

Oxford Intellectual Property Moot 2021: Rules

Abbreviations and Definitions

2020 Teams	Teams who have been invited to participate in the Oral Proceedings on the basis of submissions made in December 2019
2021 Teams	Teams who have been invited to participate in the Oral Proceedings on the basis of submissions made in December 2020
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 2021
OC	The Moot Organising Committee
Oral Proceedings	The oral phase of the competition, to be conducted in March 2021; entry is by invitation only, based on the results of the two Written Phases (December 2019 and December 2020)
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

Registration and Eligibility

1. Subject to §1A, 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 practice 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.

1A. There is an exception to §1 for **original members** of the 2020 Teams. For those team members **only**, eligibility is to be judged at March 2020.

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 and, for 2020 Teams, §1A. Subject to §3A, the same team must prepare the written submissions and appear in the Oral Proceedings. It is a matter for teams to decide which members speak (if at all) and in what order.

3A. For the 2020 Teams, it is permissible for an original mooter to be substituted with a new mooter, so long as: (i) there remains at least one original mooter on the team; and (ii) any new mooter(s) meet the eligibility requirements of §1.

Note to §3A. It is not permissible for a 2020 Team to replace all of its original mooters with new mooters. If no team members from the 2020 Team are available to moot in March 2021, that university may select a new team and make new written submissions in December 2020.

4. A team may be supported by a third party or parties who fulfill a mentoring or coaching role. Any such individual must not make any substantive contribution to the preparation of written submissions nor contribute during Oral Proceedings. 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 **£200**. This subsidized fee is to cover the costs of running the Moot. Because the Moot will be run entirely online in March 2021, there will be no observer fees.

The moot registration fee and the team registration form must be submitted by the Registration Deadline of **TUESDAY 9 FEBRUARY 2021**.

For 2020 Teams, the sum of £235 will be reimbursed (this being the difference between the registration fee paid last year and the moot registration fee for March 2021) along with any observer fees.

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. [*Deleted for the 2021 Moot*]

9. If a team deemed under §7 to have applied to enter the competition does not participate in 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. The exception to this rule is for any teams that were invited to the March 2020 moot (which was subsequently cancelled) but who declined the invitation to participate in the Oral Proceedings in March 2021. Those teams **will** be considered for the prize for best written submissions for the 2020 Teams.

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 two Written Phases in December 2019 and December 2020 (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.

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 members may continue in the Moot (if the team originally comprised three mooters) or withdraw from the Moot (if the team originally comprised two mooters, or, for 2020 Teams, the mooter withdrawing is the sole original mooter). The team may 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.

13A. The oral proceedings that were scheduled to take place in March 2020 were cancelled due to the COVID-19 Pandemic. The OC decided that it would use the same moot problem for the competition in 2021. It also decided that teams invited to the March 2020 rounds could elect to participate in the Oral Proceedings in March 2021 so long as **at least one** original team member remained on the team.

Note to §13A: The eligibility rules have been adjusted for original mooters in 2020 Teams, as set out in §1A and §3A.

Written Phase (for 2021 Teams)

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 7 DECEMBER 2020 (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.

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

20A. In 2021, the Oral Proceedings will be conducted **wholly online**. The moot schedule will be prepared by the OC. Teams will be given advance notice of the schedule to assist with their planning. Best efforts will be made to avoid teams having to moot in the middle of the night. That said, teams should be prepared to moot outside of standard office hours (9am to 5pm).

20B. Teams will be given specific information about the platform on which moots will take place, how and when to enter that platform, and so forth. **All teams should ensure that they have the necessary technical infrastructure and support to participate online.** Although accommodations can be made where teams experience significant technical disruptions (see also §24(e)), it will not generally be possible for the OC to reschedule moots in response to technical issues experienced by teams, especially during the preliminary rounds.

20C. Each team shall have **up to 30 minutes per moot** to deal with technical issues **at their end**. This grace period shall apply to disruptions that **prevent the team from joining** the moot on time and to disruptions that occur **during that team's submissions** (but not those of the opposing team). To expand:

(a) Each moot shall have an official start time. Judges and teams shall be asked to be on the moot platform prior to that time; detailed instructions shall be given ahead of the Oral Proceedings.

(b) Where a team fails to join the moot within 30 minutes of its official start time, that team shall be deemed to have forfeited that moot. If one team member is present, the

moot may commence at the expiry of the 30 minute grace period. However, that team will forfeit the moot if the second mooter is not online when it is their turn to speak. It is not permissible for one mooter to present both the lead and junior counsel's submissions.

(c) If, during its submissions, a team experiences significant technical disruptions (see §24(e)), it may also draw on its 30 minute grace period (or whatever is left of that period) to rejoin the moot or deal with those issues. If the disruptions are so extensive that the grace period expires, that team shall be deemed to have forfeited that moot.

(d) If one team forfeits a moot, the other team will still present their submissions and (for the preliminary rounds) receive a team score.

(e) **For the preliminary rounds:** where a team can provide evidence that it forfeited a moot for technical reasons beyond its reasonable control, the OC shall have discretion to give that team a team score for that moot, this being the same as the lowest mark achieved by that team in its three remaining preliminary rounds. To illustrate, if a team has achieved team scores of 6, [*forfeit*], 7 and 5, the OC has the discretion to give a 5 for the forfeited moot, resulting in a total team score of 23.

(f) **For all finals moots:** after the preliminary rounds, progress is via elimination. If one team forfeits, the other team shall progress to the next round by default, although it must still deliver its submissions. If both teams forfeit, the OC has discretion to reschedule the moot or, if this is not possible, invite the highest-ranking losing team to progress.

20D. The grace period in §20C applies to technical disruptions suffered by teams. It does not apply to any technical disruptions suffered by the judges and/or clerk. If the latter occurs, the OC will use its best efforts to ensure that teams are not disadvantaged. For shorter problems during a moot, the relevant submission(s) shall be extended to reflect the time of the outage. For more significant technical disruptions, the responses of the OC include substituting a new judge, rescheduling the moot, or giving the affected teams the average team score of their other three moots.

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...”

23A. While they are giving their submissions, each mooter must have his or her camera and microphone on. If bandwidth issues are causing issues with the quality of the video, the Bench shall have the discretion to agree that the mooter turn his or her camera off.

When they are not mooting, all mooters should mute their microphones but leave their cameras on (unless instructed otherwise by the Bench or in the moot guidance).

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

	Speaker	Preliminary rounds and all final round prior to the Grand Final	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.	Senior appellant	Between 15 and 19 minutes per speaker	Between 20 and 24 minutes per speaker
2.	Junior appellant		
3.	Senior respondent		
4.	Junior respondent		
5.	Rebuttal by the appellant (senior or junior appellant)	Between 2 and 5 minutes	Between 2 and 5 minutes
TOTAL TIME		A maximum of 35 minutes per team	A maximum of 45 minutes per team

(a) Prior to the moot, each team shall indicate to the clerk their timings for each speaker and, for the appellants, the time reserved for rebuttal. 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 appellants might reserve 15 minutes for senior counsel, 16 minutes for junior counsel and 4 minutes for rebuttal (total: 35 minutes). The respondent might reserve 17 minutes for each of senior and junior counsel (total: 34 minutes).

(c) At the commencement of each moot, the lead appellant and lead respondent will each be asked to introduce themselves and their 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 senior 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 warn 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.

(e) The clerk will pause the clock where a significant technical disruption occurs during a mooter's submission. A "significant technical disruption" is one in which there is a technical failure for either that mooter and/or one of the judges such that it is not possible for the submission to continue. To illustrate, a short lag between the audio and video of a mooter would not count as a "significant technical disruption", whereas their internet connection dropping out or their video freezing would constitute such a disruption. Where a **team** experiences a lengthy technical disruption (or disruptions) **at its end**, the procedure in §20C will apply.

(f) The Bench will have discretion to grant an extension, although the maximum extension that may be granted for any given speaker is **three minutes from the expiry of time**, with the exception of the rebuttal, for which **no extension may be granted**.

Teams should **not** assume that they will be granted extensions and should structure their submissions accordingly.

(g) 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).

(h) In previous years, the respondent has been able to give a surrebuttal (i.e., an answer to points made in the rebuttal). This element has been removed from the 2021 moot, on the basis that there may be challenges for mooters to communicate quickly with one another when they are not able to moot from the same room.

25. During the moot there is to be no communication by the mooters with anyone other than their fellow advocate, the Bench, and the clerk. If permitted by the relevant COVID-19 rules in their country, the two mooters may sit in the same room. No other person may join them. That is, any third team member, coach, mentor or observer may only watch the moot online, from another room or location. For teams where COVID-19 restrictions are such that mooters cannot appear together, they may moot from different rooms or locations; and again neither mooter may be joined by any other individual. Given the COVID-19 pandemic, the two mooters may communicate discreetly with one another using electronic means (such as text messaging) as well as handwritten notes.

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) The skeleton arguments will be circulated to judges ahead of the preliminary rounds, in order to give the judges an opportunity to consider the arguments to be run and authorities to be relied upon by each side. In order to facilitate this, all teams must email their skeleton arguments to the Moot Secretary by **midday on Wednesday 3 March 2021** (Oxford time). There will be an opportunity for skeleton arguments to be updated after the preliminary rounds.

(d) At each moot, teams will exchange skeleton arguments electronically with one another.

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.

28. Ahead of the Oral Proceedings, all teams will be provided with an electronic, paginated Bench Bundle, which will include the problem (with corrections and clarifications) and all the authorities cited in the moot problem. The Bench Bundle will be provided to the judges. Teams may also produce two Supplementary Bundles (i.e., one for the appellants and one for the respondent), comprising other authorities (e.g., statutes, case law and academic articles) **on which they are likely to rely**. The relevant Supplementary Bundle will be provided to the judges for each moot.

- (a) Each Supplementary Bundle may comprise a maximum of 150 A4 pages.
- (b) In compiling their Supplementary Bundles, teams do not need to include every authority on which they might conceivably cite.
- (c) In order to stay within the 150 page 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, plus any necessary contextual material. That is, judges may not look favourably upon a single paragraph or page from a judgment, if this does not allow them to analyse how those statements are used by the team.
- (d) Highlighting of relevant portions of the authorities is encouraged. Similarly, teams should have clear directions on how the Bench should navigate the Supplementary Bundle (which is likely to be viewed electronically rather than printed out).
- (e) Teams should identify themselves on the bundles **only** by reference to the anonymous identifier used for the Written Submissions.

29. *[Deleted for 2021 Moot]*

30. *[Deleted for 2021 Moot]*

Progress through competition

31. There will be four preliminary rounds. Under the indicative schedule, these will take place in the period **Monday 8 March to Friday 12 March 2021**; this will be confirmed in advance of the Oral Proceedings. Each team will complete once 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. It is the responsibility of each team to ensure that they follow the competition schedule.

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. The quarter finals will be drawn as follows:

1st **versus** 8th

2nd **versus** 7th

3rd **versus** 6th

4th **versus** 5th

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 1st v 8th **versus** Winner of 4th v 5th

Winner of 2nd v 7th **versus** Winner of 3rd v 6th

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.

39A. If resources permit, there will be a "round of sixteen" at the end of the preliminary rounds (this round is scheduled tentatively for Sunday 14 March 2021). If this round is included, the draw shall be created via rankings (1st v 16th, 2nd v 15th, etc), and progress will be via knockout. Teams will be advised well ahead of the competition whether this round will be held, and the rules revised to reflect this change.

Awards

40. The following prizes will be awarded:

The Allen & Overy Winner, Oral Proceedings

Runner Up, Oral Proceedings

8 New Square Winner, Best Written Submissions (2020 Teams)

The 2nd and 3rd place Powell Gilbert runners-up will also be announced

8 New Square Winner, Best Written Submissions (2021 Teams)

The 2nd and 3rd 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 2nd-5th 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.