

FACULTY OF LAW
POSTGRADUATE DIPLOMA IN INTELLECTUAL PROPERTY LAW
AND PRACTICE 2010-11

Examiners' Report 2011

PART ONE

A. Statistics

1. Numbers and percentages in each category

The number of candidates taking the examinations was 54 (including one candidate who re-took one paper). In addition, one candidate took four papers only (will take the remaining two papers in 2012), a second candidate should have re-taken two papers but was granted permission to defer until 2012 and a third candidate should have re-taken three papers but was also granted permission to defer until 2012.

Category	2009		2010		2011	
	No	%	No	%	No	%
Distinction	3	5.55	6	11.54	4	7.41
Pass	50	92.59	43	82.69	43	79.63
Fail	1	1.85	3	5.77	7	12.96
Total	54		52		54	

2. Vivas

Vivas are not used in this Diploma.

3. Marking of scripts

Double marking of scripts is not routinely operated. 143 out of 323 scripts (44.27%) (50.5% in 2010; 46.32% in 2009) were second marked. Further details about second and third marking are given in Part Two (A.1.).

B. New examining methods and procedures

The Diploma is jointly taught and examined by senior law practitioners (solicitors) who are members of the Intellectual Property Law Association (IPLA) and by members of the Faculty of Law. Teaching commences with a two-week residential course in Oxford in September followed by eight workshops (three 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 four coursework assignments (two in Michaelmas and two in Hilary 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 short weight scripts were second marked. In addition, 1 script was third marked to confirm a sub-Distinction mark (below 55).

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. For five of the six papers these procedures worked smoothly and marks were submitted in time for the final meeting of the examiners. But, due to unavoidable pressure of professional work, one team was unable to complete their work in time, and this unfortunately meant that the examiners had to reconvene later in order to make final decisions. Publication of the Diploma results was delayed for a month. One method of ensuring this does not occur again is to have a bigger team of markers, or in an emergency to bring in as markers others involved in teaching the course, and the examiners will be discussing this with next year's teams.
- 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 six papers (four coursework assignments plus two examination papers).
- 3.** A Distinction was awarded to three candidates who did not qualify under the results convention (3 marks of 70 or above, including 70 or above in at least one of the two examination papers, and no mark below 55). Two of these candidates had two marks of 70 or above supported by a 68 and three or two other good

marks. The third candidate had three marks of 70 or above, two in the 60s and one mark just below 55 but two of the 70's marks were high 70's.

4. Until now a paper on Copyright and a paper on Design has been set in alternate years as that year's fourth coursework assignment. To widen the range of topics examined each year, next year there will be an additional coursework assignment, so that the fourth assignment will cover Copyright and the fifth will cover Design. At the same time the examiners do not wish to make it more difficult for a candidate to achieve Distinction, so there will be no change in the results convention for next year.

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.

2. Medical certificates, dyslexia/dyspraxia and special cases

Five medical certificates were forwarded to the examiners but none concerned Part 11.7. to 11.10 of the *Examination Regulations*. Special arrangements were required for one candidate.

3. Materials in the examination room

For the two examination papers (Part II) candidates were permitted under a pilot scheme to bring into the examination room their own copies of Butterworths Intellectual Property Law Handbook, 9th edition. Strict conditions were imposed; the copies had to be absolutely clean and unmarked and all copies were inspected before the start of the examination. All candidates supplied themselves with copies, and no problems were encountered. The scheme is under review by the Proctors and, if continued next year, the 10th edition of Butterworths Handbook will be permitted. In addition, candidates were provided in the examination room with a set of loose documents (see Appendix 2-Third 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 (none typed in 2010; 2 typed in 2009).

5. External Examiner

We are much in debt to our external examiner, Professor Tanya Aplin of King’s College London, who has been very actively involved at all stages of the examination process. We are very grateful for her help.

6. IPLA Examiner

We are also very grateful to Mr. Robert Anderson of Hogan Lovells who, as coursework co-ordinator for Patents 1, organised and supervised the teams of practitioners involved in the teaching and examining of this coursework assignment. His advice and help at all stages has been unstinting.

7. Thanks

In addition to the examiners, 19 colleagues were assessors, and we owe our thanks to them all. Mrs. Ellen Moilanen, Diploma Administrator, is an absolutely key player whose guidance and efficiency ensures that the Diploma runs smoothly for examiners, assessors and candidates. We are very fortunate to be in her hands and very grateful for all her hard work.

B. Equal Opportunities issues and breakdown of results by gender

	2009				2010				2011			
	Male		Female		Male		Female		Male		Female	
Category	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Distinction	1	4.55	2	6.25	1	5.26	5	15.15	1	4.77	3	9.09
Pass	20	91	30	93.75	17	39.47	26	78.79	16	76.19	27	81.82
Fail	1	4.55	0	0	1	5.26	2	6.06	4	19.05	3	9.09
Total	22		32		19		33		21		33	

C. Percentage distribution of marks by paper

	70 plus		60-69		50-59		Under 50		Total
	No.	%	No.	%	No.	%	No.	%	
Part I									
Patents 1	1	2%	26	48%	25	46%	2	4%	54
Patents 2	3	5%	39	71%	13	24%	0	0%	55*
Trade Marks and Passing Off	10	19%	26	48%	14	26%	4	7%	54
Copyright and Design	4	7%	19	35%	28	52%	3	6%	54
Part II									
Intellectual Property I	22	42%	27	51%	4	8%	0	0%	53**
Intellectual Property II	14	26%	37	70%	2	4%	0	0%	53**

* includes a candidate who re-took the paper

** excludes a candidate who withdrew from the paper

D. Comments on individual papers

These appear in Appendix 3.

Mr. R. Anderson (IPLA)
 Professor T. Aplin (External)
 Professor G. Dinwoodie
 Ms A.S. Kennedy (Chair)

Appendix 1 – External Examiner’s Report (page 6)

Appendix 2 – Notices to Candidates (pages 8-61)

Appendix 3 – Reports on individual papers (pages 62-74)

FACULTY OF LAW

**POSTGRADUATE DIPLOMA IN INTELLECTUAL PROPERTY LAW
AND PRACTICE 2010-2011**

EXTERNAL EXAMINER'S REPORT 2011

1. Introduction

This was the third year of the Postgraduate Diploma in Intellectual Property Law and Practice. The programme ran smoothly and I confirm that the academic standards of the Diploma were appropriate, the assessment processes were conducted fairly and in accordance with institutional regulations and the performances of students were satisfactory and in keeping with the standards achieved at comparable institutions. A more detailed discussion of these matters is set out below.

2. Academic standards set for the award of Diploma

The academic standards set for the Diploma are entirely in keeping with an award of this nature. The course covers the major intellectual property rights and expects candidates to have a thorough knowledge of the key principles, controversies, and debates relevant to these rights. In the assignments, candidates are expected to apply their legal knowledge and legal reasoning skills to realistic and challenging factual scenarios. In the examinations, there is the opportunity for candidates to engage with some of the wider policy debates occurring in the intellectual property field. This is an important balance to maintain and one that has been reinforced in 2010-11 by requiring students to answer at least one essay question on the examination.

Compared with most postgraduate intellectual property programmes in the UK, the Oxford Diploma gives as much weight to patents and designs as it does to trade marks and copyright and should be commended for this balance.

The teaching was delivered at a two-week residential course in Oxford in September 2010 and at eight workshops spread over the academic year. This represents significantly more face-to-face teaching time than is available on other comparable Diploma courses. A mixture of academics and senior law practitioners teaching on the Diploma makes for a rich learning experience for students. A core consistency has been maintained between the different teachers by the efforts of the Management Committee.

3. Assessment processes

In Part I, candidates had to undertake four pieces of assessed coursework – two in patents and one each in copyright and trade marks. In Part II, candidates sat two unseen two-

hour examinations – one in Patents and Breach of Confidence and another in Copyright and Trade Marks.

Part I focuses on the practice of intellectual property law by presenting candidates with realistic factual scenarios and asking them to apply their legal knowledge and legal reasoning skills. I had the opportunity to comment on all of the assignment questions, in advance of them being released to candidates, and was generally satisfied that they were aimed at key issues and were appropriately challenging.

Part II comprises two unseen two-hour examinations relating to the major intellectual property rights. I was given adequate opportunity to comment on the content and structure of the examinations and was satisfied that they reflected a good balance between problem and essay questions and an appropriate level of difficulty. I was particularly pleased to see that the recommendation emerging from the Board of Examiners' Meeting on 23 July 2010 was implemented, namely, that an essay question was compulsory on each of the 2011 exams. As well, I commend the pilot scheme that was instituted in 2010-11 of permitting 'clean' copies of IP statute books to be taken into the exam.

The assessment processes were rigorous and fair. The Scrutiny panel was given ample opportunity to comment on the forms of assessment and (with the exception of one paper) assessors carried out their marking duties promptly. The marking was consistent and in accordance with the marking criteria, and in keeping with standards at other comparable institutions that offer Diploma courses.

I was present at all Examination Boards, which were conducted with efficiency and entirely in keeping with the Examination regulations.

4. Standards of student performance

Out of the Diploma cohort for 2010-11, 4 achieved an award of Distinction, 43 achieved an award of Pass and 7 candidates failed. Compared with 2009-10, the number of Distinction awards dropped (from 6 to 4) and there were also significantly more fails (7 as compared with 3 and 1 in the previous years). The number of fails has steadily increased since the first year of the programme, but the overall distribution of results seemed to me consistent with a rigorous programme.

Dr Tanya Aplin
Professor of Intellectual Property Law
King's College London

16 October 2011

IMPORTANT – TO BE RETAINED FOR FUTURE REFERENCE

UNIVERSITY OF OXFORD

FACULTY OF LAW

DIPLOMA IN INTELLECTUAL PROPERTY LAW AND PRACTICE 2010-11

NOTICE TO CANDIDATES

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

ROLE OF THE PROCTORS

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

ROLE OF THE DIPLOMA ADMINISTRATOR

Any queries or difficulties concerning examination matters should be referred at once to the **Diploma Administrator, Mrs. Ellen Moilanen, in the Law Faculty Office (St. Cross Building, St. Cross Road, Oxford OX1 3UL). Telephone: (01865) 271457. E-mail address: ellen.moilanen@law.ox.ac.uk.** Should it be necessary to apply to the Proctors, the Diploma Administrator will contact them on your behalf. Where the *Examination Regulations* refer to action by a candidate's college or the Senior Tutor of a candidate's college, please **substitute** the Diploma Administrator.

CANDIDATE'S EXAMINATION NUMBER

In all examinations candidates are identified only by their examination number. This is the number (six digits) which appears above the expiration date on your University Card.

STATUTES AND OTHER SOURCE MATERIAL IN THE EXAMINATION ROOM

Although the two examination papers (Part II) will not be written until early July, **it is vitally important to note AT ONCE the conditions under which the Proctors will permit candidates to use, if they wish, their copy of the Butterworths Intellectual Property Law Handbook, 9th edition (2009) in the examination room. These are explained in paragraph B.8.(i) below (page 8).**

UNIVERSITY OF OXFORD EXAMINATION REGULATIONS 2010 (for academic year 2010-11)

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

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

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

1. *Timing*

(i) First Coursework Assignment: Patents 1

Saturday 9 October 2010 - Assignment question paper will be handed out during the Workshop on this day, and will also be available from the Diploma Administrator on Monday 11 October.

Friday 12 November 2010 (1.00 pm) - Candidates must submit the required work to the Clerk of Schools, Examination Schools, High Street, Oxford OX1 4BG. (See further A.3. below)

(ii) Second Coursework Assignment: Patents 2

Saturday 27 November 2010 - Assignment question paper will be handed out during the Workshop on this day, and will also be available from the Diploma Administrator on Monday 29 November.

Friday 7 January 2011 (1.00 pm) - Candidates must submit the required work to the Clerk of Schools, Examination Schools, High Street, Oxford OX1 4 BG. (See further A.3. below).

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

Saturday 22 January 2011 - Assignment question paper will be handed out during the Workshop on this day, and will also be available from the Diploma Administrator on Monday 24 January.

Friday 25 February 2011 (1.00 pm) - Candidates must submit the required work to the Clerk of Schools, Examination Schools, High Street, Oxford OX1 4BG. (See further A.3. below).

(iv) Fourth Coursework Assignment: Copyright and Design

Saturday 5 March 2011 – Assignment question paper will be handed out in the Workshop on this day, and will also be available from the Diploma Administrator on Monday 7 March.

Friday 8 April 2011 (1.00 pm) - Candidates must submit the required work to the Clerk of Schools, Examination Schools, High Street, Oxford OX1 4BG. (See further A.3. below).

You may complete and submit a coursework assignment although you were not able to attend the relevant Workshop. It is your responsibility to obtain a copy of the question paper from the Diploma Administrator; an extension of the time for submission may not be granted solely because of non-attendance at the Workshop at which the question paper was handed out (see further A.4.(ii) below).

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 and appendices) (see also A.4. below). For Marking Conventions see C.1. below, and for Assessment Standards see attached Schedule I. Each assignment will take the form of a practical exercise, such as drafting of statements of case or instructions to counsel.

The University has strict regulations governing assessment. Marks may not be disclosed to candidates until they have been agreed as final marks by the Board of Examiners. It is therefore not possible to disclose the marks for the coursework assignments (Part I) until after the final meeting of the Board in July (see E.1. below) when the Board will decide the final result of the Diploma, having reviewed and agreed the complete marks profile (Part I and Part II) for each candidate. The Board may need to make adjustments to marks after scrutinising the marking profiles of markers across each paper and across all papers and after considering other relevant information, such as medical evidence. If the marks for Part I 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. There is also the practical point that the marking of all the Part I papers may not have been completed in time to enable the Board to scrutinise and agree them at its end of May meeting, but 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); 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.

The Reports of the Examiners and of the External Examiner on the previous year's examination (2009) will be available for consultation on the Faculty web site in October 2010. 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.

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 but excluding bibliography and appendices).

Two copies of each coursework assignment must be delivered in an envelope to the Clerk of Schools, Examination Schools, High Street, Oxford. The envelope should be addressed to: The Chair of Examiners for the Diploma in Intellectual Property Law and Practice, and your examination number should be printed in the top right hand corner of the envelope. With each coursework assignment you must include: (a) a statement, signed by yourself, that, except where otherwise stated, the coursework assignment is entirely your own work, and that no help was received, even bibliographical, with its preparation; and (b) a second statement indicating which part or parts of the coursework assignment have formed part of a submission in another context. To assist you, these statements have been incorporated into the template **Declaration of Authorship** for completion (see Schedule V and D. (second paragraph thereof) below). Delivery may be by hand, by courier or by registered post, but, if not made by hand, the envelope containing your written work (and addressed as instructed above) must be placed inside a delivery envelope which should be addressed to The Chair of the Diploma in Intellectual Property Law and Practice Examiners, c/o The Clerk of Schools, Examination Schools, 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. Written work submitted late (even a few minutes past the deadline) 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. See further Schedule IV - *Examination Regulations* 2010, 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 fails to apply for or to obtain permission from the Proctors for the late submission of any written work, or non-submission (i.e. withdrawal from this examination unit (see B.7. below) will be deemed to have failed the entire Diploma examination (not just the coursework assignments (Part I)). Non-submission includes where the Examiners refuse to examine work which exceeds the word limit (see A.4. below).

4. *Length*

Candidates should take seriously the word limit imposed (see A.2. above). If the word limit is exceeded 'the examiners, if they agree to proceed with the examination of the work, may reduce the mark by up to one class (or its equivalent – 10 marks).' (See Schedule IV - *Examination Regulations* 2010, 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*

July 2011 (day and time to be advised)

Intellectual Property I
Intellectual Property II

The written examination papers will be taken at the Examination Schools in the High Street, Oxford. Candidates are advised to reach the Examination Schools not less than ten minutes before the stated time of the examination. A bell will be rung some minutes before the examination to give candidates time to move to the examination room. Notices will direct candidates to the appropriate room. Seating in the examination room will be in alphabetical order, and desks will be identified by **name** only. 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*

The substantive law elements of the course covered in the residential programme shall be examined by means of two written examination papers, each of two hours (see also B.10) below. 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, Saturday 20 November 2010, 21 May 2011 and Saturday 4 June 2011.

3. *Scripts*

(i) *Anonymity*

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 must **not** write your name on any answer book. **Write your examination number**

only (ie the six digit figure above the expiration date on your University Card) in the appropriate place in each answer book you use.

(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 by placing them in the appropriate box**, which will be pointed out to you by the invigilator. Any candidate who does not hand in a script **must** inform an invigilator.

(v) Incomplete scripts

Where a whole question has been omitted, or where part of a question which was formally separate has not been attempted (eg. in a question divided into (a) and (b), and part (b) has not been attempted) a mark is awarded for the paper on the normal basis (i.e. by reference to the questions which have been answered), but a deduction is then made proportionate to the extent to which the candidate has failed to answer the required number of questions.

For example, if a candidate completes one question marked at 70 in a paper which requires 2 answers, the overall mark is recorded as '70/1' ('70 over 1 answer', to indicate the extent of the short weight relative to the requirements of the paper) and 20 marks deducted, making a total overall mark of 50 for the script. If a candidate completes one-and-a-half questions marked at 70, and '70/ ½' ('70 over half an answer') in a paper which requires 2 answers, the overall mark is recorded as '70/1 ½' ('70 over 1 ½ answers', to indicate the extent of the short weight relative to the requirements of the paper) and 10 marks deducted, making a total overall mark of 60 for the script. Other examples of short weight attract analogous proportionate responses.

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

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

(i) During first half hour and last half hour of examination

No candidate may leave the examination room within half-an-hour of the beginning of the examination and, to avoid disturbance to other candidates, candidates may not leave the examination room within half-an-hour of the end of the examination.

(ii) Examination Protocol

An Examination Protocol giving practical advice on the conduct of the examination is attached as Schedule II. This should be read before the examination. The document does not have official status and will not be placed on desks in the examination room. The Protocol also refers you to the Proctors' Disciplinary Regulations (see Schedule IV – *Examination Regulations* 2010, Part 19) and Administrative Regulations for Candidates in Examinations (see Schedule IV – *Examination Regulations* 2010, Part 20). (See also E.3. below).

(iii) Illness during the examination

A candidate who is taken ill while sitting a written paper may (with the invigilator's permission) leave the room and return while the examination is in progress to resume the paper on **one** occasion only (and no extra time shall be allowed). If the candidate is unable to complete the paper concerned because they have been taken ill a second time, they should inform an invigilator so that the incomplete script can be handed in. It is the candidate's responsibility to obtain a medical certificate explaining how the performance in the paper concerned may have been affected by illness. The examiners will only be made aware of any difficulties suffered by a candidate in the examination room if the candidate subsequently obtains a medical certificate and that, plus any other relevant information, is submitted to the Proctors and passed on by them to the examiners. For the procedure to be followed see B.6. below.

(iv) Late arrival

A candidate who arrives more than half-an-hour after the time when the examination begins will be allowed by the invigilator to attempt the paper, finishing at the same time as the others. The circumstances will be reported to the Proctors, and the work shall not be taken into account by the Examiners without the consent of the Proctors. The candidate should contact the Diploma Administrator as soon as possible so that a

submission explaining the reasons for late arrival may be made to the Proctors.

(v) **Failure to attend the examination**

Candidates who fail to attend a written examination paper without having obtained the prior permission of the Proctors are deemed to have failed the entire Diploma examination (not just that particular part of the examination), unless the Proctors give instructions to the Examiners about reinstating them (see Schedule IV - *Examination Regulations* 2010, Part 14). This means that the names of such candidates have to be included on the results list under 'fail'. For the procedure for withdrawal (from the entire Diploma examination and from a particular part of the examination) before the Diploma examination and after the Diploma examination has started, see paragraph B.7. below (Schedule IV - *Examination Regulations* 2010, Part 14). The point of completion is deemed to be 'the conclusion of the last paper for which the candidate has entered, or the time by which a dissertation or other written material is due to be submitted, whichever is the later' (Schedule IV – *Examination Regulations* 2010, Part 20.6.). Candidates should consult the Diploma Administrator if any of these provisions apply to them.

5. Academic Integrity – avoidance of Plagiarism

See D. below.

6. Illness or other Causes affecting Candidates for examinations

The Proctors have authority to authorise special arrangements for candidates who for medical or other sufficient reasons are likely to have difficulty in writing their scripts or completing the examination in the time allowed (see Schedule IV - *Examination Regulations* 2010, Part 10). If this applies, you should consult the Diploma Administrator. Applications for such arrangements **must be submitted to the Proctors by Friday 5 November 2010**. Where a candidate's performance in any part of an examination is likely to be, or has been, affected by factors, such as illness or disability, of which the Examiners have no knowledge, the candidate may, through the Diploma Administrator, inform the Proctors of these factors. Usually this will involve submitting a medical certificate to the Proctors, in which as much detail as possible should be recorded by the certifying doctor to explain the case. The certificate should indicate the medical reason for the special request. The candidate should request the certificate from the doctor at the time when the doctor is able to certify the facts. Once the final Examiners' meeting has taken place (22 July 2011) only in the most exceptional circumstances will the Proctors forward to the Examiners retrospective evidence that a candidate's performance may have been affected by medical or other factors. The Proctors will pass the information to the

Chair of Examiners if, in their opinion, it is likely to assist the Examiners in the performances of their duties. See further Schedule IV - *Examination Regulations* 2010, Part 11. The Examiners cannot take account of any special circumstances other than those communicated by the Proctors. See also B.4.(iii) – (v) above.

The Proctors also have authority to authorise special arrangements for candidates who are forbidden for reasons of faith from taking examinations on religious festivals or other special days which may coincide with days on which examinations are set (see Schedule IV – *Examination Regulations* 2010, Part 12). If this applies, you should consult the Diploma Administrator. Applications for such arrangements **must be submitted to the Proctors by Friday 5 November 2010**.

7. *Withdrawal from the Diploma Examination*

A candidate may withdraw from the entire Diploma examination at any time before the date for submission of the first coursework assignment (Part I). Withdrawal will be effected by the Diploma Administrator on the candidate's behalf. A candidate may not withdraw from the entire Diploma examination, or any part of it, after the start of the first paper or date for submission of the first paper or other exercise unless by reason of illness or other urgent cause (see Schedule IV - *Examination Regulations* 2010, Part 14). A candidate may not withdraw from the Diploma examination after the written parts of the examination are complete. The point of completion is deemed to be the conclusion of the last paper for which the candidate has entered, or the time by which a dissertation or other written material is due to be submitted, whichever is the later. See further paragraph C.2. for provisions for re-examination. Candidates should contact the Diploma Administrator at once if any of these provisions apply to them; it may be necessary for the Diploma Administrator to apply to the Proctors on the candidate's behalf, and there are administrative consequences too.

8. *Materials in the Examination Room*

(i) *Statutes and other Source Materials*

Statutes and other source materials may only be brought into the examination room with the prior approval of the Proctors and then only subject to strict conditions. For Intellectual Property I and Intellectual Property II you may if you wish provide for your own use a copy of the Butterworths Intellectual Property Law Handbook, 9th edition (2009). The Proctors have ruled that '(1) the Handbook will be allowed in the examination room, but under current regulations – which are under review on this point – it must be absolutely clean and unmarked, and contain no post-it notes or other forms of marker; (2) should it be the case that the regulations are altered during the course of the academic year so as to allow for annotated or otherwise marked Handbooks to be brought into the examination, candidates will be informed. Unless and until you hear otherwise, however, you should assume that only unmarked

copies will be permitted, and therefore, if you bring your copy of the Handbook into the examination, you must keep it in an unmarked state.’

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

- SI 1989 No. 1294: The Design Right (Reciprocal Protection) (No. 2) Order 1989
- Council Regulation (EC) 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the “Brussels Regulation”)

(ii) Dictionaries

No dictionaries are allowed in the examination room.

(iii) Other materials

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

(iv) Food and drink

Items of food and drink are **NOT** permitted in the examination room except in cases approved by the Proctors on the recommendation of a medical practitioner. Candidates given permission by the Proctors to take items, such as food and drink, into the examination room must carry a copy of the permission letter with them and produce the letter if requested by an invigilator. Candidates should contact the Diploma Administrator if this applies to them.

9. Academic Integrity – avoidance of Plagiarism

See D. below.

10. The Question Papers

An Examiner will be present during the first half-hour of each examination paper to address any question concerning the paper.

(i) Format and Rubric of papers

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) Special announcements

Intellectual Property I and Intellectual Property II – candidates will not be expected to have detailed knowledge of developments after Friday 11 March 2011.

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 six marks.

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

(a) For the award of the Diploma in Intellectual Property Law and Practice there must be no mark below 50. A mark below 50 may not be compensated by very good performance elsewhere

(b) For the award of a Distinction in the Diploma in Intellectual Property Law and Practice a candidate must achieve marks of 70 or above in three or more papers, including in at least one of the written examination papers (Part II), and must have no mark below 55 in any paper. For this calculation, the coursework assignments count as four papers, and the examination papers count as two papers (making a total of six 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 six papers (four coursework assignments and two examination papers), or who withdraw before submission of all the six papers, may re-take in the immediately following academic year **only** any paper in which they achieved a mark of 49 or below, and may carry forward the marks of any paper they passed (mark of 50 or above). But nothing in this paragraph shall prejudice the powers of the University's Education Committee and Proctors to permit partial re-takes in exceptional circumstances. If since the previous year there has been a change of syllabus, coursework assignments or examination papers shall nevertheless be set on the previous syllabus for the candidate who is re-taking them, but may not be taken by any other candidate.

D. **ACADEMIC INTEGRITY – AVOIDANCE OF PLAGIARISM**

Plagiarism is the copying or paraphrasing of other people's work or ideas into their own work without full acknowledgement. All published and unpublished material, whether in manuscript, printed or electronic form, is covered under this description. Collusion is another form of plagiarism involving the unauthorised collaboration of students (or others) in a piece of work. The Proctors Disciplinary Regulations concerning conduct in examinations (Schedule IV – *Examination Regulations* 2009, Part 19.4. and 19.5.) state that 'No candidate shall present for an examination as his or her own work any part of the substance of any part of another person's work. In any written work (whether thesis, dissertation, essay, coursework, or written examination) passages quoted or closely paraphrased from another person's work must be identified as quotations or paraphrases, and the source of the quoted or paraphrased material must be clearly acknowledged.' See further Schedule III - the introductory text of the guidance issued by the University's Education Committee. Examples of plagiarism and how to avoid it are given on <http://www.admin.ox.ac.uk/epsc/plagiarism>; you are strongly advised to consult this website. The University reserves the right to use software applications to screen any individual's submitted work for matches either to published sources or to other submitted work. Any such matches respectively might indicate either plagiarism or collusion (see A.3.(i) (last paragraph thereof) above).

In this connection, you are required to complete and submit with each coursework assignment a **Declaration of Authorship**, including acknowledgement of the University's right to check for plagiarism or collusion.

A blank Declaration of Authorship for your use is attached as Schedule V. When submitting one of the coursework assignments (Part I) (see A.3.(i) above), **please complete a copy of this Declaration and enclose it in the envelope with the two hard copies of the assignment.** If the Declaration is submitted late, the Proctors may recommend that the examiners apply an academic penalty (Schedule IV – *Examination Regulations* 2010, Part 16.8.(6)).

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

E. GENERAL INFORMATION

1. *Publication of Results*

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

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

For the procedures for appeals from decisions of the Proctors, see Schedule IV – *Examination Regulations* 2010, Part 18.1.). The appeal must be made within 14 days of the date of the Proctors' decision. For appeals from the decisions of the Examiners, see Schedule IV – *Examination Regulations* 2010, Part 18.2., and Part 20, paragraph 7. If you wish to raise a query or make a complaint about the conduct of your examination you should consult urgently the Diploma Administrator. Queries and complaints must not be raised directly with the Examiners, but must be made formally to the Proctors through the Diploma Administrator, and no later than three months after the notification of the results. The Proctors are not empowered to consider appeals against the academic judgment of examiners, only complaints about the conduct of examinations.

Further information about complaints procedures may be found in the Proctors' and Assessor's Memorandum, particularly section 13 (see E.3. below).

3. Proctors' and Assessor's Memorandum

Essential Information for Students (known as the Proctors' and Assessor's Memorandum) contains much useful information and is available on <http://www.admin.ox.ac.uk/proctors>. Sections 9, 10, 11 and 13 have relevance for examinations.

Ms A.S. Kennedy (Chair)
Mr. R. Anderson (IPLA)
Dr. T. Aplin (External)
Professor G. Dinwoodie

5 October 2010

Schedule I – Assessment Standards
Schedule II – Examination Protocol
Schedule III – Academic Integrity; avoidance of plagiarism
Schedule IV – Extracts from *Examination Regulations* 2010
Schedule V – template Declaration of Authorship

SCHEDULE I

DIPLOMA IN INTELLECTUAL LAW AND PRACTICE 2010-11

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 2010-11

EXAMINATION PROTOCOL

NB This is an unofficial practical guide to conduct and procedures in the Examination Schools. In addition, you should before the examination familiarize yourself with the Proctors' Disciplinary Regulations for Candidates in Examinations (see Schedule IV - *Examination Regulations* 2010, Part 19) **and the Proctors' Administrative Regulations for Candidates in Examinations** (see Schedule IV - *Examination Regulations* 2010, Part 20). (The Proctors also draw attention to these Regulations in the *Proctors' and Assessor's Memorandum* – see Examiners' Edict, para. E.3.).

1. Please check that you are seated at the right seat in the examination room.
2. In order to prevent impersonation of examination candidates, during every written paper you must display your University Card face up on your desk.
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 Statutes on Intellectual Property, 9th edition (2009). 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. (NB the regulations concerning statutory materials have recently been reviewed – see Second Notice to Candidates dated 25 May 2011 for the new regulations and procedures for enforcing them).
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 spill-proof bottle, into the Examination Room. Water is also available in the lobby just outside the room. No other drinks or food will be permitted except on medical grounds, and with prior approval of the Proctors.
10. Diabetic students are permitted to take a Silent blood testing kit, and a glucose drink (e.g. Lucozade) and/or glucose tablets (e.g. Dextro energy tablets) and insulin with syringes into the Examination room, and asthmatic student may take in an asthma inhaler, provided the Diploma Administrator has informed the Examinations Team in advance.
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 exam 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 will be called upon, a row at a time, to deposit your script in the boxes provided.
 16. At the end of the examination, please disperse as soon as possible. In order to avoid nuisance to other members of the public, the Proctors' rules clearly prohibit you from assembling for any purpose in the entrance of the Examination Schools or on the streets outside. The Proctors' Code of Conduct for post-examination celebrations is available on <http://www.admin.ox.ac.uk/proctors>.

SCHEDULE III

DIPLOMA IN INTELLECTUAL LAW AND PRACTICE 2010-11

PLAGIARISM

What is plagiarism?

Plagiarism is the copying or paraphrasing of other people's work or ideas into your own work without full acknowledgement. All published and unpublished material, whether in manuscript, printed or electronic form, is covered under this definition.

Collusion is another form of plagiarism involving the unauthorised collaboration of students (or others) in a piece of work.

Cases of suspected plagiarism in assessed work are investigated under the [disciplinary regulations](#) concerning conduct in examinations. Intentional or reckless plagiarism may incur severe penalties, including failure of your degree or expulsion from the university.

Why does plagiarism matter?

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

What forms can plagiarism take?

- Verbatim quotation of other people's intellectual work without clear acknowledgement. Quotations must always be identified as such by the use of either quotation marks or indentation, with adequate citation. It must always be apparent to the reader which parts are your own independent work and where you have drawn on someone else's ideas and language.

- Paraphrasing the work of others by altering a few words and changing their order, or by closely following the structure of their argument, is plagiarism because you are deriving your words and ideas from their work without giving due acknowledgement. Even if you include a reference to the original author in your own text you are still creating a misleading impression that the paraphrased wording is entirely your own. It is better to write a brief summary of the author's overall argument in your own words than to paraphrase particular sections of his or her writing. This will ensure you have a genuine grasp of the argument and will avoid the difficulty of paraphrasing without plagiarising. You must also properly attribute all material you derive from lectures.
- Cutting and pasting from the Internet. Information derived from the Internet must be adequately referenced and included in the bibliography. It is important to evaluate carefully all material found on the Internet, as it is less likely to have been through the same process of scholarly peer review as published sources.
- Collusion. This can involve unauthorised collaboration between students, failure to attribute assistance received, or failure to follow precisely regulations on group work projects. It is your responsibility to ensure that you are entirely clear about the extent of collaboration permitted, and which parts of the work must be your own.
- Inaccurate citation. It is important to cite correctly, according to the conventions of your discipline. Additionally, you should not include anything in a footnote or bibliography that you have not actually consulted. If you cannot gain access to a primary source you must make it clear in your citation that your knowledge of the work has been derived from a secondary text (e.g. Bradshaw, D. *Title of Book*, discussed in Wilson, E., *Title of Book* (London, 2004), p. 189).
- Failure to acknowledge. You must clearly acknowledge all assistance which has contributed to the production of your work, such as advice from fellow students, laboratory technicians, and other external sources. This need not apply to the assistance provided by your tutor or supervisor, nor to ordinary proofreading, but it is necessary to acknowledge other guidance which leads to substantive changes of content or approach.
- Professional agencies. You should neither make use of professional agencies in the production of your work nor submit material which has been written for you. It is vital to your intellectual training and development that you should undertake the research process unaided.
- Autoplagerism. You must not submit work for assessment which you have already submitted (partially or in full) to fulfil the requirements of another degree course or examination.

Not just printed text!

The necessity to reference applies not only to text, but also to other media, such as computer code, illustrations, graphs etc. It applies equally to published text drawn from books and journals, and to unpublished text, whether from lecture handouts, theses or other students' essays. You must also attribute text or other resources downloaded from web sites.

SCHEDULE IV

DIPLOMA IN INTELLECTUAL LAW AND PRACTICE 2010-11

EXTRACTS FROM THE UNIVERSITY OF OXFORD EXAMINATION REGULATIONS 2010 (for academic year 2010-11)

The *Examination Regulations 2010* are available at <http://www.admin.ox.ac.uk/examregs/>. For ease of reference, the extracts below cover regulations for the conduct of examinations of particular relevance to Diploma candidates, and include (inter alia) those provisions specifically referred to in the Examiners' Edict.

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

REGULATIONS FOR THE CONDUCT OF UNIVERSITY EXAMINATIONS

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

Part I Introduction

1.1.

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

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

(3)

1.2. In these regulations unless the context otherwise requires:

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

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

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

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

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

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

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

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

....

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

Part 2 Number of Examiners

2.1. It is the duty of every supervisory body:

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

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

....

Part 3 Qualifications of Examiners

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

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

Part 4
Examiners: Nominations and Vacancies

....

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

....

Part 6
Chairmen of Examiners

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

...

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

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

Part 7
Assessors

7.1. A Board of Examiners may in accordance with the provisions of this Part appoint as assessors other persons who are not examiners in the same University Examination

to act with them in setting and/or marking any particular part of a University Examination.

....

Part 8
Approval of Conventions and Submission of Papers to Examiners

....

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

....

Part 10
Candidates with Special Examination Needs

Application of Part 10

10.1.

(1) This Part is concerned with candidates for University Examinations who have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.

(2) This Part shall apply to them if the impairment which they have significantly affects their ability to undertake any examination at or within the time allotted to it, or at the place where it is to be held, or in the manner in which it is normally undertaken by candidates.

(3) This Part in any case applies to every candidate who has a specific learning difficulty such as dyslexia, dyspraxia, dysgraphia, dyscalculia or attention deficit disorder.

(4) Candidates to whom this Part applies are called ‘candidates with special examination needs’ and those falling within paragraph (3) of this regulation are called ‘candidates with specific learning difficulties’.

General Rules

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

(1) for special examination arrangements relating to his or her condition; and

(2) for the condition to be taken into account by the examiners as a special factor that may affect his or her performance in examinations.

10.3.

(1) An application under regulation 10.2 above shall be made as soon as possible after matriculation and in any event not later than the date of entry of the candidate's name for the first examination for which special arrangements are sought.

(2) The application must be supported by a statement from an educational psychologist or other suitably qualified medical practitioner (called in these regulations 'the consultant') approved by the Proctors.

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

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

10.4.

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

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

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

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

10.6. In the case of a candidate with a specific learning difficulty the Proctors shall also ensure that the appropriate statements explaining the effects of a specific learning difficulty are supplied to the chairman of the examiners of the relevant University Examination and the Academic Registrar and Secretary of Faculties shall ensure that they are placed on the candidate's examination scripts and any other work

submitted for assessment, in order to assist the examiners in adjudicating the merits of the candidate's work.

Visually-impaired candidates

10.7.

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

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

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

Codes of practice

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

Invigilation

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

Continuity of arrangements

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

10.11

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

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

Appeals under this Part

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

Costs

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

Part 11 Acute Illness or other urgent causes affecting candidates

Application of Part 11

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

Non-appearance at an examination

11.2.

(1) A candidate in any University Examination may, through his or her college, request the Proctors to accept a submission that the candidate will be or has been prevented by illness or other urgent cause from presenting himself or herself at the appointed time or place for any part of a University Examination.

(2) For the purposes of this regulation a candidate will be deemed to have presented himself or herself for a written paper if he or she was present in the place designated for that examination and had the opportunity to see the question paper there.

11.3.

(1) A request under regulation 11.2 above must be submitted in writing by the Senior Tutor or other proper officer of the candidate's college, with sufficient evidence to support it.

(2) Where non-appearance is caused by illness a medical certificate from a qualified medical practitioner must be sent, and this certificate must specify, with dates, the reason why the illness will prevent or has prevented the candidate from attending the examination.

11.4.

(1) If the Proctors accept a submission under regulation 11.2 above they shall send a copy of their decision promptly to the chairman of examiners of the University Examination concerned and inform the candidate's college and the Academic Registrar and Secretary of Faculties.

(2) If the Proctors decide not to accept the submission they shall give reasons for their decision.

11.5.

If the Proctors accept a submission under 11.2 above they may authorise the examiners either:

(1) to examine the candidate at another place or time under such arrangements as they deem appropriate; or

(2) if other work that the candidate has already submitted in the Examination is of sufficient merit, to act as if he or she had completed the part of the University Examination which he or she was unable to attend.

11.6. Where it is decided under paragraph (1) of regulation 11.5 above that a candidate is to be examined at a place or time other than that appointed for the examination the invigilation of the candidate shall be carried out in accordance with regulation 15.5 below.

11.7.

(1) Where it is decided under paragraph (2) of regulation 11.5 above that the examiners are to act as if the candidate had completed the part of the University Examination concerned, and the University Examination is one in which Honours may be awarded, the examiners may adopt one of the following courses:

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

(b) if they are unable to adopt course (a) but consider, on the basis of the work submitted, that but for the candidate's absence he or she would have obtained classified Honours, they may deem the

candidate to have obtained Honours and publish his or her name accordingly at the foot of the Class List under the words 'declared to have deserved Honours';

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

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

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

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

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

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

Factors affecting performance

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

11.9.

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

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

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

11.10.

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

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

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

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

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

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

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

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

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

Appeals under this Part

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

Part 12

Religious Festivals and Holidays Coinciding with Examinations

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

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

12.3.

(1) If the Proctors approve the application they shall notify the Academic Registrar and Secretary of Faculties who shall make reasonable efforts to ensure that an examination timetable is set such that special arrangements are not required.

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

12.4. If it is not practicable to adjust the timetable in the manner described in regulation 12.3 (1) above, the Academic Registrar and Secretary of Faculties shall notify the Proctors and the candidate's Senior Tutor and identify another date or time when the candidate must take that part, which will, whenever possible, be later than the date or time prescribed for the part in question.

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

12.6. The Proctors shall notify the Chairman of Examiners and the Academic Registrar and Secretary of Faculties of special arrangements approved under this regulation.

12.7. When a candidate is to be examined on a date or at a time fixed by the Academic Registrar and Secretary of Faculties under regulation 12.4 above, the invigilation of the candidate shall be carried out in accordance with regulation 15.5 below.

Costs

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

Appeals under this Part

12.9. A candidate who is dissatisfied with a decision made by the Proctors under regulation 12.3 above, or his or her college, may appeal against that decision in accordance with the provisions of regulation 18.1 below.

Part 13

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

Dictation and the use of word-processors

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

13.2.

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

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

The Proctors shall send the details of these arrangements promptly to the chairman of the examiners of the relevant examination, with copies to the Senior Tutor, and to the Academic Registrar and Secretary of Faculties.

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

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

....

Use of pencils

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

Use of dictionaries

13.7.

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

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

....

Part 14
Withdrawal from Examinations and Non-appearance

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

Withdrawal before the Examination begins

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

Withdrawal after the Examination has started

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

14.4.

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

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

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

Non-appearance at an examination

14.5.

(1) Except in cases to which regulations 11.2-11.7 or 14.3 and 14.4 above apply a candidate who fails to appear for any part of a University Examination (including a viva voce examination other than as specified in (2) below) will be deemed to have failed the entire Examination or, in the case of a Second Public Examination taken over more than one year, the entire Part of the Examination.

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

Part 15
Supervision and Invigilation of Examinations

....

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

15.5.

(1) When a candidate is to be examined on a date or at a time or place fixed by the Proctors, or as the case may be by a chairman of examiners, under Parts 10, 11 or 12 or regulation 13.2 above, paragraphs (2)-(6) of this regulation and regulation 15.6 below shall apply.

(2) Whenever possible the examination shall take place in a room managed by the Academic Registrar and Secretary of Faculties who shall be responsible for the appointment of an invigilator and other necessary arrangements.

(3) If the examination takes place in a room provided by the candidate's college, the Senior Tutor shall appoint as invigilator for that part of the examination a person whose name is on the list of invigilators or some other suitable person whose name shall be approved by the Proctors.

(4) If the examination is to take place at a time different from the time fixed for other candidates the Senior Tutor shall make arrangements to be approved by the Proctors for the isolation and supervision of the candidate during the period which begins at the time when the part of the examination is due to be taken by him or her and ends at the time at which it is taken by other candidates (or the other way round) which will ensure that the candidate is unable directly or indirectly to communicate in person, by telephone or by electronic or any other means with any other candidate, unless the Proctors otherwise permit.

(5) When these arrangements are approved by the Proctors they shall communicate them to the chairman of the examiners and the Academic Registrar and Secretary of Faculties.

(6) The provisions of this regulation shall apply with any necessary modification to practical examinations.

15.6.

(1) Where the Proctors have given permission for an examination to be held in a place or at a time other than that appointed for the examination, the invigilator or another person approved by the Proctors shall attend the Examination Schools at least 15 minutes before the examination begins, to receive the examination paper and any necessary writing materials from the Examination Schools, and should bring their University Card or other reliable evidence of their identity.

(2) The invigilator should sign the list kept by the Academic Registrar and Secretary of Faculties of examination papers which are issued in this way.

(3) The candidate's work must be handed as soon as possible after the time appointed for the collection of papers to the Academic Registrar and Secretary of Faculties, who shall make the appropriate entry in his or her register.

Part 16

Marking and assessment

16.1.

(1) Every examiner who takes part in adjudicating on the merits of a candidate shall give careful attention to the examination of such candidates.

(2) No examiner adjudicating on the merits of any candidate shall take account of any circumstances, not forming part of, or directly resulting from, the examination itself, except as provided in Parts 10 or 11 of these regulations.

(3) The work of any candidate to whom Part 10 or 11 of these regulations applies shall be assessed with due and careful regard to the circumstances of that candidate and any relevant code of practice or guidelines adopted by the University in relation to such candidates.

(4) In the case of a candidate against whom an order has been made by a University Court under section 11 (3) or section 21 (1)(e) of Statute XI or by the Appeal Court in similar terms (intentional or reckless breach of examination regulations), the examiners shall give effect to that order.

(5) Where the Proctors have a recommendation to the examiners in respect of a candidate under section 32 (3) of Statute XI (breach of examination regulations which is neither intentional nor reckless) the examiners shall give due weight to the recommendation in assessing the candidate's work.

Examination conventions

16.2.

(1) In adjudicating on the merits of candidates the examiners shall follow and apply the conventions approved under regulation 8.1 above subject to the right of the Board of Examiners in exceptional circumstances to make minor adjustments to the conventions during any particular Examination.

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

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

....

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

16.6.

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

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

Illegible scripts

16.7.

(1) If a chairman of examiners shall consider that a script or scripts of a candidate in an examination are illegible, he or she shall thereupon inform the Proctors and the Senior Tutor or other proper officer of that candidate's college or other society or approved institution, provided that, if there shall be a dispute as to the illegibility of a script or scripts, the question shall be referred to the Proctors, whose ruling on the question shall be conclusive.

(2) The Senior Tutor or other proper officer shall then arrange for the candidate to dictate his or her illegible script(s) to a typist under the invigilation of a Master of Arts of the University or any other person who in the opinion of the Proctors seems suitable; the typist and invigilator having been approved beforehand by the Proctors. The dictation and typing shall be undertaken in a place to be approved by the Proctors, but subfusc need not be worn; the candidate shall dictate his or her script to the typist in the presence of the invigilator and shall ensure that the typescript is in every respect identical in form and content to the original script. No copies may be taken. The use of a tape-recorder is not permitted.

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

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

Late submission of work

16.8.

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

(a) the candidate shall apply in writing through the Senior Tutor to the Proctors for such permission enclosing the grounds for the application;

(b) the Proctors shall consult the chairman of examiners about any such application and shall then decide whether or not to grant permission.

- (2) If permission is granted, the examiners shall accept and mark such a thesis (or other exercise) as if it had been submitted by the prescribed date.
- (3) If a candidate fails to submit a thesis (or other written exercise) on time without prior permission, the Proctors may after making due enquiries into the circumstances permit the candidate to remain in the Examination and to submit the work late under arrangements similar to those set out in paragraph (1) above. It shall be a condition of any permission granted under this regulation that the candidate shall pay a late presentation fee, the amount of which shall be determined by the Proctors according to the facts of the particular case.
- (4) In cases arising under paragraph (3) above, the Proctors may give leave to the examiners to impose an academic penalty according to any established conventions agreed by the relevant supervisory body or, if there is none, according to guidance issued by the Proctors.
- (5) The examiners shall give due consideration to either the conventions or the guidance issued by the Proctors, and in either case report back to the Proctors on the penalty imposed. They shall give a reasoned justification for their decision where this differs from the conventions or the guidance.
- (6) Where provided for by regulation, submissions must be accompanied by a declaration of authorship and originality. The examiners are under no obligation to mark any submission not so accompanied. This declaration should be in a sealed envelope (which may be included inside the envelope used to hand in the written work). In the event that the Declaration of Authorship is submitted late, the Proctors may recommend that the examiners apply an academic penalty.
- (7) A candidate who is dissatisfied with a decision made by the Proctors under this regulation may, or his or her college may, appeal against it in accordance with the procedure set out in regulation 18.1 below.

Voting on candidates

16.9.

- (1) If in voting upon the place to be assigned to a candidate in any Class List the examiners shall be equally divided, the chairman of the examiners in that Examination shall (unless paragraph (2) below applies) have a second or casting vote.
- (2) If the candidate in question shall be of the same college as the chairman of the examiners or of any college in which he or she is tutor or in which he or she has been tutor during the previous two years, or shall have been privately taught by him or her during the past two years, then the casting vote shall be with the senior of the examiners who is not disqualified on that ground.

....

Part 17
Class and Pass Lists

....

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

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

- (1) determine the candidates (identified only by their examination number) who have satisfied them;
- (2) if the regulations governing the particular Examination permit, determine the candidates who have shown sufficient merit to obtain a distinction; and
- (3) forthwith provide the information determined under paragraphs (1) and (2) above to the Academic Registrar and Secretary of Faculties.

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

....

Candidates who have failed

17.10.

- (1) If a candidate in any University Examination has been judged by the examiners to have failed the examination the examiners shall give notice of that fact, together with the name and college of the candidate, at the close of the examination to the Academic Registrar and Secretary of Faculties.
- (2) If no candidate has failed the Examination, the chairman of the examiners shall give notice of that fact at the close of the examination to the Academic Registrar and Secretary of Faculties.

Notification of results

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

17.12. All information submitted to the Academic Registrar and Secretary of Faculties under this Part shall be certified by the signature of all the examiners who have acted together in the assessment of the candidates in the Examination.

17.13. On receipt of the information provided under regulations 17.11 and 17.12 above the Academic Registrar and Secretary of Faculties shall arrange the production of Class and Pass Lists in a form which shall be determined by the Registrar from time to time.

17.14.

(1) All the lists drawn up under this Part shall be fair copies and shall show no name to have been added or erased or transferred from one position to another.

(2) After submission to the Academic Registrar and Secretary of Faculties examiners shall have no power to alter such lists except under paragraphs (3) and (4) below.

(3) Examiners may with the written consent of the Pro-Vice-Chancellor (Education) and Proctors issue a supplementary list or lists correcting an accidental error or omission in the original.

(4) A list shall be altered by the examiners to give effect to the outcome of any appeal made under regulation 18.2 below which affects a candidate's standing in that list.

Custody of records

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

Forms of Certificates

17.16.

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

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

Part 18

Appeals from Decisions of the Proctors and Examiners

Appeals from decisions under Parts 10, 11, 12, and regulation 16.7

18.1.

(1) A candidate who is dissatisfied with a decision made by the Proctors under Parts 10, 11, 12, or regulation 16.7 above, may, or his or her college may, appeal against it in accordance with the procedures set out in this regulation.

(2) An appeal must be made within 14 days of the date of the Proctors' decision.

(3) Any such appeal must be made in writing to the Chairman of the Education Committee.

(4) The appeal shall be determined expeditiously by the Chairman or another member of the Committee, other than one of the Proctors, nominated by the Chairman.

Appeals from decisions of examiners

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

Part 19

Proctors' Disciplinary Regulations for Candidates in Examinations

Made by the Proctors on 1 October 2003

Approved by Council on 30 October 2003

1. These regulations are made by the Proctors in the exercise of their powers under section 22 of Statute IX and are designated by Council as disciplinary regulations under section 6 (2) of Statute XI.
2. In these regulations: (1) 'examination' includes where the context so permits the submission and assessment of a thesis, dissertation, essay, or other coursework which is not undertaken in formal examination conditions but counts towards or constitutes the work for a degree or other academic award; and (2) 'examination room' means any room designated by the University's Academic Registrar and Secretary of Faculties or approved by the Proctors as a place for one or more candidates to take an examination.
3. No candidate shall cheat or act dishonestly, or attempt to do so, in any way, whether before, during or after an examination, so as to obtain or seek to obtain an unfair advantage in an examination.
4. No candidate shall present for an examination as his or her own work any part or the substance of any part of another person's work.
5. In any written work (whether thesis, dissertation, essay, coursework, or written examinations) passages quoted or closely paraphrased from another person's work must be identified as quotations or paraphrases, and the source of the quoted or paraphrased material must be clearly acknowledged.
6. No person shall dishonestly give help to a candidate before, during or after an examination so as to give, or attempt to give, that candidate an unfair advantage in an examination.
7. No candidate shall take, or attempt to take, into an examination any unauthorised material (including revision notes) or equipment relevant to the examination nor use or attempt to use it.
8. No candidate shall copy from the script of another candidate or in any other way dishonestly receive help from another person in an examination.
9. Candidates may not communicate with any person other than an invigilator during an examination.
10. No candidate may leave or re-enter an examination room unless permitted by an invigilator.
11. No candidate shall enter an examination room more than thirty minutes after an examination has started except with the permission of the Proctors or an invigilator.
12. No candidate shall unless permitted by the Proctors or an invigilator leave an examination room:

- (1) within thirty minutes of the beginning of an examination; or
- (2) within thirty minutes of the time at which it is due to end.

13. No candidate may smoke in an examination room or in any building in which an examination is being held, or behave in any other way which distracts or is likely to distract other candidates.

14. Candidates may not use paper in an examination except that which is provided for them.

15. At the end of each examination candidates must hand back to an invigilator all the paper provided for writing their answers, including paper used for rough drafts and paper which has not been used. No paper must be removed from the examination room other than the question-paper for the examination that has just been completed.

16. Unless regulation 17 below applies, all articles or equipment to be used in an examination must be carried into the examination room in a transparent bag.

17. Candidates must offer non-transparent bags for inspection and, unless special permission is given by an invigilator, must deposit them at the place designated for the deposit of bags and other personal belongings.

18. No candidate shall take a mobile telephone into an examination room.

19. Candidates must present themselves for examinations in full academic dress.

20. Candidates must follow the directions of the invigilators and the Proctors during an examination, including a direction to leave the examination room and the building in which the examination is being held.

Part 20

Proctors' Administrative Regulations for Candidates in Examinations

Made by the Proctors on 1 October 2005

1. These regulations shall apply to all university examinations, including any examination described in any regulation as a qualifying examination.
2. In these regulations 'college' means any college, society, or Permanent Private Hall or any other institution designated by Council by regulation as being permitted to present candidates for matriculation.
3. It is the responsibility of each candidate to ensure that he or she hands in all the material he or she wishes to be considered by the examiners and to comply with

regulations relating to the submission of written work such as dissertations, essays and project reports. Once a candidate has submitted a piece of work, he or she may not withdraw that piece of work and substitute a revised version in the same examination without the Proctors' consent.

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

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

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

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

SCHEDULE V

DIPLOMA IN INTELLECTUAL PROPERTY LAW AND PRACTICE

DECLARATION OF AUTHORSHIP

Name (in capitals): Examination number:

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

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I am aware of the University's disciplinary regulations concerning conduct in examinations and, in particular, of the regulations on plagiarism (see Schedule IV – *Examination Regulations* 2010, Part 19).

The Coursework Assignment I am submitting is entirely my own work except where otherwise indicated.

It has not been submitted, either wholly or substantially, for another degree of this University, or for a degree at any other institution.

I have clearly signalled the presence of quoted or paraphrased material and referenced all sources.

I have acknowledged appropriately any assistance I have received.

I have not sought assistance from any professional agency.

The electronic copy of the Coursework Assignment I am submitting is identical in content with the two hard copies of the Assignment I am submitting.

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.

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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 2010-11

FIRST NOTICE TO CANDIDATES

The purpose of this circular is to amend the ‘Notice to Candidates’ document distributed at the workshop on Saturday 9 October 2010.

On page 3 of the notice, paragraph 3(i), please replace this sentence “It should also state the year of submission and the number of words (inclusive of footnotes but excluding bibliography and appendices)” with “It should also state the year of submission and the number of words (inclusive of footnotes and appendices).”

Ms A.S. Kennedy
Chair of Diploma in Intellectual Property Law and Practice Examiners
8 November 2010

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UNIVERSITY OF OXFORD

FACULTY OF LAW

DIPLOMA IN INTELLECTUAL PROPERTY LAW AND PRACTICE 2010-11

SECOND NOTICE TO CANDIDATES

Part II – Two Written Examination Papers

MATERIALS IN THE EXAMINATION ROOM – NEW REGULATIONS

The Advance Notice to Students dated 27 August 2010 dealt with the statutory materials you would need during the course, and the current regulations of the Proctors governing permission to take into the examination room a copy of the current edition of Butterworths Intellectual Property Law Handbook, 9th edition (2009) (hereafter ‘Butterworths Handbook’). The Proctors have now reviewed these regulations and the purpose of this Notice is to update the details given to you in the Advance Notice (also in the Examiners’ Edict dated 5 October 2010, paragraph B8.(i)), including details of how the regulations will be policed.

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 very strictly enforced.
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 the 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 the 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 be found in *Essential Information for Students* (known as the Proctors' and Assessor's Memorandum), a hard copy of which was distributed to you during the Patents 1 Workshop, and 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 breaches of University discipline may also be reported to the Bar Standards Board/Solicitors Regulation Authority.

Ms A.S. Kennedy
Chair of Diploma in Intellectual Property Law and Practice Examiners
25 May 2011

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 must **not** write your name on any answer book. **Write your examination number only** (ie the six digit figure above the expiration date on your University Card) 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, 9th edition (2009) but only subject to strictly enforced regulations. **It is extremely important to read the Second Notice (attached) and comply strictly with these new regulations.**

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

- *SI 1989 No. 1294: The Design Right (Reciprocal Protection) (No. 2) Order 1989*
- *Council Regulation (EC) 44/2001 OF 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the “Brussels Regulation”)*

4. Water and medication in the Examination Room

Candidates are permitted to take non-carbonated water, in a spill-proof bottle, into the Examination Room. No other drinks will be permitted except on medical grounds, and with prior approval. Water is also available in the lobby just outside the room. Diabetic students are permitted to take a Silent blood testing kit, a glucose drink (e.g. Lucozade) and/or glucose tablets (e.g. Dextro energy tablets), and insulin with syringes into the Examination room and asthmatic students may take in an asthma inhaler, provided that the Diploma Administrator has informed the Examinations Team in advance. If these provisions apply to you, please contact the Diploma Administrator **by Monday 20 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. 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 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 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 20 June please give to the Diploma Administrator a telephone number where you (or someone who knows you) may be contacted on Friday 1 July.** Only in an emergency, the Diploma Administrator may be contacted that day on (07963) 327471 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
25 May 2011

IMPORTANT – TO BE RETAINED FOR FUTURE REFERENCE

UNIVERSITY OF OXFORD

FACULTY OF LAW

DIPLOMA IN INTELLECTUAL PROPERTY LAW AND PRACTICE 2010-11

ADDENDUM TO SECOND NOTICE TO CANDIDATES

Part II – Two Written Examination Papers

MATERIALS IN THE EXAMINATION ROOM – NEW REGULATIONS

The Second Notice to Candidates referred to in paragraph 3. of the Third Notice to Candidates (both dated 25 May 2011) and attached thereto, detailed the new regulations under which you will be permitted to take into the examination room a copy of Butterworths Intellectual Property Law Handbook, 9th edition (2009) (hereafter 'Butterworths Handbook'). Some candidates have pointed out that their copies of Butterworths Handbook have personal possession markings (e.g. their name, the name of their chambers/firm), and the purpose of this addendum is to clarify the position with regard to such markings.

Please add a final sentence to paragraph 1. of your copy of the Second Notice to Candidates (dated 25 May 2011). Paragraph 1. is repeated below with the additional final sentence in bold:

Second Notice to Candidates – paragraph 1.

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 very 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.**

Ms A.S. Kennedy
Chair of Diploma in Intellectual Property Law and Practice Examiners
14 June 2011

Individual Reports

Coursework assignments

PATENTS 1

The majority of the answers were competent but there were few very good answers.

There were two failures. One of these failures was to a large extent the result of simply omitting (possibly inadvertently) to answer a major section of one question. Most candidates demonstrated that they were aware of the relevant legal issues. However a number of answers were a little superficial in the reasoning and, for example, recited that a particular claimed feature was present but gave little or no indication of why.

There were a number of possible bases for an attack on the validity of the patent but some candidates did not deal with some of them at all, possibly for good reason, but again without sufficient explanation.

This is not an easy coursework assignment and it is possible that it may present something of a challenge coming as it does near the beginning of the course.

PATENTS 2

Particulars of Claim

Most students identified the correct claimants as Esme Lowther and Natural Originals Ltd on the basis that Esme is the patentee and Natural Originals Ltd the exclusive licensee. As for the defendants, All Real Ltd makes, sells and deals in Chocalicious eye gel and consequently potentially infringes most of the method and product claims. Aztec Trading Ltd supplies theobromine to All Real Ltd and consequently should be named as a defendant on the basis that it provides the means essential to infringe.

Matt Factor who discloses how to make the face cream to the All Real research team and instigates development of the Chocalicious Eye Gel is identified as the Vice President of Sales and a director of the company. Unless, however, he is the alter ego of the company, this may be insufficient to join him as an individual defendant. In any event, there is little benefit to suing him personally in addition to All Real Ltd.

SP:YN beauty stores are identified as selling the All Real product so are potentially infringers. As a potential distributor of the claimants' product, however, it probably is commercially unwise to name them as a defendant.

Esau Hughes-Cumming does not make or use an infringing product. His mix of coffee and glycerine is used as an injectable filler to remove wrinkles. He does not mix his filler

with a cosmetic carrier to make a topically applied cream, so should not be named as an infringer.

Particulars of Infringement

Most candidates identified that claim 3 was not infringed by All Real Ltd as it uses theobromine rather than caffeine. Under section 60(1)(b) All Real Ltd is using the process of claims 1 and 2. As regards claim 1, there is a question whether glycerine is added after heating the mixture of xanthine and the water, but this should not prevent infringement of this claim being pleaded. As regards infringement under section 60(1)(a), All Real Ltd makes, disposes of, offers for disposal, uses and keeps the products of claims 4, 5, 6, 7 and 8. Under claim 6 it is arguable that using 11% active ingredient by weight in the final product is outside the claims 5-10% range. Infringement of this claim could be pleaded and reference made in the notes to claim construction in accordance with the approach taken by Lord Hoffmann to construction in the Kirin Amgen case. As to claim 7, which claims the use for moisturising the skin, this might be implied on the basis that the defendant's product removes dark circles, puffiness and gets rid of fine lines around the eyes.

In addition, most candidates identified that there would be potential infringement under section 60(1)(c) in disposing of, offering to dispose of or using a product directly obtained by the process of claims 1 and 2 and also under section 60(2) supplying means essential (the cream) for use in claim 9 knowing that it is suitable for and intended to be used to put the invention into effect, i.e. by reducing wrinkles by application to the face and hands. In relation to section 60(2) it is necessary to plead knowledge to show that the defendant knew that the cream was intended to be used as a skin cream for reducing wrinkles and moisturising.

Most candidates also identified that Aztec Trading Ltd was infringing under section 60(2) by supplying the mean essential, i.e. theobromine under section 60(2) and putting the invention of claims 1, 2, 4, 5, 6, 7, 8 and 9 into effect. Again, this required the candidate to plead particulars of knowledge showing that Aztec Trading Ltd knew that the material supplied was intended to be used in skin cream for reducing wrinkles and moisturising, as evidenced by its discussions with All Real Ltd on intended use, price and purity specifications.

Defence and Counterclaim

Most candidates pleaded that Aztec Trading Ltd's supply of theobromine was supply of a staple product under section 60(3) which, whilst unlikely to succeed, was reasonable to plead.

Although All Real Ltd had started working on caffeine based cream some time before the priority date (although it is not very clear as precisely when) the cream finally developed was different and based on Esme's method. Consequently, there is no section 64 defence available to All Real Ltd.

Grounds of Invalidity

By giving a sample of her product to Veronica, Esme may have provided a prior use of claims 4, 5, 7, 8 and 9 in addition to disclosing the method by which she had created her new product (claims 1, 2 and 3). It is not clear whether she disclosed the precise method as claimed, i.e. heating the mix of water and xanthine-based compound and adding glycerine, but it would be sensible to plead this disclosure and provision of sample as novelty destroying.

As to inventive step, similarly the disclosure of the method and sample by Esme to Veronica should be pleaded. The disclosure of the method by Veronica to Esau could also be pleaded as part of the method is disclosed and adding a cosmetic vehicle to form a skin cream an obvious step.

The disclosure in Mitani of a xanthine compound to reduce wrinkles in mice was relied upon by a number of candidates, although whether it provides a disclosure of heating and cooling method to obtain a compound is less clear. Similarly in the publication of Health & Beauty discloses that caffeine applied to the skin can reduce wrinkles and might be pleaded in support of a lack of inventive step.

None of the remaining references are sufficiently close to plead under lack of inventive step. Many candidates did, however, include a pleading of common general knowledge, and in some cases referred to the old rosewater and glycerine lotion recipe of Esme's grandmother as an illustration of what was well known.

There are no insufficiency, added matter or priority issues.

TRADE MARKS AND PASSING OFF

Question 1

Inherent Registrability

The mark is G-NOME which is the name of the goods (A has filed for garden gnomes in class 21) with a hyphen added. Points to be discussed included whether G-NOME is to be regarded as identical to GNOME; whether average consumer would be expected to notice the presence of the hyphen in the mark and therefore any visual difference between G-NOME and GNOME (*LTD Diffusion*); and how the mark would be pronounced.

Opposition in the UK may be filed based on objections on absolute grounds, so candidates should have assumed this objection may have been made.

Candidates were expected to conclude that there may be issues here even though the Registry has accepted the mark for registration. Conclusions either way on registrability were acceptable, but candidates should have considered on behalf of A that she would argue that the mark would be pronounced differently ("GEE NOME"). Cases such as BABY DRY and others might be referred to as support for small differences from normal presentation being taken into account for registrability.

Similarity of Marks

The marks to be compared are G-NOME and GUARD GNOME. Visual, phonetic and conceptual similarity; marks are clearly **not identical**. There is some similarity because of the presence of (G)NOME in each, but this relates to an aspect of the product, as mentioned above; if considered in relation to items relating to GNOMES, GUARD GNOME is a name relevant to the goods with the addition of an additional element (GUARD) not present in the other mark; arguably the marks are **not similar** overall comparing mark for mark.

Similarities/Differences in Goods

A has applied for registration in class 21 for Garden Gnomes in the UK; G have a CTM registered in class 9 for Electronic Alarm Systems. On the face of it these goods are **not similar** and an opposition under section 5(2) must fail. G's opposition could not simply be based on the existence of its registration in class 9 for similar goods but would have to be based on 5(3) - registration for non-similar goods, or its use of its mark on goods in the nature of garden gnomes, even though they may incorporate electronic alarm systems. Candidates should therefore be expected to consider whether G have a case under 5(3) based on reputation and non-similar goods, or under 5(4) based on passing off.

For 5(3) this requires consideration of whether the earlier trade mark has a reputation in the United Kingdom or, in the case of a Community trade mark (which this is), in the European Community, and the use of A's mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of G's mark. Query whether use only in Denmark (one "small" member state, plus part of another member state) would qualify as establishing a reputation in a substantial part of the Community. Candidates were expected to refer to the *Pago* case as establishing that use in only one member state (in that case Austria) is sufficient to establish such a reputation and therefore to consider the question of Denmark being smaller than Austria and the fact that in this case the mark has been use in cross border trade and in part of another member state (Sweden). However, the requirements for reputation and not just use should be discussed, so some reference to *General Motors v Yplon* was expected: "Art 5 (2) should be interpreted to mean that, in order to enjoy protection [under the equivalent CTM provision] a registered trade mark must be known by a significant part of the public concerned by the products or services which it covers in a substantial part of the territory". Candidates were expected to note that the question says that G's products are "very popular" in Scandinavia, and that there is accordingly a possibility that reputation in this sense could be established by G.

Candidates should have considered whether A's use could be "without due cause", given that she has chosen a mark which is closely related to the name of her product.

Under s 5(4) G would have to show that its trade mark had sufficient goodwill in the UK such that the use of A's mark in the UK would be liable to be prevented by the law of passing off, so in order to oppose under 5(4), G would have to show some goodwill in the United Kingdom. Even if there is reputation abroad and there could be knowledge of G's product from people who had travelled to Denmark or Sweden there is no evidence that G has any business extending to the UK (use on G's web site is not use targeted at the UK). Therefore candidates should have concluded that G is unlikely to succeed with any opposition under 5(4).

Candidates should have noted that success by G in an opposition under 5(3) is still dependent on whether the marks GUARD GNOME and G-GNOME are considered to be sufficiently similar. If candidates have already concluded that the marks are unlikely to be considered similar in their consideration of s. 5(2), they would be expected to carry this through and reach the overall conclusion that G's opposition is not very strong.

Proof of use of Guard Gnome Registration

Given that G have based their opposition on their prior CTM and their best case would seem to be under 5(3) based on that registration, A can respond to the opposition by requiring that G prove use of their mark in a substantial part of the EU. Better candidates noted that G's mark is more than 5 years from registration and a **statement of use** is required on the TM7 Notice of Opposition.

Candidates should have considered whether use only in Denmark (one "small" member state, plus part of another member state) would qualify as genuine use in the Community, which should have prompted discussion of the ONEL/OMEL case in Benelux whether use in one member state alone will be sufficient. This case indicates that there is an issue here but the matter is one on which a decision of the ECJ is awaited. Therefore either conclusion could be accepted. In this case there is also use in at least one other member state which could form the basis of an argument that there has been inter-state trade which might be sufficient for genuine use in the Community.

Question 2

Inherent Registrability

Because this has been dealt with above, candidates were expected to cross refer to their answer to Question 1.

Similarity of Marks and Goods

The marks to be compared are G-NOME and G-GNOME. They differ only by the additional letter G which arguably makes no difference to the pronunciation. Are the marks identical (*LTJ Diffusion*).

Would the average consumer notice the difference between these marks on an "imperfect recollection" basis? Candidates might be expected to come to the conclusion that there is a **high degree of similarity** between the marks. A conclusion that the marks might be considered **identical** under *LTJ Diffusion* might also be accepted but the better view might be that they are just highly similar (cf. *Origins*).

The goods are **identical** (garden gnomes in class 21 in both cases) so the conclusion should be that the marks are either **highly similar** or **identical**, the goods are **identical** and the opposition therefore has a **high prospect of success** under s. 5(2).

Priority between Applications

Candidates should recognise that B's application was filed first so is an earlier right. Better candidates noted here that there is no indication that B has used that mark at all and A has only made two sales (arguably only one genuine commercial sale because one is obviously a trap order). As regards the priority between the marks it is clear that on the face of it B will prevail.

There may be some consideration of whether A would be able to prove sufficient goodwill to entitle her to oppose B's application under section 5(4). This might depend on how much publicity and marketing she has done. Candidates might have been expected to discuss whether evidence of marketing coupled with one genuine sale might be enough for 5(4) (*BBC v Talbot*; *My Kinda Bones v. Dr Pepper's*). Since this is not strictly a response to B's opposition, some candidates discussed it under Q5 ("other steps which A might consider taking ...") which was acceptable.

However Candidates should probably have concluded that there is no evidence from the question that A would have enough goodwill at this point to support a case under 5(4).

Bad Faith

Most of the marks in this question went on the discussion of bad faith (this was hinted in the way the question was put).

B's allegation of bad faith seems to have no merit given that A is assumed to have been unaware of B's interest, relying on the conversation she had had with him. We do not know when he made his interest known to A but his trade mark application was filed after she had already made some sales. We do not know whether A was aware of B's application when she filed her own but that is unlikely and arguably this would not make any difference to her position as regards bad faith.

Candidates should have considered whether A's response could include an allegation that B's application was filed in bad faith; it would not appear that he has any genuine intention to use the trade mark he has filed for in a business of his own, and it is more likely that he has filed the application having seen or heard about A's business in attempt to give him bargaining potential with her even though either he or his trade mark attorney has chosen the wrong mark. Would this involve the necessary ingredients for a case of bad faith? (*Chinawhite*; *Viennetta*). There can be nothing akin to "dishonesty" in A having filed a trade mark application to protect her interest in a mark she is using in her business, and there is no indication that any name for the proposed business was discussed between them while at business school. Candidates should conclude that B's case on bad faith seems bound to fail, but on the face of it he has a strong case under s. 5(2) having filed his application first. It therefore important that A opposes his application, which is still open to opposition at this point. Her best case against B may be bad faith. This latter point is more likely to be covered by most candidates under Question 5.

Q3

Trade Mark Infringement

A's use of G-NOME has been for gnomes incorporating some form of alarm system so she has **used** the mark on goods arguably **similar** to those for which G's mark has been registered, even though the scope of her application for registration may not reflect that use.

There were no additional marks here for discussion of the similarities between the marks, but there should have been a recognition that her use could be an infringement if the marks are deemed to be similar. Therefore, depending on conclusion on similarity of marks candidates were expected to conclude that the CTM could in principle be

infringed, although they were expected to carry through here any conclusion that the marks are unlikely to be found similar.

Candidates should have picked up either here or in the letter to G that G's mark may be liable to **revocation** depending on whether use in one (small?) member state plus part of another would be sufficient to resist an application for revocation based on non use. The mark must be put to **genuine use in the Community**. Therefore candidates may refer to the ONEL/OMEL case in Benelux for whether use in one member state alone will be sufficient. The *Pago* case is relevant to the existence of *reputation* in the Community by use in one member state so is not really the relevant case here. In this case there is also use in at least one other member state or part of one so a good argument that there has been interstate trade and mark would withstand application for revocation. However good candidates might be expected to recognise that this is a good point for A to take up in her response to G, and also that putting G on notice of the possibility of an action for revocation would be to her advantage.

Some candidates considered whether A could accuse G of making an actionable threat in her response but this is a weak point in context given that A is applying the mark to the goods etc and no marks were awarded for mentioning this and certainly no marks lost for not mentioning it.

It would be a reasonable conclusion that G's case for infringement is not particularly strong based on the lack of similarity in the marks as already concluded.

Passing Off

Candidates needed to discuss what use G can claim to have made of GUARD GNOME in the UK. It would appear that their use is limited to Denmark and Sweden and to sales through the US website. There is no evidence in the question that any sales have actually been made in the UK through the website and this would need to be explored. However it is clear that the website is not targeted at UK customers and substantial sales through that route to UK customers are unlikely (the products may not be suitable for use with UK wiring systems for example). Also unlikely that substantial numbers of UK customers would have become aware of her products through their sales in Denmark and parts of Sweden. G would appear to have no business in the UK and there is no suggestion in the problem that they are considering expanding to the UK. Therefore candidates should have queried likelihood of damage to any business of G by A's activities. In theory A's products could be purchased by Danish and Swedish customers through her website, but there is no evidence of any such sales or that she is targeting those markets so the same issues arise in reverse. Therefore candidates would be expected to conclude that G's case of passing off overall is not a strong one.

Domain Name

Candidates may have recognised that G might have a better case of passing off based on confusion between the domain names, because of the higher degree of similarity there (g-nome vs gnomes). However there is still no evidence of goodwill in the UK (as already discussed) and without that, G is probably unlikely to succeed with an action for passing off.

Candidates should have at least mentioned the possibility of a Nominet action by G against the .co.uk domain name, although this is probably also unlikely to succeed given

that there is no corresponding registered trade mark and no evidence of use of the web site in the UK (cf. passing off as above).

Challenges to G's Registration

Some candidates favoured an attack on G's registration based on an allegation that GUARD GNOME is descriptive/non-distinctive in relation to G's product, and therefore set up the possibility of a challenge to validity in the response to G. This is a valid point although probably not a particularly strong one. Better candidates realised that there is an incentive for putting G on notice of a possible application for revocation (since their mark is more than 5 years from registration) in order to trigger the 3 month period in section 46(3), whether or not A would have a settled intention at the moment to file any application for revocation.

Letter

Candidates were expected to bring out all the points above as well as emphasising the weakness of G's position and possible challenges to their registration, including putting G on notice of the possibility of an application for revocation.

Question 4

Similarity of Trade Marks

Candidates should have applied the global assessment/average consumer analysis; GLEE GNOME is arguably the name of the product with an additional component at the beginning of the mark giving significant visual dissimilarity, coupled with a conceptual element which is absent from A's mark. Despite arguably some phonetic similarity the conclusion should probably have been that overall the marks have a **low degree of similarity**.

Similarity of Goods

The GLEE GNOME product is a plastic novelty. Under the *British Sugar* test candidates should have considered channels of trade and likely consumers. A's gnomes are likely to be sold either through her website or through specialist outlets selling alarm systems etc. GLEE GNOMES are sold through the Fairyland shop and possibly other similar shops. There was no indication in the question of sales on the internet or other sources. Considering uses to which they could be put, candidates should have considered whether A's scenario was really likely, and in any event does her specification "garden gnomes" really cover this type of product? Probably the conclusion should be that the goods are **not similar** and that A's case overall is not strong.

Risks of Actionable Threat

Accordingly, candidates should have recognised that there is a significant risk of making an actionable threat if A writes to F because threats may be unjustified (no sufficient similarity of marks or goods for infringement) and because the trade mark is not yet registered. Also because F is not responsible for the application of the mark to goods or their packaging or for the importation of the goods. A has no case under 10(3) at this stage because no sufficient reputation.

Very few candidates mentioned the at least theoretical possibility that the solicitor or trade mark attorney could be liable for an actionable threat under s. 21.

All things considered candidates should have advised A that she does not overall have a strong case and that it would be **unwise to send any letter**.

She should be advised at least of the desirability of waiting until the mark is registered and when she may have more use which may back up some case of passing off.

Candidates could consider if A had any case of passing off at this point but should have concluded that her case would be weak and **should not be recommending writing as regards passing off either** at this point.

There could also be some mention of the fact that it is not at this point known how long the GLEE GNOME product has been on sale and whether this may predate A's own use which could then be used against her. Also A's trade mark application has only just been published so that F or the makers or importers of the GLEE GNOME product would still have the possibility of opposing if she writes to them now.

Most of the marks went on the answer to this part as the letter itself would be expected to be relatively brief in the circumstances.

Letter

The letter should have been a **mere notification** or carefully constructed so as to request information on the sources of supply of the product, although the savings under the Patents Act in relation to requests for information are not replicated in the trade marks act so it is not certain that any letter referring to the existence of the trade mark and then coupled with any wording implying that infringement may be an issue may be deemed to be a threat under the section. Not many candidates realised that.

Candidates who wrote stern letters threatening passing off proceedings and demanding undertakings etc. (even if they recognised the risks under s. 21 and left out trade mark infringement - although some threw this in as well) were given low marks for this part of the question, depending on how they interpreted their brief from their client and whether they clearly identified the risks of what they were doing.

Q5

Should A now file for Alarm Systems?

This would probably be a good move as it possibly avoids conflict with B's application and she can assert that G-NOME is not similar to GUARD GNOME in case G files another opposition. Query whether she could amend her application to refer to garden gnomes incorporating electronic alarm systems and request transfer to class 9.

Should A have filed more broadly? Or filed a CTM?

The original application was not very well thought out as regards the name of the product and the goods selected ("garden gnomes" only – see above).

A CTM perhaps should have been considered since A is selling through a web site and her business may expand to other countries. She could also consider applications beyond the EU.

Clearance Searches

Some searching should have been done before the application was filed which should have alerted A to the GUARD GNOME registration.

Gnomes 4U better than G-NOME? Logos etc?

Gnomes 4U might have had more potential for registration and distinctiveness (depending on what other rights there might be out there).

Oppose B's application (bad faith)

Candidates were expected to recognise either here or in an earlier part of their answer that A's response could include an allegation that B's application was filed in bad faith; it would not appear that he has any genuine intention to use the trade mark he has filed for in a business of his own, and it is more likely that he has filed the application having seen or heard about A's business in attempt to give him bargaining potential with her even though either he or his trade mark attorney has chosen the wrong mark. Would this involve the necessary ingredients for a case of bad faith? His application could be opposed on that basis and is still open to opposition.

Putting G on notice of intention to challenge registration

A can let G know that she may file an application to revoke G's mark for non use if they are not able to show use in a substantial part of the Community; this would be a good thing to do as part of negotiations, whilst the advice to A should recognise (as above) that an attack against G's registration on this basis will probably fail.

Designs/3D shapes

Some candidates did discuss this possibility given the hint provided by the picture at the end of the problem.

COPYRIGHT

1. Question 1

Most students identified correctly the various copyright works. The question required an analysis of subsistence and duration of "old" copyrights which subsisted under the predecessor legislation to the CDPA 1988. Depending on the particular work, this required a discussion of the Copyright Act 1911, the Fine Arts Copyright Act 1862 and the Copyright "revival" provisions of the Duration of Copyright Rights in Performances Regulations 1995 SI 1995 3297. On the whole, I was pleased at how well this question was answered and many candidates were conversant with the subsistence and duration rules under the old copyright legislation. Most of the students also identified that the copyright in the paintings "revived" under the provisions of the Duration of Copyright Rights in Performances Regulations. The weaker candidates unfortunately overlooked issues relating to the CDPA 1988 predecessor legislation.

2. Question 2

Most candidates showed a good grasp of the necessity to identify the first owner of the copyrights. Some of the practical issues were also dealt with very well. With regard to

the letters, most candidates identified that the Cole family were likely to be the owners of the copyright as the sole beneficiaries under the will. With regard to the treaties, most candidates identified that issues of joint authorship needed to be discussed. With regard to the photographs, most candidates spotted that an analysis of the written agreement between Lampard and LP needed to be undertaken to establish the understanding about ownership of the copyright in the photographs. On the whole, this question was well answered.

3. Question 3

This question invited a discussion on the legal merits and legal tests relating to copyright infringement claims. It also required candidates to comment on the evidence that might be needed to make good the pleaded copyright infringement claim. Most candidates correctly identified the relevant sections of CDPA (Sections 16 and 17). Most candidates also dealt with issues relating to "substantial part" and were conversant with the legal tests and current case law. Most candidates did well on this questions and it was pleasing that everyone was able to identify and discuss with ease the current infringement regime in the UK and refer to relevant case law.

4. Question 4

This question was well answered on the whole. Most candidates identified the "fair dealing" defence in CDPA Section 30 for the purposes of criticism or review. Most also were aware that the dealing had to be "fair". However, there was not a huge amount of discussion as to whether, on the facts, the particular dealing in question was indeed "fair".

5. Overall comments

I was generally very pleased with the level of understanding of copyright law displayed by the candidates in their papers. There were some very good answers indeed. It was pleasing to see that, clearly, many candidates had worked very hard in preparing their answers.

Examination papers

INTELLECTUAL PROPERTY I

This Paper was done extremely well on the whole, as the high number of Distinctions (22 out of 53 scripts = 42%) reflects. The majority of candidates answered Question 1 from Part A (essay) and Question 3 from Part B (problem). Question 1 gave students the opportunity to demonstrate their knowledge of and critical engagement with two aspects of substantive patent law, and the results were extremely pleasing overall. The most popular topics were software patents and the law of sufficiency, but many others were considered as well, including the law of obviousness, *Schlumberger* and the concept of the skilled addressee, product patents, the concept of the contribution to the art, anticipatory breaches of confidence, *Improver* and claim construction, and the concepts of repair and making. My main constructive criticism is that students were considerably

better at identifying areas of genuine uncertainty than suggesting how that uncertainty ought (if at all) to be resolved.

The problem answers also were excellent overall, with most students demonstrating a strong understanding of the legal principles and close engagement with the facts. The best answers to Question 3 looked beyond novelty and inventive step to consider threshold issues of patentability, including the implications of the plant varieties, discoveries, and methods of therapeutic treatment exclusions for the claims. Unfortunately, some dealt only fleetingly if at all with these issues. For example, some failed to identify the therapeutic treatment exclusion as an issue for claims 4 and 5, and most were unaware that methods of treating pregnancy have been treated as beyond its scope. (Noone considered whether claim 5 might be caught by the exclusion notwithstanding that its subject matter was not a method of therapy.) Similarly, only a couple of students seemed aware of the plant varieties exclusion and its implications for claims 1 and 2, and few considered the distinction between natural products in their discovered and isolated forms.

So too answers to Question 4 were very good overall. Most students identified the implications of the patent not having been granted, and engaged well with the breach of confidence and other patent law issues raised by the facts.

INTELLECTUAL PROPERTY II

There were four questions on this paper, of which candidates were required to answer two: one had to be an essay and one a problem question. The essay questions required discussions of trade mark law and design law, respectively. Few candidates answered the design essay question, preferring instead to answer the trade mark question. One problem question was on trade mark and passing off, while the other raised issues of copyright. Most candidates opted to answer the trade mark problem rather than the copyright problem. The quality of answers to all questions was generally good.

On Question 1, candidates demonstrated good knowledge of case law since the cut-off date for the exam (e.g., the *Datacard* opinion). However, answers based upon the law as of March 2011 were equally acceptable (though few in number). The strongest answers tackled both the (still unsettled) state of the law regarding keyword advertising even after *Google France* and how decisions such as *Google France* fitted with trade mark law generally. Most of these candidates compared the treatment of the defendant in *Google France* with the Court of Justice decision in *L'Oreal v. Bellure*. This is a very difficult area of law, but the answers were spectacularly good (especially in dealing with the Court's treatment of trade mark functions). Very few candidates attempted the design question (Question 2), and those that did used a variety of different doctrinal developments to make their point, especially in the first part of the question: some focused on the definition of "design" while others focused on features of a design that were excluded from protection (e.g., must fit exclusions). Examiners took a broad view of the question.

The Copyright question was relatively straightforward, and the main challenge which students faced was to identify clearly the legal issues and explain how they would be resolved. Detailed knowledge of the case law on any particular issue was not required; a fact which I think disappointed some students, who seemed to have hoped for the opportunity (judging from what they wrote) to engage at greater length with the uncertainty regarding the law of subsistence and infringement post-*Infopaq*.

Most candidates answered the trade mark problem question (Question 4). The biggest challenge appeared to be that a number of similar legal issues were raised by the fact pattern. For example, assessment of the similarity of marks and products was required in a couple of different contexts. Some candidates opted to analyse each factual issue serially and thus became somewhat repetitive; others set out the applicable legal principles and then applied to the different set of facts. Examiners gave credit to either approach. Almost no candidates were distracted by red herrings involving the calendar (which required astute knowledge of UK law on revocation and genuine use), and most of the issues were caught by most candidates. The strongest papers also noted the potentially different outcomes (as a result of a slightly different analysis) that might arise with respect to similar issued in the different registration and infringement contexts.