

Guidance on answering the discussion questions in the book

Para 10.5

Why do you think that a period of 14 years was chosen, as opposed to 13 or 15 or some other figure?

Hint: Consider the nature of the history of the system to this point.

Para 10.9

What are the advantages of the premium system compared to the patent system?

Equally, can you think of any disadvantages?

Aid: Draw up a balance sheet of pros and cons; this will also assist you as you reflect critically on the patent system in the rest of the book.

Para 10.34

Given the coexistence of national patents and EU patents, and roles for domestic courts as well as the divisions of the Unitary Patent Court, are we likely to see a convergence or divergence of approach to patent protection as between member states and EU bodies?

Reflect on this issue as you go through this book and see the potential for divergence.

Hint: consider the role of judicial interpretation in individual cases and how this might impact on the coherence of patent law domestically and at the international level.

Para 10.56

How much flexibility do the words ‘to the extent necessary’ provide for those who would rely on this provision, or indeed, who would object to others relying on this provision?

Hint: Ask yourself, who gets to decide this and against which benchmarks?

Para 10.77

What other costs would be involved with the introduction of new IPRs? How might these new rights impact on existing rights?

Hint: Do not just think of ‘costs’ in economic terms, i.e. there are costs in efforts, administration and so-called ‘transaction costs’ to consider too.

Para 10.107

What are the pros and cons of first-to-invent as opposed to first-to-file?

Hint: Consider this question, first, from the perspective of the inventor, and then from the perspective of a competitor. In this way you will see the issues from multiple dimensions.

Consider also questions of proof.

Para 10.111

What sorts of factors do you think would influence the Comptroller or court one way or another in exercising its discretion to amend a patent?

Hint: Are these likely to be purely technical reasons, or will and should policy and morality have a role to play? Can you find any evidence either way?