

PEB Notice – Changes to the 2018 Foundation Syllabi and Examinations

Introduction

Syllabi

IPReg has designated, as published in its [Accreditation Handbook](#), five core subjects for foundation level qualifying examinations:

- a) Fundamentals of the English Legal System
- b) Patent Law
- c) Design and Copyright Law
- d) Trade Mark Law
- e) Professional ethics applicable to IP practitioners

These topics are covered in the PEB Foundation Certificate examinations as follows:

PEB Examination	Contains topics from the following IPReg core subjects
FC1 – UK Patent Law	Patent Law
FC2 – UK Law	Fundamentals of the English Legal System Professional ethics applicable to IP Practitioners Patent Law Design and Copyright law Trade Mark Law
FC3 – International Patent Law	Patent Law
FC4 – Design & Copyright	Design and Copyright law
FC5 – Trade Mark Law	Trade Mark law Design and Copyright law

The PEB examiners have reviewed the syllabi to ensure they meet the content of the core subjects as required by IPReg. Accordingly, the learning outcomes specified in the PEB syllabi have been revised to better cover the topics listed in the IPReg core subjects. The PEB syllabi have also been reviewed as part of the annual review process to take into account feedback from students and to reflect law changes. Learning outcomes have been deleted as well as added and thus the overall standard required to be successful in each examination is unaltered.

In addition the PEB has created a Programme Specification for the Foundation Certificate which is published alongside the syllabi. This sets out the aims of the qualification as a whole, and gives an overview of its content, aims and assessment methods.

Examinations

In addition to the change to the syllabi, from 2018 the format of each examination has been standardised and sample assessment materials in the new format are available on the PEB website. This change of examination format is also described at the end of each amended syllabi and at the end of this notice.

Syllabi content – detailed information by syllabus

Here is a table of contents for the detailed information about the changes for the relevant syllabi:

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FC1 – UK Patent Law : Syllabus Changes

Only one new learning outcome is added to this syllabus:

Section 9 - the law relating to infringement of UK patents:

- i) Differentiate between novelty and freedom to operate searches*

This new learning outcome is added to match the wording of a Patent law topic listed in the core subjects. This topic was already tested in FC1 by applying the knowledge to a scenario relating to the following learning outcomes.

Section 9 – the law relating to infringement of UK patents:

- a) Identify the acts which infringe a UK patent

Section 1 – The law relating to patentable inventions in the UK

- c) Explain whether a document is prior art

It is thus expected that no changes to the material to be learnt by a candidate are required but the additional learning outcome clarifies the knowledge which must be demonstrated by a candidate.

The recent Supreme Court decision in *Actavis v Eli Lilly* has also been added to the list of cases in section 15.

FC2 – UK Law : Syllabus Changes

The syllabus for FC2 contains all the topics for the following IPReg subjects:

- a) Fundamentals of the English Legal System
- e) Professional ethics applicable to IP practitioners

FC2 provides the overarching legal framework for the more specific IP knowledge required for the other IPReg subjects.

Changes in the light of the IPReg Subject – Fundamentals of the English Legal System

The syllabus has been amended to include a new learning outcome to better reflect the topic 'Differences between common and civil law':

Section 1 – The characteristics of the English legal system

- q) *Differentiate between Civil Code and Common Law court systems at a general level only, including:*
 - *evidence and especially oral evidence, role of hearings, costs-shifting*
 - *the adversarial nature of Common Law systems in contrast to the inquisitorial system*

Changes in the light of the IPReg Subject – Professional ethics applicable to IP practitioners

The second amendment is to include relevant references to the IPReg Litigators Code:

Section 10 – Professional Conduct for a Registered Patent Attorney

- b) *Describe a Registered Patent Attorney's ethical, legal and financial responsibilities as set out in the Litigators Code*
http://ipreg.org.uk/wp-content/files/2012/08/Litigators_code_for_website_2015.pdf only as further set out this section
- c) ...
- d) *Describe the application of the Litigators Code (Rule 1)*
- e) *Describe the general duties to the court under the Litigators Code (Rule 3)*
- f) *Describe the general nature of the duties with respect to client monies under the Litigators Code (Rule 10) and clarifications to Conduct Rule 11 issued since 1 January 2016 (in particular that found at https://ipreg.org.uk/wp-content/files/2015/10/Client_Monies_Guidance_10_Sep_15_Final_with_Footnotes.pdf)*
- g) *Identify situations where a conflict of interest arises under the Litigators Code (Rule 4)*

Changes in the light of the IPReg Subjects – Patent and Trade Mark law

Further changes have been made to the syllabus for FC2 in the light of the topics listed under Patent and Trade Mark law. This is because FC2 provides the overarching legal framework for the more specific IP knowledge required for these topics.

The topics ‘intellectual property transfer, commercialisation and licensing (including negotiation, international perspective, jurisdiction, arbitration)’ appear in both the Patent Law and Trade Mark law subjects.

Accordingly, section 1 of the FC2 syllabus has been amended to give more detail on the arbitration aspect to avoid repetition of learning for a candidate. The revised learning outcomes are:

o) Outline the different options for parties to resolve disputes with or without recourse to commencing (or continuing) court procedures and the nature of the final decisions for such options, distinguishing between Litigation and Alternative Dispute Resolution (“ADR”)

p) Describe and compare different types of ADR, including:

- *mediation:*
 - *use of a non-lawyer or non-specialist go-between (“mediator”)*
 - *without prejudice settlement discussions*
 - *decisions are non-binding unless a settlement contract/deed is signed*
 - *commonly parties may include a term on mediation into a commercial contract as a first method of resolving disputes though courts will not force parties to mediate*
- *arbitration:*
 - *choice of rules is up to the parties though the Arbitration Act 1996 sets out some compulsory aspects (knowledge of the Arbitration Act 1996 is not required)*
 - *likely to be a binding decision*
 - *subject to the parties’ choice of rules or the unreasonableness of a decision, a court is reluctant to interfere with a decision on arbitration*
- *opinions of the UKIPO:*
 - *the UKIPO issues an opinion at an early stage of proceedings (in IP matters)*
 - *non-binding decision*
 - *the parties are free to ignore the decision*

Similarly, section 5 of the FC2 syllabus has been expanded to give more detail on IP transfer, including:

- i) Outline the formal requirements for a Deed*
- j) Differentiate between a contract and a Deed, including*
 - *the requirement for a Deed in certain transactions such as those conveying real property (detail not required)*
- k) List the five principles for implying terms into a contract as set out in BP Refinery (Westernport) Pty Ltd v Shire of Hastings (1977) 52 ALR 20*
- l) Define an application of the five principles, for example the assignment of copyright by implication as set out in Robin Ray v Classic FM [1998] FSR 622, 624 at para 7*

Section 7 of the FC2 syllabus has also been expanded to give more detail on IP transfer and licensing, including:

- b) Differentiate between legal and equitable title *and when they might arise in assignments of IP rights*
- c) *Outline the nature of co-ownership of intellectual property rights*
- d) Define the terms joint tenants in common *in the context of co-ownership of intellectual property rights*
- e) *Describe how IP rights may be transferred or licensed, including by*
 - *Deed*
 - *Contract (including by necessary implication into a term of a contract)*
 - *Gift*
- f) *Define when a Deed is required to transfer IP rights, e.g. if part of a larger transaction*
- g) *Define the requirements to demonstrate a gift of IP rights has occurred*
- h) *Describe when a gratuitous licence may arise*
- i) *...*
- j) *Outline the advantages for an assignee or licensee of an enforceable agreement*

The Patent law subject specifies a topic of the legal protection of trade secrets and confidential information. The strategic considerations for this topic are captured in the revised FC3 syllabus as explained elsewhere. These strategic considerations are complemented by a new section 8 entitled 'The Law of Trade Secrets and Confidential Information' which has been added to the FC2 syllabus to provide the more general legal framework. This new section includes several new learning outcomes to outline the knowledge that a candidate needs to demonstrate in relation to this topic:

- a) *Identify how commercial and technical information such as know-how can be protected using trade secrets*
- b) *Outline the harmonization of trade secrets law under Directive (EU) 2016/943 and its creation of a parallel system alongside national law*
- c) *Define the 3 stage test that is laid down in Coco v Clark (Engineers) Ltd [1969] FSR 41 to protect trade secrets in the UK under the common law rule of confidential information:*
 1. *the information has the necessary quality of confidence*
 2. *there is an obligation of confidence*
 3. *there has been breach by misuse or disclosure*
- d) *Referring to the first stage of the test, outline the principles relating to the term "information", including:*
 - *the different types of information protected*
 - *the requirement for the information to be definite*
 - *the quality of the information (e.g. immorality, non-trivial, novelty not required etc.)*
- e) *Referring to the first stage of the test, outline the principles relating to the term "confidence", including:*
 - *that the protection of secrets or of value or significance is unknown to the public*
 - *the implications of reverse engineering*
 - *the implications of incorporation into a product*
- f) *Referring to the second stage of the test, outline the "reasonable recipient" test, including:*
 - *the implications of fiduciary, express and implied agreements*
 - *that there is no requirement for a contract*
 - *the nature of the obligation, including its scope, its limitations in social situations, and the fact that it is a legal rather than a moral obligation*

- g) Referring to the third stage of the test, outline the principles relating to the term “breach”, including:
- that the breach is judged by the scope of duty
 - the role of bad faith
 - the role of detriment
- h) Describe how breach of the three stage test is proven:
- using direct evidence of derivation
 - using indirect evidence such as a “fingerprint” in a document
 - persuading a court that the defendant could not have derived the information from legitimate sources
- i) Outline the possible defences to an alleged breach:
- consent (explicit or implied)
 - that the information is part of the defendant’s stock of knowledge
 - public interest (at a general level only)
 - freedom of expression (at a general level only)
 - legal rights to disclose (at a general level only)
- j) Outline the remedies for breach, including damages (or account of profits) and injunction
- k) Compare the different types of injunctions:
- Urgent injunction – useful because information cannot be put back into the private domain
 - Final ‘springboard injunctions’, including that court has discretion to
 - vary the length of time,
 - cover derivative products
 - possibly punish defendants
 - Possible injunctions on third parties - where they ‘knew or should from the circumstances have known of [the defendant’s] duty”
- l) Outline the duty of good faith on employees as set out in leading case of *Faccenda Chicken v Fowler* [1986] 1 All ER 617:
- rule is not one of strict liability
 - possible whistleblowing rights (no detail required)
 - role of restrictive covenants (no detail required)
- m) Outline the differences between a breach of confidence claim and a property right claim
- n) Outline the differences between a breach of confidence claim and breach of contract claim
- o) Apply (a) to (n) to a scenario

Other changes

As shown above, the learning outcomes for the FC2 syllabus are more detailed than the learning outcomes for the other foundation examinations which list specific sections and rules to aid a candidate’s understanding of the knowledge required to be successful in the examination. The change to the learning outcomes was started in the 2017 syllabus which was revised in response to candidate feedback to give more clarity to candidates when studying for the examination. Additional clarifying amendments have been incorporated in the 2018 syllabus, including reformatting changes or splitting of learning outcomes. The learning outcomes now include additional notes to assist candidates, including:

- the definitions and/or information that a candidate is expected to know, for example:
 - *Outline the general principles for the level of damages awards including:*
 - *contract (to put the claimant in the position as if the contract had been fulfilled)*
 - *tort (to put the claimant back in the position if the tort had not been committed)*

- An outline of the additional sub-topics, for example:
 - Define the elements necessary for the formation of a valid contract:*
 - *Offer, including:*
 - *unilateral offer*
 - *communication of the offer*
 - *comparison with Invitation to Treat*
 - *termination of offer*

In light of the additions, the following topics have been removed:

Section	Title	Learning Outcome
1	The characteristics of the English legal system	Understand the relevant advantages of each tribunal Describe how legislation is made by the UK Parliament in Westminster and by the Institutions of the European Union
3	Remedies available in IP related civil legal proceedings	Freezing orders (old Mareva injunctions) Define the general principles governing the award of costs made by the court at the end of trial and at interim hearings, including those governing the court's power to assess costs for immediate payment

The scope of the following topics has also been limited as marked in bold.

Section	Title	Learning Outcome
2	Law of Court Procedure	Explain the law of court procedure in the IPEC Outline the stages of IPEC court actions by reference to the Civil Procedure rules ...

FC3 – International Patent Law : Syllabus Changes

The syllabus has been revised to review the country coverage for this examination. As patent laws harmonise around the world, it remains important for the skilled patent attorney to understand any features which are unique to particular countries and to have a broad understanding of where internal patent law differences from EPC/UK practice. This knowledge enables the skilled UK patent attorney to understand what questions they need to ask their overseas counterparts and is a key differentiator for the UK profession. Accordingly, a new section 1 to a set of strategic consideration when building a patent portfolio is added. The wider list of countries from the previous syllabus is retained for this new section 1.

This new section 1 has learning outcomes relating to strategic considerations such as:

- a) *Describe the rationale for and purpose of the patent system*
- b) *Evaluate and compare alternative ways in which a client's invention may be protected in the listed countries, including outlining:*
 - *the strategic creation and management of a patent portfolio and*
 - *the principles for the legal protection of trade secrets and confidential information*

The learning outcome relating to trade secrets and confidential information is intended to allow a candidate to demonstrate their knowledge of the range of legal protection which is available. It is intended to complement the more detailed legal knowledge in the new section of FC2 – UK Law set out above.

In addition to the topics listed above, the new section 1 also draws together the strategic considerations which previously appeared in other parts of the syllabus. Accordingly, the learning outcome on the underlying principles for claiming priority in section 7 has been moved into the new section 1 and the learning outcomes on grace periods and utility models remain in section 1.

The list of countries for which a detailed knowledge of patentability requirements and procedure is required has been shortened to:

- EPC
- PCT
- Australia
- China
- Germany
- Hong Kong
- Japan
- Singapore
- USA

Similarly, the specific detail for claiming priority is moved to sections 2, 4 and 5 and is thus limited to the PCT, EPC and the new short list of countries. The specific learning outcomes in the previous section 2 on natural security provisions have also been moved into section 5.

Other changes include separating the previous section on the PCT into two parts – an international phase (section 2) and a national phase (section 3). The wider list of countries is also retained for the new national phase section to ensure candidates retain a strategic knowledge.

Two new columns listing the relevant legal Articles and Rules which are associated with the learning outcomes have been added to give candidates further guidance of the knowledge required to succeed.

FC4 – Design and Copyright : Syllabus Changes

The core subjects specified by IPReg include UK and international copyright law. Accordingly, in line with the amendments to the FC3 syllabus, a new section 1 has been added to give learning outcomes relating to strategic considerations for copyright:

- a) *Describe the rationale for the copyright system*
- b) *Explain the general provisions under the Berne Convention for extending copyright protection internationally*

These new learning outcomes align with the topics ‘copyright law (UK and international) - rationale’ in the core subjects.

Similarly, a knowledge of registering and maintaining a design in the UK and internationally is required by IPReg. Accordingly, a new section 2 entitled ‘Protection of designs in EU, UK, USA, China and Japan’ has been added with learning outcomes reflecting strategic considerations for 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) *Identify any grace periods for prior disclosures*
- d) *With reference to the Paris Convention, define the underlying principles for claiming priority for national and international applications*
- e) *Define who may file an International application*
- f) *Identify where an International application must be filed and its contents*

Further learning outcomes have also been added to section 14 to include moral rights, economic rights and licensing for copyright to match the core subjects defined by IPReg:

- d) *Define the right to be identified as the author or director*
- e) *Define the right to object to derogatory treatment of work*
- f) *Outline the rights conferred on performers and persons having recording rights*
- g) *Outline the consent required for recording of live performances*
- h) *Describe how copyright may be transferred or licensed*

The following learning outcomes have been added to reflect recent law changes:

Section	Title	Learning Outcome
6	The law relating to the application process for registered designs	e) Explain the consequences of falsely representing a design as registered
10	The law relating to infringement of registered designs	e) Outline the limitations based on a prior use right

		h) Outline when the offence of unauthorised copying is committed i) Describe the consequences of committing the offence
13	The law relating to infringement of unregistered community designs and UK design right	h) Explain when proceedings for a groundless threat of infringement may be brought in the UK
15	The law relating to infringement of copyright	d) Outline the criminal liability for making or dealing with infringing articles

The following learning outcomes are deleted to, at least in part, balance the inclusion of the additional material:

Section	Title	Learning Outcome
7	Priority	e) what is meant by exhibition priority
9	A Registered Design as a form of property	a) Describe the information which is available on the Register
10	The law relating to infringement of registered designs	c) Define, ..., where that action may be brought
13	The law relating to infringement of unregistered community designs and UK design right	c) Define, ..., where that action may be brought

The balance of UK and EU design knowledge is unchanged for the 2018 syllabus. This will be reviewed again for the 2019 syllabus.

FC5 – Trade Mark Law : Syllabus Changes

The core subjects specified by IPReg include international and trans-national options for trade mark protection together with legal protection for unregistered trade marks in the UK and other key jurisdictions. Accordingly, in line with the amendments to the FC3 and FC4 syllabi, content on the international protection of trade marks have been augmented in order to specifically address protection of trade marks in the EU (as a unitary right), France, Germany, Ireland, Italy, Spain, UK, USA, China and Japan.

The provisions on the international protection of trade marks have been grouped together as sections 1 to 4. Section 1, entitled: *'The international protection of trade marks'*, is new, and contains the learning outcome:

Evaluate alternative ways in which a client's rights in a trade mark may be protected internationally, and specifically the strategic considerations for using the Madrid Protocol, the EU Trade Mark, and national filings.

The former section 14, concerning protection afforded to Well Known Marks by the Paris Convention, is also now included in this section 1.

A new section 3 entitled *'The Madrid Protocol: Protection of trade marks in EU (unitary right), France, Germany, Ireland, Italy, Spain, UK, USA, China and Japan.'* has also been added to strengthen the international knowledge of a candidate. The learning outcomes are:

- a) *Outline the specific requirements for registering and maintaining registered trade marks in the listed countries through the Madrid Protocol, including:*
- *any requirement to pay registration fees once an application has been accepted for registration*
 - *any requirement of intent to use the mark*
 - *whether the office can refuse registration, ex-officio, on relative grounds*
 - *the length of opposition period*
 - *the length of the period after which a mark can be revoked for non-use*
 - *any maintenance requirements beyond paying a renewal fee*

For the final bullet point, the candidate is referred to [Section 8 of the Lanham Act \(15 United States Code, Section 1058\)](#).

Likewise, the existing requirement to describe the EU 'conversion' procedure (in section 4) has been augmented with a learning outcome to:

Outline the legal protection for unregistered trade marks in EU countries.

Candidates will only be expected to outline the information from the ['Table on National Rights that Constitute 'Earlier Rights' in the Sense of Article 8\(4\) EUTMR'](#) for the five EU states listed above.

The existing learning outcomes concerning priority under the Paris Convention have been merged into a single section (section 10).

Also to meet the core subjects' requirements, a learning outcome has been added to section 6 ('the law relating to registrable trade marks'), namely to:

Describe the overlap with design protection.

Furthermore, as part of the annual review, the following legal provisions are added to give more information on what is required for the associated learning outcome:

Section	Title	Legal provision
9	Opposition and observations	UKTMA 6A – Raising relative grounds in opposition in cases of non-use
10	Priority and seniority	EUTMR 36 – Effect of priority
11	Duration of registration	UKTMA 80 – Hours of business and business days
14	Revocation and invalidation of registered trade marks	EUTMR 18 – Use of EU trade marks EUTMR 62 – Consequences of revocation and invalidity

The following learning outcome and related legal provisions have been added to give more consistency with the treatment of infringement on the UK patent and design and copyright syllabi:

Section	Learning outcome	Legal provisions
13	Identify the remedies available to trade mark owners against infringers	UKTMA 14 – Action for infringement UKTMA 15 – Order for erasure, &c. of offending sign UKTMA 16 – Order for delivery up of infringing goods, material or articles EUTMR 17 – Complementary application of national law relating to infringement

The case law listed in the syllabus has also been reviewed and the list of cases has been expanded to reflect key developments in trade mark law. However, the learning outcome relating to case law is now limited to describing only the legal principles established by these cases. No other case law (on registered trade marks) will be examined.

The following learning outcomes are deleted to, at least in part, balance the inclusion of the additional material:

Section	Title	Learning Outcome
4	The law relating to the application process	e) Explain the restitutio process for a European Union trade mark application and the implications of a successful application for restitution

		NB This learning outcome is retained in section 7 for a European Union trade mark registration
9	The law relating to infringement of registered trade marks	f) Explain how jurisdiction is determined (the cascade principle) and the extent of the jurisdiction
12	European Union Law affecting trade marks	b) Outline the key competition law provisions

Until March 2019, there is no change to the UK profession's right to represent clients before EUIPO. Accordingly, the balance of UK and EU trade mark knowledge is unchanged for the 2018 syllabus. This will be reviewed again for the 2019 syllabus.

In addition to reflect the updating of the [EU Regulation No. 2017/1001 of 14 June 2017 on the European Union Trade Mark](#) (EUTMR), there has been some renumbering of references in syllabus sections 6, and 8-14.

Examination Format

All PEB Foundation Certificate examinations will be three hour unseen closed book question papers divided into Section A and Section B.

The total number of marks available is unchanged at 100 and the pass mark is unchanged at 50%.

Candidates must attempt:

- **all** questions in Section A and
- **three questions from four questions** in Section B.

Section A

The overall total for Section A is 40 marks. All questions are compulsory.

The questions in Section A may have different marks awarded to them depending on the amount of time required to answer the question. There will be a minimum of four questions and no question in Section A will be worth more than 10 marks.

Section A will test a candidate's knowledge of topics across the syllabus. There will be a mix of questions for example: recitation questions, definition questions and comparison questions. Simple scenarios may also be used to test a candidate's ability to analyse information and to apply their legal knowledge.

For FC2 – English Law, approximately 10 marks will examine the content of 'Professional Conduct for a Registered Patent Attorney'.

Section B

The overall total for Section B is 60 marks. Three questions from four questions must be selected. Each question is worth 20 marks. If a candidate attempts more than three questions, only the first three questions will be marked.

Section B will also test a candidate's knowledge of topics across the syllabus but at a more advanced level than in Section A. The questions will thus test more complex or specialist subjects as well as setting out more complex scenarios, and will require candidates to apply their knowledge to a scenario by providing advice and/or guidance.

Sample Assessment Materials

The PEB has provided sample assessment materials in the form of a question paper in the new common format for each of the Foundation Certificate examinations with a mark scheme for each. These can be found [here](#).