

**FACULTY OF LAW**  
**POSTGRADUATE DIPLOMA IN INTELLECTUAL PROPERTY LAW**  
**AND PRACTICE 2015-16**

**Examiners' Report 2016**

**PART ONE**

**A. Statistics**

**1. Numbers and percentages in each category**

The number of candidates taking the examinations was 62 (including seven candidates who re-took one paper, and one candidate who took two papers).

	2016		2015		2014		2013	
Category	No	%	No	%	No	%	No	%
Distinction	10	16.13	7	12.5	8	12.90	8	13.11
Pass	48	77.42	41	73.21	49	79.03	47	77.05
Partial Fail*	2	3.2	8	14.29	5**	8.06	6	9.84
Fail	2	3.2	0	0	0	0	0	0
Total	62		56		62		61	

\* 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. 176 out of 403 (43.67%) scripts (39.2% in 2015; 45.23% in 2014; 31.71% in 2013) were second marked. Third marking may be used in exceptional cases and two scripts (0.50%) were third marked this year. 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 four 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 one or more very good marks (high 60's).
4. The introduction of a Merit award was raised by the Board of Examiners, in particular by the external examiner, in 2010-11 and has been repeated each year since. The Social Sciences Division canvassed other departments in the Division and a number of them were also interested in having a Merit award. This was passed to the University's Education Committee and, during 2014-15, the Graduate Panel of the Education Committee consulted the University's four academic Divisions and the Department of 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. During 2014-15 the Education Committee carried out a formal consultation process on a specific proposal for the introduction of a Merit outcome for graduate courses on an institution-wide basis. There was support for a Merit outcome in the majority of departments and very

strong support from students. However the Graduate Panel decided not to take further steps to introduce a Merit outcome in the immediate future; instead the Panel decided to concentrate on standardisation of the two marking scales in use for graduate courses in the University.

An assurance that the Merit outcome remains on the Panel's list of priorities is not encouraging; consideration of the case for a Merit award in the Diploma will now be further delayed. To give around 80% of Diploma candidates the same minimum award (a bare Pass) does not accurately or fairly record the level of achievement attained by different groups of candidates, and in particular undervalues the work of very good candidates who achieve just below a Distinction. This is not a situation which the University should allow to continue.

#### **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 scripts were third marked.

##### **2. Medical certificates, dyslexia/dyspraxia and special cases**

Special arrangements in the Manor Road Building were required for one candidate. Information in respect of three candidates was forwarded to the Examiners under Part 13.2 and 13.3. of the *Examination Regulations*. Please refer to Appendix 4.

##### **3. Materials in the examination**

Candidates are permitted, under strict conditions, to take into the examination room their own copy of the current edition (12<sup>th</sup> in 2016) 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. We particularly owe her our gratitude for taking on additional marking duties at short notice when one of the assessors was taken ill.

## 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, 24 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 warmly welcomed back Mrs. Ellen Moilanen who rejoined the Faculty as Diploma Administrator in January; all aspects of the Diploma are now firmly in her very capable hands. We owe her much for getting the administration back on track.

### B. Equal Opportunities issues and breakdown of results by gender

Category	2016				2015				2014				2013			
	Male		Female		Male		Female		Male		Female		Male		Female	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Distinction	3	12.5	7	18.42	4	16.67	3	9.38	4	13.33	4	12.90	2	6.67	6	19.35
Pass	18	75	30	78.95	18	75	23	71.88	24	80	25	80.65	23	76.67	24	77.42
Fail	3	12.5	1	2.63	2	8.33	6	18.75	2	6.67	2	6.45	5	16.67	1	3.23
Total	24		38		24		32		30		31		30		31	

### C. Percentage distribution of marks by paper

Part I	70 plus		60-69		50-59		Under 50		Total
	No.	%	No.	%	No.	%	No.	%	
Patents 1	12	20%	24	39%	22	36%	3	5%	61*
Patents 2	9	16%	40	70%	8	14%	0	0	57
Trade Marks and Passing Off	10	17%	30	51%	17	29%	2	3%	59**

Copyright	11	19%	35	61%	10	18%	1	2%	57
	<b>70 plus</b>		<b>60-69</b>		<b>50-59</b>		<b>Under 50</b>		<b>Total</b>
Design	12	20%	35	59%	11	19%	1	2%	59** *
<b>Part II</b>									
Intellectual Property I	7	13%	36	64%	11	20%	2	4%	56** *
Intellectual Property II	15	28%	36	67%	2	4%	1	2	54** *

\* includes 4 candidates who re-took the paper

\*\* includes 1 candidate who re-took the paper

\*\*\* includes 2 candidates who re-took the paper

NB The figures above include 1 candidate who took Trade Marks only and then withdrew from this year's examination, and 3 candidates who took all papers in Part I but neither of the papers in Part II and then withdrew from this year's examination.

#### **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 4 - Factors affecting performance applications

## Appendix 1 – External Examiner’s Report

Not yet received

## Appendix 2 – Notice to Candidates

### UNIVERSITY OF OXFORD

#### FACULTY OF LAW

#### DIPLOMA IN INTELLECTUAL PROPERTY LAW AND PRACTICE 2015-16

#### 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 BOARD OF THE FACULTY OF LAW**

The Law Board is responsible for setting the assessment standards and marking conventions for the examination. The practical arrangements are in the hands of the Examiners who act under the supervision of the Law Board.

#### **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, Stephanie Hudson, in the Law Faculty Office (St. Cross Building, St. Cross Road, Oxford OX1 3UL). Telephone: (01865) 271457. E-mail address: diploma.administrator@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. Candidates should not under any circumstances seek to make contact with individual internal or external Examiners.

#### **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/studentselfservice/?path=studentselfservice>.

#### **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, 12<sup>th</sup> 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 12<sup>th</sup> edition taken into the examination room **must be absolutely clean and unmarked.** .

**UNIVERSITY OF OXFORD EXAMINATION REGULATIONS 2015** (for academic year 2015-16)

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* prevail.

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

**1. Timing**

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

**Saturday 10 October 2015** - Assignment question paper will be available via the PG Dip in IP Law WebLearn site from 6.00 pm, and will also be available from the Diploma Administrator on Monday 12 October.

**Friday 31 October 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).

**(ii) Second Coursework Assignment: Patents 1**

**Saturday 21 November 2015** - Assignment question paper will be available via the PG Dip in IP Law WebLearn site from 6.00 pm, and will also be available from the Diploma Administrator on Monday 23 November.

**Friday 18 December 2015 (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 16 January 2016** - Assignment question paper will be available via the PG Dip in IP Law WebLearn site from 6.00 pm, and will also be available from the Diploma Administrator on Monday 18 January.

**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 12 March 2016** – Assignment question paper will be available via the PG Dip in IP Law WebLearn site from 6.00 pm, and will also be available from the Diploma Administrator on Monday 14 March.

**Friday 15 April 2016 (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 23 April 2016** – Assignment question paper will be available via the PG Dip in IP Law WebLearn site from 6.00 pm, and will also be available from the Diploma Administrator on Monday 25 April.

**Friday 20 May 2016 (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 or difficulty in accessing the question paper (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 posted on the PG Dip in IP Law Weblearn site**. 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). A bibliography is not expected. 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 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 (see *Examination Regulations 2015*, Part 14.9.). Written work submitted **after the prescribed date** without prior permission (see *Examination Regulations 2015*, 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 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* 2015, 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 *Examination Regulations* 2015, 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 27 June 2016**

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. An announcement will be made 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 20 May 2016** (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 14 November 2015, 4 June and 11 June 2016. (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), the Examiners may reduce the mark by up to one class (or its equivalent – 10 marks) 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* 2015, Part 19) and Administrative Regulations for Candidates in Examinations (see *Examination Regulations* 2015, 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 or 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 *Examination Regulations 2015*, 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 (*Examination Regulations 2015*, 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’ (*Examination Regulations 2015*, 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 (*Examination Regulations 2015*, Part 12). If this applies, you should consult the Diploma Administrator. Applications for such arrangements **must be submitted to the Proctors by Friday 6 November 2015**. 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 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. Information submitted after the final Examiners’ meeting (mid-July 2016) 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 has 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 2015*, 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 (*Examination Regulations 2015*, Part 11). If this applies, you should consult the Diploma Administrator. Applications for such arrangements **must be submitted to the Proctors by Friday 6 November 2015**.

## **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 (*Examination Regulations 2015*, 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 2015-16 candidates will be permitted to bring into the examination room their own copies of Butterworths Intellectual Property Law Handbook, 12<sup>th</sup> 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 room. Details of these will be notified specifically to candidates.

**(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 non-carbonated water, in a spill-proof bottle (ie with a valve or sports cap, not screw cap; this is strictly enforced), into the examination room. Also a small packet of sweets (e.g. Polos), but any noisy wrappers and packaging must be removed prior to entering the room; chewing gum is not allowed. No other drinks and/or foods will be permitted except on medical grounds, and with prior approval. Water is also available in the lobby just outside the room.

Provided they have prior approval diabetic students are permitted to take into the examination room silent blood testing kits, and glucose drinks (e.g. Lucozade) and/or glucose tablets (e.g. Dextro energy tablets) in case of hypoglycaemia, also Insulin syringes/supplies. Also permitted with prior approval are asthma inhaler, epi-pen, over-the-counter and/or prescription medicine, small unobtrusive snack (please note nuts may not be taken into the examination), medical aids such as wrist splint/support, back support pillow, ice-pack. In all these cases the item will only be permitted in the examination room provided you have obtained permission in advance, and you must carry the permission letter with you and produce it if requested by an invigilator. If any of these provisions apply to you, please consult the Diploma Administrator.

## **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. **The Diploma requires candidates to demonstrate ability over a range of intellectual property subjects and in a range of different situations, hence candidates must pass each of the seven papers** (see (a) below).

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 50 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/take in the immediately following academic year **only** any paper in which they achieved a mark of 49 or below/or from which they withdrew, 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* 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.’ 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 2015-16. 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* 2015, 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 *Student Handbook* 2015-16, section 8. (see 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.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* 2015, 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 *Examination Regulations* 2015, 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 (preferably within one month, 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. The Proctors will only authorise the re-checking of marks if at first sight there is evidence of an irregularity having occurred or if some other sufficiently serious justification is in play (e.g. a candidate’s overall classification being absolutely borderline or one mark being very significantly out of line with the others). Marks will not be checked merely because a candidate is disappointed with them or is puzzled by the distribution. Papers will be re-marked only if investigation by the Proctors has found a serious

problem in the original examination process. See further *Student Handbook* 2015-16, particularly sections 5.2. and 9. (E.3. below).

**3. *Student Handbook 2015-16 incorporating the Proctors' and Assessor's Memorandum***

The *Student Handbook* contains much useful information and is available on <http://www.admin.ox.ac.uk/proctors>. Sections 5., 8. and 9. have relevance for examinations.

Ms A.S. Kennedy (Chair)  
Mr. R. Anderson (IPLA)  
Dr. D. Gangjee  
Dr. S. Thambisetty (External, LSE)  
3 October 2015

Schedule I – Assessment Standards (Page 13)  
Schedule II – Examination Protocol (Page 14)  
Schedule III – template Declaration of Authorship (Page 16)

# SCHEDULE I

## DIPLOMA IN INTELLECTUAL LAW AND PRACTICE 2015-16

### 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 2015-16

#### 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* 2015, [Part 19](#)) and the Proctors' Administrative Regulations for Candidates in Examinations (see *Examination Regulations* 2015, [Part 20](#)). You should also consult the [Student Handbook](#) 2015-16 incorporating the [Proctors' and Assessor's Memorandum](#), particularly sections 5 and 8.**

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, 12<sup>th</sup> edition. 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. Also a small packet of sweets (e.g. Polos), but any noisy wrappers and packaging must be removed prior to entering the Room; chewing gum is not allowed. No other drinks and/or foods will be permitted except on medical grounds, and with prior approval. If you have been given prior permission to have items, such as food and drink, in the examination room, you must carry the Diploma Administrator's permission letter with you and produce it if requested by an invigilator.
10. Provided they have prior approval 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) in case of hypoglycaemia, and insulin with syringes/supplies. Also permitted with prior approval are asthma inhaler, epi-pen, over-the-counter and/or prescription medicine, small unobtrusive snack (please note nuts may not be taken into the examination), medical aids such as wrist splint/support, back support pillow, ice-pack. In all these cases the item will only be

permitted provided that the candidate has a permission letter from the Diploma Administrator, which must be produced if requested by an invigilator. Please consult the Diploma Administrator regarding this letter.

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 8.8 and 10*).

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](http://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](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.

**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.**



**IMPORTANT – TO BE RETAINED FOR FUTURE REFERENCE**

**UNIVERSITY OF OXFORD**

**FACULTY OF LAW**

**DIPLOMA IN INTELLECTUAL PROPERTY LAW AND PRACTICE 2015-16**

**NOTICE TO CANDIDATES**

**Part II – Two Written Examination Papers**

The purpose of this Notice is to explain the arrangements for the two written examination papers (Part II) on Monday 27 June 2016.

**A. Examiners' Edict (pages 5 – 11) and Examination Protocol (attached hereto)**

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

Candidates are strongly advised to re-read Part B of the Examiners' Edict (pages 6 – 10) dated 3 October 2015, and the Examination Protocol attached hereto. (Do not rely on the version of the Examination Protocol in Schedule II to the Examiners' Edict as some instructions have now been changed by the Proctors). What follows in this Notice supplements the information in the Edict **and paragraphs 4., 5. and 6. below require action by you.**

**1. Location, timing and title of examination papers**

**Examination Schools, 75-81 High Street, Oxford OX1 4BG**  
(<http://www.admin.ox.ac.uk/schools/contact.shtml>)

**Monday 27 June 2016** 9.30 – 11.30 am Intellectual Property I

2.30 – 4.30 pm Intellectual Property II

Dark formal attire must be worn. For the men, it would be dark lounge suits (like black or grey etc, not pink, white, yellow etc.) and for the ladies, its equivalent. You may remove jackets and ties during the examination, but must be correctly dressed before you leave the examination room.

You are advised to reach the Schools twenty minutes before the timed start of the examination. A bell will be rung some minutes before the examination to give candidates time to move from the entrance of the building to the examination room. **Seating in the examination room will be by desk number only. Seating charts will be displayed in the reception area, displaying candidate and desk numbers, as well as outside the examination room.**

**2. Anonymity and University Card**

Please bring with you to each examination paper your University Card which must be placed face up on the desk at which you are writing. You should also bring the examination timetable sent to you by email and post as a reminder of your examination 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. (NB if you do not have your University Card with you, you may be required to return to Oxford at a later date to undergo a handwriting test).

### **3. Materials in the Examination Room**

Candidates are permitted to bring their own copy of the Butterworths Intellectual Property Law Handbook, 12<sup>th</sup> edition but only subject to strictly enforced regulations. **It is extremely important to read paragraph 8(i) in the Examiners' Edict**, but for ease of reference this is also extracted in the attached **Notice to Candidates**.

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.

- Treaty on the Functioning of the European Union. Title VII, Chapter 1, Section 1 (arts 101-102)
- Redlined Extracts from the 2009 Community Trade Mark Regulation to Reflect Changes Made by the 2015 European Union Trade Mark Regulation (prepared by Alex Von Muhlen Dahl)
- Part III of the Copyright, Designs and Patents Act before the 2014 IP Act
- SI 1989 No. 1294: The Design Right (Reciprocal Protection) (No. 2) Order 1989
- Regulation (EU) No 1215/2012 (Recast Brussels I Regulation) replacing Regulation (EC) No 44/2001 (Brussels I Regulation)

### **4. Water and medication in the Examination Room**

Candidates are permitted to take non-carbonated water, in a spill-proof bottle (ie with a valve or sports cap, not screw cap; this is strictly enforced), into the examination room. Also a small packet of sweets (e.g. Polos), but any noisy wrappers and packaging must be removed prior to entering the room; chewing gum is not allowed. No other drinks and/or foods will be permitted except on medical grounds, and with prior approval. Water is also available in the lobby just outside the room.

Provided they have prior approval diabetic students are permitted to take into the examination room silent blood testing kits, and glucose drinks (e.g. Lucozade) and/or glucose tablets (e.g. Dextro energy tablets) in case of hypoglycaemia, also Insulin syringes/supplies. Also permitted with prior approval are asthma inhaler, epi-pen, over-the-counter and/or prescription medicine, small unobtrusive snack (please note nuts may not be taken into the examination),

medical aids such as wrist splint/support, back support pillow, ice-pack. In all these cases the item will only be permitted in the examination room provided you have obtained permission in advance, and you must carry the permission letter with you and produce it if requested by an invigilator. If any of these provisions apply to you, please contact the Diploma Administrator **by Monday 6 June**.

## **5. 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 through this [survey](#)**. 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.

## **6. Arriving late and failing to attend**

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 Board of 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.

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 Board of Examiners about reinstating them.

If you are not present at the beginning of an examination paper, the Examination Schools staff will contact the Diploma Administrator and ask her to account for your absence. It is therefore vital that you inform the Diploma Administrator at once of any difficulties, and, in advance, **by Monday 6 June please give to Ellen Moilanen, Diploma Administrator, a telephone number where you (or someone who knows you) may be contacted on Monday 27 June through this [survey](#)**. Only in an emergency, the Diploma Administrator may be contacted that day on (01865) 271457 and in an emergency the Examination Schools may also be contacted on (01865) 286223.

To assist you, space for your contact details has been added to the attached template document.

Ms A.S. Kennedy  
Chair of Examiners of Diploma in Intellectual Property Law and Practice  
June 2016

## Appendix 3 – Reports on individual papers

### Patents 1

#### Question One

There is an issue whether the claims cover a product (i.e. the computer system) or a process (the computer system in action). This affects the question whether Eric is a primary or a secondary infringer. Few candidates discussed this.

Many candidates failed to distinguish between an exclusive licence (where the licence confers on the licensee, to the exclusion of all other persons including the proprietor, rights in respect of the invention), from a “sole” licence (where the licensee is the only licensee but the patentee can also exploit the invention). An exclusive licensee has the right to sue for infringement; a sole licensee does not. The patentee also has the right to sue for infringement, either alone or jointly with any exclusive licensee. If the exclusive licensee sues and the patentee does not want to sue, the patentee must be made a party by making it a defendant.

Several candidates said that Gloria could rely on Section 60(5): if so, you would normally expect the other people involved with the event similarly to be able to benefit.

Many candidates overlooked the threats issued by Hiram.

#### Question Two

Few candidates addressed the fact that the patent is about a shop (such as Argos), and this gives rise to issues when trying to read the claims onto the infringement (and the prior art) which are restaurants, particularly with regard to “collection point” and “despatch point” and the location of the display screens.

In addition, the skilled person in the patent case is a person skilled in the art covered by the patent, not in the art of the invention. In the present case, the skilled person is probably a computer systems person with retail knowledge not restaurant knowledge.

#### Question Three

Many candidates missed the “not patentable subject matter” objection – do the claims relate to a method of doing business/method of displaying information, or is there a “technical effect”?

A number of candidates were rather glib on insufficiency. The basic question is: does the specification (plus common general knowledge) teach the skilled person how to make the invention across the breadth of the claims? Sufficiency (enablement) “across the breadth of the claim” means that if you can think of something covered by a claim, the skilled person should be able to make it using his common general knowledge and/or the information at the specification. A lot of candidates assumed that a skilled computer programmer could not write software implementing the system, which is a bit hard on most skilled programmers.

Some candidates looked at B1 (the diary) and said (correctly) that it was not available to the public; but overlooked that it was evidence of a prior use which was available to the public.

Further, a number of candidates missed that the Chinese takeaway was prior art (and probably common general knowledge), and also did not address the greengrocer.

Note that the fact that a piece of prior art was considered by the EPO may mean that there is an attempt in the claims to distinguish it, but that does not mean that you should not address it in the same way as any other piece of prior art. It still needs to be considered and analysed. The EPO may well have failed fully to recognise the significance of the prior art concerned.

### **Question Four**

Amendments: a surprising number of candidates forgot about the rule against “added matter”: an amendment cannot introduce new information.

The best approach to considering amendments is to do a claim chart: if you have a claim where there is a “tick” from a piece of prior art for novelty or obviousness against every integer, you need to bring in another integer or modify one of the existing integers so there is a “cross” for one of the integers of the amended claim.

Generally, the poorer answers to questions 2, 3 and 4 did not show signs that the candidate had made proper use of a claim chart.

## **Patents II Coursework – Exams Report**

### Summary

Overall, the student cohort performed very well. The vast majority of candidates identified the key points and some provided very thoughtful and well expressed notes to supplement the pleadings. The problem related to the development and exploitation of a natural remedy used for pain relief.

### Question 1 - Infringement

Question 1 required candidates to draft particulars of claim and particulars of infringement for proceedings in the High Court (Patents Court) in relation to Bond Page Limited and any suppliers considered by the candidate to be infringing the patent. All candidates identified Jones Bard Limited as the only claimant. As to additional defendants over and above Bond Page Limited as manufacturers, many candidates identified Bloomings Limited, who supplied nasturtium petals, and some Beta-C GmbH, suppliers of the pumpkin extract BTC250. There are equally good reasons to exclude Beta-C GmbH on the basis it was not clear whether supply took place in the United Kingdom. Provided this was addressed in the notes, no criticism was made of candidates who omitted to identify Beta-C GmbH as a potential defendant. Cross & Co, suppliers of vinegar, were correctly not named as a defendant on the basis that they had no knowledge of the use to which their product was put by the first defendant, Bond Page Limited. No candidate suggested suing the supermarkets or pharmacies selling the defendant’s products.

On the basis of the information provided Bond Page clearly infringed claims 1, 3 and 4, possibly 6 but probably not. It infringed claim 7 by offering for use the process of claim 7 by the instructions and information provided with its products and the means essential to infringe that claim under section 60(2). Most candidates included these claims for infringement or dealt with them in notes if they decided, for good reason, not to assert claim 6.

### Question 2 – Defence and invalidity

This required candidates to draft a defence and counterclaim and grounds of invalidity. Most candidates produced a good defence and counterclaim. The grounds of invalidity needed to address novelty, inventive step, probably sufficiency, added matter and excluded subject matter. The fact pattern in relation to novelty was unusual in that James, the inventor, had made a sample of carrot, vinegar and nasturtium petals whilst employed at Betty's Natural Cures. It was unclear precisely what process he followed to do so, other than mixing the ingredients into which the petals fell by accident. He was then given a pot of the combination product by Betty and used it on holiday to treat pain caused by jelly fish stings. The best analysis of any prior use was that the pot given to him by Betty was one he was free to use. On that basis, it was a prior use of claims 1, 2, 3 and 5, although probably not 4 as the product was prepared for the alleviation of heat rash rather than the treatment of pain.

Most candidates spotted that UK 2, 315, 677 could be relied upon as a novelty only reference as it was filed before the priority date. It related to the use of beta carotene, vinegar and nasturtium combination for use to prevent sunburn. It was a novelty reference for claims 1, 2, 3 and 7 but again probably not 4. Most candidates identified that this could not be used as a reference in relation to lack of inventive step but some did not.

As regards lack of inventive step, most of the references provided in the coursework provided a reasonable starting point except UK 1, 732, 857. That taught topical pain relief from extracts from nasturtium seeds but made no reference to carrot or vinegar and was the weakest prior art reference as a result. The Journal of Natural Health referred to the myth of carrots improving night vision but did teach combining carrots, vinegar and plant extracts (unspecific) to calm heat rash and stinging pain. The Reader's Digest extract taught a combination of carrot juice, flower petals and vinegar to reduce puffiness caused by heat rash.

The patent claimed a cream using carotene, extracts from nasturtium flowers and vinegar but only gave disclosure in relation to use of petals and not the other aspects of the flower including seeds etc. Which extracts from the flowers work (some may not have done) was unspecified and as a result the breadth of the product claims may not be enabled. There was therefore a Biogen style insufficiency argument that could be made and some candidates developed this well.

Most candidates also spotted that claim 8 was added matter as it was only added during the course of prosecution. Finally on validity, a number of candidates also spotted that claim 7 was a method of treatment claim and therefore excluded subject matter.

### Question 3

Question 3 required candidates to write concise notes explaining their advice to James Bard on the position of Betty's Natural Cures. Many candidates provided a good response, analysing the potential issues of infringement by Betty's in relation to its product which incorporated oil extracted from nasturtium flowers and seeds. Betty's Balm had a carrot to vinegar to nasturtium oil ratio of 2:1:1 and was then mixed and heated to 60-80C and cooled. It was therefore likely to infringe claims 1, 2 and 4. They were using the process of

claim 6 but not 8 and offering for use the process of claim 7. There was a further question as to whether a balm was a cream and this would be a question for an expert to assist in resolving. Betty's would also probably have a defence under section 64, although the recipe used by James when working with Betty's Natural Cures used nasturtium petals and the subsequent product made by Betty's used oil extracted from flowers and seeds, so the section 64 defence was not necessarily strong.

Most candidates also identified that Betty's Natural Cures had a basis to bring entitlement proceedings as the work done by James in relation to the product had been done during the course of his employment with Betty's. This meant that Betty's could seek to be joined as an inventor/owner and/or seek revocation under section 72(1)(b). James also subsequently disclosed the combination of carrot, vinegar and nasturtium petals to his new employer in breach of confidence and probably in breach of contract as his confidentiality obligations would probably not terminate with his employment with Betty's. Most candidates advised James Bard not to bring proceedings against Betty's and for good reason.

#### Question 4

Question 4 required candidates to write notes explaining their draft pleadings in answer to questions 1 and 2. Most candidates provided thoughtful and well expressed notes identifying the reasons that they had adopted their positions on infringement or validity.

A few candidates suggested pleading joint tortfeasorship as between Bond Page and its suppliers which was not marked down but would in any circumstances be unlikely to do more than add complexity and cost to no great advantage to the claimants.

### **Trade Mark and Passing Off Coursework**

#### **Performance by Question**

##### Q1 – (25 marks)

This question dealt with the basics of trade mark infringement and passing off, along with the relevant defences. It also required consideration of a counterclaim. This question was generally very well answered with most candidates dealing well with the issue of Identical marks under Article 9 (1) (a), the global appreciation test under Article 9 (1) (b) and particularly well with the Passing Off part of the question. Where many candidates fell short was in recognising the importance of harm to Functions (a requirement even for Identical Marks). Many also failed to identify the context of use of the trade mark required by *Specsavers*, despite being led to this issue by the wording of the problem.

##### Q2 – (25 marks)

This question required an analysis of strategic issues to be considered when dealing with the infringement in Q1. We expected to see candidates deal with Interim Injunctions, choice of forum and the pre action protocol. Better candidates were expected to address issues such as survey evidence, customs reports and eBay complaints. Unfortunately this question was not answered satisfactorily. Most candidates focussed almost exclusively on litigation strategy; i.e. the availability of an injunction and choice of forum. Whilst they were the key elements of the question, good

candidates were expected to be more imaginative and consider other strategic options, of which there were many.

### Q3 – (20 marks)

This question dealt with registrability of a shape trade mark. Most candidates rightly considered the three limbs of Article 7(1)(e) as regards absolute grounds and also relied on *Philips v Remington*. However there was a general lack of reliance on other relevant case law.

### Q4 – (5 marks)

This was a short passing off question dealing exclusively with false celebrity endorsement and required application of the *Eddie Irvine* and *Rihanna* cases. All candidates answered this well.

Q5 – (25 Marks). This was another trade mark infringement and passing off question with different facts. There was also a requirement to analyse a possible trade mark Opposition. Most candidates dealt well with the Trade Mark Infringement and Passing Off elements of this question but few dealt well with the Opposition issue. Given the similarity to Q1, candidates were expected to find a difference and consider the Opposition but some failed to make any reference whatsoever to the Opposition element.

## Concluding Comments

1. Few candidates drew conclusions from their reasoning. We would expect candidates not just to set out the relevant legal tests but also to apply those tests to the facts and come to a conclusion.
2. Very few candidates recognised the issues arising from *IP Translator* and the ability to limit trade mark specifications.
3. Many candidates put a great deal of effort into Q1 and Q5 (and so achieved a high mark on those questions) but then reached the word limit when attempting the other questions.

## Copyright

### 1. Overview

The overall performance of candidates was very good, with a considerable number of distinction marks. There was only one fail.

Most students managed to consider all the relevant material in the assignment with well-structured answers which dealt with the matters raised in a coherent and logical manner. The best candidates were able not only to discuss the less clear issues, but also to reach a view as to how they might be resolved. The weaker candidates recited the law which would apply



and would need to be considered, but were less willing, or able, to apply that law to the facts before them.

Overall, the performances showed a very good understanding of copyright law.

## **2. Comments on Question 1 (40 marks)**

There were a good number of works to consider in this question, and the majority of candidates were able to identify them, the type of rights attached to them, and who might enforce those rights. The candidates showed a clear understanding of the legal rights of owners and licensees. The question raised issues as to overlapping rights in works, which most candidates handled well. It also left some points deliberately vague. For example, the language used by Mick Sacramento in his letters might, or might not, have amounted to an assignment or exclusive licence to Black Tuesday. Better students tackled these difficulties and came to a view as to how the material was likely to be interpreted by a court. Less confident students tended to say only that the points would need to be resolved one way or the other, or that more information was required.

## **3. Comments on Question 2 (15 marks)**

Candidates here generally understood the need for Black Tuesday to establish that it was the owner, exclusive licensee or non-exclusive licensee with contractual rights to sue, and the principles set out in *Classic FM v Robin Ray*. They understood that the courts would be unlikely to interpret unclear agreements as assignments, if lesser rights would do. Stronger candidates used the peripheral facts, such as the copyright notices on the record labels, to support their arguments as to where rights might lie. Some of the best candidates suggested commercial ways for Black Tuesday to improve its position, such as using Vasim Kapoor's breach of warranty to persuade him to grant it clear rights. Weaker candidates made suggestions which might be difficult to carry out in practice, such as asking Mick Sacramento to execute an assignment, when it was clear from the facts that contacting him would be challenging. Overall, the question was well answered.

## **4. Comments on question 3 (30 marks)**

The question was generally well answered, picking up the strongest works on which to sue, the causes of action available, and the benefits of joining the ISP into the action as a defendant. The possible parody defence was pleasingly well tackled. One consistent theme however was a concern that Black Tuesday might have difficulty proving that Sean Murphy's work was an infringing communication to the public. This appeared to arise from a view that Black Tuesday might have difficulty proving communication to a "new public": there was nothing in the facts to indicate that Black Tuesday had consented to any communication of Sean Murphy's work to any public at all. Weaker candidates also failed to distinguish acts taking place in Eire, and acts taking place, at least arguably, in the UK. Generally the remedies available were considered well though fairly superficially.

## **5. Comments on question 4 (15 marks)**

Weaker candidates did little more than repeat the comments they had made in question 3, although the question related to a different potential claimant and defendant. Stronger

candidates tackled the question of "new public" here, where it sat better. Stronger candidates also looked at the difficulties Mick Sacramento might face, given the commercial relationship between him and Black Tuesday, the scope of the rights he might have granted to it, and his expressed views that Black Tuesday could do what it liked with his songs, and that he was happy if he was being paid. The best answers took the facts to suggest how Black Tuesday might pacify Mick Sacramento through a commercial deal, showing their understanding as to how disputes can be resolved in real life.

## **Designs**

To follow

## **Intellectual Property I**

### **General Comments:**

Intellectual Property 1 was taken by 56 Candidates. The answers provided were of a high standard over all. This year saw an increase in the number of candidates achieving a pass mark of 60% or above, from 75% in 2014/15 to 77% in 2015/16. This increase was also maintained at the Distinction level with 12.5% of students achieving a mark of 70% or above, up from 11% in 2014/15. The average mark achieved in Parts A and B was the same – 62%.

A note on some recurring practices that have a negative impact on the marks awarded:

- a) Failure to state the relevant statutory provision and/or stating the incorrect provision. The statute book is available for use in the examination room.
- b) Very limited use of the relevant case law. As stated in the 2014/15 Examiner's Report, it is disappointing to see answers that identify the relevant legal issues, but fail to identify the relevant legal authorities, case law or statutory provision. Case law is vital to our understanding of how the relevant legal are applied in practice, and should be utilised to support the arguments being made.

### **Part A**

The 'essay' section of the paper saw the vast majority of candidates opt to answer question 1 (42) over question 2 (14). The average mark for question 1 was slightly lower (61%) than the average mark for question 2 (65%).

### **General observations:**

- a) To achieve at the highest level care must be taken to ensure that the answer remains focussed on the question being asked. The weakest answers provided a descriptive account of a particular area of the law, with little attempt to engage with the 'discuss' or 'critically evaluate' instruction of the question.

- b) The vast majority of responses to both questions made reference to the concept of ‘plausibility’. However, it was not always clear why a discussion of the concept was relevant to the arguments being made, this was especially so in question 1. As touched upon above, weaker answers merely provided a discussion of plausibility without effectively relating it to the question asked. Better answers perceptively linked an analysis of the concept within a broader discussion of the relevant legal issues arising.

### Question 1

This was by far the most popular essay question, attracting 75% of candidates. On a strict reading of the question, candidates were asked to provide an analysis of the exceptions to patentability rather than the ‘non-invention’ exclusions in s1(2) Patents Act (art 52(2) EPC). Although, this was by no means fatal as long as candidates acknowledged that these may be considered ‘non-inventions’ under the relevant regimes, and demonstrated a critical awareness of the controversies (and case law) arising in this area. Many candidates also discussed the requirement of sufficient disclosure. The ‘discuss’ direction allowed candidates to approach their analysis from a variety of perspectives – e.g. the rationale behind such exceptions; the scope of protection for various types of inventions; and interpretative practice. Mere descriptive responses were not marked favourably, demonstrating very little evidence of a critical understanding of this area of the law.

### Question 2

This question provided scope for a range of responses. Weaker answers merely provided an overview of the relevant legal provisions and their application in the courts. The majority of candidates identified that each area comes with its own set of controversies. Nevertheless, better answers were able to engage with the normative role of each element and consider to what extent these requirements may work together to achieve the same objective. It was pleasing to see some candidates make their assessments in light of the (often conflicting) theoretical foundations of the patent system.

## **Part B**

The ‘problem’ section of the paper saw the vast majority of candidates opt to answer question 3 (48) over question 4 (8). The average mark achieved on both questions was the same - 62%.

### General observations:

- a) While less prevalent than last year, some candidates spent time explaining points of law that were not strictly relevant to the facts presented in the problem questions. It is not always necessary to analyse all the patentability criteria in detail. For example, time spent in detailed discussion of ‘industrial application’ when it is clear from the facts that this is easily satisfied, leaves less opportunity to focus upon the more important legal issues arising.
- b) Better answers were those that took time at the beginning to identify/define the technical contribution made by the relevant invention/development. This provided structure to the answers, and helped the candidate formulate how the law applied in the circumstances.

### Question 3

86% chose to answer this question, which required candidates to explore the law in several areas - inventorship, entitlement, attribution and patentability (in the context of validity and application). Better answers identified more than one technical development of relevance – multi-layered hollow-form panel; a safe constructed using the hollow-form Hercules panel.

*Inventorship* – Most candidates dealt with this issue well. Better answers generally took a two-pronged approach, considering in order – i) what is the inventive concept? Who is the actual devisor/contributor to that inventive concept? This element was well supported by case law and discussion of the relevant statutory provisions.

*Entitlement, compensation & attribution* - The contract and supporting facts raised several issues. Most answers demonstrated good knowledge of the law relating to employee inventions and compensation, and applied the law to the facts well. Contrasting conclusions were reached on whether this was an ‘employee’ situation. However, better answers took time to consider which argument would place Jarvis in the best position in relation to both inventions. Very few answers referred to Jarvis’ right of attribution contained in s13 Patents Act.

*Validity/patentability* – This area was again covered in a sound manner. Most answers focussed upon the key issue of novelty and whether the relevant inventions were anticipated in the circumstances. A significant number of candidates also considered the question of inventive step. As with the issues above, the only real weakness rested in a failure to identify more than one relevant invention.

### Question 4

Broadly speaking, this question combined elements of patent infringement and applicable defences.

*Infringement* – This area of the law did not present any particular difficulties for candidates. The issue of claim construction and the relevant statutory provisions/case law were considered. Nevertheless, while most identified the InComp modification and use in the FilmTab as potentially infringing, very few candidates discussed the relevance, if any, of InComp’s trials of the patented invention.

*Defences* –

- i) *Invalidity challenge* – this was typically analysed on two fronts – patentable subject-matter; novelty. Most candidates demonstrated a good knowledge of the law relating to the patenting of software-implemented inventions, and applied the legal principles established in the case law in an appropriate manner. The issue of novelty required candidates to consider the priority of the earlier US application. The limited facts should have prompted candidates to question whether the priority date could be relied upon. However, the issue of ‘support’ etc. was not always handled well, with many automatically assuming the priority of the earlier application or missing the point completely. Whether Haitec’s application anticipated the later patent was generally analysed in a comprehensive manner. Many candidates also discussed the issue of

inventive step, with very few identifying that unpublished patent applications are unlikely to be prior art for this purpose.

- ii) *Experimental Use* – Those candidates that did identify InComp’s trials as potentially infringing, also went on to consider the relevance of the experimental use defence. These candidates demonstrated a reasonable understanding of the law in this area.
- iii) *Competition Law/FRAND* – Not all candidates discussed the application of EU competition law and the FRAND licencing requirements. Better answers demonstrated a good understanding of the limited legal reasoning in this area and made a reasonable attempt to apply this to the facts in hand.

## **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 tended to favour the trade mark essay and only a few candidates attempted the designs essay, which was disappointing (only 6 attempted the designs essay). 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, most candidates opted for the essay evaluating whether it had become increasingly difficult to register shape marks in the EU. The average quality of answers was high but not exceptional. Many candidates played it safe with a descriptive overview of the difficulties faced when (i) establishing distinctiveness, or (ii) overcoming the specific policy filters excluding generic, technical or aesthetic shapes. For (i), better essays explored some of the traps associated with the requirement that a shape must ‘depart significantly from the norm’ (inherent distinctiveness) and what a ‘reliance’ standard might mean and how it might be achieved (acquired distinctiveness). *Kit Kat* (CJEU) featured prominently in most essays and nuanced analysis of its reasoning and implications was rewarded. For (ii) the better candidates engaged not only in an analysis of recent CJEU case law (*Hauck* in particular) interpreting the policy exclusions but also in overarching themes which cut across all three provisions, such as how the essential features of a shape were to be identified or the relationship between the two dimensional graphical representation of the shape and the scope of protection sought.

Although only a few candidates attempted the design essay question, it was very well-answered. As to the first part of the design essay question, all candidates articulated well the different characteristics of the informed user, drawn especially from *Procter & Gamble*, *Pepsico* and *Samsung*. Candidates also properly assessed the role of the informed user, the significance of which perhaps best encapsulated by Birss J’s acknowledgment in *Samsung* that his perspective changed on becoming an informed user. It was also expected that candidates might assess influences that affected the scope of protection apart from the informed user (e.g., design freedom) and here there was a greater range in the answers. As to the second part, candidates appreciated the core theoretical point (see eg *Green Lane*) that registered design rights are no longer tied to the the nature of the product to which the design is applied. Better papers highlighted where this inevitably gave way to practicalities (such as the means by which courts actually make comparisons, or assess functionality) or was modified in some respects doctrinally (e.g, Recital 14, as regards overall impression, as seen in *Gimex*).

As for the problems, the Copyright problem question was unfortunately all too topical and related to the claims made by a political party over various works. It was attempted by a third of the candidates and in general was answered systematically. It required candidates to demonstrate familiarity with subsistence criteria and identify relevant protected works. Here a surprising number of candidates neglected the issue of whether an assemblage of objects may nevertheless be protected under the new CJEU interpretation of originality in *Infopaq*, despite not conveniently fitting within a category of work. Once protectable works were identified, most candidates adroitly handled issues relating to their ownership and whether the political party had the relevant proprietary interest. The problem also tested the extent to which the acts of third parties (i) created new protectable works; while (ii) nevertheless infringing the copyright owners' rights; and (iii) whether they would benefit from any defences. Better answers paid attention to the hyperlink infringement issues as well as provided more detailed, structured analysis when considering defences including criticism or comment, parody, quotation and news reportage.

Finally, the trade mark problem was extremely well-answered, and showed particularly good knowledge of recent case law (and recent reform of the Regulation). Most candidates showed awareness of the slight differences (5 years after registration) that might suggest a stronger cause of action based upon the UK registration, especially in light of *Sofaworks*. Analysis of the different infringement claims based upon the strap line was very solid, as was the analysis of defences. Some candidates failed to appreciate that the UK does not provide a private cause of action for violation of the Comparative Advertising Directive; the conditions in that Directive are relevant to the question of a defence (see *O2*) under trade mark law. Most candidates also appreciated that the claim to enjoin the use of the logo would turn on passing off analysis; knowledge of the basics of passing off was very good and better papers referred to closely analogous cases. Finally, the answers were adequate (though perhaps rushed) in exploring how the claimant could better its position by securing an EUTM in the logo. This required candidates to think about (1) the bases for invalidating the defendant's existing registration both at the UKIPO, with similar but very slightly different grounds under the UK Act and the Regulation, to avoid relative grounds problems, and (2) the different capacity to raise absolute grounds in opposition at the UKIPO (yes) and the EUIPO (no).

**Appendix 4 - Form to report factors affecting performance applications considered by examination boards**

<b>Name of examination: PG Diploma in Intellectual Property Law and Practice</b>	
Number of factors affecting performance applications received before final meeting of examiners:	3
Number of factors affecting performance applications received after final meeting of examiners:	0
<b>Total number of factors affecting performance applications received:</b>	3
<b>Percentage of factors affecting performance applications received (as a percentage of all candidates in the examination):</b>	4.8%
Number of factors affecting performance applications which resulted in a change to the classification/final degree result:	2
<b>Percentage of factors affecting performance applications which resulted in a change to classification/final degree result (as a percentage of all factors affecting performance applications):</b>	66.7%
Number of factors affecting performance applications which resulted in changes to marks on an individual paper(s)/submission(s) (but not to the final classification/degree result):	0
<b>Percentage of factors affecting performance applications which resulted in changes to marks on an individual paper(s)/submission(s) (but not to the final classification/degree result) (as a percentage of all factors affecting performance applications):</b>	0
Number of factors affecting performance applications which did not result in any changes to marks or degree result:	1
<b>Percentage of factors affecting performance applications which did not result in any changes to marks or degree result (as a percentage of all factors affecting performance applications):</b>	33.3%