

The Patent Regulation Board and the Trade Mark Regulation Board

Minutes

Thursday 31 May 2018 at 12 noon

Room 106, 16 High Holborn, WC1V 6BX (Orega)

Attending:

Steve Gregory (Chair)
Jonathan Clegg
Samantha Funnell
Keith Howick
Alan Kershaw
Emma Reeve
Nigel Robinson
Caroline Seddon
Nick Whitaker

In attendance: Fran Gillon, Victoria Swan, Rachel Greensides

1. Apologies

Alicia Chantrey

2. Notification of any conflicts of interest

None

3. Minutes of April 2018 meeting

The Board agreed the minutes of the April 2018 meeting.

4. Action Log

4.1. The action log was agreed.

[REDACTED]

5. Chair and CEO activities (not covered elsewhere):

5.1. Discussions with CIPA/CITMA (SG)

Covered at item 5.3.

5.2. Chair recruitment (FG)

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

5.3. 3x CEO meeting 4 May (FG)

[REDACTED]

5.3.2.FG reported to the Board that the following items were discussed at the CEO's meeting of 4 May:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- Delegation Agreement – this is to be progressed by the CEOs. The AR Forum will be updated on 12 June. FG confirmed she had circulated the heads of terms for the Delegation Agreement.
- Chair recruitment process – FG updated CIPA and CITMA on the recruitment process as set out above.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- GDPR – FG provided an update on GDPR and her work to bring IPReg in compliance with the regulations.

[REDACTED]

[REDACTED]

5.4. IP Practice Directors 15 May (FG)

5.4.1.FG reported to the Board that on 15 May she had attended the meeting of the IP Practice Directors, consisting of senior staff from large IP firms employing c. 50% of registered attorneys.

5.4.2.The group confirmed to FG that they were happy to be a sounding board for issues affecting the IP profession. The Board noted that this feedback would be from one perspective of the profession but it was nevertheless useful, because it could be balanced with views from The IP Federation for in-house attorneys and the two informal Patent Managers' groups. The Board highlighted that IPReg should also approach regulated small IP firms and sole traders for feedback.

Action: SF to introduce FG to the Patent Managers' groups.

5.5. GDPR compliance (FG) [IPReg Limited]

5.5.1.FG reported that the privacy and data protection policies had been finalised and the privacy policy was now on IPReg's website and has been emailed to all registrants. It was also noted that anyone emailed in to the info box would receive an auto-response with a link to IPReg's privacy policy and IPReg's application forms for admission to the register for both individuals and firms had been updated to include a reference to IPReg's privacy policy.

5.5.2.FG reported that the IPReg office had carried out a review of the personal data held by IPReg and the legal basis upon which that data is held. It was noted that a retention policy was now in place. When compliance involves third parties, e.g. IT providers, payroll, they have been contacted.

5.5.3.FG had carried out a step-by-step analysis of where the GDPR requirements applied to IPReg and this was documented as at May 2018. The GDPR policies are saved on the

shared drive and are accessible by all IPReg staff. A subject access request procedure has been put in place as have internal processes regarding the updating of IPReg Pro accounts.

[Redacted]

6. Complaints update (RG/SE)

6.1. RG presented the complaints update paper to the Board. RG explained that, as SE was on annual leave, she would log any detailed queries as action points and refer to SE.

6.2. RG reported that one complaint had closed in the last month and there were currently three open complaints as follows:

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

- 6.6. The Board agreed that it was appropriate for closed complaints (or those being dealt with by another regulator) to be taken off the complaints update paper and if they were re-opened they would go back onto the paper.
- 6.7. The Board asked for clarification of what was included in the costs estimates set out within the complaints update paper and noted that it would be useful to have an idea of office time spent, Board costs and external costs. RG confirmed that she would raise this with SE.

[REDACTED]

[REDACTED]

[REDACTED]

Action: SE to provide breakdown of costs, clarifying external costs and additional Board and office costs, if appropriate.

- 6.8. The Board provided feedback on the recent CRC and JDP training. The feedback was positive although it was noted that a practical focus, e.g. workshop style training, would add value. The Board also noted that the presence of [REDACTED] as a legal adviser at the recent CRC was very helpful.

7. Bournemouth reaccreditation (VS)

- 7.1. VS presented a paper to the Board regarding the reaccreditation of the Bournemouth University Post Graduate Certificate in Intellectual Property. VS explained that the reaccreditation exercise had been deferred pending the IPReg review of its Accreditation Standards and development of a Core Syllabus for the Foundation Level Qualification, as provided in the IPReg Accreditation Handbook. VS noted that a five-year validation period is applied to accredited pathways (unless otherwise stipulated by the IPReg Board).
- 7.2. VS further reported that independent consultants, Jane Chapman (legal education specialist) and Linda Harland (practitioner input), had produced a Bournemouth University Assessor Report that had been circulated to the Board. The Assessor Report recommends the reaccreditation of Bournemouth University's Foundation Level Qualification provision, subject to a number of recommendations being considered and commitment made to action an action plan (to be reviewed by the independent assessors), including a review of the structure of the course and the assessment strategy.
- 7.3. The Board discussed how IPReg would deal with the reaccreditation if the actions set out within the plan are not implemented. VS noted that the recommendations within the Assessor Report were fundamental to be actioned ahead of the 2019 cohort. The Board also discussed how the reaccreditation would be presented to students. The course is currently shown as accredited and this would not change with a reaccreditation. It was noted that it was in Bournemouth's interest to deliver on the action plan and they are in agreement with the recommendations set out within the Assessor Report, raising no objections or concerns.

The action plan will be managed accordingly. If issues persist IPReg would intervene to ensure that the agreed action plan is adhered to.



7.5. The Board agreed:

- the reaccreditation of the Bournemouth University Post Graduate Certificate in Intellectual Property subject to satisfactory completion of the action plan by January 2019;
- to endorse the Bournemouth University Assessor Report and its findings;
- to endorse the proposal to agree to a timescale with Bournemouth University for their implementation of the action plan; upon Bournemouth informing IPReg that everything is complete, they be required to provide IPReg with a report itemising each point on the plan and what they have done; and we provide the assessors Jane Chapman and Linda Harland with one-day maximum for them to review that report; and
- that the item would come back to Board in November / December 2018. The Board noted that Bournemouth University would need to have made substantial progress by this point.

8. Reserves policy (FG/KD) [IPReg Limited]

- 8.1. The Board noted an income report as at 30 May 2018 showing an income of £804,350 against a budgeted figure (y/e 31 December 2018) of £771,800. It was noted that there had been no fee increase in 2018 but there had been an increase in the number of registrants. FG noted that, as the 2018 registration renewal process has started earlier (in November 2017 rather than January 2018), IPReg had received the majority of 2018 practising fees by the end of February / mid-March and there was little further income expected (c.£20-30k) as at that date. It was also noted that IPReg's new powers of suspension for individual registrants had assisted with fee collection.
- 8.2. FG presented a draft Reserves Policy to the Board setting out the principles against which future levels of reserves would be determined. It was noted that the final decision on the specific allocation of reserves in 2019 would be made at the July Board meeting, which will also consider the level of the 2019 practising fee and business plan.
- 8.3. FG explained that changes would probably have to be made to the allocation of reserves given the work required to the Registers' database (as set out in item 9 below) to bring the Registers up to the requisite functionality, together with potential accommodation costs if IPReg has to move offices when the current lease expires in February 2020 and GDPR compliance costs.

8.4. The Board discussed the General Contingency Reserve (GCR) noting that it had previously been allocated to costs in the event of IPReg ceasing to trade. FG recommended that the Board keep the GCR but that it was to be used instead to finance IPReg in the event that IPReg was unable to collect practising fees due, for example, to an IT system failure that lasted up to three months. On this basis, the GCR would be reduced to at least 3 months' running costs.

8.5. The Board recognised the need for a substantial reserve level to ensure that at all times it has the financial capability to fully meet its regulatory, including disciplinary, responsibilities.

8.6. The Board:

- agreed to adopt the Reserves Policy;
- noted the issues concerning the functionality of the Register database (which are considered in more detail in Board paper 9); and
- agreed that the GCR be reduced to at least 3 months' running costs, for example to finance IPReg in the event that it was unable to collect practising fees due, for example, to an IT system failure.

9. 2018 Re-registration and PCF – lessons learned (FG/SE)

9.1. FG presented a paper setting out the main issues and problems that have been identified as a result of IPReg's review of the annual re-registration process and the implications that it raises for IPReg's work programme and budget going forward. A large number of issues had been identified including:

- IPReg's IT system was not fit for purpose – [REDACTED]
[REDACTED] IPReg's independent IT adviser, has recommended that the best course of action is to find another company to either support and develop the existing code or to develop a new system.
- The annual re-registration and fee collection process is labour and cost intensive (IPReg currently employs a temp for the first three months of the year to carry out the invoicing process).
- The categorisation of individual attorneys does not reflect the ways in which attorneys actually work.
- Sole practitioners providing legal services through a company do not currently have to register that company with IPReg (or another approved regulator) unless they are providing reserved legal activities through that company – this is a potential source of confusion and detriment to consumers.

- It is difficult for overseas attorneys to comply with certain aspects of the Rules of Conduct (e.g. the requirement to have PII with a participating insurer) and a “lite” version of the Rules of Conduct could be considered for these overseas attorneys.
- Non-practising attorneys – many attorneys categorised as “not in active practice” have remained in that category for a number of years and we are considering whether to apply a time limit to this category (e.g. to cover instances such as maternity leave, sabbaticals, extended sick leave) and not to allow retired attorneys to remain on the Register(s).

9.2. The Board was asked to provide a steer on the approach outlined in the paper on further improvements to the fee collection process and possible changes to the database.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

9.8. The Board agreed:

[Redacted]



10. IPReg Staff Handbook [IPReg Limited] (NB – an additional, confidential paper was circulated separately)

- 10.1. FG presented the draft IPReg Staff Handbook to the Board. FG reported that the Handbook had been well received. All staff had been consulted on the contents of the Handbook and, where appropriate, those comments had been incorporated. FG further reported that the Handbook did not form part of the staff contracts and could therefore be amended at any time.
- 10.2. The Board raised whether an appraisal system would be put into place for IPReg staff. FG noted that whilst Personal Development Plans were in the process of being introduced whereby training needs and opportunities could be identified, it was not currently anticipated that a formal appraisal system be implemented. The Board noted that any staff performance issues would be dealt with by way of the Disciplinary and Capability Procedure set out within the Handbook.
- 10.3. It was noted that a confidential paper had been circulated to the Board regarding the employment rights of individual staff members e.g. holiday entitlement, working hours etc.
- 10.4. The Board agreed:
- the Handbook comes into effect as of this meeting;
 - to delegate to the CEO the ability to make changes to the Handbook other than on matters concerning staff terms and conditions or health and safety policy (which are reserved to the Board); and
 - the contents of the confidential paper concerning the employment rights of individual staff members.

11. AOB



12. Regulatory Statement

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