

# LAW AND PRACTICE OF PATENTS

## EXAMINATION PAPER 2014

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. For many years Roland Klemfer has been attempting to develop a means of assisting people to give up the smoking of tobacco. Unlike techniques which involve satisfying the craving for nicotine (e.g. by means of a patch or chewing gum), Roland's approach involves inducing an allergic reaction in the smoker when he or she attempts to resume smoking. Roland has discovered that a known compound called VEBIX (hitherto used as an active ingredient in mouthwash), when injected into the body, will react with nicotine and cause the subject to suffer nausea and, in some cases, vomiting. When the nicotine dissipates the symptoms lessen and the subject will feel normal again in around four hours. A single injection of VEBIX will continue to produce this effect in an average adult for approximately one week. Roland is very keen to protect his discovery by means of a patent. It transpires that an article entitled "*Physical Deterrence in Kicking the Habit*", which appeared in the Ottawa Journal of Medicine in 1985, referred to the possibility of helping weak-willed smokers by making their bodies reject cigarettes. However, the article did not explain how this might be done. Roland seeks your advice.
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. Explain the nature and purpose of divisional patents.
4. 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.
5. Set out the procedural steps to be followed within the European Patent Office in order to pursue an opposition to the grant of a European patent and any appeal pertaining thereto.
6. Outline the concept of priority in the context of patent applications and set out the means by which priority is claimed.

7. While making appropriate reference to relevant case law, discuss the principles to be applied when considering whether an innovation involving the use of a computer program is patentable.
8. Discuss the circumstances in which an Irish patent can be amended after grant and how such an application for amendment can be made.
9. While making appropriate reference to relevant case law, consider the concept of insufficiency (as set forth in section 58(b) of the Patents Act 1992) as a ground for the revocation of a patent.