The Institute of Trade Mark Attorneys

The Chartered Institute of Patent Attorneys

The Patent Regulation Board and the Trade Mark Regulation Board (together The Intellectual Property Regulation Board)

Regulatory Independence Certification

The Trade Mark Regulation Board

27th June 2010

On behalf of The Institute of Trade Mark Attorneys **, an approved regulator designated under section 20 and Schedule 4 of the Legal Services Act 2007, we jointly certify that we have in place arrangements that comply with the requirements of the Internal Governance Rules 2009 (except in the manner and in respect of the matters set out in the Annex to this Certificate) and that in particular:**

(1) observe and respect the principle that structures or persons with representative functions must not exert, or be permitted to exert, undue influence or control over the performance of regulatory functions, or any persons(s) discharging those functions;

(2) ensure that persons involved in the exercise of our regulatory functions are, in that capacity, able to make representations to, be consulted by and enter into communications with any person(s) including but not limited to the Legal Services Board, the Consumer Panel, the OLC and other Approved Regulators;

(3) ensure that the exercise of our regulatory functions is not prejudiced by our representative functions or interests;

(4) ensure that the exercise of our regulatory functions is, so far as reasonably practicable, independent of our representative functions;

(5) ensure that such steps are taken as are reasonably practicable to ensure the provision of such resources as are reasonably required for or in connection with the exercise of our regulatory functions; and

(6) ensure that persons involved in the exercise of our regulatory functions are able to notify the Legal Services Board where they consider that their independence or effectiveness is being prejudiced.

Signed:

Applicable Approved Regulator

[signature] and [signature]

[President/equivalent] [Chief Executive/equivalent]

Regulatory board

[signature] and [signature]

Chairman Chief Executive

INTRODUCTION

In order to provide background and avoid repetition in the table annexed below, we have summarised the governance arrangements for the Patent Regulation Board and the Trade Mark Regulation Board (referred to below (as appropriate) as the "Regulation Board" or "RB"), as well as the current structure and operation of the RB, and its relationship to the Approved Regulator ("AR").

The number of registrants on the Patent Attorney Register is 1742 and on the Trade Mark Attorney Register is 794 [1] and, therefore, the intellectual property legal community is very small in comparison to other sectors of the legal profession. The RB fully respects the requirements of the Legal Services Act 2007 and of the Legal Services Board, and in establishing the regulatory regime and in the proposals for rectifying the limited areas of non compliance, the RB has had regard to the resources available to it and the direction from the LSB of proportionality.

The governance arrangements for the RB are defined in a formal delegation agreement (the "Delegation Agreement"). A copy of this agreement is attached.

Under the Delegation Agreement, the AR:

- sets up the RB;
- sets out the constitution of the RB, including the members of the RB, the mechanism for their appointment and reappointment, appraisal, remuneration, and removal in terms reflecting directly the internal governance rules except in relation to the matters noted in the Annex to this certificate;
- sets out specifically obligations of the AR in terms equivalent to those set out in paragraph 1 of the Certificate (Clause 4 and Schedule 2.2);
- sets out specifically rights of the members of the RB in terms corresponding to those set out in paragraph 2 of the Certificate (Clause 5);
- provides generally that the AR must comply with the provisions of the Rules in relation to regulatory independence (Clause 4 and Schedule 2.2) and establishes a framework (as set out below) in which the RB operates which is intended to ensure that the delegated

[1] Figures from LSB levy

regulatory activities are carried out fully independently and therefore cannot be prejudiced by the AR's representative functions or interests as set out in paragraphs 4 and 3 of the Certificate;

- confirms that the RB was provided with initial funds prior to commencement (Clause 7.1), that the RB[2] sets its budget (Clause 6.1(b)), sets practice fees (Clause 6.1(b)) (subject to the statutory provisions), and collects practice fees (Clause 2.6(b) – in relation to the PRB, and 2.7(b) – in relation to the TRB), these practice fees being used to apply to meet its resource requirements. The budget is subject to approval of the AR, but in exercising its right of approval the AR must take into account the requirement that the RB should have available resources as reasonably required to meet its regulatory functions (Clause 6.1(b)), as set out in paragraph 5 of the Certificate;
- provides that the RB and any member shall have free access to the LSB, so that they can notify the LSB in any case in which they consider that their independence or effectiveness is being prejudiced (Clause 5), as set out in paragraph 6 of the Certificate.

In accordance with the Delegation Agreement, each RB consists of:

- a Chairman (Michael Heap)
- three professional board members
- three lay board members

This board is responsible for exercise of decisions in relation to regulatory functions, and the exercise of regulatory functions, and other matters required under the Act and Rules to be delegated to it, and these are delegated to the RB under Clause 2.3 et seq. of the Delegation Agreement.

The detailed work of the RB is carried out through three Committees namely: Governance, Conduct & Disciplinary and Education and Qualification.

The Delegation Agreement also provides for the appointment of a corresponding regulation board for the other approved regulator (CIPA and ITMA as appropriate) and that the two RBs will seek to agree common rules and regulations (except in relation to education) for the profession

2 As explained below, the RB carries out it regulatory functions in conjunction with the corresponding other AR and is supported in carrying out these functions by a joint regulatory board, the IP Regulation Board (IPReg). The budget supports IPReg, TRB and PRB and is proposed by the Boards together.

and generally operate together as The Intellectual Property Regulation Board (IPReg), so that resources are shared, and duplication of work is avoided, in order to carry out their relevant functions while maintaining independence in making decisions etc.

For this reason the certificates issued by CIPA as AR in respect of the Patent Regulation Board and by ITMA as AR in respect of the Trade Mark Regulation Board are in identical form.

Whilst the Certificate is strictly applicable only for the period from 1st January 2010 the Annex identifies issues which arose prior to that date where relevant.

ANNEX TO CERTIFICATE

This Annex sets out in tabular form comments against each of the Internal Governance Rules as well as against the corresponding guidelines in the format provided by the LSB, indicating the manner in which compliance has been assessed. Where it appears that there may be non-compliance with an element of the rules any proposals for addressing such non-compliance is included in more detail, together with timescales, at the end of the Annex.

Principle 1: Governance

Principle 1: Governance

Internal Governance Rule	Relevant arrangement in place	Summary of those arrangements	Summary of practical issues that have arisen since 1st January 2010 in respect of these issues
A. Each AAR must delegate responsibility for performing all regulatory functions to a body or bodies without any representative functions.	Delegation Agreement dated 2nd December 2009 between The Chartered Institute of Patent Attorneys (CIPA),The Institute of Trade Mark Attorneys (ITMA) and The Intellectual Property Regulation Board Limited (copy attached)	CIPA established The Patent Regulation Board (PRB), ITMA established The Trade Mark Regulation Board (TRB) and CIPA and ITMA jointly established the Intellectual Property Regulation Board (IPReg) as a joint board comprising PRB and TRB. Under the Delegation Agreement the powers of CIPA and ITMA to exercise their regulatory functions are delegated to PRB and TRB respectively.	
B. The regulatory body or, if more than one, each of the regulatory bodies, must be governed by a board or equivalent structure.	Board(s) set up in accordance with the Delegation Agreement	The PRB comprises a chairman, 3 lay members and 3 patent attorney members. The TRB comprises a chairman, 3 (the same) lay members and 3 trade mark attorney members. IPReg comprises a chairman, the 3 (same) lay members, the 3 patent attorney members and the three	

		trade mark attorney members.	
C. In appointing persons to regulatory boards AARs must ensure that: • A majority of members of the regulatory board are lay persons; and • The selection and appointment of a chair is not restricted by virtue of any legal qualification that person may or may not hold, or have held.	Delegation Agreement (Schedule 1) sets out the constitution of the Board	The Delegation Agreement provides that • the Chairman should not be a Patent or Trade Mark Attorney. The Chairman is Michael Heap who qualified as a barrister but has never practised. • The remaining board members are 3 patent attorneys (on Patent Regulation Board) and 3 registered trade mark attorneys (on Trade Mark Regulation Board) and 3 lay members. The selection of the Chairman was not restricted by any legal qualification held or not held. As noted above the Chairman may not be a patent or trade mark attorney,	The Chairman of each RB (and IPReg) was appointed to a "Shadow Board" on 1st June 2008 and his appointment continued when the formal board was constituted under the Delegation Agreement. Subsequent to his appointment and agreement of the Delegation Agreement, the LSB finalised the Internal Governance Rules providing that a majority of members of a regulation board be lay persons and defining a lay person as a person who has never been an authorised person, and person who has, at any time, been a barrister, is deemed to be have been an authorised person. Michael Heap, who is qualified as a barrister, has never practised as a barrister, and has since that time had extensive experience in other regulatory organisations, with no prior involvement with the IP professions. However, because he qualified as a barrister, he is therefore not a lay person within the definition now used in the Internal Governance Rules, and accordingly under the very

			strict criteria of the IGRs the RB does not have a majority of lay persons. No practical issues have arisen from this. The Chairman has only a casting vote on the RB, and in practice all decisions have been reached by consensus so that the absence of a lay majority has not, and can be seen not to have any impact. Proposals for addressing this position are made in the "Proposal" section at the end of the Certificate.

LSB Guidance	**Extent to which guidance has been followed, with any reasons for departing from guidance explained**
An AAR should take all reasonable steps to agree arrangements made under these Rules with the regulatory body or, as the case may be, the regulatory bodies.	The arrangements are set out in the Delegation Agreement and have proved to be robust in securing the independence of the regulation boards as well as ensuring that the legal obligations of CIPA and ITMA are complied with. These arrangements have been agreed with the RB.
If an AAR wishes otherwise than through its regulatory body/bodies to offer guidance to its members or more widely on regulatory matters, it should:	The AR has already noted this LSB Guidance. The AR has historically provided guidance to its members and other regulated persons in three ways. Informal guidance provided by the Secretary/Registrar, "business" guidance provided through the joint Business Practice Committee of CIPA and ITMA, and professional guidance through the Professional Guidance Committee of CIPA and ITMA equivalent. The first is now

• ensure that it does not contradict or add material new requirements to any rules or guidance made by the regulatory body/bodies; and • consult with the regulatory body/bodies when developing that guidance	provided by the Chief Executive of IPReg and the relevant board members of the RB; Business Practice guidance is currently being rewritten in the light of the changed arrangements and will be reviewed with the RB before publication. At present the Professional Guidance Committee of CIPA does give guidance based on the experience of the members of the Committee with the agreement of the RB, but makes clear that it cannot give binding guidance on the interpretation of the IPReg Code of Conduct. In practical terms examples where this practice has been followed are: • CIPA, ITMA and IPReg agreed common wording for their websites to deal with service complaints pending the opening of the office of the Legal Ombudsman. • CIPA, ITMA and IPReg have co-hosted the LSB Roadshow on ABS on 9th June

The Principle	Explanation of any other arrangements in place that bear on the principle and in particular how those arrangements comply with the principle
Nothing in an Applicable Approved Regulator's (AAR's) arrangements should impair the independence or effectiveness of the performance of its regulatory functions	The Delegation Agreement is framed to provide independence of the exercise of the regulatory functions of the RB. None of the professional members of the RB (as noted below) have roles in any representative functions or capacity within the AR, the RB and IPReg are free to make decisions and take action within the scope of their delegated functions, the RB is free to set its budget (subject to approval of the AR as noted above) having specific regard to ensuring that reasonable resources are available for the performance of its functions), and collects practice fees to meet its budgeted requirements. The Delegation Agreement provides that observers from CIPA and ITMA may attend meetings. It became apparent that the presence of observers might be felt to inhibit free discussion by the Board members. Whilst the Delegation Agreement permits CIPA and ITMA to send observers to IPRreg meetings it has been agreed that, in lieu, there will be a liaison meeting between CIPA, ITMA and the Chairman and CEO of IPReg prior to each formal Board meeting. There is no current proposal to amend the Delegation Agreement to reflect this change of approach as the right to send observers ought to be preserved for use should, for example, concerns be raised that IPReg was not fulfilling the regulatory functions.

Principle 2: Appointments etc

Principle 2: Appointments etc

Internal Governance Rule	Relevant arrangements in place	Summary of those arrangements	Summary of practical issues that have arisen since 1st January 2010 in respect of these issues
A. All appointments to a regulatory board must be made on the basis of selection on merit following open and fair competition, with no element of election or nomination by any particular sector or interest groups.	The Delegation Agreement provides for appointment of new Board members in accordance with this rule. The current board members were appointed to the "Shadow Board" before the finalising of the IGR and became RB members on formal constitution of the RB: 3 Lay members appointed until March 2014 3 TRB members appointed until March 2012 3 PRB members appointed until March 2011, 2012 and 2013 respectively	The 3 lay members were appointed by selection and interview by the Chairman of IPReg and representatives of CIPA and ITMA under the supervision of the Independent Appointments Commission. The PRB professional members were elected by registered patent attorneys (as distinct from CIPA members) but with no IPReg involvement. The TRB professional members were appointed by ITMA after competition and interview with IPReg Chair as observer.	Proposals to address the manner of appointment of the professional members are set in the "Proposal" section at the end of the Certificate. The Delegation Agreement provides that the appointment should take place after open competition and selection undertaken by a panel comprising the Chairman of IPReg and an equal number of lay and ITMA or CIPA representatives (as appropriate).

Internal Governance Rule	**Relevant arrangements in place**	**Summary of those arrangements**	**Summary of practical issues that have arisen since 1st January 2010 in respect of these issues**
	Appointment can be for an initial period of up to 4 years with a single further period of up to 3 years		
B. The selection of persons so appointed must itself respect the principle of regulatory independence and the principles relating to "appointments etc" set out in the Schedule.	See above	See above	See above
C. Decisions in respect of the remuneration, appraisal, reappointment and discipline of persons appointed to regulatory boards must respect the principle of regulatory boards, must respect the principle of regulatory independence and the principles relating to "appointments etc" set out in the Schedule.	Delegation Agreement	The Delegation Agreement provides that - the Chairman and the Board will be paid an annual fee determined by IPReg in association with the AR and consultation with the LSB – the AR is bound under the Delegation Agreement by the requirements of regulatory independence in relation to any such matter	None to date

Internal Governance Rule	Relevant arrangements in place	Summary of those arrangements	Summary of practical issues that have arisen since 1st January 2010 in respect of these issues
		- reappointment of the Chairman is determined by the Presidents of CIPA and ITMA (acting together) in consultation with the lay members - reappointment of any other members of the Boards is subject to the agreement of CIPA and ITMA (as appropriate) and the Chairman of IPReg and the decision is to be guided by objective appraisal and the desirability of ensuring a balance between regular turnover and continuity.	

D. Except insofar as an AAR would be, or would reasonably be considered likely to be, exposed to any material legal liability (other than to pay wages, salaries etc) as a consequence of the delay required to obtain the concurrence of the Board, no person appointed to a regulatory board must be dismissed except with the concurrence of the Board.	Board Member Contract	Under the Contract it is the Board which is entitled to dismiss the member. CIPA and ITMA are to be consulted.	No issue has arisen
E. No person appointed to and serving on a regulatory board must also be responsible for any representative function(s).	Board Member Contract (as above)	Confirmed that no person is.	No issue has arisen

LSB Guidance	Extent to which guidance has been followed, with any reasons for departing from guidance explained
If regulatory boards do not lead on managing the appointments process, it should have a very strong involvement at all stages.	Professional Board members were appointed to a Shadow Board prior to the publication of guidance dated 2 December 2008. Lay member appointments were conducted by the Appointments Commission. Future appointments will be made in accordance with the procedure prescribed in the Delegation Agreement and set out above.
Best practice for public appointments should be taken into account. In particular, account should be taken of the Code of the Commissioner of Public Appointments insofar as relevant.	See above
Appointment panels or equivalent should be established following the guidance set out in the Board's letter of 2 December 2008[3]	Given the infrequency of appointments no formal "panel" will be established. The Delegation Agreement sets out the requirements for appointments
The chair of the regulatory board (or an alternate) should always form part of that panel, unless the panel is established to select the chair (in which case another member of the regulatory board should participate).	The Delegation Agreement requires this

[3] **See:** http://www.justice.gov.uk/news/docs/legal-services-board-open-letter-021208.pdf

LSB Guidance	Extent to which guidance has been followed, with any reasons for departing from guidance explained
The appointments process should be conducted with regard to the desirability of securing a diverse board with a broad range of skills. The framework applied at Schedule 1 paragraph 3 of the Act serves as a useful template.	The Delegation Agreement specifically requires panels to take this into account. In addition a range of skills were identified for the appointment of lay members – including (but not exclusively) i) regulatory experience and expertise in a professional context ii) disciplinary experience iii) education and training and further appointments will equally identify the requisite skills. The RB has identified a benefit which would be obtained if experience from consumer interests relevant to patent and trade mark attorneys activities were represented on the RB, and in parallel is therefore looking at the scope for securing, for the time being, additional lay experience on the RB. Subject to budget such experience on the Board is proposed to be addressed in the short term by the co-opting onto the Board of a suitable qualified candidate or candidates (if the Board decides that co-opting should be limited to particular projects). In determining the budget and practice fees for 2011 IPReg will develop with CIPA and ITMA the feasibility (and cost implications) of the appointment of a lay member providing a suitable background.
• Remuneration – decisions in respect of regulatory board pay and conditions should be made having regard to best practice and in any event should not be controlled wholly or mainly by persons responsible for representative functions; • Appraisals – while persons with representative functions may be consulted about regulatory board members' appraisal, they should	Board members receive £3,000 pa for 10 days. There are 6 Board meetings scheduled for 2010. The Education & Qualification Committee meets monthly The Governance Committee meets bi-monthly The Conduct & Disciplinary Committee currently meet "as and when required" but are moving onto a monthly cycle. Additional meetings are remunerated at £100 per meeting

LSB Guidance	Extent to which guidance has been followed, with any reasons for departing from guidance explained
not be involved formally in agreeing the outcome, or future objectives; Reappointments – decisions should be guided by objective appraisals and the desirability of ensuring a balance between regular turnover <u>and</u> continuity.	Three Board members have undertaken additional duties, for example, in dealing with technical enquiries from attorneys and office set up and are being paid a daily rate of £300. This has been necessary due to the limited personnel resource in IPReg office in the initial phase The Governance Committee advises the Board on decisions such as board pay, subject to the terms of the Delegation Agreement No appointments have yet fallen for re-appointment
While the LSB accepts that there may be <u>exceptional</u> reasons which justify immediate dismissal without concurrence having first been obtained, it would expect a full explanation if such circumstances were ever to arise. An AAR should accordingly be prepared to justify why it could not comply with the relevant Rule.	Not applicable
Where an AAR proposes to discipline one or more member(s) of a regulatory board, where such discipline is short of dismissal, the Board should be consulted privately in advance of the	Not applicable

LSB Guidance	Extent to which guidance has been followed, with any reasons for departing from guidance explained
action being taken, and the AAR should consider any representations the Board may choose to make.	
Where possible, a person appointed should not have been responsible for any representative functions immediately prior to appointment. The longer the gap between holding responsibility for representative functions and taking up regulatory functions, the more likely it is that the principle of regulatory independence will be observed.	Bruce Alexander – CIPA Council member 1997 to 2006 and President 2004/5 Ian Buchan – former ITMA President 2002-2004. Member of ITMA Council to 2009 Penny Nicholls – formerly ITMA committee (Laws & Practice) involvement until 2009 Nicholas Fox – no involvement Phil Harris – former ITMA President 2006-2008 . Member of ITMA Council to 2009 Steve Smith – formerly member of CIPA Constitutional Committee from 2005 until his appointment to the RB in 2009 None of the professional members have any current roles within CIPA or ITMA.
Codes of conduct or equivalent for board members should highlight the importance of observing and respecting the regulatory objectives and the principles of better regulation, rather than operating to represent any one or more sectoral interests. Codes should also highlight the importance of respecting the principle of regulatory independence, as underlined by the provisions of	The Contract and the Code for Board Members require fulfilment of the Board's objectives and these objectives are set out in Schedule 2 of the Delegation Agreement (and these objectives fulfil these requirements).

LSB Guidance	Extent to which guidance has been followed, with any reasons for departing from guidance explained
sections 29 and 30 of the Act.	

The Principle	Explanation of any other arrangements in place that bear on the principle and in particular how those arrangements comply with the principle
(1) Processes in place for regulatory board members' appointments, reappointments, appraisals and discipline must be demonstrably free of undue influence from persons with representative functions.	There are no proposals to hold board member appraisals in 2010. Appraisals will be held in March 2011 and will be conducted by the Chairman of IPReg and one lay member. Soundings from CIPA and ITMA will be taken by the CEO of IPReg.
(2) All persons appointed to regulatory boards must respect the duty to comply with the requirements of the Legal Services Act 2007.	Every Board Member Contract of Appointment requires fulfilment of the Boards obligations and objectives. The Delegation Agreement expressly provides that the Boards are required to comply with the regulatory objectives and regulatory requirements of the Act (Clause 3 and Schedule 2.1).

Principle 3: Strategy and Resources etc

Principle 3: Strategy and Resources etc

Internal Governance Rule	Relevant arrangements in place	Summary of those arrangements	Summary of practical issues that have arisen since 1st January 2010 in respect of these issues
A. Defining and implementing a strategy should include: • access to the financial and other resources reasonably required to meet the strategy if has adopted • effective control over the management of those resources, and • the freedom to govern all internal processes and procedures.	The Delegation Agreement and collection of the Practice Fee, together with the RB's internal structures. Strategy and policy is debated by the committees and then brought to the Board for approval. Whilst CIPA and ITMA have funded the set up costs, it is now intended that IPReg is be funded exclusively from practice fees.	Under the Delegation Agreement, the RB sets its budget, and collects Practice Fees for the purpose of satisfying its budgeted needs. The Delegation Agreement delegates effective control over the resources to the RB, and gives the RB freedom to govern its processes as set out elsewhere. The work of the of the Board is undertaken by 3 committees: Governance Conduct & Disciplinary Education & Qualification The Governance Committee consist of a lay member (who chairs the committee) and a PRB and a TRB member. The Governance Committee monitors	The delay in being able to demand the entity fees has caused concerns in that the amount of this income is unknown at this date (some 4 months into the first financial year). This income represents c 50% of the total income according to projections. Income from individual registrants has met projections. There is sufficient income from the individual registrants to enable IPReg to satisfy itself that it can meet the LSB levy. However until entity fee income is known (end June) IPReg is not

Internal Governance Rule	Relevant arrangements in place	Summary of those arrangements	Summary of practical issues that have arisen since 1st January 2010 in respect of these issues
		budget and approves expenditure. It meets with the Chairman and CEO bi-monthly and reports to the Board bi-monthly.	able to commit to any significant strategy (such as research on educational matters) or make any investment (such as upgrading the website). The Delegation Agreement provides that PRB and TRB have responsibility for "formulation of policy and regulations in respect of standards and other requirements for education training and qualifications" The Education and Qualifications Committee is drafting a strategy paper for consultation/discussion with the Institutes on the policy making and delivery functions.
B. The regulatory body (or each of the regulatory bodies) must have the power to do anything within its allocated budget calculated to facilitate, or incidental or conducive to,	The Delegation Agreement		

Internal Governance Rule	**Relevant arrangements in place**	**Summary of those arrangements**	**Summary of practical issues that have arisen since 1st January 2010 in respect of these issues**
the carrying out of its functions.			

C. Insofar as provision of resources is concerned arrangements must provide for transparent and fair budget approval mechanisms	Delegation Agreement.	Under the Delegation Agreement IPReg must submit its budget for consideration and agreement. If CIPA or ITMA do not agree the proposed budget because it - does not support the objectives of the Board -will not provide value for money -indicates any form of non compliance then those concerns must be notified to the Chairman of IPReg. In approving the budget CIPA and ITMA must have proper regards to their duty to take steps to ensure resources are available to IPReg. Any further dispute is referred to a mediator.	

D. Insofar as provision of any non-financial resources is concerned (for example, services from a common	Delegation Agreement Clause 13. With the exception of fee collection,	Currently disputes would be raised between the Chief Executive of the RB and the	

corporate service provider, or staff), arrangements must provide for transparent and fair dispute resolution mechanisms.	maintenance of the registers, minor computer services and the provision of separate accommodation, there are no longer services provided by either CIPA or ITMA.	Secretary of CIPA and/or Chief Executive of ITMA and, if necessary, escalated to the Chairman of the RB and the President of the AR. Service Level Agreements will be put in place with more explicit dispute mechanisms.	

LSB Guidance	**Extent to which guidance has been followed, with any reasons for departing from guidance explained**
The Act requires separation of regulatory and representative functions. Absent of corporate management structures that are robustly and demonstrably separated from the control of persons with representative functions, these Rules are likely to require a high degree of delegation to regulatory bodies in respect of the control of strategy and resourcing. What is or is not a regulatory function is determined in accordance with the Act. Subject to the Act, whether something is 'regulatory' should be for each regulatory body to determine, in close consultation with respective	The principle of separation between representational and regulatory functions is respected by both CIPA and ITMA and given reality by an independent board which employs a CEO and support staff in its own name (IPReg Limited is the registered employer with HMRC). The management structures are separate. RB members report to the Chairman; none have representational roles in the AR. Further the Delegation Agreement provides for this level of delegation. IPReg now has premises which are separate from either AR (sublet from ITMA with its own entrance and signage) and funds are derived from fees paid by registrants (and soon to be paid by entities also). Budget is determined by the RB as noted above. IPReg can therefore demonstrate separation by reference to: 1) Board Membership 2) Employee status 3) Financial independence

LSB Guidance	**Extent to which guidance has been followed, with any reasons for departing from guidance explained**
AARs.	4) Physical (i.e. accommodation) separation
Where members of staff are employed by an AAR to discharge regulatory functions under the delegated remit of a regulatory body, the position of the AAR as legal employer should be recognised in the arrangements made under these rules. However, in complying with these Rules, those arrangements should make clear how decisions with respect to the management and control of such members of staff are to be exercised. The presumption under such arrangements should be – subject only to being exposed to unreasonable liability (such as in creating a pension scheme) – that an AAR should always agree a reasonable request from its regulatory body. While an AAR has a right of veto, therefore, it also carries a responsibility to justify that decision in light of the principle of regulatory independence.	The Delegation Agreement provides that PRB and TRB are responsible for collection of registration and other fees. The administration of this function has been outsourced to: • CIPA in relation to the PRB register of patent attorneys • ITMA in relation to the TRB register of trade mark attorneys • CIPA in relation to the register of dual qualified professionals • CIPA in relation to entities This is a commercial arrangement for which CIPA and ITMA are paid a negotiated fee. No regulatory function is discharged by an employee of an AAR. As noted above, the purely administrative tasks of maintaining the register and acting as conduit for fee collection are subcontracted to ITMA and CIPA. (Both of these are under review.)

LSB Guidance	Extent to which guidance has been followed, with any reasons for departing from guidance explained
The Board may from time to time issue further illustrative guidance on these issues under Rule 11 of these Rules.	
Each regulatory body should act reasonably when defining and implementing its strategy, and should in particular have regard to the provisions of Section 28 of the Act. It should also have due regard to the position of the AAR and in particular to any responsibilities or liabilities it may have as AAR.	The RB is mindful of its obligations when making decisions as to strategy and operations. In order to ensure that the legitimate concerns of CIPA and ITMA are met, regular meetings take place between the CEOs and the respective Presidents' and IPReg Chair. The Delegation Agreement imposes this as an obligation on the PRB.
Each regulatory body should act reasonably when exercising its functions in accordance with this Rule, and should in particular have regard to the provisions of Section 28 of the Act. It should also have due regard to the position of the AAR and in particular to any responsibilities or liabilities it may have as AAR.	See above.
The process established by the AAR should provide appropriate checks and	See above.

LSB Guidance	Extent to which guidance has been followed, with any reasons for departing from guidance explained
balances between it and the regulatory body (or bodies) so as to ensure value for money and observe the wider requirements of the Act, without impairing the independence or effectiveness of the regulatory body (or bodies).	Value for money is a significant issue for the Governance Committee of IPReg and the legitimate representations of the AARs are taken into account. The budget approval mechanisms in the Delegation Agreement expressly provide that one of the criteria for approval is value for money. In order to ensure best practice and value IPReg proposes to undertake a feasibility study to determine whether the administration of the registers should be: • kept with CIPA and ITMA • brought in house • undertaken by a commercial provider • undertaken by another AR (but on an arms length negotiated basis) The existing regulatory framework is based closely on that used by the AR prior to commencement, and resource requirements were determined by the acting Chief Executive specifically in order to support transition of those arrangements into the new framework. Given the lack of complete information about the nature of the regulation which might be sought by the LSB, and the resources needed to address interface with other bodies including the LSB, the existing resources will require review over the next period of years both to establish what is required to meet the regulatory obligations of the RB, and the level of resource requirement after transition, and a stable state is reached. As noted elsewhere the checks and balances in relation to this are provided by the budget approval mechanism detailed above. These will be kept under review. In addition, there are reporting mechanisms to review whether the Delegation Agreement is working satisfactorily, under which either the RB or AR can raise concerns about value for money, and the wider requirements of the Act, while maintaining independence and effectiveness.
Subject only to the formal budgetary approval process and the operation of	See above in relation to broader topics of independence/separation.

LSB Guidance	Extent to which guidance has been followed, with any reasons for departing from guidance explained
its dispute resolution mechanism(s), an AAR's arrangements should not prevent those performing regulatory functions, where they believe their independence and/or effectiveness is compromised or prejudiced, from obtaining required services, otherwise than through the AAR.	
AARs and regulatory bodies should be particularly careful to ensure that, in respect of public and/or consumer-facing services (including media relations and marketing-type activities), the principle of regulatory independence should be seen to be met, as well as being met.	IPReg has not engaged in "marketing" type activities (such as advertising) but does maintain its own website and undertakes its own presentations to the community to explain its role. The AR makes clear in its publicity that matters of professional conduct are handled by IPReg (and matters of service standards by the Legal Ombudsman). Consumers and indeed the wider public will observe from our website the clear efforts made to demonstrate the fact (and not just perception) of regulatory independence.
When considering whether arrangements meet the required standards, the Board will consider factors such as: • evidence that the provision of services to the regulatory body (or bodies) is not subordinate to the provision of services to any other	See above for evidence in relation to the servicing of IPReg. Dispute resolution in relation to budget is specifically dealt with in the Delegation Agreement (see above) There is no restriction on IPReg on where services may be sourced; freedom of decision making is protected by the Delegation agreement.

LSB Guidance	Extent to which guidance has been followed, with any reasons for departing from guidance explained
part of the AAR; • provision being made for service level agreements agreed between respective parties ; and • transparent, fair and effective dispute resolution mechanisms being in place	

The Principle	**Explanation of any other arrangements in place that bear on the principle and in particular how those arrangements comply with the principle**
Subject only to the oversight permitted under Part 4 of this Schedule, persons performing regulatory functions must have the freedom to define a strategy for the performance of those functions and work to implement that strategy independently of representative control or undue influence.	See above.

Principle 4: Oversight etc

Principle 4: Oversight etc

Internal Governance Rule	Relevant arrangements in place	Summary of those arrangements	Summary of practical issues that have arisen over since 1st January 2010 in respect of these issues
A. Arrangements in place must be transparent and proportionate.	Delegation Agreement	Under the Delegation Agreement (in addition to budget approval regular (minuted) meetings with all parties).	See above.
B. Arrangements in place must prohibit intervention, or the making of directions, in respect of the management or performance of regulatory functions unless with the concurrence of the Board.	Delegation Agreement	See Agreement	None

LSB Guidance	Extent to which guidance has been followed, with any reasons for departing from guidance explained
In making its arrangements, an AAR should balance its ultimate responsibility for the discharge of regulatory functions with its responsibilities to ensure separation of regulatory and representative functions.	See above – IPReg is satisfied that the appropriate balance is maintained
In considering proportionality, AARs should consider the risk of Board intervention. Note the Board's policy statement on compliance and enforcement powers, and in particular the Board's intention to use its most interventionist powers only when other measures (including informal measures) have failed.	The AR respects proportionately and does not expect Board intervention
In determining whether to give concurrence, the Board will consider the extent to which the process leading to the proposed intervention or directions complies with the principle of regulatory independence.	Not applicable at present

The Principle	**Explanation of any other arrangements in place that bear on the principle and in particular how those arrangements comply with the principle**
Oversight and monitoring by the ARR (which is ultimately responsible and accountable for the discharge of its regulatory functions) of persons performing its regulatory functions must not impair the independence or effectiveness of the performance of those functions.	See above and in particular the Delegation Agreement which recognises the balance needed for the statutory obligation to be complied with and the functioning of an independent regulatory capability.

Proposals (with timeline) for resolving non compliant issues identified in the Certificate

Issue

Chairman is a barrister and is therefore not "lay" in the strict sense defined by the IGR, so as to constitute a lay majority on the Board. This is regarded as a "technical" issue given that the Chairman has never practised as a barrister and, therefore, there is no question of any conflict arising.

In the light of this, the AR and RB consider that there is not an issue which needs to be addressed at this stage.

Proposal (Timeline)

Chairman continues until the expiry of his appointment and continues to vote in the case of deadlock only (as currently).

Reasons why Proposal is Proportionate

- No risk of conflict.
- Chairman was appointed in June 2008 and therefore has considerable "corporate knowledge" and experience
- Chairman was selected for his experience in management of complex public organisations which has proved invaluable
- Chairman is now "public face" of IPReg and has respect of professional community.
- There is no budget for replacement of the Chairman and it would not be proportionate to do so.
-

Proposals (with timeline) for resolving non compliant issues identified in the Certificate

Issue

The current appointments of the professional members did not occur after both an open competition and selection by IPReg.

Proposal (Timeline)

- Every current professional member if wishing to serve a further term, will be required to enter an open competition and undergo a selection process and will not be automatically invited to remain (subject only to performance)
- Trade Mark board members will agree a cycle of retirement dates rather than retiring "en masse" in March 2012.
- IPReg will lead on the process and will make the final selection subject to the terms of the Delegation Agreement (outlining the consultation/participation rights of CIPA and ITMA) as described above.

Reasons why Proposals are Proportionate

- The appointment of the professional members occurred prior to any LSB guidance/requirement.
- The current members contributed enormously to the set up of IPReg by drafting its Code/Rules etc and therefore have significant experience
- The current members remain very active in getting IPReg to "steady state"
- None of the current members have any role in CIPA or ITMA
- The cost/time effort of undertaking new appointments would be disproportionate.

General Evaluation

The Approved Regulator
This first certificate of internal governance issued separately but in the same terms by CIPA and ITMA (as ARs) confirms the satisfactory regulatory independence of the Patent Regulation Board and the Trade Mark Regulation Board (as the case may be). Regulatory independence is achieved by: • financial independence with limited terms for budget approval; • an independent regulation board; • separate offices; • a chief executive and two administrators appointed by and reporting exclusively to the Board; • management of the registers and collection of practice fees being undertaken by CIPA and ITMA in the name of IPReg and on an arms-length commercial basis with monthly accounting of fees received; CIPA, ITMA and the Regulation Boards of CIPA and ITMA recognise that, as a consequence of the Internal Governance Rules dated 10th December 2009 and the open letter dated 29th December 2009 having been issued after the actual appointment of the professional members and chairman, these appointments are not fully compliant and that going forward all new appointments must be fully compliant. However they considers that the proposals (as described above) to: • retain the current Chairman;and • require current professional members to undertake a competitive selection process when their current appointments expire are proportionate responses to the issues in terms of risk to the public, timescale and cost.

The Regulatory Body
As above