

LAW AND PRACTICE OF PATENTS

EXAMINATION PAPER 2024

Time Allowed: 3 Hours and 20 minutes

Answer **SIX** questions only. Any additional answers will be disregarded and **NOT** marked.

Candidates **MUST** answer Question Number 1 and Question Number 2.

In the event of a Candidate failing to answer Question Number 1 and Question Number 2 the examination paper of that Candidate will **NOT** be considered valid.

1. Aidan has devised what he believes is a new method of fast charging for electric vehicles. Due to a lack of funds, he has yet to build a prototype device that employs the method. In an effort to secure funding, he approached the manager of his local bank and verbally provided her with an outline of the concept, but she declined to consider making a loan in the absence of other investors who would be prepared to guarantee the loan and provide part of the funding. Thereafter Aidan prepared a written description of the method which he e-mailed to three separate companies involved in the installation of electric car charging equipment under cover of a letter headed "*STRICTLY PRIVATE AND CONFIDENTIAL*" that went on to invite the company in question to consider investing in the project. He has not heard back from two of the companies, but the third has responded to say that while it has no interest, it has forwarded Aidan's e-mail and the accompanying description to a "*tech entrepreneur*" who is related to one of its directors and lives in the United States.

Aidan has now sought your advice as to whether he has adversely affected his ability to obtain a patent.

2. Analyse in detail the decision of the Supreme Court in *Merck Sharp and Dohme Corporation v. Clonmel Healthcare Ltd* [2020] 2 IR 1 regarding the availability of interlocutory injunctions in actions concerning the infringement of patents and/or supplementary protection certificates, identify the factors that are likely to be influential when seeking this remedy and list the advantages and disadvantages of securing this remedy pending trial.
3. Discuss the concept of "*indirect infringement*" provided for in section 41 of the Patents Act 1992.
4. Set out in detail the procedural steps that have to be taken in order to oppose the grant of a European patent and the appellate structure applicable to a determination made in respect of such an opposition.
5. Explain the nature and purpose of divisional patents.
6. Identify the principles to be applied in determining the entitlement to apply for a patent as between employer and employee and the means by which a dispute on this issue can be determined.

7. Discuss the decision of the UK Supreme Court in *Actavis UK Ltd v Eli Lilly and Co.* [2017] UKSC 48 and consider whether the Irish courts should follow it when applying the equivalents provision contained in the Second Schedule to the Patents 1992 Act (as amended).
8. Discuss the concept of priority in the context of patent applications and set out the means by which priority is claimed.
9. Discuss the circumstances in which it would be advisable to seek to amend a patent after it has been granted, outline the procedure that has to be followed in order to do so, and identify the criteria by which the permissibility of a proposed amendment is to be determined.