

## **Representations to the Legal Services Board in response to the comments of the Lord Chief Justice on the Licensing Authority Application submitted by the Intellectual Property Regulation Board on behalf of the Chartered Institute of Patent Attorneys and the Institute of Trade Mark Attorneys**

The Intellectual Property Regulation Board (IPReg) has reviewed the advice from the Lord Chief Justice concerning the Licensing Authority Application made on behalf of the Chartered Institute of Patent Attorneys (CIPA) and the Institute of Trade Mark Attorneys (ITMA) and we set out below our response.

IPReg sought a meeting with the Lord Chief Justice prior to submitting its application and, in view of the advice received, we believe that such a meeting would have provided useful background on patent and trade mark attorney regulation and perhaps avoided certain misunderstandings.

The Lord Chief Justice makes three points that relate to:

- a) Competition and standards;
- b) Continuing Professional Development for patent and trade mark attorneys;
- c) The activities that IPReg would permit to be conducted by the bodies that it seeks to license.

### **a) Competition and standards**

IPReg shares the Lord Chief Justice's concern about the need to maintain high standards in all areas of legal work. IPReg agrees also with the Lord Chief Justice's comments concerning the excellent international reputation of the UK in relation to intellectual property (IP) law. Patent and trade mark attorneys are highly qualified individuals who, as a rule, hold degrees in specialised fields for which individuals would apply for patents or trade marks, in addition to their attorney qualification. We believe that the high standard of their work and client care are reflected in the very low levels of complaints received concerning trade mark and patent attorneys by the firms themselves and by the Legal Ombudsman (see our comments under "Complaint handling" on page 19 of our Licensing Authority Application). So far as the type of body through which they practise is concerned, we would point out that the two disciplinary cases that have arisen out of complaints have related not to licensable bodies but to sole practitioners.

Traditionally, there has been no fetter on profit sharing in patent and trade mark attorney firms. For this reason, IPReg already regulates 9 larger firms that are ABS-like<sup>1</sup> by virtue of non-lawyer ownership and management, including Murgitroyd & Co, who are quoted on the AIM market. Our experience with such firms, over almost 4 years of operation, is that they operate to the same high standards and with the

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<sup>1</sup> These firms are currently registered under the Copyright, Designs and Patents Act and/or the Trade Marks Act and, in their current form, will be licensable once the transitional period in the LSA terminates.

same systems and controls as other patent and trade mark attorneys, and we have no cause to believe that their existence jeopardises standards. (Moreover, so far as we are aware, this was the experience of the previous regulator of these firms.) In addition, as we explain in our Licensing Authority Application (see Section 6), IPReg will have robust authorisation and supervision arrangements to ensure that the high standard of IP work in the United Kingdom is maintained.

**b) Continuing Professional Development (CPD) for patent and trade mark attorneys;**

We believe that the comments of the Lord Chief Justice reflect a misunderstanding on the part of the Legal Services Consumer Panel, both of IPReg's CPD requirements and also its comment at point 6 of IPReg's Education Plan (Annex 9 to the Licensing Authority Application).

We have previously written to the Legal Services Consumer Panel to explain this (see **Annex A** to these representations) and will be making formal representations in response to their advice on IPReg's Licensing Authority Application. Dealing with the point about IPReg's Education Plan, the action, "Issue a CPD questionnaire to identify areas for development" related to a questionnaire that IPReg intended to issue to see how its CPD arrangements could be improved upon, hence the subsequent action, "Amend Guidelines and Rules as and if appropriate." This questionnaire was issued and the project was completed in 2012.

In actual fact, IPReg already has had since 1<sup>st</sup> January 2010 the "detailed programme of continuing education" that the Lord Chief Justice recommends for patent and trade mark attorneys, full details of which are set out on our website (see <http://ipreg.org.uk/pro/manage-your-professional-development/>). This consists of IPReg's Continuing Professional Development Regulations and detailed guidance. There are also particular CPD requirements for litigators. For ease of reference the Regulations and guidance are attached to these representations as **Annex B**.

The CPD requirements relate, as would be expected, to people who hold the protected title of patent/trade mark attorney. IPReg does not set CPD requirements for non-attorneys but such persons are nevertheless, as employees of regulated firms, subject to IPReg's Code of Conduct regarding the standard of their work, etc.

IPReg did not include the Continuing Professional Development Regulations and associated guidance in its Licensing Authority Application, having taken the view that these Regulations were not relevant in relation to the licensing of ABS as entities (and in respect of which no changes were being made). However, in view of the misunderstandings on the part of both the Legal Services Consumer Panel and the Lord Chief Justice, we propose that our Regulations and guidance on CPD be formally included in our Licensing Authority Application as **Annex 14**.

CPD returns are collected from all registrants (individual patent and trade mark attorneys). Any non-compliant returns are reviewed and necessary action taken. In the years that returns have been submitted to IPReg (2010-2012) we have annually had significantly in excess of 95% that are compliant.

**c) The activities that IPReg would permit to be conducted by the bodies that it seeks to licence.**

IPReg has always intended to stay within the bounds of its professional expertise and experience as a regulator in relation to the licensing of ABSs. This is because we believe that regulation is more effective

when conducted by those with in-depth knowledge of the various sectors of the legal services market. The purpose of Regulation 3.1 of the IPReg Registered Bodies Regulations is to ensure that IPReg does not authorise bodies conducting non-IP legal work.

The Lord Chief Justice is correct in stating that the specific examples in Regulation 3.1 are higher risk areas of work. However, this was never intended to be an exhaustive list and it is for this reason that the Regulation states, "IPReg will not Register a body if IPReg is not satisfied that IPReg has suitable Regulatory Arrangements in place to regulate that body in accordance with IPReg's statutory duties and the Regulatory Objectives. For the avoidance of doubt, and without limiting the generality of the foregoing sentence, IPReg will not register a body which undertakes (to whatever extent) any of the following activities..." (Our emphasis).

Nevertheless, we accept the comments of the Lord Chief Justice and have made the suggested amendment to Regulation 3.1 in the form attached as **Annex C** to these representations. Given the breadth of the first sentence of Regulation 3.1, we did not consider it necessary to conduct a public consultation on this amendment, which has been approved by our Board.

In view of the above, we submit that there is no substantive reason for the Legal Services Board to decline IPReg's Licensing Authority Application based on the advice received from the Lord Chief Justice.

Michael Heap  
Chairman  
30 October 2013