

LAW AND PRACTICE OF PATENTS

EXAMINATION PAPER 2004

Time Allowed: 3 Hours

Answer SIX questions only.

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. Write notes on any THREE of the following cases:
 - (a) Smithkline Beecham plc v. Genthon BV, High Court, 28th February 2003 (Kelly J).
 - (b) Plant Genetic Systems/Glutamine Synthetase Inhibitors [1995] EPOR 357.
 - (c) Merck & Co Inc. v. G.D. Searle & Co. [2001] 2 ILRM 363.
 - (d) Salminen – Pigs III [1989] EPOR 125.
 - (e) Merck v. Stephar [1981] 3 CMLR 463.

2. Lawmaster Limited has devised an organically-based spray as a self-defence weapon for use by police officers. Unlike conventional "pepper sprays" which disable an assailant by affecting the eyes and the respiratory system, the spray developed by Lawmaster Limited causes an immediate and insatiable itching sensation on the skin and a feeling of extreme nausea. Lawmaster Limited regards this as an advantage over pepper sprays which have been criticised because of their potential to interfere with breathing. This can pose a particular threat to the health and lives of pregnant women and people with asthma. In 2002 the spray was tested on human volunteers under laboratory conditions at the headquarters of Lawmaster Limited in Dundalk. Last month a pilot scheme commenced whereby containers of the spray were issued to gardai in the Dublin metropolitan area. Since then the spray has been used on four occasions to repel violent attacks on garda officers. However, during one of these altercations an assailant grabbed the can of spray from the garda officer and ran off with it. This can was not recovered.

Lawmaster Limited now wishes to patent its spray. You have been asked to advise it on the issues of patentability which arise.

3. Outline the rationale behind the Community Patent and consider such progress as has been made in bringing this concept into operation.
4. Provide a detailed explanation to a client regarding the manner in which a short term patent can be secured under the Patents Act 1992 and list all of the procedural steps and legal requirements which must be followed.
5. With reference to decided case law and relevant statutory provisions, evaluate the different approaches as to how a court should interpret patent claims in the context of infringement proceedings.
6. Write notes on EACH of the following insofar as they are relevant to actions for patent infringement:
 - (a) A quia timet injunction.
 - (b) An interim injunction.
 - (c) An interlocutory injunction.
 - (d) An Anton Piller injunction.
 - (e) A permanent injunction.

Refer to relevant case law to illustrate how Irish courts have laid down and applied the principles applicable to each of these types of injunction.

7. 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.
8. Set out:
 - (a) The procedural steps which have to be taken in order that a European patent will have effect in Ireland;

AND

 - (b) The procedural steps which have to be followed in order to oppose the grant of a European patent.
9. Write notes on THREE of the following:
 - (a) The surrender of a patent.
 - (b) The restoration of a lapsed patent.

(c) Declarations as to non-infringement.

(d) Divisional patent applications.