

THE OFFICIAL HAROLD G. FOX MOOT RULES
(2017 – 2018 Academic Year)

Preamble

The Harold G. Fox Moot is named in honour of the late Harold G. Fox, one of Canada's leading intellectual property scholars and advocates.

The Harold G. Fox Moot is sponsored by DLA Piper (Canada) LLP and administered by the IP Moot Committee—a committee of jurists and practitioners. The 2017-2018 IP Moot Committee will be chaired by Ryan Evans, an associate at DLA Piper (Canada) LLP.

The Harold G. Fox Moot is designed to promote the furtherance of education in the intellectual property field and to provide participants with the opportunity to interact with jurists of the Ontario, Federal and Supreme Courts and with experienced practitioners of intellectual property law.

These rules are designed to provide for fair and proper conduct during the competition. Any questions regarding these rules should be directed to the IP Moot Committee at foxmoot.canada@dlapiper.com.

Definitions

As used in the Harold G. Fox Moot, the following terms shall have the corresponding meanings:

“Competition” means the Harold G. Fox Intellectual Property Moot Competition; and shall refer to the oral arguments and any/all matters preceding the oral argument (including registration, and factum preparation), as the context dictates.

“IP Moot Committee” means the Intellectual Property Moot Committee described above, or any sub-committee or sub-set thereof.

“Judge” means a person who shall adjudicate the oral advocacy component of the Competition, as further set out in Section 4.

“Law School Contingent” means a team of four (4) students from one Law School—two (2) students paired together as the Appellant Team and two (2) students paired together as the Respondent Team.

“Marker” means a person who shall adjudicate the written advocacy component of the Competition, as further set out in Section 3.

“Participant” means a student registered to compete in the Competition.

“Rules” means the rules, and discretionary guidelines, set out in this document.

“Team” means, subject to Section 2, two (2) students paired together (i.e. either an Appellant Team or a Respondent Team).

1.0 Organization of the Competition

1.1 Administration

- a) The Competition is presented by the IP Moot Committee.
- b) The Preamble shall form part of, and is integral to, a proper interpretation of these Rules.
- c) Subject to 1.1 (d), the Competition shall take place in the English and/or French languages.
- d) Each Team may elect to have one or both of its Participants plead orally in French. Such election must be indicated on the registration form and submitted by Monday, October 23rd, 2017. Where such Participant(s) elect to plead orally in French, the corresponding section of their factum may also be in French.

1.2 Competition Procedures

1.2.1 The Competition shall consist of at least two (2) general levels: a Preliminary Round or Rounds and a Final Round. A Semi-Final Round may take place.

- a) The Preliminary Round shall be open to all student teams pursuing an LL.B., J.D., B.C.L, or LL.L. degree in Canada, or elsewhere; and
- b) Advancement through the Competition shall be:
 - i. To the Appellant Team and the Respondent Team with the highest Total Team Score(s) in the Preliminary Round, if there is no Semi-Final Round. These two (2) Teams shall advance to the Final Round; or
 - ii. Subject to sub-section 8.6, to the two (2) Appellant Teams and the two (2) Respondent Teams with the highest Total Team Score(s) in the Preliminary Round, if there is a Semi-Final Round. These four (4) Teams will advance to the Semi-Final Round. The Judging Panels for the Semi-Final Round shall meet after the Semi-Final Round to determine the Appellant Team and Respondent Team to advance to the Final Round; and
- c) In the event of a tie pursuant to 1.2.1 (b) ("Tied Teams"), then the Team with the highest Raw Score – Oral (among those Tied Teams) shall advance, and be deemed to have broken said tie.

1.2.2 The Competition shall consist of a written problem in the area of Intellectual Property Law (the "Moot Problem").

1.2.3 Each Team shall draft a written factum (pursuant to section 6).

1.2.4 Each Team shall make one (or a series) of oral arguments during the Competition.

1.2.5 Each Team will act as either the Appellant or the Respondent.

1.3 Implementation and Interpretation of Rules

The IP Moot Committee shall serve as the final arbiter for the implementation and interpretation of these Rules.

2.0 Participation and Eligibility

2.1 Team Eligibility

All students registered in an LL.B., J.D., B.C.L., or LL.L. program in Canada, or elsewhere, are eligible to participate in the Competition (hereinafter, for convenience, the “Law School”).

Each Law School participating in the Competition must enter at least one Law School Contingent and may enter up to two (2) Law School Contingents.

Except as provided for in 2.4 *bis*:

- a) Each Participant shall either represent the Appellant Team, **or** a Respondent Team; and
- b) No Participant shall be allowed to argue, or switch between, Appellant and Respondent Teams; or among Law School Contingents.

2.2 Team Composition and Selection

2.2.1 Each Team shall be composed of two (2) Participants. Participants on the same team must be from the same Law School, in accordance with 2.1.

2.2.2 At the discretion of the IP Moot Committee, each Team shall be assigned a number (the “Team Number”) by the IP Moot Committee. Subject to 2.2.4, Teams shall use only their Team Numbers for identification purposes during the Competition.

2.2.3 Subject to 2.2.4, no Team should reveal their Law School affiliation at any time during the Competition. In the interests of fairness to other Teams or Participants, any Team or Participant who violates this rule 2.2.3 may face immediate expulsion from the Competition.

2.2.4 For the purposes of this sub-section 2.2, the phrase “during the Competition” shall mean the competitive aspects of the Competition (including preparation time and oral arguments). Social events, dinners, receptions and like venues are thereby not considered to be events “during the Competition”.

2.3 Outside Assistance to Teams

Subject to 2.4 and 2.5, all research, writing and editing must be the work product of the Team and no one else.

2.4 Assistance from Faculty Members, Coaches and Advisors

Outside assistance rendered to a Team in the preparation of its case by faculty members, sessional lecturers, practitioners, or other members of legal community, shall be limited to a general discussion of the issues, suggestions as to research sources, and consultations regarding oral advocacy technique. Assistance shall be limited to general commentary on argument organization and structure, the flow of arguments, and format.

(2.4 bis) Assistance from Other Students

Notwithstanding any of the foregoing, each Law School Contingent may also utilize an additional student Participant (the "Additional Participant") from its Law School. Except for oral arguments on the day(s) of the Competition, the Additional Participant is permitted to perform any of the other activities that other Participants on the Team may be engaged in, including research, peer coaching, and/or factum writing.

The Additional Participant may only engage in oral arguments on the day(s) of the Competition where a Participant on the Law School Contingent, acting in good faith, is unavailable due to some *force majeure*. Upon the occurrence of said *force majeure*, the name of the Additional Participant must be revealed to the IP Moot Committee, in writing, as soon as reasonably possible, having regard to the circumstances. The nature of the *force majeure* must also be documented, if reasonably possible, having regard to the circumstances.

2.5 Assistance from Librarians and Other Research Professionals

Assistance from librarians, computer research advisors, and other legal resource specialists in preparing the Factum, and any other materials, shall be limited to answering specific questions regarding the location of legal sources or general legal research methods.

2.6 Use of Opposing Team's Facta

Subject to 2.6 *bis*, no Team shall be allowed to view or otherwise become privy to any factum other than the respective Appellant and Respondent facta of scheduled opposing Team(s).

(2.6 bis) Use of Facta

Each Law School Contingent is permitted to view or otherwise become privy to the factum of that particular Law School Contingent's Appellant and/or Respondent factum in its preparation for the Competition.

Where a Law School is sending two (2) Law School Contingents, then each Law

School Contingent from that particular Law School is permitted to view or otherwise become privy to the Appellant and/or Respondent factum of its other Law School Contingent in its preparation for the Competition.

Teams are permitted to view the winning Appellant and/or Respondent facta from previous Competitions available on the Harold G. Fox Moot website.

2.7 Withdrawal from the Competition

Given that each Appellant Team in the Competition is reliant upon the production of a factum and presentation of oral arguments by its opposing Respondent Team and *vice-versa*, and but for extenuating circumstances, it is essential that Participants be unable to withdraw from the Competition following the final date of registration.

Any requests for withdrawal from the Competition after the final registration date, shall be subject to the discretion of the IP Moot Committee and may result in an ethical violation.

2.8 Ethical Violations

An ethical violation may result where any Team or Participant acts contrary to the spirit and content of the Rules. Any incidents or allegations of ethical violations shall be referred to the IP Moot Committee. Such violations may result in elimination from the Competition in the current year or in future years, or any other penalty the IP Moot Committee deems appropriate.

3.0 Factum Markers

3.1 Marker Panels and Selection of Markers

- a) Factum Markers shall consist of IP Moot Committee members or IP practitioners. The Factum Markers shall be selected at the discretion of the Chair (the "Marking Panel").
- b) Marking Panels may consist of up to five (5) members, with a view to having at least two (2) members whenever practical.
- c) Marking Panels of one (1) may also be constituted at the discretion of the Chair in urgent or unusual circumstances.
- d) All Factum Markers shall act objectively and fairly, and shall maintain the integrity of the Competition at all times.

3.2 Markers Affiliated with Mooters

- a) Markers must disqualify themselves from judging a Team:
 - (i) if they have a personal or professional relationship with someone affiliated

with that Team; **and**

(ii) if that relationship might jeopardize their impartiality, or has a reasonable potential to create bias or impropriety.

- b) Markers should not disqualify themselves from judging a round merely because they have an acquaintance with a Team member.

3.3 Commentary by Markers

- a) Markers shall not provide any Participant with direct feedback following their moot. Markers shall not reveal to any Participant the results of their individual determinations or the Participant's scoring. All Markers are under a strict obligation of confidence to Participants, and others.
- b) All written or oral comments of Markers must be made in good faith, in a professional and constructive manner.
- c) Where available, the comments described in 3.3 b) will be released on the conclusion of the Competition or a reasonable time thereafter.

4.0 Judges

4.1 Judging Panels and Selection of Judges

- a) The Judging panels shall consist of a mix of practitioners, IP professionals, professors and judicial judges (altogether, "Judges"). A panel of at least three (3) judges shall be utilized whenever possible for the Preliminary Rounds and Semi-Final Round. Panels of three (3) judges or five (5) judges shall be used to judge the Final Round of the Competition. Deviations from the three (3) judge panel for the Preliminary Rounds shall be approved by the IP Moot Committee or the Chair in urgent or unusual circumstances.
- b) In constituting the Judging panels, priority will be given to judicial judges. As such, some Judging panels may be constituted with more than one judicial judge, even where there are professors or practitioners available.

4.2 Commentary by Judges

Judges in either the Preliminary Round, Semi-Final Round and Final Round of the Competition are encouraged to provide direct feedback (whether written or verbal) to participants regarding their performance at the completion of the Moot or at a time shortly thereafter.

5.0 The Moot Problem

5.1 Drafting of Moot Problem

The Moot Problem will be drafted by a member of the IP Moot Committee. The IP Moot Committee may invite persons outside of the IP Moot Committee to help draft the Moot Problem, as needed.

5.2 Questions of Clarification

- a) Questions of clarification regarding the Moot Problem must be submitted to the IP Moot Committee in writing by Friday, November 3, 2017.
- b) Questions cannot relate to the substantive legal issues (or sub-issues), raised by the Moot Problem.
- c) In the IP Moot Committee's sole discretion, any question which violates 5.2 b) may not be answered.

6.0 Facta

6.1 General Requirements and Submission of Facta

- a) All facta must conform to the requirements set out in this Section. Teams will be penalized for failure to abide by these requirements.
- b) Once submitted to the Competition, facta may not be altered in any way.
- c) Once submitted, all rights in and to the facta will become the property of the IP Moot Committee and may be posted on the Harold G. Fox Moot website following the completion of the Competition.

6.2 Format of Facta

- a) The font and size of the text of all parts of the factum excluding the footnotes, must be the same and must be Times New Roman, 12-point.
- b) The font and the size of the text of all parts of the footnote must be Times New Roman, 10-point.
- c) The text of all parts of each factum must be double-spaced, except for the text of footnotes and headings which may be single-spaced, but there must be double-spacing between each heading and the body-text of the factum.
- d) Quotations to sources of fifty (50) words or more in any part of the factum shall be block quoted (i.e. right and left indented ½ additional inches) and must be single-spaced.

- e) Each page of the factum shall have margins of at least one inch, or two point five four (2.54) centimetres, on all sides, excluding page numbers. Each page shall be 8½ by 11 inches.

6.3 Parts of the Factum

The factum shall consist of the following parts:

Overview
Statement of Facts;
Points in Issue;
Arguments in Brief;
Order Requested;
Table of Authorities; and
Appendices (if any)

Printed copies of the authorities do not need to be filed with the facta.

6.4 Citation

Each factum shall adhere to the most current edition of the *Canadian Guide to Uniform Legal Citation*.

6.5 Length

The entire factum (excluding the cover page, table of authorities, and appendices) shall not exceed twenty (20) pages.

6.6 Covers

Each factum should bear on its cover the following, and only the following:

- a) the Team number;
- b) the name of the court (i.e. the Supreme Moot Court for Intellectual Property Appeals);
- c) the appropriate style of cause;
- d) the year of the Competition; and
- e) the title of the document (i.e. "Factum for Respondent" or "Factum for Appellant").

6.7 Electronic Submission of Facta

One (1) electronic copy of each Team's factum must be submitted to the IP Moot Committee, in PDF format, at foxmoot.canada@dlapiper.com.

6.8 Timing for Submission of Facta

- a) In accordance with 2.2.2, Team Numbers shall be assigned by Wednesday, January 3, 2018.
- b) Pursuant to 6.7, all Appellant facta must be received at that e-mail address by 5:00 pm on Monday, January 15, 2018. Appellant Teams should request a

- 'delivery receipt' or similar delivery confirmation for their facta as proof of successful delivery. In the event of a dispute or query, the facta will be deemed 'received' upon such proof of successful delivery.
- c) The IP Moot Committee will determine Team pairings (i.e. Appellant Team versus Respondent Team) for the initial oral argument(s) during the Preliminary Round, on a random basis, except that the selection process will be conducted with a view to excluding Team pairings from the same Law School Contingent.
 - d) Following the determination of Team pairings, and as soon as reasonably possible after the Appellant facta are received (but before the Respondent facta is due), the IP Moot Committee will forward the Appellant's factum to that particular Respondent they will be opposing in the initial oral argument(s) during the Preliminary Round.
 - e) Pursuant to 6.7, the Respondent's facta must be received at that e-mail address by 5:00 pm on Monday, January 29, 2018. Respondent Teams should request a 'delivery receipt' or similar delivery confirmation for their facta as proof of successful delivery. In the event of a dispute or query, the facta will be deemed 'received' upon such proof of successful delivery.

7.0 Oral Argument - Procedures

7.1 General Procedures

- a) Each Team's oral argument shall last for no more than thirty (30) minutes.
- b) Subject to 7.1 c), each Participant shall be expected to a prepare fifteen (15) minute oral presentation.
- c) The Appellant may be permitted an optional five (5) minute reply submission following the conclusion of the Respondent Team's (i.e. both Participant's) submissions (the "Reply Submission"), at the discretion of the Judging Panel.

7.2 Extension of Time at Judges' Discretion

- a) Judges may, at their discretion, extend individual oral argument beyond the fifteen (15) minute allocation, up to an additional five (5) minutes per Participant ("Additional Time").
- b) Participants who are permitted this Additional Time are expected to utilize such time to either answer a Judge's question(s) or conclude their submissions.
- c) In the spirit of the Competition, and in the interest of allowing each Participant an equal amount of time to present their argument, Judges are strongly

admonished to allow each Participant a similar amount of time for oral argument, consistent with these Rules.

d) No Additional Time is permitted for the Reply Submission.

7.3 Oral Argument

The order of the oral argument for the Preliminary Round and Final Round of the Competition shall be:

Appellant 1 → Appellant 2 → Respondent 1 → Respondent 2 → Optional Reply Submission from either Appellant 1 or Appellant 2.

7.4 Scope of Oral Argument

A Team's oral argument is not limited to the scope of that Team's factum. A Team may expand upon issues raised in their factum in oral argument and, if desired, address issues beyond the submissions found in their factum.

7.5 Ex Parte Procedure

- a) In extreme circumstances, such as when a Team fails to appear for a scheduled oral argument, the Marker, after waiting ten (10) minutes, may allow the oral argument to proceed *ex parte*.
- b) In an *ex parte* proceeding, the attending Team presents its oral pleading, which is scored by the Marker(s) to the extent possible as if the absent Team had been present and arguing.
- c) The Committee may schedule an additional *ex parte* proceeding for the absent Team later in the Competition, if time, administrative concerns, and fairness to other Teams permit, otherwise the absent Team forfeits the Competition.

7.6 Oral Courtroom Communication and Activity at Counsel Table

- a) Every courtesy shall be given to oralists during oral argument. Subject to 7.7, communication at the counsel table shall be in writing as to prevent disruption, and Teams shall avoid all unnecessary noise, outbursts, or other inappropriate behaviour which distracts from the argument in progress.
- b) Any violation of 7.6 a) may be taken into account by the Judges in determining their final score(s).

7.7 Written Courtroom Communication

- a) Written communication during oral arguments shall be limited to
 - 1) written communication between a Team's members seated at the counsel table, and
 - 2) a Team member at counsel table handing an unmarked document to an oralist when that oralist has been questioned about such document

during the course of his or her argument.

- b) No other written communication may take place among the oralists, Team members seated at counsel table, or spectators.
- c) Mobile phone messaging, or the use of portable electronic devices (such as laptops) for the purposes of messaging, shall also be considered forms of “written communication” for the purposes of this section 7.7.

7.8 Spectators

Subject to 7.9, and the availability of space, the Competition is open to the public.

7.9 Scouting

No Participant, except an Additional Participant, may attend any oral argument other than those in which their Team is competing until following completion of the Team’s oral argument, or series of oral arguments.

7.10 Audio and Videotaping

The IP moot Committee reserves all rights to the audio and videotaping, or any other form of aural or visual reproduction, of any oral argument, or part thereof. Pursuant to the registration details of the Competition, all Teams participating have consented to the taping and broadcasting of their oral argument(s).

8.0 Competition Scoring

8.1 Preliminary Round(s)

8.1.1 Subject to 1.2.1 (b), scoring shall consist of two parts: (1) the scoring of the written facta, and (2) the scoring of the oral arguments.

8.1.2 All facta shall be reviewed and assigned a score by each Marker on a scale of 5 to 20 points in accordance with the “Marking Guide – Factum” attached as appendix “A”.

8.1.3. Each Judge shall assign each oralist a score on a scale of 16 to 40 points in accordance with the “Marking Guide – Oral Presentation” attached as appendix “B”.

8.2 Raw Scores

Subject to section 10, the calculation of Raw Scores shall be subject to the deduction of Penalty Points.

8.3 Raw Score – Factum

a) The calculation of the “Raw Score – Factum” for each Team shall be determined:

- i. by the Marker's Factum score for that factum, if a single person; or
- ii. by averaging the Markers' Factum scores (if there is more than one Marker, pursuant to section 3) for that factum.

b) The top factum will be decided based on the Raw Score – Factum. In the event of a tie, then the Total Score (pursuant to 8.5) shall be used to break that tie. A separate top factum will be decided for the Appellants and the Respondents.

8.4 Raw Score – Oral

a) The calculation of the “Raw Score – Oral” for each Participant shall be determined by averaging the Judges' Oral Presentation scores for that Participant.

b) The top oralist will be decided based on the Raw Score – Oral. In the event of a tie, then the Total Score (pursuant to 8.5) shall be used to break that tie.

8.5 Total Team Score

The Total Team Score shall be the “Raw Score – Factum” added to the “Raw Score – Oral” for each Participant of the Team, and therefore expressed as a number out of 100.

8.6 Semi-Final Round

a) A determination of the Teams that will enter the Semi-Final Round shall be based on a determination of the top two (2) Appellant Teams and top two (2) Respondent Teams as determined by a calculation of the cumulative Total Team Score from the previous preliminary rounds.

b) Where a Law School has two (2) Law School Contingents only a maximum of one (1) Appellant Team and one (1) Respondent Team shall advance to the Semi-Final round – i.e., the Appellant Team with the highest cumulative Total Team Score and the Respondent Team with the highest cumulative Total Team Score.

8.7 Final Round

The winning Team for the Competition shall be determined by the Judging Panel for the Final Round.

9.0 Awards

9.1 Communication of Awards

Awards for the top factum, top oralist and winning Team will be presented at the completion of the Competition, and will be determined as set out in these Rules.

Additional awards may also be presented at the discretion of the IP Moot Committee.

10.0 Penalties

10.1 General Procedure

The following is a list of Penalties which may be imposed by the IP Moot Committee upon Participants in the Competition.

10.2 Application of Penalties

All Penalties apply against each raw score, e.g. a Penalty of one (1) point shall be applied to the score that *each* Marker or *each* Judge (as applicable) would have given that particular factum or oral pleading.

10.3 Non-Discretionary Penalties

- a) For the following violations, Penalties may be assessed as a matter of course, without discretion on the part of the Committee, except in rare or extenuating circumstances, or where the application of a non-discretionary penalty would lead to injustice or absurdity, then the Chair or the IP Moot Committee may waive or lessen the severity of a penalty.
- b) **Non-Discretionary Factum Penalties** - the following Penalties may be imposed only by the IP Moot Committee and may be deducted from each of the individual scores on a Team's factum. The IP Moot Committee shall notify all affected Teams of imposed Penalties prior to the Preliminary Round.
 - i. **Tardiness in Submitting Facta** – to ensure an equitable distribution of preparation time between Appellants and Respondents, it is essential that all facta be submitted on time. As such, any factum received by IP Moot Committee following the designated submission time shall be subject to a three (3) point penalty per day.
 - ii. **Other Non-Discretionary Factum Penalties** – penalties shall be assessed for violations of other Rules concerning the facta by reference to the following list:
 - I. Violation of sub-section 2.3 (indication of Team identity in factum) – 3 points;
 - II. Violation of sub-section 6.2 (incorrect formatting of factum (i.e. incorrect font size, or spacing)) – 1 point per type of violation;
 - III. Violation of sub-section 6.5 (excessive length of factum) – 2 points per page (or part thereof) over the specified limit;
 - IV. Violation of sub-section 6.6 (failure to include necessary information on factum cover (or to utilize incorrect colour of paper per sub-section 6.2)) – 1 point per type of violation; and

- V. Violation of sub-section 6.7 (failure to submit the require number of facta) – 2 points per facta not submitted.

10.4 Discretionary Penalties

- a) Aside from 10.3, the Committee may assess up to three (3) point Penalties for violations of the following:
- i. revisions to the form and substance of the facta, other than as permitted under these Rules; and
 - ii. inappropriate behaviour of Participants during the Competition.
- b) The size of the Penalty shall correspond to the degree of the violation in the judgment of the IP Moot Committee. Discretionary Penalties shall be imposed only by the IP Moot Committee.
- c) Participants may bring potential violations to the attention of the IP Moot Committee, in writing.

10.5 Notice to Teams

The IP Moot Committee may notify Teams of the imposition of such Penalties prior to the beginning of the Preliminary Round, if possible; or as soon as practicable if incurred after the beginning of the Preliminary Round or if discovered pursuant to 10.4 (c).

11.0 Interpretation of Rules

11.1 General

Questions concerning the interpretation of these Rules must be submitted to the IP Moot Committee in writing. Clerks and Judges are not authorized to interpret these Rules.

11.2 *De Minimis* Rule

When the impact of an alleged violation of these Rules is so insignificant as to be determined by IP Moot Committee, or the Chair, to be *de minimis*, the IP Moot Committee, or the Chair, may waive the Penalty. Any *de minimis* exception shall be applied evenly to all Teams, to the extent that such an exception reasonably extends to all Teams.

11.3 Power to Promulgate Additional Measures

The IP Moot Committee may promulgate such other measures as may be deemed advisable for the orderly conduct, quality, integrity and reputation of the Competition or to correct deficiencies in the Competition, and may delegate such authority to the Chair. Modifications shall not violate the spirit of these Rules or the best interests of the Competition.

APPENDIX A FACTUM MARKING GUIDE

Team Names: _____

Team #: _____

1. Stylistic Considerations

- Did the factum comply with all formal requirements?
- Were proper sentence and paragraph structure and sequence used?
- Did the factum contain grammatical or spelling errors?
- Was the language clear and comprehensible (effective use of “plain English” principles)?

1 2 3 4

COMMENTS (IF ANY)

2. Authorities and Citations

- Were sufficient and proper legal citations applied consistently throughout?
- Did Counsel rely on appropriate and strong authorities?
- Was a sufficiently broad range of authorities cited?

1 2 3 4

COMMENTS (IF ANY)

3. Organization of Issues

- Was there a clear and correct statement of the facts and issues?
- Were the issues organized and did they flow in a logical order?
- Were the issues discretely divided or were they convoluted?
- Was there appropriate use of sub-headings, etc.?

1 2 3 4

COMMENTS (IF ANY)

4. Development of Arguments

- Were the arguments presented in a persuasive and compelling manner?
- Did Counsel apply the correct substantive law in crafting legal arguments?
- Was appropriate weight given to each issue with a focus on Counsel's strongest arguments or were there unnecessary arguments?
- Did Counsel effectively apply the law to the facts?
- Were the arguments creative and/or original or was it merely a restatement of the lower court decisions?

2 4 6 8

COMMENTS (IF ANY)

TOTAL – FACTUM: _____/20

**APPENDIX B
MARKING GUIDE – ORAL PRESENTATION**

Presenter: _____

Date/Time/Room: _____

Team #: _____

1. Speaking Ability and Delivery:

- Did Counsel address the bench and opposing Counsel appropriately?
- Did Counsel interrupt the bench?
- Did Counsel display appropriate court etiquette in general?
- Did Counsel make eye contact with the bench?
- Did Counsel maintain composure under stress?
- Did Counsel employ appropriate speed and tone in his or her submissions?
- Was Counsel able to speak from memory or a brief outline or was Counsel reading his or her submissions?

3 4 5 6 7

COMMENTS (IF ANY)

2. Organization of Arguments:

- Did counsel provide an introduction or ‘road map’?
- Were the arguments organized in a logical sequence?
- Did Counsel sufficiently integrate oral arguments with written arguments?
- Did Counsel conclude with a concise and effective summary of the arguments?

3 4 5 6 7

COMMENTS (IF ANY)

3. Questions from the Bench:

- Was Counsel adequately prepared to answer questions from the bench?
- Did Counsel address the issue or were answers evasive?
- Were questions handled properly and did Counsel re-direct the Court's attention back to the issues effectively?
- Did Counsel make concessions where appropriate and in an effective manner?

8 10 12 14 16

COMMENTS (IF ANY)

4. Preparation & Development of the Arguments:

- Was Counsel sufficiently familiar with the issues?
- Were the arguments developed in a persuasive manner?
- Were concessions made only where necessary and in the proper manner?
- Did Counsel efficiently allocate time among the arguments with a focus on the strongest arguments?
- Was effective use made of the best authorities and the best policy arguments?
- Did Counsel sufficient integrate the facts into his or her arguments?
- Did Counsel address and appropriately dispose of opposing Counsel's arguments?

2 4 6 8 10

COMMENTS (IF ANY)

TOTAL – ORAL PRESENTATION: _____/40