

# LAW AND PRACTICE OF PATENTS

## EXAMINATION PAPER 2013

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. Harry has devised what he believes is a new man-made fibre which, when combined with cotton or linen, produces wrinkle-free garments that return to their original shape after washing or dry-cleaning without the need for tumble-drying or ironing. He has found it difficult to find a potential investor or business partner to proceed with the commercial production of the fabric. Accordingly, he asked Keith (a tailor) to make a number of coats, jackets and pairs of trousers using a roll of the material (interwoven with cotton) which Harry had produced in his workshop. The roll of fabric was delivered to Keith and he duly made the required garments and delivered them to Harry. However, when Harry asked Keith to return the remains of the roll and the off-cuts Keith said that he had mislaid them. Six weeks later Harry appeared on the popular TV show “*Big Deal*” where, in keeping with the format of the programme, he made a presentation (which included models wearing the garments produced by Keith) in the hope that one or more of the six entrepreneurs on the panel would invest in his business. During the course of the exchanges one of the panel (who has a degree in chemistry) quizzed Harry about the formula for and mode of manufacture of his fabric. Harry answered these queries, but it later occurred to him that he had been unwise to do so and the producers of the show agreed to his request that the segment of the show where he did this would be edited out and not broadcast. The show did not have a studio audience. The show was broadcast without the aforementioned segment, but none of the panel offered to invest on terms acceptable to Harry.

Harry has sought your advice as to whether he could now successfully apply for a patent. In furnishing your advice you should also indicate how you would investigate (by means of searches or otherwise) whether the fabric and/or the use thereof identified by Harry is patentable.

2. Analyse in detail the judgment of Charleton J in *Glaxo Group and the Patents Act (Patent 65535)* [2009] IEHC 277 (26<sup>th</sup> June 2009) and in particular the consideration given to the differences between the Boards of Appeal of the European Patent Office and the English courts on the test of obviousness.

3. Write notes on **THREE** of the following:
  - (a) The *Anton Piller* injunction.
  - (b) An account of profits.
  - (c) A declaration as to non-infringement.
  - (d) Damages for patent infringement in respect of “*convoyed goods*”.
4. Outline and discuss the intended operation of and rationale for:
  - (a) Unitary patent protection within the European Union;

**AND**

  - (b) The Unified Patent Court.
5. With reference to decided case law and relevant statutory provisions, discuss the principles governing patentability in the event of a new medicinal use being found for a known substance that is already being used in medical treatment.
6. With particular reference to the following cases:
  - (a) *Ranbaxy Laboratories Ltd v. Warner Lambert Company* [2007] IEHC 256 (10<sup>th</sup> July 2007) (Clarke J);

**AND**

  - (b) *Medinol Ltd v. Abbott Ireland* [2011] IEHC 128 (10<sup>th</sup> March 2011) (McGovern J)

discuss the approach to be taken in interpreting patent claims in the context of an infringement action.
7. 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.
8. Set out in detail the procedural steps which 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.
9. Outline the procedure to be followed in securing the restoration of a lapsed patent and set out the circumstances in which this is possible.