

The Patent Regulation Board and the Trade Mark Regulation Board**Minutes****Thursday 5th November 2020 at 12 noon****Attending:**

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

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

- 1. Apologies** - apologies were received from Emma Reeve.
- 2. Notification of any conflicts of interest** – none. Standing item to note that KH is Chair of Trade Marks Committee for CIPA.

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

3.1 The Board agreed the minutes of the September 2020 meeting, subject to a minor amendment.

3.2 No matters arising.

4. Action Log

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

Pro bono work: the Board agreed that it would be a more appropriate use of resources for this to be included within regulatory arrangements review.

2021 budget and business plan: FG reported that the LSB had approved the element of the IPReg practising fee application relating to provision of a waiver for Covid-19 hardship under its block exemption for Covid-related changes to regulatory arrangements. The Board approved the 2020 Practice Fee Regulations which would come into force on the day the practising fee was approved by the LSB.

Action: FG to publish amended Practice Fee Regulations when in force

Accreditation costs: related notice on website; agreed this item to be closed.

Diversity Funding - Stemettes: SF reported liaison had been undertaken; agreed this item to be closed.

CS joined the meeting.

Risk register - Cyber Essentials Accreditation: [REDACTED]

5. Discussion on Covid-19 – impact on:

IPReg team

5.1 FG reported the team has been asked to complete risk assessments to determine any longer term home working needs such as extra screens or lumbar support chairs. The health insurance in place provides a wellbeing helpline which includes quick access to GPs and complementary therapies. SE advised that LawCare support is available to the solicitors in the team.

5.2 FG added that Office Space In Town has reduced the licence fee for November by 25%.

Market

5.3 [REDACTED]

5.4 FG reported that since the last Board meeting there had been 4 new firm applications of varying structures and that around 10 registered trade mark attorneys have been admitted to the register this week having recently passed their examinations (later than normal owing to the impact of Covid-19). So far there had not been an increase in Voluntary Removal applications though the renewal process may lead to an increase.

6. Other activities (not covered elsewhere):

3 x CEOs: 30 September and 28 October

6.1 FG reported discussion items included practising fees and the IPReg Call for Evidence and a proposed webinar about IPReg's role. [REDACTED]

UK Internal Markets Bill

6.2 The Chair reported on government's proposed amendment 107 to the UK Internal Markets Bill which seeks to include attorneys in the list of professions which would be excluded from the

automatic recognition principle in Clause 22 of the Bill. There had been no consultation prior to publication of the proposed amendment and so, given that the drafting of the relevant clauses of the Bill are not clear, IPReg, CIPA and CITMA had requested a meeting with Ministry of Justice officials. They had advised that the amendment was intended to preserve the status quo in terms of where attorneys are able to practise in the UK. At the House of Lords debate on 2 November the Chair sought explicit assurance from the Minister that the drafting confirms the status quo rather than changes it. The Minister provided that assurance and this is recorded in Hansard.

Action: FG to issue IPReg statement on website to clarify the amendment seeks to sustain the status quo of the internal market (and to include link to Hansard)

Action: Chair to include this reassurance in CIPA and CITMA journal articles

Brexit

6.3 FG reported she had attended a Business, Energy and Industrial Strategy conference for the broad range of bodies covered by Mutual Recognition provisions. Government officials stressed that nothing has yet been agreed and that they are unlikely to have detailed provisions in place by end of December. They hope to issue guidance shortly about what happens after the end of the transitional period.

6.4 The Chair reported that in the context of absence of a deal to enable Recognised Trade Mark Attorneys to appear in the European court, CITMA has focused on securing a level playing field between UK and EU representation.

Future of Legal Services – Westminster Policy Forum Event

6.4 RG provided a report on the virtual conference, the keynote speaker of which had been Professor Stephen Mayson, author of the independent review of legal services, published in June 2020. The conference had considered the proposals in his review, included extending the scope of regulation to all providers of/and all legal services so bringing in to regulation currently unregulated providers, creation of a single regulator, and a revised and more extensive ombudsman scheme. Matthew Hill, CEO of the Legal Services Board, commented that he considered innovation was too slow and that there needs to be progress on price transparency. Representatives from the MoJ said that there are no current plans for a review of the Legal Services Act but they are considering a register of unregulated legal services providers.

7. IPReg Qualification Accreditation Withdrawal Procedure

7.1 CS introduced the paper proposing a detailed policy statement and procedure for withdrawing IPReg accreditation from a qualification. Stakeholder comments have been incorporated and the policy has been restructured to ensure balanced and to provide clarity on role of the IPReg Education Group.

7.2 VS referred to the table of stakeholder feedback items and corresponding IPReg amendments. Stakeholder feedback had particularly sought more detail around the decision making, including the process of appeals. The table will be published alongside the policy statement and procedure. VS

emphasised that it is hoped that the procedure will not need to be invoked but that it is important to have it for transparency and accountability purposes.

7.3 The Board approved, subject to a minor amendment, the proposed IPReg Accreditation Withdrawal Policy Statement and Procedure.

Action: VS to share procedure and feedback table with stakeholders and to publish procedure

8. Qualifying as an attorney – reviewing exemptions for historic JEB examinations

8.1 CS introduced the paper proposing ending acceptance of historic qualification pathways for attorneys who had not practised since they passed these exams. VS explained that the sunset clause would apply to both historic Joint Examination Board (JEB) examinations (effectively ending the transitional arrangements which applied to these) as well as historic courses from the universities of Bournemouth, Brunel and Manchester. Subject to consultation findings, VS hoped the 18 months sunset clause might be triggered late Q1 2021. The proposal is in keeping with the regulatory objectives of promoting and protecting the interests of consumers and encouraging an effective profession and the consultation paper will reflect this.

8.2 VS advised that the 18 months sunset clause will provide an appropriate lead-in time for anyone potentially affected, although because at least 7 years have already passed since the university courses ended and it has been 10 years since the last JEB examinations, that affected numbers are likely to be very small. SE reported in the last 3 years there had been less than 5 applications made on the basis of these historic exams.

8.3 The Board agreed to the consultation being issued, first to the representative bodies, then the qualification agencies and then published for wider stakeholder input.

Action: VS to take forward consultation on introducing a sunset clause to historic qualifications

9. Education Group Update

9.1 CS introduced a paper providing an overview of the recent activities and outputs of the Board's Education Working Group, including the status of work programme items and a range of other activities including the accreditation withdrawal procedure and sunset clause consultation (items 7 and 8 of this agenda).

9.2 CS commented that the issue of ongoing quality concerns with the QMUL Trade Mark Law and Practice has recently seen evidence that the concerns are being addressed. [REDACTED]

9.3 VS reported that all qualification agencies are now required to provide annual reports for review by IPReg; this would include a review of the online delivery (owing to Covid-19) of their most recent set of examinations. The first annual report received was from Bournemouth University and included

a review of the online examinations which appeared to have gone well. The Education Group had been assured by the annual report although it lacked examples of student feedback and these were subsequently sought and provided.

9.4 FG reported that [REDACTED]
[REDACTED] The Education Group is meeting this month with Lee Davies and Chris Mercer to discuss the emerging findings of the Mercer Review and CS/VS are meeting PEB representatives to discuss the timing of an accreditation assessment of the final examinations.

10. Diversity monitoring

10.1 FG presented a paper setting out the proposed approach to diversity monitoring of registrants. A quote has been obtained from [REDACTED] a body with experience of surveys, results interpretation and provision of related training. [REDACTED]
[REDACTED]

[REDACTED] The survey will include information on both protected characteristics and socio-economic information. IP Inclusive is rerunning its diversity survey before the end of the calendar year. The questions of both IPReg and IP Inclusive are sufficiently aligned to enable useful comparisons between those who are regulated and those who are not. IPReg plans to run its diversity survey in January so as not to coincide with the IP Inclusive survey. The Board/team training to follow. It is hoped that analysis of the results would help enable targeting of funding to particularly relevant projects.

10.2 The Board agreed to:

- the appointment of [REDACTED] to work with IPReg in its initial data gathering exercise;
- [REDACTED] to deliver diversity training to the IPReg team and Board.

Action: FG to appoint [REDACTED] to help take forward the diversity data gathering exercise and provide diversity training

11. Regulatory Performance Review

11.1 FG presented IPReg's proposed response to the Legal Services Board's (LSB) recent information request. This is part of its ongoing review of performance of regulators. The request asks for information not previously considered part of the assessment, in particular, whether IPReg considers its enforcement and sanction powers can be effective without the powers of interim orders. [REDACTED]
[REDACTED]

11.2 The Board agreed that, in its judgement, some of the questions appeared to encroach on its role in deciding IPReg's priorities and adjusting requirements in order to respond to events as they occur during any particular year. The Board agreed with the tone and content of the response.

Action: FG to submit the response to the LSB performance information request

Action: FG to include interim orders in regulatory arrangements review

12. Lawtech UK – Regulatory Response Unit

12.1 FG presented a paper providing an update on IPReg’s involvement with development by LawTech of a Regulatory Response Unit (RRU) which includes other legal regulators. IPReg circulated LawTech’s call for applicants to its regulatory sandbox via mailshot on 4 November to all registrants and practice directors and had received positive comments from them.

12.2 FG explained that the RRU would provide advice and guidance on regulatory issues that are raised by sandbox participants. It could both help people navigate the complex regulatory framework whilst enabling regulators to learn where the real or perceived barriers are to innovation.

12.3 The Board endorsed IPReg’s involvement with this project and set up a RRU Reference Group of Board members to provide rapid advice where necessary.

PART B – CONFIDENTIAL ITEMS

13. Complaints Update

13.1 SE presented the complaints update paper which was noted by the Board. [REDACTED]

[REDACTED]

13.2 [REDACTED]

[REDACTED]

14. LSB issues

14.1 [REDACTED]

[REDACTED]

[Redacted]

14.2 [Redacted]

14.3 [Redacted]

14.4 [Redacted]

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

[Redacted]

15. Regulatory Risk Register – Red risks

15.1 [Redacted]

16. Any Other Business

[Redacted text block]

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17. 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.