

THE JOINT EXAMINATION BOARD
PAPER D&C – Design and Copyright

Wednesday 9th October 2013

2.00pm – 5.00pm

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

1. You should attempt **ten** of the twelve questions 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.
 - g. You must number all the pages of your answer script. Once the exam finishes, an **additional** 5 minutes will be allowed for you to do this.
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, number all the pages 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 5 pages including this one.

Question 1**[10 marks]**

A UK designer recorded a design in a design document on 1 February 2010. The design was for a household article. Due to the need to solve industrial-scale production difficulties, the articles according to the design were not published or put on the market until 1 July 2013. This occurred on a large scale simultaneously in the UK, France and Germany, and also simultaneously there was the launch of a publicity campaign showing the article and directed to the trade.

- a) When does UK unregistered design right:
 - i) begin, and
 - ii) expire? (3)
- b) When will licences of right become available under the UK unregistered design right? (1)
- c) When does Community unregistered design right:
 - i) begin, and
 - ii) expire? (3)
- d) By what date should an application for a UK registered design be filed as a first application? (1)
- e) By what date should an application for a Community registered design be filed as a first application? (1)
- f) Does it infringe the UK copyright in the design document to make articles according to the design, without licence? (1)

In your answers ignore the possibility that the dates might fall on a weekend or holiday and assume that the design meets the necessary requirements for unregistered and registered design protection.

Question 2**[10 marks]**

Answer the following questions on Community Registered Design application procedure.

- a) If an official objection is made that a filing date cannot be granted, what is the term given to the applicant to remedy deficiencies? (1)
- b) What is the outcome if the term in a) is observed and all deficiencies are remedied? (1)
- c) What is the outcome if the term in a) is missed? (1)
- d) By when must a claim for priority be made? (1)
- e) When must deferment of publication be requested? (1)
- f) When must the fee for deferment of publication be paid? (1)
- g) What is the normal term of deferment of publication? (2)
- h) What is the latest by which the fee for publication can be paid if deferment has been requested? (2)

Question 3**[10 marks]**

Answer the following questions on UK Registered Design application procedure.

- a) By when must priority be claimed? (1)
- b) What is the deadline for filing a certified or verified copy of the representation of the earlier application from which priority is claimed? (1)
- c) What language(s) of the copy in b) cannot be the subject of a direction to provide a translation? (1)
- d) If a direction for a translation is made, what term is given for filing the translation? (1)
- e) If an official objection to registration is made, what term is given for reply? (1)
- f) How can publication be delayed? (1)
- g) If publication is delayed, when and how is the fee for publication paid? (2)
- h) By when must the application be in order for registration? (2)

Question 4**[10 marks]**

A potential new client comes to you with a design suitable for protection by unregistered and registered design right. Remembering that she is entirely new to all this, write her a letter explaining concisely what these two rights are, how they are obtained, and summarising the advantages and disadvantages of each.

Question 5**[10 marks]**

Your client Mr G is British and is the designer for, and owner of, a small company making bespoke suitcases. He has made a prototype of a revolutionary new design of suitcase and has filed a UK application for registration of this design. After filing the application, he approached a much larger British company, H Ltd, whom he had never dealt with before, to discuss mass-production of the new design.

The meeting with H was not a success. Mr G was shocked to be shown drawings made by their research department a few years ago of cases giving an almost identical impression to his prototype, though differing in small details. H told him that although they, like him, felt that the design merited mass-production they had been suffering financially at the time and had taken no further steps. In particular they had never shown the drawings to anyone.

H went on to allege that

- (1) they own the rights in the design
- (2) they could manufacture such cases without licence from G
- (3) any registration resulting from G's application would be invalid, and
- (4) G could not make cases to his design, or have them made for him, without infringing their rights.

Make notes on the advice you will be giving Mr G about each of these allegations. Limit your notes to a discussion of UK design rights; do not discuss Community design rights or any other rights.

Question 6**[10 marks]**

According to the Registered Designs Act 1949, as amended;

- a) Who is the author of a design? (2)
- b) Who is the proprietor of a design? (5)
- c) Who is the registered proprietor of a design? (1)
- d) What do “employee”, “employment” and “employer” refer to? (2)

Question 7**[10 marks]**

Your client is the proprietor of a UK Registered Design and has drawn your attention to a clear infringement which has started recently. He has identified the infringer, who is manufacturing in the UK. He has contacted the infringer who has indicated that they were not aware that the design was protected by a UK Registered Design. Your client has indicated that the UK Registered Design number appears on brochures for their product. Your client is particularly concerned that the infringing articles and the mould they were made in could be handed over to another manufacturer, leading to more litigation and expense.

Make notes explaining the remedies available under the UK Registered Design against the infringer.

Question 8**[10 marks]**

- a) What are the “acts restricted by copyright” according to the Copyright, Patents and Designs Act 1988? (5)
- b) Who has the exclusive right to do those acts in the UK, without licence? (1)
- c) What are the exceptions to that exclusive right in relation to artistic works? (4)

Question 9**[10 marks]**

A citizen and resident of the United States recorded a novel and distinctive design in 2010. Products incorporating the design were first disclosed by being put on sale in the US under licence from him in August 2012, accompanied by publicity showing the design, in trade magazines also circulated in Europe. On 10th July 2013 the products were exhibited at an International Exhibition falling under the Convention on International Exhibitions signed in Paris on 22 November 1928.

As of today (9th October 2013) what design rights, (both registered and unregistered) exist or may be obtained by him in

- (i) the UK, and
- (ii) the EC?

In each case give reasons and, where rights exist or may be obtained, give the relevant start dates or dates by which any applications should be filed and duration of the rights.

Question 10**[10 marks]**

Answer the following questions relating to infringement of copyright by copying.

- a) What acts constitute copying of an artistic work? (4)
- b) What remedies are available to the claimant in an action for infringement of copyright in an artistic work? (3)
- c) How can a defendant in an action for infringement of copyright in an artistic work show that he is an innocent infringer? (2)
- d) What, if any, is the effect on remedies, if a defendant succeeds in showing that they are an innocent infringer? (1)

Question 11**[10 marks]**

Nest boxes for attracting wild birds to the garden are typically hollow cuboids with an aperture on one face to allow the birds access. One type, known for many years, has a large aperture but is sold with a range of restrictors having central circular apertures of different sizes. The diameter of each aperture is less than that of the box aperture so that, when a selected restrictor is secured to the face, only birds below a selected size can gain access to the box. Each restrictor is a plain rectangular plate.

Your client has drawings and prototypes of various restrictors which are intended to be more attractive to humans, even if not to birds. At present he thinks that each box would be sold with six restrictors having different sized apertures. The variations to the known restrictors include:

- i. Decorating the exposed face of the restrictor with a multi-coloured picture of a species of bird appropriate to the diameter of the aperture of that restrictor.
- ii. Providing a perch which projects from the exposed face of the plate and which is below the aperture. Each perch is the same length as the diameter of the aperture in the plate.
- iii. Forming the outline of the plate to resemble a generic bird-shape. The client intends to use the same shape and size for all restrictors.

What strategy would you recommend for obtaining Community Registered Design protection for your client over a maximum range of his proposal but as economically as possible?

Question 12**[10 marks]**

For a design which is original and which is not commonplace and which has been designed by a qualifying designer, give the aspects of the design in which UK unregistered design right does not subsist.