

EIP

A Year in Patents - Part 4/4: Back to School—and Back to Exams

Dr Girish Nivarti joined EIP's London office in October 2022. In this four-part series, he chronicles his first year as a trainee patent attorney. This is the final instalment of the series.

When I graduated from University, I thought I had bidden farewell to exams for good. The past winter proved me wrong: exams came back into my life once more. This time, however, exam study came with a fresh spirit. Tomes of intellectual property law dominated over the scientific essentials—Chandrashekar, Frisch, and Zeldovich—my former self would have consulted. The attention I previously would have devoted to scientific research papers was now replaced by enthusiasm for the statutes and seminal decisions of the English courts.

Held in January this year, these exams marked the end of the four-month intensive certification course in IP Law that I have been pursuing at Queen Mary University of London since September. (The spring, of course, marks a season of anxious anticipation of the results.) Despite its short duration, the QM course covers an impressive volume of knowledge. As I absorbed slide after slide and lecture after lecture of new information, I realised that, despite its astonishing breadth and depth, the course amounts to barely dipping a toe into the ocean of law. Geared towards trainee patent attorneys, the course involves four main modules, three dedicated to major strands of IP protection and one to the fundamentals of English law.

Even in the context of exam study, believe it or not, essential legal reading is deeply engaging because of its intellectual gravity and literary relish. With little previous knowledge of law beyond intellectual property, I found the module on legal fundamentals

particularly riveting. We were taught the basics—from the origins of English law to its changing interface with European law—and covered several different areas of civil and commercial law. The law of obligations (both contractual and tortious) was especially appealing. A unique aspect of the module on legal fundamentals is that it is primarily assessed through a set of legal essays rather than exams. Legal essay-writing overlaps with scientific writing in its reliance on logic as the backbone of argumentation, but differs in requiring much more personal reflection, critique, and analysis. For a former scientist like me, foregrounding my own authorial voice was initially challenging, but in time, came to feel both natural and thrilling.

The lectures on legal fundamentals are complemented by lectures on the ethics of legal practice. Law is a regulated profession, and legal practitioners—solicitors and attorneys alike—are members of regulatory bodies that give them their professional titles and, in turn, scrutinizes the standards of their professional services. Maintaining standards of moral and ethical conduct is vital in legal practice. Duty-bound in service of their clients, the conduct of attorneys and solicitors is held to a particularly high standard. Unlike the relatively casual way in which academics might bounce research ideas off one another, rendering legal advice is no light-hearted matter: even if offered in an ostensibly informal setting, issuing legal advice always involves adherence to strict codes of conduct set by bodies such as IPReg, not to mention liability on the part of the advisor. Failure to comply carries severe consequences, such as potentially being struck off the list of registered practitioners.

The challenge of absorbing vast volumes of new information in a short amount of time is made less onerous by the company of likeminded peers. A wide gamut of students enrolls in the course. Most, like me, are trainee attorneys employed by private law practices; some work in-house at technology firms; and others pursue the course independently as a stepping stone towards traineeship. A select few come from government departments such as the Ministry of Defence. Not only did socialising with classmates help alleviate the repetitiveness of endless studying, but it also gave me insight into the differences and similarities of working for various employers. Although the overall qualification route is the same for anyone training to become a patent attorney, the day-to-day reality at different workplaces varies considerably. Most trainee patent attorneys in and around London attend the QM course specifically, meaning the cohort there reflects the make-up of the profession in the region. The diversity of students' technical backgrounds—in terms of type and depth of expertise—fuelled intellectual dialogue across the group, allowing us to cultivate connections beyond the confines of our immediate peers at our own firms.

Of the strands of IP protection, patent law is taught in most detail. Weekly module

lectures covering everything from the sources of substantive law to procedural details are supplemented by regular guest lectures on topics ranging from patent drafting to infringement. The lectures focus on English law—the Patents Act 1977 and the judgements of the English courts—but draw frequent parallels with European law, including key sections of the European Patent Convention (EPC) and decisions of the EPO Boards of Appeal. Although the statutes of a given legal system seek to embody a legislative rule in a consistent manner, they are rarely complete in and of themselves, and points of law routinely need to be interpreted by the courts. Understanding how legal doctrines evolve as a product of such interpretation in different judgments was a source of genuine pleasure. The lectures also touch upon patent law in other jurisdictions including the US and Japan, elaborating, where applicable, on related instruments such as utility models.

Modules beyond patent law mainly cover substantive aspects of the remaining strands of protection—trademarks, copyright and designs. At a fundamental level, all IP rights seek to balance the opposed interests of a potential right holder, their competitors, and of the public at large. Generally speaking, the law seeks to avoid overlapping protection between various forms of intellectual property. For example, design rights, which extend to the appearance or shape of products, are formulated in such a manner as to exclude the protection of designs which are dictated by technical function alone—the latter being the preserve of patents. Learning how to navigate the complex landscape of intellectual property is one of the most significant learning outcomes of the course.

During the QM course, trainees have minimal work obligations at their firms. Typically, as in my case, trainees attend the office once a week, which is why the amount and type of work assigned to trainees during study months is considerably different compared to the months prior to the course. Attending the office regularly allowed me to remain in touch with my colleagues, and also provided me with opportunities to apply my ever-increasing knowledge of the law to real-world contexts. The QM course is one of several routes that trainees in the UK can take to progress to the UK Final Exams set by the Patent Examination Board (PEB). Alternatives include sitting a set of Foundation Exams set by the PEB, or attending other PEB-accredited courses such as that run by Bournemouth University. Trainees at my firm choose a preferred option based on factors such as location and schedule, and completing any of these paves the way to further freedom and responsibility, marking a notable milestone in the career of a trainee patent attorney.

Studying—and exams—may be over for me for now, but learning is not: each day at the office teaches me something new. Onward to the next year, and career, ahead.