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FC1	1 of 27	67%	
Q1 a) i) Yes, the Act provides that priority can be claimed from US utility patents. If the application in suit has already been filed within 12 months from the filing date of the US utility model, then priority can be claimed up to 16 months from the filing date of the US utility model (i.e. 3 months time). If the application in suit has not yet been filed, one must apply to the comptroller (form and fee) for a late filing with late declaration of priority. Extends the deadline by 2 months so application in suit must be filed within the next month. Must claim priority on filing. ii) Yes – the Act specifically allows you to claim priority from EP applications. It was filed 11 months ago therefore still within the 12 month priority period. It is irrelevant that the GB designation has been withdrawn. iii) To obtain a date of filing the documents filed at the UKIPO must indicate: – the grant of a patent is sought - Identify the applicant or provide sufficient details to render him contactable by the UKIPO - Something that is or appears to be a description of the invention for which the patent is sought, or a reference to one or more earlier relevant applications of the applicant or his predecessor in title.			1.5 1 2
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The completed form 1 should satisfy the first two requirements. If the form 1 made a reference to an earlier relevant application, then this is sufficient to obtain a filing date and therefore priority can be claimed (if within the 12 month priority period). If the form 1 did not reference an earlier relevant application, the annotated sketch may be considered a description (it is immaterial whether the description otherwise complies with the rules), therefore priority can be claimed.

- 0 b) It is a party to the WTO.
- 1 c) A German utility model.

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Q2

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a) Must be made in writing

Must identify the party A that is the assignor (name, address).

0.5

Must identify the party B that is the assignee (name, address).

Must identify the patent application that is being assigned (application

0.5

number, title).

0.5

Must include some consideration, this may be a nominal sum of £1.

Must be signed by at least the assignor (Party A).

0.5

If the assignor is a body corporate, it may be signed by affixing the seal of the body corporate.

b) No stamp duty is payable.

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Stamp duty has not been payable on patent assignments in the last ten years – a patent is not 'real property' (buildings or land).

c) A person who claims to have acquired property in or a right in or under a patent or patent application by virtue of a transaction, instrument or event is entitled against any other person who claims to have acquired that right/property by virtue of an earlier transaction instrument or event (the assignment) where, at the time of the second transaction instrument, or event, the earlier one (the assignment):

0.5

- had not been registered (in the case of a published application or patent), or

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- notice had not been given to the comptroller (in the case of an unpublished application); and in either case

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0.5 the party claiming under the later one did not know of the earlier one (the assignment).

The transaction instrument or event should be registered within 6 months of it occurring for the above to apply.

Additionally:

0.5 Where a transaction, instrument or event has occurred (assignment) of a patent or patent application, then before the assignment is registered the

0.5 patent is infringed, the court or comptroller shall not award costs or

0.5 expenses in subsequent infringement proceedings, unless:

3.5

- 0.5
- The assignment was registered within 6 months of it occurring, or
 - It can be shown that it was registered as soon as practicable thereafter.

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Q3

a) The following are not inventions:

- a discovery, scientific theory, or mathematical method;
- artistic, dramatic, musical, or literary work, or any aesthetic creation whatsoever;
- a scheme, rule, or method for playing a game, performing a mental act, doing business, or a program for a computer; and
- the presentation of information, as such.

b) Not sufficient: the specification does not disclose the invention in a manner that is clear and complete enough for it to be performed by a person skilled in the art.

It is not capable of industrial application.

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Q4

The Actavis approach to claim construction:

- (a) Does the item fall within the scope of the claim on normal interpretation?
- (b) In the case of a variant not falling under (a), does the variant nevertheless infringe because it differs from the invention in only an immaterial way, consider:
 - (i) Notwithstanding that the variant does not falling within the literal meaning of the claim, does it achieve substantially the same result in substantially the same way?
 - (ii) Would the person skilled in the art, and reading the patent at the priority date, knowing that the variant achieves substantially the same result, consider it obvious that it does so in substantially the same way?
 - (iii) Nevertheless, would the reader conclude that the patentee intended strict compliance with the claim language to be an essential requirement of the invention?

In the Actavis v. Eli Lilly case, the court used the file wrapper when addressing the final question (iii) above. This was the first time this has been done. They found that the claims had been restricted to perimetrexed disodium, and as such this was clearly not an essential requirement of the invention. Accordingly, it was concluded that in this case strict compliance with the claim language was not an

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essential requirement of the invention, and Actavis' proposed products using perimetrexed salts and free acids would infringe Eli Lilly's patents – a declaration of non-infringement was not granted.

This set a precedent that the prosecution history can be used to determine whether strict compliance with the claim language was intended to be an essential requirement of the invention.

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Q5

When the proprietor applies to the comptroller (form and fee) to advertise licenses available as of right, the comptroller will inform all current rights holders. The comptroller will ensure that there are no contractual obligations preventing the proprietor from licensing.

If the comptroller is satisfied he shall advertise that licenses are available as of right.

Accordingly, any person is entitled to undertake a licence on agreed terms, or on
1 the terms of the Comptroller.

On request from existing rights holders, the comptroller may exchange current
1 licenses for licenses as of right, where the terms are more favourable to the licensee.

Any infringer who undertakes a licence on agreed terms shall not have an
1 injunction or interdict granted against him. Additionally, the infringer is only liable
1 to pay in damages up to two times the amount he would have paid to the proprietor for a (hypothetical) license on such terms before the date of the first infringement (i.e. reduction in damages in infringement proceedings).

Additionally, such an undertaken may be given in infringement proceedings
1 without the infringer having to admit liability.

Licenses of right can request the proprietor to bring infringement proceedings
1 against an act, and where the proprietor refuses or neglects to do so within 2 months from the date of the request, the licensee as of right can initiate

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infringement proceedings themselves as if they were the proprietor (an relevant references in the Act to the 'proprietor' shall be construed accordingly).

The proprietor must be made a party to the proceedings, however they are not liable for costs unless they take an active part in the proceedings.

Within 2 months of the entry having been made, third parties may apply to the comptroller to cancel the entry that licenses are available as of right, if they claim that the proprietor is prohibited from granting licenses due to an agreement or license they themselves have with the proprietor. If the comptroller agrees with the 3rd party, he shall accordingly remove the entry and the proprietor is required to pay the value of any renewal fees that would have been due had the entry not been made (renewal fees are halved whilst licenses of right are available, so the discounted value must be paid back in full). If the proprietor fails to do so within the time specified by the comptroller, the patent will cease to have effect.

If the proprietor applies to cancel the entry that license of right are available (form) – can be done at any time), the license holders must all consent to the cancellation and the proprietor must pay back the value of any renewal fees that would have been payable had the entry not have been made.

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Q8

a) By 31 months from priority:

- 0.5
- Pay regional processing fee, using prescribed form (NP1)
 - PCT filed in English, so no translations required.

By 33 months from priority:

- 0.5
- Request search (form) and pay the search fee
- 0.5
- Request substantive examination (form) and pay exam fee
 - Only one claim, so no claims fees payable when requesting search
 - If there are more than 35 pages of the description at the time of requesting examination, pay excess page fees.
 - If statement of inventorship has not already been filed for the PCT, file statement of inventorship.

To speed up the process (in order to obtain a granted patent sooner, for the sake of the infringement):

- 1
- Do all of the above as soon as possible and before the 31 months
- 0.5
- Request expedited examination. Give a reason for doing so, this
- 0.5
- could be the infringement.
- 0.5
- Respond to any objections in the written opinion.

4

b) Potential infringers: Seeds Are Us Ltd, the farmers purchasing the seeds,

1 1 1 the customers purchasing the vegetables.

The invention is a process. Direct infringement:

A person infringes a patent if he does any of the following acts whilst the patent is in force and without the proprietor's consent:

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- Where the invention is a process, he disposes of, offers to dispose of, uses, or imports any product obtained directly by means of the process, or keeps any such product whether for disposal or otherwise.
- Where the invention is a process, he uses or offers to use the process in the UK where he knows, or it is obvious to a reasonable person in the circumstances, that its use there without the proprietor's consent would constitute an infringement.

Indirect infringement:

- A person infringes if he supplies, or offers to supply, to a person who is not a licensee, an essential element for putting the invention into effect, where he knows, or it is obvious to a reasonable person in the circumstances, that those means are suitable for putting the invention into effect in the UK.

Seeds Are Us Ltd:

- Direct infringement:

1

Seeds Are Us Ltd are at least disposing of (selling) and keeping seeds that create vegetable plants with blue leaves.

The question turns to whether the seeds sold/kept by Seeds

1

Are us are made/processed directly by means of the process that my client has protected. If they use a different method then they will not be infringing. However, if the seeds are

1

made/processed via my client's method, this will be

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considered a direct infringement. It is worth noting that, because it is a process patent, the court will assume that the seeds sold by Seeds Are Us are made/processed via my client's method, and the burden of proof is on Seeds Are Us to prove that they were made/processed via a different, non-infringing method. This is because the processes produce the same products (namely, seeds for blue leaved vegetable plants). The court will not require Seeds Are Us to disclose their method if it is unreasonable to do so.

1

Additionally, if it is Seeds Are Us who are making/processing the seeds themselves, rather than just storing/selling them on, they may additionally be infringing by using the process in the UK. The question then turns to whether they knew, or whether it is obvious to a reasonable person in the circumstances, whether they were infringing. If they did, and they were indeed using the same method, then this is direct infringement. Is it likely they would know? Potentially not, as the client has not yet sold any seeds – it is not on the market, and therefore can assumed to be a fairly private activity thus far and therefore this is no reason that Seeds Are Us would necessarily be aware.

Seeds Are Us are infringing by disposing of an keeping the seeds, and potentially by processing the seeds if they were aware of my client.

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Indirect infringement:

- Unlikely to be indirectly infringing, the invention is the method of processing the seeds, not the method of propagating the seeds into a plant.

Farmers buying the seeds from Seeds Are Us:

1

Direct infringement:

- Discussion above regarding the seeds being obtained 'directly' by means of my client's process applies equally here. If the seeds sold by Seeds Are Us are indeed processed by my client's method, then farmers purchasing seeds are directly infringing by at least using the seeds, and they are likely also keeping the seeds, another form of direct infringement.

1 Customers purchasing the vegetable plants;

- Assuming that customers are only buying the vegetable plants, and not dealing in/with the seeds themselves, then not infringing.

For all:

Consider whether the vegetable plant is to be considered a product 'obtained directly by means of the process'? No, it is not directly obtained as work and other resources must be provided for propagating the seed into the plant. If the plant is to be considered directly obtained by means of the process, then farmer may also be infringing by disposing of, or offering dispose of, the plants, and customers may be infringing by using, or keeping the plants.

Defences:

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For Seeds Are Us:

- If Seeds Are Us were using the process (or indeed keeping or disposing of the seeds obtained directly by means of the process) before the filing date of my client's PCT application, they may have a defence.

Where a patent has been granted, and before the priority/filing date of the patent, a person who:

- begins in good faith to do an act which would constitute an infringement had the patent been in force, or
- makes in good faith serious and effective preparations to do so, may continue to do so, but this right does not extend to granting a license to others to do the act.

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Therefore, if Seeds Are Us had in good faith began using the process or keeping/disposing of the product (or had made in good faith serious and effective preparations to do so) before the filing date of my client's PCT application, then they may have a defence and may continue to do so. As the act would have been done in the course of business, it confers between the partners in business but can only be transferred as part of the business itself. The products of such acts can be dealt with freely, meaning Seeds Are Us could continue selling to farmers.

- If Seeds Are Us had started selling their seeds, or using the process in some capacity that made it available to the public, before the filing date of my client's PCT application 28 months ago,

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then they may be able to file to revoke my client's patent on the grounds that it is invalid for lack of novelty or inventive step. This is unlikely given that their seeds have only become a big hit 'this year' (vs. my client's filing date 28 months ago), however developing a processing method can take a long time, so something to bear in mind.

- If indeed Seeds Are Us are indirectly infringing, they could argue that the seeds are a staple commercial product. Unlikely that they are indirectly infringing in this case (the method is of processing the seeds, not of growing the plant). Additionally, seeds for blue-leaved vegetable plants are not a staple commercial product.

Farmers buying the seeds from Seeds Are Us:

- As above, if Seeds Are Us had began processing and selling the seeds prior to my client's PCT application filing date, and as such farmers were buying seeds also before this date, and this was done in good faith, then the farmers may continue to do so.
- It is also noted that if Seeds Are Us have prior user rights as explained above, the products of these rights can be dealt with freely so farmers can continue to purchase seeds from Seeds Are Us and use them as they wish, without this being classed as infringement.
- There has been no sale of the seeds from my client to the farmers, so the scenario set out in the Act regarding no infringement if it is a farmer propagating the product of his harvest in his own holdings

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where there has been a sale of plant propagating material from the proprietor or with his consent to the farmer, does not apply.

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c) For Seeds Are Us:

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Give them notice of your patent application. Send them a copy of the application if possible. This is because, even if they are infringing, in potential infringement proceedings if they can show that they were unaware, or had no reasonable grounds for supposing, that the patent existed and was in force at the time of the infringement then the court or comptroller shall not award damages against them. At present, they probably have grounds for showing they were unaware (as my client has not sold any seeds yet), therefore give them notice ASAP.

It is not a threat to simply give notice that a patent exists, or to provide information about the patent (that is accurate in all material respects, and not misleading) for the purpose of giving notice.

Enquire with Seeds Are us as to when they first sold their seeds, and when they first starting processing them (if they are the processors). Was this before the filing date 28 months ago? If it was, they may have the right to continue doing so, as outlined above.

1

For the farmers:

Also give them notice of the patent application, send them a copy and the same applies in relation to damages and threats as above. Should also enquire when they first purchased seeds from Seeds Are Us.

No action to be taken in respect of the customers, as they are not infringing.

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In respect of the PCT application, could request early entry into the national phase, and then request expedited examination (give the infringement as a reason).

Note that if the scope of the claims changes between the published and the granted version of the PCT application, there may be a reduction in damages awarded against an infringer at infringement proceedings.

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Q7

a)

The fact that no paperwork has been signed is irrelevant.

The inventor is the actual devisor of the invention, not a person who merely contributed advice or other assistance in the making of the invention. In this case, the inventor is clearly the inventor, and is entitled to the grant of the patent. Despite the fact that Big Widget Ltd provided money and resources, they are not the inventors, and therefore are not entitled to the grant of the patent (without such an agreement in place, which in this case there is not). However:

An invention made by an employee belongs to his employer where:

- The invention was made in the course of the employee's normal duties, or in the course of the duties falling outside his normal duties but that are specifically assigned to him, and in either case the circumstances are such that an invention was reasonably expected to result from the carrying out of those duties; or
- The invention was made in the course of the employee's duties, and implicit in those duties was a special obligation for the employee to further the interests of the employer's undertaking.
- In all other cases, the invention belongs to the employee.

The question falls to whether the inventor can be considered an employee of Big Widget? He has formally retired, and as such will not be considered an employee but rather a contractor – this would result in the inventor

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owning the invention himself. As such, the inventor is additionally entitled to:

- apply for a patent
- work the invention

without infringing any copyright or design rights owned by BigWidget as a consequence of the inventor making the invention.

1 b) The disclosure of information to Teton may be considered as the invention having been made publically available before the filing date of the invention, therefore forming a part of the state of the art and potentially denying novelty to the new filing. However, if the new patent application filing claims priority from the earlier GB patent then the new application will have a priority date of the filing date of the earlier patent, and therefore the disclosure to Teton will not form a part of the state of the art (this is correct only if the earlier patent did disclose the widgets broadly enough that the octo-widget is covered by the earlier application).

1 Nevertheless, did my client make Teton sign an NDA? Assuming they did not, was teton told or aware that the information was confidential?

If teton are not aware this information is confidential, any disclosure of the information by teton would form part of the state of the art. If Teton

1 is aware that the information is confidential, and a breach of this confidence arises (i.e. teton disclose it), this disclosure may be disregarded if the patent application is filed within 6 months of the disclosure. We are aware that Teton have a confidential process for

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testing the widgets, does this mean that the widget that is being tested is kept confidential, or simply that the process by which widgets are tested is confidential? If the latter, there may be an issue as described above, and if the former, the disclosure to Teton is unlikely to be a problem.

- c) Is the data kept confidential by teton? If not, it may form part of the state of the art and be used against the patentability of the octo-widget invention.

1 Are Teton aware, and/or have they given their consent, for my client to use their data. There is likely copyright subsisting in the data, which will be owned by Teton. If my client wishes to use the data and there was not an agreement in place between the parties that the copyright in the data will be owned by my client, then my client should request an assignment of the copyright from teton to themselves.

- 1 d) Draft an assignment document between the client BigWidget and the inventor, transferring the inventor's right to have a patent for the octo-widget invention granted to them to the client.

Have the inventor sign the assignment document, and the client must sign the assignment document themselves also. This can be done under the seal of BigWidget. This assignment can be executed either before or after filing.

0.5 When filing the statement of inventorship for the new GB filing, ensure that the inventor is listed as an inventor. Also in the statement of inventorship the client must outline their derivation of the right to be

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granted a patent, which will come from the executed assignment document. This must be filed within 16months from priority.

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Q6

a) Last renewal fee paid 30 April 2023 (the 10th year renewal fee).

0.5 The next renewal date to fall after the last payment is 1 April 2024 (11th year renewal fee). This could have been paid up to the end of 30th April 2024 (renewal period), however it was not. The grace period could have been used (6 months from expiry of renewal period, with surcharge – surcharge varies with number of months),

0.5 but it was not. The grace period expired on 30th October 2024.

Therefore, the only option left is to request restoration of the patent.

1 This must be done by 30th November 2025 (13 months from expiry of 6 month grace period). CAUL must apply (form and fee) to the comptroller, and must provide evidence that failure to pay the

1 renewal fee within the renewal period (or, indeed, within the 6 month grace period with surcharge) was unintentional. The

comptroller shall accept the request if, and only if, the request complies with the rules and he is satisfied that the failure was unintentional.

Regarding the following (12th year) renewal fee, the renewal date was 1st April 2025. The renewal period ended 30th April 2025, and the 6 month grace period ends 30th October 2025. CAUL could still pay the renewal fee and surcharge (surcharge depends on number of months of grace period used) before the 30th October 2025. Use the prescribed form. No evidence required.

b) CAUL's patent has ceased to have effect due to failure to renew.

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Any person who, between termination and notice of request for restoration:

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- Begins in good faith to do an act that would effectively infringe, or
- Makes in good faith serious and effective preparations to do so, may continue to do so, but this right does not extend to the right to grant a licence to another person to do the act.

This right only becomes enforceable after the expiry of any potential extension period.

Therefore, due to CAUL's failure to renew their patent ceased to have effect on the end of the renewal date (1st April 2024). There has been no notice of request for restoration as yet. The question then falls to when Ms Shah's actions started with respect to the timeline of the patent.

Any third party rights acquired as above are only exercisable at the end of any extension period. In this case the renewal fee could have been paid up until 30th October 2024. Ms Shah's third party rights therefore only are exercisable after this date. We know that Ms Shah only started developing her new flask 6 months ago (24 April 2025), which is after the end of any potential extension period and as such Ms Shah has third party rights.

Assuming that Ms Shah's development and preparations for sale are considered 'serious and effective preparations' (there is no reason they would not be considered so), and that they were done in good faith (it does not appear that Ms Shah knew of Cups Are

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Us, and therefore assumedly was done in good faith), then Ms Shah has the right to continue to do these acts and to launch her product, notwithstanding any subsequent restoration of CAUL's patent. She will not have the right to license another person to do the act, and the right will confer between partners in business but can only be transferred as part of the business itself.

3

- c) Any of the following acts are infringement if done whilst the patent is in force and without the proprietor's consent:
- where the invention is a product, making, disposing of, offering to dispose of, using or importing that product, or keeping it whether for disposal or otherwise.

Claim 1: A container comprising X:

1

A flask is a form of container. Ms Shah's flask also comprises X, therefore Ms Shah's flask would be infringing this claim.

Claim 2: A container as claimed in claim 1, wherein the container is a cup:

1

The question is whether a flask is a cup. Yes, a flask is probably a form of cup, 'cup' being a very broad term to mean any vessel by which a liquid is held and usually drank from. Therefore Ms Shah's flask would be infringing this claim.

Claim 3: A container as claimed in claim 2, further comprising a stand:

1

There is no indication that Ms Shah's flask has a stand, therefore no infringement of this claim.

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I note that, despite the fact Ms Shah's flask would not be taken to infringe Claim 3, to establish infringement it is only necessary to find infringement of the independent claim (in this case Claim 1), and therefore Ms Shah's flask would infringe. However, the patent is not in force.

d) Validity of claim one with respect to the M1 and M2 prior arts:

1. A container comprising X:

1

M1 – arguable a kettle is a container, and the kettle was made from X. Claim 1 lacking novelty over M1. Claim 1 invalid.

M2 – Claim 1 is novel over M2, as M2 does not comprise X.

Claim 1 is invalid nevertheless.

0.5

2. A container as claimed in claim 1, wherein the container is a cup

M1 – A kettle is not a cup, therefore Claim 2 is novel over M1.

Arguably inventive over M1, as M1 itself may not provide a teaching that the material X is suitable for cups, and so it may not be obvious to the person skilled in the art that the material X used in a kettle is suitable for cups. They may assume it is kettle-specific.

M2 – Claim 2 is also novel over M2, as M2 does not comprise or disclose the material X, as required in Claim 2 due to its dependence on Claim 1.

0.5

The question then turns to whether Claim 2 was inventive – arguably not as M1 taught the material X and M2 taught the travel mug (which is a form of cup). There is an argument that M2 teaches the person skilled in the art towards M1, as M2 discloses a rubber sleeve to retain

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heat, and material X is a good thermal insulator. Arguable either way, but in conclusion Claim 2 is invalid.

3. A container as claimed in claim 2, further comprising a stand;

M1 – kettles have stands, M1 destroys novelty of Claim 3

M2 – M2 has no stand, does not destroy novelty.

0 Claim 3 lacks novelty, therefore invalid.

All three claims are invalid.

e) Respond to CAUL's letter promptly, within 14 days (or within any other deadline they have set for response).

Inform them that their renewal fee payment is overdue and as such their patent no longer has effect.

Ms Shah should inform them of the third party rights she has acquired due to their failure to pay a renewal fee.

Ms Shah should enquire about whether they intend to restore their patent.

Ms Shah may wish to ask for written consent from CAUL for her to continue her product development/launch without this been classed as an infringement. This may bring her legal certainty and security in the future and when creating a path to market.

0.5 If Ms Shah wishes to, she may will be able to file for invalidity of the patent GB1, on the grounds that it is not patentable in view of M1 and M2. She may decide that it is not worth the time and money to do so if CAUL do not intend to restore their patent, or if she is

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satisfied with the third party rights she has acquired. On the other hand, it may be beneficial for her if looking to reduce competition on the market. It would also provide her with more legal certainty going forward.

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