

# Oxford Intellectual Property Moot 2020: Rules

## Abbreviations and Definitions

A4	References to A4 are to include paper of similar dimensions, such as US Letter
Bench	The group of judges for a given moot round in the Oral Proceedings
Moot	The Oxford International Intellectual Property Moot 2020
OC	The Moot Organising Committee
Oral Proceedings	The oral phase of the competition, to be conducted at Oxford on 19 to 21 March 2020; entry is by invitation only, based on the results of the Written Phase
Panel	The panel of judges for submissions in the Written Phase, as appointed by the OC
Written Phase	The first stage of the Moot, in which two 3,000 word submissions must be submitted by each prospective team by 3:00pm on Monday 9 December 2019 (Oxford time)

## Registration and Eligibility

1. The Moot is open to students who are enrolled on a full-time or part-time basis in a higher education degree, provided that:

- (a) such course is not a research degree in law;
- (b) he or she has not been admitted or licensed to practise law in any jurisdiction; and
- (c) he or she is enrolled at his or her institution at the date of the Oral Proceedings, or at an earlier time as permitted at the discretion of the OC.

Members of the OC are not eligible to participate as mooters, even if they otherwise meet the requirements of §1.

*Note to §1: prospective entrants who have any inquiries about eligibility are advised to contact the Moot Secretary at [moot@oiprc.ox.ac.uk] at their earliest convenience. The OC has received inquiries in the past about the status of paralegals, law clerks, and patent/trade mark agents. Merely being employed as a paralegal or clerk will not usually fall within the exclusion in §1, as such positions are often held prior to (or without) being admitted to practice. The status of patent and trade mark agents will depend on the rules in the particular jurisdiction, and the OC will advise on a case-by-case basis.*

2. Any entrant into the Moot is required to declare in their application that they are eligible to compete under §1. Anyone considered by the OC to have misrepresented their eligibility will be subject to an appropriate penalty determined by the OC, which penalty may include disqualification from the competition. Those wishing to apply for discretion under §1(c) should apply in writing for such a determination *prior* to entering their written submissions. Such applications should be addressed to the Moot Secretary at [moot@oiprc.ox.ac.uk].

3. A university or other higher education institution may only enter one team for the Moot. A team comprises two or three team members, each eligible under §1. The same team must prepare the written submissions and appear in Oral Proceedings. It is a matter for teams to decide which members speak (if at all) and in what order.

4. A team may be accompanied by one or two observers. Observers may fulfill a mentoring or coaching role for the team, but may not make any substantive contribution to the preparation of written submissions, nor contribute during Oral Proceedings. Additional observers may be admitted to the Moot at the discretion of the OC. For the avoidance of doubt, observers are not required to meet the conditions of §1.

5. On registration, each team undertakes to submit all documentation in good time to meet the deadlines set out in these rules. Additionally, each team undertakes to arrange timely payment of any fees. Late submission of any documentation or payment may lead to sanctions determined by the OC to be appropriate, including disqualification from all or part of the competition.

6. Each team is required to pay a moot registration fee of **£435**. This subsidized fee covers, amongst other things, registration of the team in the competition, drinks at the Thursday night welcome event, attendance (including food and drinks) at the *Conversazione* lecture and dinner, and attendance (including food and drinks) at the Saturday night Grand Final Dinner.

Any observers travelling with the team will be required to pay a separate registration fee, calculated on a cost-recovery basis. Details about the fee and arrangements for observers will be released separately on the moot website.

Team will be responsible for paying their own accommodation costs. The OC will make arrangements for bed and breakfast accommodation to be available at the host college (Pembroke College) at a discounted rate. Specific details regarding accommodation options will be released separately on the moot website. Teams will be able to book accommodation at the host college when registering for the Moot.

The moot registration fee, the team registration form, and any fees payable by observers as defined in §4, must be submitted by the Registration Deadline of **MONDAY 10 FEBRUARY 2020**.

7. A team is deemed to have applied to enter the competition when a completed team registration form has been received by the Moot Secretary. A team is deemed to have registered for the competition when all of the team registration form, a mooter registration form for each team member, and all the requisite fees as laid out in these rules, have been received.

8. Teams are entirely responsible for their own immigration arrangements. The OC can provide letters of invitation to help with visa applications, but teams are fully responsible for requesting these in good time to meet the appropriate deadlines. It is strongly recommended that such arrangements be commenced **immediately** after invitation to the Oral Proceedings. Teams unable to attend the Oral Proceedings because immigration arrangements were not made in good time will **not** be eligible for a refund of any fees for the Moot.

9. If a team deemed under §7 to have applied to enter the competition does not then attend the Oral Proceedings, they are deemed to have withdrawn from the Moot. They will no longer be considered for any awards, including those relating to written submissions, and their university or higher education institution will be invoiced for the full cost of their participation in the Oral Proceedings. In exceptional cases, such an invoice may be waived at the discretion of the OC.

10. Participation in the Oral Proceedings is by invitation only. Except as set out in this

provision, invitations will be issued on the basis of the results of the Written Phase (below, §14-§19). The total number of teams invited will be at the discretion of the OC. The winner of the previous year's Canadian Fox Moot will be granted entry into the Moot, provided they meet the eligibility requirements of §1. They will tender written submissions, and will accordingly be considered for awards for such submissions alongside other entrants. They will automatically gain an invitation to the Oral Proceedings.

*Note to §10: as an indication, the OC invited twenty-eight teams in 2018 and 2019 to participate in the Oral Proceedings, including the winner of the Canadian Fox Moot.*

**11.** If a team invited under §10 has to withdraw from the Moot, then the team with the next highest scoring set of written submissions under §16 may, at the discretion of the OC, be invited to the Oral Proceedings.

**12.** Should a member of a team have individually to withdraw from the Moot, the remaining team member(s) may continue in the Moot (if the team originally comprised three mooters) or withdraw from the Moot. The team may also apply in writing to the OC for permission to substitute a new team member. The OC will have total discretion in deciding whether to accept this request.

## The Competition

**13.** The competition comprises a Written Phase and Oral Proceedings.

### Written Phase

**14.** For the Written Phase, each team must prepare TWO sets of written submissions: one shall be on behalf of the appellant, and the other on behalf of the respondent. Instructions for the preparation of the written submissions will accompany the hypothetical. Additionally:

(a) The word count for each submission is 3,000 words, including all footnotes and headings. The word count must be indicated at the end of each submission; those exceeding the word limit will be subject to a points penalty at the discretion of the OC. For avoidance of doubt, the indication of the word count does not count towards the word count, and nor does any court heading or title page (so long as it does not contain any substantive material).

(b) Each submission should be formatted to include at least 1.5 spacing between lines, with document margins of at least one inch (2.54cm) on all sides. There is no prescribed font, although any type size that is smaller than Times New Roman 12 point should be avoided (except for footnotes, for which a smaller text is acceptable).

(c) A bibliography or separate list of authorities is not required.

**15.** The written submissions must be received by the Moot Secretary by **3:00pm on MONDAY 9 DECEMBER 2019 (Oxford time)**. No alterations to the written submissions are permitted after this deadline. Within their written submissions, teams must identify themselves **only** by use of the anonymous identifier given to them in advance by the Moot Secretary. To apply for this identifier, prospective teams should email the Moot Secretary at [moot@oiprc.ox.ac.uk] well before the submission deadline.

The Moot Secretary will acknowledge receipt of all written submissions by email. If a team has not received an email acknowledgement by **Friday 13 December 2019**, they should contact the Moot Secretary at the email address above.

16. Written submissions must be made as electronic attachments to an email addressed to the Moot Secretary. They must be supplied **in Microsoft Word format only**, with either a .doc or .docx file extension. Please add a cover sheet on each submission that includes your anonymous identifier, the word count and whether the submission is for the appellant or respondent. The text on the cover sheet will not count for the purposes of the word count.

17. The written submissions shall be adjudicated anonymously by a panel of judges, selected by the OC from the legal professions and/or academia.

18. The Panel will award a mark out of 20 to each submission for each of: (i) legal analysis; (ii) clarity of argument and persuasiveness; and (iii) research and use of authority. A further mark, out of 10, will be awarded for style. This will result in a mark out of 70 for each submission. These marks will be forwarded to the OC by the Panel.

19. The team with the highest combined score for both submissions (i.e., out of 140) will win the award for Best Written Submissions. In the event of a tie, the award will be made jointly.

20. As discussed further in §26, the written submissions will not be circulated to judges of the Oral Proceedings or to other teams. Each submission will be treated as confidential to the team that wrote it, and (unless permission is obtained) access limited to the OC and the Panel.

## Oral Proceedings

### *Conduct of moots*

21. This is an appeal. The facts of the case are admitted and agreed, and no new evidence or witness may be introduced.

22. There is no formal dress requirement, and no form of gown or court dress is required. However, mooters are advised to dress in a professional manner appropriate to a courtroom atmosphere.

23. Each mooter should address each judge as “My Lord” or “My Lady”, or “Your Lordship” or “Your Ladyship”. Collectively, the Bench should be addressed as “My Lords”.

*Example, in response to a question: “My Lord, we would submit that the learned judge was right. If instead your Lordship were to hold that...”*

24. The order and timings for each speaker are as follows:

	Speaker	Preliminary rounds, quarter finals and semi-finals	Grand final
	<i>Introductions (lead appellant and lead respondent)</i>	<i>Not counted in allocation of time</i>	<i>Not counted in allocation of time</i>
1.	Lead appellant	Between 15 and 17 minutes per speaker	Between 20 and 22 minutes per speaker
2.	Junior appellant		
3.	Lead respondent		
4.	Junior respondent		
5.	Rebuttal (lead <b>or</b> junior appellant)	Between 2 and 5 minutes per speaker	Between 2 and 5 minutes per speaker
6.	Surrebuttal (lead <b>or</b> junior respondent)		
<b>TOTAL TIME</b>		<b>A maximum of 35 minutes per team</b>	<b>A maximum of 45 minutes per team</b>

(a) Prior to the moot, each team shall confer with one another and then indicate to the clerk their timings for each speaker and the time reserved for rebuttal or surrebuttal. Once timings have been confirmed, they may **not** be altered.

(b) Each team shall have a maximum of 35 minutes to speak, except in the grand final, when they shall have up to 45 minutes. Timings must fall within the ranges in the table, above, and must be whole numbers.

*For instance, the appellant might reserve 15 minutes for lead counsel, 16 minutes for junior counsel and 4 minutes for rebuttal (total: 35 minutes). The respondent might then reserve 16 minutes for each of lead and junior counsel, and 2 minutes for surrebuttal (total: 34 minutes).*

(c) At the commencement of each moot, the lead appellant and lead respondent will each be asked to introduce him or herself and his or her junior counsel, and to indicate the timings reserved for the team. It is not necessary that a particular form of words be used. The introductions will not form part of the time allocation of time for each team.

*Example: “Good morning, my name is Ms X, and I appear as lead counsel for the appellant along with my junior counsel, Mr Y. I will speak for 15 minutes; Mr Y will also speak for 15 minutes; and we reserve 5 minutes for rebuttal.”*

(d) Time will be kept by the clerk, who will indicate to each mooter when he or she has five and then two minutes remaining, and when the mooter’s time has expired. **Mooters must not continue speaking after the expiry of time without first gaining the permission of the Bench.** The Bench will have discretion to grant such an extension, although the maximum extension that may be granted for any given speaker is **two minutes from the expiry of time**, with the exception of the rebuttal and surrebuttal, for which **no extension may be granted**. Teams should **not** assume that they will be granted extensions, and should structure their submissions accordingly.

(e) If a mooter finishes his or her submissions prior to the expiry of time, that time may not be “banked” (i.e., added to the time allocated to another mooter).

**25.** There is to be no communication by the mooters with anyone other than their fellow advocate, the Bench, and the clerk. Notes may not be passed other than between the two mooters appearing for a team. Whilst they are still active in the competition, teams may not send observers or scouts to other moots.

**26.** The scope of the oral arguments is not limited by the written submissions, and the judges of the Oral Proceedings will not have copies of such documents. Instead, each team should prepare a short skeleton argument for each of their appellant and respondent submissions.

(a) Each skeleton argument should set out the key propositions that each team intends to make, and the authorities on which they will definitely rely. Other points may be raised and authorities cited in response to questions from the Bench and arguments made by the opposing side.

(b) The skeleton argument must not exceed two sides of A4 paper for each team. Teams should identify themselves on the skeleton argument **only** by reference to the anonymous identifier used for the Written Submissions.

(c) When they register at the Oral Proceedings on Thursday 19 March 2020, each team

must submit **six copies** of the skeleton arguments for each of the appellant and respondent (i.e., **twelve copies in total**). These will be circulated to judges in the preliminary rounds in advance of each moot, in order to give the judges an opportunity to consider the arguments to be run and authorities to be relied upon by each side. Judges may wish to retain the skeleton to assist with scoring, especially if they have annotated the document. You should therefore not assume these documents will be returned.

(d) Additional copies of the skeleton arguments will also be required for teams that progress to the quarter finals and beyond. Each finals bench will be made up of three (or in some cases, five) judges.

(e) At each moot, teams should bring a clean copy of the relevant skeleton argument (i.e., appellant or respondent) to exchange with the opposing side. These documents must be returned at the conclusion of the moot.

(f) It is recommended that teams bring plenty of clean copies of their skeletons to the Oral Proceedings.

**27.** The remarks made in the rebuttal are limited to the scope of the respondent's remarks. A good rebuttal will make specific points about the arguments pressed by the respondent, and not merely recapitulate the submissions already made by the appellant. The surrebuttal must relate **only** to the specific points made by the appellant in its rebuttal.

**28.** Teams must supply to the Bench a bundle of the authorities relied upon in their oral submissions, including statutes, case law, academic articles and the like.

(a) **Each bundle (one of appellant and one for respondent) may comprise a maximum of 300 A4 sheets.** Sheets may be printed double sided but only 300 sheets are allowed in total, whether it is single or double-sided.

(b) In compiling the bundles, teams should include all authorities on which they are likely to rely, bearing in mind that: (i) oral remarks are not limited to the authorities in the skeletons and bundles; and (ii) the Bench will not look favourably upon strong reliance on an unduly narrow spectrum of authorities.

(c) In order to stay within the 300 sheet limit, teams are permitted to reproduce authorities in full or in part. Redacted or extracted authorities should include all aspects on which the team intends to rely. **In such cases, it is recommended that teams retain a full copy in their possession, which may be provided to the Bench if requested.**

(d) Highlighting of relevant portions of the authorities is strongly encouraged. Similarly, a sensible series of dividers or tabs is recommended to assist judges navigate between and within authorities.

(e) Teams should identify themselves on the bundles **only** by reference to the anonymous identifier used for the Written Submissions.

**29.** Each team must bring two bundles (one set for appellant and another set for respondent) to every round. These will be collected by the clerk before the start of the round for distribution to the judges. If they wish, teams may include the authorities they rely upon as both appellants and respondents within the same bundle.

**30.** Teams are wholly responsible for the production and provision of all written materials for the Oral Proceedings. They should not expect that any printing or reprographic facilities will be made available to them by the OC, the Faculty of Law, or Pembroke College.

### *Progress through competition*

**31.** There will be at least four preliminary rounds; these will be held on **Thursday 19 March (afternoon)** and **Friday 20 March 2020 (all day)**. Each team will participate in each round, appearing twice for the appellant and twice for the respondent. The OC will be responsible for the draw to decide which teams face one another in the preliminary rounds. This will be carried out in advance of the competition and the draw released at the Oral Proceedings. It is the responsibility of each team to ensure that they follow the competition schedule. Late arrival at a moot without a reasonable explanation may incur a penalty.

**32.** After the conclusion of each preliminary round moot, the judges will call a short adjournment, during which they will consider the performance of the mooters and decide on a winner. They will invite all mooters and audience to return, when they will make some general remarks regarding the performance of the mooters and indicate the winner of the moot. **Team and individual scores will not be announced.**

**33.** In the preliminary rounds, each Bench will be asked to award the following scores (in addition to determining the winner of the moot):

(i) **A team score.** This will be a mark from 1 to 10, where:

**9/10** = an excellent performance that displays the qualities of a semi-finalist or grand finalist;

**7/8** = a very good performance that displays the qualities of a team that will progress to the quarter finals;

**5/6** = a good performance that with improvement could be good enough for the team to progress to the quarter finals;

**3/4** = a solid performance of a team in the preliminary rounds; and

**1/2** = all other performances.

Across the four preliminary rounds, there is therefore a total of 40 points available per team.

In an extremely close moot, it is permissible for the Bench to give the same team score to both teams, however, it is not permissible for them to award a tie. It is permissible for the Bench to award half marks (e.g., 5.5 or 8.5).

(ii) **An individual score for each mooter.** This will be a mark out of 50, having regard to factors such as legal content, use of authority, courtroom manner, use of bundles, and responses to questions from the Bench. As an indication, an excellent mooter will score 40 and above, a very good mooter 35-39, a good mooter 30-34, and a solid mooter 29 and below. Only exceptional mooters will be awarded a mark greater than 45.

The aggregate of individual mooter scores for the winning team must be higher than for the losing team.

**34.** The teams will be ranked at the end of the preliminary rounds as follows:

(i) The **team scores** will be aggregated, and the teams ranked on the basis of those scores (from highest to lowest).

(ii) Where two teams have the same aggregate score, they will be separated according to **win/loss record**. If their win/loss record is also the same, they will be ranked on the basis of the **aggregate of individual scores** awarded to each mooter.

35. All finals will take place on **Saturday 21 March 2020**. The quarter finals will be drawn as follows:

1<sup>st</sup> **versus** 8<sup>th</sup>

2<sup>nd</sup> **versus** 7<sup>th</sup>

3<sup>rd</sup> **versus** 6<sup>th</sup>

4<sup>th</sup> **versus** 5<sup>th</sup>

Progress from the quarter finals to the semi-finals will be by knockout. As such, the judges in the quarter finals will only be required to select the winner of the moot. Team and individual scores will not be given.

36. The semi-final will be comprised:

Winner of 1<sup>st</sup> v 8<sup>th</sup> **versus** Winner of 4<sup>th</sup> v 5<sup>th</sup>

Winner of 2<sup>nd</sup> v 7<sup>th</sup> **versus** Winner of 3<sup>rd</sup> v 6<sup>th</sup>

Progress from the semi-finals to the grand final will be by knockout. As such, the judges in the semi-finals will only be required to select the winner of the moot.

37. In determining sides in the quarter finals, semi-finals and the grand final, the following rules will apply:

(i) If the two teams met in the preliminary rounds, they will argue the opposite sides to that round.

(ii) If the two teams did not meet in the preliminary rounds, the winner of a coin toss will decide which side each team will argue. The highest ranked team from the preliminary rounds will call the toss. Unless otherwise advised, the winner of the coin toss will have two minutes to allocate sides.

The winner of the Oral Proceedings is the team that wins the Grand Final.

38. The decision of the judges is final. Any concerns regarding the conduct of the judges must be addressed discreetly to the OC, and must not under any circumstances be raised directly with the Bench.

39. Scores from all rounds will be held confidentially by the OC. At the OC's discretion, applications by a mooter to see his or her scores only, or a coach to see the scores of his or her team, may be considered after the conclusion of the moot.

## **Awards**

40. The following will be awarded at the Grand Final Dinner:

The Allen & Overy Winner, Oral Proceedings

Include mentoring by Allen & Overy

Runner Up, Oral Proceedings

8 New Square Winner, Best Written Submissions

*The 2<sup>nd</sup> and 3<sup>rd</sup> place Powell Gilbert runners-up will also be announced.*

Best Individual Mooter in the Preliminary Rounds (the Sir Nicholas Pumfrey Award)

*To be eligible, a mooter must have spoken in at least two moots in the preliminary rounds; in these moots, he or she must have argued at least once for the appellant and at least once for the respondent.*

*Ranking will be undertaken by reference to the average individual score achieved by each eligible mooter in the preliminary rounds*

*The 2<sup>nd</sup>-5<sup>th</sup> place Herbert Smith Freehills runners-up will also be announced*

Highest Ranked Team After the Preliminary Rounds

Professor David Vaver Spirit of the Moot Award

*This award will be given to team that best embodies the spirit of mooting, having regard to such qualities as camaraderie, perseverance, respect of fellow competitors, passion, and academic excellence. The winner will be selected by reference to a vote of teams at the Oral Proceedings, along with feedback from judges.*

## **Discretion of the OC**

41. The OC may at any time amend or add to the rules of the Moot. In the event of a rule-change, notice will be given to all teams. Any questions of interpretation of the rules should be addressed, *via* the Moot Secretary, to the OC; during the Oral Proceedings, these should be addressed to members of the OC directly. Decisions of the OC are final and are not subject to any form of appeal.

42. The OC may, at their discretion, disqualify a team if they consider that there has been a serious violation of these rules, or in the event of other behaviour that is considered contrary to the spirit of this mooting competition. A team so disqualified may, at the discretion of the OC, be charged the full fee described in §9, as if they had withdrawn from the competition.