

The Patent Regulation Board and the Trade Mark Regulation Board**Minutes****Thursday 8 September 2022 at 12 noon****Orwell Room, 20 Little Britain, London, EC1A 7DH and by Zoom Video Conference****Attending:**

Rt Hon Lord Smith of Finsbury (Chair, attending remotely)
Justin Bukspan (attending remotely)
Sam Funnell (attending remotely)
Alan Kershaw
Victor Olowe
Samantha Peters (attending remotely)
Emma Reeve
Nigel Robinson
Caroline Seddon (attending remotely)

In attendance: Fran Gillon, Shelley Edwards, Karen Duxbury, Victoria Swan (attending remotely)

1. Apologies – no apologies were received.

The Chair observed that this was Nigel Robinson's last Board meeting and thanked him for his service as a Board Member. [Note that it has subsequently been agreed that Nigel Robinson's contract will be extended to January 2023.]

2. Notification of any conflicts of interest – none declared.**PART A – NON-CONFIDENTIAL ITEMS****3. Minutes of 14 July 2022 meeting and matters arising**

3.1 The Board agreed the minutes of the 14 July 2022 meeting.

4. Action Log

4.1 The Board noted the action log. SE reported that the disciplinary webpage had been reviewed and now includes information about the Joint Disciplinary Panel having the power to impose a costs order.

5. 2023 business plan and practising fees

5.1 FG reported that the consultation (which had closed on 22 August) had received 25 responses. A summary of those responses and the full responses of CIPA, CITMA and IP Inclusive was included with the draft application to the Legal Services Board (LSB). The responses indicated a general understanding of the need to raise fees by the proposed 6% given the current economic climate. The

Board noted that the consultation responses were broadly positive and that both the CIPA and CITMA had reiterated their desire for a reduction in fees at some point in the future.

5.2 FG explained that there had been no substantial changes to either the budget or business plan. However, in response to suggestions from the consultation, additional transparency had been provided on:

- The costs for Directors' Remuneration, Employers National Insurance and Directors Travel and subsistence have been taken out of "Staff Costs". They are now shown under a general heading "Board of Directors" along with the costs to recruit new Board members;
- The supporting note for "Board of Directors" references these and now includes a note stating that the Board members are directors of the limited company;
- The number of regulatory officers and administrative officers have been shown in the supporting note for "Staff Costs";
- The Equality Impact Assessment had been updated.

The Board agreed that it would be appropriate to submit a draft application to the LSB for feedback given that it had indicated that this should be done within a week. The Board noted that if the LSB suggested substantial changes were needed then these would need to be considered by the Board.

5.3 The Board considered the draft application and agreed that the final application should also set out:

- The rationale for why an increase of 6% was appropriate;
- Whether IPReg has "target" levels for its reserves (other than for the compensation fund);
- More detail about the benefits of the regulatory activities that IPReg had undertaken;
- More detail about the approach to engagement for this consultation;
- More detail about the likely cost of the website redevelopment given that it is intrinsically linked to the CRM's IPReg Pro platform.

5.4 The Board agreed:

- The updated budget and equality impact assessment, subject to the amendments that had been agreed;
- To broaden the provision to waive fees in cases of hardship;

- The 2023 business plan;
- Make the Practice Fee Regulation 2022, noting that they would only come into effect if the LSB agreed the 2023 fees;
- To submit a draft application to the LSB for comment;
- Delegate authority for finalising the formal application to the Chair and CEO, subject to there being no significant changes suggested by the LSB.

Action: FG to update and submit draft application

Action: FG and Chair to consider LSB feedback and agree final application

6. Review of regulatory arrangements – rule change application

6.1 AK introduced the paper. He explained that this was a significant milestone for the project and that, subject to Board agreement, the application was ready to be considered in full by Kingsley Napley prior to submitting a draft application to the LSB. FG explained that the draft reflected previous Board discussions, in particular about the application of the Overarching Principles to attorneys' private lives. Draft Guidance had also been provided to the Board and this was something that Board members had not previously reviewed; the Board noted that a consistent in-house style would be adopted for the Guidance prior to submission to the LSB. The Board discussed the draft Guidance and agreed that it provided useful context to the regulatory arrangements themselves.

6.2 The Board considered whether the regulatory sandbox had the potential to have a negative impact on premia if a significant number of firms were allowed to enter it. It noted that PAMIA had a significant market share and was very competitive on price and service quality. In the Board's view this was likely to mean that a small number of firms would apply to enter the sandbox; this was therefore unlikely to have a significant impact on PAMIA. However, if evidence from the sandbox was that the current market structure (with compulsory minimum terms and conditions set by IPReg) was no longer appropriate, this could have a beneficial impact across the sector since it could lead to a significant regulatory requirement being removed or reduced.

6.3 The Board discussed whether there should be a specified timeframe for which the sandbox would be live. A potential concern was that if the sandbox was allowed to continue indefinitely, it would no longer be serving its purpose as an innovative mechanism for an alternative approach to PII. The Board noted that if there were too short a timeframe, there would probably be a deterrent effect because firms would not be provided with sufficient certainty about their medium term PII plans. However, it was not possible at this stage to know how many firms would enter the sandbox or when. It was therefore not possible at this stage to say how long it would be before sufficient evidence would be gathered to assess whether IPReg's policy on PII should be changed. The Board agreed that this should be reflected in the guidance on the sandbox.

6.4 The Board then discussed the ongoing competence guidance. It agreed that the Guidance should provide as much flexibility as possible for attorneys to record their approach to CPD. The Board

noted that IPReg would nevertheless need sufficient evidence of an attorney's reflection on their current practice and development needs to assess the effectiveness of the changed approach to CPD.

6.5 The Board discussed the changes to the definition of "client money" (which had received widespread support in the consultation) and the circumstances in which the Compensation Fund would provide consumer protection. FG explained that the Compensation Fund rules cover instances of fraud and failure to account; the maximum amount payable is £25,000 any one claim. In a case where a firm had failed to act when a disbursement had been paid to it by a client, consumer protection could be provided by the firm's PII and/or the Legal Ombudsman. In the event that the firm became insolvent, money in the client account would be protected, but money that had been paid to the firm and was not client money under the new rules would be subject to insolvency law. The Board agreed that the regulatory protection that existed in such circumstances should be made clearer in the draft application.

6.6 The Board then discussed the application of the Overarching Principles to events in an attorney's private life. SE explained that IPReg cannot lawfully take enforcement action in relation to conduct in an attorney's private life if there is no link to the individual's professional practice and/or to the reputation of the profession.

6.7 The Board agreed to:

- submit the draft application to the LSB after it had been reviewed by Kingsley Napley (with the changes agreed at the meeting);
- To delegate authority to the Chair, Alan Kershaw (Chair of the Review Working Group) and the CEO to finalise and submit the rule change application unless substantial policy or procedural issues are raised by the LSB's review.

Action: FG/SE/EL to amend and submit draft application to Kingsley Napley for review;

Action: FG/SE/EL to submit a draft application to the LSB (following review by Kingsley Napley)

KD left the meeting.

7. Progress on Governance Action Plan Implementation

7.1 FG reported that good progress was being made on the governance action plan. Changes to the format of Board papers and minutes would probably be trialled at the November meeting. In terms of finding an external minute taker, the Chartered Institute of Governance website is being redeveloped and it was not currently possible to use the Public Practice directory. A CEO report would probably be included with the December Board papers

7.2 The Board welcomed the suggested structure for the new agenda, subject to providing clarity on the agenda itself of whether an item is for information, or discussion, or approval.

7.3 The Board discussed the significant improvements that had been made on the complaints backlog. It also discussed whether it needed detailed information about complaints that were being investigated since this was something that had been done historically. The Board suggested that a high level overview of complaints may be more appropriate. In due course, this information could be provided as part of the regular reporting on KPIs.

Action: SE to review the process for reporting complaints to the Board

8. Other activities

8.1 Meeting of the 3 Chief Executive Officers (IPReg, CIPA and CITMA):

FG reported that the meeting on 29 July had discussed:

- IPReg’s approach to awareness-raising about sanctions in the context of the Russian invasion of Ukraine and related queries;
- The new LSB Ongoing Competence Statement of Policy;
- The regulatory arrangements Review roundtable on 27 July;
- Update on the LSB’s performance framework monitoring, the business plan and practice fees consultation; and
- Press reports about the Chartered Institute of Legal Executives (CILEx)/CILEx Regulation governance matters.

FG reported that the meeting on 2 September had discussed:

- IPReg’s approach to awareness raising about sanctions in the context of the Russian invasion of Ukraine and the action plan that IPReg had developed;
- LSB undertaking a technology and innovation survey;
- Personnel changes at the Intellectual Property Office,
- The LSB’s performance framework;
- Recruitment of the new IPReg Education and Diversity post by Thewlis Graham;
- A CIPA concern about Queen Mary University London entry requirements which IPReg agreed to pursue; and
- Positive feedback on the IPReg/CIPA/CITMA Board/Councils event on 14 July.

8.2 Regulatory Forum – Chairs and CEOs of IPReg, CIPA and CITMA: the Chair reported that meeting on 8 September had discussed:

- Regulatory performance framework – we had submitted our response to the LSB on 28 July and were awaiting feedback from the LSB;
- LSB work on ongoing competence and CIPA/CITMA concerns about whether revalidation was expected;
- IPReg’s approach to awareness raising about sanctions in the context of the Russian invasion of Ukraine and the action plan that IPReg had developed the regulatory arrangements review and the IPReg intention for LSB on the draft application;

- IPReg Board recruitment – we thanked CIPA for raising awareness of the patent attorney recruitment process;
- CIPA/CITMA responses to the 2023 business plan and fee consultation;
- Concerns about the significant volume of work that was generated by the LSB;
- Whether there was due to be a triennial review of the LSB by the Ministry of Justice. (The Board noted that the most recent tailored review was undertaken around 2017.)

8.3 **Board recruitment update:** the Chair reported that Thewlis Graham is taking forward the recruitment for the patent attorney and lay posts that were due to become vacant over the next 6 months. Thewlis Graham had received 8 patent attorney applications which met the person specification requirements. The Board agreed that SF would be a member of the interview panel with the Chair and that a lay member would also be involved, to be decided on availability for interviews.

Action: FG to notify Thewlis Graham of interview panel membership

8.4 **Compensation Fund – one year review:** The Board noted that FG had instructed John Birkenhead to undertake a one year review of how the Compensation Fund was operating. He was supportive of the fact that we had set up a Data Group. His report is scheduled to be considered at the November meeting.

8.5 **IP Inclusive blog – In2Science:** the Board noted the blog about In2Science which IPReg is supporting.

PART B – CONFIDENTIAL ITEMS

9. Complaints Update

9.1 SE presented the complaints paper which included an update on the decision that is being considered by the independent adjudicator.

9.2

[REDACTED]

9.3 The Board noted the complaints paper.

10. LSB engagement

10.1 **LSB letter to all Chairs and CEOs:** The Board noted the letter which summarised the discussion at the meeting in June.

10.2 **Sanctions:** FG reminded the Board that the LSB had threatened enforcement action because it considered that IPReg had not conducted a sufficiently thorough risk assessment. IPReg had subsequently submitted an Action Plan to the LSB in June. On 7 September, FG and VS met Chris Nichols (CN) and Sally Al-Saleem (SAS) of the LSB to discuss the action plan. SAS started the meeting by asking about what had been learnt from the discussions with the IPO on 18 August and whether

CIPA or CITMA had received many enquiries about sanctions. [REDACTED]

[REDACTED] FG had explained that the discussion with the IPO was extremely helpful [REDACTED]

[REDACTED] FG reported that the IPO said that it had found the IPReg website guidance extremely helpful and had referred enquirers to it.

10.3 FG reported that the meeting had then discussed whether it would be appropriate to ask the IPO [REDACTED]

[REDACTED] FG had explained to the LSB that IPReg's approach was to bring firms into compliance with the sanctions framework and that raising awareness of the need for a licence from OFSI was part of that approach.

10.4 The Board discussed the Action Plan and the importance of obtaining targeted information in a proportionate way, including from registrants. The Board also noted that CIPA had provided information on its website that it had obtained from the IPO about how attorneys could remove themselves from being a representative at the IPO if they found that they were connected to a sanctioned individual or firm.

10.5 The Board agreed:

- To instruct the Executive to email registrant firms and sole traders to obtain information using our formal powers on their approach to sanctions including whether they were being used as an address for service by sanctioned individuals or firms and/or listed as a representative at the IPO. The email would include a signpost to information about how to withdraw from representation at the IPO. The Board considered that in its judgment, given the significant workload that firms were experiencing, one month should be allowed for responses;
- That IPReg should discuss further with the IPO what high level data it had that it could share with IPReg.

Action: FG to email registrants

10.6 LSB regulatory performance framework update: FG reported that IPReg sent its update to the LSB on 28 July. At the Relationship Management meeting on 4 August, the LSB said that the response was "clear and encouraging" and it would ask IPReg to fact check the LSB's response document in a few weeks. This has not yet been received.

11. Red Risks

11.1 The Board noted the continuing red risk, [REDACTED]
[REDACTED]

12. AOB – Emma Reeve reported that she had been asked by Nottingham Trent University to deliver a lecture about IPReg and had agreed to do so.

13. Regulatory Statement

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