

The Patent Regulation Board and the Trade Mark Regulation Board**Minutes****Thursday 19th March 2020 at 12 noon**

(Meeting held remotely)

Attending:

Rt Hon Lord Smith of Finsbury (Chair)
Alicia Chantrey
Samantha Funnell
Steve Gregory
Keith Howick
Emma Reeve
Nigel Robinson
Caroline Seddon (from item 7)
Nick Whitaker

In attendance: Fran Gillon, Shelley Edwards, Mark Barnett (from item 12), Rachel Greensides

- 1. Apologies** – Alan Kershaw
- 2. Notification of any conflicts of interest** – No conflicts of interest were declared although a potential conflict is noted at item 4.

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

The Board agreed the minutes of the 23 January 2020 meeting as a correct record. No matters arising.

4. Action Log

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

LSB CEO Meeting – The invitation to Matthew Hill to attend a Board meeting had been put on hold due to COVID-19.

Responses to IPReg consultations on pro-bono and run-off cover – The LSB agreed the changes to IPReg's regulatory arrangements regarding run-off cover on 2 March 2020. The pro-bono application remains outstanding and FG is to meet with the IP Federation to understand more fully their concerns about the availability of appropriate PII.

Regulatory arrangements review – Four law firms had been invited to tender to provide legal support. Three had been shortlisted [REDACTED]

A contract for the recruitment of IPReg’s new policy officer was in place with Andrew Sinclair-Smith of Quadrant Selection, although this had been put on hold due to COVID-19.

Mercer Review – IPReg responded to the call for evidence on 12 February 2020.

Response to LSB Business Plan Consultation – The Chair had raised the LSB’s proposed timing of the IGR consultation at the Regulators’ Chairs meeting. The LSB had stated that the review would be “short and light” and would be focused on how the LSB will monitor the Approved Regulators.

Recruit broader pool of potential qualification accreditation assessors – Two potential new assessors have been identified.

5. Update on 2020 renewal process and suspensions from the Registers

5.1. SE reported that as at 1 March 2020:

- 79 attorneys and two firms had been suspended for non-payment of 2020 practising fees.
- Of the 79 attorneys, 38 are on the Register of Patent Attorneys, 35 are on the Register of Trade Mark Attorneys and 6 are on both registers.
- Of the two firms, one is on the Register of Patent Attorneys and one is on the Register of Trade Mark Attorneys.
- In 2019, 25 attorneys had been suspended for non-payment of practising fees, with 50 suspended overall for non-payment and failure to make a compliant CPD declaration. The proportion of suspended attorneys on each register was roughly the same in 2020 as it was in 2019.

5.2. From 1 March 2020, attorneys can pay a penalty fee to have their suspension lifted. As at 19 March 2020, 54 attorneys remain suspended. On 1 June 2020, any remaining suspended attorneys will be removed from the register(s). The Board noted that in 2019 10 attorneys were removed from the registers following non-payment of practising.

- 5.3. It was noted that all other attorneys/firms had paid their 2020 practising fees unless they were due to be removed from the register(s) following an application for voluntary removal application (for individuals) or an application for revocation under the Registered Bodies Regulations (for firms).
- 5.4. The Board discussed IPReg's approach to payment due to the circumstances surrounding COVID-19. It was noted that any mitigating factors would be considered on a case-by-case basis. The Board agreed that if attorneys had suffered genuine hardship as a result of COVID-19, IPReg would take this into account.
- 5.5. The Board noted that an email had been sent to all registrants and entity administrators to log in to their IPReg Pro accounts. Reminders to pay practising fees were sent in December, with a final warning to non-payers sent on 20 February 2020. It was noted that individuals who had moved firms and not updated their contact details would have missed these reminders. In previous years IPReg had used methods to track down individuals where we were aware that we did not hold up-to-date contact information by using sources such as LinkedIn to establish contact. The Board agreed that it was the duty of the attorney/firm to ensure that their IPReg Pro account was up to date and that it was not a good use of IPReg's resources to carry out such checks.

6. Other activities (not covered elsewhere):

6.1. Canadian College of Patent and Trade Mark Agents: 8 January

FG reported that on 8 January 2020 she had attended a videoconference with the Canadian College of Patent and Trade Mark Agents following an initial meeting with them last summer.

6.2. IP Practice Directors Group: 15 January

FG reported that on 15 January 2020 she attended a meeting with a group of practice directors from some of the larger attorney firms many of whom were administrators of their firm's IPReg Pro accounts. The meeting discussed the capabilities of IPReg's new CRM [REDACTED] FG had flagged the review of the regulatory arrangements and IPReg's openness to discussions with firms on a collective or one-to-one basis, in particular to understand their views about how regulation works in practice and to identify opportunities for de-regulation.

6.3. PAMIA: 16 January

FG attended a meeting with Redvers Cunningham of PAMIA (RC) on 16 January 2020. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]



6.4. 3 x CEOs meetings 29 January, 26 February and 18 March

FG reported that the main focus of these three meetings between the CEOs had been the new Delegation Agreements (see item 8).

6.5. Regulatory Forum: 5 March

The Chair reported that the meeting had primarily discussed the new Delegation Agreement. The Chair had also provided an update regarding suspensions from the registers as a result of non-payment of practising fees and/or non-complaint CPD. CITMA continue to be concerned over the Queen Mary course issues (see item 7). The meeting had also covered Brexit and it was noted that the representative bodies remain concerned about the equality of rights of representations for UK attorneys in Europe. IPReg's role in relation to Brexit was discussed and it was noted that it was appropriate for representative bodies to take the lead on the issue.

6.6. LSB: 27 January, 12 February, 19 February

6.6.1. The 27 January meeting comprised the Chairs of regulatory bodies; CEOs were not present at the meeting but it had been agreed that in future it would be helpful for CEOs to attend and that there could be a session at the end of the meeting for Chairs only if required. The meeting covered a range of issues including the LSB's report on the state of legal services that is to be carried out in the Autumn prior to the strategic review of its role. The Chair said that he had pressed the LSB to consider issues surrounding CPD and career breaks and balancing consumer protection and diversity issues.

6.6.2. Following her meetings with the LSB on 12 February and 19 February, FG reported that the LSB wants increased transparency about how practising fees are spent. In particular where an element of the fee is retained by the approved regulator for expenditure on "permitted purposes". FG reported that IPReg is in a good position as we collect our own practising fees and CIPA and CITMA, as representative bodies, collect their own fees. It was noted that it would be difficult for IPReg to provide a detailed breakdown of expenditure given its size and we already provided a considerable amount of information in our budget and annual report. Whilst it might be possible to provide some high-level details on, for example, staff time spent dealing with complaints or registrations, a forensic breakdown would be very time-consuming and difficult to produce because most of the team worked across a range of activities.

7. Report from Education Group

7.1. CS presented the Education Group Update paper including:

- an overview of the activities and outputs of the Education Group since those reported to the October 2019 Board meeting;
 - related sectoral developments; and
 - the proposed work programme plan of the Education Group.
- 7.2. CS reported that broad work plan was on track and IPReg had the resource required to undertake the current work. The Board noted that the work plan showed good progress and a positive direction of travel.
- 7.3. CS provided an update on the quality concerns relating to the Queen Mary University London (QMUL) Trade Mark course. QMUL had been given the opportunity to respond to the latest iteration of disappointing student feedback obtained by CITMA. The response from [REDACTED] had been positive although the Board noted it was disappointing that [REDACTED], the external assessor, had only been asked to review course content and not the overall student experience. The Board agreed that if student experience did not improve, re-accreditation was likely to be problematic. The Chair reported that the Education Group would try to have a Zoom introduction meeting with the external assessor in the coming weeks to discuss his review.
- 7.4. CS reported that Brunel University had proposed accreditation of an undergraduate interdisciplinary double major degree, initially with biological life sciences and, in the future, with other subjects in engineering. The Board noted that this was a positive and exciting development and IPReg is keen to support Brunel whilst ensuring that the course structure complies with the accreditation framework. The Board discussed the need for Brunel to have dialogue with the EPO to ensure that the double major degree will be classified as a STEM degree for the EPO's purposes.

Action: Education Group to flag to Brunel the classification of the double major degree by the EPO as a potential issue and to ask Brunel to liaise directly with the EPO on this point.

- 7.5. The Board agreed the suggested direction of travel recommended by the Education Group, including the:
- broad education work programme plan;
 - approach to the Brunel University proposal for IPReg accreditation of an undergraduate degree in combined intellectual property law and science, noting the need for Brunel to investigate the issue surrounding the classification of the degree by the EPO as a STEM degree;
 - regulatory arrangements review to include a review of the current exemptions with an explicit proposal to introduce a sunset clause for the Joint Examination Board "transitional arrangements" (so as not to continue to provide exemption for historic examinations) and ongoing competence including CPD; and
 - external reaccreditation assessment of CPD Training's courses.

7.6. The Board noted the remainder of the paper.

7.7. The Board discussed the issues surrounding examinations in the context of COVID-19. Nottingham Trent University and QMUL had both approached IPReg with their proposals, with Nottingham initially suggesting postponement and QMUL proposing a remote online examination. The Board decided that IPReg would contact all the accredited universities (Bournemouth, Brunel, Nottingham and QMUL) which have pending examinations. It agreed that proposed approaches would be reviewed against the relevant requirements of the [IPReg Accreditation Handbook](#), in particular *“Required Features – Assessment and Appeals Procedures”* and item 9 of the Core Subjects and Learning Outcomes regarding the *“9. Assessment of each subject shall be by written examination or by other methodology, which is:- (a) appropriate to the required level and scope of the Foundation Level Qualification and b) approved by IPReg through its accreditation process”*.

Action: Education Group to review the reconfigurations of pending examinations proposed by accredited universities in light of COVID-19

7.8. The Board agreed that it should be stressed to the universities that students should be given clarity on this issue as rapidly as possible.

8. IGRs – progress on new Delegation Agreement

8.1. The Board noted the summary of progress in the Board paper.

8.2. The Board agreed that it would be appropriate for the Delegation Agreements with CIPA and CITMA to be separate documents. CIPA had provided some minor drafting points but was broadly content to delegate its regulatory functions to IPReg with no requirement to establish a patent regulation board. CITMA did not want to follow that approach and was taking legal advice on its preferred approach. CIPA and CITMA were discussing with the LSB the timescale for submitting their applications for approval for the Delegation Agreements.

8.3. The Board expressed the need to ensure that the Delegation Agreements were clear that IPReg did not have to include CIPA or CITMA in the recruitment of Board members in future.

8.4. The Board restated its preference for delegation to IPReg by both CIPA and CITMA and that IPReg would then decide what was the most appropriate way to ensure that it complied with the requirements of the Legal Services Act in carrying out those regulatory functions.

8.5. The Board then discussed the separate Information Sharing Protocol (“Protocol”) that been agreed in principle and made one suggestion to improve the clarity of the provision of information about IPReg’s audit.

Action: FG to communicate clarificatory amendment on the Information Sharing Protocol.

Action: FG to check with IPReg’s legal advisors that the IGRs mean that IPReg does not have to include CIPA or CITMA in the recruitment of Board members in future and, if so, that the drafting of the Delegation Agreements reflects this.

9. Review of 2019 regulatory enquiries

The Board noted the contents of the paper. In addition, the following oral updates were provided:

- FG reported that the new CRM was functioning well although there were some outstanding issues that IPReg is working on with the developers, Miller Tech, to resolve. A meeting with [REDACTED] from Equantiis (previously Purple Consultancy) has been scheduled to discuss outstanding issues.
- SE reported that there had generally been fewer enquiries since the implementation of the CRM system although the reason for this was not clear. SE noted that VS’s workload had been eased by the new online enquiry system as IPReg staff could assign enquiries to anyone rather than VS undertaking this task.

10. Review of (a) CRC remuneration and process and (b) IPReg Board remuneration and travel and subsistence policy

10.1. CRC remuneration and process

The Board noted that hard copies of papers for Complaints Review Committees (CRCs) were no longer required and CRC members would be provided with secure links to documents. The Board discussed the appropriate preparation time for CRC members. It was agreed that one half day’s preparation time per case for each CRC member was appropriate but, if a case was particularly complex, the relevant CRC members could increase the allocated preparation time if they agreed that half a day was not sufficient. It was noted that preparation time was separate to hearing time and that a day rate would be paid for attending the hearing. The Board noted that the last CRC training was in 2018 and that refresher training was appropriate.

10.2. IPReg Board remuneration and travel and subsistence policy

The Board discussed the revised IPReg Board remuneration and travel and subsistence policy including whether Board remuneration should be increased. It was noted that Board members’ contracts state that their remuneration is fixed for the term of their contract unless the Board agrees otherwise. The Board’s custom and practice is to increase the remuneration rates by RPI with effect from 1 January each year. The Board noted that the IPReg staff contracts contain a discretionary increase of RPI per annum. The Board discussed how, for example, Education Group work should be charged. The Board agreed that the appropriate unit to charge time is one hour, rounded to the nearest hour. The Board noted the policy not to pay for travel time but to reimburse for the cost of travel. The Board discussed the requirement to publish high level details of Board members’ remuneration and travel and subsistence payments. The Board agreed to follow best commercial practice i.e. a

breakdown of individual travel was not required, only the number of Board meetings and number of other events attended together with travel expenses.

10.3. The Board agreed:

- The CRC will no longer be provided with hard copies of papers. Secure links to the papers will be provided instead;
- Paid reading time for CRC members will be capped at 0.5 days (i.e. 3.5 hours) per case being considered (with the added provision that in the event that a case was particularly complex, the relevant CRC members could review the allocated preparation time if it was concluded that half day was not sufficient);
- All Board members will attend CRC-refresher training;
- The revised remuneration rates at Annex A of the Board paper, noting the appropriate unit to charge time is one hour, rounded to the nearest hour;
- The revised travel and subsistence policy at Annex B of the Board paper;
- In principle, to publish high-level details about Board members' remuneration and travel and subsistence payments.

11. Update on review of regulatory arrangements

FG provided an oral update on the review of regulatory arrangements. FG suggested that, as a first step, IPReg should publish a call for evidence, rather than a very detailed consultation document. The Board agreed that a wide-ranging call for evidence rather than the publication of a detailed consultation document was the best course of action at this stage.

PART B –CONFIDENTIAL ITEMS

12. Complaints update

12.1. MB joined the meeting.

12.2. SE presented the complaints paper, which the Board noted. SE reported that 4 cases had closed since the last complaints update was presented, showing the rapid progress that had been made by MB since the closure of the most time-consuming case [REDACTED]. It was noted this progress should continue to improve with the appointment of IPReg's new Policy Officer. It was noted that SE and MB would produce action plans to move cases forward. The Board noted that, due to COVID-19, CRCs may have to be held remotely to keep momentum with cases.

Action: SE/MB to produce action plans for complaints cases.

12.3. The Board discussed the recent costs order made by the Joint Disciplinary Panel (JDP) in relation to case [REDACTED] resulting in a £26,000 liability to IPReg by each defendant. The Board agreed that, once the appeal period had lapsed, IPReg should pursue the debt owed as soon as possible and seek advice on how best to do so from an external adviser.

Action: MB to seek advice from an external adviser.

- 12.4. SE reported that there had been a cluster of cases relating to lapsed professional indemnity insurance. It was noted that two sole traders had been unable to obtain insurance through PAMIA due to non-payment of premia had been unable to obtain PII with other participating insurers. SE reported that this was an issue that was particularly affecting sole traders if they allowed their PAMIA insurance to lapse. The Board agreed that it was not appropriate to relax insurance arrangements as these were an important part of consumer protection and that it expected all those it regulated to comply with the requirement to have professional indemnity insurance from a participating insurer in place.
- 12.5. The Board noted that the PAMIA insurance renewal date is 1 June each year and that reminders to renew policies are sent out in February. [REDACTED]
[REDACTED] It was noted that IPReg gathers insurance information in December as part of the annual renewal process. The Board discussed sending out a targeted communication about insurance and noted that this could be sent through the CRM. The Board agreed to send a reminder about insurance in the run up to the June PAMIA renewal date after liaising with PAMIA about its 2020 renewal process. The reminder would highlight the potential difficulty in obtaining insurance with another participating insurer if a policy lapsed as well as the impact of not having insurance i.e. disciplinary action that may ultimately result in removal from the register and/or personal liability in the event of a claim.
- 12.6. The Board agreed that IPReg should speak to PAMIA regarding the impact of COVID-19 on the profession.

Action: FG to discuss the impact of COVID-19 on the profession with PAMIA.

Action: IPReg to liaise with PAMIA on timing of communications about insurance renewal

13. AOB

[REDACTED]
[REDACTED]

14. **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.