

FACULTY OF LAW
POSTGRADUATE DIPLOMA IN INTELLECTUAL PROPERTY LAW
AND PRACTICE 2014-15

Examiners' Report 2015

PART ONE

A. Statistics

1. Numbers and percentages in each category

The number of candidates taking the examinations was 56 (including two candidates who re-took one paper, and one candidate who took two papers).

	2015		2014		2013		2012	
Category	No	%	No	%	No	%	No	%
Distinction	7	12.5	8	12.90	8	13.11	8	11.76
Pass	41	73.21	49	79.03	47	77.05	54	79.41
Partial Fail*	8	14.29	5**	8.06	6	9.84	4	5.88
Fail	0	0	0		0		2	2.94
Total	56	62	61	68				

* candidates who failed one or more papers and are eligible to re-take those in the next academic year

** includes a candidate who withdrew from two papers in 2013-14 and completed the Diploma in 2014-15

2. Vivas

Viva are not used in this Diploma.

3. Marking of scripts

Double marking of scripts is not routinely operated. 147 out of 375 scripts (39.2%) (45.23% in 2014; 31.71% in 2013; 36.58% in 2012) were second marked. Third marking may be used in exceptional cases but no script was third marked this year (0.48% in 2012). Further details about second 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 (ie. 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). A mark below 50 may not be compensated by good performance elsewhere.
3. A Distinction was awarded to five candidates who did not qualify under the results convention (in the same examination year 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 one or more 68's).
4. A fully worked out proposal for a Merit Award was submitted in October 2014 to the Social Sciences Division for onward transmission to the University's Education Committee. The Division canvassed other departments and a number of them were also interested in having a Merit Award. During 2014-15 the Graduate Panel of the Education Committee consulted the University's four Academic Divisions and the Department for Continuing Education and found interest in a number of departments and faculties for such an Award, and inquiries of the Russell Group universities indicated that Oxford and Cambridge are out-of-line in not awarding Merit. The Education Committee will proceed with a formal consultation process in Michaelmas Term on a specific proposal for the introduction of a Merit outcome for graduate

courses on an institution-wide basis and, depending on the outcome, possible introduction from 2016-17.

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. No scripts were third marked.

2. Medical certificates, dyslexia/dyspraxia and special cases

Special arrangements in the Examination Schools were required for two candidates. Information in respect of three candidates was forwarded to the Examiners under Part 13.2 and 13.3. 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 2015) 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 – Second Notice to Candidates). 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.

5. External Examiner

We are very grateful for the help and advice of Dr. Sivaramjani Thambisetty who, as External Examiner, was very fully involved at all stages of the examination process.

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, 20 colleagues were assessors, and we owe our thanks to them all. The Diploma Administrator ensures that the Diploma runs smoothly for examiners, assessors and candidates and this service is vital and onerous. We have relied on Mrs. Victoria Campbell until May and Dr Ceri Hunter from June to run the Diploma for us. This they have done calmly and efficiently and we are very grateful for all their hard work.

B. Equal Opportunities issues and breakdown of results by gender

Category	2015				2014				2013				2012			
	Male		Female		Male		Female		Male		Female		Male		Female	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Distinction	4	16.67	3	9.38	4	13.33	4	12.90	2	6.67	6	19.35	7	20	1	3.03
Pass	18	75	23	71.88	24	80	25	80.65	23	76.67	24	77.42	26	74.29	28	84.85
Fail	2	8.33	6	18.75	2	6.67	2	6.45	5	16.67	1	3.23	2	5.71	4	12.12
Total	24		32		30		31		30		31		35		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	5	9%	25	47%	19	36%	4	8%	53
Patents 2	2	4%	35	66%	16	30%	0	0	53
Trade Marks and Passing Off	2	4%	26	49%	24	45%	1	2%	53
Copyright	8	15%	33	62%	12	23%	0	0	53
	70 plus		60-69		50-59		Under 50		Total
Design	6	11%	30	56%	16	30%	2	4%	
Part II									
Intellectual Property I	6	11%	35	64%	12	22%	2	4%	55**

Intellectual Property II	17	31%	33	61%	4	7%	0	0	54** *
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* includes 1 candidate who re-took the paper

** includes 1 candidate who re-took the paper and 1 candidate who was completing the Diploma

*** includes 1 candidate who was completing the Diploma

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 – to follow

Appendix 2 – Notice to Candidates

Appendix 3 – Reports on individual papers

Appendix 1 – External Examiner’s Report

Not yet received

Appendix 2 – Notice to Candidates

IMPORTANT – TO BE RETAINED FOR FUTURE REFERENCE

UNIVERSITY OF OXFORD

FACULTY OF LAW

DIPLOMA IN INTELLECTUAL PROPERTY LAW AND PRACTICE 2014-15

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. Victoria Campbell, in the Law Faculty Office (St. Cross Building, St. Cross Road, Oxford OX1 3UL). Telephone: (01865) 271457. E-mail: victoria.campbell@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/selfservice/>.

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 2014 (for academic year 2014-15)

Available on <http://www.admin.ox.ac.uk/examregs/>. This Examiners' Edict provides a guide to the rules for this Diploma programme, but in case of any conflict, the *Examination Regulations 2014* prevail.

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

1. Timing

(i) First Coursework Assignment: Trade Marks & Passing Off

Friday 10 October 2014 - Assignment question paper will be available via the 'PG Dip in IP Law' WebLearn Site. A paper copy may also be obtained from the Diploma Administrator.

Friday 7 November 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).

Please note the change of dates from those already notified to you. **Completion of the assignment question has been delayed and it will not be available until Friday 10 October**. In consequence, the date for submission of the assignment has been moved to Friday 7 November 2014 (1pm). Please see separate Notice for further information.

(ii) Second Coursework Assignment: Patents 1

Saturday 22 November 2014 - Assignment question paper will be available via the 'PG Dip in IP Law' WebLearn Site. A paper copy may also be obtained from the Diploma Administrator.

Friday 19 December 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: Patents 2

Saturday 17 January 2015 - Assignment question paper will be available via the 'PG Dip in IP Law' WebLearn Site. A paper copy may also be obtained from the Diploma Administrator.

Friday 13 February 2015 (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 14 March 2015 – Assignment question paper will be available via the 'PG Dip in IP Law' WebLearn Site. A paper copy may also be obtained from the Diploma Administrator.

Wednesday 15 April 2015 (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).

Change of submission date to **Wednesday 22 April (1.00pm)** notified to candidates on 19 March 2015.

(v) Fifth Coursework Assignment: Designs

Saturday 25 April 2015 – Assignment question paper will be available via the 'PG Dip in IP Law' WebLearn Site. A paper copy may also be obtained from the Diploma Administrator.

Thursday 28 May 2015 (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).

Change of submission date to **Thursday 4 June 2015 (1.00 pm)** notified to candidates on 29 April 2015.

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, but if you have difficulty accessing WebLearn, please

consult the Diploma Administrator. An extension of the time for submission of your assignment may not be granted solely because of non-attendance at the Workshop (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 released**. 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 OX1 4BG. 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 III 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 (see further *Examination Regulations 2014*, Part 14.9.). Written work submitted **after the prescribed date** without prior permission (*Examination Regulations 2014*, Part 14.10.) 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 *Examination Regulations 2014*, Part 14.11. 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 2014*, Part 14 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) (See *Examination Regulations 2014*, Part 14.2)). 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 *Examination Regulations 2014*, 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*

Monday 29th June 2015

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 **Thursday 28 May 2015** (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 (e.g. listing sources that might be read prior to a lecture or workshop) will not be directly 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 15 November 2014, 6 June and 13 June 2015. (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 *Examination Regulations 2014*, Part 19) and Administrative Regulations for Candidates in Examinations (see *Examination Regulations 2014*, 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 Registrar and Proctors and passed on by them to the Examiners. For the procedure to be followed see B.6. below.

(iii) 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 *Examination Regulations 2014*, Part 14.2(1)). 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 (*Examination Regulations 2014*, Part 14.17 – 14.19). 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' (*Examination Regulations 2014*, Part 14.17). 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 *Examination Regulations 2014*, Part 12). If this applies, you should consult the Diploma Administrator. Applications for such arrangements **must be submitted to the Proctors by Friday 7 November 2014**. 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 Registrar of these factors. Usually this will involve submitting a medical certificate to the Registrar, 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. Information submitted after the final Examiners' meeting (mid-July 2015) will be passed by the Registrar to the Proctors. The Proctors will normally only pass the information on to the Examiners' if it is received within three months of the publication of the results, and if one or more of the following applies: (a) the candidate's condition is such as have prevented them from making an earlier submission; (b) the candidate's condition is not known or diagnosed until after the final meeting of the Examiners; (c) there has been a procedural error that has prevented the candidate's information from being submitted. If the Proctors decide not to pass on the

information they shall give reasons for their decision (*Examination Regulations 2014*, Part 13.4.). An appeal may be made within 14 days' of the Proctors' decision (See E.2. below).

The Examiners cannot take account of any special circumstances other than those communicated by the Registrar or 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 *Examination Regulations 2014*, Part 11). If this applies, you should consult the Diploma Administrator. Applications for such arrangements **must be submitted to the Proctors by Friday 7 November 2014**.

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 *Examination Regulations 2014*, Part 14.18 and 14.19). 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 2014-15 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.

Any additional materials will be placed on the desks in the examination rooms. Details of these will be notified specifically to candidates.

On 10 June 2015 candidates were notified that the following materials would be placed on desks in the examination room:

- *The Legislative Reform (Patents) Order 2014 which added sections 60(6D), (6E), (6F) and (6G) to the Patents Act in October 2014*
- *Copyright, Designs and Patents Act 1988, Chapter III (as amended) ("Acts Permitted in Relation to Copyright Works")*
- *SI 1989 No. 1294: The Design Right (Reciprocal Protection) (No. 2) Order 1989*
- *Regulation (EU) No. 1215/2012 of The European Parliament and of The Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), O.J. L 351/1 (Dec 22 2012)*

(ii) Dictionaries

No dictionaries are allowed in the examination room.

(ii) 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 the 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 in the same examination year 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 (*Examination Regulations 2014*, 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.' The University's Education Committee has developed a website (<http://www.ox.ac.uk/students/academic/guidance/skills/plagiarism>) that

gives useful advice about all aspects of plagiarism – why it matters, how to avoid it, what happens if you are suspected of plagiarism etc. It also provides a list of related documents which includes advice from other institutions, and about academic good practice more generally. You are strongly advised to consult this website. For law students, there are particular things to watch for, and guidance and examples are given in the Faculty Handbook for the Diploma 2014-15 (pages 11-13). 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 III. 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 (*Examination Regulations 2014*, Part 14.11).

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 (<http://www.ox.ac.uk/students/selfservice>). 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 *Examination Regulations 2014*, Part 18.1.). The appeal must be made by you or by the Diploma Administrator on your behalf within 14 days of the date of the Proctors' decision. For appeals from the decisions of the Examiners, see *Examination Regulations 2014*, 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.

Mr. R. Anderson (IPLA)
Dr. D. Gangjee
Dr. S. Thambisetty (External)
2 October 2014

Schedule I – Assessment Standards (Page 12)
Schedule II – Examination Protocol (Page 13-14)
Schedule III – template Declaration of Authorship (Page 15)

SCHEDULE I

DIPLOMA IN INTELLECTUAL LAW AND PRACTICE 2014-15

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 2014-15

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 *Examination Regulations 2014*, Part 19) and the Proctors' Administrative Regulations for Candidates in Examinations (see *Examination Regulations 2014*, 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 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: <http://www.ox.ac.uk/students/academic/guidance/skills/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.

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.

_____ Date: _____

Candidate's signature: _____

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

Appendix 3 – Individual Subject Reports

Coursework Assignments

PATENTS 1

Most of the candidates showed a reasonable understanding of the underlying concepts although a few scripts indicated that further study is required.

Some particular issues were as follows:

1. Failure to adopt an integer-by-integer approach in relation to each claim when assessing infringement and/or lack of novelty. Claim charts are a useful way of ensuring that all integers are considered although the charts may not necessarily be incorporated in the final answer.
 2. Misapplication of Article 69 and the Amgen/Improver principles in interpreting the claims. One example was to limit Claim 1 to “strips” [of conductive material] even though the Claim was directed only to ‘conductive material’ in a general sense. The claims are to be interpreted in the light of the specification but this does not provide a general licence to shovel features described in the specification into the claims. Another was to give, without explanation, a limited interpretation to words in the claim. The patentee uses “container” and “shopping bag” so presumably “container” has a more general meaning; nevertheless some candidates dismissed without explanation the possibility that a balloon could be a “container”.
 3. Failure to identify the correct priority date. This is not necessarily the date upon which the application is filed. The patent may claim priority from another Convention application that has an earlier date than the application date. Getting this wrong can be serious because it determines which prior art is relevant when assessing novelty and inventive step.
 4. Failing to note that the prior art may include material other than that contained in published documents. The state of the art includes “*all matter ... which has at any time before the priority date of that invention been made available to the public (whether in the United Kingdom or elsewhere) by written or oral description, by use or in any other way.*”
- In the exercise in question “The Retailer” periodical was rightly dismissed as prior art per se because it was published before the priority date. However the events reported occurred before the priority date and were relevant. What was needed was an analysis of what was made available by the apprehension of Harry Lightfinger and the subsequent court proceedings. Of course there may be issues of proof as to what was actually disclosed but these events should have been considered.
5. The defence under s.60 (5(a) is that the act is done “*privately and for purposes which are not commercial*”. Both elements are necessary. Some candidates simply relied upon the private nature of the act and ignored the second element or vice versa. For example an act could be done at home (privately) but could be intended to prepare the ground for commercialisation.
 6. Some candidates relied upon the experimental use exemption in relation to, for example, the use by the focus group, but failed to give reasoning as to why this defence would be applicable. (Trials

to find out something new rather than, for example, amassing information for purposes of commercial exploitation. – *Monsanto v Stauffer*.)

7. Citing insufficiency but not explaining in any detail how this should be made out. (E.g. Claim exceeding technical contribution.)

8. Some candidates cited “lack of clarity” as a ground of invalidity but did not explain how this could be argued bearing in mind that this ground *per se* is only available pre-grant. (It may be a form of insufficiency in that the skilled person would not know whether they were working within or outside of the scope of the claim.)

PATENTS 2

To follow

TRADE MARKS AND PASSING OFF

Question 1 - This was generally well answered. Whilst this was clearly aimed at ss 10(2) and 10(3) it was also worth discussing whether s 10(1) applied. Candidates were expected to consider the cases on identity of marks as well as whether the goods were identical - *LTJ Diffusion*. Some candidates failed to do this and jumped straight into ss 10(2) and 10(3) analysis. Whilst marks weren't deducted for that, good candidates would have completed the full analysis of s 10. Other issues which good candidates looked at were the context of use under *Specsavers* as well as *Thomas Pink*, whether the functions of a trade mark were harmed and post-sale confusion citing *Datacard*. Many candidates failed to deal effectively with Defences and in particular descriptive use under s 11(2).

Question 2 - This was universally well answered. For Passing Off analysis, all candidates cited the Classical Trinity of Goodwill, Misrepresentation and Damage under *Jif Lemon*, with misrepresentation being the most substantial issue. Really good candidates spent time coming to a conclusion rather than just citing the relevant legal test; surprisingly many candidates didn't do this. Also good candidates went beyond the basic test and considered what evidence would be necessary/helpful to improve the case.

Question 3 - This was the question where candidates generally struggled and where some candidates got the law completely wrong. The majority of candidates focussed, rightly, on relative grounds Opposition with some also cursorily mentioning Absolute Grounds. The examiners feel compelled to emphasise that Absolute Grounds Oppositions are **NOT** available as a matter of law against CTM Applications (they ARE available for UK Applications but this was a CTM question). Some candidates only mentioned Absolute Grounds and that is wrong as a matter of law. This led to a very low mark. There was also generally very little mention of the ability to partially Oppose the mark and limit the specification. Many candidates wrongly considered this as an all or nothing Opposition.

Finally all too few candidates mentioned *IP Translator* in relation to the proper scope of the goods. This was a 20 mark question and candidates were expected to have considered all these issues for a high score.

Question 4 - Most candidates dealt with an invalidity attack based on acquired distinctiveness arguments but again many thought of this as an all or nothing attack and didn't consider a partial challenge. A number of candidates also stopped there and did not consider a non-use attack for some goods. A few of the better candidates considered use in the last 3 months and evaluated whether that would affect a non-use attack. Again this was a 20 mark question and so it required a more detailed analysis than most candidates provided.

Question 5 - Whilst only a 10 mark question there are a number of issues to consider with relation to the Adwords issue. Good candidates queried whether an action could be brought against Google and cited *Google France*. When proceeding against the advertiser, most candidates rightly referred to the test in *Interflora* and better candidates analysed each of the functions in turn to come to a conclusion 1 as to whether they were harmed. Of particular interest was the application of the test for harm to the origin function on the grounds of vagueness.

Question 6 - Most candidates answered this question poorly - possibly because they ran up against the word count. The key point to consider was bad faith but acquired distinctiveness was also a significant issue. Good candidates would also have considered the possible differences in applying for a UK mark as opposed to a CTM.

COPYRIGHT

Overview

I was pleased with the overall performance of the candidates in this year's Copyright Coursework Assignment exercise. There were no fails and a number of very good distinction marks.

There was quite a lot of material to review in the assignment and it was quite a challenge to provide a full answer within the word limit.

I was pleased that the performance in the Coursework Assignment indicated that, on the whole, the candidates have an excellent grasp of copyright law.

Comments on Question 1 (50 marks)

There were a lot of copyright works to describe in this question and most candidates did very well. The question was based on similar "real life" situations and it was very important to trace through the various issues relevant to subsistence and ownership in the copyright works identified. This was done pretty well by most of the candidates which was pleasing. Some of the facts were left deliberately vague. For example, the letter from the CEO of Fabregas Publications Limited could have been interpreted in a number of ways. It was mildly disappointing to see that some candidates simply ducked the issue and said "There is not

enough information to be able to answer". The better candidates took on board the uncertainty and provided analysis of the various ownership and subsistence scenarios that could have applied. Similar considerations applied to the role of Miss Matic in relation to the reviews written in India.

Question 2 (35 marks)

Although there were some very good answers, as a general comment this question was answered less well than question 1. The better candidates were able to marshal the facts to support infringement arguments and to manipulate some of the uncertainties in the facts to their advantage. It was pleasing that most candidates understood clearly the approach to the infringement test and a fairly well established sequence of steps and procedures.

Question 3 (15 marks)

The answer to this question is fairly straightforward and the candidates generally scored well. The better candidates were able to provide better analysis as to how a Court might approach calculating the amount of financial compensation rather than just listing the remedies.

DESIGNS

General:

Structure: whilst students were free to structure their answers however they wished, for anyone struggling to work out how to tackle structuring their answer, there was a 'hint' as to a suitable structure (not the only suitable structure) in the way the question was posed. A number of papers mixed up different rights (eg: trying to deal with UKUDR and Community UDR simultaneously) or tried to do validity/subsistence of all possible rights first and then infringement of all rights afterwards. Invariably these papers were difficult to mark, the structure didn't lend itself to the contents being comprehensible, and students tended to get the rights muddled up.

Definitions and abbreviations: 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. Moreover, this year the question specifically stated: "*Please do not come up with new definitions for anything which is already defined in this question. The definitions provided are there to assist both students writing their answers and the marking of this piece of coursework.*" It was disappointing to find a number of students nevertheless insisting on coming up with their own definitions instead of following the instructions.

Word limit: There were a number of issues to address, and plenty to talk about, but also a word limit. In the circumstances, students did need to consider carefully what to talk about in their answers. A number of students 'wasted' words on things that were never going to get any credit (eg: there is no point talking about UK registered designs on this fact scenario, even if eventually (after using up a lot of words) it is acknowledged that it is too late to apply for one), leaving themselves short of words for the things that mattered.

Footnotes and case and legislation references: As a letter to a lay client, there was of course room for appropriate reference to be made to any case law or legislation of particular relevance in the body of the letter, but there was no expectation of footnotes, detailed case references or references to

legislation; quite the contrary. Typically lay clients do not want the equivalent of a 'research memo'. Students were expected to use their judgment as to what level of referencing to cases and the law was suitable for a lay client.

Title:

Students were expected to address the potential gaps in title. Some students assumed there had been an assignment without really considering the alternative. Some students assumed there was a commission, but did not really analyse whether all the ingredients for a commission were present. Some students missed the possible copyright title issue.

RCDs:

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

Students were expected to recognise that RD663 creates a different overall impression from the prior art.

Students were expected to form a view on infringement, including discussing the informed user and the design corpus, the overall impression of the design(s) and the overall impression of the infringement, and form a view whether or not they were the same and differed only in immaterial details. In terms of scope of protection: rather too few students picked up on *Trunki*. Students were expected to acknowledge the implications of the Court of Appeal decision in relation to the CAD greyscale drawings of RD663.

Students were expected to consider the validity and infringement of RD664.

CUDR:

Many students spotted the potential problem of first disclosure outside the EU, but rather too few saw the analysis through to form a clear view. The trade from the EU were invited and the webcast was targeted at and accessible by them in the EU. CUDR would be useful and students who dismissed the possibility that it subsisted dismissed a potentially important cause of action. Good papers understood the potential usefulness of the CUDR over the RCD and formed a view on subsistence and infringement.

UKUDR:

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

Most students dealt with qualification and ownership well.

Students were expected to consider the surface decoration exception and most dealt with this well.

This was not a 'must fit' or 'must match' question.

Students were expected to explain originality and commonplaceness, which most did well, although some students failed to appreciate that commonplaceness is not the same as CUDR/RCD novelty.

Students were expected to explain the infringement test and to explain that the design relied upon could be tailored to fit the infringement – such as the 'whole of the design minus...' features. A number of students did not run through what designs could be relied upon in any detail; but those who did, did it well.

Students were expected to form a view on subsistence and infringement.

Copyright:

Copyright was generally handled well.

Students were expected to realise that section 51 applied, but that copyright might be useful to protect surface decoration.

Students were expected to understand the qualification requirements, spot the copyright ownership issue and suggest a solution.

Strategy:

Credit was given for a wide variety of suggestions.

However, as a general observation, it was surprising how many students decided that the rights were invalid or weak, or not infringed, or not owned by the client (as the case may be), and yet recommended sending a robust letter before action alleging infringement of everything.

Many students realised there is a ‘threats’ issue; not everyone understood how the ‘threats’ provisions would apply in this case.

Remarkably few students asked for access to the products themselves to help them assess subsistence and infringement.

Most students recommended obtaining assignments from Charlotte for all the rights she may own, or otherwise an exclusive licence.

Some students explained the possibility of action against Jakub as well as New World and Cosmic.

Examinations

INTELLECTUAL PROPERTY I

The Intellectual Property I paper was handled well, with approximately 75% of candidates achieving a pass mark of 60% or above. There was also a slight increase in marks of 70% and above. 6% of students achieved at this level compared with only 2% in 2013/14. There was little disparity between the marks achieved in Sections A and B. Once again, some recurring practices negatively affected the marks achieved, some of which were mentioned in the 2013 /14 IP1 Examiner’s Report:

- a) Several answers made little or no mention of the relevant case law. This was especially so when addressing the problem questions. It is disappointing to see an answer that identifies the relevant legal issues, but fails to identify the relevant legal authorities, case law or statutory provision. In addition, and as mentioned in last year’s Report, it is not enough to merely cite the relevant case law. Candidates are expected to explain to the examiner the legal principles or rules established in the relevant case law and apply them to the facts in hand (see Examiner’s Report 2013/14).
- b) Another perennial issue is the failure to state the relevant statutory provision and/or state the incorrect provision. This has an impact on the marks awarded given that a statute book is available in the examination room.
- c) As mentioned in the Examiners’ Edict- Part B, all the substantive elements covered on the residential programme are examinable, thus candidates are expected to prepare accordingly. However, it was evident that many candidates were more confident in some areas of the law, i.e. patentability – novelty, inventive step, etc., than in others, such as amendment and breach of confidence (see comments to questions 3 and 4 below).
- d) Unacceptably, a few candidates confused the EPO with the EU, and accepted that the EPC was an EU instrument.
- e) In the answers, several candidates included significant material that, while not strictly incorrect, appeared to be of little relevance to the question. For example, spending time on all three patentability criteria – novelty, inventive step, and industrial application – when it should have been clear from the facts that only one or two elements were at issue.

While the examiners do not directly adopt a negative marking strategy, spending time on irrelevant points reduces the time the candidate has for the important legal issues.

Part A – Question 1

This was by far the most popular question in Part A attracting 91% of candidates. Broadly speaking, students were asked to provide a critical analysis of the law governing patent claim construction. The question was divided into two parts: an ‘is’ and an ‘ought’ analysis. The latter analysis was not always addressed well, often forming a mere postscript to the ‘is’ discussion. The most successful answers were those that adopted a holistic approach to their answer, using the judgemental ‘ought’ analysis to frame their answer. It was pleasing to see most candidates recognise the superior authority of the House of Lords decision in *Kirin-Amgen v Hoechst Marion Roussel*. However, it was surprising to see *Catnic Components v Hill & Smith* often referred to as the ‘Catnip’ case!

Part A – Question 2

This question was broadly worded and provided scope for students to discuss, the application of and the rationale behind, a wide range of exceptions to granted rights. The focus of the question was the ‘exceptions’ to the conferred rights rather than the ‘exclusions’ from patentability. Therefore, those candidates that spent time analysing the latter limited their chances of achieving highly in this question.

Part B – Question 3

53% of candidates chose to answer this question, which required an exploration of the issue of potential patent infringement and various defences available to the parties. As noted above, many answers failed to adequately reference the relevant case law and identify the applicable statutory provision/s.

- a) This section of the question was generally dealt with in a sound manner. Better answers immediately questioned whether Ludwig’s use fell within the exclusive rights granted under s60 Patents Act. The relevant defences were discussed well, and those that were able to effectively target and apply the key facts to a challenge to validity achieved highly in this area.
- b) This section of the question was the weaker of the two. As mentioned above, it was very evident that many candidates were less well acquainted with the issue of patent amendment. While most were able to identify the correct statutory provision/s and provide a cursory overview of their application, relatively few candidates demonstrated detailed knowledge of the law governing post-grant amendment and the relevant case law in this area.

Part B – Question 4

Broadly speaking, this question combined elements of patent entitlement, breach of confidence and patentability.

Entitlement

The candidates' knowledge in this area of the law was generally of a high standard. When discussing the compound 'Igtarin', the most successful answers made a clear distinction between contribution to the inventive concept and entitlement to the resulting patent. Most of the relevant statutory provisions were identified, and the case law discussed. The question of ownership over any resulting patent/s on the changes to the genetic structure of the raspberry plant presented little difficulties for candidates.

Breach of Confidence

As mentioned above, this was an area of the law where candidates appeared less comfortable. The key principles set out in *Coco v Clarke* were usually identified and applied to the facts. However, many scripts demonstrated a lack of knowledge of the relevant case law and legal principles governing the ex-employee situation. The best answers spent time identifying Monty's skills and knowledge used at OBS and whether they could be held to contain any 'trade secrets' owned by IGT in the post-employment situation.

Patentability

Subject matter exclusions for plant varieties and essential biological processes (which was relevant for both a) and b)) were identified and their relevance discussed. However, once again many candidates failed to discuss the prominent case law in this area. The question of novelty raised the possibility of patenting a previously known substance for a novel use. Weaker answers narrowed their discussion to Art 54 (5) EPC ('second medical use'), while failing to question the relevance of this provision in the circumstances presented.

INTELLECTUAL PROPERTY II

There were four questions on this paper, of which candidates were required to answer two: one essay and one problem question. The essay questions drew upon trade mark law and design law respectively; candidates split their essay choice evenly between the two questions. One problem question was on trade mark while the other raised issues of copyright. Twice as many candidates opted to answer the trade mark problem as the copyright problem. The quality of answers to all questions was generally good, with a high number of distinctions.

Commencing with the essays, answers to the trade mark essay question inevitably focused on the treatment by the Court of Appeal of survey and witness collection evidence in the *Interflora* litigation. Almost without exception, candidates handled that core part of the question very well. However, candidates were also expected to address how the treatment of surveys might differ in cases of passing off (itself mentioned in *Interflora*), and the continued importance of surveys for proving acquired distinctiveness and/or goodwill. The best answers engaged critically with all these recent developments, often providing well-reasoned defences of the approach taken by the Court of Appeal and offering explanations of why courts might adopt a different approach in passing off cases.

The design question was well-answered, with candidates noting the differences between UK unregistered designs and the EU-derived rights (including UK Registered Designs). The examiners gave some credit for tangential treatment of copyright because while it not explicitly ruled out by the language of the question, candidates were not expected to go beyond design rights proper. Most papers gave most extensive treatment to the different exclusions from protections, such as must-fit or designs dictated by function (noting disagreements among courts as to the interpretation of some of those provisions). Better papers also addressed the extent to which the scope of protectable subject-matter had addressed the functionality challenge, by avoiding reference to the eye-appeal of designs (as under prior UK law). Others impressively brought in the extent to which functionality might be injected into analyses of individual character and scope of rights through issues such as design freedom. The best candidates illustrated these points by reference to relevant case law.

As for the problems, 17 candidates answered the copyright question. Their answers were of a high standard overall, with more than one-third achieving individual marks of 70 or above. Most candidates identified clearly the works in which copyright and moral rights subsisted and the potentially infringing uses of those works of relevance for A. The issue of copyright in football games was dealt with well, as was the issue of fair dealing for the purposes of criticism/review and parody. Most candidates also considered whether A might have a claim for moral rights infringement under section 80 CDPA, and identified with confidence the copyright rights of A which C's actions engaged, which was pleasing. On the negative side, only one person considered the possibility of dramatic copyright in the film of the football game (applying *Norowzian*), and some candidates could have worked harder to support their legal assertions with appropriate legislative and judicial authorities.

Finally, the trade mark problem was extremely well-answered, and showed particularly good knowledge of recent case law. The problem contained a wide variety of issues. Candidates were expected to consider not only possible infringement claims, but also potential attacks on the validity of the marks in question. It was not expected that candidates would engage in extensive and separate analysis of the claim based on WEEDONLY given the availability of claims based upon WEEDOUT, though some papers canvassed whether WEEDONLY might be brought in to support a family of marks argument. The SUCKAWEED mark, insofar as it was a mark, required no detailed treatment. Better candidates noted the different strengths and weaknesses of the comparable UK and CTM registrations (and the different conditions for the assertion of rights, such as where any reputation must exist). The UK registration might have been subject to a non-use argument (and partial revocation) because it had been issued more than five years earlier, which might affect double identity claims. Yet, the UK mark was on stronger ground in arguably overcoming any descriptiveness challenge through acquired distinctiveness. Many papers commented perceptively on the (in)ability of the figurative 'cross' to confer distinctiveness; Arnold J's discussion of "figurative fig leaves" has clearly resonated. Good candidates also considered whether the use of the registered word mark within the composite mark could be treated as use. The question also built in jurisdictional issues – advising parties of available remedies 'to restrain their activities (whether in the UK or elsewhere)' – requiring a consideration of *where* the claimant could sue to ensure the relief requested, and whether (in light of *DHL* and *Enterprise*) relief outside the UK might be secured from the UK courts. This is a difficult issue and the examiners were impressed by the way that it was handled by a number of candidates.