

THE JOINT EXAMINATION BOARD
COMMON FOUNDATION LEVEL
UNITED KINGDOM DESIGNS AND COPYRIGHT LAW
11 November 1999
02.00p.m. - 05.00 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 four 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. In the appropriate boxes at the top of each sheet please enter the designations of the paper, the question number, and your Examination number. Write on one side of the paper only using **BLACK INK**. You must **NOT** staple pages together. 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 any other written material may be taken into the examination room.
7. Answers **MUST** be legible. If the examiners cannot read a candidate's answer, no marks will be awarded.

This paper consists of **twenty** pages, including this page.

NOTE: Pages 15-20 are to be returned as part of your answer script please remember to complete the boxes at the head of these pages.

This is page 1 of 20

Part AQuestion 1

- (a) What is the initial duration of a registered design filed without claiming Convention Priority ?
- (b) For how long may this period be extended:
- (i) for designs filed prior to the commencement date of the Copyright Designs & Patents Act 1998(CDPA) ?
 - (ii) for designs filed after commencement of CDPA ?
[Ignore any special provisions such as those for associated designs or transitional provisions concerning registrability.]
- (c) What are the provisions for renewal of registered designs after the expiry of the period initially allowed for renewal:
- (i) for designs filed prior to commencement of CDPA ?
 - (ii) for designs filed after commencement of CDPA ?

(10 marks)

Question 2

For what period does the owner of copyright in a drawing recording the designs for the following articles have the exclusive right to make an article to the design ?

- (i) a house of unique design, i.e. only one example ever built
- (ii) a 'mass-produced' pre-fabricated house, i.e. several hundred built from factory manufactured components and sold.
- (iii) a fifty foot high sculpture, 'The Angle of the North', based on an industrial pipe fitting. Consider:
 - (a) reproduction of the original design drawing for the pipe fitting, and
 - (b) reproduction of the artist's production drawings for the sculpture.*[Assume in both cases that the drawings were made after commencement of the Copyright, designs and Patents Act, 1988]*
- (iv) a typeface supplied
 - (a) as one of a number of print fonts on a computer disc
 - (b) as cast type in a printer

(10 marks)

This is page 2 of 20

Question 3

Your client, Melton Motors Limited, has contacted you for advice as to how to protect certain elements of the design of its new 'Z-type' sports car and associated products. Assuming all the designs are new, advise the client whether all or part of the following are likely to be registrable as designs and why:

- (a) A strikingly patterned seat cover which matches the decor of the rest of the interior;
- (b) A sporty tyre tread design which Melton intend to sell to other sports car owners;
- (c) A door panel;
- (d) An exhaust pipe which runs along the grooved underside of the car; and
- (e) A series of medallions bearing the new logo for the company

(10 Marks)

Question 4

Your client, a US corporation tells you that it has received advice from its US advisors that there is automatic design right protection in the United Kingdom for new products and that it does not need to seek Registered Design protection. Advise your client in note form of the main advantages and disadvantages of the two forms of protection.

(10 marks)

Question 5

Discuss what is meant by the following terms in relation to design right, with reference to case law where necessary:

- (i) "Original"
- (ii) "Surface decoration"
- (iii) "Copying"

(10 marks)

Part B

Question 6

Your client, Summer Magic Limited, has paid a freelance designer, John Dough, to design an inflatable paddling pool. The pool is of an unusual kidney shape, which John Dough copied from an instrument tray he saw when visiting his dentist. It also has a 'leaping dolphins' motif, of John Dough's creation. Your client is concerned by the fact that John Dough has recently set up a rival company, Big Splash Limited, and has begun to sell identical paddling pools, as well as traditional round ones, each bearing the same leaping dolphins motif.

Your client has no registered rights in the pool design and can find no written contract with John Dough for the design work. However, it has found an invoice dated 15 July 1989 "To advance payment on account for all professional services in new paddling pool design". The invoice has been signed by John Dough, who has also written on it "Paid in full". In fact, the new paddling pool design was not put on the market until 2 December 1996, as it took John Dough over a year to produce the first manufacturing drawings and there were then further delays due to production difficulties.

Assuming that

- (a) John Dough was paid for the design work prior to 1 August 1989
- (b) John Dough was paid for the design work after 1 August 1989

write notes concerning rights existing in the pool design, their duration and, hence, the possibilities Summer Magic have for preventing Big Splash Limited's marketing activities. *[Ignore any issues concerning trade marks or passing-off.]*

(15 marks)

Question 7

Your client, Canvas Designs Limited, manufactures and sells tents. Its most popular and highly successful model, the Romany, is a family size tent designed from scratch in 1996 by its Technical Director, Mr Paul Smith, and first marketed in the same year. In common with many other tents of this sort, the Romany has a square floor plan and slightly inwardly inclined sidewalls. An unusual feature of the design, giving the tent a distinctive overall appearance, is that rather than the standard arrangement of a pitched roof supported from a centrally positioned horizontal pole, the Romany has a single, sloping roof panel, supported at its highest edge from a horizontal pole forming the top edge of the sidewall containing the entrance flap. A downwardly sloping awning extends away from the pole, symmetrically with the roof panel, (See Figure 1).

Mr Smith is concerned that a competitor, Camping Crafts Limited, has recently introduced onto the market its 'Bedouin' tent, which is very similar in visual appearance to the Romany. He has written to Camping Crafts Limited, complaining that he believes the Bedouin to infringe design right in the Romany tent. In its letter of reply, Camping Crafts Limited denies design right infringement and explains:-

This is page 4 of 20

"Each and every panel of our Bedouin tent differs in shape and dimensions from the corresponding panel in the Romany. Tent panels and awnings having similar shapes are in widespread general use, and are by no means unique to your company.

Our tent frame uses our unique patented jointing system, whereas yours uses standard spigot and socket joints. In any event, our Patent Agents advise us that there can be no design right in a tent, where the frame must be designed to fit the size and shape of the covering material.

The Bedouin design originated from Rough Trade (Tentmakers) Limited, from whom we purchased the design rights shortly before they went into receivership. We did not copy the Bedouin from you."

Mr Smith is familiar with Rough Trade (Tentmakers) Limited. Six months ago, he was contemplating legal action against them over their 'Innuity' tent which closely resembled the Romany. On learning that they had ceased trading, Mr Smith decided not to take any further action against Rough Trade. He did, however, purchase a quantity of 'Innuity' tents in a liquidation sale, for resale as 'bankrupt stock'. When collecting these from Rough Trade's premises, his van driver noticed the dismembered parts of a Romany tent, lying in a shed with a sign on the door saying 'Design Department'.

Measurements taken from the three tents are as follows:

	Romany	Bedouin	Innuity
Base Dimension	3.57 m	3.25 m	3.25 m
Side Height	2.10 m	1.91 m	1.91 m
Side Slope (from vertical)	12°	15°	15°
Roof/Awning Slope (from horizontal)	25°	26°	26°

Write notes discussing (i) the subsistence of design right in the following items of the Romany and (ii) whether there is infringement by the corresponding items of the Bedouin

- (a) the shape and configuration of the tent as a whole
- (b) the tent panels
- (c) the tent frame

(15 marks)

[Question 7]

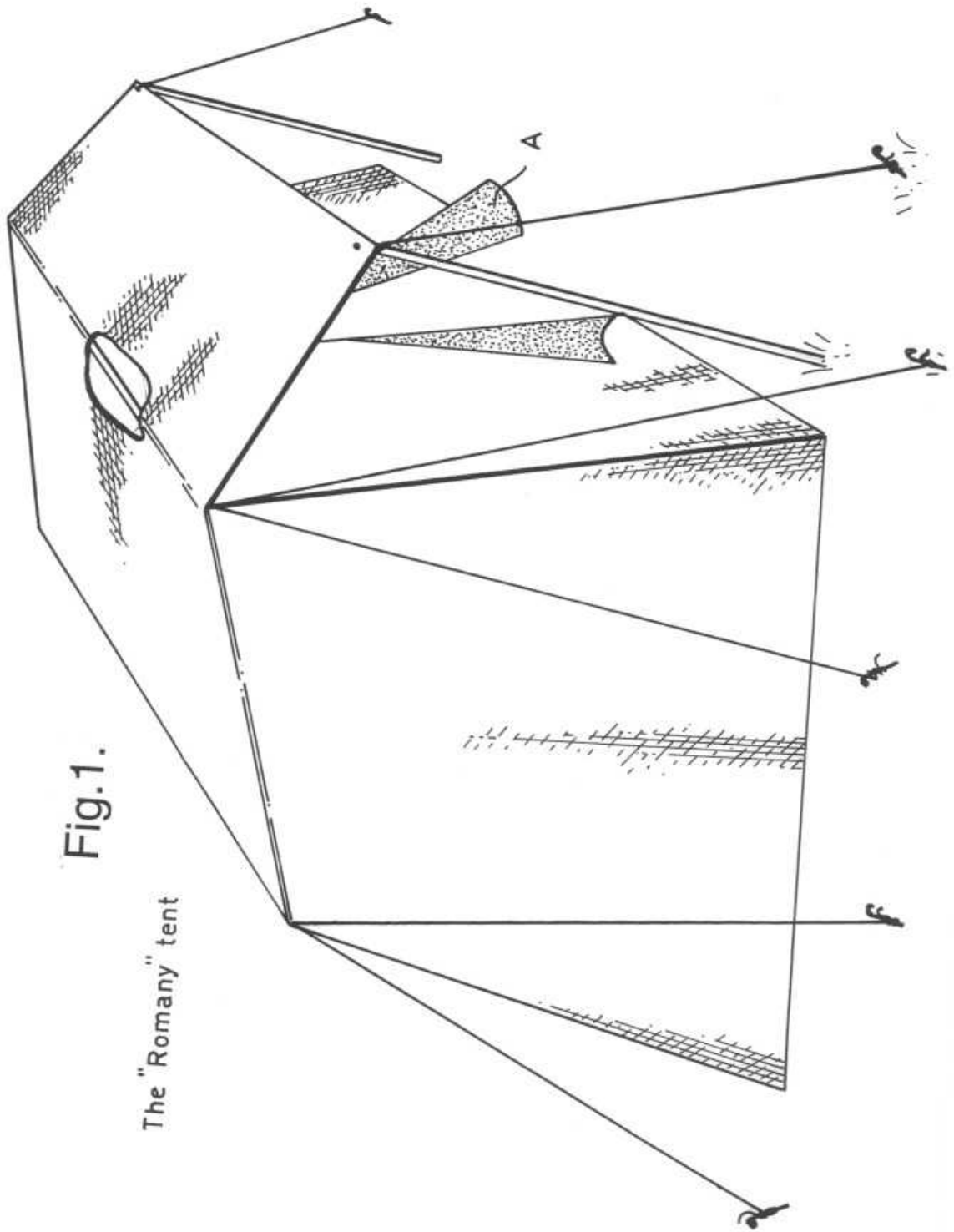


Fig.1.

The "Romany" tent

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Question 8

Your client is about to launch a new computer console in the United Kingdom.

- (a) A United Kingdom agency has this year produced the following for your client:
 - (i) a drawing and model of a cartoon character which is to appear prominently in advertising; and
 - (ii) the packaging design which is in the form of a three-dimensional space vehicle
- (b) On the client's instruction, the agency has also arranged for a freelance software designer to write (iii) a computer game program for use on the console
- (c) One of the client's employees, the office messenger, who is a computer enthusiast, has also written in his spare time (iv) an instruction manual for the console

Your client is concerned that his agreement with the agency does not refer to ownership of IP rights. Ignoring trade mark issues, discuss

- (a) what design or copyright protection is available for (i) to (iv) above
- (b) who is the owner of any rights in (i) to (iv); and
- (c) if your client is not the owner, outline the steps they should take and the legal requirements for transferring the rights.

(15 marks)

Question 9

For the following items, discuss (a) whether copyright subsists (unless otherwise stated, assume works have been created in 1999) and (b) whether there is any possibility of design registration.

- (i) a screen saver for a PC
- (ii) an original bottle created on 1 July 1989
- (iii) a circuit diagram
- (iv) a sculpture intended to form part of a lampstand; and
- (v) a recent translation of Macbeth into Serbo-Croat

(15 marks)

This is page 7 of 20

Question 10

It is 4.30 pm on 1 September 1999 when a courier package arrives from your Japanese associate. The package contains instructions for a United Kingdom design application in the name of a Japanese company, Ikibushi Kabushiki Kaisha, of 2402 Ninjong-ku, Seiji 1-chome, Tokyo, Japan, claiming priority from a Japanese filing on 1 March 1999. The representations in the package consist of fifteen sets of three colour photographs showing respectively a teacup, a milk jug, a coffee pot and a teapot, each having red petal motifs on a yellow background. You filed an application for the same client two weeks ago covering identically shaped articles but of entirely plain colour. You were instructed at that time to claim 'shape and configuration' in the Statement of Novelty.

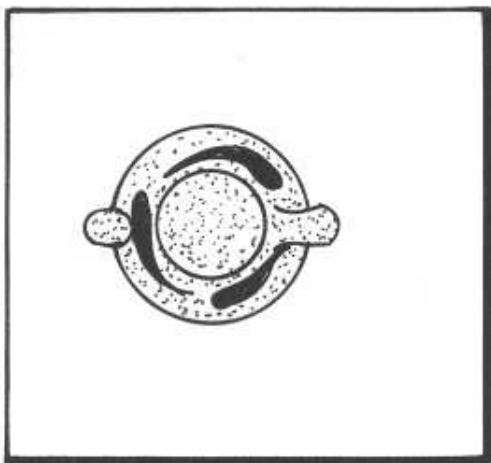
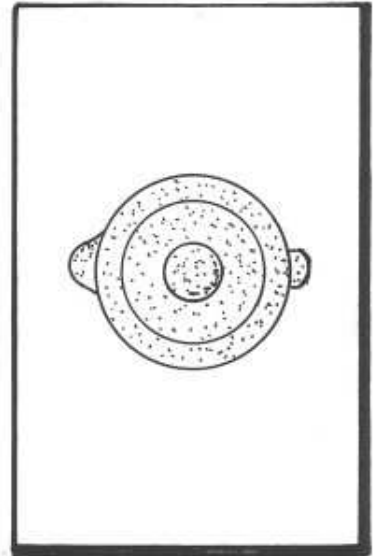
Your draughtsman is away on holiday and, in any case, due to the intense time pressure, you do not have much choice but to file using the colour photographs as representations. (You have tried making black and white photocopies, but the results are not satisfactory.) Copies of the photographs mounted on A4 paper are reproduced below. (NB the photographs are here shown in shades of black and white; black = red, dotted = yellow, but the actual representations to be filed include the colour photographs.)

Prepare these representations for filing and also complete the accompanying Designs Form 2A. How many sets of representations do you need to file ?

(15 marks)

[Question 10]

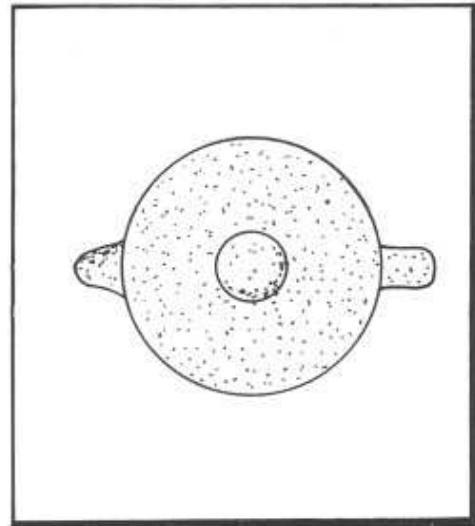
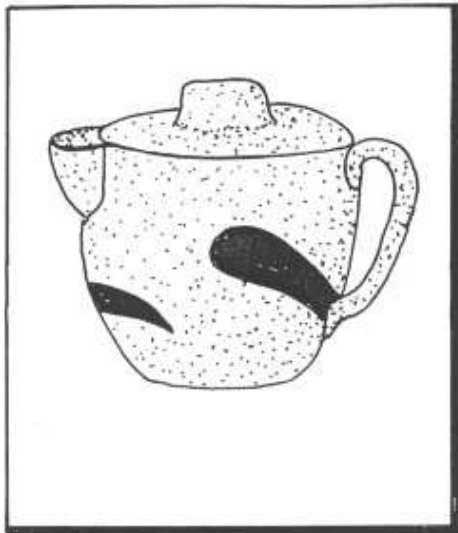
COFFEE POT



This is page 9 of 20

[Question 10]

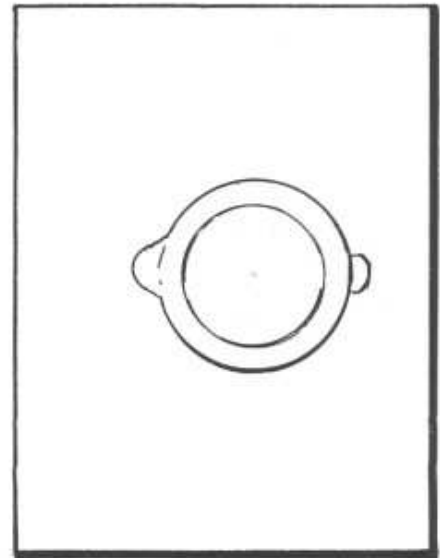
TEAPOT



This is page 10 of 20

[Question 10]

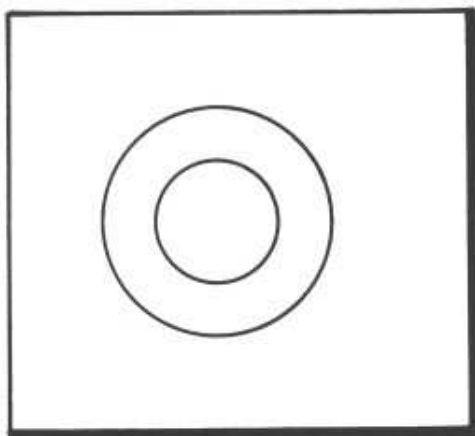
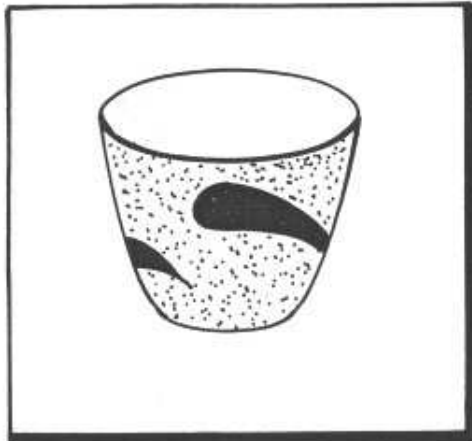
MILK JUG



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[Question 10]

TEACUP



Designs Form 2A

Registered Designs Act 1949
(Rules 6, 12 to 14 and 16)

The
Patent
Office

StudentBounty.com

The Patent Office
Designs Registry


Cardiff Road
Newport
Gwent NP9 1RH

Application for registration of a design

(See the notes on the back of this form)

1.	Your reference	df2a
2.	Full name, address and postcode of the or of each applicant (Names of individuals including all partners in a firm must be given in full. Underline the surname or family name. for a corporate body give its company name.) Designs ADP number (if you know it) If the applicant is a corporate body, give country/state of incorporation	
3.	Name of agent (if you have one) "Address for Service" in the United Kingdom to which all correspondence should be sent (including the postcode) Designs ADP number (if you know it)	Hunky & Dory 221b High Holborn London WC1X 1ZZ 00001234001
4.	Name the particular article or set of articles to which the design applies Write the fee code S, T or O (see note (f))	
5.	Association: Enter the number of any earlier design application or registration with which the applicant seeks association under section 4	
6.	Declaration of Priority: (If any)	Country Date of filing (day / month / year)
Give the Convention country and filing date of any previous application made abroad from which priority is claimed under section 14		
7.	If 6 above applies, and the previous application was not made in the name(s) given at part 2, give details of the instrument (for example, deed of assignment) which gives the applicant the right to apply for registration. Include appropriate names(s) and date(s). (If this information is not given at the time this form is filed you must supply it before the design is registered.)	

Designs Form 2A

8	Divisional application: Give the number and filing date of any relevant earlier application whose filing date is claimed under rule 34	Number	Date of (day / month / year)
<hr/>			
9.	Declaration	<p>I/We apply to register the design shown in the accompanying representations or specimens. I/We declare that the applicant(s) claim(s) to be the owner(s) of the design in relation to the article or set of articles specified at part 4 overleaf and to be the owner of any design right that exists in this design. I/We also declare in respect of any entry at part 6 above that the application made in the convention country upon which the applicant relies is the first application made for registration of the design in a convention country.</p>	
		Signature(s)	Date
			01/09/99
<hr/>			
10.	Name and daytime telephone number of person to contact in the United Kingdom	John Smith 0171 405 9876	
<hr/>			
11.	<p>Checklist</p> <p>Make sure you have enclosed:</p> <ul style="list-style-type: none"> • representations or specimens of the design (See note (c)) • any continuation sheets (See note (e)) • the relevant fee (See note (f)) 		

Notes

- a) If you need help to fill in this form or you have any questions, please contact the Patent Office on 0645 500505
- b) Write your answers in capital letters using black ink or you may type them.
- c) This form should be accompanied by four (five if the application is for a set of articles) identical representations (for example, drawings or photographs) or specimens of the design. Except in the case of an application for a design applied to lace, a textile article or wallpaper (or similar wall covering), a statement of the features of the design for which the novelty is claimed (a "statement of novelty") should appear on each representation or specimen. In the case of representations or specimens which consist of more than one sheet, the statement of novelty should only appear on the first sheet. If it is impracticable for the statement of novelty to appear on a specimen, it may be given on a separate sheet. Specimens may sometimes need to be replaced by representations.
- d) If words, letters or numerals appear in the design, the Registrar will normally require a disclaimer of any right to their exclusive use to appear on each representation or specimen.
- e) If there is not enough space for all the relevant details on any part of this form, please continue on a separate sheet of paper and write "see continuation sheet" in the relevant part. Any continuation sheet should be attached to this form.
- f) Different fees are payable according to whether the application relates to a design for:
 - a set of articles (fee code S)
 - a single lace article or textile article mainly of checks or stripes (fee code T)
 - any other single article (fee code O)

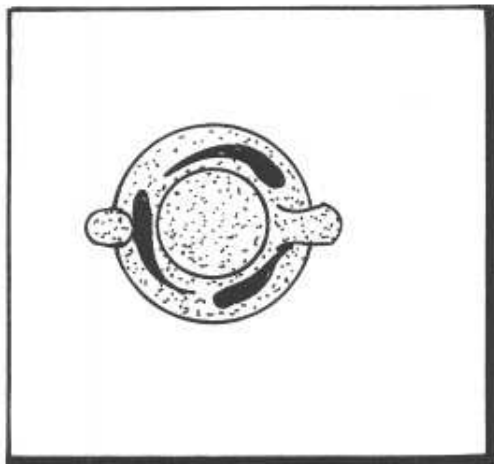
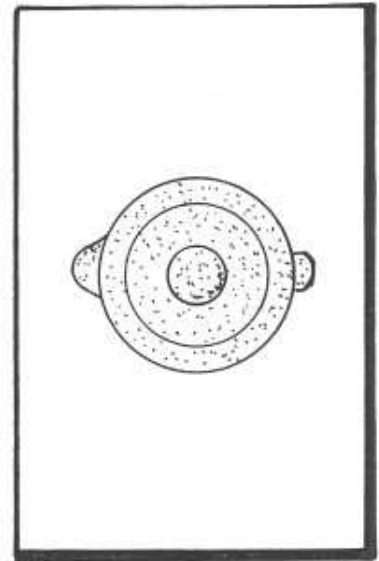
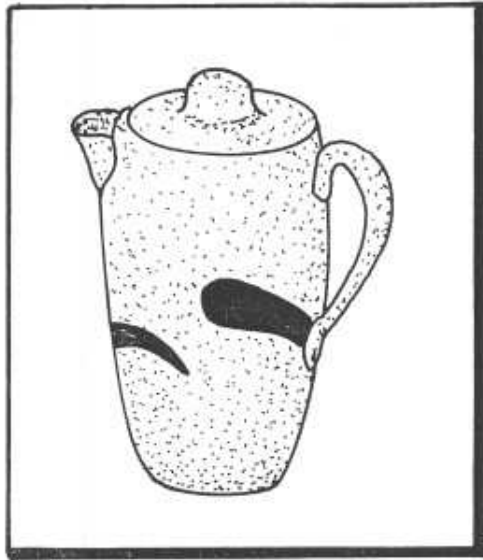
For details of the fees and ways to pay please contact the Designs Registry of the Patent Office.
- g) Once you have filled in the form you must remember to sign and date it.

PAPER QUESTION

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NOTE

NUMBER



This is page 15 of 20

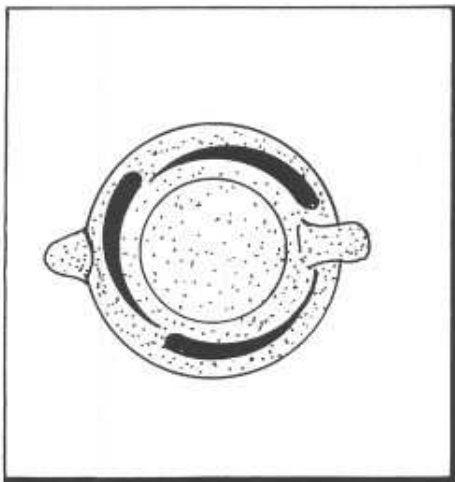
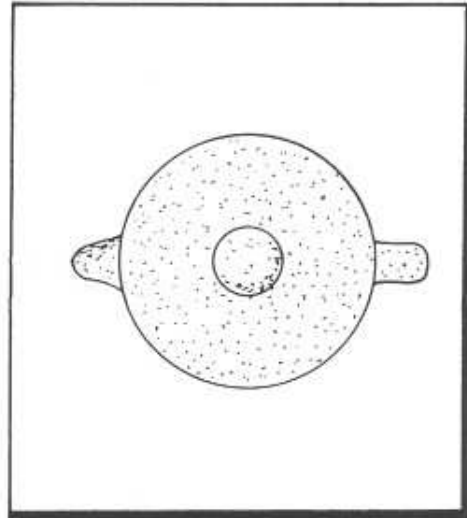
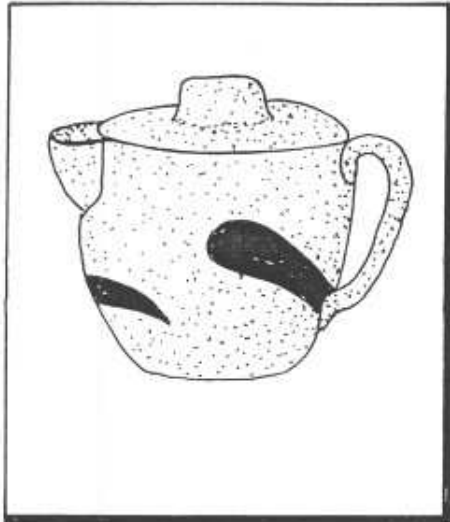
NOTE

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ANSWER SCRIPT

PAPER QUESTION

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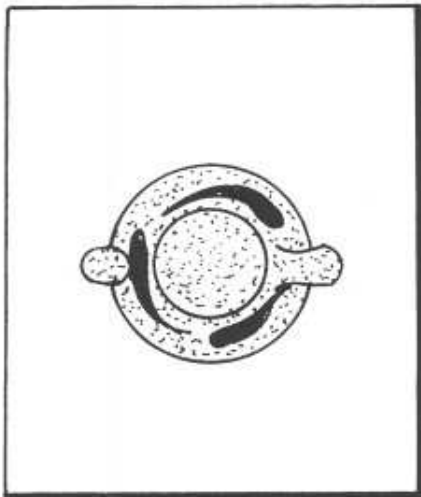
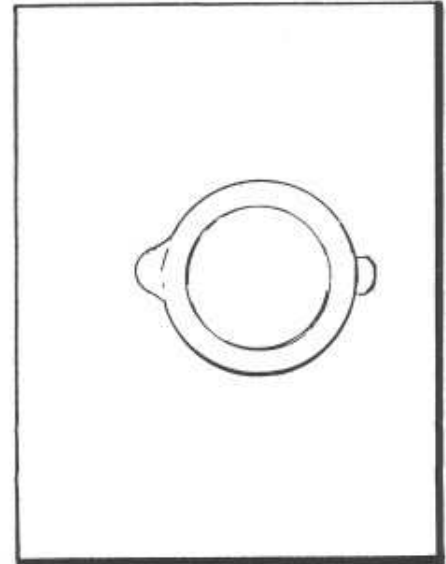
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DATE

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NOTE

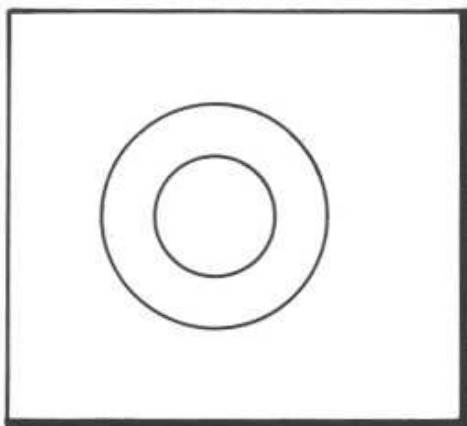
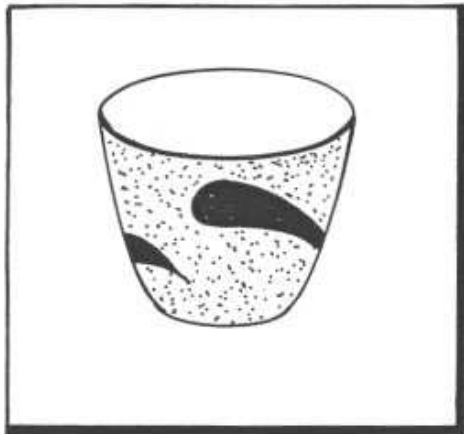
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NUMBER



NOTE

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PAPER QUESTION

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Designs Form 2A

Registered Designs Act 1949
(Rules 6, 12 to 14 and 16)

The
Patent
Office

2A

The Patent Office
Designs Registry

Cardiff Road
Newport
Gwent NP9 1RH

Application for registration of a design

(See the notes on the back of this form)

1.	Your reference	df2a
2.	Full name, address and postcode of the or of each applicant <i>(Names of individuals including all partners in a firm must be given in full. Underline the surname or family name. for a corporate body give its company name.)</i>	
	Designs ADP number <i>(if you know it)</i>	
	If the applicant is a corporate body, give country/state of incorporation	
3.	Name of agent <i>(if you have one)</i> "Address for Service" in the United Kingdom to which all correspondence should be sent <i>(including the postcode)</i>	Hunky & Dory 221b High Holborn London WC1X 1ZZ
	Designs ADP number <i>(if you know it)</i>	00001234001
4.	Name the particular article or set of articles to which the design applies Write the fee code S, T or O <i>(see note (f))</i>	
5.	Association: Enter the number of any earlier design application or registration with which the applicant seeks association under section 4	
6.	Declaration of Priority: <i>(If any)</i>	Country Date of filing <i>(day / month / year)</i>
	Give the Convention country and filing date of any previous application made abroad from which priority is claimed under section 14	
7.	If 6 above applies, and the previous application was not made in the name(s) given at part 2, give details of the instrument <i>(for example, deed of assignment)</i> which gives the applicant the right to apply for registration. Include appropriate name(s) and date(s). <i>(If this information is not given at the time this form is filed you must supply it before the design is registered.)</i>	

NOTE

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Designs Form 2A

PAPER QUESTION

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Designs Form 2A

- 8 Divisional application: Give the number and filing date of any relevant earlier application whose filing date is claimed under rule 34

Number

Date of filing
(day / month / year)

- 9 Declaration

I/We apply to register the design shown in the accompanying representations or specimens. I/We declare that the applicant(s) claim(s) to be the owner(s) of the design in relation to the article or set of articles specified at part 4 overleaf and to be the owner of any design right that exists in this design. I/We also declare in respect of any entry at part 6 above that the application made in the convention country upon which the applicant relies is the first application made for registration of the design in a convention country.

Signature(s)

John Smith

Date 01/09/99

- 10 Name and daytime telephone number of person to contact in the United Kingdom

John Smith 0171 405 9876

- 11 Checklist

Make sure you have enclosed:

- representations or specimens of the design (See note (c))
- any continuation sheets (See note (e))
- the relevant fee (See note (f))

Notes

- a) If you need help to fill in this form or you have any questions, please contact the Patent Office on 0645 500505
- b) Write your answers in capital letters using black ink or you may type them.
- c) This form should be accompanied by four (five if the application is for a set of articles) identical representations (for example, drawings or photographs) or specimens of the design. Except in the case of an application for a design applied to lace, a textile article or wallpaper (or similar wall covering), a statement of the features of the design for which the novelty is claimed (a "statement of novelty") should appear on each representation or specimen. In the case of representations or specimens which consist of more than one sheet, the statement of novelty should only appear on the first sheet. If it is impracticable for the statement of novelty to appear on a specimen, it may be given on a separate sheet. Specimens may sometimes need to be replaced by representations.
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 - any other single article (fee code O)
- For details of the fees and ways to pay please contact the Designs Registry of the Patent Office.
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Designs Form 2A

This is page 20 of 20