

## LAW AND PRACTICE OF PATENTS

### EXAMINATION PAPER 2016

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. Angelo is a botanist who is in favour of natural and non-chemical means of controlling weeds in domestic gardens and in horticulture. He has been working on a technique whereby particular enzymes that he has found to be susceptible to absorption by certain weeds (but not other plants) are introduced to the soil in lawns and flower beds. Once absorbed the enzymes cause the weeds to become attractive as food sources to slugs and snails in preference to other plants.

Advise Angelo as to whether, and if so to what extent, his technique could attract patent protection.

2. Outline and discuss the mode of operation of and rationale for:
  - (a) Unitary patent protection within the European Union;

**AND**

- (b) The Unified Patent Court.

3. 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.

4. While making appropriate reference to relevant case law, explain:

- (a) *AgrEvo* obviousness (T-939/92 *AgrEvo/Triazoles* [1996] EPOR 171);

**AND**

- (b) The concept of “*common general knowledge*” as applied in the context of obviousness.

5. Analyse in detail the decision of the Court of Appeal in *Boehringer Ingelheim Pharma GmbH and Co KG v. Norton (Waterford) Ltd* [2016] IECA 16 and consider what implications, if any, this decision has for the availability of discovery in patent revocation actions in Ireland.

6. Set out the requirements that have to be satisfied in order to obtain a short term patent, discuss the advantages and disadvantages of such a patent as compared with a standard patent, and identify any fields within which you believe that a short term patent would be particularly suitable or unsuitable.
7. You have been consulted by a client who has presented what he believes is a novel means of preventing air locks within the radiators of central heating systems. Outline the resources and techniques that you would use in conducting searches to determine whether there is a basis for seeking patent protection.
8. With particular reference to the following cases:
  - (a) *Ranbaxy Laboratories Ltd v. Warner Lambert Company* [2007] IEHC 256 (High Court - Clarke J);

**AND**

- (b) *Medinol Ltd v. Abbott Ireland* [2011] IEHC 128 (High Court - McGovern J)

discuss the approach to be taken in interpreting patent claims in the context of an infringement action.
9. Explain the purpose of a know-how licensing agreement, the circumstances in which one might find recourse being had to such an agreement and the provisions that one would expect to see in a properly drafted know-how licensing agreement.
10. 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.