

## The Patent Regulation Board and the Trade Mark Regulation Board

### Minutes

18 May 2023 at 1.00 pm

Orwell Room, 20 Little Britain, London EC1A 7DH and online

#### **Attending:**

Rt Hon Lord Smith of Finsbury (IPReg Chair)  
Justin Bukspan  
Alan Clamp – joining remotely  
Sam Funnell (Data Working Group Chair)  
Henrietta Rooney  
Victor Olowe (Review Working Group Chair)  
Samantha Peters (Governance Working Group Chair)  
Emma Reeve  
Caroline Seddon (Education Working Group Chair)

**In attendance:** Fran Gillon (CEO), Victoria Swan (Director of Policy), Shelley Edwards (Head of Registration), Gurdas Sually (Education and Diversity Officer), Ben Newman (Compliance and Authorisations Officer)

The meeting began at 2pm after a presentation and discussion with Julia Gwilt about the proposed changes to the European Qualifying Exams.

#### **Apologies**

- 1.1. No apologies were received.
2. Notification of any conflicts of interest
  - 2.1. No conflicts of interest were declared.

#### **Items for decision/discussion**

#### **3. Minutes of March 2023 meeting and matters arising**

- 3.1. The Board discussed whether smart criteria should be set for strategic objectives in future. The Chair agreed there needed to be further thought on this point.
- 3.2. The minutes were agreed as an accurate record, subject to a typographical change.

#### **4. IT Upgrade**

- 4.1. The CEO reported confidential legal advice that had been provided by William Sturges on this matter. A further update would be provided to the next Board meeting on the due diligence that was being conducted.

## **5. Review of Regulatory Arrangements – Implementation**

- 5.1. The CEO reported that registrants and IP Practice Directors had been notified that the new arrangements would come into force on 1 July. There had been some queries but no requests to delay. The Head of Registration and a team member would attend the IP Practice Directors' Group on 23 May to discuss the main changes and update on other IPReg work. This would highlight any challenges with implementation of the new arrangements. With CIPA and CITMA, IPReg had arranged a webinar for 8 June to discuss key changes. There would be further webinars in September and November on CPD and transparency.
- 5.2. Two organisations had expressed interest in the PII Sandbox. One was a firm that IPReg regulated. The other was an insurance provider or facilitator and a meeting had been arranged to discuss their approach.
- 5.3. The Review Working Group Chair asked for more information about the IP Practice Directors' Group and its relationship with CIPA and CITMA. The CEO explained that they represented a large proportion of the major firms and that CIPA and CITMA were often invited to the group's meetings.

## **6. Regulatory performance framework – new arrangements**

- 6.1. The CEO presented the paper on assurance mapping, which set out the progress so far on what we anticipated would need to be provided to the Legal Services Board (LSB) once the information request had been received; this was expected to be at the beginning of June. There had been a one-to-one meeting with the LSB the previous week and a workshop for regulators to discuss what the LSB was expecting from the mapping process. The best approach appeared to be to take the LSB's source book of standards and characteristics and to map what IPReg did against that together with any other relevant information that we considered relevant. Annex A to the paper set out the work in progress, for the Board's view before it was finalised. At the workshop, it had been suggested that boards have red, amber and green indicators for the characteristics of the standards, to identify gaps. This was an opportunity to align to performance indicators and KPIs, and the governance work.
- 6.2. The LSB had acknowledged that the arrangement was also new for them and everyone was working through how the framework would work in practice. The LSB would continue looking at the work on ongoing competence, on which they were pleased with IPReg's progress so far, and consumer empowerment.
- 6.3. The Board discussed:
  - 6.3.1. Some overlapping of reference documents between the three Standards and the importance of the IPReg Board being able to determine whether they had assurance on the Standards;

- 6.3.2. The timescale of the work. The CEO stated that the LSB would send the information request at the beginning of June, probably with a six-week turnaround. However, extensions could be given to allow the Boards time to consider a draft response;
- 6.3.3. The need to include our engagement with PAMIA and the work on professional indemnity insurance given the fact that failure to hold PII was a common theme in disciplinary cases;
- 6.3.4. The importance of keeping the response as high level as possible while providing examples of the work we had undertaken;
- 6.3.5. That if we did not have a particular document that the LSB referenced we should consider whether it would be appropriate to have one – but that it would not always be appropriate for an organisation of IPReg's size;
- 6.3.6. That it was important for the IPReg Board to determine the level of sophistication and provide rationale for what was included;
- 6.3.7. The importance of considering all the Characteristics to determine what work we had done and what evidence was needed. But the approach should be to start at higher level, providing more detail as necessary. There was an opportunity to utilise the same information multiple times;
- 6.3.8. That the Board should also consider whether it also had assurance from independent external parties such as auditors on any of the Standards/Characteristics. The Chair noted that an independent assessment of Board performance will be conducted in due course, which would be a further element of external assurance. The Board noted that for some areas it would be more difficult to obtain independent assurance than others but that this might be an area where other front line regulators could provide an element of challenge to IPReg;
- 6.3.9. That it might be appropriate to give an indication of budget for some of the areas to underpin the information provided to the LSB.

**Action:** Director of Policy to finalise response for the July Board

## **7. Performance Management Dataset**

- 7.1. The CEO explained that the dataset had been published since 2018/19 and had followed the previous LSB performance management framework. The framework had changed so that the LSB no longer required it, but IPReg intended to publish the figures for 2022, as it provided transparent performance data. It would be published in a more accessible version, for which a quote would be sought from Ocean. This was an opportunity to review what IPReg wanted to monitor going forward. Items that could be dropped but still included in

the annual report included some thematic reviews, consultations, external events, news items and staff turnover. The CEO thanked the Director of Policy and the Head of Registration for their help with the report.

7.2. The Director of Policy reported that a three-year comparison had been introduced to look at data trends. Significant improvements had been noted in the time to process an application of a firm to the register and the time taken to investigate complaints. There had been an increase in the median time to process attorney admission applications because of the time some individuals took to provide the information needed. Going forward, this would be recorded in a different way to capture the timeframe from the last piece of evidence being received. There had also been a decrease in the number of patent attorney admission applications from the previous year, but this had been due to EQE examinations not taking place in 2020 because of the pandemic, and so there had been an artificial increase in the 2021-22 figures.

7.3. The Board discussed:

7.3.1. The need to consider what data could be streamlined and generated automatically from the CRM. The data could also be presented as a dashboard of key metrics, highlighting the key headlines for publication.

7.3.2. That there had been significant achievements on performance reporting;

7.3.3. The need to develop information that was useful for the Board to see and information that was useful for the general public. It was likely that no more than 10 KPIs would be needed.

## **8. Queen Mary University London – assessment of accreditation implementation plan**

8.1. The Education Working Group (EWG) Chair thanked the Director of Policy for the work she had done for the EWG. She noted that IPReg's diligence and strong stance had made change happen. Queen Mary University London had also appointed a new permanent programme director, who had helped significantly to make progress.

8.2. The Director of Policy stated that the EWG did not have delegated authority from the IPReg Board, so it could only bring a recommendation to the Board based on its findings. She reminded the Board that it had considered the accreditation assessment in March 2022. At that point, because of Queen Mary University London's previous failure to take forward the accreditation assessment implementation plan in a timely manner, it had been decided that there would be an independent assessment after a year to determine whether they had successfully delivered the plan. The assessors had been pleased with the progress that had now been made. The Annex included the assessment of Queen Mary University London successfully delivering its implementation plan.

- 8.3. The EWG therefore recommended that Queen Mary University London be approved for the standard five-year accreditation status, until March 2027.
- 8.4. The Board discussed the lessons learned from this accreditation process. The EWG Chair confirmed that new policies had been introduced such as an annual reporting requirement for accredited agencies and a new policy on withdrawal of accreditation. The accreditation handbook had been revised in summer 2021 and a more formal review will take place. The EWG was also reviewing a first draft of a revised annual reporting pro forma. The Director of Policy noted that there was a balance between allowing some flexibility in the timescale for implementing plans and the potential for review by the independent assessors to ensure sufficient progress was being made in the anticipated timeframes.
- 8.5. The Board agreed the reaccreditation recommendation. The Chair thanked the Director of Policy for her work.

## **9. Patent Examination Board – accreditation implementation plan**

- 9.1. The EWG Chair noted that some of the issues with the PEB had been linked to governance. There had been some early discussions with CIPA who had set out a possible way forward.
- 9.2. The Director of Policy noted that the January Board meeting had reviewed the independent accreditation assessment of the final diploma examinations, which had raised 19 mandatory requirements to meet the accreditation standards and two recommendations for best practice. The PEB had provided an interim implementation plan and response, which the IPReg Board had found insufficient because of the nature of the requirements and recommendations. The Board had therefore asked the PEB for an implementation plan that would deliver the plan within two years. The Board had also decided that there would be a further independent assessment of the PEB's delivery of that plan after two years. IPReg reserves the right with all accredited providers to initiate the accreditation withdrawal procedure, which was intended to support an organisation meet the accreditation standards, but was also a backup mechanism in case of failure.
- 9.3. The Director of Policy explained that the EWG had met in April and discussed the implementation plan that the PEB had provided, which covered all the mandatory requirements and proposed to implement them all in the two-year timeframe. There were potential concerns regarding whether this was possible, given the lack of transparency of both the business and governance model. There would therefore be an early discussion with the PEB and regular oversight.
- 9.4. The Director of Policy explained that the PEB foundation exams had been subject to IPReg accreditation assessment in 2018. On the five-year cycle, they were due for reaccreditation assessment in 2023. The PEB had requested that this be deferred to 2024 to allow it to focus on the implementation plan for the final diploma exams. The EWG recommended this deferral to the Board.

## 9.5. The Board discussed:

- 9.5.1. That there were risks associated with further delay on the foundation examinations assessment given the Board had previously afforded the PEB deferral of the final examinations assessment, on the basis of the Mercer Review and Middlesex University research recommendations being taken forward by the PEB, much of which it had not implemented. The Board agreed that the response to the PEB would be clear on this point and the basis on which the deferral had been agreed (i.e. in order to make significant progress on the final examinations implementation plan);
- 9.5.2. Whether some of the accreditation report points were relevant to the PEB as it was solely an examination body and not a teaching body. The Board noted that the accreditation handbook was based on the fact that it could potentially be applicable to any delivery mechanism and organisations could change and also become teaching bodies. The Director of Policy reminded the Board that the accreditation assessment had identified areas relevant to the PEB as an examination body and how to remedy them;
- 9.5.3. That the accreditation handbook was scheduled for an independent review to ensure that it did not invite applications from only particular types of providers;
- 9.5.4. Whether teaching-only bodies should be reviewed. However, although we welcome applications from all type of provider none had been received yet. The EWG would need to consider in due course whether teaching only bodies also needed to be accredited;
- 9.5.5. That even after five years, the lists of mandatory requirements for the PEB (and Queen Mary University London) were very long. The Director of Policy explained that these examinations had not previously been subject to accreditation, the 2018 accreditation exercise had been for the QMUL foundation certificate examinations, whereas this assessment was for the final examinations. Given the number, and weight, of the mandatory requirements, both were/would be subject to independent assessment of delivery of these items. A Board member asked whether there would be a five-year cycle going forward or if there were areas that could potentially be deferred. The Director of Policy confirmed that IPReg should be able to commit to the five-year cycle, subject to other deferment requests but the schedule could be reviewed if necessary. The Director of Policy explained that IPReg reserved the right under the accreditation withdrawal procedure to have a shorter timeline than five years;
- 9.5.6. A Board member questioned whether it was appropriate to defer the PEB implementation review for two years, given the learning from Queen Mary University London and whether it would be more targeted to undertake within the next year. However, the Board recognised that two years had been agreed to allow the PEB time

to meet all the mandatory requirements and that IPReg would work closely with the PEB to support it. The Chair asked that the regular and rigorous monitoring be made clear to the PEB.

9.5.7.A Board member noted in the implementation plan repeated reference to management requirements being met by other requirements and co-dependence. He recommended framing the requirements to acknowledge potential duplication. He agreed that extending the foundation assessment to 2024 was reasonable, but requested confirmation that there had been a risk assessment of that decision. Finally, he recommended tightening the governance of the EWG to make its purpose clear and avoid criticism of its role. The Director of Policy confirmed that the EWG had agreed it would be appropriate for the Board and EWG to review of its Terms of Reference upon the new Chair of the EWG being in place later in 2023.

9.6. The Board agreed to endorse the PEB accreditation implementation plan.

9.7. The Board agreed to endorse the timeframe for formal review of the PEB's delivery of the final examinations implementation plan after the two-year period, in 2025, with regular and rigorous monitoring of progress.

## **10. Complaints Update**

10.1. The Head of Registration reported that there was one less complaint than there had been at the previous Board meeting. However, another case was expected, which would mean that there would be six open complaints. A Complaints Review Committee on a PII case had been set for 22 May. A respondent in a competence complaint was due to respond to observations and would be chased if nothing was received before the case was referred to the Complaint Review Committee.

10.2. The Head of Registration reported that papers had been filed in court for a bankruptcy petition for an attorney who had not paid costs awarded against him.

## **11. CEO's report**

11.1. The CEO explained that four waivers had been granted which allowed the joint examination board qualifications to be considered for admission to the registers. There were significant extenuating circumstances in each case and a common theme was issues with passing the PEB's FD4 exam. All four had been admitted to the register.

11.2. The CEO explained that a formal process had now been established with the SRA for when firms switched from it to IPReg.

11.3. The CEO explained that she had reviewed the LSB report on its investigation into disputes between CILEx Regulation and CILEx in order to see whether there were any lessons

learned for IPReg. The process that had been put in place for IPReg under the IGRs was working very well and the relationship between CIPA, CITMA and IPReg at working level and at Board level was very good. However, it would be appropriate to formally review the Delegation Agreement and the Information Sharing Protocol at the Regulatory Forum on 7 September to consider whether any improvements should be made.

**Action:** CEO to add Delegation Agreement and Information Sharing Protocol to 7 September Regulatory Forum

## 12. Governance Action Plan implementation

12.1. The CEO presented the update on implementation. The next action would be to begin work on reviewing IPReg's approach to risk oversight through the Risk Oversight Working Group. The governance handbook was nearly complete and its component parts had been included with the Board papers; there would be a later addition on Board member appraisals and effectiveness. The Chair stated that Board member appraisals would be set up in the autumn and there would be external assessment of the Board within the next year or so.

12.2. The Board discussed the draft governance handbook structure and agreed that it should:

12.2.1. note when each of the policies was last reviewed, when it would next be reviewed and the approver;

12.2.2. all working group terms of reference should be included;

12.2.3. include more detail about IPReg's role and structure;

12.2.4. include IPReg Limited Articles of Association which were on the Companies House website. It would also be appropriate to review these at the Regulatory Forum in September;

12.2.5. be presented in a digital-first format which would help people to navigate its contents.

**Action:** CEO to include these matters in the Governance Handbook and publish it

12.3. The Board discussed whether it would be appropriate for IPReg to establish a panel of legal and other advisers which would be in place for a set number of years. It recognised that setting up such a panel did take significant resources and that IPReg's expenditure on these areas was relatively low. The Board agreed that this matter would be left to the executive to decide.



### 13. Working group reports

#### *Education*

13.1. The Board discussed membership of the EWG in the context of its current Chair stepping down from the IPReg Board in September after two terms of office. The Board agreed that the new lay Board member (Katerina Kolya) should be asked to take over the role of Chair. The Board also agreed that Alan Clamp should join the EWG to ensure a lay majority (Chris Smith, Henrietta Rooney and Emma Reeve also being members).

13.2. The Director of Policy reported on work that had been undertaken on education at a meeting with representatives from CITMA and Nottingham Trent University (NTU):

13.2.1. The university was one of the only providers of the Higher Courts Litigation Certificate. It offered the course every other year because of limited numbers of attendees. The university had previously said that the ideal minimum to run the course is 12 individuals, however, it can be run with six. For the current academic year there had only been three individuals who registered to take the course, so the course was not able to run. However, all three individuals agreed to defer and take the course next year. It was agreed that both IPReg and CITMA would advertise the course through their respective channels in order to maximise the number of individuals taking the course next year. Nottingham Trent have committed to running the course next year, irrespective of the numbers.

13.2.2. There had been feedback at the meeting that the three-tier approach to litigation and advocacy was not fit for purpose. IPReg had been clear that there had been no consensus on this in the regulatory arrangements review. The new EWG chair and the Education and Diversity Officer would consider how this matter should be included in IPReg's wider work on education.

**Action:** Education and Diversity Officer to include litigation qualification in the wider work on education

13.3. The Director of Policy also reported that the April EWG meeting had considered a paper from the CEO about barriers to entry to the patent attorney profession which had previously been included in the March Board papers. The EWG had recommended that there should be further discussions with academics and qualification providers with a report back to the Board in due course about the level of interest.

**Action:** CEO to gauge the level of interest in undertaking work on barriers

13.4. The EWG had discussed the PEB accreditation implementation plan, the Queen Mary University London implementation plan assessment and the annual reporting pro forma would be strengthened to include more protected characteristics.

*Data Working Group*

- 13.5. The Data Working Group (DWG) Chair reported that the DWG had been trying to determine whether information could be extracted from publicly available data about whether those on the sanctions list were being represented by firms or individuals that IPReg regulated. This had been difficult given the volume of information that was available on the IPO records. She recommended proceeding with an external party to undertake the analysis.

**Action:** CEO to instruct an external party to undertake the analysis

**14. Action Log**

- 14.1. The action log was noted.

**15. Red Risks**

- 15.1. The CEO stated that the IT upgrade would be a red risk.
- 15.2. The Chair noted that the previous red risk was currently amber and moving to green.

**16. Finance Report**

- 16.1. The finance report was noted.

**17. Any other business**

- 17.1. The CEO confirmed that a social event for the CIPA and CITMA Councils would take place after the September Board meeting.

**18. Regulatory Statement**

- 18.1. The Chair confirmed that, except where expressly stated, all matters were approved by the Patent Regulation Board and the Trade Mark Regulation Board.

The meeting closed at 16.25.