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13<sup>th</sup> October 2023

Dear Marc,

Your article<sup>1</sup> published in epi Information 3/23 was discussed at the Council meeting of The Chartered Institute of Patent Attorneys (CIPA) on 4<sup>th</sup> October 2023. CIPA Council agrees 100% with the views that you express and the position you advocate. This letter is intended to formalise that support. Please feel free to copy this letter to anyone you feel would benefit from reading it or to quote our comments in your future correspondence or articles on this matter. We are at your disposal to provide any further support that we can to your position.

At our October Council meeting, we also discussed the paper<sup>2</sup> by Dr. Thomas Marx in epi Information which advocates an opposite position to your own. We are in correspondence directly with Dr. Marx and will be providing him with a copy of this letter.

In May this year, CIPA Council received a report that the Council of the epi had passed a motion in favour of raising the threshold technical qualification for entry to the European Qualifying Examination and, therefore, registration as a European Patent Attorney, to a Master's level degree or equivalent. Council was further advised that this will require an amendment to the Regulation on the European qualifying examination for professional representatives (REE) and that the EPO would be considering this in due course.

CIPA Council is opposed to any such move and would expect the EPO to consult contracting members states of the EPC to ascertain the impact of such a requirement as part of its risk analysis. That risk analysis, in addition to the impact of such a significant change on current and future EPAs, should also consider the legal context such as antitrust legislation and competition law. In advance of that consultation and a detailed explanation of the rationale for the change to a Master's degree entry requirement, CIPA Council has the following observations in addition to those made in your article.

1. There is no clear or obvious problem with the current requirement for a university-level scientific or technical Bachelor's degree that will be addressed by requiring EPAs to have a Master's degree or equivalent. We note that the majority of EPC member states set their national patent attorney requirement at or equivalent to a

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<sup>1</sup> <https://information.patentepi.org/issue-3-2023/prerequisites-to-sit-the-future-e-epi-perspective.html>

<sup>2</sup> <https://information.patentepi.org/issue-3-2023/all-about-patent-quality.html>



Bachelor's degree, not a Master's degree<sup>3</sup>. CIPA Council has seen no evidence to suggest that a longer technical education provides for better EPAs.

Analysis of data available through the EPO's published statistics on the results of the EQE<sup>4</sup> and the epi's register of patent professions in EPC contracting states<sup>5</sup> shows that, in the 2022 EQE, candidates resident in countries that require a Master's degree for their national qualification had an overall pass rate of 39% compared to 49% for the countries where a Bachelor's degree is the national threshold.

2. CIPA Council understands that, in part, this proposal is driven by the recent move by the EPO to require its examiners to be qualified at Master's level. CIPA Council takes the view that the two roles are very different. The main asset of a patent examiner is their knowledge of the art in which they specialise in order to assess the novelty and obviousness of inventions. Unlike examiners, patent attorneys are not examining a patent application in isolation, they are drafting and prosecuting patent applications with the benefit of the inventor's expertise and knowledge in the technical field. By definition, a patent attorney does not have existing knowledge of a new invention. It is their skill in efficiently developing a deep understanding of the function and scope of the invention that is paramount to their success.

Individual patent attorneys will cover a much broader range of technologies than individual examiners, as patent applications from all applicants in a relatively narrow technical field can be directed towards a single examiner. Conflict of interest rules<sup>6</sup> would not allow a patent attorney to specialise in this way, and patent attorneys therefore act for clients across a range of technical fields.

3. As you have said in your article, employing firms are best placed to make decisions about the suitability of applicants for trainee patent attorney positions. This requires a detailed understanding of clients' needs and recruiting trainee patent attorneys with appropriate qualifications, skills and experience. In some areas of technology, for example the biotechnologies, a higher degree may be desirable, where this may foster initial credibility with academic inventors. In others, employers may find that a Bachelor's degree provides the perfect foundation for a successful career. This decision is best left to employers. A one-size-fits-all policy is not appropriate.

In the UK, about 1 in 5 trainee patent attorneys come into the profession with a Bachelor's degree or equivalent as their scientific or technical qualification<sup>7</sup>. Employing firms will have made a detailed assessment of the candidate's technical ability before offering a training place. The efficacy of trainee recruitment in the UK is proven by the success of UK candidates in the EQE, where the proportion of UK

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<sup>3</sup> <https://patentepi.org/en/education-and-training/table-of-patent-profession.html>

<sup>4</sup> <https://www.epo.org/en/learning/professional-hub/european-qualifying-examination-eqe>

<sup>5</sup> <https://patentepi.org/en/education-and-training/table-of-patent-profession.html>

<sup>6</sup> <https://patentepi.org/assets/uploads/documents/rules-regulations/4.3.2-230503.pdf> Article 3(2)

<sup>7</sup> CIPA Student Member Data July 2016 to end June 2023



candidates qualifying is consistently significantly higher than the other major EPC states<sup>8</sup>.

We acknowledge, however, that 20% of new trainees with Bachelor's degrees is low in the context of Bachelor's graduates making up 60% to 70% of the potential recruits with appropriate STEM qualifications from UK universities each year<sup>9</sup>. We are currently investigating the reasons for this with a view to increasing diversity in recruitment.

4. In your article, you have explained the potential impact on equity, diversity and inclusion (EDI). We agree completely with your analysis. CIPA has taken the lead, through initiatives such as IP Inclusive<sup>10</sup> and working with the UK Intellectual Property Office, to make the patent attorney profession more diverse, more inclusive, and more representative of the clients it serves. You have highlighted the many constraints faced by underrepresented groups such as women, people with disabilities and people from minority ethnic communities. Raising the entry threshold to a Master's degree can only serve to introduce an unnecessary barrier to those already experiencing disadvantage.

Even in simple financial terms, access to a Master's degree is not a level playing field across Europe. According to published information<sup>11</sup>, students can study at their national public universities with no charge for tuition or administration in Austria and the Scandinavian countries. In many other countries the total fees for a four-year course amount to less than €5,000. However, the cost of such courses in Spain, Italy and the United Kingdom, for example, is much higher. Indeed, UK universities are the most expensive for home students in Europe, with a four-year Master's course estimated at €32,000 in tuition fees alone. This may explain our particular sensitivity in the UK to any unnecessary increase in the academic requirements for the EQE.

CIPA Council's assessment of the data<sup>12</sup>, carried out as part of its assessment of the risks attached to this proposal, shows that, of the 5 million science and engineering undergraduates across the EPC contracting states, about 3.7 million are studying for a Bachelor's degree or equivalent, and would be excluded from commencing training as EPAs on graduation.

In the absence of a compelling problem that will be solved by the introduction of a Master's degree entry requirement, closing down the patent attorney profession in this way and making it more exclusive is anathema to CIPA Council. This will be particularly evident in jurisdictions such as the US, where there have long been

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<sup>8</sup> <https://www.epo.org/en/learning/professional-hub/european-qualifying-examination-eqe> see Results and Statistics

<sup>9</sup> <https://www.hesa.ac.uk/data-and-analysis/students/table-51>

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

<sup>11</sup> <https://www.topuniversities.com/student-info/student-finance/how-much-does-it-cost-study-europe>

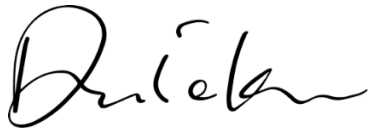
<sup>12</sup> [https://ec.europa.eu/eurostat/databrowser/view/EDUC\\_UOE\\_ENRT03\\_custom\\_6325278/default/table?lang=en&page=time:2019](https://ec.europa.eu/eurostat/databrowser/view/EDUC_UOE_ENRT03_custom_6325278/default/table?lang=en&page=time:2019)



moves to remove the professional barriers experienced by underrepresented groups and where UK firms enjoy a positive reputation in terms of their approaches to EDI.

CIPA Council is committed to working with the epi and the EPO to ensure that EPAs are highly skilled, highly competent professionals. CIPA will support all moves to increase that professionalism. The introduction of a Master's degree level entry requirement does not do that.

Yours sincerely,



Daniel Chew  
President