

THE JOINT EXAMINATION BOARD
PAPER D & C – DESIGN AND COPYRIGHT

Wednesday, 3rd November 2010

2.00 p.m. – 5.00 p.m.

*Please read the following instructions carefully. Time Allowed – **3 HOURS***

1. You should attempt **TEN** of the twelve questions contained in this paper.
2. All questions carry ten marks. If more than ten questions are answered only the first ten presented will be marked.
3. Please note the following:
 - a. Start each question (but not necessarily each part of each question) on a fresh sheet of paper;
 - b. Enter the Paper Number (D&C), the question number and your Examination number in the appropriate boxes at the top of each sheet of paper;
 - c. The scripts are photocopied for marking purposes. Please write with a **dark inked pen** on one side of the paper only and within the printed margins, and do not use highlighters in your answer;
 - d. Do not state your name anywhere in the answers;
 - e. Write clearly, examiners cannot award marks to scripts that cannot be read;
 - f. Reasoning should always be given where appropriate.
4. Under the Examination Regulations **you may be disqualified from the examination and have other disciplinary measures taken against you if:**
 - a. you are found with unauthorised printed matter or other unauthorised material in the examination room;
 - b. your mobile phone is found to be switched on;
 - c. you copy the work of another candidate, use an electronic aid, or communicate with another candidate or with anyone outside the examination;
 - d. you continue to write after being told to stop writing by the invigilator(s). **NO WRITING OF ANY KIND IS PERMITTED AFTER THE TIME ALLOTTED TO THIS PAPER HAS EXPIRED.**
5. **At the end of the examination assemble your answer sheets in question number order and put them in the WHITE envelope provided.** Do not staple or join your answer sheets together in any way. Any answer script taken out of the examination room will not be marked.

This paper consists of **6** pages including this page.

1. Under the UK Copyright Designs and Patents Act, 1988:

- (a) What moral rights exist in literary or artistic works? (6 marks)
- (b) Which moral rights, if any, must be asserted if they are to be capable of being infringed? (1 mark)
- (c) what are the only circumstances in which moral rights can be transferred to a new holder? (3 marks)

2. (a) If an international registration of a design designates the European Community and is recorded in the International Register, what effect does it have in the European Community? (2 marks)

(b) If an international registration of a design designates the European Community and has a date of registration but has not yet been entered on the international register, what effect does it have in the European Community? (2 marks)

(c) On what grounds and within what term can OHIM refuse an international registration? (3 marks)

(d) On what grounds other than prior availability to the public can an international registration invalidate a European Community Design Registration? (3 marks)

3. Who is the first owner of i) copyright ii) UK unregistered design right and iii) UK Registered Design right in

- a) a design commissioned from a UK designer by a Japanese company? (3 marks)
- b) A design which is computer-generated in the UK, for a "3-D" article? (3 marks)
- c) A design made in the course of his employment by an employee of a Canadian company, the employee being a UK resident? (3 marks)
- d) A photograph commissioned in the UK for private and domestic purposes? (1 mark)

Note: Not all rights i)-iii) may be available for all cases a) -d).

4. Language aspects of Community Design Regulation practice:

- a) Name the "languages of the office" of OHIM. (2 marks)
- b) What languages may or must be used in filing an application for registration of a Community Registered Design (CRD)? (2 marks)
- c) What is the "language of the proceedings" when only the applicant for a CRD is involved? (2 marks)
- d) Summarise the language provisions relevant to proceedings at OHIM seeking invalidation of a CRD. (4 marks)

5. Extension of duration of right/renewal of Design Registrations:
- a) What is the period during which an application for extension of a UK Design Registration may be made, without payment of an additional fee? (2 marks)
 - b) What action does the registrar have to take, within what term, when a UK Design Registration ceases to have effect because of a failure to apply to extend? (2 marks)
 - c) What is the term during which an application for renewal of a Community Design Registration may be made, without payment of an additional fee? (3 marks)
 - d) What action does OHIM have to take, within what term, when a Community Design Registration is approaching expiry? (3 marks)
6. Give five features of design which are not protected under UK unregistered design right legislation, even though the design possesses originality, is not commonplace and there is no problem of qualification. (2 marks each)
7. Your client is a UK manufacturer of locks who is developing a new range. In this range, the keys will have blades which have an irregularly corrugated cross-section, which corresponds to the outline of the aperture through which the key is inserted into the lock, so that only an appropriate key may be used. This corrugation and outline will be common to all locks in this new range.

The blades will have an edge which is cut in peaks and valleys. When the key is inserted into the lock these interact with tumblers in the barrel of the lock. If the interaction is correct the barrel is freed and may be rotated by the key to undo the lock. The setting of the tumblers and therefore the outline of the peaks and valleys is unique to an individual lock or to a small batch of them.

The handles of the keys will have an asymmetric outline, and a hole for a keyring which is eccentric of the axis of rotation of the key. Both these help the user to present the key correctly to the lock, even in the dark. These will be common to all locks in the new range.

You make enquiries and find that although all of the stated features of the blade and handle are already known in general, each of your client's proposed features are original and have distinctive character. You are also satisfied that there is no problem over infringement of rights of others, over the existence of drawings/design documents relating to the proposed features, or over ownership or qualification of the proposed features.

Your client wishes if possible to be the sole supplier of duplicate (replacement) keys for this new range, or at least to be the sole supplier of blanks from which others could cut individual duplicate keys.

Make notes on the advice you would give him on how UK copyright and/or UK unregistered design right and/or UK design registration might help protect the following features of the key, and on which of these would not be available to help:

- a) Edge of the blade
- b) Blade Corrugation
- c) Handle outline
- d) Handle hole

8. Right of prior use of a Community Registered Design (CRD):

- a) A sees an attractive new article being sold by B in the European Community. A copies the article and puts it on the market in the European Community for the same purpose. Some time later but within the grace period from B first putting the article on the market, B applies for and duly obtains a Community Registered Design. When he tries to enforce it against A, the latter replies that he, A, has a right of prior use and can continue.

Giving reasons, say whether A is correct or not. Ignore possible issues of unfair competition and copyright. (5 marks)

- b) C has designed and at great expense has had moulds made for manufacturing a plastic comb for the manes and tails of horses. She intended to sell the comb in the European Community.

D independently has designed a decorative comb for women to wear in their hair and applied for and obtained a CRD, specifying the design as being for a fashion accessory.

D applied for the CRD at a later date than the preparations made by C referred to above.

When C sees the publication of the CRD she realises that her comb, which is virtually identical to D's and gives the same overall impression, would serve equally well as a decoration for women to wear in their hair. When she starts her first exploitation of her comb in the European Community she sells it as such.

When D tries to enforce his CRD against her, she replies that because she had made such preparations before he applied, she has a right of prior use and can continue.

Giving reasons, say whether D is correct or not. Ignore possible issues of unfair competition and copyright. (5 marks)

9. A UK prototyping company prepares computer aided design (CAD) drawings and then produces mould tools from the designs. The mould tools are then used to produce finished products for motors and aero-engines.

When modified in a trivial way, the products are also included in household appliances.

The company's policy is to "protect everything possible by way of registering Designs in the European Union and UK."

As a consequence of a series of recent staff changes the last three sets of Community and UK Design Applications were not filed.

Two new domestic appliances that incorporate these trivially modified parts received considerable acclaim at a product launch a month ago, and you have been asked to advise how the position might be recovered.

Write notes on, and give reasoning for the points made:

- a) what rights does the company have in their designs for the household products?
- b) What actions can the company take to secure their rights?

10. Your client (who is currently unemployed) sketched some new designs for fastening devices. His original sketches were not much more than free hand concept "drawings", but he also showed you a set of much smarter, more formal graphic designs, which your client had got his friend, Mr. Smith who happens to be is a freelance designer, to prepare for him for free.

Your client has discovered that Mr. Smith has applied to register (without your client's permission) an almost identical design in the UK in respect of fasteners for use in a range of fashion items, such as buttons, handbags, purses, hair clasps and clothes fasteners.

Make notes on the advice you will give your client as to (i) any protection currently enjoyed by his designs; and (ii) the options open to your client; in each case giving brief reasons.

11. An established client Alpha Ltd sell a range of goods designed for them under commission by independent designers. They send you a fax they received from a law firm acting for Beta Ltd. The letter states that Beta owns UK Registered Design No. 3456789 for an electric fan heater which was registered on 27th April 2005. The letter alleges infringement of Beta's UK Registered Design.

Alpha tell you that they started selling their heater "about 5 or 6 years ago" and that a prior art search they had conducted prior to the launch of Alpha's heater in respect of heaters revealed no earlier relevant designs.

You examine a fan heater that is being sold by Beta Ltd, and which is supposed to be the heater subject of UK Registered Design 3456789. You notice two things: firstly on the base it is marked with the words "Regd Design". Secondly, there are several significant differences between this heater and what is shown in the representations of UK Registered Design No. 3456789.

You also examine the heater that is being sold by Alpha Limited that Beta have claimed infringes UK Registered Design No. 3456789. There are also several significant differences between this heater and what is shown in the representations of UK Registered Design No. 3456789.

Prepare a list of points and notes to be included for discussion at a meeting with your client and reasons for each.

12. Assuming that each of the following products is new as such, would they be registrable under the Registered Designs Act 1949 (as amended)? Give your reasons. (2 marks each)

- a) A hamburger restaurant with a particular get-up
- b) A bicycle tyre with a black and orange chequered pattern on the outside
- c) A scale model of a Second World War fighter aircraft
- d) An electronic speedometer for a car, with a series of segments which appear/disappear as speed increases/decreases
- e) A safety floor covering with a raised top surface pattern to enhance grip