

RESPONSE TO LSB OBSERVATIONS TO SUBMISSION RE COMPLIANCE WITH IGRs

The schedule below relates to the TRB and is submitted with agreement of ITMA as the Approved Regulator

This document deals with that part of the LSB paper called 'Overall Conclusion' and in particular deals with paragraphs 9 to 11 inclusive.

5 October 2010

Para	Issue	Comment	Proposal	Additional note
9	Lay majority (required by LSB)	Accepted	<p>Proceed immediately to appoint an additional lay member to the Board using a fast track lower cost appointment process; the process to be agreed with the LSB and still involving an open competition but restricting advertisement to within specifically targeted consumer entities.</p> <p>Selection to be made after interview by two lay members and the Chairman.</p> <p>The appointment to expire not later than 2013 when the current Chairman retires. At that date a compliant (in terms of the definition of lay) Chairman or a lay person to be appointed under a full competitive selection process. This is subject to any review and / or changes to the makeup of the Board during the preceding year.</p>	<p>The lay appointee (ie lay under the definition of lay as prescribed by LSB) to be selected under Nolan principles and to have a consumer background (by consumer we mean someone from CBI type consumer rather than “man on street type consumer”).</p>

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9	Definition of 'lay' within the delegation agreement	<p>Concern repeated: that the definition is in effect broader than the preferred definition which is 'not a member of the profession being regulated'</p> <p>That said the additional lay member to serve on the Board and with the chair (Michael Heap) of the Board being non voting, a lay majority will exist on the board.</p>	As above	Delegation Agreement needs to be amended.

Para	Issue	Comment	Proposal	Additional note
9	Uncertainty over regulatory function delegated to IPReg	<p>Regulatory functions have been delegated to the TRB and not IPReg.</p> <p>The three committees referred to in the Certificate are advisory and all recommendations of the committees are approved by the relevant Board at the next Board meeting. In practice it is very unusual for the Board to reject a committee recommendation but the Board has referred matters back to committee for further review.</p>	<p>IPReg was set up and exists as a medium to facilitate in a manner which is economic and effective (as well as proportionate) the regulatory duties of the TRB.</p> <p>However to ensure further transparency:</p> <ul style="list-style-type: none"> • The structure of the committees will be reviewed in 2011 so that regulatory work will be more clearly seen to have been undertaken at Board level; • Committees may become more ad hoc and project led with an appropriate composition depending on the nature of the project/topic but always with appropriate lay representation • “IPReg” records, such as minutes, will make clear that IPReg facilitates the actions of the TRB 	<p>IPReg acts in the consumer interest by ensuring that the regulatory ‘effort’ is consistent, whether a consumer requires patent or trade mark advice (or indeed both which is commonly the case) It is also sensible that firms who employ both trade mark and patent attorneys and those who are both patent and trade mark attorneys have a consistent set of rules.</p>

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9	IPReg - an entity comprising six professional...and three lay members, and a shared chair	The Board has three professional and three lay members. With the additional lay member there will be a lay majority on the Board, with the Chair non-voting	See above for proposals but IPReg is happy to enter into further discussions about how this issue of perception might be addressed.	
9	Concerned about the role of regulatory committees which could be seen as being dominated by the provider interest	The committees have no executive power and must report to the TRB for all decisions to be made by the TRB and then carried forward.	That until the outcome of the IPReg review as discussed above each committee be formally constituted as a single joint subcommittee comprising one professional PRB member and one professional TRB member, but with two lay members one of whom would be chair and have a second and casting vote in the event of the votes being equal. In either case any proposal of the committee could not be implemented without the TRB (constituted with a lay majority) approving the decision.	Delegation Agreement needs to be amended.

Para	Issue	Comment	Proposal	Additional note
9	Board members have previously been responsible for representative functions	Within the professional IP community, the tradition of service has been confined to activity with ITMA. The pool of experienced professionals with regulatory knowledge was therefore self-determining. At present there has been no conflict arising and we believe any risk to the principle and perception of regulatory independence is minimal and the proposal outlined will mitigate this risk.	We propose a minimum one year gap between any representational role on the ITMA Council and application for Board membership.	Delegation Agreement needs to be amended.

Para	Issue	Comment	Proposal	Additional note
10	Board reappointment arrangements	<p>It is noted that comment refers to reappointment. Current appointments were made prior to any formal (LSB) rules being in place.</p> <p>Lay appointees were appointed under the supervision of the Appointments Commission. Non compliance in the process of appointment is therefore in relation to the appointment of the professional members.</p> <p>Any disturbance to present appointments would involve a considerable loss of resource to the Board who have been working as a shadow board and full board for over 2 years and (a secondary but important point in terms of cost) might involve contractual issues</p>	<p>The appointment of new professional members will be by way of open competition and selection on merit and the process will have a substantial lay involvement.</p> <p>It is understood that a process seen to be dominated by a professional body cannot give the best of impressions. As for lay members it is considered that the model used for their appointment is consistent with good practice.</p>	

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10	We require further information about arrangement for board discipline	There is in place a code of conduct for board members and a structure for its enforcement.	<p>The Code of Practice of the Board is attached.</p> <p>We have yet to develop a structure for formal enforcement but currently the Board informally accepts that the Chairman (lay) of the Governance Committee would resolve any issue</p>	Agree that formal dismissal cannot take place without prior consultation with the LSB.
10	We require further information about arrangements for setting board remuneration	Terms were set out in contracts drafted prior to the formal establishment of the Board	The board remuneration of £3,000 pa (for 10 days work) was set in the context of informal investigations of what is paid by similar type boards. The 2010 budget for the cost of the Board was approved by ITMA. The remuneration is fixed for the entire period of the contract for each Board member	

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11	Concerns around shared services.	Shared services are at a minimum and those that exist are on a commercial basis and kept under regular review.	<p>IPReg has committed to reviewing the arrangement for maintenance of the registers that is currently undertaken for IPReg by ITMA to ensure value for money.</p> <p>IPReg has included in the business plan for 2011 the scoping and possible redevelopment of its website to enable the public and registrants to engage directly with IPReg on line, to ensure communication in real time and also to streamline data collection. These activities will enable IPReg to meet its regulatory objectives and provide data to the LSB in a more efficient way.</p>	

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11	Budgets (and dispute resolution mechanisms)	<p>These concerns are accepted. Detailed and prolonged budget discussion could lead to concessions being made by the TRB acting with IPReg and those discussions could lead to a perception that the regulator is being placed in a subservient position.</p> <p>However, it is also important for the Approved Regulator to be satisfied that the proposed budget is suitable, proportionate and delivers the regulatory objectives for which it is responsible. The theoretical benefits of a dispute resolution procedure are outweighed by the practical requirements of ensuring that work continues.</p>	<p>The delegation agreement will be amended to ensure that a suitable process for budget preparation and deliberation is put in place. This will preserve the independence of IPReg, acting on behalf of the AR and take account of the rights of ITMA as AR and registrant through consultation.</p> <p>The safeguard against the profligate regulator is in the requirement for the budget and practice fees to be approved by the LSB.</p> <p>The TRB, IPReg and the AR agree to refer any issues which require mediation to the LSB.</p>	Delegation Agreement needs to be amended