

# IPReg CPD review 2017: IP Inclusive submissions

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**IPINCLUSIVE**

Working for diversity and inclusion in IP

## Introduction

We understand from the 2017 Business Plan that IPReg intends to benchmark its existing CPD arrangements against those of other legal and non-legal providers. We respectfully request that IPReg take the following submissions into account during the benchmarking process.

These submissions are based on input from patent and trade mark attorneys, the organisations in which they work and the membership bodies to which they belong. They reflect the views of many registered attorneys who value, and seek to improve, diversity and inclusivity within the IP professions.

## Submissions

- 1. We urge IPReg, when reviewing and potentially updating the existing CPD arrangements, to take due account of their impact on diversity and inclusivity within the patent and trade mark professions.**

This includes recognising the impact of restrictions on the nature and format of acceptable CPD activities. Such restrictions can disadvantage patent and trade mark attorneys who – for example for medical reasons, or in order to care for children or other dependents – work part-time, as well as those who have difficulty (for example through physical disability or mental health issues, or again because of care commitments) accessing training which involves significant travel or interaction with large groups of people.

- 2. We further urge IPReg to consider the impact of the CPD arrangements not only on diversity among patent and trade mark professionals, but also on the diversity of business models and consumer choices within the IP sector.**

The regulatory objectives which underpin IPReg's activities include improving access to justice; protecting and promoting the interests of consumers; and promoting competition in the provision of legal services. Such objectives can be better met by nurturing diversity in terms of the services available to clients and the business models through which those services are delivered. Restrictions on the means by which CPD is sourced can impose more heavily on precisely those newer, more innovative business models which are providing the consumer with greater choice, for example virtual and remote working arrangements; and smaller and/or regional practices (including freelance

attorneys) for whom attending a CPD “get-together” is necessarily more onerous. This applies equally to small- to medium-sized UK technology and engineering companies with a small in-house department which may include a sole IP professional.

- 3. In view of the above, we particularly urge IPReg to reconsider the current 25% cap on supposedly non-interactive forms of training such as the “personal study of books, articles, law reports, conference papers, recordings (eg webinars that are not interactive) and the like”, to avoid discrimination against those for whom flexible learning arrangements are most valuable.**

The 25% (4-hour) cap makes it harder for attorneys of the types mentioned above to accrue CPD points, even though they are perfectly willing and able to undertake relevant training. Those most affected are likely to be people who work part-time: they may be unable to “attend” a webinar at the point of broadcast, but instead will listen to the recording at another time, for instance when appropriate childcare is available. At present, of course, the majority of those working part-time are women; a regulatory constraint which affects them more than other sections of the profession could therefore represent a *de facto* gender discrimination.

Remote forms of training, such as webinars, provide an ideal way to make CPD accessible to a wider audience. Their key benefit is that they can be listened to anywhere (including from a remote office or home desktop) and at any time. They thus support diversity within the professions, in terms of both individual professionals and the business models within which they practise.

They are, moreover, of value to attorneys whose professional commitments conflict with scheduled training events – in particular those who serve international clients or employers, for whom working across time zones increases scheduling pressures. Remote-access and flexibly-timed CPD resources thus help members of the patent and trade mark professions to serve their global client base more efficiently.

We submit that the IP professions should seek to exploit, not erode, the opportunities that remote learning can provide to build a more inclusive workplace. A regulator charged with supporting this small but important sector of the legal professions should facilitate such moves.

- 4. We submit that the 25% cap should only be maintained if or to the extent that it is justified by evidence that the capped learning formats have a lower value than others.**

If a cap is to be imposed on any form of CPD, there should be evidence that the designated forms of training are less effective – in the context of a patent or trade mark attorney’s work – than others. The level of any such restriction should reflect the evidenced imbalance in CPD value, which we submit is unlikely to justify a restriction as great as 25%. It should, moreover, be realistic and feasible in the context of an attorney’s normal working arrangements.

We recognise that interacting with other professionals can be a valuable form of CPD, allowing participants to exchange views and experiences and to benefit from new perspectives. However,

much of a patent or trade mark attorney's work is non-interactive. As such, self-study has always served IP professionals well as a means of assimilating new laws, procedures, legal precedents and comment. It is, indeed, an extremely efficient way of acquiring information, updates and practice tips, and of benefitting from the insights and experiences of others within the profession – potentially more efficient than listening to a live presentation which must necessarily be limited, in scope and speed of delivery, to suit all members of the audience.

During supposedly interactive forms of training, whilst in theory all audience members have the opportunity to interact with the presenter, often many do not avail themselves of that opportunity. Out of a webinar audience of 30-40 attendees, typically only 3-4 people will ask "live" questions. A recording of a webinar in any case gives the listener access to questions asked by his or her peers during the live broadcast, and to the speaker's replies, just as would be available through attending a live seminar. Without *evidence* that watching a later recording of a live event reduces its impact on the attendee's professional development, it would seem inappropriate to discriminate against those who, for whatever reason, need to do so.

**5. We urge IPReg to maintain a self-certifying CPD scheme, in which it is up to individuals to decide what constitutes valid CPD in the context of their personal working arrangements.**

Such a scheme is, we submit, the best way to ensure that individual attorneys undertake appropriate types and amounts of training. We repeat that it is not correct to impose detailed restrictions on such matters without clear evidence of need.

Under IPReg's current CPD arrangements (including both the regulation and the associated guidelines), patent and trade mark attorneys are required to judge for themselves the type of work they should undertake to develop "their skills, knowledge and professional standards in areas relevant to their area of practice... and in order to keep themselves up to date and to maintain the highest standards of professional practice." They should "determine for themselves, bearing in mind their existing skills and the nature of their practice, the most appropriate subjects where they should undertake CPD, taking account of their responsibilities and the expectations placed upon them." Accordingly, they are "encouraged to plan their annual programme of CPD activities based on an objective assessment of their training and development needs".

We approve of this model, which appears to have worked well both prior to and after the introduction of mandatory CPD. We submit, however, that it would be appropriate also to allow members of the regulated community to decide individually what would best suit their development in terms of the nature and accessibility of the training resources they choose. Under a self-certifying regime, individual attorneys naturally take responsibility for their selected CPD resources having a genuine and demonstrable impact on their professional development.

**6. We look forward to the published findings of the benchmarking process, and would welcome the opportunity to take part in consultations on any proposed changes. We urge IPReg to consult actively with the regulated community – as well as with those involved in**

**their training, HR support and practice management – before introducing new or amended CPD arrangements.**

## Signed by

These comments are submitted by the IP Inclusive task force, including in particular the following IP professionals and organisations:

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## About IP Inclusive

IP Inclusive is an association of individuals and organisations who share a commitment to improving diversity and inclusivity throughout the IP professions. Its founding members were the Chartered

Institute of Patent Attorneys (CIPA), the Chartered Institute of Trade Mark Attorneys (CITMA, formerly ITMA), the IP Federation and The UK Association of the International Federation of Intellectual Property Attorneys (FICPI-UK), with active support and involvement from the UK Intellectual Property Office. Our supporters now span the IP-related professions, and include patent and trade mark attorneys, IP solicitors and barristers, IP analysts, IP administrators, licensing executives and IP Office examiners, as well as many professionals who work in or with IP firms, for example their practice managers and HR managers, IP recruitment specialists, *Managing IP* magazine and the charity *Generating Genius*.

Our work includes:

- a voluntary best practice Equality, Diversity and Inclusion Charter, which now has over 100 signatories from across the IP professions;
- the “Careers in Ideas” initiative ([www.careersinideas.org.uk](http://www.careersinideas.org.uk)), which raises awareness of IP-related careers and so widens the pool that the professions recruit from;
- support networks for under-represented groups, currently including our Women in IP group, “IP Out” for the LGBT community, and “IP & ME” for BAME professionals; and
- diversity-related resources, training, news and information, which we disseminate through our website, events and regular updates to our supporters.

For more information, please visit our website at [www.ipinclusive.org.uk](http://www.ipinclusive.org.uk).