



Oxford International
IP Moot

09

St Catherine's College Oxford



Welcome...

...to the Oxford International IP Moot, hosted in 2009 by the Oxford Intellectual Property Research Centre from its new home in the University of Oxford's Faculty of Law.

The Moot in 2009 will take place on Friday 20 March and Saturday 21 March, marking a change from the weekend schedule of previous years. It will also have a new venue, St Catherine's College – or Catz, as it is known to its friends – which is the youngest and largest of the Oxford colleges, and which (not coincidentally) is my own College. Catz is proud of its beautiful buildings and gardens, the design of which marked a bold move away from the more traditional designs usually associated with Oxford colleges. It is considered to be one of the finest examples of the work of the Danish architect Arne Jacobson, and is imbued with an open, welcoming and democratic spirit that makes it a perfect venue for an event such as this.

The problem to be mooted also marks a change from past years. Written by Associate Professor David Brennan of the University of Melbourne, it is the first

problem to have a patent focus. For this among many other things we have the Moot's OC Chairman and Oxford DPhil Candidate in Physical Chemistry to thank: Stuart Baran. My hope is that having a patent problem will dispel the myth that one needs a background in science in order to be a patent lawyer.

Or is it not a myth? This is one of the questions that will be considered at the inaugural Oxford IP *Conversazione*, to be held at the Moot on the evening of Friday 20 March. In the tradition of past *conversazioni*, the aim of this event will be to bring together people from different disciplines and professional backgrounds to address contemporary issues relating to IP; all with the help of good food and wine.

Between the timing, venue, problem and *Conversazione*, we can expect some small changes to the Moot from past years. All however will be in fulfilment of

the Moot's original objective of providing a social and intellectually rigorous event for those of us interested in IP law and advocacy. In the light of that objective particularly I am delighted to say that the final round of the moot will be judged again this year by Lord Justice Mummery, Lord Justice Jacob, and Mr Justice Floyd; and that we will again end the event with a black-tie dinner, this time in Catz's beautiful hall.

All in all it promises to be a wonderful event. I do hope you will be able to join us for it.

Justine Pila
Interim Director, Oxford Intellectual Property Research Centre





From the Dean

"The faultless organization made the experience very enjoyable..."

Mooter

Welcome to the Oxford Intellectual Property Law Moot.

The law of intellectual property presents remarkable challenges for countries around the world. They need to work out how to cooperate with each other. And the cooperation needs to allow scientific and artistic creativity to flourish, in a way that respects the interests of the community, the rights of original creators, and the rights of those who come up with creative ways of using other people's work. In each country and internationally, the practice of intellectual property law gives well-equipped lawyers the opportunity to serve their clients and their communities as advisors, as advocates, and in the development of law and policy. That is why we are particularly glad to welcome teams from all over the world to Oxford for this moot. I know that it will be exciting, and I hope that it will equip you for your work as lawyers. The moot is a wonderful opportunity for you to learn from senior judges and practitioners, whose commitment has made this event such an excellent success over many years. You also have the brilliant opportunity to learn from

each other, and I wish each of you something that many of us in Oxford have enjoyed in our own mooting experience: the benefit of outstanding opponents.

Professor Timothy Endicott
Dean, Faculty of Law, University of Oxford



2009 Moot Facts

FACT SITUATION

The following is a judgment of Justice Bowden in the High Court of Erewhon. It forms the basis of an appeal to the Supreme Court of Erewhon. The points of appeal and instructions appear after the judgment.

Judgment of JUSTICE BOWDEN:

This is an action brought by the plaintiff, Ingenious Labs Inc ('Ingenious') for the infringement by the Erewhon Health Corporation ('EHC') of a synthetic protein patent granted to Ingenious. Ingenious is the country's largest investor and employer in the field of biotechnology research. EHC is the country's major private provider of health services and largest manufacturer of non-proprietary medicines. The action relates to a product patent for a synthetic protein. EHC defends the action for infringement by disputing that it infringes the patent, and EHC also alleges that the patent is invalid and asks this court to order its revocation.

The Facts

The facts that I set out here are agreed between the parties, their dispute is about the legal implications of these facts.

The Ingenious patent relates to the discovery of a human gene responsible for the production in the body of the human protein cyston T ('CT'). Cyston T deficiency ('CTD') has long been understood to be the cause of a rare variety of unique and severe epilepsy (known as CTD epilepsy) which particularly afflicts people in Erewhon, with symptoms in the form of debilitating seizures. The reason why CTD triggers epilepsy is not known.

For many years CTD epilepsy was not treatable by any known procedure or

medication. In 1982 the CT protein was first isolated from human blood and made available as an effective treatment (by intravenous injection) for CTD. However because the supply of such naturally-occurring isolated CT protein ('niCT') relies upon blood donations, and because it was so difficult to efficiently obtain in isolated form from blood, there has always been an insufficient supply of niCT protein relative to the number of sufferers of CTD. As such, niCT protein has been administered predominately as an ad hoc treatment for seizures, rather than as a prophylaxis to prevent seizures.

The identification of the particular human gene (situated on the 19th chromosome) responsible for the production of the CT protein ('the CT gene') was made in 2004 by Dr Graeme Pollack after lengthy, complex and costly research. Dr Pollack is a senior research scientist employed by Ingenious. The gene sequence information had in 2000 been published as part of the human genome draft ('Book of Life'). However the role and significance of that gene sequence as encoding for the CT protein had never previously been appreciated. Dr Pollack established through an extensive epidemiological study that those with any mutation (even a single point mutation) in their CT gene suffered CTD, and suffered CTD epilepsy. Through his ground-breaking research CTD epilepsy was for the first time (correctly) classified as a genetic condition.

Dr Pollack also first physically isolated the nucleic acid encoding the CT gene. Dr Pollack then used standard recombinant DNA techniques to insert the CT gene into the plasmid of *Escherichia coli* ('E. coli') bacteria. In so doing, and relying upon well understood

processes, as the *E. coli* cells replicated they cloned the inserted human CT gene and synthetically expressed the CT protein. The CT protein thus produced was readily recoverable in an isolated form from the *E. coli* host cells. By isolating the physical CT gene and its use in the recombinant process Dr Pollack was able to (through the bacteria 'factories') to synthetically produce isolated CT in quantities far greater than previously possible and without the need of donated blood. This synthetic CT protein is known as 'recombinant CT' ('rCT'), and it is accepted by the parties that rCT protein is indistinguishable from niCT protein except for a slightly different physical structure. This difference is caused by less sugar residue being deposited to protein side chains in the recombinant production of rCT protein when compared to the CT protein produced in the human body. As a result rCT and niCT proteins are said to have different 'glycosylation patterns'. That difference notwithstanding, the rCT and niCT proteins are bioequivalent.

Ingenious kept the results of Dr Pollock's research pertaining to the CT gene secret until it applied for its patent before the Patent Office of Erewhon ('POE') on 17 September 2005. The patent was granted by the POE in March 2008.

The patent is entitled 'Cyston T protein produced by recombinant technologies'. The following passages of the description outline the crux of the alleged invention.

The problem that this invention seeks to overcome, and the limitation of the prior art, is the inability to produce in an isolated form sufficient quantities of the CT protein to administer to sufferers of CTD and CTD epilepsy.

The description then set out the process by which niCT protein was extracted from donated blood supplies, the finite amount of niCT protein available and the consequence that niCT protein is rationed so that only those actually suffering a seizure may be treated with it. The description went on to state:

Upon isolating the gene which encodes CT protein it was perceived that the application of recombinant DNA technologies would be a most effective way of producing ample quantities of the human protein CT in a substantially pure form. The present invention involves the insertion of the CT gene into a plasmid capable of replication in the bacterium E. coli, the introduction of the plasmid into the bacterium, the replication of the CT gene in conjunction with the bacterium cells' replication, and the expression of CT protein by the recombinant E. Coli in such a way that the synthesised protein is able to be recovered in a substantially pure and isolated form. The protein in such form is recombinant CT (rCT) and exhibits bioactivity which admits its use in either the prophylactic or therapeutic treatment of human beings suffering CTD and CTD epilepsy.

Claim one of the patent provided:

Cyston T protein in substantially isolated form produced by recombinant DNA technology.

It is this claim of the synthetic protein patent which Ingenious relies upon in its action against EHC.

The conduct of EHC that Ingenious complains about is that since September





2008 EHC has started producing its own synthetic CT protein by recombinant technologies. In so doing, EHC has used an essentially standard process except that rather than use *E. coli* as the host bacterium cells it used a different bacteria strain – *Rhodococcus erythropolis* ('*R. erythropolis*'). In so doing, scientists at EHC had recourse to standard biotechnology textbooks – some dating back to the 1980s – which described the different types of organisms which can be used for recombinant technology including types of bacteria, yeast, insect and mammalian cell lines. *R. erythropolis* was found by EHC to be a better bacteria 'factory' for rCT protein than *E. coli* as it was capable of proliferation over a broader temperature range and the expressed rCT protein was more easily recoverable in a substantially pure and isolated form. The rCT protein produced from *R. erythropolis* has the same glycosylation pattern as rCT protein produced from *E. coli*, and is otherwise identical. This production has occurred without the permission of Ingenious, which alleges the conduct infringes claim one of the synthetic protein patent. EHC defends this action on two fronts. It argues that its conduct falls outside the scope of claim one properly construed, and also argues that the claim should be revoked.

The Law

I set out the relevant provisions of Erehwon's simplified Intellectual Property Code 2008 ('IP Code') which the parties accept as governing the case.

General

1. The articles of this Code may be interpreted to conform as far as possible to prevailing international standards relating to intellectual property rights, as

manifested, for example, in treaties, the decisions of national and international tribunals, and the opinions of reputable jurists, but none of these sources shall bind the courts of Erehwon.

2. Intellectual property rights shall include: ... (c) patents; ...

3. Subject to this Code, an intellectual property right is infringed if it is used without the consent of its owner, and appropriate remedies shall be available as for an infringement of a property right.

* * *

Patents

20. Patents shall be granted for any inventions, in all fields of technology, provided that they are new, involve an inventive step and are susceptible of industrial application.

21. Discoveries as such are not inventions within the meaning of article 20.

22. Patents are not to be granted in respect of inventions the commercial exploitation of which would be contrary to ordre public or morality.

23. In assessing novelty or inventive step, regard must be had to the state of the art which comprises everything made available to the public by means of a written or oral description, by use, or in any other way, before the date of filing of the patent application.

24 (1) The extent of the protection conferred by a patent shall be determined by the claims; nevertheless, the description shall be used to interpret the claims.

(2) The extent of the protection conferred by a patent is to be understood as meaning neither: (a) that the strict, literal meaning of the wording used in the claims define protection and the description merely resolve claim ambiguity; nor (b) that the claims serve only as a guideline and that the actual protection conferred may extend to what, from a consideration of the description by a person skilled in the art, the patent proprietor has contemplated.

(3) The extent of protection conferred by a patent means a position which combines a fair protection for the patent proprietor with a reasonable degree of legal certainty for third parties.

(4) For the purpose of determining the extent of protection conferred by a patent, due account shall be taken of any element which is equivalent to an element specified in the claims.

25. The term of a patent is 20 years from the date of filing of the application.

26. The Patent Office of Erehwon must refuse to grant a patent unless it is satisfied that:

- (a) the subject-matter of the patent application is patentable under articles 20 to 23;
- (b) the patent application discloses the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art; and
- (c) the claims are clear and supported by the description.

27. A patent may be revoked by a court only on the grounds that:

- (a) the subject-matter of the patent is not patentable under articles 20 to 23; or



"The Oxford Moot serves a very valuable purpose, both in encouraging students to further their studies in intellectual property law, and also in show-casing the research work of the Oxford Intellectual Property Research Centre."

**The Hon Michael Lavarch, Executive Dean,
Faculty of Law, QUT**

(b) the patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

The Issues

I will deal first with arguments related to the revocation of the patents under 27(a), and then with arguments related to infringement and revocation under 27(b).

Revocation under article 27(a)

EHC argues that the claim 1 of the patent is no more than a claim to a discovery relating to the CT gene. It is therefore said to be a claim to subject-matter excluded by article 21 and revocable by this court under article 27(a). Although I have some sympathy for the position put by EHC, I consider myself constrained by the stipulation in the IP Code that discoveries are excluded 'as such'. The claim is not a claim to a mere discovery. The claim adds more subject matter, attaching insights pertaining to the artificial production of the protein for which the CT gene encodes. Therefore – with some misgivings in view of the scope of the claim – I reject this as a basis upon which the patent claim may be revoked.

EHC next argues that the patent claims an invention the commercial exploitation of which would be contrary to ordre public or morality, barred by article 22 and therefore able to be revoked by this court under article 27(a). EHC alleges that the claim is tantamount to an assertion of proprietorship in humanity. While this may be so, trial judges should be slow to apply notions of morality to the field of biotechnology without guidance. It is for the legislature or a higher court to explicate whether and to what extent patents which relate to

human genes or genetic information offend article 22. Commercial entities such as Ingenious can then structure their expenditure on research and development to avoid wasting money in fields considered outside of the patent system on moral grounds. I therefore reject EHC's arguments under this ground.

EHC next argues that claim 1 of the synthetic protein patent is not new and therefore fails to meet a criterion required by article 20, and can be revoked by this court under article 27(a). Article 23 requires regard to be had to 'everything made available to the public' immediately prior to 17 September 2005. EHC argues that the claim is to isolated CT protein as a product, and that this is a product that has been made available to the public since 1982 in the form of niCT protein. Therefore it is not new. Ingenious counters this argument by arguing that its claim is not to CT protein produced naturally but to a form of the CT protein produced synthetically through a recombinant process. In any event rCT protein has a different glycosylation pattern to that of niCT protein. In rejecting EHC's position this court is struck by the qualification upon the claim – that it is to CT protein 'produced by recombinant DNA technology'. There is no prior art rCT protein for one very good reason: such a product was impossible without the breakthroughs of Dr Pollack. The newness of the claim to CT protein produced by recombination can not be impugned on the basis of the prior existence of niCT alone. If another reason were required I would add that rCT protein is different in physical structure to naturally produced CT protein.



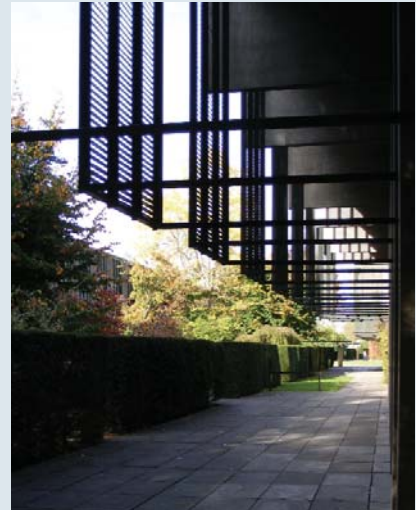
EHC next argues that claim 1 was obvious at the filing date and therefore fails to possess an inventive step as required by article 20. EHC alleges that the means to produce recombinant proteins were very well understood prior to 17 September 2005. All that Ingenious did was combine that prior art with the mere discovery of information about the CT gene. Once that discovery was made, the rCT protein was plainly obvious. EHC invites me to extract from the assessment of inventive step that which might be said to be 'discovery'. However, I reject that invitation. Ingenious cannot patent the discovery of the CT gene, but if on the basis of that discovery it can tell people a way how the discovery can be usefully employed, then a patentable invention may result. This is the case even though once Ingenious has made the discovery a way in which it can be usefully employed – here recombinant protein production – is fairly obvious. I therefore find that the claim involves an inventive step.

Infringement and revocation under article 27(b)

EHC argues that even if its arguments for revocation under article 27(a) fail its production of rCT protein through the use of *R. erythropolis* does not fall within the scope of claim 1 of the synthetic protein patent. This is because article 24 should apply to confine that claim to rCT protein made through the agency of *E. coli*. As such, EHC argues that there is no infringement. In the alternative EHC argues that if the rCT protein made via *R. erythropolis* is found to fall within its scope, there has been insufficient description of any invention relating to *R. erythropolis* by Ingenious and that claim 1 of the synthetic protein patent should be revoked under article 27(b).

Ingenious submits that a claim in patent law must operate to some extent at an abstract level, for no patent applicant could ever be expected to foresee all the ways in which its patent could be infringed. Ingenious further submits that article 24 permits claims to operate with some degree of elasticity – particularly when it comes to 'any element which is equivalent to an element specified in the claims'. Ingenious puts its case that the production of rCT protein by any recombinant technology falls within its claim. However its claim must be read in light of the description through the eyes of a skilled biotechnologist. Such a person would understand the purpose of using the term 'recombinant DNA technology' was to confine the claim to products made from modified *E. coli*. The activities of EHC in making rCT protein using a different bacterium must fall outside the claim correctly construed.

If I was wrong on the claim construction point, and the claim is to have the broader scope contended by Ingenious, I would revoke the claim under article 27(b). Ingenious submits that to do so is offensive to the logic of the IP Code's drafting, and in particular the omission of an article 26(c) counterpart in article 27. However, I prefer EHC's argument that a claim must be fully disclosed by its description across the entire breadth of its possible scope to avoid revocation under article 27(b). If the claim includes within its scope rCT protein produced from *R. erythropolis* some reference to recombination with that bacterium must be found in the description. That reference is absent and so the Ingenious claim can not be both infringed by rCT protein made from *R. erythropolis* and be said to have sufficiently described the making of rCT protein using *R. erythropolis*. I agree with EHC's arguments here both



"The idea of such international mooting is excellent... We hope to be back as coaches next year..."

Mooting team from Nantes University, France





as to infringement and article 27(b) which put claim 1 in a classic patent squeeze.

Conclusion

In find that claim 1 is valid but it is not infringed by EHC.

INSTRUCTIONS:

Ingenious appeals the decision of Bowden J to the Erewon Court of Appeal; EHC in responding cross-appealed those parts of the High Court's judgment that went against it. The Court of Appeal concisely and unanimously dismissed both the appeal and cross-appeal, affirming the reasoning and every conclusion of Bowden J. Ingenious now appeals the Court of Appeal's judgment to the Supreme Court of Erewon and EHC in responding maintains its cross-appeal.

The Ingenious appeal

Ingenious appeals on the ground that the Court of Appeal's affirmation of the High Court was wrong in law:

- (a) in interpreting the claim to the synthetic protein under IP Code article 24 to not include EHC's production of rCT protein;
- (b) in finding that if the claim to the synthetic protein was to be interpreted to include EHC's production of rCT protein then the claim would be revocable under IP Code article 27(b).

EHC responding to the appeal and cross-appealing

In responding to the Ingenious appeal, EHC supports (although not necessarily for the same reasons as Bowden J) the two legal conclusions of the High Court

and Court of Appeal impugned by Ingenious, and cross-appeals on the ground that the Court of Appeal's affirmation of the High Court was wrong in law:

- (a) in finding that the claim was to subject matter not excluded by IP Code articles 21 or 22;
- (b) in finding that the claim to the synthetic protein was to new subject-matter and possessed an inventive step as required by IP Code article 20.

Ingenious responding the cross-appeal

In responding to the EHC cross-appeal, Ingenious supports (although not necessarily for the same reasons as Bowden J) the two legal conclusions of the High Court and Court of Appeal impugned by EHC.

2009 Moot Rules

Abbreviations and Definitions

OC: 2009 Moot Organising Committee

Panel: Panel of Judges for Written Submissions as appointed by the OC

Bench: The group of judges for a given moot round in the oral proceedings weekend.

Moot: The Oxford International Intellectual Property Mooting Competition, 2009

Registration and Eligibility

1. The moot is open to anyone currently enrolled in a full-time higher education course, provided that s/he has not already:
 - a) enrolled on a research course in law; or
 - b) practised law in any jurisdiction where the practice of law is considered to include, but is not necessarily limited to practice as a barrister, solicitor, legal executive, judicial assistant, patent attorney or trade mark attorney. Those enrolled in the OC are not eligible for participation in the moot.
2. Any entrant into the moot is required to declare in their application that they are eligible to compete under §1; anyone considered by the Moot Chairman to have mis-represented their eligibility will be subject to an appropriate penalty determined by the Moot Chairman, which penalty may be disqualification from the competition.
3. A university or other higher education institution may only enter one team for the moot. A team comprises two mooters, each eligible under §1, and may also include a reserve member. Each of the two [or three] team members must be simultaneously registered at the

same University. The same team must prepare the written submissions and appear in oral proceedings.

4. A team may be accompanied by one or two observers. Observers will be required to pay for the cost of their accommodation and food during the oral proceedings weekend. No observer may make any substantive contribution to the preparation of written submissions, nor contribute during oral proceedings. Additional observers may be admitted to the moot at the discretion of the Moot Chairman.
5. On registration, each team undertakes to submit all documentation in good time to meet the deadlines set out in these rules. Additionally, each team undertakes to arrange timely payment of any fees. Late submission of any documentation or payment will lead to sanctions determined by the Moot Chairman to be appropriate, and may entail disqualification from all or part of the competition.
6. Each team [including up to two mooters and a reserve] is required to pay a moot registration fee to the Moot Secretary. The fee is determined according to the country of your University or Higher Education institution, as follows:

Group I (UK, US, Canada, Europe):

£225 per team

Group II (all other countries and territories): **£150 per team**

The moot registration fee, the team registration form, and any fees payable by observers as defined in §4, must be submitted by the

Registration Deadline of **Friday 6th February 2009**.

7. A team is deemed to have applied to enter the competition when a completed team registration form has been received by the Moot Secretary. A team is deemed to have registered for the competition when all of the team registration form, a mooter registration form for each team member, and all the requisite fees as laid out in these rules, have been received.
8. If a team deemed under §7 to have applied to enter the competition does not then attend the oral proceedings weekend, they are deemed to have withdrawn from the moot. They will no longer be considered for any awards, including those relating to written submissions, and their university or higher education institution will be invoiced for the full cost of their accommodation, food and entertainment during the oral proceedings weekend, at a rate of not less than £300 per person. In the most exceptional cases, such an invoice may be waived at the discretion of the Moot Chairman.
9. The maximum number of teams to be allowed to compete during the Oral Proceedings weekend shall be 24. Should more than this number be deemed to have registered for the competition, then the teams with the highest-scoring written submissions [as according to §15] shall be invited to the oral proceedings weekend, subject to the maximum number of 24 teams.

10. If a team invited under §9 has subsequently to withdraw from the moot, then the team with the next-highest-scoring set of written submissions under §15 may, at the discretion of the Moot Chairman, be invited to the oral proceedings weekend.
11. Should a member of a team have individually to withdraw from the moot, the remaining team member may proceed by withdrawing from the moot, or by substituting a reserve team member. The Moot Chairman must be consulted before any such substitution is permitted.

The Competition

12. The competition comprises a written phase, and an oral proceedings weekend.

Written Submissions

13. For the written phase, each team must present two sets of written submissions: one shall be on behalf of the appellants, and the other on behalf of the respondents/cross-appellants. Each pleading is to be under 3000 words in length, including all footnotes and headings, and the word count should be indicated at the end of the pleading; submissions exceeding the word limit will be subject to a points penalty at the discretion of the Moot Chairman.
14. The written submissions shall be adjudicated by a panel of judges, selected by the OC from the legal profession or academia.
15. The panel will award a mark out of 20 to each pleading for each of legal analysis, clarity of argument and research/use of authority. A further





mark, out of 10, will be awarded for style. These marks will be forwarded to the OC by the panel.

- 16.** The written submissions must be received by the Moot Secretary in good time for the Written Submissions Deadline of **5pm UK time, Thursday 18th December 2008**. Within their written submissions, teams must identify themselves only by use of the anonymous identifier that will have been given to them in advance by the Moot Secretary.
- 17.** Written submissions must be made as electronic attachments to an e-mail addressed to the Moot Secretary. They must be supplied in **Microsoft Word format only**. These will then be passed, marked only with the anonymous identifiers, to the judging panel.
- 18.** No alterations to written submissions are permitted after the Written Submissions Deadline.

Oral Proceedings Weekend

- 19.** The OC will be responsible for the draw to decide which teams face one another in the preliminary rounds. This will be carried out in advance of the competition; the results will be prominently available on arrival at the moot. The OC may allocate byes where it is considered expedient.
- 20.** This is an appeal; the facts of the case are admitted and agreed, and so no evidence or witness may be introduced.
- 21.** There is no formal dress requirement, and no form of gown or court dress is required. However, mooters are

advised to dress in a professional manner appropriate to a courtroom atmosphere.

- 22.** Each advocate should address each judge as “My Lord” or “My Lady” directly, “Your Lordship” or “Your Ladyship”. So: *“My Lord, we would submit that the learned judge was right. Indeed, if instead your Lordship were to hold that...”*

Collectively, the bench should be addressed as “My Lords”. Court proceedings should be begun by the opening advocate with “if it pleases...”. The opening advocate should introduce all advocates appearing: appellants and respondents.

- 23.** Each hearing in the preliminary rounds shall have the following structure:

	Preliminary Rounds	Final Round
1 Lead Appellant	15 min	20 min
2 Junior Appellant	15 min	20 min
3 Lead Respondent	15 min	20 min
4 Junior Respondent	15 min	20 min
5 Lead Appellant in Reply	5 min	5 min

Timings include all introductions. Time will be kept by the clerk, who will indicate to each advocate when s/he has five minutes, and then one minute, remaining. The clerk will then indicate when the advocate’s time has expired.

- 24.** There is to be no communication by the advocates with anyone other than their fellow advocate, the bench, and the clerks. Notes may not be passed other than between the two advocates appearing for a team.

- 25.** The scope of the oral arguments, which is not limited by the earlier written submissions, should be laid out in a short skeleton argument, of which four copies should be provided to the clerks in advance of each moot round. Skeleton arguments should address issues to be raised in outline only, and must not exceed 2 sides of A4 for each team. These should be provided in 12-point type, and should be directed only to those points the advocate intends to raise: overly-exhaustive lists of points will not be looked upon favourably. An advocate may of course depart from the scope of his skeleton argument in response to questions from the bench.

- 26.** The remarks made in reply by the Lead Appellant are limited to the scope of the Respondents’ remarks.

- 27.** Teams must supply a bundle of the authorities relied upon in oral proceedings, including statutes, case law, academic articles and the like to which reference will be made by the advocates. Again, teams are recommended to be selective in preparation of their bundles, though mooters are advised that the bench will not look favourably upon strong reliance on an unduly narrow spectrum of authorities. Redacted authorities, or excerpts from authorities, are acceptable, but reliance may not then be placed on



parts of authorities that are not provided to the bench. Teams are recommended to retain a full copy of each authority in their possession, which may be provided to the bench if that is requested. Highlighting of relevant portions of the authorities is encouraged.

28. Four bundles must be brought; one for each judge should be handed to the clerk before each round, and then collected from the clerk after judgment is handed down. Teams are advised to label their bundles clearly, and may supply their bundles for the appellants and respondents within the same file.
29. Teams are wholly responsible for the production and provision of all written materials for the oral proceedings; they should expect that no printing, internet or reprographic facilities will be made available to them in Oxford.
30. After the conclusion of oral proceedings, the judges will call a short adjournment, during which they will consider the performance of the advocates. They will invite all advocates and audience to return, where the legal outcome will briefly be indicated. Judges will then indicate the winner of that round of the moot, and may offer some constructive criticisms of the mooters' performance.
31. Points will be awarded in respect of each advocate, as follows:
Legal content, research and use of authority **20 points**
Courtroom manner **10 points**
Presentation and clarity (including bundles) **10 points**

Response to questions from the bench **10 points**

32. The decision of the judges is final. Any concerns regarding the conduct of the judges must be addressed discretely to the Moot Chairman, and must not under any circumstances be raised directly with the bench.
33. After two rounds, the scores will be collected, and the eight highest-scoring teams will proceed to quarter finals, which will be conducted by three judges each and to preliminary round timings. The four highest-scoring teams will proceed to semi-finals; these will also be conducted by three judges each, and to preliminary round timings. The winner of each semi-final will proceed to the final round.

Awards

34. Scores from all rounds will be held confidentially by the Moot Chairman. At the Moot Chairman's discretion, applications by a mooter to see his or her scores only may be considered after the conclusion of the moot.
35. The team with the higher score in the final round shall be deemed to be the winners of the moot.
36. The team with the highest score for their written submissions shall be deemed to be the winners of the "Best Written Argument" award.
37. The winner of the Sir Nicholas Pumfrey "Best Individual Mooter" award shall be the person achieving the highest individual aggregate score in the first two rounds.

Discretion of the OC and Moot Chairman

38. The Moot Chairman, or the OC collectively, may at any time amend or add to the rules of the moot. In the event of a rule-change, notice will be given to all teams. Any questions of interpretation of the rules should be addressed, via the Moot Secretary, to the Moot Chairman; during the oral proceedings weekend, these should be addressed to the Moot Chairman directly. Decisions of the Moot Chairman are final and are not subject to any form of appeal.
39. The Moot Chairman may at his discretion disqualify a team if he considers that there has been a serious violation of these rules, or in the event of other behaviour which is considered contrary to the spirit of this mooting competition. A team so disqualified may, at the discretion of the Moot Chairman, be charged the full fee described in §8, as if they had withdrawn from the competition.



Stuart Baran, *Moot Organising Committee Chairman*,
ip.moot@law.ox.ac.uk

IP at Oxford

In October 2008 the Oxford Intellectual Property Research Centre (OIPRC) became a Centre of the University of Oxford's Faculty of Law, taking its place alongside a growing number of multidisciplinary Centres.

The OIPRC was established in 1990 at St Peter's College by Faculty member Peter Hayward, with an initial £85,000 gift from the Hitachi Foundation. In its first six years it was essentially a library, and then in 1995/6 it developed a visitors programme and multidisciplinary (law and economics) research agenda.

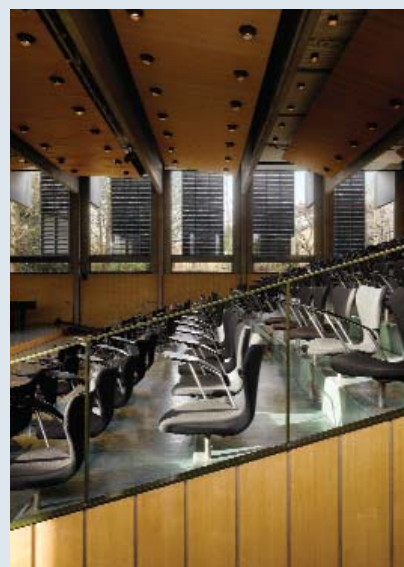
In 1998 Peter Hayward retired, and Professor Vaver was appointed to a Professorial Fellowship at St Peter's and made Director of the Centre. The Centre's website, seminar series and electronic journal were established in the same year, followed in 2002/3 by its Mock Trial and International IP Moot. In the years since these events have grown, with the Moot in particular earning a well-deserved place on the international IP scene.

The Centre's move to the Faculty represents a wonderful opportunity for consolidation and growth, both for the Centre itself and IP at Oxford more generally. It comes at a time of wider growth in IP at Oxford, through such initiatives as the creation of a Career Development Fellowship in IP and a new postgraduate programme – the Diploma in Intellectual Property Law and Practice. This latter particularly is a novum in the history of Oxford Law. Involving a new

collaboration between the University and the Intellectual Property Lawyers' Association, it is the first part-time, vocational programme ever to be offered by the Law Faculty, and represents a further opportunity for us to strengthen our expertise in IP and relationship with private practice.

I do hope that those of you with interests in IP will find ways to become involved in these and other initiatives in the future.

Justine Pila
University Lecturer in Intellectual Property



For more information about the moot, the Centre or the IP Diploma, please see www.oiprc.ox.ac.uk/moot.html (the moot) www.oiprc.ox.ac.uk (the Centre) or www.law.ox.ac.uk/odip (the Diploma).

For enquiries with respect to any aspect of IP at Oxford, please feel free to contact me by email at justine.pila@law.ox.ac.uk

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