

FACULTY OF LAW
POSTGRADUATE DIPLOMA IN INTELLECTUAL PROPERTY LAW
AND PRACTICE 2011-12

Examiners' Report 2012

PART ONE

A. Statistics

1. Numbers and percentages in each category

The number of candidates taking the examinations was 68 (including nine candidates who re-took one or more papers).

	2012		2011		2010		2009	
Category	No	%	No	%	No	%	No	%
Distinction	8	11.76	4	7.41	6	11.76	3	5.55
Pass	54	79.41	43	73.63	42	82.35	50	92.59
Fail	6*	8.82	7	12.96	3	5.88	1	1.85
Total	68		54		51		54	

*includes 4 candidates who failed one or more papers and are eligible to re-take those papers in 2013.

2. Vivas

Vivas are not used in this Diploma.

3. Marking of scripts

Double marking of scripts is not routinely operated. 154 out of 421 scripts (36.58%) (44.27% in 2011; 50.5% in 2010; 46.32% in 2009) were second marked. Third marking may be used in exceptional cases and 2 scripts (0.48%) (0.31 in 2011; 2.01% in 2010; 2.15% in 2009) was third 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 programme in Oxford in August/September followed by nine workshops (two of which are revision workshops)

spaced over the academic year. The candidates are all newly qualified or trainee solicitors or barristers. The Diploma examination is divided into Part I and Part II. Part I focuses on the practice of intellectual property (IP) law and consists of five coursework assignments (two in Michaelmas, two in Hilary and one in Trinity Term). Each coursework assignment is preceded by a one-day workshop on the relevant IP topic(s). Part II consists of two unseen two-hour examination papers covering the range of IP law, and are written at the end of Trinity Term.

In each paper (coursework assignment or examination paper) a proportion of scripts chosen at random were second marked as a check to ensure that markers were adopting similar standards. Where any significant discrepancy was found, scripts were second marked and markers adjusted their marks (for all scripts) if they were out of line with other marker(s). In addition, all scripts with borderline marks (ie. 47, 48, 49, 67, 68, 69, also 53 and 54 as a sub-55 mark bars a Distinction), all failing marks (49 or below), and any short weight scripts were second marked. In addition, 2 scripts were third marked to determine the award of Distinction.

C. Possible changes to examining methods, procedures and conventions

1. Setting and checking the question paper for each coursework assignment (Part I) and examination paper (Part II) and the marking of candidates' scripts are the responsibility of a team of two (or more) members. The leader of the team has a considerable additional responsibility to ensure that procedures are carried out and deadlines met.
2. The examiners applied the marking and results conventions as agreed by the Law Board and notified to candidates. For the award of the Diploma a candidate must have no mark below 50 in any of the seven papers (five coursework assignments plus two examination papers).
3. A Distinction was awarded to five 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). One of these candidates had three marks of 70 or above supported by very good marks in all other papers, but none of the 70 marks was in an examination paper. Two candidates had two marks of 70 or above supported by a 69 or a 68. Two candidates had two marks of 70 or above supported by a 67 and other good marks.
4. For the first time this year, there was a paper on Copyright and a paper on Design, increasing the number of coursework assignments from four to five. Previously a paper on Copyright and a paper on Design had been set in alternative years. This change was made to widen the range of topics examined each year. At the same time the examiners did not wish to make it more difficult for a candidate to achieve Distinction, so no change was made in the results convention (see B.3. above).

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. Only two scripts were third marked.

2. Medical certificates, dyslexia/dyspraxia and special cases

Special arrangements were required for two candidates. Two medical certificates and a similar document ('urgent cause') were forwarded to the examiners in respect of three candidates (4.4% of candidates) under Part 11.8 to 11.10. of the *Examination Regulations*, and in none of these cases was the candidate's final result materially affected.

3. Materials in the examination room

Under a pilot scheme, introduced in 2011 and repeated in 2012, for the two examination papers (Part II) candidates were permitted to bring into the examination room their own copies of Butterworths Intellectual Property Law Handbook, 10th 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 Proctors have now been asked to make the scheme permanent. In addition, candidates were provided in the examination room with a set of loose documents (see Appendix 2 – Second Notice to Candidates). All candidates remembered to bring with them their University card (which has to be displayed on their desk to enable their identity to be checked).

4. Legibility

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

5. External Examiner

Professor Tanya Aplin of King's College London has now completed the four years of her appointment as our external examiner. We have been very fortunate to have her help and experience, particularly at the beginning of the Diploma, and she has been very actively involved each year at all stages of the examination process. We are much in her debt and wish her well in the future.

6. IPLA Examiner

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

7. Thanks

In addition to the examiners, 22 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

Category	2012				2011				2010				2009			
	Male		Female		Male		Female		Male		Female		Male		Female	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Distinction	7	20	1	3.03	1	4.77	3	9.09	1	5.26	5	15.15	1	4.55	2	6.25
Pass	26	74.29	28	84.85	16	76.19	27	81.82	17	39.47	26	78.79	20	91	30	93.75
Fail	2	5.71	4	12.12	4	19.05	3	9.09	1	5.26	2	6.06	1	4.55	0	0
Total	35		33		21		33		19		33		22		32	

C. Percentage distribution of marks by paper

Part I	70 plus		60-69		50-59		Under 50		Total
	No.	%	No.	%	No.	%	No.	%	
Patents 1	1	2%	34	56%	26	43%	0	0	61*
Patents 2	3	5%	25	43%	28	48%	2	3%	58
Trade Marks and Passing Off	8	13%	34	54%	21	33%	0	0	63**
Copyright	2	3%	22	36%	34	56%	3	5%	61*
Design	9	16%	30	52%	15	26%	4	7%	61*

	70 plus		60-69		50-59		Under 50		Total
Part II									
Intellectual Property I	12	20%	40	68%	7	12%	0	0	59** *
Intellectual Property II	23	38%	33	55%	4	7%	0	0	60** **

* includes 3 candidates who re-took the paper

** includes 5 candidates who re-took the paper

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

**** includes 2 candidates who re-took 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

Appendix 2 – Notices to Candidates

Appendix 3 – Reports on individual paper

FACULTY OF LAW

**POSTGRADUATE DIPLOMA IN INTELLECTUAL PROPERTY LAW
AND PRACTICE 2011-12**

EXTERNAL EXAMINER'S REPORT 2012

1. Introduction

This was the fourth 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, 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, candidates engage with some of the wider policy debates occurring in the intellectual property field, not least because of the requirement introduced in 2010-11 to answer one essay question as well as one problem question.

Compared with most postgraduate intellectual property programmes in the UK, the Oxford Diploma gives as much weight (if not more) 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 2011 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 five pieces of assessed coursework – two on patents, and one each on designs, copyright and trade marks. This was a change from 2010-11 where candidates were only required to submit four pieces of coursework. Submitting five pieces has the advantage of ensuring that candidates are tested across the breadth of the syllabus and makes

for a demanding programme. In Part II, candidates sat two unseen two-hour examinations, also covering the range of topics covered in the syllabus.

Part I focuses on the practice of intellectual property law by presenting candidates with realistic factual scenarios and asking them to apply their legal knowledge and legal reasoning skills. I had the opportunity to comment on all of the assignment questions, in advance of them being released to candidates, and was satisfied that they were directed 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. The practice started in 2011 of requiring students to answer one essay question and one problem question has continued, which is a thoroughly good thing in my view. Interestingly, there was no significant variation in the quality of answers in both aspects of the paper.

The assessment processes were rigorous and fair. The Scrutiny panel was given ample opportunity to comment on the forms of assessment and assessors carried out their marking duties promptly. Consistency of marking between assessors was enhanced through the use of an agreed set of marking guidelines. I would encourage this practice to continue. The standards achieved in the coursework and examinations were in keeping with comparable institutions that offer Diploma courses.

I confirm that I was present at all Examination Boards, which were conducted with efficiency and entirely in keeping with the Examination regulations. One rather important issue that was discussed was the introduction of a Merit classification, so that awards of Pass, Merit and Distinction are available. The Examination Board (myself included) strongly supported such a proposal, not least because it appropriately recognises the varying levels of performance that are attained across a challenging programme. As well, this sort of classification is standard practice for many other Diploma programmes in the UK. It was therefore disappointing that the Graduate Studies Committee and Law Board rejected this proposal. The reasons given by the GSC were fairly unconvincing (being largely inapplicable to this programme) and I would urge reconsideration of the proposal.

4. Standards of student performance

In the Diploma cohort, the standards of performance were high, with an appropriate number of candidates being awarded Distinctions. This is particularly impressive given the change to the classification conventions which made them more stringent for awarding a Distinction. Several people will have to resit one or more of their assessments, but this is unsurprising given the range and rigour of coursework and examinations and speaks to the quality of this programme rather than detracting from it. As mentioned above, I strongly support the introduction of a Merit classification – this would reflect overall consistency of performance whilst the Distinction award would reflect excellence of performance.

Dr Tanya Aplin
Professor of Intellectual Property Law
King's College London
25 September 2012

IMPORTANT – TO BE RETAINED FOR FUTURE REFERENCE

UNIVERSITY OF OXFORD

FACULTY OF LAW

DIPLOMA IN INTELLECTUAL PROPERTY LAW AND PRACTICE 2011-12

NOTICE TO CANDIDATES

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

ROLE OF THE PROCTORS

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

ROLE OF THE DIPLOMA ADMINISTRATOR

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

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

CANDIDATE'S EXAMINATION NUMBER

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

STATUTES AND OTHER SOURCE MATERIAL IN THE EXAMINATION ROOM

As part of a pilot scheme in the 2010-11 examination, candidates were permitted under certain conditions to bring into the examination room their own copies of the Butterworths Intellectual Property Law Handbook, 9th edition. The scheme is under review by the University Proctors and, if continued in 2011-12, the **10th edition of Butterworths Handbook** will be allowed into the examination room. Further details will be sent to you when the review has been completed, but the copy of the 10th edition taken into the examination room **must be absolutely clean and unmarked.**

UNIVERSITY OF OXFORD EXAMINATION REGULATIONS 2011 (for academic year 2011-12)

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 8 October 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 10 October.

Friday 4 November 2011 (1.00 pm) - Candidates must submit the required work to the Clerk of Schools, Examination Schools, 75-81 High Street, Oxford OX1 4BG. (See further A.3. below)

(ii) Second Coursework Assignment: Patents 2

Saturday 26 November 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 28 November.

Friday 6 January 2012 (1.00 pm) - Candidates must submit the required work to the Clerk of Schools, Examination Schools, 75-81 High Street, Oxford OX1 4 BG. (See further A.3. below).

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

Saturday 21 January 2012 - Assignment question paper will be handed out during the Workshop on this day, and will also be available from the Diploma Administrator on Monday 23 January.

Friday 17 February 2012 (1.00 pm) - Candidates must submit the required work to the Clerk of Schools, Examination Schools, 75-81 High Street, Oxford OX1 4BG. (See further A.3. below).

(iv) Fourth Coursework Assignment: Copyright

Saturday 3 March 2012 – Assignment question paper will be handed out in the Workshop on this day, and will also be available from the Diploma Administrator on Monday 5 March.

Friday 30 March 2012 (1.00 pm) - Candidates must submit the required work to the Clerk of Schools, Examination Schools, 75-81 High Street High Street, Oxford OX1 4BG. (See further A.3. below).

(v) Fifth Coursework Assignment: Designs

Saturday 21 April 2012 – Assignment question paper will be handed out in the Workshop on this day, and will also be available from the Diploma Administrator on Monday 23 April.

Monday 21 May 2012 (1.00 pm) - Candidates must submit the required work to the Clerk of Schools, Examination Schools, 75-81 High Street High Street, Oxford OX1 4BG. (See further A.3. below).

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

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. This is dependent on the timing of the completion of the marking process and may not always be possible.

The Reports of the Examiners and of the External Examiner on the previous years' examination are available for consultation on the Faculty website, <http://www.law.ox.ac.uk/publications/handbooks.php>. These reports contain (inter alia) information on examining methods and statistical analyses of performance.

3. Submission of Coursework Assignments

(i) Submission Requirements

Candidates are required to submit **two typewritten copies** of each coursework assignment. The coursework assignment must be typed or printed on one side of A4 paper only, with a margin of 3 to 3.5 centimetres on the left-hand side of each page. The text should be double spaced and the footnotes and quotations should be single-spaced. Pages should be numbered and stapled together, not held together by a paper clip. You must **not** write your

name anywhere on the coursework assignment or envelopes. All written work must be submitted in English.

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 and appendices).

Two copies of each coursework assignment must be delivered in an envelope to the Clerk of Schools, Examination Schools, 75-81 High Street, Oxford. The envelope should be addressed to: The Chair of Examiners for the Diploma in Intellectual Property Law and Practice, and your examination number should be printed in the top right hand corner of the envelope. With each coursework assignment you must include: (a) a statement, signed by yourself, that, except where otherwise stated, the coursework assignment is entirely your own work, and that no help was received, even bibliographical, with its preparation; and (b) a second statement indicating which part or parts of the coursework assignment have formed part of a submission in another context. To assist you, these statements have been incorporated into the template **Declaration of Authorship** for completion (see Schedule V and D. (second paragraph thereof) below). Delivery may be by hand, by courier or by registered post, but, if not made by hand, the envelope containing your written work (and addressed as instructed above) must be placed inside a delivery envelope which should be addressed to The Chair of the Diploma in Intellectual Property Law and Practice Examiners, c/o The Clerk of Schools, Examination Schools, 75-81 High Street, Oxford OX1 4BG. However delivery is made, the package **must arrive** by the deadline. **You are strongly advised to obtain proof of collection by a courier service or proof of posting.** (NB promises by the Post Office of 'next day delivery' may not be reliable). At the same time as you submit hard copies of each coursework assignment to the Examination Schools, you must also submit electronically a copy of that assignment to the Diploma Administrator for the Examiners. A random sample of coursework assignments will be checked for plagiarism using the *Turnitin* plagiarism software. See further D. below.

(ii) Late submission

Application to the Proctors for permission for late submission of coursework assignments should be made by the Diploma Administrator, on the candidate's behalf, before the submission date. 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* 2011, 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* 2011, Part 16.6.). The Examiners are naturally bound by this. It is necessary, however, to give guidance on the meaning of a 'word' in this context. Because of the manner in which word count software operates, legal citations often inflate the count. The Examiners have therefore determined that an allowance of an extra 3% should be permitted to candidates (should they wish to use it) above the figure of 3,000 words. The word count which appears on the coursework assignments must be the actual word count produced by the software. The word count must include all footnotes. You must ensure that any automatic word-count on the word-processing programme you use is set to count footnotes.

5. Academic integrity – avoidance of Plagiarism

See D. below.

6. Illness or other Causes affecting Candidates for examination

See B. 6. below.

7. *Withdrawal from entire Diploma examination*

See B.7. below.

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

1. *Timing and Place of Examination*

Monday 2 July 2011

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

The written examination papers will be taken at the Examination Schools in the 75-81 High Street, Oxford. Candidates are advised to reach the Examination Schools not less than fifteen minutes before the stated time of the examination. A bell will be rung some minutes before the examination to give candidates time to move to the examination room. Notices will direct candidates to the appropriate room. Seating in the examination room will be by desk number only. Seating charts will be displayed in the reception area, displaying candidates' names and desk numbers, as well as outside the examination room. You will need your University Card for each paper (see B.3.(i) below). Dark formal attire must be worn (eg lounge suit).

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

2. *Method of Assessment and Examination Technique*

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, Saturdays 19 November 2011, 9 June 2012 and 16 June 2012.

3. *Scripts*

(i) *Anonymity*

You will be informed of your examination number and you should bring to the examination room the note advising you of that number. You must **not** write your

name on any answer book. **Write your examination number only** in the appropriate place in each answer book you use. Please also bring with you to each examination your University Card. This must be placed face up on the desk at which you are writing.

(ii) Legibility

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

(iii) Rough work

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

(iv) Handing in scripts

It is the **candidate's own duty to hand in his or her scripts, either when collected from your desk by an invigilator, or 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

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

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

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

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

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

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

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

(ii) Examination Protocol

An Examination Protocol giving practical advice on the conduct of the examination is attached as Schedule II. This should be read before the examination. The document does not have official status and will not be placed on desks in the examination room. The Protocol also refers you to the Proctors' Disciplinary Regulations (see Schedule IV – *Examination Regulations* 2011, Part 19) and Administrative Regulations for Candidates in Examinations (see Schedule IV – *Examination Regulations* 2011, 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* 2011, 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* 2011, 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* 2011, 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* 2011, Part 10). If this applies, you should consult the Diploma Administrator. Applications for such arrangements **must be submitted to the Proctors by Friday 4 November 2011**. 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 (20 July 2012) 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* 2011, 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* 2011, Part 12). If this applies, you should consult the Diploma Administrator. Applications for such arrangements **must be submitted to the Proctors by Friday 4 November 2011**.

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* 2011, Part 14). A candidate may not withdraw from the Diploma examination after the written parts of the examination are complete. The point of completion is deemed to be the conclusion of the last paper for which the candidate has entered, or the time by which a dissertation or other written material is due to be submitted, whichever is the later. See further paragraph C.2. for provisions for re-examination. Candidates should contact the Diploma Administrator at once if any of these provisions apply to them; it may be necessary for the Diploma Administrator to apply to the Proctors on the candidate's behalf, and there are administrative consequences too.

8. *Materials in the Examination Room*

(i) Statutes and other Source Materials

Statutes and other source materials may only be brought into the examination room with the prior approval of the Proctors and then only subject to strict conditions. For Intellectual Property I and Intellectual Property II in 2010-11, as part of a pilot scheme, candidates were permitted under certain conditions to bring into the examination room their own copies of Butterworths Intellectual Property Law Handbook, 9th edition. The scheme is under review by the Proctors, and, if continued in 2011-12, the **10th edition (2011) of Butterworths Handbook will be allowed in the examination room**. Further details will be sent to you when the review has been completed, but the copy of the 10th edition taken into the examination room **must be absolutely clean and unmarked**.

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

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

(ii) Dictionaries

No dictionaries are allowed in the examination room.

(iii) Other materials

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

(iv) Food and drink

Candidates are permitted to take non-carbonated water, in a spill-proof bottle (this is strictly enforced), into the Examination Room. No other drinks and/or foods will be permitted except on medical grounds, and with prior approval. Water is also available in the lobby just outside the room. 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.

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 9 March 2012.

C. MARKING CONVENTIONS, ASSESSMENT STANDARDS AND RE-EXAMINATION

1. Marking Scale, Classification Conventions and Assessment Standards

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

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

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

(b) For the award of a Distinction in the Diploma in Intellectual Property Law and Practice a candidate must achieve marks of 70 or above in three or more papers, including in at least one of the written examination papers (Part II), and must have no mark below 55 in any paper. For this calculation, the coursework assignments count as five papers, and the examination papers count as two papers (making a total of seven papers in all).

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

2. *Re-examination*

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

D. ACADEMIC INTEGRITY – AVOIDANCE OF PLAGIARISM

Plagiarism is the copying or paraphrasing of other people's work or ideas into their own work without full acknowledgement. All published and unpublished material, whether in manuscript, printed or electronic form, is covered under this description. Collusion is another form of plagiarism involving the unauthorised collaboration of students (or others) in a piece of work. The Proctors Disciplinary Regulations concerning conduct in examinations (Schedule IV – *Examination Regulations* 2011, 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* 2011, 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* 2011, 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* 2011, 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

7 October 2011

Schedule I – Assessment Standards (Page 12)
Schedule II – Examination Protocol (Page 13-14)
Schedule III – Academic Integrity; avoidance of plagiarism (Page 15-19)
Schedule IV – Extracts from *Examination Regulations* 2011 (Page 20-37)
Schedule V – template Declaration of Authorship (Page 38-39)

SCHEDULE I

DIPLOMA IN INTELLECTUAL LAW AND PRACTICE 2011-12

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 2011-12

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 2011, Part 19) and the Proctors' Administrative Regulations for Candidates in Examinations (see Schedule IV - Examination Regulations 2011, Part 20). (The Proctors also draw attention to these Regulations in the Proctors' and Assessor's Memorandum – see Examiners' Edict, para. E.3.).

1. Please check that you are seated at the right seat in the examination room. This will be identified by desk number, not by name.
2. In order to prevent impersonation of examination candidates, during every written paper you must display your University Card face up on the desk at which you are writing.
3. Do not turn over the examination paper or begin writing until you are told you may do so.
4. You may remove jackets and ties during the examination, but you must be correctly dressed before you leave the examination room.
5. Do not put your name on any answer book. Write only Diploma in Intellectual Property and your examination number in the spaces provided.
6. Please read the instructions on the front of your answer book and observe them.
7. You may for your use take into the examination room an absolutely clean and unmarked copy of Butterworths Statutes on Intellectual Property, 10th edition (2011). 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 20 April 2012 for the Proctors' 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 (not standard screw top), into the Examination Room. Water is also available in the lobby just outside the room. No other drinks or food will be permitted except on medical grounds, and with prior approval of the Proctors. If you have been given prior permission by the Proctors to have items, such as food and drink, in the examination room, you must carry the permission letter with you and produce it if requested by an invigilator – see Examiners Edict, para. B. 8 (iv).
10. Diabetic students are permitted to take Silent blood testing kits, and glucose drinks (e.g. Lucozade) and/or glucose tablets (e.g. Dextro energy tablets) in case of hypoglycaemia into the Examination room, provided the Diploma Administrator has informed the Examinations Team in advance. Similar syringes/supplies and asthma inhalers are

permitted 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 must remain seated at your desk until the invigilator has collected your script from you.
16. At the end of the examination, please obey all instructions of the Proctors and their assistants and disperse quickly. In order to avoid nuisance to other members of the public, the Proctors' rules clearly prohibit you from assembling for any purpose in the entrance of the Examination Schools or on the streets outside. The Proctors' Code of Conduct for post-examination celebrations is available on <http://www.admin.ox.ac.uk/proctors>.

SCHEDULE III

DIPLOMA IN INTELLECTUAL LAW AND PRACTICE 2011-12

PLAGIARISM

What is plagiarism?

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

Why does plagiarism matter?

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

Why should you avoid plagiarism?

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

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

What to avoid

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

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

- **Verbatim quotation without clear acknowledgement**

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

- **Paraphrasing**

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

- **Cutting and pasting from the Internet**

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

- **Collusion**

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

- **Inaccurate citation**

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

2004), p. 189).

- **Failure to acknowledge**

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

- **Professional agencies**

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

- **Auto-plagiarism**

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

What happens if you are suspected of plagiarism?

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

If plagiarism is suspected in a piece of work submitted for assessment in an examination, the matter will be referred to the Proctors. They will thoroughly investigate the claim and summon the student concerned for interview. If at this point there is no evidence of a breach of the regulations, no further action will be taken. However, if it is concluded that an intentional or reckless breach of the regulations has occurred, the Proctors will refer the case to one of two disciplinary panels. More information on disciplinary procedures and appeals is available on the [Student Conduct section](#) of the Student Gateway.

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

Does this mean that I shouldn't use the work of other authors?

On the contrary, it is vital that you situate your writing within the intellectual debates of your discipline. Academic essays almost always involve the use and discussion of material written by others, and, with due acknowledgement and proper referencing, this is clearly distinguishable from plagiarism. The knowledge in your discipline has developed cumulatively as a result of years of research, innovation and debate. You need to give credit to the authors of the ideas and observations you cite. Not only does this accord recognition to their labours, it also helps you to strengthen your argument by making clear the basis on which you make it. Moreover, good citation practice gives your reader the opportunity to follow up your references, or check the validity of your interpretation.

Does every statement in my essay have to be backed up with references?

You may feel that including the citation for every point you make will interrupt the flow of your essay and make it look very unoriginal. At least initially, this may sometimes be inevitable. However, by employing good citation practice from the start, you will learn to avoid errors such as sloppy paraphrasing or unreferenced quotation. It is important to understand the reasons behind the need for transparency of source use. All academic texts, even student essays, are multi-voiced, which means they are filled with references to other texts. Rather than attempting to synthesise these voices into one narrative account, you should make it clear whose interpretation or argument you are employing at any one time (whose 'voice' is speaking). If you are substantially indebted to a particular argument in the formulation of your own, you should make this clear both in footnotes and in the body of your text, before going on to describe how your own views develop or diverge from this influence. On the other hand, it is not necessary to give references for facts that are common knowledge in your discipline. If you are unsure as to whether something is considered to be common knowledge or not, it is safer to cite it anyway and seek clarification. You do need to document facts that are not generally known and ideas that are interpretations of facts.

Does this only matter in exams?

Although plagiarism in weekly essays does not constitute a University disciplinary offence, it may well lead to College disciplinary measures. Persistent academic under-performance can even result in your being sent down from the University. Although tutorial essays traditionally do not require the full scholarly apparatus of footnotes and referencing, it is still necessary to acknowledge your sources and demonstrate the development of your argument, usually by an in-text reference. Many tutors will ask that you do employ a formal citation style early on, and you will find that this is good preparation for later project and dissertation work. In any case, your work will benefit considerably if you adopt good scholarly habits from the start, together with the techniques of critical thinking and writing described above. As junior members of the academic community, students need to learn how to read academic literature and how to write in a style appropriate to their discipline. This does not mean that you must become masters of jargon and obfuscation; however the process is akin to learning a new language. It is necessary

not only to learn new terminology, but the practical study skills and other techniques which will help you to learn effectively. Developing these skills throughout your time at university will not only help you to produce better coursework, dissertations, projects and exam papers, but will lay the intellectual foundations for your future career. Even if you have no intention of becoming an academic, being able to analyse evidence, exercise critical judgement, and write clearly and persuasively are skills that will serve you for life, and which any

Unintentional plagiarism

Not all cases of plagiarism arise from a deliberate intention to cheat. Sometimes students may omit to take down citation details when copying and pasting, or they may be genuinely ignorant of referencing conventions. However, these excuses offer no protection against a charge of plagiarism. Even in cases where the plagiarism is found to have been unintentional, there may still be a penalty. It is your responsibility to find out the prevailing referencing conventions in your discipline, to take adequate notes, and to avoid close paraphrasing. If you are offered induction sessions on plagiarism and study skills, you should attend. Together with the advice contained in your subject handbook, these will help you learn how to avoid common errors. If you are undertaking a project or dissertation you should ensure that you have information on plagiarism and collusion. If ever in doubt about referencing, paraphrasing or plagiarism, you have only to ask your tutor. There are some helpful [examples](#) of plagiarism-by-paraphrase and you will also find extensive advice and useful links in the [Resources section](#). All students will benefit from taking the [online course](#) which has been developed to provide a useful overview of the issues surrounding plagiarism and practical ways to avoid it. Graduate students who complete this course can include it in their skills training record on [Aspire](#). You will need to create a [SkillsPortal user account](#) before taking an online course.

The best way of avoiding inadvertent plagiarism, however, is to learn and employ the principles of good academic practice from the beginning of your university career. Avoiding plagiarism is not simply a matter of making sure your references are all correct, or changing enough words so the examiner will not notice your paraphrase; it is about deploying your academic skills to make your work as good as it can be.

SCHEDULE IV

DIPLOMA IN INTELLECTUAL LAW AND PRACTICE 2011-12

EXTRACTS FROM THE UNIVERSITY OF OXFORD EXAMINATION REGULATIONS 2011 (for academic year 2011-12)

The *Examination Regulations 2011* 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.

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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.

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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

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

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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.

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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.

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Part 8
Approval of Conventions and Submission of Papers to Examiners

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

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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.

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

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

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

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

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

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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.

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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

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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.

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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

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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.

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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 16.8 above, may, or his or her college may, appeal against it in accordance with the procedures set out in this regulation.

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

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

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

Appeals from decisions of examiners

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

Part 19
Proctors' Disciplinary Regulations for Candidates in Examinations

Made by the Proctors on 1 October 2003

Approved by Council on 30 October 2003

1. These regulations are made by the Proctors in the exercise of their powers under section 22 of Statute IX and are designated by Council as disciplinary regulations under section 6 (2) of Statute XI.

2. In these regulations: (1) 'examination' includes where the context so permits the submission and assessment of a thesis, dissertation, essay, 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).

IMPORTANT – TO BE RETAINED FOR FUTURE REFERENCE

UNIVERSITY OF OXFORD

FACULTY OF LAW

DIPLOMA IN INTELLECTUAL PROPERTY LAW AND PRACTICE 2011-12

SECOND NOTICE TO CANDIDATES

Part II – Two Written Examination Papers

MATERIALS IN THE EXAMINATION ROOM – NEW REGULATIONS

You were asked (in your initial offer letter) to bring with you to the residential programme your copy of Butterworths Intellectual Property Law Handbook, 9th edition (2009), and told that you are likely to be permitted to bring your own copy of the 10th edition (2011) (hereafter ‘Butterworths Handbook’) into the examination room subject to conditions to be imposed by the Proctors following review of the pilot scheme run in 2010-11. In the meantime, you were warned that your copy of the 10th edition must be kept absolutely clean and unmarked. The Proctors have now reviewed the pilot scheme, and the purpose of this Notice is to update the details given to you before the residential programme (also in the Examiners’ Edict dated October 2011, paragraph 8.(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. **Particular attention will be paid to personal possession markings (eg your name, the name of your chambers/firm) which must do no more than identify the ownership of the Handbook.**
2. Your copy of Butterworths Handbook will be inspected by the examiners/invigilators in your presence immediately before the start of the first examination paper (Intellectual Property I). This will be carried out as quickly as possible, but may result in a short delay to the start of the paper. Thereafter during the examination scrutiny will be conducted as part of invigilation and will be random. Your copy of Butterworths Handbook **must remain absolutely clean and unmarked** (see 1. above) **for the duration of the first and second examination paper** (Intellectual Property II), so do not write or mark it in any way during the first and second papers.
3. At the end of the first paper your copy of Butterworths Handbook **must be left on your desk in the examination room**. The inspection (see 2. above) will be repeated for the second examination paper (Intellectual Property II).

4. In the event of any infringement or breach of 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
20 April 2012

IMPORTANT – TO BE RETAINED FOR FUTURE REFERENCE

UNIVERSITY OF OXFORD

FACULTY OF LAW

DIPLOMA IN INTELLECTUAL PROPERTY LAW AND PRACTICE 2011-12

THIRD NOTICE TO CANDIDATES

Part II – Two Written Examination Papers

The purpose of this Notice is to explain the arrangements for the two written examination papers (Part II) on Friday 2 July 2012.

A. Examiners' Edict (pages 5 – 9 and Schedule II Examination Protocol))

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

Candidates are strongly advised to re-read Part B of the Examiners' Edict (pages 5 – 9) and the Examination Protocol (Schedule II); what follows in this Notice supplements the information in the Edict **and paragraph 4. and 6. below require action by you.**

1. Location, timing and title of examination papers

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

Monday 2 July 2012 9.30 – 11.30 am Intellectual Property I

2.30 – 4.30 pm Intellectual Property II

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

You are advised to reach the Schools no less than fifteen minutes before the timed start of the examination. A bell will be rung some minutes before the examination to give candidates time to move from the entrance of the building to the examination room. **Seating in the examination room will be by desk number only. Seating charts will be displayed in the reception area, displaying candidate and desk numbers, as well as outside the examination room.**

2. Anonymity and University Card

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

3. Materials in the Examination Room

Candidates are permitted to bring their own copy of the Butterworths Intellectual Property Law Handbook, 10th edition (2011) 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 (not standard screw top), 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 into the examination room Silent blood testing kits, and glucose drinks (e.g. Lucozade) and/or glucose tablets (e.g. Dextro energy tablets) in case of hypoglycaemia, also Insulin syringes/supplies, and asthmatic students may take in asthma inhalers, provided that in all these cases the Diploma Administrator has informed the Examinations Team in advance. If these provisions apply to you, please contact the Diploma Administrator **by Monday 18 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 Board of Examiners without the consent of the Proctors. The candidate should contact the Diploma Administrator as soon as possible so that a submission explaining the reasons for late arrival may be made to the Proctors.

Candidates who fail to attend a written examination paper without having obtained the prior permission of the Proctors are deemed to have failed the entire Diploma examination (not just that particular part of the examination) , unless the Proctors give instructions to the 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 18 June please give to the Diploma Administrator a telephone number where you (or someone who knows you) may be contacted on Friday 2 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
30 May 2012

SCHEDULE V

DIPLOMA IN INTELLECTUAL PROPERTY LAW AND PRACTICE

DECLARATION OF AUTHORSHIP

Name (in capitals):

Examination number:

Title of Coursework Assignment (in capitals):

Word count:

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

Please tick to confirm the following:

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

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

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

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

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

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

I have not copied from the work of any other candidate.

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

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

I agree to retain an electronic copy of this work until the publication of my final examination

result, except where submission in hand-written format is permitted.

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

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

Candidate's signature:

Date:

.....

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

Individual Reports

Coursework assignments

PATENTS 1

1. **Parties to the action**

It is important to consider all those who have involvement and all possible infringing acts. In some cases there was inadequate explanation as to the legal basis for making individuals such as Mr Cleanough liable. Others failed to consider at all other possible individual defendants such as the doctor and the players.

2. **Infringement**

Each integer of each claim needs to be examined in the context of the infringement. Terms can have a special meaning in the context of the patent. Full explanations need to be provided as to why words in the claims are to be given a particular meaning. Some candidates did not do this; others were superficial. Although not compulsory it may help to use the *Improver* test in some cases. For example, if it is argued that a sock is not a structure there has to be an explanation as to what "structure" means and why the sock is not within the meaning of the word. Care is needed, where claim charts are not used, to ensure that all integers are covered. Some candidates missed out a number of integers in their infringement analysis.

3. **Validity**

Some of the answers did not consider all possible prior art. (The sponge was missed by many and others did not address the prior disclosure of the draft patent specification).

As in the case of infringement some candidates did not address all integers of the claims when considering lack of novelty. In other cases prior art was dismissed without any proper explanation

Where it is decided that a particular item of prior art is not an anticipation it is important also to consider lack of inventive step. This was not always done.

Some candidates did not cover all possible grounds of invalidity, e.g. insufficiency and in particular *Biogen* insufficiency.

There was some confusion as to the effect of the disclosure of the draft patent specification before filing (but this is a difficult area.)

PATENTS 2

The objective of the coursework was to present candidates with a complex set of facts and ask them to prepare draft pleadings for use in the High Court (Patents Court) in the form of draft Particulars of Claim and Particulars of Infringement, draft Defence and Counterclaim and Grounds of Invalidity but without the need to prepare a draft Claim Form. 40 marks out of a total of 100 were allocated to the notes from the candidate for which there was a word limit of 3000 words. The purpose of the notes was to enable candidates to demonstrate their understanding of the procedural and substantive legal issues to be addressed in the coursework.

During the workshops, the tutors explained to candidates that it is a useful exercise to draft a chronology of events and, in addition, to prepare claim charts addressing infringement and validity questions. These are tools to analyse whether the alleged infringements fall within the scope of any or all of the claims of the patent in issue and whether any of the alleged prior art anticipates or renders obvious those claims. Some candidates included a chronology and claims chart as part of their coursework, but it was not necessary to do so and candidates who did not were not penalised.

When considering the Particulars of Claim and Particular of Infringement, the first task is to identify who are the correct claimants. In almost every case, candidates identified correctly that the inventor was Laura Davidos who had agreed to grant an exclusive licence under her patent to Golf Kit For You Plc. Both should have been named as claimants and candidates should in their notes have referred to the need to register the exclusive licence if this had not already been done. Some candidates noted that the question said that Laura Davidos had agreed to grant an exclusive licence but not that any licence had in fact been executed nor what its terms were. Others also pointed out that the terms of the exclusive licence might well be confidential, so that in practice it would be necessary to plead this fact and negotiate terms with the representatives for the defendants as to the basis on which such exclusive licence would be disclosed.

The candidates should identify which of the many potential defendants should be sued. In their notes the candidates needed to identify each of the potential defendants and the basis on which their activities might fall within the scope of Section 60 of the Patents Act 1977. If a decision was taken not to sue a particular individual or company, candidates needed to explain the reasons why in their notes.

The potential defendants are Carbonara & Sons Limited, Frank Hardy (director of Carbonara & Sons Limited), Gdansk Engineering Co. based in Gdansk, Poland, Weil Lei Ki Co. in Shanghai, Tyneside Golf Co. in Newcastle and possibly the director of Weil Lei Ki Co. in Shanghai, as well as other retail outlets including pro golf shops around the UK.

Carbonara & Sons Limited's product is stated to be virtually identical to the magnetic training putter sold by Golf Kit For You Plc. On analysis, it is identified as having an electronic switch in the golf shaft, a miniature battery in the golf head and the simulated golf balls which are hollow with a ferromagnetic lining. Consequently, the products themselves fall within claims 1, 2, (not 3 because the switch is electronic and not compression spring mounted), 4, (not 5 as the battery is not housed in the golf club head and not in the handle), 6, 7 and 8. Carbonara & Sons is infringing under Section 60(1)(a) by disposing of, offering to dispose of, using and/or

importing the product and/or keeping it whether for disposal or otherwise. It is also offering the means essential to infringe process claim 9 (if it is a valid claim) and possibly under Section 60(1)(b) offering for use a process of claim 9 by giving instruction as to how the golf training kit is to be employed. Knowledge in relation to Section 60(2) (the purpose for which the means is supplied) and Section 60(1)(b) needs to be pleaded (which means knowledge of the patent and that what was being done would be an infringement).

Gdansk Engineering Co. is manufacturing the magnetic putters but is doing so in Poland, therefore out of the jurisdiction. It might additionally be importing the magnetic putters into the UK but the information provided in the coursework gives no indication that it was doing so, but this issue needed to be commented upon by the candidates. Given the uncertainty, the better answer would be to note the possibility that they might be sued (which would depend on the terms of supply as to who did the importation) but not add them as a defendant.

The electromagnets are supplied by Weil Lei Ki Co. in Shanghai and this was done initially without any understanding as to the use to which they would be put. This changed when the managing director of the company made enquiries with Gdansk Engineering Co. to find out the purpose which the electromagnets are being supplied. This led to a product being sold by Tyneside Golf Co. supplied by Weil Lei Ki Co. in Shanghai but with a battery in the golf handle (so would infringe claims 5 but not claim 6 in addition to the other claims). The simulated golf ball, however, was described as a hollow metal sphere larger than a normal golf ball, so might not infringe claims 7 or 8. Some candidates identified Frank Hardy as the director of a local engineering company, Carbonara & Sons Limited as a potential defendant, as well as John Dalesford at Tyneside Golf Co. in Newcastle and the Chinese MD of Weil Lei Ki Co. in Shanghai. There was insufficient information to establish that the activities of each of the individual directors were such that they were joint tortfeasors or individually responsible for acts of infringement. As a result, no individual director should be named as a defendant. Other possible defendants would be the pro shop proprietors stocking magnetic putters and the individual pros who will be using the magnetic putters when teaching pupils. Bringing proceedings against either pro shops or the pros individually would not be a good commercial decision on the part of the claimants and consequently neither should be included as defendants to the action.

This commercial position does, of course, apply to Tyneside Golf Co. as it was stated to be a major retailer with shops in every UK shopping centre. In practice, the only way to restrain the activities of Weil Lei Ki Co. in supplying Tyneside Golf Co. would be to sue Tyneside Golf Co. As some candidates identified, even if Weil Lei Ki Co. was named as a defendant, on the basis of its possible importation of products into the UK, service of proceedings would not be straightforward.

Another question which many candidates addressed was whether there was any basis to Luke Rich's suggestion that he should have been named as an inventor of the patent and be entitled to a share of any proceeds of its successful exploitation. On the basis of the information provided, this seems possible as his contribution was to suggest Laura consider electromagnets in the context of a golf training device. It is not apparent, however, that he did anything further to implement that idea into the form of a product as such. There is also a question to be raised in

the notes as to whether Laura's employers, Thorpehaven Golf Club, would be entitled to claim any share in the invention on the basis she was doing the work as part of her employment. This seems unlikely given the facts. In any event, it would not be open to any other party (other than Luke Rich or Thorpehaven Golf Club) to plead lack of entitlement as a ground for revocation of the patent as this is not open to third parties who do not have an entitlement claim.

On defences, the only defence is that the patent is not infringed because it is invalid. None of the other standard defences such as experimental use, private non-commercial use, Section 64 or supply of a staple commercial product would apply, given the facts in the coursework.

As to the Counterclaim and Grounds of Invalidity, the candidates should rely upon the disclosure by Laura to Luke Rich to what she was planning in February 2009, although it is not entirely clear what they discussed. It should have been most, if not, all of the subject matters of Claim 1. Additionally, the prior use of the prototype by Laura when instructing Pi Wei and Rory Macintyre in April 2009 should be pleaded in relation to a lack of novelty. The notes should discuss whether this was in fact a full disclosure in an enabling fashion of the invention as set out in the claims. This in turn should have led to a discussion in the notes of any relevant case law relating to prior use.

As to lack of inventive step, the candidates needed to identify each of the pieces of prior art in turn and discuss in the notes whether it rendered obvious the invention of the patent. US Patent 3,112,156 disclosed a golf swing analyser with a permanent magnet attached to the head of the golf club and magnetic sensors spaced apart and in parallel relationship to the swing direction of the golf club. This showed the use of magnets in the head of the golf club, so might be a step towards the invention but it is not a strong prior art reference. This also applies to the article from "Golfers' World" of 2008. The article on electromagnets for kids was a useful starting point for a general understanding of electromagnetism at a very basic level and would form part of the common general knowledge. The John Brown Novelties catalogue and the availability of joke magnetic balls might be relevant, but magnetic balls attach permanently to the golf club. Ferromagnetic material is magnetisable. Ferromagnetic balls would be released once the electric current was turned off. This would not apply to magnetic balls which would be useless for putting as they would stick to the club face. The mechanical spring device used by Uncle Fred Twins was a useful starting point being closer to a mechanical equivalent to the invention, but at best could be relied upon only for lack of inventive step.

Some candidates correctly identified that the patent description insufficiently described how to make a simulated golf ball which had the features as described. Candidates did try to plead common design (which is far from straightforward to establish and difficult to sustain on the facts given the coursework). A number suggested that the magazine publisher that carried the advertisement should be sued, although this in itself is not an infringement. The difference between ferromagnetic and magnetic was widely misunderstood. Overall, however, the pleadings and notes were of a good standard.

TRADE MARKS AND PASSING OFF

Question 1

1. Comment on the issues of trade mark infringement arising from Megabrush's use of MagiBrush's trade marks

a. on the packaging; and

b. on the website.

(20 marks)

The question calls for comment on the use by Megabrush of MagiBrush's trade marks. This should have suggested to candidates that they were being asked to focus on the way that Megabrush were using the word MAGIBRUSH to refer to MagiBrush's products and the fact that their own products were compatible and could function as spare or replacement parts. Some candidates raised queries about whether they should be considering Megabrush's use of its own trade mark as a use of MagiBrush's trade mark because of the similarity between the marks. Although it is reasonable that candidates should notice the similarities between the marks, it was not to be expected that they would spend much time on this aspect of the problem here, as it comes in more naturally in Question 4.

Candidates might have recognised that the facts of the question followed quite closely those of the *DataCard* case which focuses on the spare parts aspects. Candidates who were astute enough to recognise this and follow the reasoning of Mr Justice Arnold in *DataCard* (provided they had the stamina to read the case) would have found that helpful to them.

Thus, here there clearly is use of the relevant sign by the third party, in this case use by Megabrush of the word MAGIBRUSH to sell products of Megabrush which it wants to be able to tell the public are compatible with the products of MagiBrush. It may be reasonable of it to want to do that, but the question is whether the way that it has done it is open to objection.

Mr Justice Arnold goes through the six conditions which must be satisfied for there to be a claim under article 5.1(a) or (b) of the Directive. As in the *DataCard* case the first three conditions are clearly satisfied here, that is to say that (i) there is the use of the sign by a third party, (ii) the use is in the course of trade and (iii) it is without the consent of the proprietor. The fourth condition is also satisfied in this case because the sign in question is clearly identical to the registered trade mark. Candidates should not therefore have spent a lot of time on about the rules for identity of trade marks in answering this question.

As far as the trade mark PRO-IMAGE is concerned, some candidates were concerned that Megabrush was using PRO-IMAGE along with the suffixes 2000 and Plus, which are suffixes which MagiBrush also uses. In the circumstances it would be reasonable to conclude that the mark being used is at least highly similar to the registered mark PRO-IMAGE. The suffixes 2000 and Plus would probably not "go unnoticed" by the average consumer so this should probably lead to the conclusion that Megabrush is not using the identical marks *as registered* although it is using the identical marks *as used*.

The time that needed to be spent in this question was on the fifth and sixth factors which are (v) whether the use is in relation to goods or services which are identical or similar to those for which the trade mark is registered and (vi) whether the use affects or is liable to affect the functions of the trade mark.

Here, the trade mark is being used for replacement brush heads for electric toothbrushes.

MAGIBRUSH is registered for goods in class 3 and for toothbrushes in class 21. Candidates should therefore have considered whether the brush heads for which the mark is being used were identical or similar to any of the products in those classes.

It would not have been expected that candidates would have known in detail how the Registry deals with issues of similarity in relation to these particular goods, although as regards class 3 they should have realised that the brush heads could not be identical to dentifrices (toothpastes). They should have given some consideration to whether a replacement brush head could be considered to be some form of dental care product or a product for dental hygiene and whether the fact that the goods were classified in class 3 made any difference to that.

As regards class 21, it would have been reasonable to consider whether a brush head intended as a replacement part for an electric toothbrush could of itself be regarded as a toothbrush, being some form of brush without a proper handle.

Subject to some reasonable discussion of those points, candidates should have come to the conclusion that the relevant goods were at least similar, but probably not identical to the goods for which the trade mark is registered.

As regards PRO-IMAGE, candidates should have noted that this mark is registered for electric toothbrushes in class 21, but unlike the application which Megabrush has filed, the specification of goods does not include parts and fittings for electric toothbrushes. Again therefore, the goods are at least similar but not probably not identical to the goods as registered.

This should have led to the conclusion that the question of infringement would involve an assessment of the likelihood of confusion.

Mr Justice Arnold spends a long time in his judgment in *DataCard* on the question of the relevance of post sale confusion to the issue of infringement under 5(1)(b), concluding that it could indeed be relevant. This might have been an issue in this case, if a customer ordered a brush head in full knowledge of its source but confusion occurred later.

Candidates should also have considered the question of the reputation of the marks and whether that would contribute to the likelihood of confusion. Given that MagiBrush is one of the largest suppliers of electric toothbrushes and has been selling them for 10 years, there would have been a reasonable assumption that it would have a reputation in the UK market.

The reasoning above should have led to the conclusion that the case corresponds to what Arnold J. refers to as DataCard's alternative case under s. 5(1)(b):

- The average consumer is an end user who is a reasonably well informed and reasonably circumspect consumer of electric toothbrushes and replacement parts for them.
- The trade marks are distinctive and have some reputation attached to them.
- The signs are identical to the trade marks as registered or at least similar.
- The goods are not identical to the goods for which the trade marks are registered, but are at least similar, perhaps very similar to them.

That should have led to a consideration of whether the manner of the use would give the impression that there is, or at least may be, a commercial connection between the supplier of the Megabrush products and MagiBrush and a conclusion that infringement is likely to be established on the facts.

Candidates should then have considered whether Megabrush would have had a defence to infringement under Section 11(2)(c) on the basis that the use of the trade mark is necessary to indicate the intended purpose of the product in particular as accessories or spare parts and whether they have been used in accordance with honest practices in industrial or commercial matters.

There should also have been consideration of the possibility of a case under section 5(3) given that the marks probably have a reputation and the question would then be whether the use of the marks in context takes unfair advantage of that reputation. Note that no issues of quality entered into the facts of this problem so there is no factual basis for concluding that the Megabrush products would necessarily have been of inferior quality and therefore that there would be any inevitability of tarnishment. Note that in *DataCard* there was also no evidence of inferior quality or customer dissatisfaction. However candidates might have considered this as a possibility and addressed the point that MagiBrush has no control over the quality of the products being supplied by Megabrush.

The question then reverts to a consideration of whether the use of the marks is without due cause and whether Megabrush has the necessary ingredients of the defence of section 11(2)(c) as considered above.

On the facts the use of the marks would appear to be necessary to inform the public of the fact that the Megabrush products can be used with the MagiBrush electric toothbrushes as replacement parts because there is "no other realistic way in which [Megabrush] could convey that information" This must extend to enabling consumers to navigate [Megabrush's] website to find the type of [product] they want" including by the use of the breadcrumb trail. As in *DataCard* what is really being complained about is not the fact that the signs have been used to indicate compatibility, but the manner of that use. Therefore the question turns on therefore whether the use of the marks in

context was in accordance with honest practices in industrial and commercial matters. This will not be the case if the manner of the use gives the impression that there is, or at least may be, a commercial connection between the supplier of the replacement parts and the original manufacturer.

It would have been a reasonable conclusion that the wording used on the packaging would not allow a reasonably observant consumer to know whether he was buying original MagiBrush replacements or was buying them from another supplier.

There should have been some separate consideration of the "bread crumb" trail as used on the website reaching the conclusion that this was probably ok in context. However, the wording used in relation to the replacement brush heads is also subject to objection in that it would not allow a reasonably observant consumer to make the necessary distinction.

There could have been some discussion of the possibility of post sale confusion. There should have been a small amount of extra marks for considering this issue however it is probably not such a major issue in this case as it was in the actual *DataCard* case.

The overall conclusion would seem to be that there is a problem with both the wording used on the packaging and on the website and some changes would be appropriate. Whether what has been offered is enough and what alternatives there may be is to be discussed in Question 3.

Question 2

2. Comment on any issues of passing off arising from the above. (20 marks)

Candidates here should have received marks for setting out the basic principles of passing off and applying them to the facts of the problem. Passing off does not seem to have figured in the *DataCard* case itself.

Whether there was a misrepresentation and potential confusion as to the source of the product should have been fairly clear on the basis of the wording used on the website and on the packaging. Megabrush is obviously seeking to sell replacement products and will do damage to MagiBrush's business if it is able to sell products to customers who want to buy genuine product and might be misled by the wording used to buy the third-party product.

Candidates should have discussed the essential difference between passing off and trade mark infringement in this context, where passing off would have required actual evidence of confusion or at least the likelihood of it, and the need to bring forward actual witnesses who could testify on these points. They should not simply have fallen into the trap of assuming what they had discussed in the first part of the question, reading this into the ingredients of passing off and coming to the conclusion that passing off was inevitably going to be found on these facts. Essentially, this question was a test to see if the candidates had understood the principles of the law of passing off and the distinctions between passing off and trade mark infringement in real situations.

Account should have been taken of the fact that MagiBrush is one of the biggest suppliers in the world of electric toothbrushes and has been selling its products for 10 years. It should therefore have been a reasonable assumption that it would have the necessary goodwill and reputation in the UK, although that might depend on how it sold its products in the UK, through distributors etc.

The issues relating to the confusion resulting from the wording used on the packaging and on the website would have been the same as in Question 1 and it would have been acceptable for candidates to cross refer to that as long as they emphasised the need for evidence to confirm those conclusions.

It would have been a reasonable conclusion that the necessary ingredients of passing off could have been found subject to witnesses being available to testify on these points.

Question 3

3. Do you think that the amendments proposed by Megabrush's lawyers are sufficient to deal with the issues raised by MagiBrush? If you were acting for Megabrush, would you propose any further amendments which might improve Megabrush's position? Comment specifically on any amendments you would recommend

a. to the packaging; and

b. to the website.

(15 marks)

In *DataCard*, Arnold J. concluded that the uses complained of gave rise to a likelihood of confusion on the part of end user consumers because the labels were likely to have led unsuspecting consumers to believe that the products emanated from DataCard, and there was nothing to indicate otherwise. It was immaterial if the consumers were not confused at the time of purchase, and such confusion only arose after purchase.

The same conclusion has reasonably been reached on these facts in relation to the original labels.

In respect of the amended label, Arnold J. found in *DataCard* "with some hesitation" that the description "Plus-Ribbon™ compatible with Data Card", was not used in context such as to give rise to a likelihood of confusion on the part of the average consumer.

It is likely that the first amended label (as used on the packaging) would be seen in the above light. The label used on the website is more doubtful perhaps and might be interpreted by the average consumer reasonably as referring to these being genuine MagiBrush products being supplied as compatible spare parts for the Pro-Image range.

Candidates might also have discussed the issue of post sale confusion even if a customer buying in a shop might be more likely to appreciate the true position based on the amended label.

Given that the lawyers for MagiBrush have expressed dissatisfaction with both the amendments that have been offered, candidates should have considered whether to stick to their guns on the first label or offer further amendments to both.

Of course in the artificial circumstances of the fictitious problem, the possibility of customer confusion is further enhanced by the similarities of the marks involved. This is a consequence of the two marks having an uneasy coexistence in the marketplace having evolved somewhat independently into this overlapping space where they each have their own use and reputation. This comes up more in Question 4, but it does suggest that the amended labels might have to be particularly carefully worded to remove the likelihood that reasonably circumspect consumers could be confused.

Possible amendments to the labels might be the following:

REPLACEMENT BRUSH HEADS

Compatible with MAGIBRUSH® brand Electric Toothbrushes

Made by MEGABRUSH

and:

REPLACEMENT BRUSH HEADS

Compatible with

MAGIBRUSH®

Pro-Image 2000® and Pro-Image Plus®

MADE BY MEGABRUSH

but any reasonable suggestions by candidates which showed that they had appreciated and addressed the issues should have been acceptable.

An express disclaimer of any connection between the products and MagiBrush might also have been considered.

Candidates might have cautioned against the use of the ® symbol in the labelling because the MEGABRUSH application is not yet registered for parts for electric toothbrushes, although of course MEGABRUSH is already registered for toothbrushes. It might be the most prudent

course to recommend against the use of the symbol or at least restrict it to the MagiBrush trade marks.

Question 4

4. Comment on MagiBrush's prospects of success in an opposition to the MEGABRUSH trade mark application and on any points Megabrush might be expected to make in response to such an opposition, including in relation to any of the other trade mark registrations of MagiBrush. (40 marks)

Candidates needed to appreciate the order of things properly to answer this question. The registrations and other events come in this order.

The earliest registration is MEGABRUSH registered 2001 (classes 3 and 21)
MAGIBRUSH registered in 2002 for class 3.

Use of MAGIBRUSH "over the last ten years" so also from about 2002 on electric toothbrushes.
The problem is not specific about when Megabrush's use began.

MAGIBRUSH registered in 2009 (class 21 - toothbrushes).

PRO-IMAGE registered in 2009 (class 21 - electric toothbrushes).

MEGABRUSH applied for 2011 (class 21 - electric toothbrushes and parts etc).

One of the issues in this question which candidates might have been expected to recognise is that the trade mark registrations of MagiBrush do not really fit very well with the realities of its business. As far as we know, it does not make or sell any dentifrices (toothpastes) or any other dental care or dental hygiene products. Nor does it make or sell toothbrushes other than electric toothbrushes.

If it opposes, it will have to do so based on its registrations of 2002 and 2009 for MagiBrush and possibly on its use. The registration of Pro-Image would not seem to be relevant.

Candidates should therefore have considered the similarities of the two trade marks taking into account the usual global appreciation test considerations and in particular whether the two marks are visually, phonetically and/or conceptually similar. Visual similarity is clearly the strongest aspect, and it could be argued that the two marks are readily distinguishable on a phonetic and conceptual basis. However, taking account of the way in which the products are likely to be purchased (probably by self selection in a supermarket or chemists or over the Internet) the question of visual similarity is the most significant and visually the marks are really quite similar (same number of letters, same initial letter, differing by only two letters etc). It would therefore have been reasonable to come to a conclusion that there was a quite high level of similarity between the two marks.

Considering the goods, Megabrush is applying to register for electric toothbrushes and parts and fittings for them.

As far as we know, Megabrush does not at the moment sell electric toothbrushes itself, but it would be hard to base any objection to its application on that ground. It might have a genuine

intention to begin selling a range of its own electric brushes with the support of its Chinese manufacturer. Candidates might have considered whether there could be any ground of bad faith to be raised against the application but should not have spent too much time considering that as it is probably a non-starter.

If we assume that the opposition is based on the registration of 2002 it would be necessary to consider whether "dentifrices, dental care products and products for dental hygiene" are the same or similar goods to "electric toothbrushes and parts and fittings for electric toothbrushes". A reasonable answer would point out that the class 3 goods as specified would not extend to toothbrushes whether electric or otherwise but it would be necessary to consider the issue of similarity. This would bring in a discussion of how the goods would be sold, whether in the same shops or the same aisles of shops, and whether toothbrushes and electric toothbrushes are generally made by the same or different manufacturers and sold under the same brand names.

For example a shop such as Boots would sell toothbrushes, electric toothbrushes and other dental care products in the same shop, but not necessarily in the same aisles. Conventional toothbrushes and dental care products such as toothpastes, floss etc. would be sold in the same aisle but electric toothbrushes and the spare parts for them might be in the aisles for other electrical products. The brand names may or may not be the same, e.g. Philips might make electric toothbrushes but not other dental care products. Smaller chemists shops or supermarkets might sell ordinary toothbrushes and other dental care products such as toothpaste but not electrical products.

As long as there was a discussion showing that candidates had considered these issues it would have been reasonable to come to a conclusion either for or against similarity. On balance the better view is probably that there is some degree of similarity at least between some of the possible dental care products and the replacement parts for electric toothbrushes at least, so the opposition would depend on the likelihood of confusion.

Assuming the opposition is also based on the 2009 registration the position is clearer as toothbrushes and electric toothbrushes are obviously similar goods (even though there could still have been scope for discussion of the points above about different manufacturers, shops etc).

Accordingly on this basis MagiBrush's opposition would on its face seem to have a good chance of success.

However, Megabrush has a number of points to make in response.

It would not seem from the facts as presented that MagiBrush has used its 2002 registration on the goods for which it is registered. Since the registration is more than 5 years old (candidates should have made that assumption whether they regarded the 2002 date as actual registration date or the date of application), in the opposition they would have to provide evidence of use, in the absence of which this registration cannot be relied on in the opposition. Use on electric toothbrushes only is not likely to be accepted as evidence of use on dental care products etc as specified. Megabrush could also challenge the 2002 registration on the basis of its 2001

registration for "dentifrices", as well as making an application to revoke the registration for non use.

The 2009 application is not yet beyond its initial 5 year period and therefore MagiBrush would not be required to present evidence of use in the opposition. It would therefore seem on its face that MagiBrush should succeed based on this application. Indeed, candidates might have considered whether the lawyers for MagiBrush would have been better restricting their opposition to be based on that registration alone, subject of course to the next point.

However, Megabrush is able to counter with an application to invalidate MagiBrush's 2009 registration based on its own 2001 registration for toothbrushes. If the marks are considered similar, then this application by Megabrush must succeed. Nevertheless, candidates should have distinguished between this as a separate invalidation action which Megabrush would have to take, and understood that it is not a ground on which Megabrush can defend the opposition as such. However it can ask the Registry to suspend the opposition proceedings while its application for invalidity is dealt with.

MagiBrush can also oppose Megabrush's application on the basis of its own use of MagiBrush for electric toothbrushes going back about ten years. It would seem that an opposition under section 5(4) might have a good chance on the facts and this might be a better way for MagiBrush to approach the opposition than on the basis of its registrations, although of course this would not stop Megabrush from challenging those registrations anyway if it saw fit.

Candidates may have thought about acquiescence. This may apply in respect of MagiBrush's 2002 mark if Megabrush can be proved to have been aware of its "use", but since there has been no use on the relevant goods it cannot apply. Acquiescence cannot apply in respect of the 2009 mark because it has not been registered for long enough.

It would seem that the facts of the problem call for there to be some form of amicable co-existence between these two parties, although if Megabrush's business is seen to be tending more towards the electric toothbrush market, in particular if its recent application indicates that it is actually planning its own range of electric toothbrushes, that may be made more difficult given that the interests of the parties seem to be converging.

It might be a reasonable compromise for MagiBrush extract some further concessions from Megabrush as to how it will sell its own products in the future in return for not opposing Megabrush's application. It could also try to get some information on Megabrush's real intentions by asking it to delete electric toothbrushes per se from its application and see what it says, since at the moment it appears only to sell the replacement parts. Candidates may have noted that MagiBrush has not itself applied for MAGIBRUSH for electric toothbrushes and this is something it may want to rectify if it can get Megabrush to restrict its own application, or it may want to try to work into any agreement that Megabrush should not oppose any such application it might make.

Question 5

5. Briefly discuss how you would advise Megabrush to deal with the question from the reseller and what other action should it consider in that regard? (5 marks)

This question really just needed candidates to explain the provisions of section 21 and recognise that this was one of those situations which the threats provisions are really there to deal with.

It is not clear from the facts as stated whether there has been an explicit threat of trade mark infringement so the first step should be to obtain further details of what had actually been said or written. Subject to that a letter can be written to MagiBrush's lawyers drawing attention to section 21 and indicating that action will be taken by Megabrush if any further threats are made. Megabrush should assure the reseller that it is entitled to sell the replacement parts and is dealing with MagiBrush as regards any issues there may be about the wording of the packaging.

Megabrush can tell MagiBrush's lawyers that it will hold MagiBrush liable for damages if any of its resellers cancel their orders, and can also remind them that their firm may be liable if they have been responsible for making any such threats or were to repeat such threats in the future.

Candidates might have mentioned more general competition law considerations if MagiBrush has a dominant position in the market for electric toothbrushes (unlikely) and is trying to eliminate a competitor from the market.

COPYRIGHT

On the whole the 2011-12 copyright coursework assignment was well done. There were three fails which is always disappointing, but also two distinctions.

Exercise 1 was generally well done. The better candidates were able to apply the test for copyright infringement to the detailed facts scenario and materials provided in the question which were based on a real life example. The weaker candidates neglected to map the infringement criteria on to the materials and did not come to a view as to whether there was infringement or not. The use of analysis in tabular format by some candidates was not thought to be a particularly good idea by the examiner as it was difficult to include detailed analysis text in the column format.

A number of the weaker answers did not raise the issue of whether the replication of the methodology in the allegedly infringing copy was merely the taking of a "general idea" and therefore non-infringing.

The better answers to exercise 1 question 2 dealt with the knotty issue of copyright in speeches and *Walter v. Lane*.

Exercise 2 was generally well done. This exercise is based on the recent cases relating to infringement by ISP's under Section 97A CDPA 1988 and the recent "Pirate Bay" cases. Some of the weaker candidates omitted to mention that copyright infringement has to be present before it is possible to make an application against an ISP under Section 97A.

DESIGNS

To follow

Examination Papers

INTELLECTUAL PROPERTY I

This paper was answered well overall. The majority (66%) of students answered essay question 2 over question 1, with the most popular cases being *Schlumberger*, *Lundbeck*, *Brüstle* and *Eli Lilly*. Only a small number of students considered *Synthon*. Regardless of their choice of cases, the strongest answers were those which focused on a single theme or argument, such as the impact of the European patent system on UK law, or the role of policy in patent law decision-making.

Question 1 was answered less well than question 2. Some students confused the “scintilla of invention” test of inventive step with the requirement for an invention, and accordingly focused part (a) of their answers on EPC Article 52(2) & (3).

The problem questions were answered less confidently than the essay questions. The choice between questions 3 and 4 was almost equally weighted: 51% of students answered question 3 and 49% answered question 4. The best answers to question 3 were those which fully considered the current legal position regarding purpose-limited product claims in their discussion of the second patent’s validity and scope, including the problems to which they give rise in determining infringement, and whether Rackets would benefit from the patent being construed or amended to claim a use of RC. Few students identified insufficiency as an issue, and few applied *Kirin-Amgen* well, due to an uncertainty over what “purposive construction” in practice entails. Some students considered *Schütz v Werit* and the issue of “repair”, if only to dismiss its relevance, and most dealt adequately with infringement, though some without having properly resolved whether the invention was a product or process.

The focus of question 4 was very different. The best answers were those which (a) went beyond *Liffe* in considering entitlement, (b) engaged fully with the nature of the invention and its inherent patentability under UK and EPC law, and (b) engaged fully with breach of confidence, including its implications for patent validity and entitlement. The most common mistake was to read a potential patent infringement issue into the question by treating Ernest’s act of printing stickers describing the invention as constituting a use of the invention or offer for use of the invention under PA s60(1)(b), or the supply of essential means under PA s60(2). Another common flaw was failing to consider Mr Berry’s potential rights as an inventor, and the impact on those rights of his use of confidential information. Only one or two students referred to *Mustad v Dosen*, and none to the *Vestergaard* case.

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 (parallel imports) and copyright law (originality), respectively. Most candidates

elected to answer the copyright question. One problem question was on trade mark and passing off, while the other raised issues of design law. Two-thirds of candidates answered the trade mark problem question. The quality of answers to all questions was generally very good.

On Question 1, almost all candidates demonstrated good knowledge of case law across the range of parallel import issues that have been litigated in recent years. The best papers also engaged directly with the particular topic of repackaged goods, and connected the conditions that the Court of Justice has developed under Article 7(2) of the Directive with the purposes of trade mark law it has identified (often by connecting to its development of functional analysis).

Question 2 was extremely well answered. In particular, candidates displayed good knowledge not only of the content of the case law in this area (elaborating well both the traditional U.K. standard of originality and the European treatment of "author's own intellectual creation") but of the ramifications of that case law for U.K. law. Thus, most candidates went beyond direct treatment of originality to the efforts by the Court of Justice in *Infopaq* and later cases to address that topic indirectly through its treatment of reproduction and infringement.

Candidates attempting the design problem question showed a good knowledge of all the relevant potentially applicable rights. The best papers showed an awareness of points of ambiguity in the law, such as the effect on Unregistered Community Design Rights of first making a design available outside the European Union. Candidates almost universally handled very well the inconsistent treatment of commissioned works in design law. The poorer questions did not connect the elaboration of rights possible to the facts provided; even though there were some aspects for which further guidance would be necessary to give definitive advice, it was important to try to apply the law to the facts provided.

A larger number of candidates answered the trade mark problem question (Question 4). The biggest challenge with this question was the number of issues raised by the fact pattern. Examiners took this into account in marking, as almost no paper covered every issue in the same depth. The discussion of passing off was very good throughout, as was the treatment of the keyword advertising issue (despite its complexity). Candidates handled extremely well the difficult matter of trade mark functions, and several papers incorporated to good effect Mr. Justice Arnold's analysis (in *Datacard*) of *Google France*. Treatment of the strap line issue in the problem, and the comparison to *Specsavers*, was also well done. Candidates spent less time on validity than might have been expected (especially with respect the colour mark) and quickly concluded that distinctiveness acquired through use would remedy any initial problems. A fuller answer might have explored these issues in greater depth. The best papers also briefly addressed the ability of the claimant to secure the relief against all the defendant's activities (some of which were in Germany), requiring short discussion of jurisdiction.