

## Introduction

The patent attorney profession has an international dimension that many other legal professions envy, and this paper is designed to test the underlying knowledge required to assist clients (or employers) in relation to the European and PCT systems, and to at least orient clients (or employers) in relation to national patent and utility model systems in a number of foreign jurisdictions.

While the syllabus covers a number of foreign jurisdictions, it can be expected that beyond the inevitable many marks available in connection with the EPO and the PCT, most of the remaining marks will be available in any paper in relation to a restricted number of key foreign jurisdictions such as the USA, Germany, China, Japan, and then a small group of other notable IP jurisdictions such as Australia, Hong Kong, Singapore, Brazil and South Africa.

It is generally highly risky to revise the laws of only the EPC and the PCT. Candidates are advised always to accurately revise US patent laws. It is also highly advisable to geographically cover as many other countries as possible, prioritising the most important jurisdictions.

This year, 39 candidates sat FC3 (a considerably lower number than in 2015). 34 passed and 5 failed. 4 candidates failed with poor marks, meaning that they were clearly not adequately prepared to take this exam. It is advisable for candidates to sit this exam only when adequately prepared.

23 candidates scored 60 or more marks, meaning that they passed comfortably. 8 candidates scored between 55-60 marks. 3 candidates scored between 50-55 marks. Notably, one candidate scored as high as 86 marks.

## Questions

Question number	Comments on questions
<b>Question 1</b>	<p>This question was about entering the national/regional phase of a PCT patent application at the EPO, in the USA, China and Japan.</p> <p>This question was very popular and was answered by nearly all the candidates. The candidates answered generally very well. A small number of the candidates who passed the exam scored fewer than 10 marks.</p>

	<p>Some candidates did not recognise that 'further processing' is a mechanism that makes it possible (among other things) to enter the application at the EPO late, without risking loss of rights (albeit at a considerable additional cost). Some candidates confused the practical requirements of further processing in the scenario set out by the question in response to question 1 c).</p> <p>Most candidates failed to mention that the claim fees are required in Japan as part of the examination fee at the time of requesting examination, which is due within three years from the international filing date of the application.</p> <p>Surprisingly, a relatively large number of candidates failed to identify that excess claim fees in Europe are practically due not earlier than the expiry of the six months period under Rule 161.</p>
<b>Question 2</b>	<p>This question was about the search and examination procedures in the International phase of a PCT application.</p> <p>This question was answered by all the 39 candidates. The candidates answered generally well, and perhaps a little below question 1. This was somewhat surprising given the core themes (Chapter I and Chapter II of the PCT) tested by this question. Disappointingly, some of the candidates who passed the exam (also comfortably) scored less than 10 marks.</p> <p>The 'protest' process was dealt with generally well in response to question 2 a).</p> <p>In response to question 2 e), no candidates recognised that PCT1 had only so far received a partial search report, and that the deadline would accordingly be computed based on the date the complete search report will issue.</p> <p>Too few candidates discussed in response question 2 h) the non-binding nature of the examination in the international stage, which is an important feature of international examination.</p> <p>Most candidates advised adequately in response to question 2 i).</p>
<b>Question 3</b>	<p>Question 3 was predominantly about utility model protection.</p> <p>Eight candidates did not attempt this question. The median score for this question was below those for questions 1 and 2.</p> <p>Question a) of part A was generally well answered and candidates showed adequate general knowledge of the differences between patents and utility models. Relatively few candidates failed to observe that utility models are subject to less harmonised laws than patents internationally.</p> <p>In response to question c) of part A, few candidates correctly pointed out that the national route from the PCT is precluded in</p>

	<p>Italy and France. Virtually no candidates mentioned that the protection afforded by a PCT application is for any protection available in the designated states (i.e., including utility model protection).</p> <p>In response to question a) of part B, the candidates generally failed to observe that the conversion of a European patent application into national utility models is subject to national requirements, and what these requirements were in the listed countries.</p>
<b>Question 4</b>	<p>Part A of this question was about national security provisions. It should be noted that the national security provisions of the UK are part of the syllabus for this exam. Part B was about European law and was thus relatively straightforward.</p> <p>Seven candidates did not attempt this question. The median score for this question was low, and this was due to the fact that most candidates did not adequately answer part A. Part B (on European patent law) was generally well answered.</p> <p>In responding to part A, the candidates not only displayed general lack of knowledge but also a limited ability to make use of the available information to attempt to logically answer the questions. Marks were available for identifying whether the fact that a certain technology was or was not relevant to national security had any impact on the proposed filing policy. Marks were also available for considering whether the nationality and/or residency of the inventors and/or applicant had any impact on the proposed filing policy. Since patent applications were preferably filed in the name of the UK company, UK patent law was relevant to the questions.</p> <p>In responding to question b) of part B the candidates failed to identify the existence of discretionary extensions of time at the EPO.</p> <p>In responding to question d) of part B the candidates failed to discuss the relatively new procedure of waiving the right to receive a further Communication under Rule 71(3) following amendment proposed by the applicant.</p>
<b>Question 5</b>	<p>Question 5 tested the knowledge of certain formal requirements in a number of foreign jurisdictions.</p> <p>This question was attempted by only 24 candidates. Only two of these candidates who went on to pass the exam scored below 10 marks.</p>

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	<p>In question a), no candidate correctly identified that the USA was the only among the listed countries to require an inventor's declaration.</p> <p>Question e) was generally well answered by the candidates, thus showing adequate knowledge of the implications of memberships to the PCT, PC and/or WTO on filing strategy.</p>
<b>Question 6</b>	<p>Question 6 was in three parts: part A tested the definitions of prior art in the US and EP; part B tested the knowledge of the national opposition procedures in Germany and Japan; and, part C tested the knowledge of patentable subject matter in different jurisdictions.</p> <p>All but six of the candidates attempted this question. Those who did scored very well, with a median mark above those for questions 1 and 2.</p> <p>Part A was generally answered very well, to the credit of the candidates (especially in connection with question c), which was potentially challenging).</p> <p>Parts B and C were also answered generally very well, with part C being mostly a 'yes' or 'no'-type question.</p>