.10 All regulatory Chairs/CEOs meeting 29 June: FG reported that this had included a helpful discussion on working collaboratively on equality, diversity and inclusion (EDI). The meeting heard from one regulator about the difficulty in establishing cause and effect on EDI issues and that it might be more effective to focus on two or three issues where cause and effect might be able to be linked more effectively. The meeting had also discussed the LSB's sector-wide strategy and proactive regulation that protects the public. The LSB would write to attendees to summarise key points from the meeting.

## **12. Finance update**

12.1 KD reported income to the end of June was slightly ahead of what had been anticipated. She confirmed that the award of costs of £22,794 for the recent disciplinary case had not been reflected in the figures as an appeal had been lodged. On conclusion of the appeal, if the costs award was upheld, the figure will be recognised and it is likely that a full provision against the recoverability will be made. The Board noted this and the possibility that an external specialist may be required to assist in the recovery of the award.

## **13. Risk register**

13.1 The Board noted the risk register. FG reported the red risk relating to [REDACTED] [REDACTED] One of GTWG actions is to review IPReg's approach to risk. [REDACTED]

[REDACTED]

**Action: FG to review risk wording**

#### **14. Regulators' Pioneer Fund**

14.1 [REDACTED]

#### **15. 2023 business plan, budget and practising fees**

15.1 FG presented the paper proposing a consultation on the business plan, budget and practising fees for 2023. The consultation will propose to increase the practising fees by 6% (less than 9.1% CPI) after holding them level for the past 2 years. The paper set out the implications of different levels of increase and of holding fees level or reducing them and the proposal to increase fees by 6% would result in a small deficit. The paper set out different options for the Board to consider in the business plan including putting the new post of Education and Diversity Officer on hold. The consultation will run for 4 weeks. Rather than organising a webinar over the summer holiday period, the consultation will offer people the opportunity to talk direct to IPReg about the proposals and to ask for more information if they need it.

15.2 The Board discussed the options set out in the paper and the impact on IPReg's finances of proposing an increase of less than 6% (or holding fees level or reducing them). Having considered a range of options, including deferring the appointment of the Education and EDI Officer to ease budget constraints, the Board determined a proposed increase of 6% was well judged, enabling IPReg to staff itself adequately to undertake the work of programme needed and endorsed the need to recruit a new Education and Diversity Officer. The Board also considered whether to introduce application fees for individual attorneys for entry onto the registers and whether there should be an application fee for non-ABS firms. However, as both of these would require a rule change application to the LSB, the Board considered that these issues should be revisited as part of the wider work on changes to the practising categories which may take place in 2024/2025.

15.3 The Board agreed to publish the consultation and to hold a strategy day in November.

**Action: publish consultation on 2023 business plan and practising fees (FG)**

#### **16. Any Other Business**

16.1 The Board held a short discussion about the recent recruitment to the Joint Disciplinary Board.

#### **17. Regulatory Statement**

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