

THE JOINT EXAMINATION BOARD

PAPER P1

BASIC UNITED KINGDOM PATENT LAW AND PROCEDURE

6th November, 1991

10.00 a.m. - 1.00 p.m.

Please read the following instructions carefully. This is a THREE HOUR Paper.

1. You should attempt no more than four questions from Part A and no more than three questions from Part B.
2. The number of marks allotted to each question is placed in brackets at the end of the question.
3. Where a question permits of reasons being given for the conclusions reached, such reasons should be given.
4. Start each question (but not necessarily each part of each question) on a fresh sheet of paper and number it clearly in the margin. Write on one side of the paper only using BLACK ink. You must write your examination number and the designation of the Paper in the top right hand corner of the sheet. You must NOT state your name anywhere in the answers.
5. Unless specifically requested answers are NOT required in letter form.
6. NO printed matter or other written material may be taken into the examination room.

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SECTION A

1. How is the extent of protection conferred by a patent determined? What is the earliest date the proprietor of a patent can bring proceedings for infringement? What is the earliest date from which an infringement of a patent may attract damages?  
(10 marks)
2. What are the grounds presently available for revocation of a patent granted under the Patent Act 1949? Who may apply for revocation of a patent granted under the Patents Act 1949?  
(10 marks)
3. What is meant by 'purposive construction'?  
(10 marks)
4. What is the term of a British patent granted under the Patents Act 1977? When must renewal fees be paid to keep a UK patent alive (mention any extensions of time that are available)? What is the time limit for applying for restoration if a patent lapses? The Comptroller must be satisfied about certain matters before he restores a patent - what are those matters?  
(10 marks)
5. What is meant by contributory infringement?  
(10 marks)

SECTION B

6. Outline the principal stages of a defended action for infringement of a patent in the Patents County Court.  
(20 marks)
7. Your client wishes to import a specific product. Your searches reveal a British patent granted under the Patents Act 1977, which is in force, and which has claims that embrace the product. The patentee is not willing to grant a licence and there are no grounds for applying for a compulsory licence. Investigations reveal a prior art document which is relevant to the broadest claim of the patent. When this is disclosed, the patentee applies to the Comptroller to amend the main claim to

distinguish the invention from this prior art. Is there anything that your client can do about this?

After the patentee has applied to amend you find a further item of prior art which is even more relevant, and which anticipates even the proposed amended version of the main claim. What options are now open to the client?

What would the position have been if your inspection of the file of the equivalent US patent showed that an item of prior art had been cited by the US examiner which anticipated the main claim of the British patent as granted, this prior art document having been cited in the US two years before the British patent was granted?

(20 marks)

8. Provide a summary of the important issues of two of the following cases:

- a. Windsurfing International v. Tabur Marine (1985) (Windsurfer)
- b. Hickman v. Andrews (1983) (Workbench)
- c. John Wyeth's and Schering's Application (1985) (Second Medical use)
- d. Raleigh v. Miller (1948) (Bicycle dynamo)
- e. Any other leading patent case before the British Court

(20 marks)

9. A new client writes;

"I am a retired schoolteacher, and I have found your name in the 'YELLOW PAGES' telephone directory. I have no knowledge of patents or anything like that, but I have invented a totally new type of lawnmower, where the blades move in a way which I have not seen before.

Please can you explain to me what has to be done to get a patent granted for this invention. I am only interested in the British market as no-one else seems to take any interest in lawns. Now that I am getting on in years (I will be 82 next birthday!) I find jargon difficult to follow - so please can you explain things as simply as possible."

Prepare a reply to your client. Do not go into the question of costs.

(20 marks)