

## Patent Examination Board Litigation Skills Syllabus

### 1. Introduction

The aim of this qualification is to deliver the necessary underpinning knowledge and practical skills in order to be able to conduct litigation in accordance with the **Intellectual Property Litigation Certificate** which grants:

- i) A right to conduct appeals from and/or apply for judicial review in the High Court of decisions of:
  - a) the Comptroller General of Patents,
  - b) an Appointed Person, or
  - c) any other body or tribunal in England and Wales making decisions relating to the subsistence, scope, grant, enforcement, exploitation or ownership of intellectual property rights such as may be constituted from time to time;
  
- ii) A right to conduct litigation in (including the right to conduct appeals of interim decisions of):
  - a) the Intellectual Property Enterprise Court; and
  - b) the County Court when the court is hearing a matter where Part 63 of the Civil Procedure Rules apply or any matters ancillary thereto;
  
- iii) A right of audience to appear before:
  - a) the Intellectual Property Enterprise Court;
  - b) the High Court in appeals proceedings mentioned in paragraph (i) but not applications for judicial review; and
  - c) the appeal tribunal constituted by the Registered Designs Act 1949 (as amended from time to time);
  
- iv) A right to conduct appeals from decisions in proceedings mentioned in paragraphs (i)-(iii) above to the Court of Appeal and the Supreme Court.<sup>1</sup>

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<sup>1</sup> Source: <http://ipreg.org.uk/wp-content/files/2013/01/IPReg-Regulations- Oct-2013-Website.pdf>

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### 2. Subject content

The qualification meets the IPReg Learning Outcomes which are:

Attorneys should, in the context of intellectual property litigation, be able to:

1. understand the importance of preparation and the best way to undertake it;
2. understand the importance of litigation ethics and the obligations and duties litigators and advocates have towards a court, clients and other parties;
3. understand the basic skills in the presentation of cases before courts and tribunals in particular the skills necessary for the presentation of cases before the Intellectual Property Enterprise Court;
4. understand the procedures for swearing oaths and the circumstances when a Commissioner for Oaths may not administer an oath;
5. understand the procedural rules, including the time limits, for a judicial review, and the circumstances when judicial review of the decisions of intellectual property tribunals will be granted;
6. understand court structures and civil litigation procedure and how they apply to intellectual property litigation;
7. be able to formulate and present a coherent submission based upon facts, general principles and legal authority in a structured, concise and persuasive manner.

Source: <http://ipreg.org.uk/wp-content/files/2013/01/IPReg-Regulations- Oct-2013-Website.pdf>

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### 3. Qualification structure

The subject content is divided into five units.

<b>Unit 1</b>	<b>Preparation</b>
<b>Subject content</b>	<ol style="list-style-type: none"> <li>1. The courts system</li> <li>2. Anatomy of a civil IP court action</li> <li>3. Costs</li> <li>4. Judicial review and appeals</li> <li>5. Introduction to litigation file management</li> <li>6. Case analysis and preparation</li> </ol>
<b>IPReg learning outcomes reference</b>	<ol style="list-style-type: none"> <li>1</li> <li>3</li> <li>5</li> <li>6</li> </ol>
<b>Unit 2</b>	<b>Litigation procedures</b>
<b>Subject content</b>	<ol style="list-style-type: none"> <li>1. Civil litigation rules and identification of which parts apply to IP</li> <li>2. Alternatives to litigation</li> <li>3. Causes of action in IP litigation</li> <li>4. Case management and preparing for trial</li> <li>5. Administering oaths or declarations</li> </ol>
<b>IPReg learning outcomes reference</b>	<ol style="list-style-type: none"> <li>1</li> <li>2</li> <li>3</li> <li>4</li> <li>6</li> </ol>
<b>Unit 3</b>	<b>Evidence and ethics</b>
<b>Subject content</b>	<ol style="list-style-type: none"> <li>1. Applying the IPReg Codes of Conduct</li> <li>2. Duty to the court and duty to other professionals</li> <li>3. Ethical issues when dealing with clients and witnesses</li> </ol>

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	<ol style="list-style-type: none"> <li>4. Interviewing techniques</li> <li>5. Preparing a witness statement</li> <li>6. Evidence gathering techniques and expert evidence</li> <li>7. Usefulness of evidence</li> </ol>
<b>IPReg learning outcomes reference</b>	<ol style="list-style-type: none"> <li>1</li> <li>2</li> <li>3</li> </ol>
<b>Unit 4</b>	<b>Preparing the case</b>
<b>Subject content</b>	<ol style="list-style-type: none"> <li>1. Case preparation</li> <li>2. Evidence, argument and submission</li> <li>3. Ethical principles in relation to collecting and presenting evidence</li> <li>4. Pre-trial preparation</li> <li>5. The skeleton argument</li> <li>6. Advocacy skills: formulating a coherent closing submission</li> </ol>
<b>IPReg learning outcomes reference</b>	1 to 6
<b>Unit 5</b>	<b>Making the submission</b>
<b>Subject content</b>	<ol style="list-style-type: none"> <li>1. Delivering a closing submission</li> </ol>
<b>IPReg learning outcomes reference</b>	<ol style="list-style-type: none"> <li>1</li> <li>3</li> <li>7</li> </ol>

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### 4. Assessment<sup>2</sup>

There are two assessment components for this syllabus. Each candidate:

- will be awarded a mark for each component;
- will be graded either 'pass' or 'fail' for each component;
- must achieve a pass mark in both components in order to gain the IPLC.

#### Component 1 – Written examination

Units 1, 2, 3 and 4 which meet the IPReg learning outcomes 1, 2, 3, 4, 5 and 6 will be assessed via a written examination which will comprise:

A written **closed book** examination of two hours with short answer questions each question or sub question is worth between 1 and 5 marks.

Pass mark: 50%

#### Component 2 – Oral examination

Units 4 and 5 which meet the IPReg learning outcomes 1, 3 and 7 will be assessed via an Oral Examination which will comprise a delivery of a 10 minute presentation.

Pass mark: 50%

The assessment criteria and the pass/below pass descriptors for the oral examination are as follows:

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<sup>2</sup> NB: The law that will be assessed is the law that is current at the time of the examination.

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Learning Outcomes Candidates will be able to:	Assessment criteria The candidate:	Below Pass standard descriptor The candidate:	At or above Pass standard descriptor The candidate:
<b>LO1</b> Understand the importance of preparation and the best way to undertake it	a. demonstrates understanding of the facts and issues in the case b. supports the case by drawing on general principles and legal authority	<ul style="list-style-type: none"> <li>• appears unfamiliar with the facts and issues in the case</li> <li>• identifies general principles or legal authority that are not relevant to the case.</li> </ul>	<ul style="list-style-type: none"> <li>• appears familiar with the facts and issues in the case</li> <li>• identifies the relevant general principles and legal authority to support the case.</li> </ul>
<b>LO3</b> Understand the basic skills in the presentation of cases before courts and tribunals in particular the skills necessary for the presentation of cases before the IPEC	c. acts as an advocate d. differentiates between evidence, submission and argument e. relies upon witness and documentary evidence in an appropriate manner to support their case f. responds appropriately to the formality of the court hearing	<ul style="list-style-type: none"> <li>• fails to act as an advocate in an adversarial manner</li> <li>• shows limited ability to differentiate between evidence, submission and argument</li> <li>• shows limited ability to assess evidence</li> <li>• is too discursive or conversational in style.</li> </ul>	<ul style="list-style-type: none"> <li>• acts as an advocate in an adversarial manner</li> <li>• differentiates properly between evidence, submission and argument</li> <li>• uses witness and documentary evidence to support the case</li> <li>• presents the case in a formal manner.</li> </ul>
<b>LO7</b> Be able to formulate and present a coherent submission based upon facts, general principles and legal authority in a structured, concise and persuasive manner	g. presents a submission that is concise, well-structured, reasoned and coherent h. selects relevant facts, and applies general principles and legal authority to support the case i. delivers the presentation in an authoritative and persuasive manner.	<ul style="list-style-type: none"> <li>• presents a submission that contains some elements that are concise and reasoned, but may lack overall structure and coherence</li> <li>• fails to set out adequately the legal principles and authority relevant to the submissions</li> <li>• fails to set out adequately those facts that are relevant to supporting the submissions</li> <li>• misrepresents the factual evidence or refers to facts not supported by evidence (witness or documentary)</li> <li>• delivers the presentation in a manner which is unclear and lacks authority, pace or effective use of voice.</li> </ul>	<ul style="list-style-type: none"> <li>• presents a submission that is mainly concise, reasoned and coherent</li> <li>• sets out the legal principles and authorities that are relevant to the submission</li> <li>• sets out the facts that provide relevant support to the submissions</li> <li>• accurately represents the factual evidence and does not rely on facts not supported by evidence (witness or documentary)</li> <li>• delivers the presentation in a manner that is clear, has authority, is generally well-paced and shows effective use of voice.</li> </ul>