

## Patent Examination Board

### Final Diploma

### External Examiner's Report

<b>Name of External Examiner</b>	Professor David Musker
<b>External Examiner's institution</b>	Queen Mary University of London
<b>Programme(s) being examined</b>	Final Diploma
<b>Award meeting(s) attended</b>	Awarding Meeting 23 February 2022

## 1. Programme Structure

Please comment upon:

- any particular strengths and weaknesses of the Final Diploma programme;
- the balance and content of the programme(s) followed by candidates;
- the coherence of programmes, and the appropriateness of syllabus content in relation to the Final Diploma aims;
- the suitability of methods and the adequacy of training as reflected by the standards achieved by the candidates.

**The aim of the FD examinations is to test skills as well as the application of knowledge. Inevitably, since there is no course teaching the specific skills concerned (though there are examination technique courses), candidates depend on their on-the-job training, and not every candidate is exposed to the materials tested (for example infringement analysis and advice). Candidates who lack experience will (and should) find the examinations challenging.**

## 2. Standard of candidate performance

2.1 In your view, are the standards of candidate performance comparable with similar programmes or subjects in UK higher education institutions with which you are familiar?

**YES** (If 'no', please state the reasons they fall short.)

**Yes (to the extent that there are any comparables).**

2.2 Are there any other points on candidate performance that you wish to raise?

**In some papers, few candidates reached high marks. It may be desirable to bear this in mind when re-visiting the mark schemes. There were also a small number of candidates whose low scores indicated that they had not anticipated or gained anything near the knowledge and experience required.**

## 3. Assessment Process

3.1 In your view, are the processes for assessment, examination and the determination of results sound and fairly conducted?

**YES** (If 'no', please state the reasons they fall short.)

**Yes, but there is still some scope for improvement; see below.**

3.2 Please also comment for PEB on:

- strengths and weaknesses in the assessment process;
- the appropriateness of the assessment method (i.e. examinations) to the learning outcomes for the programme;
- the mark schemes;
- the quality and achievements of the candidates.

**The examination method has run in something like its present form for a century and remains appropriate, but could be modified in several respects – practitioners would nowadays have access to the law in real life, so some “open book” element might shift the emphasis towards examining application, as opposed to knowledge, of the law, as well as drafting and advice skills. I understand that the mark schemes are intended to be used as guidelines rather than straitjackets. It might also be possible to generalise them a little further, to ensure adequate marks are available for analysis, explanation and drafting. This already takes place in relation to borderline candidates, where the Minimum Pass Descriptor is employed as a cross-check on the mark scheme.**

#### 4. Other Quality Issues

If the answer is ‘no’ for any of the following questions, please give details in the comment box at the end of this section.

<b>Examination papers</b>		<b>Delete as applicable</b>
4.1	Were you satisfied with the arrangements for consulting you on the structure and content of the question paper(s)?	<b>Yes</b>
4.2	Were your comments on the question paper(s) properly taken into account?	<b>Yes</b>
<b>Marking and Standardisation</b>		
4.3	Were you satisfied with the arrangements for your moderation of question papers?	<b>Yes</b>
4.4	Did you have sufficient information on the mark scheme(s)?	<b>Yes</b>
4.5	Did you feel that you could fairly assess the quality and consistency of the marking?	<b>Yes</b>
4.6	Was the quality of the marking satisfactory?	<b>Yes</b>
4.7	Were you satisfied with the arrangements for standardisation of examiner marking (where required)?	<b>Yes</b>
<b>The Awarding Meeting</b>		
4.8	Were you satisfied with the arrangements for, and conduct of, the Award meeting?	<b>Yes</b>
4.9	Were you satisfied with the decisions and recommendations of the Award meeting?	<b>Yes</b>
<b>Assessment</b>		
4.10	Was the standard of assessment consistent with that of UK higher education establishments where applicable, at QAA Level 7 and/or	<b>Yes</b>

	the IPReg Accreditation Handbook, so far as you could tell?	
4.11	Did the assessment meet the requirements of the IPReg Accreditation Handbook?	<b>Yes</b>

Please detail any concerns regarding 4.1 – 4.11.

**Some thought could be given to the scheme for dealing with Special Consideration requests (extenuating circumstances). By their nature the circumstances vary and it is not always clearly appropriate to just add marks. The techniques actually employed were appropriate, and I recommend documenting them for consistency of application in future.**

## 5. Issues of Procedure

If applicable, how did procedures/arrangements compare this year with previous years? Were suggestions that you made last year acted upon? (If not applicable, please go to question 7.)

**This was the first year with an External Examiner, so not applicable.**

## 6. General Comments

6.1 In your view, are the standards set at unit level for the Final Diploma appropriate for qualifications at this level in this subject?

**YES** If 'no', please state the reasons they fall short.)

**I want to add a comment on the FD4 paper, since this is the subject of scrutiny from several sides. In the Candidate Survey summary, one candidate says “As an in-house EPA I have stopped taking opinions from UK patent attorneys because I feel that FD4 bears no resemblance to the UK litigation proceedings I have been involved in ... – now I just go straight to an IP barrister.” I think there is scope for realigning this paper with how the UK courts actually treat patent claims. Usually, in real life, there are only one or two points, at most, that actually *require* interpretation – the ones on which infringement or validity, or both, turn. Anecdotally, it appears that candidates are often advised to comment on the wording of the whole claim – something there is neither the time nor the need to do. I would recommend making more marks available for selecting the key terms to interpret, and for the interpretation of just those. It is also desirable to evaluate inventive step as the UK courts would – but as this turns on expert witness testimony, and not mosaicing of documents, it is rarely going to be appropriate for candidates to reach a firm conclusion on the issue in their answers.**

6.2 Are there any other points that you wish to raise? In particular, PEB would welcome your comments on any aspects of exemplary practice in the area for which you act as external examiner.

**I am conscious that on the one hand an accreditation process will take place, and on the other there are recommendations for change arising from the Mercer Review. It will be necessary to revisit at least the syllabi in detail in the future once this is completed.**

6.3 If appropriate, please provide a short statement or bullet points of any particular strengths or distinctive or innovative features in relation to standards and assessment.

**I remain impressed by the efforts to standardise the setting and marking of the papers, and by the commitment of the examination team and the Board as a whole.**

**Signed: David Musker**

**Date: 4 April 2022**