Examiners' Comments on Candidates' Overall Performance in QE2017 Paper C

- Overall performance of the candidates is below expectations, given that the number of features for claim construction is relative low and simple. Advice to client is also poorly dealt with. Many candidates give 'expected' and 'typical' advice such as licensing to reach an amicable settlement but fail to provide rationale for doing so. A few candidates also miss out giving advice pertaining to specific topics mentioned in the question paper, perhaps they fail to identify the issues that are tested.

- The paper was not a difficult one as the technology was easy to understand and the Examiners had deliberately cut down on the number of embodiments to be analysed to ensure that the candidates had sufficient time to complete the paper. Yet, the passing rate was not high, but comparable to previous years'.

- Some key issues with the scripts that got a failing mark were due to gaps in the construction section (i.e., failure to construe all parts of the claims that need to be construed), and insufficient explanation in the infringement and validity analysis sections as to how the candidate arrived at his conclusion.

- It is generally insufficient to merely point out the pages / lines in the documents where the features are found, or to quote the relevant passages, without tying the passage back to the construction of the particular word(s) and explaining why, in light of the features that are present in the product or disclosed in the embodiment, the particular integer is present or absent.

- Surprisingly, many candidates appear to think that it is sufficient to provide a construction section and then make absolutely no use of it in the rest of their answer. Candidates are reminded that the purpose of the Invalidity and Infringement paper is to test the ability of the candidates to make reasoned judgement calls not only on their adopted constructions, but also on how they then use these constructions to determine whether a feature is present or not – at least for one or two claims per sections. Simply providing their construction in proximity to the terms "present" or "not present" in a matrix-style answer is no sufficient for candidates to obtain full marks as there is no way for the markers to understand how (or indeed whether) the construction was applied to arrive at the answer.

- While some candidates were well prepared for the examination and showed a decent understanding of the law, there was an equal number of candidates who showed a serious lack of understanding of basic concepts that have been examined in this paper on many previous occasions (e.g. groundless threats provisions). Candidates need a good foundational understanding of the underlying commercial and legal issues that may arise in Paper C before they attempt it, to do otherwise is likely to result in a poor fail.

- Though in most cases the construction was done well, most candidates failed to apply the construction in the novelty and infringement sections. What this means is that if the candidate

construed the term “adjacent” to be “physically contacted”, the candidate should be using the terms “physically contacted” instead of the word adjacent in the novelty and infringement sections.

- The novelty section was also done generally well, though some candidates did not consider the first product and the second product of document D separately.

- Some candidates did not realised that document C is not citable in an inventive step attack. Candidates should also provide better arguments for inventive step. It is hard to award marks when the candidate simply states that “the feature would have been obvious to a skilled person” without providing any further reasoning or justification.