

Introduction

Overall the questions this year were generally well answered, with almost all candidates receiving scores well above the pass mark. Although the pass mark was essentially the same the previous year, there were fewer high-scoring candidates, resulting in a significantly lower median mark for this year's paper.

Candidates were warned of significant recent changes to EU law and procedure by the PEB. These changes might have only come into effect one week before the 'cut-off date', but a cut-off-date is a cut-off-date and those candidates who did not heed the PEB's legal update or otherwise had not kept up-to-date in their legal knowledge were penalised heavily in two questions (namely, questions (1) on EUIPO application procedure and (10) on EUIPO search procedure). Future candidates should note the requirement to observe the Law Update which is published [here](#).

Part A

Question number	Comments on questions
Question 1	<p>The basic elements on filing a EUTM.</p> <p>This question was not as well answered as it should have been:</p> <p>Many candidates quoted 'old' law on where to file an application and how fees are calculated.</p> <p>Many candidates stated that application fees can be paid within two months - rather than one month - of filing. This error was so frequent, and repeated by candidates who were otherwise extremely punctilious, that one cannot help suspect that there is a source being relying upon (a book or presentation perhaps) that is in error.</p>
Question 2	<p>Recitation of the statutory provisions on absolute grounds.</p> <p>A straightforward question, helping a number of candidates bank points to achieve their pass.</p>
Question 3	<p>Practical question asking for reasons why a 'consent' might be granted.</p> <p>This question clearly challenged even the ablest candidates. It would certainly have challenged candidates who had focussed on learning statutory provisions by rote without thinking as to why the provisions exist.</p>
Question 4	<p>Recitation of the statutory provisions on relative grounds.</p> <p>A straightforward question, although candidates did drop points, primarily either omitting the provision concerning 'marks with a reputation', or missing out one or two of its key elements (in particular 'without due cause').</p>
Question 5	<p>Recitation of the statutory provisions on prior rights</p> <p>The comparatively low score is primarily attributable to candidates dropping two points for not accurately reciting the provisions on dates.</p>

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Question 6	<p>Recitation of the recordable transactions.</p> <p>A straightforward question, reflected in the high marks.</p>
Question 7	<p>The basic elements of a Madrid Protocol application</p> <p>Surprisingly few candidates obtained the point on offer for stating that the application is limited by the size of the base registration.</p> <p>The majority of candidates confused WIPO procedure with the procedure in the UKIPO and OHIM, and believed that applications would proceed even if a full set of class fees had not been paid.</p>
Question 8	<p>Recitation of the statutory provisions on opposition based on unregistered rights.</p> <p>The worst-answered question. Most candidates dropped one point for not reciting the important requirement that the right be acquired in the course of trade. Only one or two candidates picked up this point. Its importance is probably not apparent to candidates who are merely learning statutory wording by rote.</p> <p>A number of candidates gave the alternative answer in the Mark Scheme concerning the Paris Convention. Only two marks were available for this answer, and none achieved more than 1.5 marks.</p> <p>Many candidates also wasted marks by mentioning copyright and design rights, which (unlike in the UK) cannot be used as grounds for opposition before the EUIPO.</p>
Question 9	<p>Recitation of the statutory provisions on exhaustion</p> <p>A straightforward question. Points were frequently dropped for referencing the 'market' or EU (rather than EEA), or by not fully setting out the 'legitimate reasons' saving.</p>

Part B

Question number	Comments on question
Question 10	<p>Basic outline of UK and EU Search Procedure.</p> <p>UK search procedure was generally well explained.</p> <p>EU search procedure was generally very poorly explained, with candidates assuming it was similar to UK procedure, or explaining – accurately – the 'old' procedure before the recent changes to the Regulation.</p>
Question 11	<p>Basic outline of Conversion Law and Procedure</p> <p>A straightforward question, well answered by almost all candidates.</p> <p>Three candidates wasted time discussing whether the term 'kylla' was offensive, as a potential homophone to the English word 'killer'.</p>
Question 12	<p>Passing Off Scenario</p>

	<p>This year's passing-off question very much relied on candidates knowing that goodwill and reputation are different concepts, and that goodwill must be present in the UK in order for an action to succeed. The fact there was no such goodwill was clearly signalled in the question, and yet many candidates did not act upon this information: candidates must not be afraid to conclude that no action is possible.</p> <p>Also, candidates were warned twice to address only passing-off, and yet some did waste time writing about the Paris Convention or about filing trade marks.</p>
<p>Question 13</p>	<p>Application of the case law on relative grounds to a scenario.</p> <p>This year's question on case law was generally badly handled, which was very disappointing. It offered candidates the prospect of picking up some marks as long as they applied a standard, systematic, analysis of the similarity of the services, the similarity of the signs, and of the likelihood of confusion. Simply stating the marks or services were similar was not enough: candidates need to show their reasoning.</p> <p>As this is such a fundamental aspect of trade mark law, variations of the same question will appear every year in exam papers, and future candidates must apply this systematic approach to answering them, as it is the bread-and-butter of trade mark practice.</p> <p>Also, no candidate picked up the full points on offer concerning the requirements to prove a 'bad faith' case. Furthermore, some candidates wasted time addressing passing-off even though the question explicitly directed them not to do so.</p>
<p>Question 14</p>	<p>EUTMs v National Applications</p> <p>A good, practical, question, well answered by all candidates.</p>
<p>Question 15</p>	<p>Recitation of the statutory provisions on revocation for non-use.</p> <p>This question was not well answered well.</p> <p>A number of candidates wasted valuable time addressing revocation on other grounds. Furthermore, many candidates were not clear enough about when the 'three month' period applied, or when precisely use within this period could be disregarded.</p>