

FACULTY OF LAW
POSTGRADUATE DIPLOMA IN INTELLECTUAL PROPERTY LAW
AND PRACTICE 2013-14

Examiners' Report 2014

PART ONE

A. Statistics

1. Numbers and percentages in each category

The number of candidates taking the examinations was 62 (including five candidates who re-took one or more papers, and one candidate who withdrew from two papers).

Category	2014		2013		2012		2011	
	No	%	No	%	No	%	No	%
Distinction	8	12.90	8	13.11	8	11.76	4	7.41
Pass	50	80.65	47	77.05	54	79.41	43	73.63
Fail	4*	6.45	6**	9.84	6***	8.82	7	12.96
Total	62****		61		68		54	

* includes 3 candidates who failed one or more papers and are eligible to re-take those papers in 2014-15.

** candidates who failed one or more papers and were eligible to re-take those in 2013-14.

*** includes four candidates who failed one or more papers and were eligible to re-take those in 2012-13.

**** includes one candidate who was permitted to withdraw from two papers and will take those in 2014-15.

2. Vivas

Vivas are not used in this Diploma.

3. Marking of scripts

Double marking of scripts is not routinely operated. 180 out of 398 scripts (45.23%) (31.71% in 2013; 36.58% in 2012; 44.27% in 2011; 50.5% in 2010; 46.32% in 2009) were second marked. Third marking may be used in exceptional cases and two scripts (0.50%) were third marked this year (none in 2013; 0.48% in 2012; 0.31 in 2011; 2.01% in 2010; 2.15% in 2009). Further details about second and third marking are given in Part Two (A.1.).

B. New examining methods and procedures

The Diploma is jointly taught and examined by senior law practitioners (solicitors) who are members of the Intellectual Property Law Association (IPLA) and by members of the Faculty of Law. Teaching commences with a two-week residential programme in Oxford in August/September followed by nine workshops (two of which are revision workshops) spaced over the academic year. The candidates are all newly qualified or trainee solicitors or barristers. The Diploma examination is divided into Part I and Part II. Part I focuses on the practice of intellectual property (IP) law and consists of five coursework assignments (two in Michaelmas, two in Hilary and one in Trinity Term). Each coursework assignment is preceded by a one-day workshop on the relevant IP topic(s). Part II consists of two unseen two-hour examination papers covering the range of IP law, and are written at the end of Trinity Term.

In each paper (coursework assignment or examination paper) a proportion of scripts chosen at random were second marked as a check to ensure that markers were adopting similar standards. Where any significant discrepancy was found, scripts were second marked and markers adjusted their marks (for all scripts) if they were out of line with other marker(s). In addition, all scripts with borderline marks (i.e. 47, 48, 49, 67, 68, 69, also 53 and 54 as a sub-55 mark bars a Distinction), all failing marks (49 or below), and any problem scripts were second marked.

C. Possible changes to examining methods, procedures and conventions

1. Setting and checking the question paper for each coursework assignment (Part I) and examination paper (Part II) and the marking of candidates' scripts are the responsibility of a team of two (or more) members. The leader of the team has a considerable additional responsibility to ensure that procedures are carried out and deadlines met.
2. The examiners applied the marking and results conventions as agreed by the Law Board and notified to candidates. For the award of the Diploma a candidate must have no mark below 50 in any of the seven papers (five coursework assignments plus two examination papers).
3. A Distinction was awarded to three candidates who did not qualify under the results convention (3 marks of 70 or above, including 70 or above in at least one of the two examination papers, and no mark below 55). All of these candidates had two marks of 70 or above supported by very good marks (including a 68) in all other papers.
4. A fully worked out proposal for a Merit Award was forwarded to the Social Sciences Division in February 2013, but consideration of the proposal was postponed. In 2011-12 some external examiners (including the Diploma's external examiner) had commented in their reports on the lack of a classification of Merit within the University particularly for graduate degrees. In February 2013 the Examinations Panel of the University's Education Committee set up a working group to consider classifications across the University, and it was considered prudent to await the report of the Examinations Panel on the working

group's review (then expected in Michaelmas Term 2013) before pursuing a Merit Award for the Diploma. It now transpires that the working group was not asked to include graduate degrees in its review, so there has been an unfortunate delay in taking the Diploma proposal forward. The Examiners regret this delay in pursuing the matter through the University's appropriate bodies, which means that the earliest date for introduction of a Merit Award, will now be 2015-16.

D. Examination conventions

The Notice to Candidates (known as the Examiners' Edict) is attached (see Appendix 2) and the examination conventions are detailed in paragraph C.1. thereof.

PART TWO

A. General Comments

1. Second and third marking

The procedures for second marking were identified in Part One, B., above. First and second markers were required to discuss their marks and, wherever possible, agree the mark. This worked well with all second marked scripts receiving an agreed mark. Two difficult borderline failed scripts were third marked by Examiners.

2. Medical certificates, dyslexia/dyspraxia and special cases

No medical certificates in respect of candidates were forwarded to the Examiners under Part 11.8 to 11.10. of the *Examination Regulations*.

3. Materials in the examination

Candidates are permitted, under strict conditions, to take into the examination room their own copy of the current edition (11th in 2014) of Butterworths Intellectual Property Law Handbook. Their copy has to be absolutely clean and unmarked, and all copies are inspected before the start of the examination. All candidates supplied themselves with the Handbook, and no problems were encountered. In addition, candidates were provided in the examination room with a set of loose documents (see Appendix 2 attached, paragraph B.8.(5) thereof). All candidates remembered to bring with them their University card (which has to be displayed on their desk to enable their identity to be checked).

4. Legibility

No candidate was required to have either of their examination paper scripts typed (none typed in 2013, 2012, 2011 and 2010; 2 typed in 2009).

5. External Examiner

Dr Sivaramjani Thambisetty joined the Board as our External Examiner. She was actively involved at all stages of the examination process up to the final marks meeting (which she was unable to attend), and we are very grateful for her help and advice.

6. IPLA Examiner

We are also very grateful to Mr Robert Anderson of Hogan Lovells who, as coursework co-ordinator, organised and supervised the teams of practitioners involved in the teaching and examining of the coursework assignments. He was also fully involved in every part of the examination process.

7. Thanks

In addition to the Examiners, 21 colleagues were Assessors, and we owe our thanks to them all. We rely very heavily on the Diploma Administrator to ensure that the Diploma runs smoothly for examiners, assessors and candidates. Mrs. Ellen Moilanen left in January after more than five years of very efficient management of the Diploma; we are very grateful and we wish her success in her new position in the University. Mrs Victoria Campbell took up the post in June and, in the six months between January and June, the duties of Administrator were carried out by Ms Valerie Anderson and then by Ms Jennifer Hassan. They all coped well and we owe them our thanks for keeping the Diploma this year on an even keel.

B. Equal Opportunities issues and breakdown of results by gender

Category	2014				2013				2012				2011			
	Male		Female		Male		Female		Male		Female		Male		Female	
	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%
Distinction	4	13.33	4	12.90	2	6.67	6	19.35	7	20	1	3.03	1	4.77	3	9.09
Pass	24	80	26	83.88	23	76.67	24	77.42	26	74.29	28	84.85	16	76.19	27	81.82
Fail	2	6.67	1	3.23	5	16.67	1	3.23	2	5.71	4	12.12	4	19.05	3	9.09
Total	30		31		30		31		35		33		21		33	

C. Percentage distribution of marks by paper

	70 plus		60-69		50-59		Under 50		Total
	No.	%	No.	%	No.	%	No.	%	
Part I									
Patents 1	7	13%	33	59%	16	29%	0	0	56
Patents 2	6	11%	45	80%	5	9%	0	0	56
Trade Marks and Passing Off	7	12%	28	49%	21	37%	1	2%	57*
Copyright	4	7%	26	45%	27	47%	0	0	57*
Design	16	26%	22	36%	21	34%	2	3%	61**
	70 plus		60-69		50-59		Under 50		Total
Part II									
Intellectual Property I	2	4%	37	66%	15	27%	2	4%	56*
Intellectual Property II	15	27%	38	69%	2	4%	0	0	55

* includes 1 candidate who re-took the paper

** includes 5 candidates who re-took the paper

D. Comments on individual papers

These appear in Appendix 3.

Mr R. Anderson (IPLA)
 Dr D. Gangjee
 Ms A.S. Kennedy (Chair)
 Dr S. Thambisetty (External)

Appendix 1 – External Examiner’s Report
 Appendix 2 – Notices to Candidates
 Appendix 3 – Reports on individual papers

Appendix 1 – External Examiner’s Report

1. Introduction

This was my first year as external examiner for the Postgraduate Diploma in Intellectual Property Law and Practice. The involvement of the external examiner on the Diploma is relatively more intense with multiple assessments through the year. I was given regular updates and my input sought frequently. I enjoyed the remarkably collegial way in which assessment procedures are administered. To my regret, I was unable to attend the final Examiner’s meeting on July 18th due to a prior commitment dating back several months. I could have made myself available on the telephone if necessary but I was informed by the Chair of Examiners and can see from the minutes that the meeting proceeded smoothly.

Based on my involvement through the year, I am happy to confirm and report that assessment processes appear to have been conducted fairly and in accordance with institutional regulations; the academic standards of the Diploma are appropriate, resulting in a healthy range of performances from the students. For the rest of this note I am following the general format of my predecessor’s report. I make several observations below many of these are for course administration to decide on, others flag up issues that may require further discussion.

2. Academic standards set for the award of Diploma

The course covers the major intellectual property rights and expects candidates to have a thorough knowledge of the key principles, controversies, and debates relevant to these rights. In the assignments candidates are expected to apply their legal knowledge and legal reasoning skills to realistic and challenging factual scenarios. In the examinations, candidates engage with some of the wider policy debates occurring in the intellectual property field, in part because they are expected to answer one essay question as well as one problem question during the exams.

During the scrutiny process, I raised a query about the essay question in Part II on patents as I felt the reading list did not include material directed to that question. As the essay question(s), call for a different skill set I was concerned that the assessment match student learning expectations. I was assured that the cases are discussed from a policy perspective during contact lessons and the students are given plenty of guidance on answering what is now a settled part of the assessment. It would perhaps be helpful to include one or two well-chosen readings on intellectual property that would cover theoretical or policy perspectives. Academic commentary on the practice of intellectual property need not be the exclusive preserve of senior practitioners and a relatively minor expansion of the reading list would put the essay component of the assessment on firmer footing.

I understand that there has been some debate in previous years on the weightage given to the various components of the course in light of student feedback. I believe the equal weighting of patents and designs with trade marks and copyright is entirely warranted. Patent law in particular although a relatively late entrant to university based education, has grown in commercial

significance in the last three decades. I believe the equal balance in components is a very commendable aspect of the Diploma.

3. Assessment processes

In Part I, candidates had to undertake five pieces of assessed coursework – two on patents, and one each on designs, copyright and trade marks. This ensures that candidates are tested across the breadth of the syllabus. In Part II candidates sat two unseen two-hour examinations also covering the range of topics covered in the syllabus.

Part I focuses on the practice of intellectual property law by presenting candidates with realistic factual scenarios and asking them to apply their legal knowledge and legal reasoning skills. These scenarios appear to be devised with great enthusiasm by the assessors, and are an appropriately challenging way to present interesting and key issues. I had the opportunity to comment on all coursework and examination papers and also heard back from assessors and other Examiners about specific recommendations. The collaborative work that goes into fine-tuning these factual scenarios is very welcome and helps to enhance and standardize the quality of the questions.

The invitation to comment on the coursework is also an opportunity to respond to the clarity of the marking scheme that usually accompanies the coursework. There are some differences in the way marking schemes are applied as well as in the level of detail in the marking guidelines. For instance, the designs coursework assessors prefer to keep a much greater degree of fluidity in their marking scheme as picking and prioritizing issues is part of the discernment under test. There may be some room for consistency in the level of detail in marking guidelines – that is, neither too prescriptive nor too ambiguous, but in general I am heartened by the level of scrutiny that goes into setting coursework and designing marking schemes for the coursework.

Having made myself familiar with the challenging nature of the coursework and the time frame within which candidates are expected to perform well I strongly support the creation of a Merit classification. I have had a chance to look at the latest draft of the very persuasive proposal prepared by the Chair of Examiners. The variation in performance amongst different subjects that is to be expected in a professionally oriented part-time Diploma (given student expertise which is likely to be specialized in one or more and not in other subjects), I believe a Merit classification is a fair way to reward those who expend a consistent level of effort through the year and fall within the 60-69 range. I very much hope the proposal is approved through appropriate channels in time for 2015-16.

4. Standards of student performance and exceptional circumstances

This year saw the Board of Examiners decide on the case of a candidate that presented compelling evidence of difficult circumstances after the results had been finalized. The details were passed on to the Chair of Examiners by the Proctors presumably as they were satisfied that this was a ‘most exceptional circumstance’. The case was thoroughly discussed over email and a final decision was taken on the basis of a majority vote.

Without going into the specifics of this unprecedented case, I have three observations to make. First, as per the Edict, Examiners have the discretion to depart from normal conventions when exceptional or unusual circumstances arise and where they are convinced that the convention would yield an ‘indefensible result’. It is my view that while the threshold should be high enough for it to only justify exceptional intervention, it must also be a workable standard to which Examiners have genuine recourse. This is a fine balance impossible to establish in isolation and requires a case-by-case assessment. Exercise of discretion in this way is comparable to practice on the LLM Exam Board at the LSE for instance.

Secondly, the discussion highlighted a possible discrepancy in how aggregates are used at both ends of the scale. On the upper end of the scale, there is consistent past practice when it comes to the grant of distinctions. I note here that aggregate marks appear to be a useful supplement in the exercise of discretion and in one case in 2011, a mark below the bar of 55 did not prevent the candidate from being awarded a Distinction. There is no equivalent body of past practice at the lower end of the scale.

There is a clear convention that ‘a mark below 50 may not be compensated by very good performance elsewhere’. From the Edict however, it is presumably one of the conventions from which it is possible for the Examiners to depart under exceptional circumstances. If we look at the use of aggregates at the upper end of the scale then there seems to be some justification for such use when there is a Fail that is compensated by good performance(s) elsewhere, and exceptional circumstances that pass the ‘indefensible result’ threshold. Another practice I know of from being on the LSE LLM Exam Board that may help in such cases is to make a distinction between Fail and Bad Fail marks, treating the latter much more cautiously when exercising discretion.

Thirdly, it would be beneficial to place pastoral care arrangements on a formal footing so that candidates are educated about the need to update course management about ongoing difficulties that are likely to impact on their performance. This may particularly help candidates who are entrenched in a professional and competitive environment in law firms where there is less allowance for difficult personal circumstances.

5. To conclude

There is a high degree of care and attention to detail at every level of assessment on the Diploma. The outcome is a healthy range of marks including appropriate number of Distinctions, and relatively low number of re-sits this year. Above all it has been a pleasure to be closely associated with such an impressive and rigorously run postgraduate program.

Dr Sivaramjani Thambisetty
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6 October 2014.

Appendix 2 – Notices to Candidates

IMPORTANT – TO BE RETAINED FOR FUTURE REFERENCE

UNIVERSITY OF OXFORD

FACULTY OF LAW

DIPLOMA IN INTELLECTUAL PROPERTY LAW AND PRACTICE 2013-14

NOTICE TO CANDIDATES

*This document is traditionally known as the Examiners' Edict. It is the means by which the Examiners communicate to the candidates information about the examination. It is very important that you should read it carefully; **there are procedures to be followed and deadlines to be observed.***

ROLE OF THE PROCTORS

The University Proctors act as independent overseers of the conduct of examinations. They have a statutory duty (Statute IX) to see that examinations are properly conducted in accordance with the statutes and regulations concerning them. The University's *Examination Regulations* reserve to the Proctors certain powers in connection with the conduct of examinations, such as granting permission for late submission of written work. These powers are exercised independently of the University's Education Committee and of all divisional or faculty boards or other bodies responsible for the academic content of examinations. Fairness is thereby enhanced because candidates in all examinations are treated by the Proctors on the same terms. For the same reason candidates may not make direct contact with the Chair or Board of Examiners; any special applications concerning a candidate must be made through the Proctors. Candidates may not make direct contact with the Proctors; any special applications must be made by the Diploma Administrator on the candidate's behalf.

ROLE OF THE DIPLOMA ADMINISTRATOR

Any queries or difficulties concerning examination matters should be referred at once to the **Diploma Administrator, Mrs. Ellen Moilanen, in the Law Faculty Office (St. Cross Building, St. Cross Road, Oxford OX1 3UL). Telephone: (01865) 271457. E-mail address: ellen.moilanen@law.ox.ac.uk.** Should it be necessary to apply to the Proctors, the Diploma Administrator will contact them on your behalf.

Where the *Examination Regulations* refer to action by a candidate's college or the Senior Tutor of a candidate's college, please **substitute** the Diploma Administrator.

CANDIDATE'S EXAMINATION NUMBER

In all examinations candidates are identified only by their examination number which will be notified to you by the Diploma Administrator. Only your examination number (not your name) should be quoted on written work or examination scripts submitted to the examiners.

EXAMINATION ENTRY DETAILS

The Examination Schools will automatically attach compulsory papers to your academic record on registration. It is your responsibility to ensure your examination entry details are correct via the Student Self Service in OSS. See <http://www.ox.ac.uk/students/>.

STATUTES AND OTHER SOURCE MATERIAL IN THE EXAMINATION ROOM

You will be permitted to bring into the examination room for the two examination papers (Part II) your own copy of Butterworths Intellectual Property Law Handbook, 11th edition (Butterworths Handbook), subject to conditions which **it is essential to observe throughout the academic year. Full details are given in Part B.8. below** and include that the copy of the 11th edition taken into the examination room **must be absolutely clean and unmarked.** .

UNIVERSITY OF OXFORD EXAMINATION REGULATIONS 2013 (for academic year 2013-14)

Available on <http://www.admin.ox.ac.uk/examregs/>; extracts are given in Schedule IV attached hereto.

This Examiners' Edict provides a guide to the rules for this Diploma programme, but in case of any conflict, the *Examination Regulations* prevail.

A. INFORMATION FOR CANDIDATES REGARDING THE COURSEWORK ASSIGNMENTS (PART I)

1. *Timing*

(i) First Coursework Assignment: Patents 1

Saturday 5 October 2013 - Assignment question paper will be handed out during the Workshop on this day, and will also be available from the Diploma Administrator on Monday 7 October.

Friday 1 November 2013 (1.00 pm) - Candidates must submit the required work to the Clerk of Schools, Examination Schools, 75-81 High Street, Oxford OX1 4BG. (See further A.3. below).

(ii) Second Coursework Assignment: Patents 2

Saturday 23 November 2013 - Assignment question paper will be handed out during the Workshop on this day, and will also be available from the Diploma Administrator on Monday 25 November.

Monday 6 January 2014 (1.00 pm) - Candidates must submit the required work to the Clerk of Schools, Examination Schools, 75-81 High Street, Oxford OX1 4 BG. (See further A.3. below).

(iii) Third Coursework Assignment: Trade Marks and Passing Off

Saturday 18 January 2014 - Assignment question paper will be handed out during the Workshop on this day, and will also be available from the Diploma Administrator on Monday 20 January.

Friday 14 February 2014 (1.00 pm) - Candidates must submit the required work to the Clerk of Schools, Examination Schools, 75-81 High Street, Oxford OX1 4BG. (See further A.3. below).

(iv) Fourth Coursework Assignment: Copyright

Saturday 15 March 2014 – Assignment question paper will be handed out in the Workshop on this day, and will also be available from the Diploma Administrator on Monday 17 March.

Friday 11 April 2014 (1.00 pm) - Candidates must submit the required work to the Clerk of Schools, Examination Schools, 75-81 High Street, Oxford OX1 4BG. (See further A.3. below).

(v) Fifth Coursework Assignment: Designs

Saturday 26 April 2014 – Assignment question paper will be handed out in the Workshop on this day, and will also be available from the Diploma Administrator on Monday 28 April.

Thursday 29 May 2014 (1.00 pm) - Candidates must submit the required work to the Clerk of Schools, Examination Schools, 75-81 High Street, Oxford OX1 4BG. (See further A.3. below).

You may complete and submit a coursework assignment although you were not able to attend the relevant Workshop. It is your responsibility to obtain a copy of the question paper from the Diploma Administrator; an extension of the time for submission may not be granted solely because of non-attendance at the Workshop at which the question paper was handed out (see further A.3.(ii) below).

Raising of queries – if you have any queries about the content of the coursework assignment, you must submit your queries to the Diploma Administrator **not later than 14**

days after the date (see above) **when the relevant assignment question paper was handed out.** Queries received after this 14 day period will not be entertained.

2. Methods of Assessment and Format of Assignment

Each coursework assignment shall be examined by means of an assessed written exercise of 3,000 words unless otherwise stated in the question paper (inclusive of footnotes) (see also A.4. below). For Marking Conventions see C.1. below, and for Assessment Standards see attached Schedule I. Each assignment will take the form of a practical exercise, such as drafting of statements of case or instructions to counsel.

The University has strict regulations governing assessment. Marks may not be disclosed to candidates until they have been agreed as final marks by the Board of Examiners. It is therefore not possible to disclose the marks for the coursework assignments (Part I) until after the final meeting of the Board in July (see E.1. below) when the Board will decide the final result of the Diploma, having reviewed and agreed the complete marks profile (Part I and Part II) for each candidate. The Board may need to make adjustments to marks after scrutinising the marking profiles of markers across each paper and across all papers and after considering other relevant information, such as medical evidence. If the marks for any of the Part I papers had already been agreed by the Board as final marks and disclosed to candidates at an earlier date, it would not be possible to revisit those marks later. The Board has also taken the view that knowledge of their marks would not necessarily be helpful to candidates approaching the examination papers (Part II) in a few weeks time; some would be encouraged but others discouraged by their earlier performance and have little time for additional preparation.

The University does not permit assessors to provide detailed feedback on their performance in written papers to individual candidates, hence you will receive only a mark for each coursework assignment (and each examination paper) and no comments on how that mark was reached. General comments on each paper and how questions were tackled will be included in the Report of the Examiners on the year's examination, but this Report will not be available until several months after completion of the Diploma. To assist candidates as they progress through the course, the Board of Examiners has asked assessors after completion of the marking of each coursework assignment to prepare general comments on the issues raised by the questions and the points which might be included in the answers, and to comment generally on the performance of the cohort in completing the assignment. The document will not be a model answer, and will not provide a comprehensive analysis of the scripts submitted, but will identify some of the most common mistakes seen by the assessors. As soon as each text has been approved by the Board, it will be released to candidates. This is dependent on the timing of the completion of the marking process and may not always be possible.

The Reports of the Examiners and of the External Examiner on the previous years' examination are available for consultation on the Faculty website,

<http://www.law.ox.ac.uk/publications/handbooks.php>. These reports contain (inter alia) information on examining methods and statistical analyses of performance.

3. *Submission of Coursework Assignments*

(i) **Submission Requirements**

Candidates are required to submit **two typewritten copies** of each coursework assignment. The coursework assignment must be typed or printed on one side of A4 paper only, with a margin of 3 to 3.5 centimetres on the left-hand side of each page. The text should be double spaced and the footnotes and quotations should be single-spaced. Pages should be numbered and stapled together, not held together by a paper clip. You must **not** write your name anywhere on the coursework assignment or envelopes. All written work must be submitted in English. **Cover sheet** - each coursework assignment should have a cover sheet attached to it containing the title and your examination number. It should also state the year of submission and the number of words (inclusive of footnotes). **Note-form answers** should be avoided except where note-form is appropriate (e.g. in a table). Your answer should be as articulate and as readable as an explanation you would send to a client. **Two copies of each coursework assignment** must be delivered in an envelope to the Clerk of Schools, Examination Schools, 75-81 High Street, Oxford. The envelope should be addressed to: The Chair of Examiners for the Diploma in Intellectual Property Law and Practice, and your examination number should be printed in the top right hand corner of the envelope. With each coursework assignment you must include: (a) a statement, signed by yourself, that, except where otherwise stated, the coursework assignment is entirely your own work, and that no help was received, even bibliographical, with its preparation; and (b) a second statement indicating which part or parts of the coursework assignment have formed part of a submission in another context. To assist you, these statements have been incorporated into the template **Declaration of Authorship** for completion (see Schedule V and D. (second paragraph thereof) below). Delivery may be by hand, by courier or by registered post, but, if not made by hand, the envelope containing your written work (and addressed as instructed above) must be placed inside a delivery envelope which should be addressed to The Chair of the Diploma in Intellectual Property Law and Practice Examiners, c/o The Clerk of Schools, Examination Schools, 75-81 High Street, Oxford OX1 4BG. However delivery is made, the package **must arrive** by the deadline. **You are strongly advised to obtain proof of collection by a courier service or proof of posting.** (NB promises by the Post Office of 'next day delivery' may not be reliable). At the same time as you submit hard copies of each coursework assignment to the Examination Schools, you must also submit electronically a copy of that assignment to the Diploma Administrator for the Examiners. A random sample of coursework assignments will be checked for plagiarism using the *Turnitin* plagiarism software. See further D. below.

(ii) **Late submission**

Application to the Proctors for permission for late submission of coursework assignments should be made by the Diploma Administrator, on the candidate's behalf, before the submission date. If the written work is submitted **on the prescribed date but later than the prescribed time** (the sending of the electronic copy does not count as a submission), the work will be passed to the Examiners for marking but a late presentation fee (to cover administrative expenses) will be incurred. Within five working days of the prescribed submission date, the candidate through the Diploma Administrator may apply to the Proctors to request that the circumstances of the late submission be taken into account by the Examiners. Written work submitted **after the prescribed date** without prior permission will not be released to the Examiners, but will be held by the Examination Schools and the Proctors informed. The Diploma Administrator, on the candidate's behalf, may write to the Proctors explaining the reason for late submission. The Proctors may permit the candidate to remain in the Diploma examination and to submit the work late, but will impose a late presentation fee (to cover administrative costs). In addition, the Proctors may give leave to the Examiners to impose an academic penalty, which will take the form of a reduction in the mark by up to one class (or its equivalent – 10 marks). In determining the amount of the reduction, the Examiners will be guided by the evidence forwarded to them by the Proctors and (insofar as the following matters are dealt with by such evidence):

- (1) the degree of advantage gained by the extra time made available to the candidate relative to the time that was available to complete the coursework assignment by the original deadline;
- (2) the weight to be attached to the excuse given, if any, for late submission;
- (3) his or her performance in the coursework assignments (Part I) submitted by the deadline and the written examination papers (Part II);
- (4) the effect of any proposed reduction on the candidate's Diploma result as a whole.

Factors (2) – (4) may require a final decision on penalty to be delayed until all the marks for the written examination papers (Part II) are known. Late submission of the Declaration of Authorship (see B.3.(i) above, last paragraph thereof) may also incur an academic penalty. See further Schedule IV - *Examination Regulations* 2013, Part 16.8. Candidates should consult the Diploma Administrator if any of these provisions apply to them. See also B.6. below. A candidate who is dissatisfied with the decision of the Proctors under *Examination Regulations* 2013, Part 16.8. may, or the Diploma Administrator on their behalf, appeal against it – see E.2. below. A candidate who fails to apply for or to obtain permission from the Proctors for the late submission of any written work, or non-submission (i.e. withdrawal from this examination unit (see B.7. below) will be deemed to have failed the entire Diploma examination (not just the coursework assignments (Part I)). Non-submission includes where the Examiners refuse to examine work which exceeds the word limit (see A.4. below).

4. *Length*

Candidates should take seriously the word limit imposed (see A.2. above). If the word limit is exceeded ‘the examiners, if they agree to proceed with the examination of the work, may reduce the mark by up to one class (or its equivalent – 10 marks).’ (See Schedule IV - *Examination Regulations* 2013, Part 16.6.). The Examiners are naturally bound by this. It is necessary, however, to give guidance on the meaning of a ‘word’ in this context. Because of the manner in which word count software operates, legal citations often inflate the count. The Examiners have therefore determined that an allowance of an extra 3% should be permitted to candidates (should they wish to use it) above the figure of 3,000 words. The word count which appears on the coursework assignments must be the actual word count produced by the software. The word count must include all footnotes. You must ensure that any automatic word-count on the word-processing programme you use is set to count footnotes.

5. *Academic integrity – avoidance of Plagiarism*

See D. below.

6. *Illness or other Causes affecting Candidates for examination*

See B. 6. below.

7. *Withdrawal from entire Diploma examination*

See B.7. below.

B. INFORMATION FOR CANDIDATES REGARDING THE WRITTEN EXAMINATION PAPERS (PART II)

1. *Timing and Place of Examination*

Date to be confirmed (a day at the end of June/early July)

Intellectual Property I	9.30am-11.30am
Intellectual Property II	2.30pm-4.30pm

The written examination papers will be taken at the Examination Schools in the 75-81 High Street, Oxford. Candidates are advised to reach the Examination Schools not less than fifteen minutes before the stated time of the examination. A bell will be rung some minutes before the examination to give candidates time to move to the examination room. Notices will direct

candidates to the appropriate room. Seating in the examination room will be by desk number only. Seating charts will be displayed in the reception area, displaying candidates' names and desk numbers, as well as outside the examination room. You will need your University Card for each paper (see B.3.(i) below). Dark formal attire must be worn (eg lounge suit).

See also B.8.(i) below concerning the conditions under which you may have a copy of approved statutory materials in the examination room.

2. *Method of Assessment and Examination Technique; cut-off date*

The substantive law elements of the course shall be examined by means of two written examination papers, each of two hours (see also B.10) below. These elements were covered in the residential programme and the cases listed under **Essential Reading** on the core reading list. The **cut-off date** for inclusion of new material will be **Friday 29 May 2014** (the date for submission of the Designs coursework assignment). An updated core reading list will be circulated after this date. Candidates will not be required to have detailed knowledge of developments and cases after the cut-off date. Cases listed in the core reading list under Further Reading, or included by tutors in their own reading lists (eg listing sources that might be read prior to a lecture or workshop) will not be examined. For Marking Conventions see C.1. below, and for Assessment Standards see Schedule I. Sample questions will be provided and discussed in the three revision workshops, Saturdays 16 November 2013, 7 June and 14 June 2014. (See also B.10. below).

3. *Scripts*

(i) **Anonymity**

You will be informed of your examination number and you should bring to the examination room the note advising you of that number. You must **not** write your name on any answer book. **Write your examination number only** in the appropriate place in each answer book you use. Please also bring with you to each examination your University Card. This must be placed face up on the desk at which you are writing.

(ii) **Legibility**

Candidates must not write in pencil. Candidates submitting illegible scripts will be required to have them typed at their own expense. The examiners will make every effort to identify such candidates to the Diploma Administrator as early as possible. Please provide the Diploma Administrator with details of where you can be contacted by telephone and email in the week following the date of the examination papers. If any of your scripts have to be typed, you will be asked to return to Oxford to dictate your answers to a typist in the presence of an invigilator. At that time, further instructions will be given to you by the Diploma Administrator.

(iii) **Rough work**

If you wish to write plans or rough drafts, you may do so either in the same booklet as your answers (but cross out the rough work) or in a separate booklet (indicating that this is rough work) which must be handed in along with your answer booklets.

(iv) **Handing in scripts**

It is the **candidate's own duty to hand in his or her scripts when collected from your desk by an invigilator**. Any candidate who does not hand in a script **must** inform an invigilator.

(v) **Incomplete scripts**

The mark for a completely absent answer in any script will be zero, and the mark for a part answer, or a "skimped", "rushed final", "short" or "weak" answer, will be such a mark above zero as is appropriate, relative to more successful answers, in terms of the quality of what has been written, and the extent to which it covers the question.

The overall mark for a script will be arrived at by averaging the number of marks, including zeros, over the number of questions that should have been answered on the paper.

If a candidate completes the correct number of questions, but fails to answer a question which is compulsory (eg where the candidate does not answer a problem question as required by the rubric of that paper), marks will be deducted and this may affect the final result. It is therefore of the utmost importance that candidates comply with the rubric of the paper and answer the number and type of questions stipulated.

Candidates who write answers in note form may also expect to have their overall mark for the paper reduced.

4. *Leaving the examination room, arriving late and failing to attend*

- (i) During first half hour and last half hour of examination**
No candidate may leave the examination room within half-an-hour of the beginning of the examination and, to avoid disturbance to other candidates, candidates may not leave the examination room within half-an-hour of the end of the examination.
- (ii) Examination Protocol**
An Examination Protocol giving practical advice on the conduct of the examination is attached as Schedule II. This should be read before the examination. The document does not have official status and will not be placed on desks in the examination room. The Protocol also refers you to the Proctors' Disciplinary Regulations (see Schedule IV – *Examination Regulations* 2013, Part 19) and Administrative Regulations for Candidates in Examinations (see Schedule IV – *Examination Regulations* 2013, Part 20). (See also E.3. below).
- (iii) Illness during the examination**
A candidate who is taken ill while sitting a written paper may (with the invigilator's permission) leave the room and return while the examination is in progress to resume the paper on **one** occasion only (and no extra time shall be allowed). If the candidate is unable to complete the paper concerned because they have been taken ill a second time, they should inform an invigilator so that the incomplete script can be handed in. It is the candidate's responsibility to obtain a medical certificate explaining how the performance in the paper concerned may have been affected by illness. The examiners will only be made aware of any difficulties suffered by a candidate in the examination room if the candidate subsequently obtains a medical certificate and that, plus any other relevant information, is submitted to the Proctors and passed on by them to the examiners. For the procedure to be followed see B.6. below.
- (iv) Late arrival**
A candidate who arrives more than half-an-hour after the time when the examination begins will be allowed by the invigilator to attempt the paper, finishing at the same time as the others. The circumstances will be reported to the Proctors, and the work shall not be taken into account by the Examiners without the consent of the Proctors. The candidate should contact the Diploma Administrator as soon as possible so that a submission explaining the reasons for late arrival may be made to the Proctors.
- (v) Failure to attend the examination**
Candidates who fail to attend a written examination paper without having obtained the prior permission of the Proctors are deemed to have failed the entire Diploma examination (not just that particular part of the examination), unless the Proctors give instructions to the Examiners

about reinstating them (see Schedule IV - *Examination Regulations* 2013, Part 14). This means that the names of such candidates have to be included on the results list under 'fail'. For the procedure for withdrawal (from the entire Diploma examination and from a particular part of the examination) before the Diploma examination and after the Diploma examination has started, see paragraph B.7. below (Schedule IV - *Examination Regulations* 2013, Part 14). The point of completion is deemed to be 'the conclusion of the last paper for which the candidate has entered, or the time by which a dissertation or other written material is due to be submitted, whichever is the later' (Schedule IV – *Examination Regulations* 2013, Part 20.6.). Candidates should consult the Diploma Administrator if any of these provisions apply to them.

5. *Academic Integrity – avoidance of Plagiarism*

See D. below.

6. *Illness or other Causes affecting Candidates for examinations*

The Proctors have authority to authorise special arrangements for candidates who for medical or other sufficient reasons are likely to have difficulty in writing their scripts or completing the examination in the time allowed (see Schedule IV - *Examination Regulations* 2013, Part 10). If this applies, you should consult the Diploma Administrator. Applications for such arrangements **must be submitted to the Proctors by Friday 8 November 2013**. Where a candidate's performance in any part of an examination is likely to be, or has been, affected by factors, such as illness or disability, of which the Examiners have no knowledge, the candidate may, through the Diploma Administrator, inform the Proctors of these factors. Usually this will involve submitting a medical certificate to the Proctors, in which as much detail as possible should be recorded by the certifying doctor to explain the case. The certificate should indicate the medical reason for the special request. The candidate should request the certificate from the doctor at the time when the doctor is able to certify the facts. Once the final Examiners' meeting has taken place (mid-July 2013) only in the most exceptional circumstances will the Proctors forward to the Examiners retrospective evidence that a candidate's performance may have been affected by medical or other factors. The Proctors will pass the information to the Chair of Examiners if, in their opinion, it is likely to assist the Examiners in the performances of their duties. See further Schedule IV - *Examination Regulations* 2013, Part 11. The Examiners cannot take account of any special circumstances other than those communicated by the Proctors. See also B.4.(iii) – (v) above.

The Proctors also have authority to authorise special arrangements for candidates who are forbidden for reasons of faith from taking examinations on religious festivals or other special days which may coincide with days on which examinations are set (see Schedule IV – *Examination Regulations* 2013, Part 12). If this applies, you should consult the Diploma Administrator. Applications for such arrangements **must be submitted to the Proctors by Friday 8 November 2013**.

7. *Withdrawal from the Diploma Examination*

A candidate may withdraw from the entire Diploma examination at any time before the date for submission of the first coursework assignment (Part I). Withdrawal will be effected by the Diploma Administrator on the candidate's behalf. A candidate may not withdraw from the entire Diploma examination, or any part of it, after the start of the first paper or date for submission of the first paper or other exercise unless by reason of illness or other urgent cause (see Schedule IV - *Examination Regulations* 2013, Part 14). A candidate may not withdraw from the Diploma examination after the written parts of the examination are complete. The point of completion is deemed to be the conclusion of the last paper for which the candidate has entered, or the time by which a dissertation or other written material is due to be submitted, whichever is the later. See further paragraph C.2. for provisions for re-examination. Candidates should contact the Diploma Administrator at once if any of these provisions apply to them; it may be necessary for the Diploma Administrator to apply to the Proctors on the candidate's behalf, and there are administrative consequences too.

8. *Materials in the Examination Room*

(i) **Statutes and other Source Materials**

Statutes and other source materials may only be brought into the examination room with the prior approval of the Proctors and then only subject to strict conditions. For Intellectual Property I and Intellectual Property II in 2013-14 candidates will be permitted to bring into the examination room their own copies of Butterworths Intellectual Property Law Handbook, 11th edition (Butterworths Handbook). The following regulations will apply:

- (1) The copy of Butterworths Handbook which you bring into the examination room must be **absolutely clean and unmarked**. As an aid to finding individual materials in the Handbook collection, tabs may be attached to the edge of relevant pages. These tabs may be of different colours but must be **absolutely clean and unmarked**. These regulations will be strictly enforced. Particular attention will be paid to personal possession markings (eg your name, the name of your chambers/firm) which **must do no more than identify the ownership of the Handbook**.
- (2) Your copy of Butterworths Handbook will be inspected by the examiners/invigilators in your presence immediately before the start of the first examination paper (Intellectual Property I). This will be carried out as quickly as possible, but may result in a short delay to the start of the paper. Thereafter during the examination scrutiny will be conducted as part of invigilation and will be random. Your copy of Butterworths Handbook must remain **absolutely clean and unmarked** (see (1) above) **for the duration of the first and second examination paper** (Intellectual Property II), so do not write or mark it in any way during the first and second papers.
- (3) At the end of the first paper your copy of Butterworths Handbook must be left on your desk in the examination room. The inspection (see (2) above) will be repeated for the second examination paper (Intellectual Property II).
- (4) In the event of any infringement or breach of regulations specified above, your copy of Butterworths Handbook will immediately be confiscated and the matter reported to the Proctors. You will be permitted to continue and complete the two examination papers but without access to the collection of materials in Butterworths Handbook. Similarly, if for some reason you forget to bring your copy of Butterworths Handbook to the examination, you will be permitted to write the papers but without access to the materials in Butterworths Handbook.
- (5) The Proctors will suspend the candidate's examination while they fully investigate (including interviewing the candidate) the reported infringement or breach of the regulations. If they come to the view that a breach of the Disciplinary Regulations has occurred, the Proctors are empowered to refer the matter to the Student Disciplinary Panel. Further information about these Regulations and disciplinary procedures may also be found on <http://www.admin.ox.ac.uk/proctors>. Students who breach the Disciplinary Regulations for University Examinations may have their marks reduced, or may be failed in that examination or, in the most serious cases, may be expelled. Serious breach of University discipline may also be reported to the Bar Standards Board/Solicitors Regulation Authority.

The following materials will be placed on the desks in the examination room. In the event of any change or addition, this will be notified specifically to candidates.

- *SI 1989 No. 1294: The Design Right (Reciprocal Protection) (No. 2) Order 1989*

- *Council Regulation (EC) 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the “Brussels Regulation”)*

(ii) Dictionaries

No dictionaries are allowed in the examination room.

(iii) Other materials

No other books or papers whatever, and no calculators may be taken into the examination room.

(iv) Food and drink

Candidates are permitted to take a bottle of still water, in a clear spill-proof bottle (i.e. with a valve or sports cap, not screw cap, this is strictly enforced), into the examination room. Diabetic students may take in a silent blood-testing kit, a glucose drink (e.g. Lucozade) and/or glucose tablets (e.g. Dextro energy tablets) and insulin with syringes as long as these items are accompanied by a letter from the Diploma Administrator confirming that the candidate requires them. The same is also true for asthmatic students who require an asthma inhaler in the room during examinations. Diabetic and asthmatic students are advised to consult the Diploma Administrator regarding this letter. No other drink, food or medications may be taken into examination room without the permission of the Proctors.

9. Academic Integrity – avoidance of Plagiarism

See D. below.

10. The Question Papers

- (i) **Intellectual Property I and Intellectual Property II** – in each of the two papers there will be 4 questions. Candidates should answer two questions; of which one must be an essay question and one a problem question. Questions may cover more than one topic.
- (ii) **Queries** – An examiner will be present during the first half-hour of each examination paper to address any question concerning the paper. (See also B.2. above).

C. MARKING CONVENTIONS, ASSESSMENT STANDARDS AND RE-EXAMINATION

1. Marking Scale, Classification Conventions and Assessment Standards

The University requires examination scripts and other written work to be marked on a scale from 1 to 100. In this Diploma, marks of 70 and above are Distinction marks and marks of 50 – 69 are Pass marks. Marks of 49 or below are Fail marks. For the Assessment Standards see Schedule I. Marks are awarded for each coursework assignment and for each written examination paper, giving a profile of seven marks.

It is important to appreciate that the classification conventions set out here are not inflexible rules. The Examiners have a residual discretion to deal with unusual cases and circumstances. Subject to that caveat, the conventions that will normally be applied are as follows:

- (a) For the award of the Diploma in Intellectual Property Law and Practice there must be no mark below 50. A mark below 50 may not be compensated by very good performance elsewhere
- (b) For the award of a Distinction in the Diploma in Intellectual Property Law and Practice a candidate must achieve marks of 70 or above in three or more papers, including in at least one of the written examination papers (Part II), and must have no mark below 55 in any paper. For this calculation, the coursework assignments count as five papers, and the examination papers count as two papers (making a total of seven papers in all).

As for the discretion to depart from the normal conventions, candidates may be assured that it is not exercised except in very unusual circumstances (eg medical) in which the Examiners are convinced that the convention would yield an indefensible result. The discretion has to be exercised rationally, and the primary component of rationality in this context is that all candidates should be subjected to exactly the same rules. It follows that the discretion will not be exercised in favour of a candidate merely because the marks very narrowly fail to satisfy the convention or against a candidate merely because they only very narrowly succeed in satisfying the convention.

2. *Re-examination*

Candidates who fail any of the seven papers (five coursework assignments and two examination papers), or who withdraw before submission of all the seven papers, may re-take in the immediately following academic year **only** any paper in which they achieved a mark of 49 or below, and may carry forward the marks of any paper they passed (mark of 50 or above). But nothing in this paragraph shall prejudice the powers of the University's Education Committee and Proctors to permit partial re-takes in exceptional circumstances. If since the previous year there has been a change of syllabus, coursework assignments or examination papers shall nevertheless be set on the previous syllabus for the candidate who is re-taking them, but may not be taken by any other candidate.

D. ACADEMIC INTEGRITY – AVOIDANCE OF PLAGIARISM

Plagiarism is the copying or paraphrasing of other people's work or ideas into their own work without full acknowledgement. All published and unpublished material, whether in manuscript, printed or electronic form, is covered under this description. Collusion is another form of plagiarism involving the unauthorised collaboration of students (or others) in a piece of work. The Proctors Disciplinary Regulations concerning conduct in examinations (Schedule IV – *Examination Regulations* 2013, Part 19.4. and 19.5.) state that 'No candidate shall present for an examination as his or her own work any part of the substance of any part of another person's work. In any written work (whether thesis, dissertation, essay, coursework, or written examination) passages quoted or closely paraphrased from another person's work must be identified as quotations or paraphrases, and the source of the quoted or paraphrased material must be clearly acknowledged.' See further Schedule III - the introductory text of the guidance issued by the University's Education Committee. Examples of plagiarism and how to avoid it are given on <http://www.ox.ac.uk/students/academic/goodpractice/about/> you are strongly advised to consult this website. Guidance and examples are also given in the Faculty Handbook for the Diploma 2013-14 (see Part 4. thereof). The University reserves the right to use software applications to screen any individual's submitted work for matches either to published sources or to other submitted work. Any such matches respectively might indicate either plagiarism or collusion (see A.3.(i) (last

paragraph thereof) above).

In this connection, you are required to complete and submit with each coursework assignment a **Declaration of Authorship**, including acknowledgement of the University's right to check for plagiarism or collusion. A blank Declaration of Authorship for your use is attached as Schedule V. When submitting one of the coursework assignments (Part I) (see A.3.(i) above), **please complete a copy of this Declaration and enclose it in the envelope with the two hard copies of the assignment.** If the Declaration is submitted late, the Proctors may recommend that the Examiners apply an academic penalty (Schedule IV – *Examination Regulations* 2013, Part 16.8.(5)).

If the Examiners believe that material submitted by a candidate may be plagiarised, they will refer the matter to the Proctors. The Proctors will suspend the candidate's examination while they fully investigate such cases (including interviewing the candidate). If they consider that a breach of the Disciplinary Regulations has occurred, the Proctors are empowered to refer the matter to the Student Disciplinary Panel. For further information see the Proctors' and Assessor's Memorandum (E.3. below).

E. GENERAL INFORMATION

1. *Publication of Results*

The individual examination results can be viewed within the Student Self Service webpage in OSS (<https://www.studentsystem.ox.ac.uk/>). Individual Diploma Confirmation Letters will also be sent by the Examination Schools to candidates' home addresses (as contained within the Student Self Service webpage in OSS). Please note that results will not be available over the telephone from the Examination Schools and a results list will not be posted in the Examination Schools. Results will also not be available over the telephone from the Diploma Administrator, but an informal transcript will be sent by post to each candidate (and by email attachment if so authorised by the candidate concerned). See also A.2. above.

2. *Appeals from Decisions of the Proctors and Examiners*

For the procedures for appeals from decisions of the Proctors, see Schedule IV – *Examination Regulations* 2013, Part 18.1.). The appeal must be made within 14 days of the date of the Proctors' decision. For appeals from the decisions of the Examiners, see Schedule IV – *Examination Regulations* 2013, Part 18.2., and Part 20, paragraph 7. If you wish to raise a query or make a complaint about the conduct of your examination you should consult urgently the Diploma Administrator. Queries and complaints must not be raised directly with the Examiners, but must be made formally to the Proctors through the Diploma Administrator, and no later than three months after the notification of the results. The Proctors are not empowered to consider appeals against the academic judgment of examiners, only complaints about the conduct of examinations. Further information about complaints procedures may be found in the Proctors' and Assessor's Memorandum, particularly section 13 (see E.3. below).

3. *Proctors' and Assessor's Memorandum*

Essential Information for Students (known as the Proctors' and Assessor's Memorandum) contains much useful information and is available on <http://www.admin.ox.ac.uk/proctors>. Sections 9, 10, 11

and 13 have relevance for examinations.

Ms A.S. Kennedy (Chair)
Mr. R. Anderson (IPLA)
Dr. D. Gangjee
Dr. S. Thambasetty (External)
October 2013

Schedule I – Assessment Standards (Page 13)
Schedule II – Examination Protocol (Page 14-15)
Schedule III – Academic Integrity; avoidance of plagiarism (Page 16-18)
Schedule IV – Extracts from *Examination Regulations 2013* (Page 19-36)
Schedule V – template Declaration of Authorship (Page 37-38)

SCHEDULE I

DIPLOMA IN INTELLECTUAL LAW AND PRACTICE 2013-14

ASSESSMENT STANDARDS

The University requires examination scripts and other written work to be marked on a scale from 1 to 100. Marks of 70 or above are Distinction marks, and marks of 50 – 69 are Pass marks. Marks of 49 or below are Fail marks. The standards applied to the assessment of the Coursework Assignments (Part I) and Written Examination Papers (Part II) are as follows:

Distinction (70 and above): Distinction answers are those that represent an excellent level of attainment for a student at postgraduate level. They exhibit the following qualities:

- acute attention to the question asked;
- a deep and detailed knowledge and understanding of the topic addressed and its place in the surrounding context;
- excellent synthesis and analysis of materials, with no or almost no substantial errors or omissions, and coverage of at least some less obvious angles;
- excellent clarity and appropriateness of structure, argument, integration of information and ideas, and expression;
- identification of more than one possible line of argument;
- advanced appreciation of practical arguments concerning the topic, substantial critical facility, and personal contribution to debate on the topic.

Pass (50 – 69): Pass answers represent a level of attainment which, for a student at postgraduate level, is within the range acceptable to very good. They exhibit the following qualities:

- attention to the question asked;
- a clear and fairly detailed knowledge and understanding of the topic addressed and its place in the surrounding context;
- good synthesis and analysis of materials, with few substantial errors or omissions;
- a clear and appropriate structure, argument, integration of information and ideas, and expression;
- identification of more than one possible line of argument;
- familiarity with practical arguments concerning the topic, and (especially in the case of high pass answers) a significant degree of critical facility.

Fail (below 50): Qualities required for a pass answer are absent.

SCHEDULE II

DIPLOMA IN INTELLECTUAL PROPERTY AND PRACTICE 2013-14

EXAMINATION PROTOCOL

NB This is an unofficial practical guide to conduct and procedures in the Examination Schools. In addition, you should before the examination familiarize yourself with the Proctors' Disciplinary Regulations for Candidates in Examinations (see Schedule IV - Examination Regulations 2013, Part 19) and the Proctors' Administrative Regulations for Candidates in Examinations (see Schedule IV - Examination Regulations 2013, Part 20). (The Proctors also draw attention to these Regulations in the *Proctors' and Assessor's Memorandum* – see Examiners' Edict, para. E.3.).

1. Please check that you are seated at the right seat in the examination room. This will be identified by desk number, not by name.
2. In order to prevent impersonation of examination candidates, during every written paper you must display your University Card face up on the desk at which you are writing.
3. Do not turn over the examination paper or begin writing until you are told you may do so.
4. You may remove jackets and ties during the examination, but you must be correctly dressed before you leave the examination room.
5. Do not put your name on any answer book. Write only Diploma in Intellectual Property and your examination number in the spaces provided.
6. Please read the instructions on the front of your answer book and observe them.
7. You may for your use take into the examination room an absolutely clean and unmarked copy of Butterworths Intellectual Property Law Handbook, 11th edition (2013). As an aid to finding individual materials in the Handbook collection, tabs may be attached to the edge of relevant pages. These tabs may be of different colours but must be absolutely clean and unmarked. The Handbook should be placed on your desk and may be inspected at any time before or after the beginning of the examination. These conditions will be strictly enforced. Full details of the Proctors' regulations and the procedures for enforcing them are given in the Examiners' Edict, para. B.8.(i).
8. You may not leave the examination room before 30 minutes after the beginning of the examination, nor in the last 30 minutes of the examination.
9. You are permitted to take non-carbonated water, in a clear spill-proof bottle (i.e. with a valve or sports cap, not screw top), into the Examination Room. Water is also available in the lobby just outside the room. No other drinks or food will be permitted except on medical grounds, and with prior approval of the Proctors. If you have been given prior permission by the Proctors to have items, such as food and drink, in the examination room, you must carry the permission letter with you and produce it if requested by an invigilator – see Examiners Edict, para. B.8.(iv).
10. Diabetic students may take in a silent blood-testing kit, a glucose drink and/or glucose tablets and insulin with syringes as long as these items are accompanied by a letter from their college confirming the student requires them. The same is true for asthmatic students who require an asthma inhaler in the room during examinations. Please consult

- the Diploma Administrator regarding this letter. No other drink, food or medications may be taken into examination rooms without the Proctors' permission.
11. Do not bring mobile telephones or any other electronic devices into the examination room.
 12. Do not bring any papers or personal belongings, such as coats and bags, into the examination room. All articles or equipment to be used in an examination must be carried into the examination room in a transparent bag. Non-transparent bags must be offered for inspection and, unless special permission is given by an invigilator, must be deposited at the place designated for the deposit of bags and other personal belongings.
 13. If you require more paper, a drink of water or to visit the toilet please listen carefully to the instructions from the invigilator at the beginning of the examination to indicate your requirement.
 14. Shortly before the end of the examination, you will be given an oral notice of the time remaining. At the end of the examination you will be orally notified to stop writing. If you have used more than one book, you must tag the books together using the tag provided.
 15. At the end of the examination you must remain seated at your desk until the invigilator has collected your script from you.
 16. At the end of the examination, please obey all instructions of the Proctors and their assistants and disperse quickly. In order to avoid nuisance to other members of the public, the Proctors' rules clearly prohibit you from assembling for any purpose in the entrance of the Examination Schools or on the streets outside. The Proctors' Code of Conduct for post-examination celebrations is available on <http://www.admin.ox.ac.uk/proctors>.

SCHEDULE III

DIPLOMA IN INTELLECTUAL LAW AND PRACTICE 2012-13

PLAGIARISM

What is plagiarism?

Plagiarism is the copying or paraphrasing of other people's work or ideas into your own work without full acknowledgement. All published and unpublished material, whether in manuscript, printed or electronic form, is covered under this definition. Collusion is another form of plagiarism involving the unauthorised collaboration of students (or others) in a piece of work.

- Why does plagiarism matter?
- Why should you avoid plagiarism?
- What to avoid
- What happens if you are suspected of plagiarism?
- Frequently asked questions

Why does plagiarism matter?

Plagiarism is a breach of academic integrity. It is a principle of intellectual honesty that all members of the academic community should acknowledge their debt to the originators of the ideas, words, and data which form the basis for their own work. Passing off another's work as your own is not only poor scholarship, but also means that you have failed to complete the learning process. Deliberate plagiarism is unethical and can have serious consequences for your future career; it also undermines the standards of your institution and of the degrees it issues.

Why should you avoid plagiarism?

There are many reasons to avoid plagiarism. You have come to university to learn to know and speak your own mind, not merely to parrot the opinions of others - at least not without attribution. At first it may seem very difficult to develop your own views, and you will probably find yourself paraphrasing the writings of others as you attempt to understand and assimilate their arguments. However it is important that you learn to develop your own voice. You are not necessarily expected to become an original thinker, but you are expected to be an independent one - by learning to assess critically the work of others, weigh up differing arguments and draw your own conclusions. Students who plagiarise undermine the ethos of academic scholarship while avoiding an essential part of the learning process. The Proctors regard plagiarism in

examinations as a serious form of cheating for which offenders can expect to receive severe penalties.

You should not avoid plagiarism for fear of disciplinary consequences, but because you aspire to produce work of the highest quality. Once you have grasped the principles of source use and citation, you should find it relatively straightforward to steer clear of plagiarism. Moreover, you will reap the additional benefits of improvements to both the lucidity and quality of your writing. It is important to appreciate that mastery of the techniques of academic writing is not merely a practical skill, but one that lends both credibility and authority to your work, and demonstrates your commitment to the principle of intellectual honesty in scholarship.

What to avoid

It is important to note that the necessity to reference applies not only to text, but also to other media, such as computer code, illustrations, graphs etc. It applies equally to published text drawn from books and journals, and to unpublished text, whether from lecture handouts, theses or other students' essays. You must also attribute text or other resources downloaded from web sites. An example of plagiarism has also been set out to illustrate how to avoid plagiarism.

There are various forms of plagiarism and it is worth clarifying the ways in which it is possible to plagiarise:

Verbatim quotation without clear acknowledgement

Quotations must always be identified as such by the use of either quotation marks or indentation, with adequate citation. It must always be apparent to the reader which parts are your own independent work and where you have drawn on someone else's ideas and language.

Paraphrasing

Paraphrasing the work of others by altering a few words and changing their order or by closely following the structure of their argument, is plagiarism because you are deriving your words and ideas from their work without giving due acknowledgement. Even if you include a reference to the original author in your own text you are still creating a misleading impression that the paraphrased wording is entirely your own. It is better to write a brief summary of the author's overall argument in your own words than to paraphrase particular sections of his or her writing. This will ensure you have a genuine grasp of the argument and will avoid the difficulty of paraphrasing without plagiarising. You must also properly attribute all material you derive from lectures.

Cutting and pasting from the Internet

Information derived from the Internet must be adequately referenced and included in the bibliography. It is important to evaluate carefully all material found on the Internet, as it is less likely to have been through the same process of scholarly peer review as published sources.

Collusion

This can involve unauthorised collaboration between students, failure to attribute assistance received, or failure to follow precisely regulations on group work projects. It is your responsibility to ensure that you are entirely clear about the extent of collaboration permitted, and which parts of the work must be your own.

Inaccurate citation

It is important to cite correctly, according to the conventions of your discipline. Additionally, you should not include anything in a footnote or bibliography that you have not actually consulted. If you cannot gain access to a primary source you must make it clear in your citation that your knowledge of the work has been derived from a secondary text (e.g. Bradshaw, D. Title of Book, discussed in Wilson, E., Title of Book (London, 2004), p. 189).

Failure to acknowledge

You must clearly acknowledge all assistance which has contributed to the production of your work, such as advice from fellow students, laboratory technicians, and other external sources. This need not apply to the assistance provided by your tutor or supervisor, nor to ordinary proofreading, but it is necessary to acknowledge other guidance which leads to substantive changes of content or approach.

Professional agencies

You should neither make use of professional agencies in the production of your work nor submit material which has been written for you. It is vital to your intellectual training and development that you should undertake the research process unaided.

Auto-plagiarism

You must not submit work for assessment which you have already submitted (partially or in full) to fulfil the requirements of another degree course or examination, unless this is specifically provided for in the special regulations for your course.

What happens if you are suspected of plagiarism?

The regulations regarding conduct in examinations apply equally to the ‘submission and assessment of a thesis, dissertation, essay, or other coursework not undertaken in formal examination conditions but which counts towards or constitutes the work for a degree or other academic award’. Additionally, this includes the transfer and confirmation of status exercises undertaken by graduate students. Cases of suspected plagiarism in assessed work are investigated under the disciplinary regulations concerning conduct in examinations. Intentional or reckless plagiarism may incur severe penalties, including failure of your degree or expulsion from the university.

If plagiarism is suspected in a piece of work submitted for assessment in an examination, the matter will be referred to the Proctors. They will thoroughly investigate the claim and summon the student concerned for interview. If at this point there is no evidence of a breach of the regulations, no further action will be taken. However, if it is concluded that an intentional or reckless breach of the regulations has occurred, the Proctors will refer the case to one of two

disciplinary panels. More information on disciplinary procedures and appeals is available on the Student Conduct section of the Student Gateway.

If you are suspected of plagiarism your College Secretary/Academic Administrator and subject tutor will support you through the process and arrange for a member of Congregation to accompany you to all hearings. They will be able to advise you what to expect during the investigation and how best to make your case. The OUSU Student Advice Service can also provide useful information and support.

SCHEDULE IV

DIPLOMA IN INTELLECTUAL LAW AND PRACTICE 2013-14

EXTRACTS FROM THE UNIVERSITY OF OXFORD EXAMINATION REGULATIONS 2013 (for academic year 2013-14)

The *Examination Regulations 2013* are available at <http://www.admin.ox.ac.uk/examregs/>. For ease of reference, the extracts below cover regulations for the conduct of examinations of particular relevance to Diploma candidates, and include (inter alia) those provisions specifically referred to in the Examiners' Edict.

NB Where the *Examination Regulations* refer to action by a candidate's college or the Senior Tutor of a candidate's college, please **substitute** the Diploma Administrator.

REGULATIONS FOR THE CONDUCT OF UNIVERSITY EXAMINATIONS

It is suggested that these regulations are read in conjunction with the Education Committee Policy and Guidance on Examinations and Assessment (available at: <http://www.admin.ox.ac.uk/epsc/guidance>).

Part I Introduction

1.1. (1) These regulations shall, unless otherwise stated in any statute or in these or any other regulations, apply to University Examinations (including the First as well as the Second Public Examination) for all degrees except those referred to in paragraph (3) below.

(2) They also apply to University Examinations for all certificates and diplomas awarded by the University, and to any Examination described as a qualifying examination.

(3)

1.2. In these regulations unless the context otherwise requires:

(1) 'college' means any college, society, or Permanent Private Hall or any other institution designated by Council by regulation as being permitted to present candidates for matriculation;

(2) 'examiners' includes all persons approved to examine candidates for University Examinations to which these regulations apply;

(3) 'examination' includes the submission and assessment of a thesis, dissertation, essay, practical work, or other coursework and any other exercise which is not undertaken in formal examination conditions but counts towards or constitutes the work for a degree or other academic award;

(4) 'University Examination' means a group or number of examinations which a candidate must pass to obtain a degree or other award or to qualify as a candidate for a degree or other award of the University;

(5) 'supervisory body' means a Board of the Division or Faculty or other university body which has supervision over a University Examination;

(6) 'Board of Examiners' means the body of examiners, including external examiners, who are appointed to conduct a University Examination but does not include assessors.

(7) 'Senior Tutor' means the Senior Tutor or other proper officer of a candidate's college.

(8) words and expressions in the singular include the plural and those in the plural include the singular.

....

1.7. Council may authorise a supervisory body to make special regulations for a University Examination modifying the effect of these regulations on that Examination to the extent permitted by Council.

Part 2 Number of Examiners

2.1. It is the duty of every supervisory body:

(1) to ensure that there is a sufficient number of suitably qualified examiners to prepare and examine every part of the University Examination for which it is responsible;

(2) to arrange for their nomination in accordance with Part 4 below.

....

Part 3 Qualifications of Examiners

3.1. Examiners, other than examiners appointed under regulation 2.4 above or external examiners appointed under Part 4 of these regulations, must be members of a Faculty or department of the University.

3.2. The Pro-Vice-Chancellor (Education) and Proctors may for good cause dispense with the requirements of regulation 3.1 above.

Part 4
Examiners: Nominations and Vacancies

....

Part 5
Examiners: Periods of Office, Casual Vacancies, Resignations, and Removal

....

Part 6
Chairmen of Examiners

6.1. The supervisory body responsible for a University Examination shall appoint a chairman of examiners as soon as practicable and in accordance with its standing orders and shall notify the Registrar of the appointment.

...

6.5. As well as performing the specific duties laid down in these or any other regulations the chairman shall be responsible generally for ensuring that the business of his or her Board of Examiners is properly conducted and that the requirements of these regulations are fulfilled by that Board.

6.6. It shall be the duty of each chairman of examiners to ensure that account is taken of the *Policy and Guidance for Examiners and others involved in Univeresity Examinations* published periodically by the Proctors and of guidance provided by the Education Committee so far as they are applicable to the University Examination for which his or her Board of Examiners is responsible.

...

Part 7
Assessors

7.1. A Board of Examiners may in accordance with the provisions of this Part appoint as assessors other persons who are not examiners in the same University Examination to act with them in setting and/or marking any particular part of a University Examination.

....

Part 8
Approval of Conventions and Submission of Papers to Examiners

....

Part 9
Times for Holding Examinations and Entry of Names of Candidates

....

Part 10
Candidates with Special Examination Needs

Application of Part 10

- 10.1. (1) This Part is concerned with candidates for University Examinations who have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.
- (2) This Part shall apply to them if the impairment which they have significantly affects their ability to undertake any examination at or within the time allotted to it, or at the place where it is to be held, or in the manner in which it is normally undertaken by candidates.
- (3) This Part in any case applies to every candidate who has a specific learning difficulty such as dyslexia, dyspraxia, dysgraphia, dyscalculia or attention deficit disorder.
- (4) Candidates to whom this Part applies are called ‘candidates with special examination needs’ and those falling within paragraph (3) of this regulation are called ‘candidates with specific learning difficulties’.

General Rules

10.2. A candidate in any University Examination with special examination needs may apply to the Proctors through the Senior Tutor of his or her college:

- (1) for special examination arrangements relating to his or her condition; and
- (2) for the condition to be taken into account by the examiners as a special factor that may affect his or her performance in examinations.
- 10.3. (1) An application under regulation 10.2 above shall be made as soon as possible after matriculation and in any event not later than the date of entry of the candidate's name for the first examination for which special arrangements are sought.
- (2) The application must be supported by a statement from an educational psychologist or other suitably qualified medical practitioner (called in these regulations ‘the consultant’) approved by the Proctors.

(3) The consultant's statement must be based on an assessment of the candidate carried out by that person and on such further assessment of the candidate as the consultant considers necessary in order to form a judgement.

(4) The Proctors shall issue guidance periodically on the qualifications of consultants and the nature of the assessments that will be considered appropriate.

10.4. (1) Where an application is made in respect of a candidate who is confirmed under regulation 10.3 above to have special examination needs, the Proctors shall ensure that arrangements are made for the examination of that candidate which are appropriate for him or her and fair in all the circumstances.

(2) These arrangements may include but are not limited to the provision of a room for the examination of the candidate, permission under Part 13 of these regulations for the dictation of papers and the use of a word-processor or other materials and equipment, the provision of an amanuensis, and the granting of extra time for the examination.

(3) The Proctors shall have regard to any recommendation made by the consultant in deciding what arrangements they should make.

10.5. Candidates who are confirmed under regulation 10.3 above to have a specific learning difficulty shall, where appropriate, be given extra time by the Proctors. Additional examination adjustments may be permitted on the recommendation of the consultant.

10.6. In the case of a candidate with a specific learning difficulty the Proctors shall also ensure that the appropriate statements explaining the effects of a specific learning difficulty are supplied to the chairman of the examiners of the relevant University Examination and the Registrar shall ensure that they are placed on the candidate's examination scripts and any other work submitted for assessment, in order to assist the examiners in adjudicating the merits of the candidate's work.

Visually-impaired candidates

10.7. (1) This additional regulation applies to candidates who are visually-impaired.

(2) Where any college has a visually-impaired candidate for any University Examination, the Senior Tutor shall, not less than three months before the date of the Examination, inform the Proctors who will make the necessary arrangements (including provision for papers in Braille if appropriate) in consultation with the Chairman of Examiners and the Registrar.

(3) When papers in Braille or another format are required, the chairman concerned shall submit a copy of the necessary manuscripts to the Registrar at least eight weeks before the date of the beginning of the University Examination.

Codes of practice

10.8. In exercising their powers under this Part the Proctors and chairmen of examiners shall take full account of any relevant code of practice or other guidance adopted by the University in relation to persons who have a disability.

Invigilation

10.9. The invigilation of candidates with special examination needs for whom an examination room is provided shall be carried out in accordance with regulation 15.5 below.

Continuity of arrangements

10.10. Alternative arrangements approved by the Proctors under this Part shall normally apply to all University Examinations taken by the candidate during his or her course of study.

10.11 (1) It shall be the responsibility of the candidate to apply for any subsequent change to these arrangements which he or she may wish, and to inform the Proctors of any material change in his or her circumstances which might affect the suitability of those arrangements.

(2) In considering any request made under paragraph (1) the Proctors shall obtain and take into account the views of the consultant.

Appeals under this Part

10.12. A candidate who is dissatisfied with any decision made by the Proctors under this Part, or his or her college, may appeal against that decision in accordance with the provisions of regulation 18.1 below.

Costs

10.13. The costs of arrangements made under this Part shall not fall on the candidate.

Part 11 Acute Illness or other urgent causes affecting candidates

Application of Part 11

11.1. This Part is concerned with candidates whose performance in a University Examination may be significantly affected by acute illness or some other urgent cause, not falling within regulation 10.1 above, which comes to the notice of a candidate's college before, during or after an examination.

Non-appearance at an examination

- 11.2. (1) A candidate in any University Examination may, through his or her college, request the Proctors to accept a submission that the candidate will be or has been prevented by illness or other urgent cause from presenting himself or herself at the appointed time or place for any part of a University Examination.
- (2) For the purposes of this regulation a candidate will be deemed to have presented himself or herself for a written paper if he or she was present in the place designated for that examination and had the opportunity to see the question paper there.
- 11.3. (1) A request under regulation 11.2 above must be submitted in writing by the Senior Tutor or other proper officer of the candidate's college, with sufficient evidence to support it.
- (2) Where non-appearance is caused by illness a medical certificate from a qualified medical practitioner must be sent, and this certificate must specify, with dates, the reason why the illness will prevent or has prevented the candidate from attending the examination.
- 11.4. (1) If the Proctors accept a submission under regulation 11.2 above they shall send a copy of their decision promptly to the chairman of examiners of the University Examination concerned and inform the candidate's college and the Registrar.
- (2) If the Proctors decide not to accept the submission they shall give reasons for their decision.
- 11.5. If the Proctors accept a submission under 11.2 above they may authorise the examiners either:
- (1) to examine the candidate at another place or time under such arrangements as they deem appropriate; or
- (2) if other work that the candidate has already submitted in the Examination is of sufficient merit, to act as if he or she had completed the part of the University Examination which he or she was unable to attend.
- 11.6. Where it is decided under paragraph (1) of regulation 11.5 above that a candidate is to be examined at a place or time other than that appointed for the examination the invigilation of the candidate shall be carried out in accordance with regulation 15.5 below.
- 11.7. (1) Where it is decided under paragraph (2) of regulation 11.5 above that the examiners are to act as if the candidate had completed the part of the University Examination concerned, and the University Examination is one in which Honours may be awarded, the examiners may adopt one of the following courses:

(a) if they consider the candidate has submitted enough work to allow them to determine his or her proper class, they may award the candidate the class his or her performance merits;

(b) if they are unable to adopt course (a) but consider, on the basis of the work submitted, that but for the candidate's absence he or she would have obtained classified Honours, they may deem the candidate to have obtained Honours and publish his or her name accordingly at the foot of the Results List under the words 'declared to have deserved Honours';

(c) if they are unable to adopt course (a) or course (b) but are nevertheless satisfied with the work submitted, they may include the candidate's name on the Results List to show that the candidate has satisfied the examiners;

(d) if they are unable to adopt course (a), (b), or (c) they shall fail the candidate.

(2) Where the examiners have adopted course (b), (c), or (d) above it shall be open to the candidate to apply to Council for consideration of his or her standing for Honours at a future examination.

(3) Where it is decided under paragraph (2) of regulation 11.5 above that the examiners are to act as if the candidate had completed the parts of the University Examination concerned, and the University Examination is one in which Honours are not awarded, the examiners may adopt one of the following courses:

(a) if they consider the candidate has submitted enough work to allow them to determine whether it is of a sufficient standard to enable the candidate to pass the Examination they may include his or her name in the Results List;

(b) if they are unable to adopt course (a), they shall fail the candidate.

Factors affecting performance

11.8. If it comes to the notice of a candidate's college before, during or after an examination that the candidate's performance in any part of a University Examination is likely to be or has been affected by factors of which the examiners have no knowledge, that college shall through the Senior Tutor inform the Proctors of this factor.

11.9. (1) The Proctors shall pass this information on to the chairman of the examiners unless in their judgement it is irrelevant to the performance of the candidate in the examination.

(2) If the Proctors decide not to pass the information on they shall give reasons for their decision.

(3) The Proctors will normally not pass such information to the chairman of examiners if it is received after the final meeting of the examiners.

11.10. (1) If the University Examination is one in which Honours may be awarded the examiners may adopt one of the following courses, taking account of the information passed to them:

(a) if they consider the candidate has submitted enough work to allow them to determine his or her proper class, they shall award the candidate the class his or her performance merits;

(b) if they are unable to adopt course (a) but consider, on the evidence of the work submitted, that but for the illness or other urgent cause affecting the candidate's performance, he or she would have obtained Honours, they may deem the candidate to have obtained Honours and publish his or her name accordingly at the foot of the Results List under the words 'declared to have deserved Honours';

(c) if they are unable to adopt course (a) or course (b) but are nevertheless satisfied with the work submitted, they may include the candidate's name on the Results List to show that the candidate has satisfied the examiners;

(d) if they are unable to adopt course (a), (b), or (c) they shall fail the candidate.

(2) Where the examiners have adopted course (b), (c), or (d) above it shall be open to the candidate to apply to Council for consideration of his or her standing for Honours at a future examination.

(3) If the University Examination is one in which Honours are not awarded the examiners may adopt one of the following courses, taking account of the information passed to them:

(a) if they consider that the candidate has submitted enough work to allow them to determine that it is of sufficient standard to enable the candidate to pass the Examination, they shall include his or her name in the Results List;

(b) if they are unable to adopt course (a) they shall fail the candidate.

Appeals under this Part

11.11 A candidate or his or her college who is dissatisfied with any decision made by the Proctors or by the examiners under this Part, may appeal against that decision in accordance with the provisions of regulations 18.1 or 18.2 below.

Part 12 Religious Festivals and Holidays Coinciding with Examinations

12.1. A candidate in any University Examination who is forbidden, for reasons of faith, from taking papers on religious festivals or other special days which may coincide with days on which examinations are set, may, through his or her Senior Tutor, apply to the Proctors for approval of alternative examination arrangements.

12.2. A candidate in any University Examination who is fasting, for reasons of faith, during religious festivals or other special days which may coincide with days on which examinations are set, may, through his or her Senior Tutor, apply to the Proctors for approval of alternative examination arrangements.

12.3. An application under 12.1 or 12.2 above shall be made as soon as possible after matriculation and in any event not later than the date of entry of the candidate's name for the first examination for which alternative arrangements are sought and shall specify the faith of the candidate concerned and the details of any days specially affected.

12.4. (1) If the Proctors approve the application they shall notify the Registrar who shall make reasonable efforts to ensure that an examination timetable is set such that alternative arrangements are not required.

(2) If the Proctors do not approve the application they shall give reasons for their decision.

(3) Where a request is made after the date specified in 12.3 the Proctors may still approve the application and shall follow the procedure set out in 12.4(1) above.

12.5 If it is not practicable to adjust the timetable in the manner described in regulation 12.4(1) above, the Registrar shall notify the Proctors and the candidate's Senior Tutor and identify another date or time when the candidate must take that part, which will, whenever possible, be no earlier than the date prescribed for the part in question.

12.6. Following such notification, the Senior Tutor shall make arrangements for the candidate to be examined at that alternative time and shall submit these arrangements to the Proctors for approval.

12.7. The Proctors shall notify the Chairman of Examiners and the Registrar of alternative arrangements approved under this regulation.

12.8. When a candidate is to be examined on a date or at a time fixed by the Registrar under regulation 12.5 above, the invigilation of the candidate shall be carried out in accordance with regulation 15.5 below.

Costs

12.9. The costs of arrangements made under this Part shall not fall on the candidate.

Appeals under this Part

12.10. A candidate who is dissatisfied with a decision made by the Proctors under regulation 12.4 above, or his or her college, may appeal against that decision in accordance with the provisions of regulation 18.1 below.

Part 13

Dictation of Papers and the Use of Word-Processors, Calculators, Computers, and other materials in Examinations

Dictation and the use of word-processors

13.1. Unless permitted by the Proctors under Parts 10 or 11 of these regulations or under any other regulation, the use of word-processing and the dictation of papers in any University Examination is prohibited.

13.2. (1) If the Proctors permit the use of a word-processor, whether for the candidate's own use or for use by an amanuensis during the dictation of papers, the Proctors shall specify in each case such detailed arrangements as they deem appropriate for the preparation and use of any equipment and computer software during the examination and for the conduct of the examination.

(2) The Proctors shall also specify the detailed arrangements to be made for the printing, handing in and recording of the candidate's script, and the number of copies to be made.

(3) The Proctors shall send the details of these arrangements promptly to the chairman of the examiners of the relevant examination, with copies to the Senior Tutor, and to the Registrar.

(4) The arrangements for the collection of the examination paper by the invigilator and for the invigilation of the candidate shall take place in accordance with regulation 15.5 and 15.6 below.

13.3. The costs of arrangements made under regulation 13.2 above shall not fall on the candidate.

....

Use of pencils

13.6. Except for the drawing of diagrams, no candidate may use pencil for the writing of an examination unless prior permission has been obtained from the Proctors.

Use of dictionaries

13.7. (1) Unless any regulation provides otherwise, the use of dictionaries of any kind shall not be permitted in any University Examination.

(2) This regulation shall not apply to candidates whose course of study commenced prior to Michaelmas Term 2009. Such a candidate whose native language is not English and who wishes to take into any examination a bilingual dictionary (covering English and the candidate's native language) must at the time of entering for the examination obtain permission from the Proctors through the Senior Tutor. Permission shall not be given where regulations or examiners' instructions have previously forbidden the use of dictionaries.

Part 14

Withdrawal from Examinations and Non-appearance

14.1. This Part provides for candidates who wish to withdraw from any University Examination after their names have been entered under Part 9 of these regulations or who do not appear at the time or place appointed for taking any examination for which they have been entered.

Withdrawal before the Examination begins

14.2. A candidate whose name has been entered for a University Examination may withdraw from that Examination at any time before the start or (as the case may be) date for submission of the first paper or other exercise in the Examination.

Withdrawal after the Examination has started

14.3. A candidate who wishes to withdraw from a University Examination at any time after the start of the first paper or date for submission of the first paper or other exercise must inform an invigilator and the Registrar at once and his or her college as soon as possible.

14.4. (1) A candidate may not withdraw from a University Examination at any time after the start or date for submission of the first paper or other exercise in the Examination unless regulations 11.2-11.7 above apply to his or her case.

(2) If the candidate's college is satisfied with the reason given the Senior Tutor must as soon as possible notify the Registrar.

(3) On receipt of the notice given under paragraph (2) above the Registrar shall inform the chairman of the relevant examiners.

Non-appearance at an examination

14.5. (1) Except in cases to which regulations 11.2-11.7 or 14.3 and 14.4 above apply a candidate who fails to appear for any part of a University Examination (including a viva voce examination other than as specified in (2) below) will be deemed to have failed the

entire Examination or, in the case of a Second Public Examination taken over more than one year, the entire Part of the Examination.

(2) This regulation shall not apply where candidates (a) fail to appear for, or to submit work in respect of, optional papers supplementary to the compulsory elements of the examination; (b) fail to appear for a viva voce examination which has the sole purpose of confirming their final position in a Results list.

Part 15

Supervision and Invigilation of Examinations

....

Invigilation in cases to which Parts 10, 11 or 12 or regulation 13.2 apply

- 15.5. (1) When a candidate is to be examined on a date or at a time or place fixed by the Proctors, or as the case may be by a chairman of examiners, under Parts 10, 11 or 12 or regulation 13.2 above, paragraphs (2)-(6) of this regulation and regulation 15.6 below shall apply.
- (2) Whenever possible the examination shall take place in a room managed by the Registrar who shall be responsible for the appointment of an invigilator and other necessary arrangements.
- (3) If the examination takes place in a room provided by the candidate's college, the Senior Tutor shall appoint as invigilator for that part of the examination a person whose name is on the list of invigilators or some other suitable person whose name shall be approved by the Proctors.
- (4) If the examination is to take place at a time different from the time fixed for other candidates the Senior Tutor shall make arrangements to be approved by the Proctors for the isolation and supervision of the candidate during the period which begins at the time when the part of the examination is due to be taken by him or her and ends at the time at which it is taken by other candidates (or the other way round) which will ensure that the candidate is unable directly or indirectly to communicate in person, by telephone or by electronic or any other means with any other candidate, unless the Proctors otherwise permit.
- (5) When these arrangements are approved by the Proctors they shall communicate them to the chairman of the examiners and the Registrar.
- (6) The provisions of this regulation shall apply with any necessary modification to practical examinations.

- 15.6. (1) Where the Proctors have given permission for an examination to be held in a place or at a time other than that appointed for the examination, the invigilator or another person approved by the Proctors shall attend the Examination Schools at least 15 minutes before the examination begins, to receive the examination paper and any necessary writing materials from the Examination Schools, and should bring their University Card or other reliable evidence of their identity.
- (2) The invigilator should sign the list kept by the Registrar of examination papers which are issued in this way.
- (3) The candidate's work must be handed as soon as possible after the time appointed for the collection of papers to the Registrar, who shall make the appropriate entry in his or her register.

Part 16

Marking and assessment

- 16.1. (1) Every examiner who takes part in adjudicating on the merits of a candidate shall give careful attention to the examination of such candidates.
- (2) No examiner adjudicating on the merits of any candidate shall take account of any circumstances, not forming part of, or directly resulting from, the examination itself, except as provided in Parts 10 or 11 of these regulations.
- (3) The work of any candidate to whom Part 10 or 11 of these regulations applies shall be assessed with due and careful regard to the circumstances of that candidate and any relevant code of practice or guidelines adopted by the University in relation to such candidates.
- (4) In the case of a candidate against whom an order has been made by a University Court under section 11 (3) or section 21 (1)(e) of Statute XI or by the Appeal Court in similar terms (intentional or reckless breach of examination regulations), the examiners shall give effect to that order.
- (5) Where the Proctors have a recommendation to the examiners in respect of a candidate under section 32 (3) of Statute XI (breach of examination regulations which is neither intentional nor reckless) the examiners shall give due weight to the recommendation in assessing the candidate's work.

Examination conventions

- 16.2. (1) In adjudicating on the merits of candidates the examiners shall follow and apply the conventions approved under regulation 8.1 above subject to the right of the Board of

Examiners in exceptional circumstances to make minor adjustments to the conventions during any particular Examination.

(2) In cases of doubt or difficulty arising under (1), the examiners shall consult the Proctors.

(3) Nothing in this regulation shall affect the authority of the examiners in the making of academic judgements on the performance of each candidate.

....

Submission of theses or other exercises: exceeding word limits and departure from title or subject-matter

16.6. (1) Where a candidate for any University Examination in which a thesis (or other exercise) may be, or is required to be, submitted as part of that Examination presents a thesis (or other exercise) which exceeds the word limit prescribed by the relevant statute, or regulation, the examiners, if they agree to proceed with the examination of the work, may reduce the mark by up to one class (or its equivalent).[1](#)

(2) Where a candidate submits such a thesis (or other exercise), the title or subject matter of which differs from that which was approved by the supervisory body concerned, the examiners (if they agree to proceed with the examination of the work) may similarly reduce the mark by up to one class (or its equivalent).[1](#)

Illegible scripts

16.7. (1) If a chair of examiners considers that a script of a candidate in an examination is illegible (whether the whole script or any part thereof as identified by the chair), he or she shall inform the Senior Tutor of that candidate's college.

(2) Should the Senior Tutor dispute the illegibility of any such script (or part thereof as identified by the chair of examiners), the question shall be referred to the Proctors, whose ruling on the question shall be conclusive.

(3) Where it is accepted that a script (or part thereof) is illegible. The Senior Tutor shall either:

(a) arrange with the Registrar for the script to be transcribed in accordance with the procedure agreed between the Proctors and the Registrar;

or

(b) arrange for the candidate to dictate his or her script (or each required part thereof) to a typist under the invigilation of a Master of Arts of the University or any other person who is deemed by the Proctors to be suitable, having first

submitted in advance to the Proctors proposals for (i) the appointment of a typist and an invigilator for the transcription of the script and (ii) the timing and venue for the exercise.

(4) It shall be the responsibility of the Registrar or the Senior Tutor, as the case may be, to ensure that the transcription exercise is conducted in accordance with the arrangements approved by the Proctors.

(5) During the transcription exercise the candidate shall dictate his or her script (or each required part thereof) to the typist in the presence of the invigilator, with the exception (unless otherwise identified by the chair of examiners) of work which constitutes rough notes. The candidate shall ensure that the typescript is in every respect identical in form and content to the original script. The use of any recording device is not permitted. Only one fair copy shall be made of each dictated script (or required part thereof), for submission to the examiners.

(6) Academic dress and sub-fusc clothing need not be worn by any of the participants during the transcription exercise.

(7) The cost of the typing and invigilation shall not be a charge on the University.

(8) Following completion of the transcription exercise, it shall be the responsibility of the Registrar (for transcriptions under (3)(a) above) or the Senior Tutor (for transcriptions under (3)(b) above) to make available to the chair of examiners both the original script and the typescript.

(9) The examiners shall read the typescript page by page with the original script beside it and shall immediately report any discrepancy to the Proctors.

Late submission of work

16.8. (1) Where a candidate for any written examination in which a thesis (or other exercise) may be, or is required to be, submitted as part of that examination wishes on some reasonable grounds to be permitted to present such thesis (or other exercise) later than the date prescribed by any statute, or regulation, the procedure shall be as follows:

(a) the candidate shall apply in writing through the Senior Tutor of his or her college] to the Proctors for such permission enclosing the grounds for the application;

(b) in cases where a significant extension of time is requested, or where the proposed new submission date is beyond the date by which the thesis (or other exercise) may reasonably be assessed for consideration at the relevant meeting of the examiners, the Proctors shall consult the chair of

examiners about any such application and shall then decide whether or not to grant permission.

(c) in cases where an extension of time is requested which results in the submission date being beyond the term of office of the current examiners, the application shall be considered by the Chair of the Education Committee or another member of the Committee, other than one of the Proctors, nominated by the Chair.

(2) If permission is granted, the examiners shall accept and mark such a thesis (or other exercise) as if it had been submitted by the prescribed date.

(3) If a candidate fails to submit a thesis (or other written exercise) on time without prior permission, but submits it on the prescribed date of submission, the examiners shall mark the submitted work and impose an academic penalty according to the established conventions agreed by the relevant supervisory body and the candidate shall pay a late presentation fee. A candidate may apply to the Proctors in writing through the Senior Tutor of his or her college to request that the examiners take into account the circumstances of the late submission. Such an application should be made within five working days of the prescribed date of submission. If the Proctors accept the application, they shall forward it to the chairman of examiners. If the Proctors decide not to accept the application, they shall inform the Senior Tutor in writing of the reasons why.

(4) If a candidate fails to submit a thesis (or other written exercise) on time without prior permission, but submits after the prescribed date of submission, the Proctors shall enquire into the circumstances. If they permit the candidate to remain in the Examination, then they shall instruct the examiners to accept and mark the work, and forward to the chairman of examiners an account of the circumstances of the late submission. They may give leave to the examiners to impose an academic penalty according to the established conventions agreed by the relevant supervisory body. It shall be a condition of any permission granted under this regulation that the candidate shall pay a late presentation fee.

(5) Where provided for by regulation, submissions must be accompanied by a declaration of authorship and originality. The examiners are under no obligation to mark any submission not so accompanied. This declaration should be in a sealed envelope (which may be included inside the envelope used to hand in the written work). In the event that the Declaration of Authorship is submitted late, the Proctors may recommend that the examiners apply an academic penalty.

(6) A candidate who is dissatisfied with a decision made by the Proctors under this regulation may, or his or her college may, appeal against it in accordance with the procedure set out in regulation 18.1 below.

Voting on candidates

16.9. (1) If in voting upon the place to be assigned to a candidate in any Results List the examiners shall be equally divided, the chairman of the examiners in that Examination shall (unless paragraph (2) below applies) have a second or casting vote.

(2) If the candidate in question shall be of the same college as the chairman of the examiners or of any college in which he or she is tutor or in which he or she has been tutor during the previous two years, or shall have been privately taught by him or her during the past two years, then the casting vote shall be with the senior of the examiners who is not disqualified on that ground.

Part 17 **Publication of Results**

....

Preliminary or Qualifying Examinations for Master's Degrees, Diplomas and Certificates

17.7. The examiners in any Preliminary or Qualifying Examination or in any examination for a course of special study for the Degree of M.Phil. or Master of Science or in any examination for the degree of Master of Studies or for a diploma or certificate except the Diploma in Law or the Certificate in Management Studies shall:

(1) determine the candidates (identified only by their examination number) who have satisfied them;

(2) if the regulations governing the particular Examination permit, determine the candidates who have shown sufficient merit to obtain a distinction; and

(3) forthwith provide the information determined under paragraphs (1) and (2) above to the Registrar using the Registrar's Results Lists.

17.8. In an Examination where a candidate is not required to pass in all subjects at one and the same Examination the examiners shall append to the names of those candidates who have not completed the requirements of the Examination a list of the subjects in which they have passed

.....

Candidates who have failed

17.10. If a candidate in any University Examination has been judged by the examiners to have failed the examination the examiners shall give notice of that fact, at the close of the examination to the Registrar by inclusion on the Registrar's Results List.

Notification of results

17.11. All notifications submitted to the Registrar under this Part shall be made in a form provided by the Registrar, unless he or she otherwise agrees.

17.12. All information submitted to the Registrar under this Part shall (unless any examiner shall have been excused by the Proctors) be certified by the signature of all the examiners who have acted together in the assessment of the candidates in the Examination.

17.13. On receipt of the information provided under regulations 17.11 to 17.12 above, the Registrar shall arrange the publication of results to each candidate.

17.14 (1) After results have been released to candidates, examiners shall have no power to alter such Results Lists except under paragraph (2)-(4) below.

(2) Examiners may submit to the Deputy Registrar a change in an individual assessment mark or grade without further consent in instances where an examination overall outcome is not changed.

(3) Examiners may, with the written consent of the Pro-Vice-Chancellor (Education) and Proctors, amend an individual assessment mark or grade where such change will result in a change in the overall examination outcome.

(4) Examiners may, with the written consent of the Pro-Vice-Chancellor (Education) and Proctors, issue a further Results List or Lists to provide results of candidates omitted from the original list.

Custody of records

17.15. The Results Lists drawn up and duly signed shall be circulated and published by the Registrar according to the requirements of the Education Committee and subject to the provisions of the Data Protection Act and the signed copy shall remain in the custody of the Registrar, and any question thereafter arising, with respect to the result of any Examination, shall be determined by reference to such lists.

Forms of Certificates

17.16. (1) Degree certificates and other certificates for diplomas and other certificate courses shall be issued to successful candidates in forms prescribed by the Registrar.

(2) When a candidate has obtained a distinction in his or her Examination, or in any part of it for which a distinction may be awarded, the certificate or diploma, as the case may be, which is issued shall record that fact.

Part 18
Appeals from Decisions of the Proctors and Examiners

Appeals from decisions under Parts 10, 11, 12, and regulation 16.8

- 18.1. (1) A candidate who is dissatisfied with a decision made by the Proctors under Parts 10, 11, 12, or regulation 16.8 above, may, or his or her college may, appeal against it in accordance with the procedures set out in this regulation.
- (2) An appeal must be made within 14 days of the date of the Proctors' decision.
- (3) Any such appeal must be made in writing to the Chairman of the Education Committee.
- (4) The appeal shall be determined expeditiously by the Chairman or another member of the Committee, other than one of the Proctors, nominated by the Chairman.

Appeals from decisions of examiners

18.2. Appeals from decisions of examiners shall be made in accordance with the Procedures for Handling Complaints (including Academic Appeals) laid down and published by the Proctors under section 20 of Statute IX and any Council Regulations made under that section and not otherwise.

Part 19
Proctors' Disciplinary Regulations for Candidates in Examinations

Made by the Proctors on 1 October 2003

Approved by Council on 30 October 2003

1. These regulations are made by the Proctors in the exercise of their powers under section 22 of Statute IX and are designated by Council as disciplinary regulations under section 6 (2) of Statute XI.
2. In these regulations: (1) 'examination' includes where the context so permits the submission and assessment of a thesis, dissertation, essay, Transfer of Status materials, Confirmation of

Status materials, or other coursework which is not undertaken in formal examination conditions but is a requirement for, counts towards or constitutes the work for a degree or other academic award; and (2) 'examination room' means any room designated by the University's Registrar or his or her deputy or approved by the Proctors as a place for one or more candidates to take an examination.

3. No candidate shall cheat or act dishonestly, or attempt to do so, in any way, whether before, during or after an examination, so as to obtain or seek to obtain an unfair advantage in an examination.

4. No candidate shall present for an examination as his or her own work any part or the substance of any part of another person's work.

5. In any written work (whether thesis, dissertation, essay, coursework, or written examinations) passages quoted or closely paraphrased from another person's work must be identified as quotations or paraphrases, and the source of the quoted or paraphrased material must be clearly acknowledged.

6. Unless specifically permitted by the special Subject Regulations for the examination concerned, no candidate shall submit to the Examiners any work which he or she has previously submitted partially or in full for examination at this University or elsewhere. Where earlier work by the candidate is citable, he or she shall reference it clearly.

7. No person shall dishonestly give help to a candidate before, during or after an examination so as to give, or attempt to give, that candidate an unfair advantage in an examination.

8. No candidate shall take, or attempt to take, into an examination any unauthorised material (including revision notes), item or device (including a mobile telephone or any device capable of receiving or communicating information) nor use or attempt to use such material, item or device.

9. No candidate shall copy from the script of another candidate or in any other way dishonestly receive help from another person in an examination.

10. Candidates may not communicate with any person other than an invigilator during an examination.

11. No candidate may leave or re-enter an examination room unless permitted by an invigilator.

12. No candidate shall enter an examination room more than thirty minutes after an examination has started except with the permission of the Proctors or an invigilator.

13. No candidate shall unless permitted by the Proctors or an invigilator leave an examination room:

- (1) within thirty minutes of the beginning of an examination; or

- (2) within thirty minutes of the time at which it is due to end.
14. No candidate may smoke in an examination room or in any building in which an examination is being held, or behave in any other way which distracts or is likely to distract other candidates.
15. Candidates may not use paper in an examination except that which is provided for them.
16. At the end of each examination candidates must hand back to an invigilator all the paper provided for writing their answers, including paper used for rough drafts and paper which has not been used. No paper shall be removed from the examination room other than the question-paper for the examination that has just been completed.
17. Unless regulation 17 below applies, all articles or equipment to be used in an examination must be carried into the examination room in a transparent bag.
18. Candidates must offer non-transparent bags for inspection and, unless special permission is given by an invigilator, must deposit them at the place designated for the deposit of bags and other personal belongings.
19. Candidates must present themselves for examinations in full academic dress.
20. Candidates must follow the directions of the invigilators and the Proctors during an examination, including a direction to leave the examination room and the building in which the examination is being held.

Part 20
Proctors' Administrative Regulations for Candidates in Examinations

Made by the Proctors on 1 October 2005

1. These regulations shall apply to all university examinations, including any examination described in any regulation as a qualifying examination.
2. In these regulations 'college' means any college, society, or Permanent Private Hall or any other institution designated by Council by regulation as being permitted to present candidates for matriculation.
3. It is the responsibility of each candidate to ensure that he or she hands in all the material he or she wishes to be considered by the examiners and to comply with regulations relating to the submission of written work such as dissertations, essays and project reports. Once a candidate has submitted a piece of work, he or she may not withdraw that piece of work and substitute a revised version in the same examination without the Proctors' consent.

4. During every written paper, each candidate shall display his or her University Card face up on the desk at which he or she is writing.

5. A candidate who is taken ill while sitting a written paper may (with an invigilator's permission) leave the room and return while the examination is in progress, to resume the paper on one occasion only (and no extra time shall be allowed). If the candidate is unable to complete the paper concerned because he or she has been taken ill a second time, he or she should inform an invigilator so that the incomplete script can be handed in. It is the candidate's responsibility to obtain a medical certificate, in accordance with the relevant provisions of the General Regulations for the Conduct of University Examinations, explaining how his or her performance in the paper concerned may have been affected by illness.

6. A candidate may not withdraw from an examination after the written part of the examination is complete. The point of completion shall be deemed to be the conclusion of the last paper for which the candidate has entered, or the time by which a dissertation or other written material is due to be submitted, whichever is the later.

7. Concerns about the conduct of an examination must not be raised directly with Examiners. A candidate on a taught course may communicate with Examiners about such matters only through the Senior Tutor or equivalent officer of his or her college. If such a candidate wishes to raise a query or make a complaint about the conduct of his or her examination, such query or complaint must be notified to the Senior Tutor or equivalent officer of his or her college not later than three months after the notification of the results of the examination concerned (when the matter will be dealt with in accordance with the Council Regulations governing the handling of complaints submitted to the Proctors). A candidate for a research degree or higher doctorate may communicate a query or complaint about the conduct of his or her examination direct to the Proctors: this must be done not later than three months after the notification of the results of the examination concerned (in accordance with the procedures set out in the Council Regulations governing the handling of complaints submitted to the Proctors).

SCHEDULE V

DIPLOMA IN INTELLECTUAL PROPERTY LAW AND PRACTICE

DECLARATION OF AUTHORSHIP

Name (in capitals):

Examination number:

Title of Coursework Assignment (in capitals):

Word count:

There is extensive information and guidance on academic good practice and plagiarism on the University website: www.admin.ox.ac.uk/epsc/plagiarism.

Please tick to confirm the following:

I have read and understood the University's disciplinary regulations concerning conduct in examinations and, in particular, the regulations on plagiarism (*Essential Information for Students. The Proctors' and Assessor's Memorandum*, Section 9.6; also available at www.admin.ox.ac.uk/proctors/info/pam/section9.shtml).

I have read and understood the Education Committee's information and guidance on academic good practice and plagiarism at www.admin.ox.ac.uk/edc/goodpractice.

The coursework assignment I am submitting is entirely my own work except where otherwise indicated.

It has not been submitted, either partially or in full, for another Honour School or qualification of this University (except where the Special Regulations for the subject permit this), or for a qualification at any other institution.

I have clearly indicated the presence of all material I have quoted from other sources, including any diagrams, charts, tables or graphs.

I have clearly indicated the presence of all paraphrased material with appropriate references.

I have not copied from the work of any other candidate.
I have not used the services of any agency providing specimen, model or ghostwritten work in the preparation of this thesis/dissertation/extended essay/assignment/project/other submitted work. (See also section 2.4 of Statute XI on University Discipline under which members of the University are prohibited from providing material of this nature for candidates in examinations at this University or elsewhere:

http://www.admin.ox.ac.uk/statutes/352-051a.shtml#_Toc28142348.)

I agree to retain an electronic copy of this work until the publication of my final examination result, except where submission in hand-written format is permitted.

I agree to make any such electronic copy available to the examiners should it be necessary to confirm my word count or to check for plagiarism.

PTO

I agree that the Faculty of Law may retain the two hard copies and the electronic copy of this work until the publication of my final examination result. I agree to make any such electronic copy available to the examiners should it be necessary to confirm my word count or to check for plagiarism.

Candidate's signature:

Date:

.....

Please submit this Declaration of Authorship inserted into the envelope in which you submit the two hard copies of the Coursework Assignment.

Appendix 3 – Reports on individual papers

Coursework Assignments

PATENTS 1

The question raised a large number of issues, not all of which merited full discussion.

Better scripts

- Appeared to have given the whole question careful thought and so made clear they had identified the difficulty which the patentee would have in both trying to cover the commercial infringements (the Balmoral bridge) and maintaining validity
- Had read the questions carefully and answered all the specific questions raised
- Stated the law concisely, but then applied it thoughtfully, with good explanations and sensitive to which issues would have commercial importance
- Mentioned arguments on both sides of issues which are in doubt
- Paid careful attention to the words of the patent and the question
- Mentioned, but did not dwell on, less important issues
- Appeared to have considered and understood the (relatively straightforward) technical aspects of the various bridges, both prior art and as described and claimed in the patent
- A few identified the significance of the “connector mechanism” as a key component and considered possible wider and narrower constructions.

Weaker scripts

- Tended to list many possible issues somewhat indiscriminately and included some points that were wrong
- Often stated what the law was (sometimes in unnecessary detail) but then failed to apply it to the facts thoughtfully e.g. paying lip service to “purposive construction”, but not explaining how that would be applied to the claims of the patent
- Missed some significant points, e.g. the possibility of entitlement proceedings
- Suggested courses of action which would be commercially unwise or substantially pointless (or spent too much time on such issues) e.g. suing Sally would seem unwise given her right to bring entitlement proceedings and that she had seen all the details of the bridge which had all the main features of the patent before the application for the patent was filed.
- Gave the impression of being somewhat hurriedly written.

No candidate failed as all exhibited at least a basic understanding of the law of infringement and validity (although three only just cleared that level).

Question 1 - What types of action can be taken under the Patents Act 1977? Who might reasonably be parties?

This was generally adequately or well answered. There were a large number of possible actions including

- actions for infringement under s. 60(1)(a) and s. 60(2), and by common design,
- possible declarations of non-infringement,
- an action for threats,
- entitlement proceedings,
- an application for revocation, and
- an application to amend the patent.

Several candidates noticed practical points such as double checking that Tom Teller Enterprises was indeed the registered proprietor (as asserted in the Wonderlaw letter) and that Victor and Ursula carry out their potentially infringing activities within the UK (which the question implies but does not state).

There was some overlap with the answers to question 2, but this did not result in those scripts being marked down.

Question 2 - Infringement and Defences

As indicated above, the better answers indicated that the candidate had understood the difficulty of establishing both infringement and validity. Most candidates, including many of the better scripts, did not consider whether the “connector mechanism” which the patent highlights as a key component could be given a relatively narrow construction to ensure validity.

Many considered, at least briefly, the law on kits of parts.

Better scripts focused on the more realistic alternatives and not only looked in detail at each integer of the claims but provided a thoughtful and well reasoned argument for their conclusions. Some of the weaker scripts muddled the claims with the supporting description in the body of the specification and gave undue weight to the description in construing the claims.

Some but not all of those who identified the use of Calum’s bridge on Yorick’s estate as a potentially infringing act noted possible s. 64 defence. Subsidiary questions such as whether the supply of footings and/or chicken wire were staple commercial products (and if so whether s 60(3) applied) were addressed by most but not all candidates.

Most identified the s60(5)(a) defence (private, non-commercial use) available to some prospective defendants.

Question 3

Not every candidate considered all the available items of prior art, as they were asked to do in the question.

Some discussed sufficiency to an unnecessary degree.

Relatively few gave much detailed consideration to the steps that Tom might be able to take to improve matters (by amending the patent and if so what amendments might be permissible and could result in a patent that was still infringed).

Most, sensibly, did not spend much time on the issue of disclosure raised by the possible aerial photography of Sally's bridge by the RAF.

PATENTS 2

Parties

Claimants – Eraserhead Ltd (patentee) and Adler Composites Limited (licensee). George could not be a claimant because there was no infringement before the assignment.

Defendants – Dannyboy Products PLC, plus it is prudent in this case to join Broadsword Chemicals Limited under s.60(2); they are the only other known supplier of buckminsterfullerene (bmf), so an injunction against them would deter other primary infringers. It was good to see candidates saying there are good tactical reasons for suing the ingredient supplier, not just that there is a cause of action. S.60(2) involves the claimant in proving a number of things; it should not be run just for the sake of it.

Claims alleged to be infringed

1. Yes
2. No
3. No
4. Yes
5. Sufficient circumstantial evidence
6. Yes, although issues arise about range claims
7. Yes
8. No (pliable = solid)
9. Yes

Infringing acts

There is no apparent problem is pleading against both

Against Dannyboy Products claims 1,4,5,6 and 7 under s.60(1)(a) and offering the process of claim 9 under s.60(1)(b). Dannyboy Products are likely to have used the process themselves under s.60(1)(b) but why bother with that?

Same claims against Broadsword under s.60(2). The claimant would need to plead knowledge and suitability, as well as refer to Grimme v Scott. The compound cannot realistically be a staple commercial product.

Knowledge

Most candidates were aware of the separate knowledge requirements of s.60(1)(b) (knowledge of infringement, and therefore of the patent) and s.60(2) (knowledge of what the person supplied was intending to do, even if ignorant of the patent).

Validity of claims

1 anticipated by New Scientist article. Note that detergent is optional in the article. It is good practice to include it as obviousness citation as well

- 2 and 3 are arguably obvious over Rolland
- 4 is probably anticipated by New Scientist (chalk = gentle abrasive) + also obvious over New Scientist
- 5 there is no apparent reason for this range, it seems to be an arbitrary parameter and can be swept up with the other objections
- 6 is probably an obvious parameter
- 7 use not a limitation, and it adds nothing inventive
- 8 obvious over New Scientist + common general knowledge (CGK) or Rolland + CGK
- 9 anticipated by New Scientist article.

Ownership

On these facts George owned the invention under s.39. Good notes should mention ownership without agonising over it, and ownership should not be pleaded. The origin of the material is irrelevant on these facts. The assignment to the company doesn't change anything.

Gillette defence

There is a solid argument based on the New Scientist article being the same as the infringement, i.e. the alleged infringement is not novel, which is a Gillette defence. Terrell's current view (14-130) is that it is not as such a separate defence that needs to be pleaded but it can nonetheless be pleaded specifically. Either way, it should ideally be mentioned in the notes.

Sufficiency

Claim 1 is broader than the disclosure, but if the composition is novel then the claim would probably be sufficient.

Schaffer

This prior patent shows that bonding bmf to silica is old. The patent in suit says that bonding bmf to selective materials is known, although not in the case of abrasive material (silica is that, although the use described in Schaffer is not use qua abrasive). The patent is not however obvious over Schaffer, so it is difficult to see that it is relevant. A wrong statement in the patent about what is prior art is not fatal. Schaffer should not be pleaded.

New Scientist article and the Singapore congress

The article anticipates claim 1 as it stands and also the process claim 9. It is a summary of things that were said at a public gathering. It is likely that the speaker said more than was reported. The defendants cannot at this stage say more, but pleading the verbal disclosure leaves open the possibility of finding out whether more was said at the Singapore congress and, if so, supplementing the grounds of invalidity in due course without having to make a new allegation.

TRADE MARKS AND PASSING OFF

- 1 Comment upon the merits of Grimm's potential claims against Beauty for:
- (a) trade mark infringement (20 marks); and
 - (i) Consider claim for infringement of Grimm's CTM for RED LAGOON in light of Beauty's use of "*with active ingredient Red Lagoon mud*" on its product label.
 - (ii) Should consider Article 9(1)(a) of CTMR and whether the six conditions for infringement (as set out by Arnold J in *Interflora v. M&S* [2013] EWHC 1291 (Ch)) have been satisfied – including whether Beauty's use affects or is liable to affect the functions of the trade mark.
 - (iii) Candidates should consider whether Beauty has any relevant defences, including Article 12(b), which should include consideration of whether use is in accordance with honest practices (considering guidance in *Samuel Smith Old Brewery (Tadcaster) v. Lee* [2011] EWHC 1879).
 - (iv) Candidates may consider the effect of Grimm's delay in raising the claim, as in, eg. *AETN v. Discovery Communications Ltd* [2012] EWHC 109 and *Mattel v. Zynga* [2013] EWHC 3348.
 - (v) Candidates should consider whether Beauty has any strong counterclaims, including:
 - (A) Potential invalidity of the CTM as an indication of geographical origin contrary to Article 7(1)(c) CTMR;
 - (B) Potential revocation of the CTM for non-use (Article 51(1)(a) CTMR), which should include consideration of whether use in Denmark only may constitute genuine use (in light of CJEU guidance in *Onel v. Omel*) and whether the Grimms in any event have proper reasons for non-use, due to the export restrictions (export ban is referred to in Article 19(1) of TRIPS as potentially proper reason for non-use). Candidates should differentiate between the goods and services covered by the CTM when considering non-use.
 - (b) passing off (15 marks).
 - (i) Consider whether Grimm has a valid claim for passing off in respect of Beauty's reference to Red Lagoon mud on its product. Candidates may note that this could be an extended passing off claim.
 - (ii) Candidates should consider the classic trinity of goodwill, misrepresentation and damage.

- (iii) In considering goodwill, candidates should assess whether goodwill subsists in the UK in relation to Red Lagoon, noting that no sales have been made in the UK (applying *Budweiser* and *Starbucks v. BSKyB*).
- (iv) In considering misrepresentation, candidates may note the disclaimer on the back of Lavamud's label and whether this is sufficient.

2 Comment upon the merits of an opposition by Belle against Beauty's trade mark application for LAVAMUD (20 marks).

- (i) Should consider merits of an opposition based on LATHERMUD against Beauty's application for LAVAMUD;
- (ii) Candidates should note that Beauty's application for LAVAMUD covers the class 3 heading and should apply *IP Translator*, noting that the IPO will give the specification its literal meaning;
- (iii) Candidates should consider the scope of Belle's specification and note that Belle will need to rely upon both s.5(2)(b) and s.5(3) TMA in order to challenge the entirety of the application and candidates should apply both.
- (iv) In applying s.5(2)(b), candidates should consider the extent of the similarity of the marks (visually, orally and conceptually - *Sabel*) and the impact of the stylisation of LAVAMUD, the degree of similarity of the goods and likelihood of confusion, applying the global appreciation test.
- (v) Candidates should consider the need for reputation for Belle to rely on s.5(3) and consider the requirements for establishing unfair advantage or detriment and whether these might be satisfied by Belle.

3 Comment upon the potential claims that Beauty may have against Beast and the merits of those claims (15 marks).

- (i) Candidates should note that Beauty currently does not have a claim against Beast for trade mark infringement (either in relation to LAVAMUD/LUNAMUD or Beast's use of the colour red), as its trade mark applications are still pending (s.9(3) TMA) although once registered, Beauty can claim damages dating back to the date of filing of the mark.
- (ii) Once (and if) Beauty's trade marks are registered, Beauty may have claims against Beast both in relation to its use of LUNAMUD (s.10(2)(b) TMA) and its use of the colour red for a face mask (may be s.10(1) or s.10(2) claim). In applying the global appreciation test, candidates should consider the context of Beast's use eg. use of LUNAMUD in red text (*Asda v. Specsavers*).
- (iii) Candidates should also consider potential claims in passing off against Beast arising from its use of LUNAMUD, the red colouring of its face mask and similarities between Lavamud and Lunamud's overall packaging.

Candidates may note that the red colour of Lunamud is not visible to customers until after purchase and apply *Bostik v. Sellotape* [1994] RPC 556. Candidates should note the different markets for Lavamud and Lunamud and the effect.

4 Comment upon the registrability of Beauty's trade mark application for the colour red (10 marks).

- (i) Candidates should note the requirements for registrability of a trade mark in s.1(1) and s.3(1) TMA, and consider and apply the guidance in the CA's judgment in *Nestle SA v. Cadbury UK Ltd* [2013] EWCA Civ 1174 (including *Libertel and Sieckman*).
- (ii) Candidates should also consider likely requirement for evidence of acquired distinctiveness (IPO Practice Amendment Notice 2/06) and what may be required.

5 Prepare a memo for your supervising partner outlining the practical/strategic approach and options that you would recommend to Beauty for dealing with the various issues that have arisen with Beast, Belle and Grimm. Which matters should Beauty prioritise? (20 marks).

- GRIMM

- (i) May assess risk of interim injunction being granted in light of the delay in bringing proceedings – Beauty has been trading for four years;
- (ii) Consider pre-emptive application to revoke/invalidate RED LAGOON CTM (and note effect on potential proceedings in UK courts under Article 104(1) of the CTMR and related case law in *Starbucks (HK) Ltd v British Sky Broadcasting Group plc and others*; *EMI (IP) Ltd and others v British Sky Broadcasting Group plc and another* [2012] EWCA Civ 1201);
- (iii) Suggest letter in response in accordance with the requirements of Practice Direction on Pre-Action Conduct.

- BELLE

- (i) Should note that opposition will delay progress of registration, contrary to objectives re. Beast. Consequently, quick resolution is preferable - should consider settlement options;
- (ii) Note possibility of co-existence, provision of undertakings and/or limitation of mark (with proposals) to avoid opposition;
- (iii) Proposals for limiting mark may take into account the effect of *IP Translator* and how the existing class heading will be interpreted by the IPO (ie. giving the specification its literal/normal and natural meaning) in considering whether to allow amendment – might an appropriate amendment widen the specification? Candidates may also consider whether

the class heading gives Beauty sufficient protection for its product range in light of *IP Translator*;

- (iv) May note need for prompt response in light of opposition deadline of 6 February 2014. Candidates may note possibility of Belle obtaining a one month extension to opposition deadline by filing TM7A.
- BEAST
 - (i) Should consider which claims against Beast are worthwhile and weigh up pros and cons of waiting for registration of marks (noting risk to registration from Belle as mentioned above) or pursuing passing off claim alone;
 - (ii) Should note impending launch of Beast's product, and consider prospects of interim injunction being granted, applying *American Cyanamid*. May also consider possibility of an expedited trial as an alternative;
 - (iii) Should note that Mr Charming appears to have made threats of infringement proceedings to retailers contrary to s.21 TMA, and may note risk of proceedings being issued by Beast against Beauty as a consequence;
 - (iv) Should consider the possibility of issuing proceedings in the Intellectual Property Enterprise Court and merits/disadvantages of doing so;
 - (v) First step is letter of claim in accordance with the Practice Direction on Pre-Action Conduct;
 - (vi) May consider whether a survey is appropriate and, if so, apply the guidance arising from *Interflora*.

COPYRIGHT

1. Overall Comments

I was pleased with the general overall standard of the coursework answers. There were no fails and several very good distinction papers. I would have like to have seen more distinctions, and it was disappointing to see a number of very borderline passes. However, overall, a good performance. Obviously, the plan will be to build on this to ensure that the 2014-15 answers contain a few more distinction papers.

2. Exercise 1, Question 1

This was generally well done. There were a few tricky issues relating to unpublished works created under the terms of CA 1911 and CA 1956, but most candidates spotted these. The unpublished works would have enjoyed perpetual copyright until published. The copyright term would then have been cut down by the effect of CDPA 1988, Schedule 1, para 12(4)(a). The paintings referred to in the question will be treated as "revived copyrights". Copyright would have expired on 31 December 1994. However, by operation of Section 16(d) of the Duration of Copyright Rights in Performances Regulations 1995, the copyright term was "revived".

Most candidates identified all the other literary works in the books, artistic photographs as artistic works.

There was also a point on joint ownership and collaboration which was dealt with effectively by most candidates.

3. Exercise 1, Question 2

This was a question inviting a discussion of the law of infringement. Again, the answer was generally well done by most of the candidates. Most candidates were able to discuss the Designers Guild test and deal with the usual approach to copyright infringement claims set out by case law.

On balance, this was quite a difficult question in some ways because there is probably not enough information in the question to make a definitive finding as to whether there is infringement or not. There was also a point on whether replicating just the information in the itineraries would amount to infringement or whether it was at too high a level of abstraction for there to be a finding of textual copy and therefore copyright infringement.

The issue about whether the photographs are copied from the paintings was generally well done and relevant case law was referred to.

There was a potential fair dealing defence of "criticism review" in respect of the 10 paintings reviewed in the Matic book.

4. Exercise 1, Question 3

This was generally well done by all candidates. Getting the "housekeeping" right before copyright proceedings are commenced is always an important part of a copyright infringement action. Here, it will be necessary to tie up a few loose ends. These include an assignment of the copyright from Cahill in respect of the jointly owned chapters rather than having him as a claimant and joint owner.

The provisions of the publishing contract need to be examined carefully. The question was deliberately vague in not setting out exactly what this said. It should be checked to see if there was an assignment of the copyright of the publishing, or whether it was an exclusive or non-exclusive licence.

5. Exercise 2, Question 1

This was generally well done, although some of the answers lacked precision and were a little vague. The Uploaders clearly infringed copyright by copying as they scan the reviews and upload them to the website. Query whether they themselves are actually "communicating to the public" or authorised in such a communication.

Eto's act of browsing on screen is unlikely to be an infringement of copyright based on the Meltwater decision.

Again, the act of copying the headlines and small extracts from the reviews is likely to be an infringement in itself (Meltwater). Headlines and small extracts can amount to a "substantial part". There was awareness of the issues created by Infopaq and issues around whether "intellectual effort of the author" is necessary before determining whether or not an extract is a "substantial part".

In relation to MMR, it may be liable for communicating the Eto reviews to the public. There was good discussion of "new public" and other issues arising from the recent case law on communicating to the public.

There was also good discussion of the "hosting" defence under Regulation 19 of the E-Commerce Directive.

6. Exercise 2, Question 2

This was generally very well done. It was an opportunity to score good marks as it simply required a discussion of legal remedies available in England to copyright owners to restrain infringement. There was good discussion of injunctions, damages, remedies available under the Enforcement Directive and remedies available against ISPs under CDPA 97A.

DESIGNS

General

25% of the scripts this year were awarded a distinction, a higher percentage than ever before or in any other coursework or paper this year. There were nevertheless still some weak papers and some fails. The task was to write a letter to a lay client. Word limit notwithstanding, the letter did need to be comprehensible to and navigable by the reader. Some students managed this admirably, but others should perhaps have imagined their letter was going to go on their own firm's notepaper and be received by a real client, and considered whether the structure and phrasing (including abbreviations and definitions used) were fit for purpose. Definitions and abbreviations need to be user-friendly and memorable enough for the reader to hold in their heads and to be of assistance in understanding what is being said. They are not there just to save students words.

UKUDR

Students were expected to explain subsistence of UKUDR and apply it to the facts.

In the case of each of the Belvedere, Volute and Espalier, students were expected to attempt to define the designs of interest, with an eye on the potential infringements Chaffinch, Goldcrest, Linnet and Dunnock. Not all students remembered to define the various designs as 'the whole minus ...' any excluded features (eg: surface decoration) and features not copied, various individual design features, combinations thereof and any configuration claims.

Students were expected to consider whether any relevant exclusions applied (some students spent too much time on this). They were also expected to consider originality and commonplaceness and express a view whether the Belvedere, Volute and Espalier were original and whether any of the designs identified/defined were commonplace. Remarkably few students considered whether the design of the Belvedere was relevant to the originality of Volute and/or Espalier. Remarkably few students considered whether all or only some of the annex A to D designs were relevant to the question of 'commonplaceness' in the 'design field'. Some students failed to appreciate that commonplaceness is not the same as CUDR/RCD novelty.

Students were expected to explain the infringement test, apply it to the facts and form a view in relation to the designs they had identified/defined. They needed to consider 'copying' – whether there had been the opportunity to copy and whether the similarities were such that the burden shifted. None of the designs were 'the same' and so students needed to consider whether the possible infringements were 'substantially the same' as any of the designs they had defined. There were similarities and differences, but infringement was clearly arguable for any designs (properly defined) that subsisted, and some of the claims were reasonable and some were reasonably strong. Some students assumed that R&R was the manufacturer but we don't know that. Students should have considered whether if R&R was not the manufacturer they had the requisite knowledge or reason to believe to be a secondary infringer or whether notice was required and what remedies would be available if R&R's stock was innocently acquired.

Students were expected to spot the likelihood that the design of the Belvedere was now in the license of right period. This was missed by many.

Students were expected to consider who owned the designs. This was badly dealt with by many. In the case of the Belvedere, it was probably not a commission by SSS or even necessarily by QCC, and Harry was likely to be the owner of the UKUDR in the designs of interest, which presented a problem for QCC from the point of view of enforcement. In the case of the Volute and Espalier, very few students considered the possible effect of the fact the manufacturing was now being done by Plantland.

Papers should have considered Plantland's license, for instance whether George/QCC could take any enforcement action with or without Plantland's assistance and whether all the designs in issue were covered by it.

Copyright

Students invariably remembered that it is not an infringement of any copyright in a design document or model embodying a design for anything other than an artistic work (or typeface) to make an article to the design (s51 CDPA). But far too many students dwelled on discussing the extent to which copyright might be useful plugging any surface decoration gaps in any UKUDR which may subsist.

Far too few students considered the possibility that the Belvedere might be a work of artistic craftsmanship. It was a one-off, hand made by a craftsman (*Hensher v Restawhile* expressly identifies the maker of wrought-iron gates as possibly being an 'artistic craftsman'), never intended for industrial manufacture/sale, and its purpose was to be admired at a show.

Students were expected to consider who owned and could license and/or enforce any such copyright (considering there is no commissioning provision in the case of copyright) and consider the operation of section 236 CDPA.

They were also expected to consider infringement - whether part of the intellectual creativity of the work had been taken as a result of copying (copying considerations the same as for UKUDR) – and form a view.

RCDs

Students were expected to explain the concepts of novelty (all prior art relevant), individual character (some prior art relevant) and informed user (awareness of design corpus and reasonably discriminatory) and apply them to the facts.

Students were expected to recognise that the RCDs create a different overall impression from the prior art and were valid.

QCC was entitled to sue on them (Harry having failed to challenge QCC's registration in time).

Students were expected to form a view on infringement, including identifying the informed user and the design corpus, the overall impression of the design(s) claimed and the overall impression

of the infringement, and form a view whether or not they were the same and differed only in immaterial details. Can't compare to the product (stuck with the images). We were surprised that so many students were so very confident that RCD '618 was infringed.

CUDR

Any CUDR in Volute and Espalier appears to still subsist (probably first made available to public less than 3 years ago).

Students were expected attempt to define the design(s) which might be protected and useful in this case. The Belvedere was relevant prior art.

The copying considerations were as for UKUDR and copyright.

The infringement approach was as for the RCDs, save that the comparison was product-for-product and it would be important to see physical samples.

No knowledge requirements or innocence defences, pan-European injunction available, can even get tooling.

No commissioning provision so CUDR belongs to Harry. So neither QCC nor Plantland can sue.

Strategy

Credit was given for a wide variety of suggestions, but some of those students were expected to spot included:

Urgently sort things out with Harry:

- Harry owns the CUDR in Volute and Espalier and the copyright in the Belvedere (which trumps any UKUDR, whoever owns it). QCC can't sue on these at the moment. QCC owns the RCDs but are they infringed?
- Can QCC comply with its Plantland license without Harry?

Check license with Plantland:

- Was it exclusive?
- Was the Belvedere disclosed?
- Who is to take infringement action under its terms?

New applications:

- CUDR might still be in grace period (need to check urgently) so might be worth registering new designs.
- RCD application should be made by Harry (application by QCC might be in bad faith).
- QCC could apply for a UK RD.

Avoid making any more threats:

- Sort the mess out before suing.
- Mere notification letter can't be sent until ownership sorted out.

Examinations

INTELLECTUAL PROPERTY I

Generally speaking, the Intellectual Property I paper was handled well, with approximately 70% of candidates achieving a pass mark of 60% or above. Also, unlike last year, there was little disparity between the marks achieved in Sections A and B. Nevertheless, there were some recurring practices that had an impact upon the marks achieved: -

- a) Some candidates failed to cite the appropriate authority, choosing to rely on a lower court ruling when a Court of Appeal or even Supreme Court/House of Lords decision remains authoritative on the issue (for example see below Q3(a))
- b) There was also a recurring tendency to assume that merely citing the relevant case law demonstrated sufficient knowledge and application of the law. A hypothetical example being (using Q4), ‘...the National Medical Research Institute will have an action against Poly Mears and CIC under the law of Breach of Confidence (Coco v A.N. Clark).’ Candidates were expected to explain to the examiner the principles established in the relevant case law and then apply them to the facts in hand.
- c) Related to point b), to obtain the higher marks it was not enough merely to cite the relevant legal principles. The law had to be applied to the facts in the question and adequate advice given. It was not appropriate to state that the ‘court will decide’ or that ‘not enough information is provided’. However, it was appropriate to advise the party on their ‘chances of success’ in light of the law and facts provided.
- d) With regard to the essay questions in particular, candidates needed to read the question carefully and ensure that their answer responded to the key words or phrases posed in the question. There were several essays that focused on a single area at the expense of exploring the full breadth of patent law to answer the question (see comments to Q2 below).
- e) Once again this year some candidates failed to state the relevant statutory provision and/or state the incorrect provision. This had an impact on the marks awarded given that a statute book is available in the examination room.

Part A – Question 1

This question was divide into parts a) OR b) giving the candidates an extra question from which to choose.

Part a) was the least popular with less than one per cent of candidates electing to answer this option. This question required students to engage with the relationship between the laws relating to patents and regulatory approval, and to assess to what extent each regime operates to limit competition. All answers to this question achieved at a very high level (aver 69%) by exploring areas such as medical use patents, supplementary protection certificates, data exclusivity, the ‘Bolar’ exemption, and the various routes to obtaining regulatory approval.

Part b) attracted 23% of candidates and required an exploration of the areas in which it could possibly be argued that UK patent law discriminates as to fields of technology. The better answers (although not exclusively) tended to focus on biotechnology, drawing upon the provisions of the Biotech Directive/Schedule A2 and the relevant case law to argue that patent law negatively discriminates against such inventions. This was usually balanced by a discussion of instances of positive discrimination in areas such as medical use patents and industrial application. The very highest marks went to candidates that considered the quotation in the context of Article 27 of the TRIPS Agreement, thereby acknowledging that Member States are given significant freedom to restrict/extend patent protection in many fields of technology.

Part A – Question 2

This was by far the most popular question in Part A, yet it proved to be the most challenging. The first part of the question required candidates to identify both the nature AND the role of the ‘person skilled in the art’ (PSA). Most addressed the ‘nature’ part of the question reasonably well and identified the key case law that defines the hypothetical PSA. The better answers explored in some detail the differences that exist in the knowledge of the PSA depending on the type of enquiry being carried out, with particular emphasis on the Court of Appeal decision in *Schlumberger v EMGS*. When it came to considering the ‘role’ of the PSA few candidates went beyond merely identifying some of the areas in which the PSA is relevant. In fact some answers turned into a general essay on inventive step and failed to consider the role of the PSA in other areas such as novelty, sufficiency or claim construction. Those that achieved highly went on to consider in detail the wider public interest role played by PSA.

The second part of the question asked candidates to consider how the law governing the PSA could be improved. Generally, the weaker answers merely suggested that statutory clarification was required; better answers considered why this approach might not be advisable; and the best answers explored the difficulties presented by the *Schlumberger* decision and the need to remedy the uncertainty created.

Part B – Question 3

68% of candidates chose to answer this question, which required an exploration of the issue of patent infringement and various defences available to the parties. The majority of papers identified the potential invalidity challenge on grounds of novelty/inventive step, and considered whether the report or use on the mining platform formed part of the prior art. Notably, a significant number of the answers failed to make adequate reference to the relevant case law on the various issues raised in each section.

- a) This section inspired discussion of both direct and indirect infringement, and thus the issue of claim construction. There was a tendency to ignore the key House of Lords decision on the issue – *Kirin Amgen* – and to rely solely on the ‘Improver’ questions. The better answers took time to set out clearly the nature of the invention in question. Many candidates incorrectly assumed that just because ‘endersite’ was a subsequent development it could not fall within the scope of the claim. Weaker answers failed to

identify that the UK patent would not be infringed until the product was actually imported/made in the UK.

- b) This issue was generally dealt with well. However, weaker answers failed to set in detail the principles established in the leading case of *Schutz v Werit* and/or failed to apply the principles to the facts.
- c) This part dealt with the issue of exhaustion. While most candidates recognised that this defence would apply, a significant number failed to distinguish between its application within and beyond the EU/EEA. In addition, some papers did not consider the direct liability of Stack-Em Storage Company and even less made reference to any case law on the issue.
- d) This section necessitated consideration of the rights of entitlement Cathy may have over the invention. Most candidates handled this section well and made reference to the key cases. In addition, a significant number of candidates discussed the defence in s64 Patents Act. However, very few considered in any detail whether her subsequent acts went beyond 'good faith preparations,' which may have excluded the application of the defence. A number of papers tried to rely on the defence of private and non-commercial use without adequately addressing the commercial nature of Cathy's activities.

Part B – Question 4

This question, broadly speaking, combined elements of Patent Law with that of Breach of Confidence. While the patent elements were generally handled well the issue of Breach of Confidence was often dealt with in a somewhat superficial manner. Virtually all papers identified the potentially patentable inventions. The stronger answers considered the issue of patentable subject matter and correctly referred to the Biotech Directive/Schedule A2 to ascertain whether the addition of human genetic material is a bar to patenting an invention, and whether the patenting of a process for altering the genetic information of rodents is contrary to principle of morality and thus not patentable. Discussion on novelty and inventive step was required, with candidates expected to identify the key case law and the principles established. The better answers applied these principles to all the points raised by the facts in a sophisticated and nuanced manner.

The issue of Breach of Confidence was dealt with less well. The facts required candidates to consider the liability of several parties, yet few responses dealt with all of these issues. While most papers did mention the key case of *Coco v AN Clark*, the strongest answers went further to consider more recent case law in an attempt to ascertain whether a duty of confidence can arise in a more informal setting such as that provided by the facts.

INTELLECTUAL PROPERTY II

There were four questions on this paper, of which candidates were required to answer two: one had to be an essay and one a problem question. The essay questions required discussions of trade mark law and design law respectively. Just over one third of candidates answered the design essay question; slightly more answered the trade mark question. One problem question was on trade mark while the other raised issues of copyright. More candidates opted to answer the trade mark problem rather than the copyright problem. The quality of answers to all questions was generally good, with a high number of distinctions.

The trade mark essay question required students to consider the role of misappropriation in the law of trade mark and passing off. It was important for candidates to engage thoughtfully with the definition of misappropriation, and in particular to recognise that it is understood as extending to situations in which there is no misrepresentation or consumer confusion. Having provided a definition of misappropriation, better answers were able to consider the degree to which a range of passing off and trade mark principles responded to confusion-based or other harms. When discussing passing off, for example, candidates could consider extensions to the misrepresentation limb and the types of harm that constitute damage. Similarly, analysis of trade mark law could consider such things as the use of functions analysis and developments in the law in relation to dilution-based harms and unfair advantage. Answers that scored less well on this question tended to provide an uncritical description of the law, meaning that whilst they often demonstrated solid legal knowledge they fared less well on persuasiveness and responsiveness to the question. Some students also weighted their answers such that they focused heavily on one regime, underscoring the importance of understanding the legal regulation of both registered and unregistered marks.

The design essay question was particularly well-answered; marks were higher than the average essay mark. The abolition of UK unregistered design right would leave a number of other rights available to designers and thus the question was looking for an understanding of the extent to which UK UDR offered forms of protection that would be unavailable upon abolition or that would have to be framed or pursued differently. The question was asked in purely descriptive terms, and that was the focus of most candidates' analyses, for which they were rewarded. However, a couple of particularly good papers also canvassed some critiques of UK UDR (such as the potential "abuse" that occurs from being able to define the protectable "aspect" of a design in litigation under the *Fulton* line of case law. Other critical answers explored (extremely well) the logical gap that might occur through abolition of the UK UDR without attending to UK copyright law treatment of 2D designs. Better papers also pointed out the large number of recent cases where the UK UDR claim prevailed and the Community or UK registered design claim failed. The second half of the design Essay question was extremely well answered. The question required the candidates to focus on at least four cases: P&G itself (where markings were ignored); *Dyson v. Vax* (where the court painted the vacuums grey to avoid taking account of marking); *Apple* (where the court did take account of unadorned nature, but that was because of the nature of claiming) and *Magmatic* (where the reversal by the EWCA took account of colour contrast).

The trade mark problem was well answered. The problem contained a wide variety of issues. The examiners took the view that a good answer could consist of a treatment of all the issues raised (occasionally sacrificing the details) or an answer that sacrificed treatment of some minor issues

to ensure depth of treatment of the most significant issues. However, the few papers that fared less well did attempt to offer a broad view of the applicable legal principles without application to the facts. Although the fact pattern did admit of a number of plausible conclusions (all of which received credit), answers that made no attempt to connect the facts to the law were marked down. Most candidates identified most of the doctrinal issues raised. Better papers also remarked upon the subtle differences between UK and CTM registrations, as well as on the arguable differences between the facts at issue and *Dyson* or *Cadbury/Spears*. The best papers were also alert to the timing issues presented by the question of genuine use.

Twenty-one candidates attempted the copyright problem. The quality of their answers was high overall: the average mark was 68, and seven of the 21 candidates were awarded 70 or above. A variety of legal issues were raised by the problem, and several of the candidates considered and resolved them all with confidence. Among the trickier issues were: (a) whether the driftwood, sounds captured by the audio recording, pastel drawing and exhibition title were works protected by copyright, and if they were, why they were and who owned the copyright in them; (b) who owned the copyright in the series of photographic portraits, and if it was Andy alone, whether she had infringed any rights of the passerby in creating the portraits; (c) what if any rights of Andy under the CDPA Barry had infringed by reproducing the works (including the title), creating his film, and uploading his film to his blog. Candidates were expected to consider the availability to Barry of a fair dealing defence, and to do so efficiently (ie, without reproducing their analysis when considering each possible breach). The strongest answers made appropriate use of the European case law on subsistence and infringement. Especially impressive were those answers that went beyond Andy's possible action in copyright to consider also whether her moral right of integrity under section 80 CDPA had been infringed. Given that moral rights had only been covered in one of Dr Pila's handouts from the residential programme, however, this was not expected.