

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

### Minutes

IPReg Board Meeting

Thursday 19<sup>th</sup> January 2012

Outer Temple Chamber

- 1. Apologies** Rosalind Burford  
Nicholas Fox  
Ian Buchan
- Attending** Michael Heap (Chairman)  
Bruce Alexander  
David Bream  
Linda Harland  
Phil Harris  
Daniel Keenan  
Philip Portwood  
Steve Smith  
Ann Wright (Chief Executive)

**2. Approval of November 2011 minutes and actions arising**

*The minutes were approved subject to one amendment to para 9 to make it clear that there were matters (such as approval of admissions) which had to be brought to the Board by the EQCD committee for governance reasons.*

**3. General Delegation Agreement – status**

BA confirmed that the main general Delegation agreement was now settled.

AW confirmed that she was preparing a draft code of conduct for the observers representing the AR Forum.

MH agreed to raise with CIPA and ITMA the replacement of Mick Ralph and Maggie Ramage as the current directors of IPReg Limited with the IPReg board members (as advised by the LSB).

#### 4. ABS

- **Delegation Agreement (ABS Specific) from CIPA and ITMA – status**

BA reported that the ABS Agreement was also settled (**copy attached**). The final issue had been whether the last paragraph (7) ....

*“the form of the application having been agreed by the parties, CIPA and ITMA would each sign...”*

constituted a further approval process.

BA confirmed that following discussions with members of the Governance Committee, BA had proposed:

*“the form of the application having been agreed by the parties **in accordance with the process set out above**, CIPA and ITMA would each sign...”*

This had been agreed by CIPA and ITMA.

- **Meetings with the LSB**

MH reported that there had been **two** meetings in December with the LSB who had read the scoping report.

- The LSB Board had indicated a **willingness** to extend the transition period to March 2013 (based on IPReg’s representations in early 2011)
- The LSB considered that two consultations were, in their view, unnecessary
- IPReg should not regard either the SRA or the CLC applications as “precedents”.
- A key feature of the application should be evidence. The application could not be “SRA like” in its approach. The application should be “risk based” backed by evidence.
- The LSB advised that, to be successful, the application would need to have considered IPReg ability to undertake the additional regulatory responsibilities and the impact on internal resource. It was agreed that the LSB would give further guidance.

- **Meeting with Marsh (insurers)**

AW reported that PAMIA had indicated that it could not assist in meeting the requirements in the Legal Services Act for compensation arrangements.

Consequently a meeting had been held with Marsh (which insures IPReg) who had indicated that there may be a market led solution. Marsh had also met PAMIA's insurance manager and discussions were ongoing.

- **Financial issues**

- **IPReg initial investment**

AW confirmed that, to date, £18,000 had been spent of the £30,000 to be provided by IPReg. It was originally expected that the whole £30,000 would be spent in 2011 but the deferment of the decision whether to apply for licensing authority status had slowed down the work.

It was agreed that the under spend would be rolled over into the 2012 ABS budget.

- **SRA and CLC fee scales (attached)**

AW reported that, following work undertaken by Nicholas Fox and Sarah Willison, it was clear that the cost for an ABS of regulation by the SRA and the CLC would be considerable.

For example the annual cost to a substantial East Midlands firm (whose figures as an LLP were available) would be in excess of £50,000. Whilst clearly there would be a need to increase fees to meet the additional duties, it seemed highly probable that the fees scales would still be moderate in comparison.

BA commented that the fees of the SRA and the CLC were based on turnover. Traditionally IP firms include "disbursements" namely agents fees as turnover and, therefore, the figures would be distorted. It was agreed that this would be considered when determining the fee scale matrix.

- **Sarah Willison - commitment over next 3-6 months**

AW reported that, subject to a decision to apply for licensing authority status, she had agreed with Sarah that Sarah would work 3 days each week for the next 3 months.

It was agreed, given her critical role, that IPReg should agree now a commitment with Sarah for, say, 80 days work in 2012 on dates to be agreed by AW (with MH), taking into account the type of activities/period of consultation.

- **ABS Working Party**

There was discussion regarding the appropriate size and mix of the ABS working party. It was agreed that the ABS Working Party should operate as a Reference Group with the detailed drafting etc being undertaken by SW and AW (with support from Keith Hodkinson and Graeme Murnane and their respective firms).

- **“Plan B”**

AW reported that the CLC expected to have their application for litigation and advocacy rights approved in the early summer. In theory therefore the CLC would be able to regulate the reserved legal activities (namely instrument transfers litigation and advocacy) necessary for an IP firm but the CLC appeared also to be an expensive option and not necessarily the right “fit”.

## 5. Finance

- AW confirmed that, after taking into account income reserved (“ring fenced”) for projects such as the new website which are expected to be undertaken in 2012, IPReg had an operating balance of c. £45,000.
- A detailed financial report would be published (as part of the 2011 Annual Report).

## 6. AR Forum

MH confirmed that the next AR Forum was scheduled for Wednesday 25th January.

## 7. LSB – Developing the Regulatory Principles – (attached) – FYI Board do not need to review. Do we appoint an external “auditor”?

It was agreed that an external auditor would be helpful given this is the first time of scrutiny.

## 8. Complaints in 2011

- IPReg - stats – AW reported that of 10 contacts from potential complainants
  - 4 had been referred to LeO
  - 2 were - significantly- out of time
  - 1 had been reviewed by the IPReg first sift panel (and then dismissed)
  - The remaining did not formally constitute complaints for various reasons.

- LeO - stats (**attached**) – it was apparent that firms have adopted first tier complaints structure. This information is being requested in Entity Renewals.

## 9. Admissions

- Admission of two managers – see list next page - approved
- Stats (**attached**)

## 10. EU Recognition – Julie Jones

(TRB) The report in relation to the application of Julie Jones to the Trade Mark Register was reviewed and the recommendation **agreed**.

## 11. Chief Executive – other reports (if any)

- c 1,000 CPD returns had been received to date. A reminder would be issued at the end of January.
- Hugo Armitage (the website IT consultant) had issued a draft RFP which had been reviewed and approved by AW with the assistance of MH and DB. The project was expected to go live by the end of the summer.
- AW asked board members to notify her of any AOB ahead of the meeting.

## 12. AOB

- PH queried the status of the Diversity Report. AW responded that it had been submitted to the LSB and we were awaiting a response.
- The issue of Protected Title was raised. It was agreed that this would be considered in further depth.

## 12. Confirmation that the above decisions are made by the Patent Regulation Board and the Trade Mark Regulation Board.

## Admissions

Two managers - Mathisen & Macara LLP

- Christine Gravenell
- Susan Stevens

**ABS application: Agreement between CIPA, ITMA and IPReg in respect of an application to become a Licensing Authority for Alternative Business Structures**

**THIS AGREEMENT** is effective the            day of            2011

**BETWEEN:**

- (1) The Chartered Institute of Patent Attorneys;
- (2) The Institute of Trade Mark Attorneys (Company number 00294396); and
- (3) The Intellectual Property Regulation Board Limited (Company number 06624948)
- (4) PREAMBLES:
  - (A) Chartered Institute of Patent Attorneys (CIPA) and the Institute of Trade Mark Attorneys (ITMA) are both designated regulators under the Legal Services Act 2007 (the “Legal Services Act”), and wish to apply to be designated as licensing authorities under the Act.
  - (B) IPReg is willing to take forward such an application and to be the body with responsibility for the regulatory arrangements, although it may choose to delegate some of the activities associated with exercising such arrangements.
  - (C) CIPA and ITMA wish to open up opportunities for registered patent and trade mark attorneys to practice in ABSs and for this application to be progressed as expeditiously as practicable.
  - (D) CIPA, ITMA and IPReg (and PRB and TRB) wish to confirm their agreement and the basis on which this application should be made.
  - (E) The Legal Services Board (LSB) has confirmed that CIPA and ITMA can make a joint application to become Licensing Authorities.
  - (F) The Councils of the two Institutes have confirmed that this is the preferred approach and that the regulatory functions arising from CIPA and ITMA becoming a Licensing Authority are to be delegated to the Patent Regulation Board (PRB) and Trade Mark Regulation Board (TRB) respectively, and working together as IPReg or a body or bodies constituted by IPReg for this purpose, and are amending the “Delegation Agreement” between them to this end.

Now therefore the parties agree:

1. CIPA and ITMA will jointly make an application in the name of the Chartered Institute of Patent Attorneys (CIPA) and the Institute of Trade Mark Attorneys (ITMA) for CIPA and ITMA to become a Licensing Authority for ABS to practice in the intellectual property field and such ancillary activities as appear appropriate, and for the Regulation Boards (PRB and TRB) within IPReg to carry out the regulatory functions attributable to such status;

2. On the basis that the application is successful CIPA and ITMA will delegate the regulatory functions arising from becoming a Licensing Authority in the same manner as CIPA and ITMA have delegated existing regulatory functions, and this will be reflected in an amendment to the Delegation Agreement;
3. The PRB and TRB working together as IPReg will take the primary role in carrying forward the application, in consultation with CIPA and ITMA;
4. IPReg will fund the preparation and making of an application with support from CIPA and ITMA, and the continued operation of the Licensing Authority/relevant Regulation Board, and IPReg will account for the same as set out in the Annex to this letter;
5. In the event that it appears that the cost of preparing and making the application is likely to exceed the estimated amount set out in the Annex, IPReg, ITMA and CIPA will consult, preferably with the involvement of the Legal Services Board, on how the application should be handled, and whether, in the circumstances, the application should be continued, amended, or withdrawn, and on further agreement in relation to the costs of the application;
6. IPReg, CIPA and ITMA will keep each other fully informed on a regular basis of the steps being taken in preparing and making the application. To this end, unless otherwise agreed, the ABS working group of CIPA, ITMA and IPReg will be maintained in effect and will co-ordinate activities being carried out by each of CIPA, ITMA and IPReg.
7. CIPA and ITMA each agree that, the form of application having been agreed by the parties in accordance with the process set out above, CIPA and ITMA will each sign the application for submission by IPReg, and IPReg agrees that it will submit the application on their behalfs.

Accepted and agreed on

For and on behalf of the Chartered Institute of Patent Attorneys  
Tim Roberts, President

Accepted and agreed on

For and on behalf of the Institute of Trade Mark Attorneys  
Maggie Ramage, President

Accepted and agreed on

For and on behalf of IPReg  
Michael Heap, Chairman

## ANNEX

### **Budget**

It is estimated (based on the costs of the CLC) that the budget required for the application will be £130,000 plus the LSB fees.

### **Start Up Costs**

IPReg will meet the costs incurred in 2011 of any necessary additional resource both within the IPReg office and of external consultants to a maximum of ~~£10,000~~.

£30,000

Additional funding will be met by entity registrants only. It is intended that the additional funding will be raised in two tranches in 2012 and 2013, an increase in 2013 will only be applied if, and to the extent, required. This will be raised as a temporary % increase in the entity practice fee.

Income from registered entities in 2011 is £132,000. The temporary increase to be applied in 2012 will, therefore, be 50%.

### **Accounting**

Separate accounts will be kept and made available to all registrants via a dedicated part of the IPREG website.

### **Surplus from set up costs**

Any surplus, after all set up costs have been paid, will not be ring-fenced to ABS regulation/entities and will become part of the general funds of IPReg with a view to bringing ABS and non ABS entities and individual registrants into one financial accounting structure.

### SRA and CLC Fee Calculation

<b>Turnover</b>	<b>CLC Fee</b>	<b>SRA Fee</b>
19,000.00	1,000.00	252.00
145,000.00	1,985.00	847.50
2,000,000.00	23,100.00	8,781.00
8,000,000.00	84,100.00	26,881.00

### **Regulatory Standards: Self-assessment certification**

This self-assessment is one of the methods by which the LSB will assure itself that the approved regulators are complying with section 28 and other relevant requirements of the Legal Services Act 2007 [the Act] in accordance with the LSB's responsibilities as an oversight regulator of approved regulators and under section 3 and 4 of the Act.

In order to assure the LSB of the accuracy of the self-assessment we require the following to certify the contents of the self-assessment and any accompanying documents:

- A lay member of the regulatory board who has been involved in the completion of the assessment
- The Chairman/or equivalent of the regulatory board on behalf of the entire regulatory board
- An independent scrutiniser (where used) or alternatively the lay member of the regulatory board must confirm the reasons for not seeking independent scrutiny.

## Regulatory standards

- The overall approach is for AR/LAs to self-assess their own level for each constituent part of regulation as well as their own capacity and capability.
- The self-assessment is on the following scale:
  - Good
  - Satisfactory
  - Undertaking improvement and work is well underway
  - Needs improvement and work has started recently
  - Recognise this needs to be done but work has not yet started
- Alternatively, the AR/LA has the option to state: recognise this needs to be done but work has not yet started
- We consider that all of the constituent parts apply to all ARs and so “not applicable” is not an acceptable response. Below each of the constituent parts are factors that indicate where an organisation might be on the scale. AR/LAs must use these factors to assess initially whether they are towards the top or bottom of the scale and provide that information in the self-assessment. However, AR/LAs are free to add sector-specific factors as well. All additional sector specific factors must be justified with reference to evidence.
- In order to provide a consistent framework for understanding the legal services market, AR/LAs must use the Oxera report “A framework to monitor the legal services sector” published by the LSB on 28 September 2011 when considering the extent of their knowledge about consumers, the supply of legal services and the market(s) they regulate. For example, paragraph 2.1.3 of that report explains why there may be limited demand-side substitution because consumers need a specific type of legal advice for their problem; there may also be limited supply side-substitution if it is not possible for lawyers to switch to providing a different type of advice within a reasonable timescale. We would expect an AR/LA with a good understanding of the market(s) it

regulates to be able to provide evidence about the types of consumer problems that occur, the extent to which supply-side substitution is possible, the barriers to supply-side substitution, the risk of consumer detriment that arises and an assessment of whether any regulatory action is required to mitigate that risk.

- AR/LAs must provide clear analysis and evidence of how it arrived at the rating together with an Action Plan for development going forward with challenging but realistic targets/timescales.
- Lay Board involvement is necessary in completing the self-assessment; additional independent scrutiny may also be appropriate. Board sign off on the final submission is required
- LSB will publish a high level summary of the AR/LA's assessment and Action Plan

### Outcomes focused regulation

**To what extent has the AR/LA (a) introduced and (b) embedded regulatory arrangements based on the outcomes that consumers need?**

**Factors that indicate that the LA/AR is towards top of the scale**

- Regulatory arrangements deliver the outcomes that consumers need; there is clear evidence and analysis to justify any detailed rules;
- All members of staff and Board understand the organisation's approach to focusing regulation on the consumer interest;
- High quality, up to date, reliable evidence from a range of sources about how all groups of consumers use the legal services the AR/LA regulates and whether outcomes are being achieved. Regularly reviews and updates its regulatory arrangements based on that evidence.

**Factors that indicate that the LA/AR is towards bottom of the scale**

- Predominately rule based regulation; high levels of prescription with no clear evidence base;
- Some resistance to moving to consumer-based outcomes;
- Little or no up to date evidence about consumers; decisions often based on lawyers' needs/views.

<b>Outcomes focused regulation</b>	<b>To what extent has the AR/LA (a) introduced and (b) embedded regulatory arrangements based on the outcomes that consumers need?</b>
<b>Scale</b>	<b>Please mark your overall assessment against the scale for this standard</b>
Good	
Satisfactory	
Undertaking improvement and work is well underway	
Needs improvement and work has started recently	
Recognise this needs to be done but work has not yet started	
<b>Questions for response</b>	<b>Text</b>
Rationale for assessment:	
Evidence to support assessment:	
References to relevant supporting documentation:	
Details of action plan with timescales and milestones (including work identified but not begun, work recently started and work already underway):	
References to relevant action plan documentation:	

## Risk assessment

**To what extent has the AR/LA (a) introduced and (b) embedded formal risk assessment processes at key stages of its regulatory decision making processes?**

**Factors that indicate that the LA/AR is towards top of the scale**

- Formal, structured, transparent and evidence-based approach to identification and mitigation of risks across the whole range of entities and individuals that the AR/LA regulates. Risk analysis focuses predominantly on consumer detriment, including those in vulnerable circumstances;
- Approach to evidence gathering for risk assessment enables the identification of current issues as well as future trends;
- Relevant staff and Board understand the reasons for risk assessment, how it informs other aspects of the AR/LA's activities. Staff share best practice and lessons learned in a structured and effective way.

**Factors that indicate that the LA/AR is towards bottom of the scale**

- Some understanding of the main areas of risk but little evidence on which to base its approach;
- Relatively static approach, often or predominantly retrospective;
- No clear link between view of risk and other activities.

<b>Risk assessment</b>	<b>To what extent has the AR/LA (a) introduced and (b) embedded formal risk assessment processes at key stages of its regulatory decision making processes?</b>
<b>Scale</b>	<b>Please mark your overall assessment against the scale for this standard</b>
Good	
Satisfactory	
Undertaking improvement and work is well underway	
Needs improvement and work has started recently	
Recognise this needs to be done but work has not yet started	
<b>Questions for response</b>	<b>Text</b>
Rationale for assessment:	
Evidence to support assessment:	
References to relevant supporting documentation:	
Details of action plan with timescales and milestones (including work identified but not begun, work recently started and work already underway):	
References to relevant action plan documentation:	

## Supervision

**To what extent has the AR/LA (a) introduced and (b) embedded supervisory processes that are consistent with the principles of better regulation?**

**Factors that indicate that the LA/AR is towards top of the scale**

- All supervisory activity:
  - o is underpinned by an evidence-based understanding of different market segments and providers that the AR/LA regulates;
  - o is determined by reference to identified risks;
  - o facilitates innovation, change and commercial freedom; and
  - o is adequately resourced (including the use of fit for purpose technology) to provide good quality, consistent decisions without backlogs.
  
- Clear and structured feedback loops between supervisory activity, risk assessment, staff learning and best practice;
  
- Regular senior management and Board monitoring of effectiveness and value for money of supervisory activity leads to improved processes.

**Factors that indicate that the LA/AR is towards bottom of the scale**

- Supervisory activity is predominately reactive;
  
- Little co-ordination of experience and best practice development;
  
- Few incentives to improve effectiveness or value for money.

<b>Supervision</b>	<b>To what extent has the AR/LA (a) introduced and (b) embedded supervisory processes that are consistent with the principles of better regulation?</b>	<b>Please mark your overall assessment against the scale for this standard</b>
<b>Scale</b>		
Good		
Satisfactory		
Undertaking improvement and work is well underway		
Needs improvement and work has started recently		
Recognise this needs to be done but work has not yet started		
<b>Questions for response</b>	<b>Text</b>	
Rationale for assessment:		
Evidence to support assessment:		
References to relevant supporting documentation:		
Details of action plan with timescales and milestones (including work identified but not begun, work recently started and work already underway):		
References to relevant action plan documentation:		

## Enforcement

**To what extent has the AR/LA (a) introduced and (b) embedded enforcement processes that are consistent with the principles of better regulation?**

**Factors that indicate that the LA/AR is towards top of the scale**

- Published policies and guidelines are written in plain language that enables others to understand the criteria for deciding to take action;
- A wide range of effective enforcement tools that can be deployed quickly by experienced well trained staff and provide appropriate incentives for compliance; enforcement penalties punish as well as deter; regular senior management and Board monitoring of effectiveness and value for money of enforcement activity leads to improved processes and reduced costs;
- Decisions to take enforcement action are evidence based, use reliable sources and make good use of information from Legal Ombudsman.
- 

**Factors that indicate that the LA/AR is towards bottom of the scale**

- Staff have only limited experience of enforcement activity;
- Narrow range of enforcement powers; powers tend to be inflexible;
- Appeal processes that are time consuming and expensive with little control over costs.

<b>Enforcement</b>	<b>To what extent has the AR/LA (a) introduced and (b) embedded enforcement processes that are consistent with the principles of better regulation?</b>
<b>Scale</b>	<b>Please mark your overall assessment against the scale for this standard</b>
Good	
Satisfactory	
Undertaking improvement and work is well underway	
Needs improvement and work has started recently	
Recognise this needs to be done but work has not yet started	
<b>Questions for response</b>	<b>Text</b>
Rationale for assessment:	
Evidence to support assessment:	
References to relevant supporting documentation:	
Details of action plan with timescales and milestones (including work identified but not begun, work recently started and work already underway):	
References to relevant action plan documentation:	

## Capacity and capability

**To what extent has the AR/LA (a) introduced and (b) embedded the necessary Board and staff capacity and capability to deliver the regulatory objectives?**

**Factors that indicate that the LA/AR is towards top of the scale**

- Clear and consistent leadership at Board and senior management level that ensures that the whole organisation has strong consumer engagement and consumer focus;
- Appropriate levels of budget and staffing linked to the nature of the market(s), entities and individuals regulated; required skill sets are defined, linked to achieving regulatory objectives and AR/LA's regulatory outcomes – which are achieved in practice;
- Evidence-based understanding of the market(s) it regulates and the commercial realities of operating in it. High levels of knowledge management and analytical skill at all levels in the organisation drives culture of transparency, continuous improvement and embeds best regulatory practice from legal regulation and other industries.

**Factors that indicate that the LA/AR is towards bottom of the scale**

- Consumer interest not yet embedded at all levels across Board or staff, or in regulatory arrangements;
- Budget/staffing levels/structure that inhibit regulatory capacity; little focus on LSA requirements;
- Little management information about those regulated; little or no analysis or understanding of the market(s) they operate in.

Capacity and capability	To what extent has the AR/LA (a) introduced and (b) embedded the necessary Board and staff capacity and capability to deliver the regulatory objectives?	
<b>Scale</b>		Please mark your overall assessment against the scale for this standard
Good		
Satisfactory		
Undertaking improvement and work is well underway		
Needs improvement and work has started recently		
Recognise this needs to be done but work has not yet started		
<b>Questions for response</b>	<b>Text</b>	
Rationale for assessment:		
Evidence to support assessment:		
References to relevant supporting documentation:		
Details of action plan with timescales and milestones (including work identified but not begun, work recently started and work already underway):		
References to relevant action plan documentation:		

Cases by Category: Aged By Received Date and Case Category is as at 11/01/2012

Category	January 2011	February 2011	April 2011	May 2011	August 2011	September 2011	October 2011	Total
Misconduct Cases	0	0	0	0	0	0	0	0
Cases Accepted for Resolution	3	2	2	0	1	1	2	11
Cases Not Yet Accepted for Resolution	0	0	0	0	0	0	0	0
Cases Not Yet Accepted for Resolution at	0	0	0	0	0	0	0	0
Cases Not Accepted for Resolution	0	0	0	0	1	0	1	2
Premature Cases	0	0	0	1	1	1	0	3
<b>Total</b>	<b>3</b>	<b>2</b>	<b>2</b>	<b>1</b>	<b>3</b>	<b>2</b>	<b>3</b>	<b>16</b>

Category	Quarter 4 2010	Quarter 1 2011	Quarter 2 2011	Quarter 3 2011	Total
Misconduct Cases	0	0	0	0	0
Cases Accepted for Resolution	5	2	2	2	11
Cases Not Yet Accepted for Resolution	0	0	0	0	0
Cases Not Yet Accepted for Resolution at	0	0	0	0	0
Cases Not Accepted for Resolution	0	0	1	1	2
Premature Cases	0	1	2	0	3
<b>Total</b>	<b>5</b>	<b>3</b>	<b>5</b>	<b>3</b>	<b>16</b>

## ADMISSIONS 2011

### TOTAL

**Patent Attorneys: 96**

**Trade Mark Attorneys: 51**

**Patent Entity Managers: 0**

**Trade Mark Entity Managers: 2**

**Dual Entity Managers: 1**

**Patent Entities (incl. dual): 16**

**Trade Mark Entities (incl. dual): 14**