

The Patent Regulation Board and the Trade Mark Regulation Board

Minutes

Thursday 23 May 2019 at 12 noon

The Seminar Room, Hardwicke Building, New Square, Lincoln's Inn, London WC2A 3SB

Attending:

Alicia Chantrey (from item 4)
Samantha Funnell
Keith Howick
Alan Kershaw
Emma Reeve
Nigel Robinson
Caroline Seddon
Nick Whitaker (acting Chair)

In attendance: Fran Gillon, Shelley Edwards, Victoria Swan, Rachel Greensides

1. Apologies

Apologies were received from Rt Hon Lord Smith of Finsbury (Chair), Steve Gregory and Jonathan Clegg.

2. Notification of any conflicts of interest

None.

3. Minutes of April 2019 meeting and matters arising

The Board agreed the minutes of the April 2019 meeting.

4. 2020 practising fee and budget consultation

4.1. AC joined the meeting.

4.2. FG presented a paper to the Board on the 2020 budget, practising fees and business plan consultation.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4.8. It was noted that the business plan included, for the first time, the key points of the Board Strategy Day held in March 2019.

4.9. The Board agreed that:

- it should consult on increasing the 2020 fees by RPI (2.3%);
- finalisation of the consultation document is delegated to the Chair and CEO; and
- CIPA and CITMA would be briefed at least 24 hours before publication of the consultation.

5. Action Log

5.1. The action log was noted. In addition, oral updates were made regarding:

- Compensation Fund Insurance Policy – [REDACTED]
- Price and Quality Transparency Guidance – it was noted that the guidance had been published on IPReg’s website on 23 May 2019.

- Reserves – [REDACTED]
- Charges for Higher Courts Certificates – £3,700 has been reimbursed to attorneys and £2,900 will be donated to IP Inclusive (out of a total of £6,600 over-charged).

6. Chair and CEO activities (not covered elsewhere)

FG reported that there had not been any Chair and CEO activities since the April 2019 Board meeting.

7. Progress on new CRM system

FG and SE reported that progress on the new CRM system was on track and updated the Board as follows:

- our consultant from Purple was reviewing “as-is” processes with the IPReg office;
- SE was progressing the data cleansing progress with fortnightly data take-on meetings with MillerTech;
- the test website is now up and running;
- IPReg is producing a common language key to review consistency with IPReg’s regulations as well as primary legislation; and
- we might have to change our payments system provider in order to ensure compliance with new requirements coming into force later in the year as our current provider may not be compliant on the CiviCRM platform.

8. Complaints Update

8.1. SE presented the complaints update paper, advising that there had been two new complaints since the April 2019 Board meeting, resulting in ten open cases.

8.2. The Board noted the paper.

8.3. CS noted that the number of complaints had increased and queried whether there was a trend and if any action was required, for example intervention or the issuing of guidance. SE explained that there had been a change in the way IPReg was recording issues and complaints and that we could not rely on historic complaints data to make a direct comparison. It was noted that the current system of complaints recording was implemented in 2018. The Board noted that IPReg received 14 complaints in 2018 and in 2019 to date we have received seven.

9. LSB Performance Management Dataset 2018-19

- 9.1. VS presented a paper to the Board setting out IPReg's proposed Performance Management Dataset for submission to the LSB as part of the LSB's regulatory performance assessment process.
- 9.2. VS explained that the dataset covers 13 months (1 March 2018 - 31 March 2019) in order to move to the timeframe used by the other regulators, but the next dataset will revert to a 12-month period. It was noted that this made a direct comparison against the 2017-2018 dataset more difficult.
- 9.3. The Board noted the following:
- there has been an increase in patent attorney admissions, from 93 in 2017-2018 to 176 in 2018-2019;
 - there has been a significant decrease in the longest time taken to determine an individual's application to the register; and
 - there has been an increase in open complaint cases (the Board noted that the updating of IPReg's Complaints Handling and Enforcement Policy in May 2018, clarifying the criteria for opening cases, together with increasingly complex cases has meant there are more than twice the number of open cases at March 2019 as there were in the previous reporting period).
- 9.4. The Board discussed that in one case there was a period of 656 days taken from receipt of the initial complaint to the Committee/case Examiner decision stage. The Board noted that the "unique complexities" of this case referred to in the dataset commentary included convening two Complaints Review Committees. SE explained that the proportion of the delay caused by the complainant was significantly longer than any delay caused by IPReg. The Board agreed that this should be reflected in the notes accompanying the dataset.
- 9.5. The Board agreed that, subject to the above clarificatory amendment to be made by SE, the Performance Management Dataset was approved for submission to the LSB.

Action: SE to make clarificatory amendment to the Performance Management Dataset.

Action: VS to submit finalised Performance Management Dataset to LSB.

10. Regulatory Performance Assessment - publication policy

- 10.1. FG presented a paper to the Board on IPReg's progress on the three outcomes that the LSB had assessed as "not met – action being taken" in the LSB's regulatory performance assessment of IPReg:
- displaying disciplinary information on IPReg's new CRM; and

- transparency – to (i) review our publication policy and (ii) review transparency of our performance information by May 2019; and
- Board effectiveness – to introduce of a formal Board review and appraisal process by May 2019.

10.2. FG proposed that for transparency on performance, IPReg would publish the Performance Management Dataset set by the LSB; this can be revisited in due course once the new CRM is in place.

10.3. The Board discussed the proposed approach to publication of Board papers and minutes, including timescales. It was noted that this approach would include the division of a published agenda into confidential and non-confidential sections, publishing non-confidential minutes and papers (reserving the right to redact where appropriate) and not publishing confidential minutes and papers. The Board noted that this proposed approach would improve transparency whilst ensuring that the background information provided in board papers was sufficient. The Board confirmed that it did not wish to open its meetings to the public or to CIPA and CITMA.

10.4. The Board agreed that a proportionate response to the LSB's assessment would be to:

- Adopt the approach to publication of Board papers and minutes set out with the paper over the course of the next few months; and
- Advise the LSB of:
 - IPReg's continuing commitment to publish disciplinary information on the new CRM;
 - IPReg's intended approach to Board paper publication (with the caveat that we will keep the timescale and any practical implementation issues under review and may need to revise the process if it is too onerous);
 - IPReg's intention to publish the Performance Management Dataset that the LSB requires us to produce and our continuing commitment to publish other performance information in our annual reports; and
 - implementation of the Board's annual appraisal process.

Action: FG to inform the LSB of the Board's decision.

11. Response to LSB supplementary consultation on IGRs

11.1. FG presented a paper to the Board summarising the LSB's proposals in the supplementary consultation and setting out the principles for the response that IPReg will submit by the deadline of 12 June.

11.2. FG noted that the LSB had proposed replacing the term "influence" to "prejudice" in Rule 1 (The Overarching Duty) and this was welcomed by IPReg as it more closely reflects the

drafting of the Legal Services Act 2007 and recognises that there may be instances in which it can be legitimate for Approved Regulators to seek to influence certain decisions made by a regulatory body.

11.3. FG further noted that the other proposed amendments were unproblematic except those involving board appointments where the proposed changes appeared to reintroduce a role for ARs.

11.4. The Board noted and agreed the proposed approach to IPReg's response as set out in the paper.

11.5. The Board agreed to delegate the finalising of IPReg's response to the consultation to the Chair and CEO.

Action: CEO/Chair to finalise IPReg's response to the consultation and submit the response to the LSB by 12 June.

12. Education providers – ongoing monitoring

12.1. VS updated the Board on IPReg's ongoing monitoring of the education providers as follows:

- IPReg expects to receive a response from Queen Mary University of London (QM) about our quality concerns by 31 May 2019.
- IPReg had received a query from QM about what was meant by "focus groups". This was concerning given that the 2017 QM reaccreditation implementation plan had committed to creation of these groups.
- QM had recently requested IPReg's agreement to move from full second marking to sample moderation marking. IPReg's Education Sub-Group had considered this request against the background of, amongst other things, reported issues with the recent QM Copyright and Designs examination where the exam paper contained contradictory information about how many questions to answer. The Education Sub-Group considered that the level of concern about QM's performance meant that it would not be appropriate for QM to move to sample moderation marking at this time. The Board agreed and noted the decision. The Education Sub-Group had also queried QM's statement that it was standard practice to telephone lecturers in the middle of examinations to clarify aspects of exam papers and it awaited QM's reply.
- IPReg expects receipt of Nottingham Trent University's reaccreditation implementation plan by 31 May 2019.
- In benchmarking the marking processes to inform the QM sample moderation request, the Patent Examination Board had been reminded of the reaccreditation recommendation that it should consider appointing an external examiner.
- IPReg has no current concerns about Bournemouth University and Brunel University London.

12.2. The Board noted the updates.

12.3. SE reported that she met Lee Davis and Vicki Salmon, Chair of the CIPA Examination Committee, to discuss the concerns regarding the 2018 FD4 examination. They assured SE that the CIPA Examination Committee had set up a review team, to be chaired by Chris Mercer, to deal with this issue and they had invited an IPReg Board member to be part of that team. It was agreed that IPReg's Education Sub-Group would consider whether such representation would be appropriate.

13. Appeal against suspension – request for oral hearing

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Action: [REDACTED]

14. Any Other Business

None.

15. Regulatory Statement

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