

Patent Examination Board

Foundation Certificate Syllabus

Design and Copyright Law FC4

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1. Guidance for Candidates

The Patent Examination Board is an examination agency which has been accredited by IPReg to offer an examination only route for the Foundation Level Qualifications for patent attorneys. FC1 UK Patent Law is one of five examinations within the PEB Foundation Certificate. Together, the five examinations of the PEB Foundation Certificate:

- a) provide a structure which is benchmarked within the QAA Frameworks for Higher Education Qualifications of UK Degree-Awarding Bodies (2014) as being at Level 6 – a professional graduate-level certificate.
- b) develop an understanding and appreciation by the candidates of all the Intellectual Property Law and Professional Ethics Subjects set out in Schedule A of the IPReg Accreditation Handbook
- c) equip candidates with the transferable skills set out in Schedule B of the IPReg Accreditation Handbook

You should refer to the Qualifying Examination Foundation Certificate Programme Specification for full information on the Foundation Certificate including:

- QAA Credits of study
- QAA Level 6 Benchmarking
- IPReg Intellectual Property Law and Professional Ethics subjects
- IPReg General Transferable Skills
- Meeting the Minimum Competence Standard required for a Pass in the Foundation examinations.

The Foundation Certificate is structured to be equivalent to 60 QAA credits (where one credit is 10 hours of study). Each Foundation Certificate examination equates to 12 credits of study. You should, therefore, expect to spend around 120 hours of study in preparation for this examination.

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2. The Syllabus

Summary

To be successful in this examination, you will need to:

- demonstrate an understanding and appreciation of the Design and Copyright topics set out in Schedule A of the IPReg Accreditation Handbook. You will thus need to demonstrate knowledge of the main provisions of International and UK law relating to design and copyright. You will also need to demonstrate knowledge of the relevant procedures and formalities required to obtain the protection for UK designs. You will also need to demonstrate knowledge of the relevant principles relating to subsistence and enforcement of UK copyright.
- demonstrate that you have acquired the transferable skills set out in Schedule B of the IPReg Accreditation Handbook. Candidates should refer to Transferable Skills for more information but in summary, the transferable skills may be demonstrated by being recall the relevant principles, laws and rules, and/or apply them to one or more given scenario(s).

The **Content** states the topics which are covered and gives the related IPReg design and copyright law topics in brackets.

The **Learning Outcomes** describe what you will have to demonstrate in the examination to show that you have the required knowledge and transferable skills. The section 'Meeting the requirements for a Pass in the Foundation Programme Specification explains how the Learning Outcomes link to the minimum Pass requirements.

The final two columns list the key sections of the **legal provisions** relevant to the content and learning outcomes.

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	Content (IPReg Topics)	Learning Outcomes		
1	General provisions relating to copyright (Copyright law UK & International, rationale)	a) Describe the rationale for the copyright system b) Explain the general provisions under the Berne Convention for extending copyright protection internationally c) Apply (a) and (b) to a scenario	<u>Berne Convention for the Protection of Literary and Artistic Works</u>	Articles 1, 5
2	Protection of designs in UK, EU, USA, China and Japan (Strategic creation and management of industrial design portfolios, registering and maintaining a design internationally)	a) Explain what national, regional and international protection is available for registered designs b) Evaluate alternative ways in which a client's rights in a design may be protected, including advising on strategic considerations for the creation of a portfolio of national and international design applications c) Explain EU Design right: requirements for subsistence, and term d) Identify any grace periods for prior disclosures e) With reference to the Paris Convention, define the underlying principles for claiming priority for national and international applications f) Define who may file an International application g) Identify where an International (Hague) application must be filed and its contents h) Know key similarities and differences between registered design practice in UK, EU, USA, China, Japan and the Hague system i) Apply (a) to (h) to a scenario	<u>Paris Convention for the Protection of Industrial Property</u> <u>Hague Agreement Concerning the International Registration of Industrial Designs (Geneva Act 1999)</u> Plus relevant parts of: Common Regulations under the 1999 Act and the 1960 Act of the Hague Agreement; and Administrative Instructions for the Application of the Hague Agreement <u>EU Law</u> <u>Council Regulation (EC) 6/2002 as amended by Regulation (EU) 2024/2822 ("EUDR")</u>	Articles 1, 4 Articles 3, 4, 5, 6 EUDR arts 1 to 14 (especially art 3, definitions), 19-21 (especially EUDR Article 20a - Repair Clause), 37. The ratio of case C-728/19, Beverly Hills Teddy Bear Company v PMS International Group, but

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				appreciating that following the amendment to article 110a para 5, it might no longer be valid law.
3	Registered and unregistered rights in UK (UK Laws and procedures relating to the protection of industrial design through unregistered and registered design laws, overlap with trade mark rights)	a) With reference to the provisions detailed on the right, compare the advantages and disadvantages of the different forms of protection for industrial designs within the UK b) Explain the interaction between trade marks and the different forms of protection for industrial designs within the UK c) Apply (a) and (b) to a scenario		UK Law <u>Registered Designs Act (RDA)</u> <u>Registered Designs Rules (RDR)</u> <u>Copyright, Designs and Patents Act (CPDA) - designs sections</u> <u>Copyright, Designs and Patents Act (CDPA) - copyright sections</u>
4	The law relating to registrable designs (Qualifying for protection)	a) Define the requirements for a design to be registrable including: • Novelty • Individual character • Exclusions b) Identify any grace periods for prior disclosures c) Apply (a) and (b) to a scenario		RDA 1 – Registration of designs RDA 1B – Requirement of novelty and individual character RDA 1C – Designs dictated by their technical character RDA 1D – Designs contrary to public policy or morality The general approach taken by the courts to individual character set out in <i>Samsung v Apple</i> [2012] EWHC 1882, approving

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				<i>PepsiCo v Grupo Promer (C 281/10 P).</i>
5	Ownership of registered designs (Ownership)	a) Describe how the proprietor of a registered design is determined b) Apply (a) to a scenario		RDA 2 – Proprietorship of designs
6	The law relating to the application process for registered designs (Registering and maintaining a design in the UK, registering and maintaining a design internationally)	a) Describe how to make a design application, including a divisional application b) List the requirements for obtaining a filing date for an application c) Describe the procedure from filing through to registration, including any available extensions of time d) Outline how publication may be delayed or deferred and the consequences of delaying or deferring e) Explain the consequences of falsely representing a design as registered f) Explain the procedure at the International Bureau concerning designation, correction of irregularities, publication, unity, refusal, registration, invalidation and recordal of changes for international designs g) Apply (a) to (e) to a scenario	<u>Hague Agreement Concerning the International Registration of Industrial Designs (Geneva Act 1999)</u> Plus relevant parts of: Common Regulations under the 1999 Act and the 1960 Act of the Hague Agreement; and Administrative Instructions for the Application of the Hague Agreement	RDA 3 – Applications for registration <i>RDR 4, 6, 7, 8, 11</i> RDA 3C – Date of registration of designs RDR 35 – Fine for falsely representing a design as registered Articles 7 to 16 and 18
7	Priority	a) Define the requirements for claiming priority when filing an application		RDA 14 – Convention applications

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	(Strategic creation and management of industrial design portfolios)	b) Determine whether a later application can validly claim priority from an earlier application c) Apply (a) and (b) to a scenario		
8	Duration of registration (Registering and maintaining a design in the UK, registering and maintaining a design internationally)	a) Define the term that a design is in force and describe the renewal process for maintaining the design b) Explain the restoration process and the implications of restoring a lapsed design c) Explain the implications of cancelling a UK design registration d) Apply (a) and (b) to a scenario	<u>Hague Agreement Concerning the International Registration of Industrial Designs (Geneva Act 1999)</u> Plus relevant parts of: Common Regulations under the 1999 Act and the 1960 Act of the Hague Agreement; and Administrative Instructions for the Application of the Hague Agreement	RDA 8 – Duration of right in registered design <i>RDR 12</i> RDA 8A, 8B – Restoration <i>RDR 13</i> RDA 11 – Cancellation of registration RDA 11ZE – Effect of cancellation or invalidation of registration Article 17
9	A Registered Design as a form of property (Ownership)	a) Describe how a registered design may be transferred or licensed b) Explain the effect of registration of a transfer and the implications of non-registration c) Describe the rights of an exclusive licensee d) Describe the consequences of not recording a licence on the Register e) Apply (a) to (d) to a scenario		RDA 15A – The Nature of Registered Designs RDA 15B – Assignment &c of registered designs and applications for registered designs RDA 15C – Exclusive licences RDA 19 – Registration of assignments etc

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10	The law relating to infringement of registered designs (Infringement, defences)	a) Identify the acts which infringe the right in a UK design registration b) List the statutory exceptions to infringement c) Define who may bring an action for infringement d) Describe the remedies which may be claimed and any limitations on the remedies e) Outline the limitations based on a prior use right f) Explain when proceedings for a groundless threat of infringement may be brought in the UK g) Outline when the offence of unauthorised copying is committed h) Describe the consequences of committing the offence i) Apply (a) to (h) to a scenario		RDA 7 – Right given by registration RDA 7A – Infringements of rights in registered designs RDA 7B – Right of prior use RDA 24A – Action for infringement RDA 24B – Innocent infringement RDA 24C(1), 24D(1), 24F – Other remedies RDA 24G - Meaning of ‘infringing article’ RDA 26 – Threats RDA 35ZA – Offence of unauthorised copying etc. of design in course of business
11	The law relating to declarations of invalidity of registered designs (Invalidity)	a) List the grounds of invalidity and who may file an application for declaration of invalidity b) Describe the consequences or effect of invalidation of the registration c) Apply (a) and (b) to a scenario		RDA 11ZA and Sch. A1 – Grounds for invalidity of registration RDA 11ZB – Applications for declaration of invalidity RDA 11ZE – Effect of cancellation or invalidation of registration
12	The law relating to supplementary unregistered design right and UK design right	a) Define the requirements for (UK and supplementary) unregistered design right to subsist: a. Novelty		CDPA 213 – Design Right CDPA 214 – The designer CDPA 215 – Ownership of design right

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	(Qualifying for protection, ownership)	b. Individual character c. Originality d. Commonplace e. Exclusions b) Explain how the term of an unregistered design right is determined (UK and supplementary UDR) c) Describe how the proprietor of (UK and supplementary) unregistered design right is determined d) Define how a design may qualify for UK unregistered design right by reference to the designer, employer or first marketing e) Describe how an unregistered design may be transferred or licensed f) Describe the rights of an exclusive licensee g) Apply (a) to (f) to a scenario		CDPA 216 – Duration of design right CDPA 217-220 – Qualification for design right protection CDPA 222 – Assignment and licences CDPA 223 – Prospective ownership of design right CDPA 225 – Exclusive licences The legal issue raised in case C-728/19, Beverly Hills Teddy Bear Company v PMS International Group
13	The law relating to infringement of UK design right (Infringement, defences, overlap with copyright)	a) Identify the acts which infringe UK design right and the acts which do not infringe b) Define who may bring an action for infringement c) Describe the remedies which may be claimed and any limitations on the remedies d) Describe the impact of licences of right on UK unregistered design right e) Explain the interaction between copyright and UK design right in a design f) Explain when proceedings for a groundless threat of infringement may be brought in the UK g) Apply (a) to (f) to a scenario		CDPA 51 – Design documents and models CDPA 226 – Primary Infringement of Design Right CDPA 227 – Secondary Infringement – importing or dealing with infringing articles CDPA 228 – Meaning of infringing article CDPA 229 – Rights and remedies of design right owner

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				CDPA 233 – Innocent infringer CDPA 234 – Rights and remedies of exclusive licensee CDPA 235 – Exercise of concurrent rights CDPA 236 – Infringement of copyright CDPA 237, 254 – Licences of right CDPA 244A – Exception for private acts, experiments and teaching CDPA 253- Remedy for groundless threats of infringement proceedings
14	The law relating to copyright in literary and artistic works (Copyright law (UK), subsistence, subject matter (literary, artistic, musical and dramatic works), ownership, licensing, moral rights, economic rights)	a) Define literary and artistic works b) Define authorship and first ownership of copyright in literary and artistic works c) Define the term of copyright in literary and artistic works d) Define the right to be identified as the author or director e) Define the right to object to derogatory treatment of work f) Describe how copyright may be transferred or licensed g) Apply (a) to (h) to a scenario		CDPA 1 – Copyright and copyright works CDPA 2 – Rights subsisting in copyright works CDPA 3 – Literary, dramatic and musical works CDPA 4 – Artistic works CDPA 9 – Authorship of work CDPA 10 – Works of joint authorship CDPA 11 – First ownership of copyright

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				CDPA 12 – Duration of copyright in literary, dramatic, musical or artistic works CDPA 77 Right to be identified as author or director CDPA 80 Right to object to derogatory treatment of work CDPA 90, 91, 92 – Dealings with rights in copyright works The ratios of the cases <i>Waterrower (UK) Ltd v Liking Ltd (T/A Topiom)</i> [2024] EWHC 2806 and <i>Cofemel v G-Star Raw (C-683/17)</i>.
15	The law relating to infringement of copyright (Infringement, permitted acts)	a) List the acts which are restricted by copyright in a work b) Identify the acts which infringe copyright c) Define the permitted acts which do not infringe copyright d) Outline the criminal liability for making or dealing with infringing articles e) Apply (a) to (d) to a scenario		CDPA 16 – The acts restricted by copyright in a work CDPA 17 – Infringement of copyright by copying CDPA 18 – Infringement by issue of copies to the public CPDA 21 – Infringement by making adaptation etc. CDPA 22-24 Secondary infringement

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				CDPA 27 – Meaning of ‘infringing copy’ CDPA 28A, 29, 30, 30A, 36, 50A-50C, 56 – Selected permitted acts CDPA 76 – Adaptations CDPA 96 – Infringement actionable by copyright owner CDPA 101 – Rights and remedies of exclusive licensee
16	The law relating to EU registered designs (either registered or pending) and International Designs designating the EU at the end of the Brexit transition period	a) Explain how registered EU designs are protected in the UK following Brexit b) Explain how International Designs designating the EU are protected in the UK following Brexit c) Explain how pending or unpublished EU design applications may be protected in the UK following Brexit d) Describe what a “Continuing Design Right” was and when such rights became extinct. e) Apply (a) to (c) to a scenario		RDA Schedule 1A RDA Schedule 1B Withdrawal Agreement (2019/C 384 I/01) Title IV – Art. 54, 55, 56, 57, 59, 61

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3. Reading

All the legal texts referred to in this syllabus are essential reading.

Other books and/or websites listed here can be used to support your learning. It is not an exhaustive list and other sources of information can be used.

Undergraduate-level textbooks:

- *Intellectual Property Law* (Bently et al) (2022) 6th edition, Oxford University Press

Practitioner works:

- *Russell-Clarke and Howe on Industrial Designs* (2022) 10th ed. Sweet and Maxwell
- *Copinger and Skone James on Copyright* (2024) 19th ed. Sweet and Maxwell
- *Community Designs Handbook* (Ed CITMA,CIPA) (2005 to current, looseleaf), Sweet and Maxwell
- *Laddie, Prescott & Vitoria: The Modern Law of Copyright and Designs* (2018) 5th, Pub. LexisNexis Butterworths

Older but potentially still useful:

- *Designs and Copyright Training Manual* (2008) Rebecca Chambers, Ed. Keith Farwell and William Jones, pub. CIPA
- *Community Design Law: Principles and Practice* (2002) David Musker pub. Sweet and Maxwell

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4. The Examination

This syllabus is assessed via a three hour unseen examination. The pass mark is 50%.

The question paper is divided into Section A and Section B.

There are 100 marks available in total: 40 marks in Section A and 60 marks in Section B.

Candidates are instructed to attempt **all** questions in Section A and **three questions from four questions** in Section B.

- Each question in Section A is worth between 1 and 10 marks.
- Each question in Section B carries 20 marks.