

LAW AND PRACTICE OF PATENTS

EXAMINATION PAPER 2002

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 the Candidate will NOT be considered valid.

1. Write notes on any THREE of the following cases:
 - (a) Wavin Pipes Ltd V. Hepworth Iron Co. Ltd [1982] FSR 32.
 - (b) Allen and Hanburys Ltd. V. The Controller of Patents, Designs and Trade Marks [1997] 1 ILRM 416.
 - (c) Merck & Co Inc. v. G.D. Searle & Co. [2001] 2 ILRM 363.
 - (d) T 356/93 Relaxin [1995] EPOR 357; [1995] OJEPO 388.
 - (e) T 208/84 Vicom/Computer-related invention [1987] EPOR 74 [1987] OJEPO 14.

2. 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.

3. (a) Identify and discuss the various matters regarding patents which are capable of being entered upon the Register of Patents.

AND

(b) Explain the circumstances in which the Controller is entitled to revoke a patent on his own initiative.

4. 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.

5. 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 to be followed in order to oppose the grant of a European patent.

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. Set out the requirements that have to be satisfied in order to obtain a short term patent and discuss the advantages and disadvantages of such a patent as compared with a standard patent.

8. Outline and discuss the criteria to be applied when deciding whether an alleged invention involves an inventive step.

9. Write notes on THREE of the following:

- (a) The restoration of a lapsed patent.
- (b) Supplementary Protection Certificates.
- (c) Licences of right.
- (d) Selection patents.