



EXTERNAL ASSURANCE OF THE PATENT EXAMINATION BOARD'S POLICIES, PROCEDURES AND PROCESSES

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PREFACE

The Quality Assurance Agency for Higher Education (QAA) has been contracted at the request of the Intellectual Property Regulation Board (IPReg) to undertake the external quality assurance of the Patent Examination Board's (PEB) policies, procedures and processes.

This is the report of a review conducted by Professor Steve Bristow on behalf of the Agency during the period 21st April - 5th June 2015. The review has been informed, but not constrained, by the Agency's Higher Education Review method.

The Reviewer is grateful to all those associated with and responsible for the work of the PEB for the open and constructive way in which they have shared insights with him. The Reviewer has benefited from a detailed telephone conversation with the Head of Education at CIPA which enabled him to understand the context in which PEB was established and now operates, as well as agreeing the initial set of documents which he would need to undertake the review. More especially, he has drawn advantage from a full day spent with her and the PEB Administrator at CIPA's headquarters in London which identified further documents which have all been received and reviewed. Finally, he has valued the insights which five separate telephone conversations with the Chair and all Members of the Governance Board of PEB have given. Nonetheless, all observations and judgments recorded in this Report are those of the Reviewer.

This report is structured in the following way. The first section sets out the history of, and rationale for, the current arrangements for examination and regulation of Patent Attorneys by the Patent Examination Board. The second section evaluates the governance of the PEB, drawing on the papers for its nine meetings to date (one of which fell into two parts) and the interviews conducted with Governance Board members. The third section reviews policies and procedures from a quality assurance and consistency perspective. The fourth section reviews the PEB's examinations whilst the final section brings this together as an overall judgment on the effectiveness of the PEB to date and recommends an approach to external quality assurance for the future.

1 THE HISTORY OF EXAMINATION AND REGULATION FOR THE PROFESSION OF PATENT ATTORNEY

The Chartered Institute of Patent Attorneys was founded in 1882 and was incorporated by Royal Charter in 1891. It now represents over 2000 chartered patent attorneys, whether they practise in industry or in private practice.

The Royal Charter of Incorporation, most recently granted on 11th February 2009, gives the objects of the Institute as

- (a) to act as a professional and representative body for Intellectual Property Practitioners in patents, designs, trademarks and other forms of intellectual property;
- (b) to promote the education, standing, training and continuing professional expertise of Intellectual Property Practitioners and to establish, maintain and enforce high standards of professional conduct and compliance with the law.

In pursuance of those objects, the Institute has the power

- (a) to act as an authorised regulatory or supervisory body under legislation applicable to the Institute or to Intellectual Property Practitioners and, alone or jointly with other bodies, to devise, implement and operate any necessary systems of regulation, including registration schemes, of such practitioners or their firms consistent with or consequent upon such legislation, and to establish or dissolve, and delegate functions to, regulatory boards, including joint boards, in connection with such legislation and to recognise and facilitate the accountability of any such board to other bodies or authorities;"

Through its regulatory arm, the Patent Regulation Board, which operates with the Trade Mark Regulation Board [of the Institute of Trade Mark Attorneys (ITMA)] as the Intellectual Property Regulation Board (IPReg), the Institute maintains the statutory Register of Patent Attorneys. IPReg carries out the regulatory functions of setting and maintaining the standards of qualification for entry on the Register and has a Code of Conduct to ensure that registrants provide an appropriate level of service to their clients.¹

These arrangements were determined by a Delegation Agreement, originally signed in 2010 and amended in May 2012, which set out the relationship between three bodies: CIPA's Patent Registration Board; ITMA's Trade Mark Regulation Board; and the jointly formed IPReg. This Agreement clearly states that

- (A) CIPA and ITMA have been designated, and incur obligations, as approved regulators under the Legal Services Act 2007 (the "Legal Services Act").
- (B) CIPA and ITMA will continue to be the persons responsible, respectively, for the registration and regulation of Patent Attorneys and Trade Mark Attorneys under the Copyright Designs and Patents Act 1988 ("CDPA") and the Trade Marks Act 1994 ("TMA"; as amended by the Legal Services Act).
- (C) CIPA and ITMA have entered into a memorandum of understanding to establish a Trade Mark Regulation Board, a Patent Regulation Board and a joint board, the IP Regulation Board, and to set out arrangements for co-

¹ <http://www.cipa.org.uk/pages/about>

operation between the Patent and Trade Mark Regulation Boards, to which this agreement is intended to reflect and give effect.²

Clause 2.8 of the Agreement provided that

The Parties hereby further agree that the PRB and TRB shall, in relation respectively to the regulation of Patent Attorneys and the regulation of Trade Mark Attorneys, have power to make regulations pursuant to their powers under this agreement.

They shall also have exclusive responsibility for the following Reserved Matters:

(a) the formulation of policy and regulations in respect of the standards and other requirements for education, training and qualifications of persons for the purpose of registration or authorisation under the Acts;³

However, as CIPA's President, Roger Burt, put it in his Report for 2013-14,

During the course of the year it became a concern that the relationship with our regulator, the PRB, and its umbrella organisation, IPReg, was not as good as it should have been. The delegation agreement between CIPA, ITMA and IPReg reflected what was required by the Legal Services Act but did not give the PRB and IPReg the independence they considered necessary. It did not seem prudent to amend the delegation agreement because of the risk of destabilising the relationship.⁴

Furthermore,

IPReg initiated a review of the education and examination for qualification as a patent attorney. The review made a number of proposals which caused concern to CIPA and its members. A meeting was held at which IPReg representatives put forward IPReg's thinking and CIPA and IP Federation were able to comment. The meeting was widely broadcast and achieved a very high level of interest. The IPReg proposals to restrict to a university taught Foundation level and to no longer endorse the UK specific drafting and amendment papers were widely opposed. The major concerns expressed were that the current university Foundation courses were no longer perceived to be as valuable as in the past and that the drafting and amendment papers in the European Qualifying Examination had changed and were changing further to make them less appropriate. There were a large number of responses to the consultation, including a comprehensive response compiled by CIPA. [...] Running in parallel to the work on the IPReg consultation, it has been necessary to set up the replacement for the Joint Examination Board (JEB) now that ITMA has withdrawn from setting examinations to qualify for the Trade Mark Register. The Patent Examination Board (PEB) has been set up to be operationally independent from CIPA, with its own budget and a Governance Committee to oversee its work. The Governance Committee includes three lay members who are experts in various aspects of higher education and examination and two professional members who have many years' experience of CIPA examinations.⁵

The appropriateness or effectiveness of the relationship between the PEB and its Regulator, IPReg, did not form part of the brief for the current review. However, that relationship does

² Amended Delegation Agreement dated 23 May 2012 Preambles

³ *ibid*, clause 2.8

⁴ President's report, 2013-2014, One Hundred and Thirty-Second Annual Report of the Council of The Chartered Institute of Patent Attorneys for the year ended 31 December 2013, p. AR4

⁵ *ibid*.

condition (and constrain) PEB's work and reference to it cannot be avoided, not least as it figures so strongly in the perceptions which key individuals at CIPA and PEB hold.

Those perceptions take broadly two forms. On the one hand, there is a view that the “strained” relationship between IPReg and CIPA, not least in relation to the former’s consultation on the review of education and examination for qualification as a patent attorney, has been unhelpful and unproductive. In this view the key issue is one of credibility - if the profession were to lose its faith in the examination system, this would be a major issue of credibility. This may be understood as the jealous guarding of professional standards which is enshrined in CIPA's Royal Charter, as given above.

On the other hand, there is a view that, by insisting on a new governance structure for CIPA’s professional qualifying examinations which involves giving lay members a majority on the Governance Board, IPReg has given a strong impetus to transparency and public accountability, as required by the 2007 Legal Services Act.⁶ In this view, the relationship between IPReg and PEB has yet to bed down firmly. IPReg has its own timetable and focus and PEB is working constructively with IPReg to achieve mutually acceptable goals.

There was a consensus amongst all associated with the work of the PEB that the principal task during 2014 had been to maintain relationships between CIPA, IPReg, PEB, the profession, candidates and training organisations in order to permit a smooth transition from the previous structure of a Joint Examination Board from which one party had withdrawn to a new, effective and publicly accountable structure which, whilst recognising the tensions - both potential and actual - between CIPA and IPReg, nonetheless took active steps to mitigate these in the interests of prospective Patent Attorneys, their employers and clients.

⁶ The regulatory objectives of the Act being:

- (a) protecting and promoting the public interest;
- (b) supporting the constitutional principle of the rule of law;
- (c) improving access to justice;
- (d) protecting and promoting the interests of consumers;
- (e) promoting competition in the provision of services within subsection (2);
- (f) encouraging an independent, strong, diverse and effective legal profession;
- (g) increasing public understanding of the citizen's legal rights and duties;
- (h) promoting and maintaining adherence to the professional principles.

and the professional principles being:

- (a) that authorised persons should act with independence and integrity;
- (b) that authorised persons should maintain proper standards of work;
- (c) that authorised persons should act in the best interests of their clients;
- (d) that persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice;
- (e) that the affairs of clients should be kept confidential.

(<http://www.legislation.gov.uk/ukpga/2007/29/part/1>)

2 THE GOVERNANCE OF THE PATENT EXAMINATION BOARD

On the decision of ITMA to cease offering examinations through the Joint Examination Board mechanism and replace this route by a University recognition scheme, CIPA decided to establish an alternative arrangement for conducting examinations for professional recognition as a Patent Attorney. It was therefore agreed that a new Patent Examination Board would be established and would take over the existing examinations at Foundation and Final Examinations with effect from the 2014 series, having “run in parallel with the JEB during the remainder of the 2013 exam cycle so that a seamless transition can be achieved”.⁷

The PEB would be independent of CIPA’s Council and would comprise an autonomous Governance Board and an Examination Committee of examiners.

Constitution of the Patent Examination Board

1. The Patent Examination Board (PEB) is a committee of the Chartered Institute of Patent Attorneys (CIPA) and can only exist and operate as such. The PEB acts independently of CIPA’s Council and is fully and separately accountable for its plan of work and activities.
2. The PEB comprises a Governance Board (GB) acting as the governing board with overall responsibility for financial probity and effectiveness as an examining body and an Examination Committee (EC) of examiners.
3. Changes or alterations to the provisions hereof shall not become effective until approved by the Patent Regulation Board (PRB) in consultation with CIPA.⁸

As agreed with IPReg, the membership of the GB would be “three lay members with expertise in the area of education, assessment and examination and two members who are qualified patent attorneys”, whilst the EC would consist “of as many qualified patent attorneys, lay members of the GB and others with expertise in the examined subjects as may be required for the PEB to satisfactorily administer the requisite patent examinations”.⁹

Terms of Reference for the newly established Governance Board (GB) were considered at its meetings 005 (24 June 2014) and 006 (30 July 2014) before being agreed at GB meeting 007 on 16 September 2014. The ToR were designed to be read in conjunction with the Constitution of the Patent Examination Board (above).

Strategic leadership

1. Ensure that the Patent Examination Board (PEB) operates within the parameters of its Constitution
2. Ensure that all Regulatory Requirements are met
3. Approve and contribute to the development of the strategic direction of the PEB

Monitoring Effective and Efficient Delivery of Strategy

4. Ensure that the Business Plan provides sufficient resources to deliver the agreed strategy and monitor their effective deployment

⁷ Application by the Patent Regulation Board for Examination Agency Status (undated, October 2013), p. 4.

⁸ *ibid*, Appendix 2.

⁹ *ibid*.

5. Ensure that there is sufficient competent staff available to deliver forward plans and that succession plans or appropriate contingencies are in place

Quality Assurance and Risk Management

6. Ensure the effectiveness of PEB as an examining body by:
 1. monitoring the quality assurance and co-ordination of the development of PEB qualifications, including the development of assessment materials, and their operation;
 2. monitoring the impact of the equal opportunities policy in relation to PEB qualifications;
 3. advising on the formulation and implementation of policy proposals for the development of the PEB assessment systems for qualifications and their operation;
 4. assuring the quality of all processes and procedures used for the development and delivery of PEB qualifications;
 5. receiving reports and recommendations on examination performance and related issues and advising on further actions to be taken;
 6. receiving reports and recommendations on the performance of examiners and advising on further actions to be taken;
 7. overseeing a programme of succession planning for examiners to ensure continuity of provision of a high quality team;
 8. monitoring accounts and budgets with reference to PEB income and expenditure to ensure that sufficient resources are available to deliver high quality assessments;
 9. operating a risk management process to identify and respond to significant and material risks to PEB.

Stakeholder engagement

7. Ensure a specific focus on the experience of examination candidates throughout all activities
8. Approve and monitor the policies for appeals from candidates
9. Engage transparently with all key stakeholders
10. Ensure effective consultation with relevant stakeholders on any significant changes to policies, procedures and products
11. Ensure that all PEB reports and publications are clear, concise and accurate

The GB agreed a Self-Assessment Report (hereafter SAR14) on the Patent Examination Board's Qualifying Examinations 2014 at its meeting on 18 March 2015 (GB 009). The 42-page report is very thorough and commendably clear, with appropriate graphic and tabular data to support its assertions and to present evidence in a clear and accessible form. It addresses directly or obliquely items 1-5 and 7-11 of the GB's ToRs and confidence may be placed in its judgments and observations.

It is not so persuasive, however, in showing how item 6 *Quality Assurance and Risk Management* (and its nine sub-items) have been explicitly addressed during the GB's first year of operation. In some cases (e.g. *Item 6.1*) the GB has found it difficult to make progress in the absence of a clear steer on the development of an acceptable curriculum and examination structure from IPReg. In others (e.g. *Item 6.2*) work has begun (at meeting 007) to consider how most effectively to monitor the Board's policies.

It is recommended that, as part of its Self-Assessment for 2015, PEB should explicitly consider the progress which it has made on each of its Terms of Reference and the continued relevance of these.

SAR14 makes clear that, in its first year of operation, the GB's "intention from the outset [was] to build on the best of practice from our predecessor, the Joint Examination Board (JEB), and to improve where necessary the procedural framework within which the examinations operate".¹⁰

The main changes introduced in 2014 were driven by the desire to create:

- greater transparency for candidates;
- clearer, consistently applied and documented processes;
- clarity of roles and responsibilities for examiners, and remuneration for key processes such as question paper setting.

These changes were introduced to:

- start to create for candidates a greater sense of trust and confidence in the examination system;
- allow the GB to monitor processes and outcomes as part of their quality assurance framework;
- start to migrate knowledge and responsibility from JEB board members towards the examiners.¹¹

In the circumstances, this was an entirely appropriate strategy which appears to have retained the commitment of key stakeholders whilst allowing for significant procedural improvements to be made. These are all well-documented in the papers prepared for, and discussed by, the Governance Board.

For example,

the PEB implemented a documented question paper setting process in 2014 which incorporated monitoring by the GB lay members. The question paper setting process was reviewed via a *Question Paper Review* by examiners, PEB staff and the GB members after it had completed its cycle. The outputs of the survey have been incorporated into a revised 2015 question paper setting process. The main improvements which are being implemented for the 2015 process are:

1. Hold a drafting meeting, where required, for the finals papers, prior to holding two QPECs
2. Hold an examiner training day on QP setting in February 2015 (held March 4 2015)
3. Provide templates and guidelines (on writing a QP and mark scheme) for use and reference whilst setting a paper
4. Start the question paper setting process in March, and issue a timetable of events and stages and responsibilities through to pass for print
5. Use new suppliers for question paper printing and technical drawings
6. Introduce a Patent Attorney scrutineer/tester to work the paper before the QPEC, and attend and contribute to the QPEC
7. Revise the quality monitoring form and ensure all actions are followed up.¹²

and

¹⁰ Chair's Foreword to the Patent Examination Board's Qualifying Examinations 2014 Self-Assessment Report, p.3.

¹¹ *ibid.*, p. 4.

¹² SAR14 pp. 6-7

Final examinations were double blind marked, and where these two marks fell outside stated boundaries, were subject to a further review process, which included the Principal Examiner to arrive at the mark to be awarded.¹³

These are examples of commendable good practice.

The one area where roles and responsibilities are not so clearly defined and understood as they might be is that of the relationship between the Governance Board (GB) and the Examination Committee (EC). This arises at two levels: the reporting relationship between the two committees and the responsibility for conferring awards (“approving the pass list” as it has been referred to by several correspondents).

Under the *Regulations for the Examinations for the Patent Attorney Register* which came into force on 1st September 2013, it is the clear responsibility of PEB to determine awards and this is specifically addressed in paragraph 14:

At the request of any person, the Board will issue a formal decision as to whether that person is deemed to have passed an examination by virtue of paragraphs 9 to 11.¹⁴

Yet this is not clear from current practice, nor is it understood to be the case by any of the current members of the Governance Board, each of whom offered a slightly different account of where responsibility for determining awards lay. The process in January 2015, in which GB members were involved, was one in which three PEB Awarding Meetings (one for Foundation Level and two for Final Level papers) were held, the latter under the chairmanship of the Head of Education.

The purpose of the Awarding Meetings was given as

1. To ensure all candidates receive the appropriate result.
2. To carry out ‘borderlining’ processes (checking that scripts just above, on or just below boundary have been accurately marked).
3. To identify any re-marking that should be carried out.
4. The PE to identify, in the light of statistical evidence, any issues to be taken into account in future sessions, including any matters for future consideration by PEB GB.
5. To scrutinise ‘conflict of interest’ scripts.
6. To consider any reported cases of malpractice.¹⁵

From the papers produced for these meetings (which all included Principal and/or Chief Examiners for the relevant papers as well as at least one member of the Governance Board) and the notes of the meetings themselves, it is clear that appropriate care was taken to ensure that all members could question or challenge as they wished and that the decisions of the Examiners were accepted. What is not so clear is whether GB members saw themselves as quality assurers alone (itself a very appropriate role) or as awarders alongside the Examiners and the Director of Education. Yet, in terms of **function** these Awarding Meetings performed the role of the PEB.

¹³ *ibid* p.7

¹⁴ The Patent Examination Board: Regulations for the Examinations for the Patent Attorney Register.

http://www.cipa.org.uk/download_files/PEB-Examination-Regulations-2014.pdf/8B9F104A-1C06-458F-ACD0-10619A70A6A7

¹⁵ Awarding for PEB Final Diploma and Awarding for PEB Foundation Certificate and Litigation Skills Examinations, section 2.

Although provided for in the PEB's Constitution, the Examination Committee does not currently exist and, as one member of the Governance Board has put it, might be "unwieldy" if it were to include all Examiners. In his view, if the EC existed, then it could allow the GB to step back a bit further into its oversight and quality assurance role, "while the Executive and EC got on with the day job".

This is not a view which is necessarily shared by other members of the GB or PEB Officers who see the current arrangement for shared responsibility between Chief and Principal Examiners and the GB as a more appropriate approach. They would argue that the arrangement whereby the former agree the marks to be awarded and the latter assures the integrity of the process is both more efficient and more professionally defensible. Nonetheless, this does still leave open the question of ultimate authority and accountability for PEB's awards.

It is strongly recommended that PEB clarify the exact responsibility for determining awards both in terms of its constitutional location and the persons eligible for making award judgments. In the light of this, the role, purpose, status and constitution of the Examination Committee should also be re-considered. If it were to be agreed that the Examination Committee continue, then the appointment of an independent Chair for this Committee might also usefully be considered.

Lay members of the Governance Board brought helpful perspectives to the Awarding Meetings and their advice was clearly welcomed. For example, one lay member was particularly concerned at the discrepancies in pass rates from year to year and the fixed cut score of 50 percent. His preference would be for an alternative approach to determining the cut score and is encouraged by the GB's intention to introduce grade descriptors for final examinations in order to set standards more explicitly. Such a discussion demonstrates the benefit of bringing lay members with experience of examining elsewhere onto the Governance Board and its subsidiary groups.

More generally, it is clear from the Governance Board papers that all members, whether lay or professional, participate fully and actively in discussions dedicated to the improvement of the service which PEB provides to the profession, students, employers and the wider public. Greater transparency is being achieved and stake-holder feedback is being systematically and sensitively gathered and considered.

The next stage in the Board's development must lie in the review and revision of the curriculum, assessment and examination support materials - not least in order to make standards and expectations ever more transparent so that a higher proportion of candidates for professional recognition succeed. It is entirely appropriate that a policy of gradual and measured change has been adopted by the Board in its first year of operation in order not to destabilise professional and regulatory commitment. This has not prevented significant process changes which have proved beneficial.

In moving the debate about curriculum and assessment forward, the question of a fixed pass mark should be re-considered. At present, each syllabus carries the legend "Candidates gaining 50% or more of the marks available for the paper will be deemed to have passed the examination". First of all, it is not at all clear why the expression "deemed to have passed" is used, rather than the simpler "pass" (which is descriptive of current practice). Secondly, if there is a wish to deploy a "floating" pass mark (to reflect any difference in demand between papers on a year-on-year basis), then any reference to a fixed pass mark should be deleted. It is noted that the most recent reformatting of syllabi for 2015 has addressed the first, though not the second, of these issues.

The past year and a half can be seen as a period of confidence-building - the next two years should capitalise on the sound foundations which have been laid and build an ever stronger and self-sustaining qualifying scheme.

3 PATENT EXAMINATION BOARD POLICIES AND PROCEDURES

Many of PEB's policies and procedures are to be found on the PEB web-site at <http://www.cipa.org.uk/pages/PEB-Policies> and <http://www.cipa.org.uk/pages/PEB-Procedures>. These pages are comprehensive and clear.

In addition to these "public" documents, there are procedural documents which are used in-house. Some of these (for example, *Awarding for PEB Final Diploma* and *Awarding for PEB Foundation Certificate and Litigation Skills Examinations*) are seen as "working documents" for which there is no necessary requirement to publish.

The GB does have a schedule for reviewing its policies and procedures but this schedule might usefully be reviewed on an annual basis as part of the Board's self-assessment process. This review could also consider the effectiveness of signposting such documents on CIPA/PEB's web-site.

It is recommended that PEB should further develop its approach to reviewing its schedule for determining which of its policies and procedures should be updated and published on its web-site and how these should be most effectively signposted.

Once published, it is important for the potential user to know that the policies and procedures relating to them are both mutually consistent and up to date. The present review has found some examples of slight variation between different documents (relating, for example, to the relationship between PEB, GB and EC) and extensive absence of any indication of publication date or version.

The latter is a matter of concern for at least one member of the Governance Board who pointed out in conversation that much of the work of Patent Attorneys depends on version control of documents. All GB documents (agenda, papers and minutes) are marked for ease of tracking and reference.

It is therefore recommended that all PEB policies and procedures be reviewed by the Governance Board for consistency and, in signing these off, be attributed a version control and/or date signifier. It is further recommended that the Board consider the most appropriate frequency for review of each policy and procedure in order to meet its responsibility for "assuring the quality of all processes and procedures used for the development and delivery of PEB qualifications".¹⁶

¹⁶ Governance Board Terms of Reference 6.4

4 THE PATENT EXAMINATION BOARD'S EXAMINATIONS

Examinations at Foundation Certificate and Final Diploma level are held once a year during a single week in October. In 2015 each of the four Final Diploma papers will be taken on successive days from Monday to Thursday whilst the five Foundation Certificate papers are condensed into four days by holding the two Patent Law (UK and International) examinations on the same day (Friday). Examinations are of unequal length, as shown below.

The Foundation Certificate papers are

- D&C Design and Copyright Law [3 hours]
- LAW English Law [2 hours]
- P1 UK Patent Law [3 hours]
- P5 International Patent Law [3 hours]
- P7 Trade Mark Law [2 hours]

and the Final Diploma papers are

- P2 Advanced IP Law and Practice [4 hours]
- P3 Drafting of Specifications [4 hours]
- P4 Amendment of Specifications [3 hours]
- P6 Infringement and Validity [5 hours]

The examination papers sat in 2014 do not take a standard form and different questions appear to require different orders of cognitive skill, despite attracting similar marks. For example, D&C requires candidates to attempt 10 of 12 questions, all but one of which is cast in scenario form and each of which attracts a maximum of 10 marks. LAW has two sections, each with five questions. Candidates must attempt four questions from each section, with those in Part A attracting 10 marks each and those in Part B attracting 15. Two of the five Part B questions are in scenario form and demand a higher level of cognitive skill than another which simply asks the candidate to “give a brief description” of the advantages and disadvantages of four different corporate forms. This would not matter if all questions were compulsory but it may advantage some candidates who choose the less challenging questions within a section or within the paper.

P1 also has a two-section structure but one which requires candidates to attempt four of five questions in Part A (10 marks each) and three of four in Part B (20 marks each). In both sections, there is a mix of single-part and multi-part questions and it is difficult to see how comparability of demand can be assured between these. Indeed, one of the multi-part questions in Part B makes a “further 2 marks available for general points”. P5 is different again, in that candidates must attempt five of six questions, each one of which carries 20 marks and is subdivided into Parts and items, ranging from two Parts (4 and 16 marks respectively) to 26 items, with some questions demanding analytical and expository skills whilst others require no more than detailed recall. P7 is in two Parts, requiring candidates to attempt 8 from 9 questions in Part A (each worth 5 marks) and 5 from 6 in Part B (each carrying 12 marks). Once again, there is a significant difference in demand between questions in each Section which is particularly relevant to Part B where all but one are multi-item questions, the exception being a simple “describe ...” question.

These problems are not so acute at the Final Diploma level. P2 has two sections but all candidates must answer all questions in Part A and have a limited choice of attempting two of three in Part B. All are practice- and scenario-based. P3, P4 and P6 are single question papers, requiring candidates to prepare a specification, claim documentation and a detailed

memorandum respectively. The only significant variation in format between these papers is in terms of the time allocated to the examination (4, 3 and 5 hours respectively). Unlike the Foundation Certificate papers, the Final Diploma papers therefore place an equal demand on all candidates.

PEB is advised to consider carefully the rationale for such very different examination paper structures and mark allocations at Foundation Certificate level to ensure that each paper (and each question within it) makes an equal intellectual demand on candidates.

That variation in time allocation does not reflect the additional reading time necessary for the Final Diploma papers, nor their greater linguistic complexity. The table below reports word count for each 2014 examination paper including its rubric; its Flesch reading score (where 100 is very readable and 0 is unreadable - a score between 60 and 70 should be easily understood by 13- to 15-year-old students and between 0 and 30 accessible by university graduates); and its Flesch-Kincaid level, indicating the high school grade at which the text could be expected to be easily readable (12th grade is 17-18). These statistics therefore demonstrate that none of the 2014 examination papers should be beyond the linguistic reach of any graduate candidate.

Paper	Time	Words	Flesch reading ease	Flesch-Kincaid grade level
D&C	3 hours	2002	49.8	10.9
LAW	2 hours	835	53.0	9.6
P1	3 hours	1457	58.9	8.1
P5	3 hours	1514	46.5	10.1
P7	2 hours	1508	42.5	11.5
P2	4 hours	2393	51.6	10.5
P3	4 hours	1487	68.9	7.9
P4	3 hours	5839	48.7	11.2
P6	5 hours	5327	52.1	10.8

All PEB syllabi are publicly available at <http://www.cipa.org.uk/pages/PEB-Syllabi>. Similarly, past examination materials since 2003 are available at <http://www.cipa.org.uk/pages/PEB-Past-Exam-Materials>.

Those materials include the Question Paper, Examiner's Report, one or more Sample Pass Script(s) and Examination Guidance relevant to that paper for each of the Final Diploma papers and the Question Paper and Examiner's Report for each of the Foundation Certificate papers. Prior to 2003, Question Papers and Examiners' Reports may be accessed via a web-link to a dropbox account. In 2013, three examples of pass scripts were added to each of the Final Diploma paper sets whilst in 2014 this was done for the five Foundation Certificate paper sets (although Examination Guidance has not been made available for the latter).

In order to give candidates a clearer sense of the Examiners' expectations, PEB is recommended to draw one of these examples from the group just above the threshold pass mark rather than solely from the highest scoring candidates.

The steps taken to improve standardisation for the 2015 examination papers have already been noted and it is expected that a number of the issues raised in this section of the Report

will have been addressed by October, not least as a result of the approach to Examiner recruitment, selection, supervision and appraisal including the Examiner evaluation template, which has been used to evaluate all Examiners in following the 2014 examination series.

However, from a physical inspection of a small sample of examination scripts. (two from P1 and one from each other subject), it was clear that more work is needed to ensure that PEB's marking guidelines are universally observed. Of the ten scripts, six had been marked in read, showing marks allocated and thus meeting PEB's requirements. Two were marked in pencil but showed the mark allocation. One was marked in pencil without showing any indicative marks. As this was a P6 script it would have been moderated by a second marker but moderation would probably have been quite difficult and this is of especial significance given the relatively poor performance of candidates in P6 over the past five years.

		2014	2013	2012	2011	2010
Foundation	D&C	69.23%	75.68%	81.82%	65.63%	70.27%
	Law	91.89%	85.71%	88.24%	90.00%	68.00%
	P1	90.32%	94.44%	73.53%	89.47%	89.47%
	P5	83.78%	82.86%	78.13%	85.71%	75.00%
	P7	94.70%	88.89%	96.15%	86.21%	83.33%
Finals	P2	67.79%	54.65%	48.85%	52.17%	54.17%
	P3	50.89%	58.88%	53.54%	51.30%	45.35%
	P4	60.19%	68.63%	62.50%	57.28%	55.81%
	P6	41.62%	43.61%	36.45%	42.92%	54.21%

PEB is advised to reassert its marking guidelines and take appropriate action if any Examiner persistently refuses to follow these. It is also advised to investigate carefully the reasons why P6 should have had such a poor candidate success rate over an extended period.

No Appeals were made against administrative decisions in 2014. A review of each of the cases recorded in Appendix 7 of SAR14 as Complaints showed that appropriate action had been taken in each case where this was necessary. One Complaint has been raised so far in the 2015 process and this is currently under review. Two Special Consideration requests had been made (both on grounds of bereavement) but this did not adversely affect the candidates' examination performance. Nine candidates requested Reasonable Adjustments in respect of 22 paper entries in 2014: 16 for extra time; 4 for the use of a word processor; and 2 for the use of coloured lenses/overlay/paper. These were granted on the basis of evidence formally supplied by candidates.

PEB is to be commended on its sensitive and professional approach to handling Complaints, Special Consideration requests and Reasonable Adjustment requests in line with its own policies and procedures and with best practice in UK higher education.

Appendix 15 of SAR14 shows the outcome of a fifteen-question Student Survey, completed by just over 100 candidates and providing useful data both about candidates' backgrounds and their awareness and use of materials made available to them by PEB. This will form the basis for further enhancement in the future, perhaps by extending the scope of the questions to capture candidate perceptions of the relationship between the PEB examinations and their own experience of working as a trainee Patent Attorney.

The Chair of the Governance Board has begun to explore these questions in a more direct and discursive manner by meeting with a group of non-qualified patent attorneys, styling themselves the "Informals" (actually "The Informals Committee"¹⁷). The over-riding sense which has come back from this meeting is the fear of "dumbing down" the professional qualification.

PEB is encouraged to continue its attempts to elicit candidates' views (and, where possible, other stakeholders' views) through a variety of channels and methods, building on the good practice which it has already initiated.

¹⁷ See, for example, CIPA Journal, March 2015 p.128)

5 CONCLUSIONS AND RECOMMENDATIONS FOR FUTURE REVIEWS

In less than two years, PEB has restructured many of the processes which support the examination for professional recognition of Patent Attorneys and has done so with the active assistance of lay people whose background lies in the educational world as well as senior members of its own profession. This has worked extremely well.

Policies, procedures and processes are very much more robust, straightforward and transparent than previously and serious attempts have been made to gather and gauge feedback from stakeholders. Potentially hazardous and difficult external relationships have been handled with sensitivity and care.

The Governance Board has been ably assisted by CIPA's Head of Education and its own Administrator, whose expectations of professional standards amongst Examiners are very high.¹⁸

The Governance Board has been securely established and has developed a shared view of its own role, values and purposes. Its members are keen to progress to the next stage of the examination scheme's development *via* a comprehensive curriculum and syllabus review. Understandably, they have been reluctant to begin this without knowing the outcome of IPReg's consultation exercise. Yet, as has been indicated above, there are certain aspects of the Examination Scheme which need significant review and these cannot be addressed in isolation from a wider review of the curriculum against which candidates are to be tested.

This report has commended good practice in a number of areas and has made eight specific recommendations for improvement. These are listed below, for ease of reference.

Commendations:

- Standardisation and marking procedures contain examples of commendable good practice. (pp. 7-8)
- PEB is to be commended on its sensitive and professional approach to handling Complaints, Special Consideration requests and Reasonable Adjustment requests in line with its own policies and procedures and with best practice in UK higher education. (p. 14)

Recommendations:

- As part of its Self-Assessment for 2015, PEB should explicitly consider the progress which it has made on each of its Terms of Reference and the continued relevance of these. (p. 6)
- PEB should clarify the exact responsibility for determining awards both in terms of its constitutional location and the persons eligible for making award judgments. In the light of this, the role, purpose, status and constitution of the Examination Committee should also be re-considered. If it were to be agreed that the Examination

¹⁸ "Ms Sear, our Head of Education, has a smiley face but you have to earn it, and normally most things that an average person might do will be nowhere near sufficient to earn it because Ms Sear has very high standards. She wants everything to have a Learning Outcome and she has a way of making it clear that it is you who is supposed to be doing the learning." *Meet Team CIPA* by Vice-President Andrea Brewster, *ibid*, p. 180.

Committee continue, then the appointment of an independent Chair for this Committee might also usefully be considered. (p. 9)

- PEB should further develop its approach to reviewing its schedule for determining which of its policies and procedures should be updated and published on its web-site and how these should be most effectively signposted. (p. 10)
- All PEB policies and procedures should be reviewed by the Governance Board for consistency and, in signing these off, be attributed a version control and/or date signifier. The Board should consider the most appropriate frequency for review of each policy and procedure in order to meet its responsibility for “assuring the quality of all processes and procedures used for the development and delivery of PEB qualifications”. (p. 10)
- PEB is advised to consider carefully the rationale for such very different examination paper structures and mark allocations at Foundation Certificate level to ensure that each paper (and each question within it) makes an equal intellectual demand on candidates. (p. 11)
- In order to give candidates a clearer sense of the Examiners’ expectations, PEB should draw one of these examples from the group just above the threshold pass mark rather than solely from the highest scoring candidates. (p. 11)
- PEB is advised to reassert its marking guidelines and take appropriate action if any Examiner persistently refuses to follow these. It is also advised to investigate carefully the reasons why P6 should have had such a poor candidate success rate over an extended period. (p. 13)
- PEB is encouraged to continue its attempts to elicit candidates’ views (and, where possible, other stakeholders’ views) through a variety of channels and methods, building on the good practice which it has already initiated. (p. 14)

The Reviewer was also asked to advise on an approach to external quality assurance for the future.

Given the comprehensiveness and accuracy of PEB’s own Self-Assessment Report for 2014 (SAR14), the Reviewer believes that it will be unnecessary for a further external review to be conducted in 2016. A two-year review period should suffice. If that external review (which should be comprehensive in its scope) finds that SAR15 and SAR16 are equally accurate, then it should be safe to extend the next review to three years - i.e. to 2020.

At that point, it may be appropriate either for a similar general external review to be conducted by an experienced UK-based quality assurance expert or for one or more international subject-specialist reviewers of high standing within the Intellectual Property field to be invited to undertake a more specialised review or for a combination of UK and international quality assurance and subject specialist reviewers to conduct a general/specialist review - the model most commonly found in UK Universities.

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