

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

### Minutes

Thursday 3 September 2020 at 12 noon

(Meeting held online)

#### Attending:

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

In attendance: Fran Gillon, Shelley Edwards, Karen Duxbury (left after item 6), Victoria Swan

1. **Apologies** - no apologies were received.
2. **Notification of any conflicts of interest** – none. The Board noted that KH is Chair of the CIPA Trade Marks Committee.

#### **PART A –NON-CONFIDENTIAL ITEMS**

#### 3. Minutes of July 2020 meeting and matters arising

3.1 The Board agreed the minutes of the July 2020 meeting, subject to minor amendments. No matters arising.

#### 4. Action Log

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

[REDACTED]

Pro bono work – FG reported that PAMIA cannot offer Professional Indemnity Insurance (PII) to in-house lawyers because they are not eligible to become members of PAMIA. [REDACTED]

**Action:** FG to discuss further with Board member

[REDACTED]

## 5. Discussion on Covid-19 – impact on:

### IPReg team

5.1 FG reported that she had visited the office and that the on-site team expecting more people to return to the office if the return to schools happens. The building is equipped with hand sanitisers, social distancing arrangements and signage, significantly increased cleaning arrangements including monthly fogging.

5.2 FG commented that the new CRM has enabled the team to operate from home in the same way as in the office. As the team is working effectively at home there can be flexibility as to how and when to manage returns to the office. The Chair commented that the team has demonstrated clearly it can productively work from home and commended the approach to enable flexibility for the team going forward.

### Action: FG to compile a risk assessment concerning returning to the office

5.3 FG and SE reported that Covid-19 had delayed the regulatory arrangements review as well as the recruitment of the new policy officer. AK advised he would prefer a strategy day on the regulatory arrangements review to take the form of a face-to-face socially distanced meeting at some point. The Chair commented that the remaining 2020 Board meetings will be virtual but hoped at some point in the new year it might be possible to convene face to face.

### Market

5.4 The Chair reported that at the Regulatory Forum meeting, CIPA and CITMA, [REDACTED]

5.5 The Chair advised that CITMA remain concerned about Brexit. There is growing assumption that there might be a no deal scenario. CITMA has lobbied strongly on providing a level playing field for representation rights, with their consultation receiving over 1000 responses, with 95% in favour of the proposed CITMA position. It is also working hard on the US position.

## 6. 2021 budget and business plan

6.1 The Chair presented the broad proposal not to raise practising fees in 2021, a waiver provision for attorneys facing hardship and a substantial draw on our reserves. FG introduced the paper, advising that the budget projections are cautious given that our income will not be clear until February/March next year. FG reported the MillerTech quote to change the CRM to incorporate a hardship waiver would be £1,386 + VAT. The main project work for the next two years would be the review of the regulatory arrangements.

6.3 The Board agreed the consultation on the proposed budget and business plan. The Board also agreed to propose increasing the late payment penalty fee.

### Action: FG and KD to publish budget, business plan and consultation

## 7. Call for Evidence – regulatory arrangements review

7.1 AK introduced a paper on the Call for Evidence which would be launched shortly.

7.2 FG reported that communications is going to be key when discussions will be by video conferencing, and will seek to have dedicated discussions with CIPA, CITMA, CMA, IP Federation, IP Practice Directors Group and where possible, persons who might be thinking about entering the market. Kingsley Napley to review document before publishing.

7.3 The Board reiterated that it had been appropriate to postpone the review due to the pandemic but that it was now appropriate to launch it and agreed the proposed Call for Evidence.

**Action: FG to take forward Call for Evidence document publication and related discussions**

## 8. Other activities (not covered elsewhere):

### CIPA and CITMA

8.1 Regulatory Forum: 3 September: the Chair reported that the meeting had covered Covid-19, Brexit, practice fees consultation, agreeing the proposed Terms of Reference for the Regulatory Forum itself and that the IPReg Chair would chair the meetings going forward. [REDACTED]

8.2 FG advised that CITMA had again raised the issue of Continuing Professional Development in light of Covid-19. IPReg advised it could not waive all the CPD requirements as they provided important due to consumer protection measures but that we would remind registrants that they could request a waiver individually.

8.3 3 x CEOs - 30 July: FG reported that in addition to the items discussed at the Regulatory Forum an update was given on the accreditation withdrawal procedure.

### LSB

8.4 Relationship management: 19 August: FG reported that this meeting had discussed collecting diversity data. IPReg had also expressed concerns that the LSB had given the impression on more than one occasion that by publishing its board papers it was somehow consulting on the matters in them. The meeting also discussed regulatory arrangements review, Covid-19 and the Delegation Agreement/IGR compliance.

8.5 PCF consultation stakeholder event: 20 August: FG advised that the LSB is currently consulting on new practicing fee application requirements. These proposals would increase significantly the regulatory burden on IPReg and appeared to have been drafted with a focus on the larger regulators rather than adopting a proportionate and targeted approach.

**Action: FG to submit response to LSB practising fees consultation**

8.6 Review of enforcement processes - FG reported that the LSB has asked IPReg to provide a significant amount of information about its investigations and enforcement process. The LSB has indicated that it may in future request access to investigation files although the *vires* for it being able to do so is unclear.

**Action: FG submit investigation and enforcement effectiveness response to LSB**

## Other

8.7 Law Tech UK: 28 July - FG reported that Law Tech UK wants to set up regulatory sandboxes with the aim of issuing thematic guidance from regulators; we have advised Law Tech UK we would be keen to be involved.

8.8 RPIG (CMA Market Study) quality indicators: 29 July - FG reported that the Competition and Markets Authority will be revisiting the legal services market and will be issuing a Call for Evidence this month. The Legal Services Consumer Panel is focused on quality indicators and for firm-level complaints to be published and the LSB is planning to consult on a policy statement on quality indicators later this year.

8.9 IP Inclusive Event – racial diversity in the IP professions: time for change: 29 July – FG reported this event had been focused upon issues concerning black, Asian and minority ethnicity (BAME) employees in the IP profession.

## 9. Education Group Update

9.1 Covid-19 – CS reported that the pandemic has impacted across the education sector and the Education Group has been working with the accredited agencies on a variety of issues raised; wherever possible online provision is being relied upon heavily, especially for assessments. The Education Group is being kept closely in the loop and is requiring the agencies to review the efficacy of their online assessments. The issue appears to be being taken seriously and best practice is being applied.

9.2 VS commented that the PEB plans for examinations had included using Zoom for live invigilation, the possibility of the trained invigilator asking candidates to share their screen; plans to cater for reasonable adjustments (this is particularly important given the reported issues with the Bar examinations). VS advised that the FAQs on the PEB website set out that if an individual is taking the examination in their firm's premises, an individual who has declared no conflict of interest will be the invigilator; as this had not been mentioned in the correspondence with the PEB, clarification on the approach to this would be sought.

**Action: VS to contact PEB regarding examination proctoring within firms**

9.3 Queen Mary University London (QMUL) – CS commented that there had been a very positive meeting with the Head of the School, the independent Chair of the new Programme Management Group and other QMUL representatives about the Trade Mark Law and Practice course. It is clear that significant improvements are being made in quality assurance processes, timely provision of online materials and improved student feedback. CS added that unfortunately there had been a

complaint made to CIPA [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

9.4 Accreditation withdrawal procedure – CS reported that the proposed procedure has been extensively revised in light of the consultation feedback, particularly regarding more detail on appeals; SE and VS to have scheduled a meeting to discuss. The resulting procedure will then be taken to the Education Group for review with the intention of bringing a proposed procedure for consideration to the November Board meeting.

9.5 Patent Examination Board – CS reported that the PEB has advised that it has appointed an external examiner (a recommendation of the accreditation of the Foundation Level Examinations).

9.6 Brunel University – VS reported that the accreditation report had been published and the link to the newly accredited trade mark pathway provision had added to the website; VS is to contact Brunel regarding the undergraduate joint-disciplinary double major degree and whether it was still the intention to apply for accreditation and if so, the likely timeframe.

## 10. Attorney qualifying courses and examinations - accreditation costs

10.1 The Chair commented that there are a number of options for recharging costs of the accreditation of attorney qualifying pathways. CS commented that this is important to ensure that the main costs are borne by the providers and not cross-subsidised by registrants.

10.2 VS reported that the IPReg team had recorded the time it allocated to the most recent accreditation exercise as well as gaining a very broad proxy of the time spent by the Education Working Group in its review of the accreditation assessment.

10.3 The Board was asked to consider the options for charging accreditation applications at a cost reflective of the resources applied to its consideration, to include the (unsubsidised) recharging of the two specialist assessors consultants and one of the following options:

- a) IPReg office time allocated to the administration, liaison, oversight and review of the accreditation application;
- b) IPReg Education Group time allocated to the review of the accreditation application and its consequent recommendation to wider Board;
- c) both a) and b)
- d) none of the above, the assessors' costs only.

10.4 The Board agreed that accreditation costs of the specialist assessors and the IPReg team (option 10.3a) will be applied going forward.

**Action: VS to advise accredited agencies and put notice on website regarding recharging costs policy**

## 11. Diversity funding request - Stemettes

11.1 FG presented a paper setting out a request for £5000 funding from Stemettes which aims to encourage girls and young women to become interested in Science, Technology, Engineering and Mathematics (STEM) subjects and to help give them confidence to network and to speak in public. The funding relates to 5 issues of its magazine which it publishes every 2 weeks; it would also welcome articles from members of the IPReg Board for the magazine.

11.2 The Board agreed to allocate £5000 to Stemettes.

Action: FG to liaise with IP Inclusive regarding any initiatives which might need sponsorship

Action: SF to liaise with CEO of Stemettes about how to highlight the work that IP attorneys undertake

## **PART B –CONFIDENTIAL ITEMS**

### 12. Complaints update (SE)

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

[REDACTED]

12.2 [REDACTED]

### 13. Risk register – red risks (FG)

13.1 [REDACTED]

13.2 [REDACTED]

13.3 [REDACTED]

### 14. Any Other Business

14.1 VS advised the Department for Business, Energy and Industrial Strategy has launched a Call for Evidence to gather insights on recognition of professional qualifications and regulation of professions. The link to this has been shared with the representative bodies, accredited agencies, and registrants and is being raised here in case of particular interest from any Boardmembers.

15. 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.