

# IPReg’s 2024/25 business plan and budget: IP Inclusive consultation response

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**IPINCLUSIVE**

Working for diversity and inclusion in IP

## 1 Introduction

These submissions are made by the IP Inclusive initiative, in response to IPReg’s July 2023 consultation on its 2024/25 business plan, budget and practising fee proposals.

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 are pleased to see that equality, diversity and inclusion (EDI) play such a key part in IPReg’s proposed 2024/25 plans, in particular through its education-related projects (see 3.2 below). Increasing diversity is, we believe, beneficial for both the patent and trade mark professions and their clients, as well as one of the regulatory objectives under the Legal Services Act 2007.

We are also pleased to see the continued use of equality impact assessments in considering practising fee levels, although we recommend that the evidence base for these assessments be updated more frequently: see 6.1 below.

We applaud IPReg for highlighting, in its strategic objectives, an intention to carry out its regulatory activities inclusively. An inclusive regulator sets the tone for the regulated professions as a whole, and is vital for their strength and development.

## 3 The draft 2024/25 business plan

### 3.1 Improving diversity and access

The proposed 2024/25 business plan includes a number of measures likely to improve diversity and inclusivity 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 regulated community.

We are pleased that “funding diversity initiatives” is one of the anticipated main areas of work, as well as “continuing to build our evidence base about the IP sector”. Regarding the latter, we hope to

see more progress in the gathering of EDI-related data during the next twelve months (see 3.4 below) and stand ready to help with that where we can.

We agree that it is important for IPReg to continue to work with, and contribute to, cross-sector work on EDI. Learning from others in the legal and wider professional services sectors, sharing research and experiences, establishing collective approaches to information gathering and to designing, implementing and evaluating interventions – these are all key, we believe, to the effective promotion of EDI. They are likely to be particularly valuable for smaller regulators such as IPReg, which need to identify resource-efficient solutions and avoid duplication of, or non-alignment with, relevant work being done elsewhere.

We would however urge IPReg to apply these learnings in a proportionate way and one that is appropriately tailored for the sector it regulates, in which EDI issues will not necessarily play out in the same way as in the wider legal sector. IPReg’s current consultative and collaborative approach to regulatory change should help ensure that happens.

## **3.2 Education-related projects**

### *3.2.1 General*

We are delighted to see IPReg’s proposed focus, in the next year, on education, training and routes of entry. We agree that the intended projects are likely to have a positive impact on diversity within the regulated sector and on its accessibility to a wider range of recruits; they therefore constitute a sensible use of IPReg’s resources in view of its regulatory objectives. We stand ready to work with IPReg on the design, implementation and evaluation of these projects, alongside our own ongoing efforts to improve diversity in the IP professions.

### *3.2.2 Qualification routes and barriers to entry and progression*

We particularly support the intended review of qualification pathways and barriers to entry into the patent profession. We welcome the chance to explore alternative routes to qualification that might improve access and in turn allow the profession to recruit a more diverse range of people, for example via “equivalent means” or apprenticeships.

We recommend that the review encompass qualification routes for career changers, including those who wish to move from other IP- and/or STEM-related (for example R&D or entrepreneurial) roles.

Crucial to this process, we believe, will be the review of the patent attorney competency framework (see 3.2.4 below). It is important to identify the essential requirements for qualifying as a patent attorney, before exploring the routes to achieving those requirements.

In paragraph 23 of the draft business plan, IPReg notes that it will be using its work on diversity – including the data it gathers from the regulated professions – to inform its education workstreams, to identify and understand barriers to entry and progression, and thus to improve opportunities in the early stages of education and training. We very much support this approach, so long as the data is sufficiently current: see 3.4 below.

### *3.2.3 The European Qualifying Examinations (EQEs)*

We are encouraged that IPReg intends to take account of changes to the EQEs. These can have a significant impact on the UK patent profession's ability to recruit, train and quality-assure its new attorneys, and as such we believe IPReg is an important stakeholder. We would be happy to collaborate with IPReg on measures to ensure the EQEs do not present an inappropriate barrier to entry into the profession.

### *3.2.4 The competency framework*

We also welcome IPReg's proposed review of its competency framework. This will provide a more sound basis for the recruitment of new talent into the regulated professions; help employers to select and appoint more objectively; reduce the risk of unconscious bias and other forms of discrimination; inform the creation of potential new routes of entry; and in turn improve access to the professions. It should also help education providers to build, and IPReg to accredit, appropriately tailored courses.

An accurate and up-to-date competency framework will, moreover, facilitate the assessment of trainee and qualified attorney development and the design of continuing competence safeguards. It is likely to be welcomed by many IP sector employers, in particular signatories to the IP Inclusive EDI Charter.

### *3.2.5 Education providers and their accreditation*

We applaud IPReg's ambition, in its strategic priorities for 2024/25, to "increase the range of good quality education providers" that it accredits. We agree that this – alongside an inclusive and accessible qualification regime and a range of qualification routes – can be a valuable way of increasing diversity in the trade mark and patent attorney professions. We therefore welcome IPReg's plans to review its accreditation systems and accredited providers, as well as those to work with accredited and potential providers to "encourage new qualification pathway options".

In order to reduce unnecessary, and potentially discriminatory, barriers to entry, we urge IPReg to require accredited providers to conduct EDI impact assessments; to ensure that their training and assessment processes are appropriately accessible; and generally to recruit, train and evaluate both fairly and inclusively.

## **3.3 Thematic reviews**

We note that IPReg proposes to conduct "thematic reviews" into a number of its regulatory arrangements, including the recently-introduced continuing competence provisions. We would appreciate being kept informed of outcomes relevant to EDI- and wellbeing-related training, as we are keen to understand their value to the regulated professions and to improve the available resources.

## **3.4 Diversity data gathering**

We welcome IPReg's intention to continue to build its evidence base about the IP sector, which we understand will extend to EDI-related data. We note, however, that the diversity data gathering

referred to in the 2023/24 business plan has not yet happened, and are concerned that the new draft plan makes no concrete commitment on this front.

IPReg has allocated £10,000 of its proposed 2024 budget for “diversity research”. The draft business plan refers to “developing our approach to data gathering/research” and “identifying ways to improve the diversity data we hold for individuals and firms to get a clearer picture of the makeup of the profession”. This is intended to “provide a platform that will inform our EDI workstreams and enable us to develop a longer-term EDI strategy.”

There is, however, no specific reference to the gathering of EDI-related data during the period in question. This was last done in 2021 and we believe it is vital that it be repeated soon, not only to inform the education-related projects discussed above but also to allow IPReg to conduct more accurate equality impact assessments for its future activities and plans. We disagree with IPReg’s position that the 2021 data is still relevant to its regulatory activities “since there are unlikely to have been significant changes in the diversity of the profession since the survey was undertaken”: see our comments at 6.1 below.

We therefore urge IPReg to commit to conducting a diversity survey of the regulated community in 2024.

In the longer term, we continue to recommend that an EDI data gathering process be incorporated into IPReg’s annual registration procedures. In these times of tremendous change, both within the regulated professions and outside as well as in IPReg’s own regulatory arrangements, a variation in diversity statistics can have a significant impact, especially if – as in the patent and trade mark sector – the statistics start from a relatively low diversity baseline. It is important that IPReg has up-to-date evidence, not only to inform its annual practising fees review but also to evaluate the impact of recent changes to its regulatory arrangements and the intended diversity-improving measures in its business plan. This will also help it to target its future EDI initiatives more effectively.

We remain of the view that for the patent and trade mark professions, it is the regulator that is best placed to gather this data and to provide accurate diversity benchmarks for its registrants, their businesses, their clients and other legal sector regulators. It therefore has a responsibility to do so. As before, IP Inclusive stands ready to assist in the development and promotion of EDI surveys, in ensuring alignment of approaches to EDI data gathering across the sector, and in optimising participation levels.

### **3.5 Website redevelopment**

IPReg plans to invest significant resources during 2024/25 in the redevelopment and enhancement of its website and underlying databases. We urge IPReg to ensure that these developments follow best practices on digital accessibility, in particular for disabled (including neurodivergent) people. In addition, people without reliable internet access, or who are otherwise unable or reluctant to use online services, should still be able to access regulatory information and support when necessary.

## 4 The proposed 2024 budget

### 4.1 General diversity work

We are pleased to see the inclusion, in the proposed 2024 budget, of a £7,000 allowance for supporting diversity initiatives in the regulated community, underpinned by the continuing £20,000 diversity initiatives reserve.

We note that £10,000 has also been allocated for “diversity research” but would like to see this accompanied by a more concrete plan to refresh the 2021 survey during the period covered by this budget: see our comments at 3.4 above.

Although the allowance for diversity initiatives has not increased in line with inflation since the previous budget, we believe that the additional focus on diversity in the education-related projects discussed above has the result that IPReg’s overall investment in, and commitment to, diversity is increasing. We believe this is important in the current climate, when EDI issues are growing in importance to regulated professionals, their employers, their clients and therefore also the Legal Services Board.

We have very much appreciated and thank IPReg for using some of its previous diversity budgets to assist with 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 2024.

Similarly we thank IPReg for its support in promoting and participating in IP Inclusive’s work, in sharing relevant information and experiences, and in collaborating on projects where appropriate.

IP Inclusive, in particular through its regional networks<sup>1</sup>, communities<sup>2</sup> and Careers in Ideas outreach campaign<sup>3</sup> and their respective contacts, would welcome the opportunity to work with IPReg to ensure that the 2024 diversity budget is appropriately spent on projects that will have a positive impact on EDI in the patent and trade mark professions.

### 4.2 IPReg’s working arrangements

We applaud IPReg’s intention to hold its 2024 Board meetings as hybrid events. We believe this will widen accessibility for current Board members and facilitate the recruitment and retention of a diverse membership. This in turn will help the Board to make more rounded decisions, reflecting a range of perspectives from across the regulated professions and their client base.

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<sup>1</sup> See <https://ipinclusive.org.uk/our-regional-edi-charter-networks/>

<sup>2</sup> See <https://ipinclusive.org.uk/community/>

<sup>3</sup> See <https://ipinclusive.org.uk/careers-in-ideas/>

## **5 The proposed 2024 practising fees**

We have no comments on IPReg’s proposed increase to the practising fees in 2024, other than to stress the importance of the discretionary waiver (Regulation 4 of the draft Practice Fee Regulations). We welcome the fact that IPReg intends to maintain the waiver and its availability in any case of hardship. This represents a proportionate way of preventing the fee increase constituting a “back door” barrier to inclusion in the regulated professions.

The availability of such a scheme, to those who need it, is a matter of good practice in a sector that prides itself on its ethical principles and that strives to improve diversity, inclusion and access. We believe it will help the regulated professions to embrace and nurture a wider range of people, in turn contributing to their independence, strength, diversity and effectiveness.

## **6 The equality impact assessment (EIA)**

### **6.1 The evidence base for the EIA**

The draft EIA at Annex B of the consultation paper is supported by data from a 2021 diversity survey, which IPReg considers still relevant since it believes “there are unlikely to have been significant changes in the diversity of the profession since the survey was undertaken”.

We are concerned about this approach. In the absence of evidence as to how or whether diversity levels may be changing, there seems to be more risk in assuming that they are not than in considering that they may be. Given the importance of reliable EDI data to a number of its planned initiatives, we would urge IPReg to secure more timely data in support of future EIAs.

We note that the last few years have seen an increasing focus on EDI throughout the IP sector. This may well have led to changes in recruitment practices and downstream inclusivity, and in turn to changes not only in new admissions but also – we hope – in the retention and career development of existing registrants. The rate of change of declared diversity levels in the regulated community might therefore be expected to have increased compared to that observed historically. It would be helpful to monitor these changes relatively frequently to determine whether retention and progression are evenly spread. Moreover in a relatively small and less diverse sector such as the patent and trade mark professions, even small changes can have a proportionately large impact on overall diversity levels: such changes should be measured and taken into account in EIAs.

We therefore urge IPReg to update its diversity data as soon as possible, and in any case before it conducts an EIA to inform its next review of practising fees in 2024. The results are likely to be of value not only in setting fee levels but also for shaping and evaluating IPReg’s other regulatory activities, in particular those relating to education, training and access to the professions.

We refer again to the comments made in section 7 of our September 2021 submissions on IPReg’s 2022 business plan and budget<sup>4</sup> and section 3.2 of our August 2022 submissions on the proposed 2023 budget<sup>5</sup>, regarding the importance of the regulator gathering EDI data on a more frequent basis than it has done so far. See also 3.4 above.

## **6.2 The importance of the discretionary fee waiver**

Notwithstanding the above comments, there appear to be some protected characteristics for which IPReg has – and indeed may continue to have – relatively little statistically significant data. In these areas we believe it would be difficult for the regulator to say with confidence that proposed increases in practising fees had no negative impact.

We are therefore pleased to see that the discretionary fee waiver will be retained, and that IPReg intends it to apply generally in any case of hardship. As discussed at 5 above, we believe this will help guard against potential problems from the proposed fee increases, even in areas where their impact is currently difficult to assess. We see this as a sensible and proportionate way for a regulator of IPReg’s size to guard against detrimental effects on particular groups.

## **6.3 Disability**

We welcome IPReg’s recognition that the number (or proportion) of disabled people is not relevant to the question of whether, and to what extent, those people could be disadvantaged by fee increases. It is important to see supportive statements like this from the regulator. We agree that the discretionary fee waiver provisions should help alleviate potential negative impacts on disabled people in individual cases of hardship.

It seems likely, regardless of any under-reporting in IPReg’s 2021 diversity survey, that the patent and trade mark professions have a genuinely low proportion of disabled people compared to the LSB’s 15% benchmark. It is important, therefore, that IPReg’s proposed education-related projects take account of the accessibility of the professions for disabled people – including at the point of entry, during training and beyond.

We also believe that the potential under-reporting strengthens the case for IPReg to gather more up-to-date diversity data as soon as possible. Reporting levels may well have changed since 2021 due to increasing awareness and acceptance of disability in the legal professions.

## **6.4 Parenting (the “Pregnancy and maternity” section)**

We are delighted to see that IPReg now accepts applications for moving to the “not in active practice” category from attorneys who are on adoption and parental leave. We believe this will help parents of all genders and in a wider range of circumstances, thus improving diversity and inclusivity throughout the regulated professions. As stated in our 2022 submissions in response to IPReg’s consultation on its 2023/24 business plan and budget<sup>5</sup>, we believe this more gender-balanced approach will encourage a broader range of professionals to take leave to care for young children,

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<sup>4</sup> See <https://ipinclusive.org.uk/wp-content/uploads/2021/09/210930-ipreg-budget-consultation-ip-inclusive-response.pdf>

<sup>5</sup> See <https://ipinclusive.org.uk/wp-content/uploads/2022/08/220816-ipreg-2023-budget-consultation-ip-inclusive-response.pdf>

thus creating a more level playing field for professionals of all genders as they progress through their careers.

## 6.5 Sex/gender

In this section, the draft EIA states: “Middle and junior level attorneys show proportionately higher numbers of women than men.” We believe this needs clarification. It is our understanding that in the middle and junior tiers, there are higher *proportions* of women than there are at more senior levels, but there are not *more women than men*.

We are also unsure what is meant by the statement that “No targeted action is required but it is important to note that all attorneys can apply to IPReg to be moved to the ‘not in active practice’ category.” Is this perhaps a suggestion that some genders are more likely than others to remain on the register beyond their retirement from active practice? Or does it relate to the impact of the parenting provisions discussed above?

## 6.6 Age

We suggest that the availability of a reduced fee beyond retirement could also be mentioned in the “Age” section of the EIA.

## 7 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 UK’s IP professions. Its founding organisations were the Chartered Institute of Patent Attorneys (CIPA), the Chartered Institute of Trade Mark Attorneys (CITMA), 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. The founding organisations do not have any ownership or control of IP Inclusive.

Our supporters span the IP-related professions and include patent and trade mark attorneys and paralegals, their business support colleagues, IP solicitors and barristers, and other professionals who work in or with intellectual property. Many CIPA and CITMA members are actively involved in the initiative, as are their organisations, which support us as Charter signatories and/or donors.

Our work, which is overseen by the governing body IP Inclusive Management<sup>6</sup>, includes:

- A voluntary best practice Equality, Diversity and Inclusion Charter<sup>7</sup>, which at the time of writing has 159 signatories from across the IP professions, and an associated “Senior Leaders’ Pledge”<sup>8</sup>.

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<sup>6</sup> See <https://ipinclusive.org.uk/ip-inclusive-management/>

<sup>7</sup> See <https://ipinclusive.org.uk/about/our-charter/>

<sup>8</sup> See <https://ipinclusive.org.uk/the-ip-inclusive-senior-leaders-pledge/>



- The “Careers in Ideas”<sup>3</sup> campaign, which raises awareness of IP-related careers in order to diversify the pool from which the professions recruit.
- Networking and support “communities”<sup>2</sup> for under-represented groups and their allies, which currently include our Women in IP community; IP & ME for professionals from minority ethnic backgrounds; IP Ability for disabled (including neurodivergent) people and carers; IP Futures for early-career IP professionals; and IP Out for LGBTQ+ professionals.
- EDI- and wellbeing-related resources<sup>9</sup>, training, news<sup>10</sup> and information, which we disseminate through our website, events<sup>11</sup> 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 but not currently in active practice.

For more information about IP Inclusive, please visit our website at <https://ipinclusive.org.uk/>, or email [contactipinclusive@gmail.com](mailto:contactipinclusive@gmail.com).

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<sup>9</sup> See <https://ipinclusive.org.uk/resources/>

<sup>10</sup> See <https://ipinclusive.org.uk/newsandfeatures/>

<sup>11</sup> See <https://ipinclusive.org.uk/events/>