

## LAW AND PRACTICE OF PATENTS

### EXAMINATION PAPER 2009

Time Allowed: 3 Hours

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. Tom Gavin is the proprietor of an Irish patent relating to improvements in the design of the cylindrical blade attachment for an electric lawnmower which cuts and slightly flattens the grass in one direction so as to create a noticeable stripe in the lawn. The attachment is of the same size and dimensions as traditional cylindrical blades and thus can be fitted to conventional electric lawnmowers. One of the claims in the patent reads:

*“A lawnmower fitted with the cylindrical blade attachment described in Claim 1 above.”*

Tom has discovered that Bevis DIY Limited is selling electric lawnmowers which contain blades identical to those described in his patent. Further investigations have revealed that the lawnmowers are being assembled by Clotts Limited which in turn procured the cylindrical blade attachments from Gower Mechanicals Limited. When challenged by Tom, Gower Mechanicals Limited claimed that it did not know that there was a patent in existence and simply manufactured the cylindrical blade attachments according to specifications furnished by Clotts Limited. Tom has also discovered that Clotts Limited manufactures the rest of the components for the lawnmowers save for the electric motors and cables which are supplied by Heaney Electrical Solutions Limited.

You have been asked to advise Tom as to which of the aforesaid persons would have a liability for patent infringement and in each case to explain the basis of that liability and the remedy or remedies which might be available.

2. Analyse in detail EITHER:

(a) The judgment of Kelly J in *Re Akzo Nobel N.V.* [2005] IEHC 411; [2006] 3 IR 321; [2006] 1 ILRM 209;

OR

(b) The judgment of McGovern J in *Novartis AG v. Controller of Patents* [2007] IEHC 442 (20<sup>th</sup> December 2007).

3. Outline the procedure to be followed in securing the restoration of a lapsed patent and set out the circumstances in which this is possible.
4. Set out the provisions which one would expect to find in a properly drafted:
  - (a) Patent assignment; and
  - (b) Exclusive patent licence.
5. 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.
6. Analyse in detail the judgment of Kelly J in *Smithkline Beecham plc v. Genthon BV* [2003] IEHC 623 (28<sup>th</sup> February 2003) and consider what implications, if any, this decision has for the availability of interlocutory injunctions in patent infringement actions.
7. Define the criteria which must be satisfied in order to obtain a Supplementary Protection Certificate under Regulation 1768/92/EEC and set out the application procedure applicable thereto.
8. With particular reference to the recent decision of the English Court of Appeal in *Symbian Ltd v. Comptroller General of Patents* [2008] EWCA Civ 1066 (8<sup>th</sup> October 2008) and other relevant case law, discuss the principles to be applied when considering whether an innovation involving the use of a computer program is patentable.
9. Set out:
  - (a) The procedural steps which have to be taken in order that a European patent will have effect in Ireland;

AND

- (b) The procedural steps which have to be followed in order to oppose the grant of a European patent.