

LAW AND PRACTICE OF PATENTS

EXAMINATION PAPER 2010

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. Gemma is an engineering student who believes that she has invented a new chemical product that can be used to treat timber elements in older houses that are susceptible to damage through damp penetration. Gemma developed the compound in question last year while on a job experience placement with Button Partners, a firm of consulting engineers who were supervising renovation works on a house in Rathgar. The house was built in 1850 and now belongs to Tina. Initially Gemma discussed her idea with Frank, the engineer with whom she was working. Thereafter Gemma approached Gary and Howard, who were fellow students, who synthesised the compound in a university laboratory while following Gemma's written instructions and using materials that she had purchased from builders providers and a chemical company. With the permission of Frank and Tina, Gemma applied the compound to joists in the dining room of the house before they were covered with new floor coverings.

Gemma has since been advised that she should seek patent protection for her compound and/or the method for treating timber with that compound. You have been asked to advise her on whether the events set out above would compromise her chances of obtaining a patent.

2. Analyse in detail EITHER:
 - (a) The judgment of Kelly J in *Smithkline Beecham plc v. Genthon BV* [2003] IEHC 623 (28th February 2003);

OR

 - (b) The judgment of McGovern J in *Novartis AG v. Controller of Patents* [2007] IEHC 442 (20th December 2007).
3. Outline the concept of priority in the context of patent applications and set out the means by which priority is claimed.

4. Set out the requirements that have to be satisfied in order to obtain a short term patent and discuss the advantages and disadvantages of such a patent as compared with a standard patent.
5. Analyse the contribution which the Patent Co-operation Treaty has made to the process of applying for patent protection and explain how one goes about taking advantage of it.
6. You have been consulted by a client who has presented what he believes is a new type of rechargeable battery for use in devices such as mobile telephones, the principal advantage of which is that it recharges in a tenth of the time required for conventional rechargeable batteries. Outline the resources and techniques which you would use in conducting searches to determine whether there is a basis for seeking patent protection, and identify such other issues that you believe ought to be considered in this case.
7. Set out in detail the procedural steps which have to be taken in order to obtain a European patent.
8. Outline the rationale behind the Community Patent and consider such progress as has been made in bringing this concept into operation.
9. With reference to decided case law and relevant statutory provisions, discuss the principles governing patentability in the event of new medicinal use being found for a known substance that is already being used in medical treatment.