

The Patent Regulation Board and the Trade Mark Regulation Board**Minutes****Thursday 20 May 2020 at 12 noon**

(Meeting held online)

Attending:

Rt Hon Lord Smith of Finsbury (Chair)
Alicia Chantrey
Samantha Funnell
Steve Gregory
Keith Howick
Alan Kershaw
Emma Reeve
Nigel Robinson
Caroline Seddon
Nick Whitaker

In attendance: Fran Gillon, Shelley Edwards, Victoria Swan, Karen Duxbury (up to item 5)

- 1. Apologies** – none.
- 2. Notification of any conflicts of interest** – No conflicts of interest were declared.

PART A – NON-CONFIDENTIAL ITEMS**3. Minutes of March 2020 meeting and matters arising**

The Board agreed the minutes of the 19 March 2020 meeting as a correct record subject to two minor amendments. No matters arising.

4. Action Log

CS joined the meeting.

The Board noted the Action Log as well as oral updates on the following items:

PAMIA – FG and SE reported that IPReg is liaising with PAMIA to ensure consistent messaging to sole practitioners and small firms about the importance of renewing professional indemnity insurance (PII) from the beginning of July.

Recovery of costs owed to IPReg – SE reported that, regarding the respondent who had not agreed a payment plan with IPReg, we will obtain advice about the best way to recover the costs awarded by the Joint Disciplinary Panel.

Invitation for Matthew Hill to attend Board – the Chair noted that this will be taken forward when physical meetings are held again.

Pro bono work and run-off cover – FG reported that the run-off cover arrangements are in force and that she is taking forward discussions with the IP Federation and CIPA on pro bono PII.

Action: FG to liaise with CIPA and IP Federation on pro bono PII issues

Other education assessors – VS reported that some potential candidates had been identified.

Queen Mary University London (QMUL) [REDACTED]
[REDACTED]
[REDACTED]

5. Discussion of impact of Covid-19

5.1 IPReg team: FG reported that the Customer Relationship Management system introduced last year, migration to [REDACTED], the online conferencing facilities, and the purchase of a new IT hardware prior to the pandemic had all facilitated remote working for the team. Dudobi have been effective in addressing individual issues. [REDACTED]
[REDACTED]
[REDACTED]

5.2 FG confirmed that IPReg is following current government advice that all who can work from home should do so. Office Space in Town (OSiT), which owns the building in which the IPReg office is located, has been very proactive in working towards providing a safe working space, including “fogging” which is a deep clean which kills viruses and is used by Transport for London for its vehicles. FG will liaise with OSiT once it becomes clearer when we can return to the office so see what changes may need to be made to ensure continuing compliance with social distancing and other requirements. Depending on the outcome, changes to working patterns may be needed. OSiT reduced the licence fee and service charges by 50% for April and May and by 25% for June, resulting in IPReg saving ~£8,000.

5.3 FG reported there have been a couple of new entrant firms, a steady flow of applications to the attorney registers and no applications for voluntary removal from the register or change of status.

5.4 Market: the Chair reported that the Regulatory Forum discussions with CIPA and CITMA had not indicated a significant impact on the flow of work or activity yet. Professional members reported a range of experiences, including successful transitions to home working, hiring freezes and new partners not being appointed. The Board noted that there may be some disparity between the patent and trade mark market experiences, with some active life sciences patent work including Covid-19 innovations, whilst the trade mark market, including the retail market area, might be stalling. It was agreed that Covid-19 was likely to have an impact on the market(s), but there will probably be a delay (perhaps 6-12 months) before its extent can be fully

appreciated. It was agreed that this was to be borne in mind for IPReg's own budgeting purposes and practice fee considerations.

5.5 AC left the meeting to deal with a matter unrelated to the Board meeting.

5.6 2019 Actual v Budget comparison: KD advised that subject to the final audit review, the operating deficit for 2019 is likely to remain at c£63k, as noted in the draft comparison. The Board noted that IPReg had performed £100,000 better than the budget and that reserves were at a reasonable figure. The proposed adjustment to the reserves at the year-end was agreed.

5.7 Quarter 1 2020 – KD presented the figures. The Board noted that the practice fee figure was what we would expect to receive for our renewal process, slightly ahead of Q1 budget but slightly lower forecast for the end of the year. FG confirmed that as previously the Q1 figures would be published. The Board agreed that the new format was very clear on direction of travel and the origins of any variance.

5.8 2021 practising fees – the Board noted these figures and that they were based on the practice fees remaining as they are, although this would need to be revisited at the July Board meeting when there may be more indication of the impact of Covid-19 on the market(s).

5.9 [REDACTED]

5.10 KD left the meeting. AC returned to meeting.

6. Internal Governance Rules – new Delegation Agreement

6.1 FG reported that legal advice had been that the Delegation Agreement is clear that the representative bodies do not have to be involved in recruitment of IPReg Board members. CITMA remains steadfast in its position that it will only delegate its regulatory functions to IPReg on condition that IPReg establishes a Trade Mark Regulation Board (TRB). CIPA is not seeking an equivalent Patent Regulation Board (PRB).

6.2 FG commented that additionally CITMA wants the Delegation Agreements to specify that there will be parity in the number of professional members on the TRB and PRB. FG reported that the LSB is clear that the Internal Governance Rules mean that governance matters are for IPReg to decide. The Board agreed that the Delegation Agreements should include that those issues that only relate to trade mark attorneys will be considered solely by the TRB (and similarly for patent attorneys and the PRB).

6.3 [REDACTED]

7. Other activities (not covered elsewhere):

7.1 Legal Services Board

- a) Matthew Hill - 1 April and 15 May: FG reported that items covered in these meetings included [REDACTED]
- b) LSB Relationship Management – 8 April: FG and VS reported that this meeting discussed [REDACTED]
- c) LSB Chair - 15 April: the Chair reported that [REDACTED]
- d) LSB and Other Regulators – 18 May: SE reported that much of the meeting with the LSB and the other legal regulators had been focused on the impact of Covid-19. The most significant impact so far appeared to be on the notary profession which has seen a very clear downturn in notarisation requirements. Additionally, the LSB had indicated an aim to increase focus on costs transparency, by using a statutory Statement of Policy.

7.2 Chartered Institute of Patent Attorneys/Chartered Institute of Trade Mark Attorneys

- a) 3 x CEOs – 2 April: FG reported this was focused on the IGRs and the Delegation Agreements.
- b) Regulatory Forum – 21 May: the Chair reported that items covered in this meeting with CIPA and CITMA included [REDACTED]

7.3 Other

- a) IP Federation – 25 March: FG reported the meeting had covered the pro bono PII item (see item 4).

- b) Remedies Programme Implementation Group (Competition Markets Authority – CMA) – 1 May: FG reported that this group includes the CMA, LSB and all the regulators and is focused upon transparency work including the Legal Choices website which the regulators have created, developed and funded. The BSB has withdrawn its funding. No figures have yet been presented on how it is proposed that the resulting £53,000 shortfall is to be pro-rated. The CMA is to revisit progress made by the regulators in relation to this (and costs transparency) at the end of 2020 or beginning of 2021. The Board discussed the Legal Choices website and agreed, given that it is unlikely that substantial numbers of attorney clients would access this resource, that it would be difficult to justify increasing the IPReg contribution significantly. It was agreed the annual £5,000 contribution by IPReg appeared sufficient to help ensure the Legal Choices website is maintained but that this would be kept under review.

8. IPReg Annual Report 2019

8.1 FG presented the 2019 Annual Report. The Board discussed and agreed that a headline summary article should be published which set out the report's main points. This should include IPReg achievements such as being the first regulator to have met all the LSB's regulatory performance outcomes. It was agreed that IPReg attendance, for the first time, at the International Conference of Regulators should be included and acknowledgement would be made of the constructive dialogue and encouraging developments at Queen Mary. The Board discussed whether, going forward, the Chair's Report and CEO's Report should be merged and agreed they should remain separate. The Board agreed the 2019 Annual Report subject to those amendments and additions.

Action: VS to draft headlines article on Annual Report 2019

Action: VS to publish the Annual Report and article on IPReg website

9. IPReg Performance Management Dataset for the LSB

9.1 VS presented the paper which sets out the performance of IPReg in areas of authorisations, supervision, enforcement and governance and leadership. The dataset covers 1 April 2019 to 31 March 2020. VS highlighted changes from the previous performance management dataset, in particular the:

- significant improvement in the rate of compliance with Professional Indemnity Insurance requirements as part of the annual renewal process,
- the increase in longest time spent dealing with a register application and a complaint, and
- reduction in the admissions to the register, in particular from patent attorneys.

9.2 The Board discussed the appropriate emphasis in some areas of the performance management dataset.

Action: VS and FG to finalise the Performance Management Dataset (PMD)

Action: VS and FG to create introductory section for PMD providing wider context to some figures

Action: FG to submit the PMD to the LSB

Action: VS to publish PMD on IPReg website

10. IPReg Diversity Information Request from LSB

10.1 VS presented the paper which sets out the proposed submission to the LSB which it has requested from all legal regulators. FG explained that the new CRM will enable more accurate diversity reporting providing attorneys complete the data on their accounts. AK commented that disciplinary processes in other areas have sometimes been found to disproportionately impact upon black and minority ethnic groups and that this reinforces the importance of up-to-date information to inform analysis of disciplinary investigations and decisions. The Board agreed the importance of communicating to the profession the importance of diversity information and why it is being requested. It also agreed that there may be scope to work with IP Inclusive.

Action: FG to liaise with IP Inclusive

Action: VS to submit the Diversity Information Update to the LSB

11. Education Group Report

Brunel University Accreditation – Postgraduate Qualifying (Patent) Certificate

11.1 VS presented the paper including the Assessor Report's overriding recommendation to reaccredit the patent pathway and a number of lower-level recommendations accompanied by three Measures. One of the Measures related to Brunel providing a dedicated trade mark application regarding its aspiration to have this as an accredited pathway. VS confirmed IPReg was now in receipt of this application and the subsequent Assessor Report which was currently with Brunel for review. VS advised that the remaining two Measures related to:

- Measure 1 – a dedicated application regarding Brunel's proposal for a residential weekend and a re-titling from distance learning to part-time; Brunel had objected to this proposal on the basis that the residential weekend option would require no modification of content, teaching or assessment method; CS and KH endorse Brunel's position on this; and
- Measure 2 - the Assessor was unable to recommend accreditation of the PG Diploma due to lack of clarity on the award; Brunel had objected to this proposal on the basis that the PG Diploma is a recognition of an individual passing IPReg-accredited modules but not the full Masters and seeks to ensure this achievement is not wholly lost, and considers that its literature is very clear on this; CS and KH endorse Brunel's position on this.

11.2 The Board endorsed the Brunel Assessor Report, its findings and recommendations, except for Measures 1 and 2. The Board approved the standard five-year reaccreditation of the Postgraduate Certificate in Intellectual Property (Patent Pathway) and its Masters and Diploma variants. This accreditation is based upon a satisfactory implementation plan being provided by Brunel by close of business on 30 June, based upon the Assessor Report Recommendations; the accreditation will be for the standard five years, although if significant concerns are raised or other aggravating factors emerge, the accreditation may be subject to review prior to the end of the 5-year timeframe.

13.3 [REDACTED]

14. Any Other Business

14.1 VS reported that Nottingham Trent University had indicated possibility of a delay of the litigation module assessment because of the pandemic and on receipt of details this would be considered by the Education Group.

15. Regulatory Statement – for Part A and Part B: confirmation that, except where expressly stated, all matters are approved by the Patent Regulation Board and the Trade Mark Regulation Board.