

IPReg's 2022 business plan & budget: IP Inclusive consultation response



Working for diversity and inclusion in IP

1 Introduction

These submissions are made by the IP Inclusive initiative, in response to IPReg's September 2021 consultation on its 2022 business plan, budget and practising fees.

They are made on behalf of the UK-based IP professionals – including many registered patent and trade mark attorneys – who support IP Inclusive in its efforts to improve equality, diversity, inclusion and wellbeing across the UK's IP sector.

2 General comments

We welcome the inclusion of support for diversity initiatives in IPReg's proposed 2022 budget. As discussed in our 1 February 2021 submissions regarding IPReg's review of its regulatory arrangements¹, we believe that in addition to being one of the regulatory objectives under the Legal Services Act 2007, increasing diversity is good for the patent and trade mark professions and also for their clients.

We are, moreover, delighted to see the use of an equality impact assessment in considering the 2022 practising fees. This is in our view a positive development and we encourage IPReg, as in our February 2021 submissions, to conduct similar assessments before making any substantive changes to its regulatory arrangements.

IPReg's 2021 diversity survey provides a good evidential base for the impact assessment, although we believe that certain wider sources should also be taken into account in this context (see 6 below).

The proposed 2022 business plan includes a number of measures likely to improve diversity in, and access to, the patent and trade mark professions. These we welcome as an appropriate use of IPReg's resources, and one which is likely to have a significant positive impact on the strength and sustainability of the regulated community.

¹ See <https://ipinclusive.org.uk/wp-content/uploads/2021/02/210201-ipreg-regulatory-review-ip-inclusive-response.pdf>

3 The proposed 2022 budget

We approve the inclusion, in the proposed 2022 budget, of a £7,000 allowance for supporting diversity initiatives in the regulated community, underpinned by the continuing £20,000 diversity initiatives reserve. This we believe represents a concrete commitment to diversity in the sector.

We have been grateful to IPReg for using some of its previous diversity budget to sponsor IP Inclusive's operating costs as well as specific projects such as our 2018-2019 website upgrade. This has allowed us to continue our work to promote equality, diversity, inclusion and wellbeing in the UK's IP sector – a sector which embraces not only IPReg's regulated community but also the other IP professionals who work alongside them for the benefit of their clients. We hope that this funding can continue during 2022.

We have also been grateful for IPReg's support in promoting and participating in IP Inclusive's work, in sharing relevant information and experiences, and in collaborating on projects where appropriate. We believe this benefits the UK's IP system and its users.

IP Inclusive, in particular through its regional networks², communities³ and Careers in Ideas outreach campaign⁴, would welcome the opportunity to work with IPReg to ensure that the 2022 diversity budget is appropriately spent, on projects that will have a positive impact on diversity and inclusion in the patent and trade mark professions. In particular:

- The Careers in Ideas campaign helps a wider range of recruits to become aware of, and access, the patent and trade mark professions, and has contacts in relevant social mobility and outreach charities; as such it has the potential to improve diversity within the professions and could represent a sensible investment.
- The IP Inclusive communities work to improve access and fairness for specific under-represented groups such as BAME people, disabled people, carers, LGBT+ people, and (in particular in STEM-based careers) women: these too could benefit from additional funding, for example to allow them to introduce mentoring and other support schemes for IP professionals.

Finally, we note with approval IPReg's proposal to hold some of its 2022 Board meetings online. This should not only reduce operating costs but also improve accessibility for many participants; longer-term we hope it will help IPReg to recruit and retain a more diverse Board membership.

4 The proposed 2022 practising fees

We support IPReg's proposal to keep practising fees at the 2021 level, subject to our comments at 5 below regarding the availability of a waiver.

² See <https://ipinclusive.org.uk/our-regional-edi-charter-networks/>

³ See <https://ipinclusive.org.uk/community/>

⁴ See <https://ipinclusive.org.uk/careers-in-ideas/>

5 The fee waiver

We welcome the proposal to extend the fee waiver provision for a further twelve months. We agree with IPReg's view that the effects of the Covid-19 pandemic will continue to be felt by some registrants during 2022.

However, we would question whether the waiver is appropriately scoped. It is currently limited to professionals who are not in work. We believe the pandemic has had a disproportionately adverse effect on some disabled people and carers, with NHS backlogs and staff shortages making it harder to access care and support. Covid-19-related changes to working arrangements may have introduced additional complications and costs. These people may still be able to – and want to – continue working, to at least some extent, but might nevertheless suffer financial hardship and find even the existing practising fee levels problematic.

We have listed in the annex some sources of evidence regarding the impact of the pandemic on disabled people and carers.

We therefore urge IPReg to extend the waiver scheme, and the exercise of the Chief Executive's discretion, to all disabled people and carers who suffer hardship resulting from the Covid-19 pandemic, whether or not they are working. This would help ensure that the 2022 practising fees did not impact unfairly on certain registrants.

We also question whether it is appropriate to limit the waiver to hardship "resulting directly from the Covid-19 pandemic". We now know that the pandemic is having many secondary effects, not just the immediately visible ones such as furlough and redundancy (see the annexed evidence, for example). Those effects may or may not be judged to have arisen *directly* from the pandemic – and that might in any case be difficult to prove – but they are no less real to the people who suffer them. Again, we believe it would be appropriate to widen the waiver in this respect, and for the Chief Executive to have full discretion to grant a waiver if the evidence demonstrates a genuine need.

We suggest that IPReg give thought to the establishment of a "hardship fund" or similar scheme, to support the extension of the waiver to a wider group of registrants in need, particularly the groups we refer to at 6 below. We believe this would help the regulated professions to embrace and nurture a more diverse range of people.

6 The equality impact assessment

We broadly agree with IPReg's assessment of the impact of its proposed 2022 practising fees on equality ("the EIA"). There are however areas in which we think the assessment could be improved, as follows.

6.1 Disability

We believe the EIA should recognise the potential effects of the Covid-19 pandemic on disabled people, who may therefore be differently affected by the proposed 2022 fee structure than registrants who are not disabled. See our comments at 5 above and the annexed list of supporting evidence. We believe it is appropriate for an impact assessment of this type to take account of wider contextual evidence such as that referenced in the annex.

The EIA acknowledges that there may be more disabled people in the regulated community than were reported in IPReg's 2021 diversity survey. We believe, however, that the *number* of disabled people is not relevant to the question of whether those people could be disadvantaged.

For the avoidance of doubt, we use the term “disabled people” to include neurodiverse people.

6.2 Caring responsibilities

Being a carer is not a protected characteristic under the Equality Act 2010. Nevertheless our comments in 6.1 above can also apply to carers, in particular those who care for disabled people. Diversity is underpinned by inclusivity, and we believe that an inclusive community should also have regard to any disproportionate impact of its actions on people with caring responsibilities.

6.3 Parenting

We note the comment that registrants on maternity leave can apply to be put in the “not in active practice” category in order to obtain a reduction in their practising fees. We are not convinced that this alone suffices to address the impact of the fees on parents relative to other registrants. We would urge IPReg, whilst reviewing the effects of its 2022 fees for different groups, to consider the following improvements to the Practising Fee Regulations and their implementation:

- A recognition that parental leave may be taken by people of all genders, not just women, and may not necessarily be linked to a pregnancy.
- Allowance of a pro rata fee reimbursement if a registrant begins a period of parental leave mid-year, so as not to disadvantage the large number of parents whose children are born at times other than the end of the calendar year.
- The treatment of adoption leave in the same way as parental leave.

We also recommend that IPReg give more detailed consideration to the impact of the practising fees on registrants who, as a result of becoming parents, reduce their working hours without leaving active practice. The effects of the fees for these people – many of whom are currently women – are likely to be more negative than for other registrants. We believe this may be a particular issue for self-employed attorneys, or attorneys in smaller practices, for whom a period of full parental or adoption leave might not be viable.

Similarly, we believe that the EIA – and the proposals based on it – should recognise that the cost of childcare has increased as a result of the Covid-19 pandemic⁵, and might in some cases lead to financial hardship for both working and non-working parents in the regulated community.

6.4 Disability and caring (ii)

To help ensure that the 2022 practising fees do not disadvantage disabled people or carers, we would also urge IPReg to consider introducing a reduction or waiver for registrants who need to stop work, or reduce their hours, temporarily due to a disability or caring responsibility.

7 IPReg’s diversity survey

IPReg is not proposing to conduct a diversity survey in 2022. In some respects this appears a sensible and proportionate approach. However, we would offer the following cautions.

- These are rapidly changing times. Things are happening that have a significant impact on registrants and their businesses: the pandemic and Brexit for example. At the same time, registrants are becoming more engaged with the diversity agenda and steps are being taken to diversify the pipeline. These factors may well cause diversity statistics to vary significantly even over a year; it would be useful to have quantitative evidence of those trends.
- IPReg reviews, and potentially changes, its practising fees annually. The data used to assess the impact of those changes on equality, diversity and inclusion are also, therefore, more appropriately gathered once a year.
- As discussed in our February 2021 submissions regarding IPReg’s review of its regulatory arrangements¹, it is important to gather diversity data on an ongoing basis in order to track career progression opportunities for different groups and the variation of diversity levels with seniority. If the professions’ efforts to improve diversity and inclusion are working, these too should be changing rapidly at the present time: if they are not, we need to know that and redouble our efforts to improve equality in career progression.
- Many registrants’ businesses now gather their own diversity data. Regular updates of the IPReg survey will be valuable to these organisations in benchmarking their progress towards a more diverse profession.
- In the longer term, participation may be improved by making the regulator’s survey an annual event that is a standard part of the registration renewal process.
- IPReg says it “does not expect the overall results to have changed significantly in the intervening period”. We are concerned that this introduces an element of confirmation bias. The gathering of evidence, on which to base future policy, should not be constrained by prior expectations of the results.

⁵ See, for example, <https://www.familyandchildcaretrust.org/childcare-2021-press-release> and <https://ifs.org.uk/publications/14990>

On balance, therefore, we believe it would be more appropriate for IPReg to re-run its 2021 diversity survey in 2022 and annually thereafter. We would be happy to help promote future surveys and to optimise participation levels.

8 The proposed 2022 business plan

We are delighted to see mention, in IPReg’s proposed 2022 business plan, of various initiatives to improve access to, and diversity within, the patent and trade mark professions. For example we fully support IPReg’s strategic priorities to encourage the entry of new providers and delivery methods for education courses; and to provide a variety of routes into the profession, including potentially through apprenticeships. We agree that these measures are likely to increase diversity in the regulated community.

We also support IPReg’s intention to review, on a more regular basis, the performance of accredited education providers. We would urge the inclusion of independent EDI (Equality, Diversity and Inclusion) impact assessments within the review process, in particular for accessibility and for assessment methods.

We applaud IPReg’s engagement of external experts to assist with diversity- and inclusion-related aspects of its regulatory arrangements review. IP Inclusive stands ready to work with them to support and inform the review process. We are also pleased that the review includes important issues such as the impact on diversity of education and training requirements (including the litigation skills qualifications), and the encouragement of new qualification pathways. These are issues addressed in our February 2021 submissions¹.

9 The draft Practising Fee Regulations

Our comments on the draft Regulations relate to the scope of the Covid-19 waiver in Regulation 6, for which see 5 above.

See also our comments in 6.3 and 6.4 regarding the provisions for maternity and other types of career break. This is relevant to the reduced fees for attorneys “not in active practice” (which we presume is intended to align with the definition of “inactive attorney” in Regulation 1).

10 About IP Inclusive

IP Inclusive is an association of individuals and organisations who share a commitment to improving equality, diversity, inclusion and wellbeing throughout the IP professions. Its founding organisations were the Chartered Institute of Patent Attorneys (CIPA), the Chartered Institute of Trade Mark Attorneys (CITMA, formerly ITMA), the IP Federation and The UK Association of the International Federation of Intellectual Property Attorneys (FICPI-UK), with active support and involvement from

the UK Intellectual Property Office. Our supporters now span the IP-related professions, and include patent and trade mark attorneys, IP solicitors and barristers, and many other professionals who work in or with intellectual property. Many CIPA and CITMA members are actively involved in the initiative.

Our work, which is overseen by the governing body IP Inclusive Management, includes:

- A voluntary best practice Equality, Diversity and Inclusion Charter⁶, which now has over 150 signatories from across the IP professions, and an associated “Senior Leaders’ Pledge”⁷.
- The “Careers in Ideas” initiative⁴, which raises awareness of IP-related careers in order to diversify the pool from which the professions recruit.
- Networking and support “communities” for under-represented groups and their allies³, currently including our Women in IP community; IP & ME for BAME professionals; IP Ability for disabled (including neurodiverse) people and carers; IP Futures for early-career IP professionals; the IP Non-traditional Family Network for professionals in non-traditional families (including solo parents and “blended” family members); and IP Out for LGBT+ professionals.
- Diversity-related resources⁸, training, news⁹ and information, which we disseminate through our website, events¹⁰ and regular updates to our supporters.

Our Lead Executive Officer Andrea Brewster is a Chartered Patent Attorney, European Patent Attorney, and former CIPA Council member and President. In the past she has served on the Institute’s Education and Business Practice Committees. She is regulated by IPReg.

For more information about IP Inclusive, please visit our website at www.ipinclusive.org.uk, or email contactipinclusive@gmail.com.

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⁶ See <https://ipinclusive.org.uk/about/our-charter/>

⁷ See <https://ipinclusive.org.uk/the-ip-inclusive-senior-leaders-pledge/>

⁸ See <https://ipinclusive.org.uk/resources/>

⁹ See <https://ipinclusive.org.uk/newsandfeatures/>

¹⁰ See <https://ipinclusive.org.uk/events/>

Annex:

Evidence of the impact of the Covid-19 pandemic on disabled people and carers

- <https://www.jrf.org.uk/report/financial-impact-covid-19-disabled-people-and-carers> (the financial impact of Covid-19 on disabled people and carers)
- <https://www.understandingsociety.ac.uk/research/publications/526525> (the impact of disability on employment and financial security following the Covid-19 outbreak)
- <https://www.scope.org.uk/campaigns/extra-costs/disability-price-tag/> (the extra costs faced by disabled people and parents with disabled children)
- <https://wbg.org.uk/analysis/uk-policy-briefings/spring-budget-2021-covid-19-and-economic-challenges-for-disabled-women/> (problems specifically for disabled women, who have two protected characteristics)
- <https://www.adass.org.uk/adass-spring-survey-21> (access to care and support for disabled people, older people and carers)
- A post on the IP Inclusive website “News and Features” page, written by IP Ability committee member Victoria Barker and summarising the effects of the pandemic on disabled and neurodiverse people, citing a number of sources of relevant data: <https://ipinclusive.org.uk/newsandfeatures/covid-19-and-disability/>
- Also relevant to the financial burden on disabled people and carers:
 - <https://www.disabilityrightsuk.org/news/2021/february/pandemic-poverty-new-dbc-research-report-shows-why-%C2%A320-week-uc-uplift-must-be>
 - <https://disabilitybenefitsconsortium.com/campaign-news/>