

## P6 2012

### Examiners' Comments

#### General

The paper is designed to test a candidate's ability to understand the coverage of patent claims and apply this to a given situation. It is trying to establish whether candidates are fit to practice and give a reasoned opinion with advice to a client and it needs to be approached in a way that meets these requirements in order to pass.

The P6 paper for 2012 related to a cover for a clothes drier. The subject of clothes driers is universally known and well understood; the technology described was straightforward and did not appear to pose any particular problems for candidates. The pass rate was 36.45%.

Some candidates included a preamble, describing what they were subsequently going to do in their answer. This is not required; the first word on the first page of an answer should preferably be "Construction".

Many papers included good construction and infringement sections but then little or no validity (particularly inventive step) analysis or advice. The marking schedule is always structured with a good spread of marks available for each section. Therefore candidates who miss out entire sections are significantly reducing their chances of passing.

Although it had more dependent claims than previous years, those candidates who attempted construction, novelty and infringement of claims 4 to 6 generally did better; those who didn't generally failed. The moral: you will gain far more marks completing the paper, even if not comprehensively, than you will if you comprehensively answer only some of the paper.

This paper was very accommodating of many different construction points, novelty (or lack of) arguments and infringement (or lack of) arguments, and candidates could pass even if they had

completely different conclusions to the majority. Unfortunately, many candidates seemed to think that there was a “set” answer (e.g. the claims are not novel, but are infringed) and tried to contort their arguments and reasoning towards it. Those candidates tended to trip themselves up and fail.

Candidates are reminded, as always, that no credit can be given if the Examiner cannot read their answers. It is appreciated that candidates are under time pressure but legibility must be maintained.

### **Construction (21.25 marks)**

Candidates that produced a cogent and reasoned construction section generally went on to pass.

Some candidates are still tempted to write answers which state two possibilities then do not state which one of the possibilities they are sticking with. They then tend to flip-flop between them in an attempt to get the answer they think the Examiners are looking for. This generally ends in failure.

Many candidates broke the integers of the claims down too much, so that often they were not construing integers in context. Usually integers relate to a phrase so that there is some functionality connected with a feature. Candidates that, for example, tried to construe “and” and “in which” not only wasted time, but they also did not give the Examiners confidence in their ability to advise a client.

Many candidates included drawings of “radiating arms” and “curtains”. While drawings may be helpful, candidates do need to be able to say what they mean with reference to the drawing and not just give a picture and then assume that the Examiner will guess what they are trying to say.

### **Claim 1 (8.5 marks)**

“A cover for a clothes drier”

This sets the scene. Something suited to placement over or upon a clothes drier for concealment/protection. In the context of opening description: rain protection; a *waterproof* cover. Such is not specifically mentioned in claim 1, but is in claim 4 (rain protection).

“of the type specified”

The nature of the clothes drier: “*referred to hereinafter as a clothes drier of the type specified, comprising an upright central support, support arms radiating outwardly from the central support and lengths of clothes line extending between the arms.*” Therefore this is not part of claimed apparatus, however. Hence there is antecedence for “[radiating] support arms”, below.

“the cover being adapted to be mounted removably on the drier;”

“mounted removably”: the entire apparatus is held/supported/attached on/to the drier. If it is mechanically connected to resist removal, this connection must be undoable. It is not specified whether the use of tools is permissible, but it is reasonable to suppose that the cover is undamaged by such removal and can therefore be re-attached.

“adapted to be”: the claim covers apparatus when not so mounted. The apparatus must be specifically configured to allow such mounting; but the only technical features (“adaptations”) specified in this regard are “...support frame detachably mountable...” and “...the top cover being provided ... ends of the support arms”

“in which the cover comprises a support frame which is detachably mountable on said support arms,”

“comprises”: includes such a support frame, may include other integers/features.

“support frame”: structural support elements. The object of the invention is to avoid sagging of the cover/rainwater and ponding, but the nature of the support is not as specifically recited in the claims.

“detachably mountable”: same meaning as above, but the attachment point is more specific: support arms [of drier].

“and a top cover which is arranged to be supported in use by the support frame”

The entire apparatus is called “cover”. Then there is also a “top cover”. In addition the claim specifies “to form a cover extending”. What is being referred to in each case? What is the significance of “top”?

“so as to form a cover for the drier which extends over the radiating support arms of the drier,”

“over”: is this above the arms; across them? Does it mean entirely covering them? No: P6, LL14-15; repercussive effect of claim 6.

“the top cover being provided with means for attaching the cover to the radially outer ends of the support arms.”

This is another attachment between the cover (specifically the top cover) and the drier (specifically the parts of the support arms away from the central support, = “radially outer ends”). Not necessarily the very tips of the support arms? The attachment must be removable to allow removable mounting of cover on drier, as specified above.

**Claim 2 (3.75 marks)**

“A cover according to claim 1”

The claimed cover has all the features of claim 1, plus the following.

“in which the support frame comprises a central support hub,”

“hub”: the hub is a central meeting point of frame members.

“*support* hub”: is this inherent, merely by virtue of being part of the support frame, or must the hub have intrinsic support function, e.g. in helping to support the frame on the drier? The main specific embodiment of the cover is supported on the drier central support [pole] 11 as well as on the support arms 12, the hub having a support strut 17a for doing this (page 6, lines 9 and 16-17); but see also line 7, “at least”. The specific embodiments are non-limiting: page 5, line 36. Further embodiment page 7, lines 6-9 does not have a support strut.

“and resiliently deformable support elements extending radially outwardly of the support hub”

“resiliently deformable”: the support elements are bendable but will tend to spring back to their original shape.

“extending radially outwardly”: this confirms the above view of the meaning of “hub” – the support elements are elongate, with one end at the hub, and another end extending away from the hub.

“so as to overlie the support arms of the drier.”

The cover can only do this when the cover is on the drier. "Overlie" – must be directly vertically above, or merely at a higher level than? Must all of a given support element lie above its corresponding drier arm?

Must there be the same number of support elements as drier arms (and not e.g. an integer multiple)? Integer multiples would be within the scope of the claim if other support elements not overlying a support arm are permitted. But such are not specifically disclosed, and would not necessarily provide the arch shape which appears to be an important aspect of the invention.

**Claim 3 (3.75 marks)**

"A cover according to claim 1 or 2"

A cover having all the features of claim 1, plus the following; or all the features of claim 2 (= 1+2, see above) plus the following.

"in which the support elements have releasable fastenings,"

No antecedent for "support elements" when dependent on claim 1 only.

"releasable fastenings"

Fastenings that can be undone without breaking them.

"at their radially outer ends,"

their" = [of] the support elements This feature has the same antecedence problem. "Ends": their very tips, or a larger region e.g. remote from the hub, more remote from the hub than the remaining part of the support element?

"for fastening them to the support arms,"

""them" = [of] the support elements. Fastenings are suitable for securing the radially outer ends of the support elements to the drier support arms.

"the elements being deformable into an arched shape when they are attached to the support arms"

The [support] elements can be bowed either as they are being attached to the support arms, or remain in that shape once so attached. The illustrated embodiment shows the latter.

“so as to impart a generally dome shape to the top cover.”

The top cover takes up a curved sided, inverted bowl shape as a result of the support elements being bent and attached to the support arms in this way. In the specific embodiment, if the support strut 17a is first braced against the drier central support 11, the support elements will in fact be bent in a downward direction. Nevertheless the end result is that the support elements are bowed upwardly relative to their fastening points on the drier arms. There is no real lack of clarity e.g. with respect to page 6, lines 22-25.

**Claim 4 (1.75 marks)**

“A cover according to any preceding claim”

The following features, appended to claim 1, or claims 1+2, or claims 1+3, or claims 1+2+3.

“and further comprising a skirt which extends in use downwardly from the radially outer ends of the support arms”

“skirt”: a part that serves as a border or edging.

“throughout a length sufficient to protect the clothes from wind-borne rain.”

The length is somewhat indeterminate, as clothes/other laundry items are of variable length. But clothes driers of the type specified tend to be roughly of the same height (suited both to human scale and human laundry scale) and the laundry must be hung clear of the ground to stay clean. So there will be some skirt lengths which although clear of the ground will still be useful in protecting a typical wash from rain. Shorter skirts might still help protect the central area of the drier, but not the edges. Also, are the operating parameter weather conditions hurricanes, or light drizzle? This is a grey area at shorter skirt lengths, perhaps.

**Claim 5 (1.75 marks)**

“A cover according to claim 4”

Having all the features of claim 4, and the following.

“in which the skirt is arranged to be drawn open or closed in the manner of a curtain.”

Must this involve moving portions of the skirt along a pole, track or wire to draw them open or closed? “Drawn” perhaps suggests this? The simplest form of curtain may be fixed at the top, and tied to or otherwise held to one side to open. The specific description is not of much assistance. Skirt portions are apparently drawn open or closed along the outermost lengths of washing line on the drier (page 6, line 41) but this is not entirely clear, and does not preclude other possibilities.

**Claim 6 (1.75 marks)**

“A cover according to any preceding claim”

The following features, appended to claim 1, or claims 1+2, or claims 1+3, or claims 1+4, or 1+2+3, or 1+3+4, or 1+3+4+5, or 1+2+3+4+5, or 1+2+4, or 1+2+3+4, or 1+2+4+5, or 1+4+5, and the following.

“in which reinforced holes are formed at the required positions in the top cover and skirt (where present),”

“reinforced holes”: holes are insubstantial, so it must be their edges that are reinforced. Similar language used e.g. page 6, lines 31, “reinforced apertures”, line 34, “reinforced holes”.

The claim scope therefore depends on size of drier, but this is unlikely to be a significant problem in practice, as driers are of a reasonably standard size and the intended purpose of such drier cover holes will be apparent in an accused product.

“for engagement by the outer ends of the support arms.”

Suitable hole positioning and dimensions are provided.

### **Infringement (18.75 marks)**

It is important that candidates give a conclusion as to whether a feature is present or not, and that sufficient reasoning is given to explain why the conclusion has been reached. A discussion as to why an integer is or is not present and reference to the item under consideration is necessary. Ticks and crosses do not give any indication of the reasoning behind the conclusions reached and as many of the marks are for reasoning, these candidates often failed unless accompanied by the rationale.

There is no right or wrong in this paper and if a candidate makes a point well, with structured reasoning as why they came to a particular conclusion, then they have a good chance of gaining marks.

#### **General infringement considerations**

Making a note of the relevant parties and their status can be helpful as part of a well-structured answer. The following general considerations were awarded marks when discussed either as part of the infringement section or later as part of the advice section.

Potential infringement liability through making, disposing of, offering to dispose of, using or importing the product or keeping it whether for disposal or otherwise;

- No sales since product launch are statute limited.
- There is no innocence defence for sales after the approach to Mega Mart.
- Has the client been properly marking its Line Guardian product to provide statutory notice?
- The undertakings proposed by the solicitor are all potential remedies available to client if infringement is found.

Rotabrolly's customers (independent retailers) also potentially liable through disposing of, offering to dispose of, using, or keeping the product whether for disposal or otherwise. Their retail customers will have private/non-commercial use defence, unless commercial.

**Claim 1 (7 marks)**

“A cover for a clothes drier”

Rotabrolly is a folding cover for a rotary clothes line – client’s letter, P2 LL4-5. It appears to be for the same purpose as the covers of Doc A – shielding laundry on the drier from rain etc. Feature present.

“of the type specified”

The clothes driers that the Rotabrolly can be used on are those of the type specified – having an upright central support, support arms radiating outwardly from the central support and lengths of clothes line extending between the arms. See client’s sketches and P2 LL4-8, for example. Feature present.

“the cover being adapted to be mounted removably on the drier;”

“Pivoting clamps z for securing the spoke to a corresponding arm of the clothes line (see sketch B)” – P2, LL14-15 and sketch B. Feature present.

“in which the cover comprises a support frame which is detachably mountable on said support arms,”

The spokes constitute structural support elements forming a support frame which is detachably mountable on the drier support arms by the clamps z. Feature present.

“and a top cover which is arranged to be supported in use by the support frame”

“The cover is made from panels of waterproof textile material which are sewn together and stretchable over a number of stiff wire spokes to form a dome shape” – P2, LL5-7; sketches A and B. It lies over the spokes and the drier arms when the cover is fitted, and so probably forms a top cover, depending on the interpretation of this expression. One possible theory of infringement is that the assembled fabric panels are a “top cover” as claimed, and the entire Rotabrolly assembly a cover as claimed. Feature present.

“so as to form a cover for the drier”

See above. Feature present.

“which extends over the radiating support arms of the drier,”

If coverage of support arms in their entirety is required, this is achieved by fitting the correct size of cover, as shown for example in the client’s sketches.

“the top cover being provided with means for attaching the cover to the radially outer ends of the support arms.”

The clamps z are attached to the radially outer tips of the drier support arms. This feature is present (on either interpretation of “radially outer end”), again assuming the intended use as shown in the client’s sketches.

**Conclusion:** Claim 1 infringed.

**Claim 2 (2.75 marks)**

“Dependent on claim 1”

Features of claim 1 present.

“in which the support frame comprises a central support hub,”

“Spider” provides a meeting point for frame members (spokes). So the feature is present, if it is concluded that the hub does not have to provide an intrinsic support function. Otherwise the feature is not present, as the hub is supported by the spokes and not directly on the drier.

“and resiliently deformable support elements extending radially outwardly of the support hub”

The spokes are resiliently deformable – compare sketches A and B; see also P2, LL20-21. The spokes extend radially outwardly of the hub, at least when the cover is in use on the drier and both are unfolded. Feature present.

“so as to overlie the support arms of the drier.”

As the “spider” appears to be located above the central support pole v of the drier, and the clamps z secure the spokes to the drier arms, the spokes will be directly above the support arms of the drier when both the cover and the drier are opened. Parts of the spokes extending radially outwards beyond the clamps z however lie below and beyond the drier arms, but where the spokes overlap the support arms they overlie them. So a finding of non-infringement is remote on this ground.

**Conclusion:** Claim 2 infringed/not infringed, mainly depending on interpretation of “support hub”.

**Claim 3 (3.25 marks)**

“Dependent on claim 1 or 2”

Present when dependent on claim 1 only; possibly present when dependent on claim 2.

“in which the support elements have releasable fastenings,”

Clamps z are presumably releasable to allow ready fitment/removal of cover to/from drier (check with client). Feature present.

“at their radially outer ends,”

Clamps z located *towards* the radially outer ends of the spokes, but not right at their tips. So feature only present if “radially outer ends” interpreted accordingly.

“for fastening them to the support arms,”

Clamps z are suitable for fastening the support elements (spokes) to the drier support arms. Feature present.

“the elements being deformable into an arched shape when they are attached to the support arms”

The spokes above the drier arms are bent into an arched shape when the drier and cover are opened, albeit that the portions of the spokes beyond the ends of the drier arms are bent downwards. Feature present.

“so as to impart a generally dome shape to the top cover.”

When opened in this way, the cover adopts a generally domed (curved sided, inverted bowl) shape.  
Feature present.

**Conclusion:** Claim 3 infringed/not infringed, largely depending on interpretation of support element  
“radially outer ends”

**Claim 4 (1.75 marks)**

“Dependent on any preceding claim”

Feature present when dependent on claim 1 only; possibly present when dependent on claim 2 or 3.

“and further comprising a skirt which extends in use downwardly from the radially outer ends of the support arms”

The cover comprises a border region supported on those parts of the spokes which extend beyond the clamps z and drier arms, and which extends downwardly from the outer ends of the support arms when the cover is opened. Feature present.

“throughout a length sufficient to protect the clothes from wind-borne rain.”

Although this claim feature is somewhat indeterminate in scope, the purpose of the downwardly extending border of the cover beyond the drier arms is to improve protection against rain blown in from the sides. This appears to be the case for the dome umbrella which inspired the client’s cover (Document C: “Has extra deep dome for maximum protection.” Confirm with the client?)

Conclusion: Claim 4 probably infringed when dependent on claim 1 only; and possibly also when dependent on claim 2 or 3.

**Claim 5 (1.75 marks)**

“Dependent on claim 4”

Feature present when dependent on claim 1 only; possibly present when dependent on any of claims 1 to 3.

“in which the skirt is arranged to be drawn open or closed in the manner of a curtain.”

The flaps resulting from when the zips are undone can be drawn apart and tied open using the toggles and loops, P2 LL10-11. But no sliding movement is involved.

Conclusion: Claim 5 infringed/not infringed, depending on interpretation of “drawn”.

**Claim 6 (2.25 marks)**

“Dependent on any preceding claim”

Feature present when dependent on claim 1 only; possibly present when dependent on any of claims 1 to 4.

“in which reinforced holes are formed at the required positions in the top cover and skirt (where present),”

The pockets mentioned P2 LL15-16 define “holes”? They are in highly stressed regions of the cover and so are likely to be engineered to withstand such stress. In that sense they would be “reinforced”.

“for engagement by the outer ends of the support arms.”

Feature not present. The pockets are engaged by the ends of the spokes (“frame support elements”), not the outer ends of the drier support arms.

**Conclusion:** Claim 6 not infringed.

### **Novelty (34.5 marks)**

Some candidates considered novelty and inventive step claim-by claim. This is perfectly acceptable, but the more thorough approach (used by the majority) is to consider novelty first and then inventive step. If candidates form a view of the whole claim set then this helps put all the claims and associated integers in context and so interpretation becomes easier. As is the case when candidates analyse integers in minute details without reference to the other integers in a single claim, the overall meaning of the claim can be overlooked.

As with infringement, marks are available for discussing all of the points that have been construed. Selecting the points for discussion does not mean only commenting on any single feature of a claim that is missing from the cited art; furthermore, all of the sub-claims should be considered. Not doing so will certainly mean missing out on the majority of the marks available.

Marks were available for discussing the status of documents C and D as full prior art.

As with infringement, ticks and crosses do not give any indication of the reasoning behind the conclusions and do not, by themselves, attract any marks.

Many candidates missed the fact there were two embodiments for Document C and some dismissed D out of hand. An umbrella could be a covering but discussion was needed as to how it could relate to covering a drier or not.

Below is a table summarising the points for consideration with regard to novelty.

**CLAIM 1 (14 marks)**

	<b>Doc C Embodiment 1</b>	<b>Doc C Embodiment 2</b>	<b>D</b>
A cover for a clothes drier	Feature present. "This invention relates to covers for clothes driers of the type having at least three arms extending radially from a central post to support clothes lines" P10 LL3-4.	Feature present. "This invention relates to covers for clothes driers of the type having at least three arms extending radially from a central post to support clothes lines" P10 LL3-4.	Dome umbrella does not appear big enough to be suitable for covering a rotary clothes drier of the type specified – feature absent. Umbrella does serve as a "cover" in providing the same rain shielding function as the claimed apparatus.
of the type specified	Drier to which disclosed cover is fitted has radiating arms and upright central support, see above, "to support clothes lines" (P10, L4). See also Fig 1, P10 LL28-29. Feature present.	Drier to which disclosed cover is fitted has radiating arms and upright central support, see above, "to support clothes lines" (P10, L4). See also Fig 2. Feature present	
the cover being adapted to be mounted removably on the drier;	Feature present: see e.g. P10 LL11-14 and corresponding specific description. Pockets, etc. allow embodiment of the cover to be removably mounted to a clothes drier.	Feature present: see e.g. P10 LL15-18 and corresponding specific description. Clips, etc. allow embodiment of the cover to be removably mounted to a clothes drier	Feature absent – nothing to attach/fix/hold the umbrella on a rotary clothes drier; umbrella not specifically configured for placement on such a drier.
in which the cover comprises a support frame which is detachably mountable on said support arms,	Fig. 1 embodiment does not have a frame separate from the drier support arms. .	Figs. 2-4 embodiment does. Spines 34 arguably form a support frame, as do struts 40, 42, 44. Feature present in Fig. 2 etc. embodiment	Dome umbrella does have a support frame for the PVC cover formed by the spokes, tip collar, sliding collar, stays and shaft. But nothing to detachably mount the umbrella frame on the rotary drier line supporting arms.
and a top cover which is arranged to be supported in use by the support frame	No support frame in Fig. 1 embodiment. .	The panels 26 form a cover which is arranged to be supported by the spines and struts and which is on top of the drier in use. However the panels 26 do not lie on top of the spines 34, so interpretations of claim 1 are possible which are not old in view of doc. C	PVC cover is supported by the frame. It covers and is therefore on top of the spokes etc. and anything shielded by the umbrella.
so as to form a cover for the	Feature present – embodiment extends	Feature present – embodiment	Dome umbrella appears too small to

drier which extends over the radiating support arms of the drier,	above, across and entirely cover the drier support arms so as to protect them and the supported washing line from rain.	extends above, across and entirely cover the drier support arms so as to protect them and the supported washing line from rain.	cover the radiating support arms of the cover in their entirety, but could cover and protect a portion of the drier from rain, if held in a suitable position.
the top cover being provided with means for attaching the cover to the radially outer ends of the support arms.	Feature present in Fig. 1 embodiment – pockets 22 fitted over the ends of the drier arms, P9 LL30-31.	Feature absent from embodiment? Entire cover assembly (and hence any top cover) clips to the drier arm supporting struts 16, rather than the drier arms. Clip 50 is secured to both the strut 16 and the support arm 14 (P10 LL6-7). However, this is away from the radially outer end of the support arm 14, unless the latter is given a <b>wide interpretation</b> such as “a part of the drier support arm further away from the central support than the arm tip”.	Tip protectors welded to the umbrella covering attach it to the radially outer ends of the spokes (support frame), not to the outer ends of the drier support arms. Feature absent.
<b>Conclusion</b>	Claim new wrt Fig. 1 embodiment (cover has no support frame of its own).	Claim old/new wrt Fig 2 etc. depending on construction. Contentious features: radially outer ends of support arms, top cover.	The dome umbrella appears too small to protect rotary driers as specified in Document A effectively, and lacks means specifically adapted for attaching the umbrella to the support arms of such a drier.

**CLAIM 2 (4.5 marks)**

Dependent on claim 1	Claim 1 satisfied/not satisfied, depending on conclusions reached above.	Claim 1 satisfied/not satisfied, depending on conclusions reached above.	Claim 1 is new.
in which the support frame comprises a central support hub,	No support frame in Fig. 1 embodiment, so feature absent.	In the Fig. 2 etc. embodiment, the radially inner ends of the spines do not appear to be connected together by anything other than the cover panels – see Fig. 2 and corresponding description Feature absent.	The tip collar constitutes a support hub to which the radially inner ends of all the spokes are attached, and by which they are supported on the shaft and handle. Feature present.

and resiliently deformable support elements extending radially outwardly of the support hub	No support frame in Fig. 1 embodiment, so feature absent.	No support hub, but spines 34 in Fig. 2 etc. embodiment are springy (P10 L3).	The springy steel spokes (support elements) are resiliently deformable and extend radially outwardly from the tip collar (support hub). Feature present.
so as to overlie the support arms of the drier.		The spines 34 do overlie the drier support arms to permit interconnection by the struts 40, 42, 44, Fig 3	Umbrella not large enough for drier (see comments on claim 1 above. Dome umbrella has eight spokes. None of the available documents mention eight armed rotary driers.
<b>Conclusion</b>	Claim 2 is new wrt embodiment, Re dependency on Claim1 and Central support hub absent .	Claim 2 is new wrt embodiment, Central support hub absent	Claim 2 new in its own right as well as by dependency.

**CLAIM 3 (6.5 marks)**

Dependent on claim 1 or 2	Novel wrt Claim 1 and 2	Satisfied/not satisfied, depending on conclusions reached re: claim 1 above; not satisfied when dependent on claim 2.	Claims 1 and 2 are new.
in which the support elements have releasable fastenings,	No support elements, Fig. 1 embodiment. Feature not disclosed.	Feature present in Fig. 2 etc. embodiment – clips 48, 50	No releasable fastenings at all. Feature absent.
at their radially outer ends,		But clips 48, 50 are not at support element radially outer ends unless this feature interpreted broadly – see comment re: clip 50, above, re: claim 1.	No releasable fastenings at all. Feature absent.
for fastening them to the support arms,		The clips in Fig. 2 etc. are suitable for fastening the spines 34 to the drier arms, via the struts 40, 42, 44- unless drier struts 16 not counted as part of drier arms.	No releasable fastenings at all. Feature absent.
the elements being deformable into an arched shape when they are attached to the support arms		The spines 34 could be deformed into an arched shape when attached to the drier support arms, by moving the outer clip 50 along the drier strut 16, closer to the clip 48. However Doc. C	The springy spokes are bent (in the same direction as in Doc. A) into an arched shape when the umbrella is opened, despite not being attached to anything. It is the shape of the cover

		contains no clear and unmistakable directions to do this - nor would the panels necessarily permit significant spine arching in this way – so lack of novelty of this feature wrt Doc. C is debatable.	which leads to such bending. Feature absent only by virtue of lack of releasable fastenings.
so as to impart a generally dome shape to the top cover.	).	If the spines 34 are “deformable upwardly into an arch shape” as discussed above, then the cover will take up a domed shape. But in its normal open state it will instead have a shallow conical shape – no matter what the shape of the drier arm support struts (16 in the drier example shown in Figs. 3	“Dome umbrella” – feature present.
<b>Conclusion</b>		Claim 3 possibly old when dependent on claim 1 only, depending on interpretation of “top cover”, support element “radially outer ends”, and whether there is disclosure of these elements being “deformable upwardly into an arched shape...”.	Claim 3 new in its own right, but dome umbrella shares many similar features. Wrong scale and no releasable fastenings at the ends of the spokes for securing them to drier arms.

**CLAIM 4 (3.5 marks)**

Dependent on any preceding claim	Claim new wrt all preceding Claims	Possibly satisfied when dependent on claim 1 only, or claim 2, or claim 3 when dependent on claim 1 only.	Claims 1, 2 and 3 new.
and further comprising a skirt which extends in use downwardly from the radially outer ends of the support arms	Fig. 1 cover finishes at the radially outer ends of the drier arms; no skirt – feature not present.	Edge part of Fig. 2 etc. cover can extend beyond and downwardly of the ends of the drier support arms - P11 LL19-20. Feature arguably present.	Dome umbrella is the wrong scale to fit rotary driers of the type specified (or their support arms). But it does have a skirt, due to its dome shape.
throughout a length sufficient to protect the clothes from wind-borne rain.	“.	To provide extra protection against driving rain” – P11, L19-20 – feature present	The skirt apparently does provide extra rain protection – “even on windy days”.
<b>Conclusion</b>		Claim 4 old wrt Fig. 2 etc. embodiment, except by virtue of dependency – on claim 2 and	Claim 4 new in its own right but again only due to small size of dome umbrella which prevents it from being positioned

		possibly on claims 1 and 3.	with its skirt extending downwardly from the radially outer ends of the support arms.
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**CLAIM 5 (2.5 marks)**

Dependent on claim 4	Doc C Emb 1 & 2	Claim 4 new.
in which the skirt is arranged to be drawn open or closed in the manner of a curtain.	No movable skirt disclosed in either embodiment.	Skirt cannot be opened to allow access to the dome interior space when the umbrella is open. Feature absent.
<b>Conclusion</b>	Claim 5 new.	Claim 5 new in its own right and by dependency.

**CLAIM 6 (3.5 marks)**

Dependent on any preceding claim	New wrt to Embodiment C1 due to dependency	Satisfied wrt dependency on earlier claims	Claims 1-5 new
in which reinforced holes are formed at the required positions in the top cover and skirt (where present),	Pockets of Fig. 1 embodiment could be deemed to be reinforced holes..	No such pockets in Fig. 2 etc. embodiment	Tip protectors arguably provide reinforced holes
for engagement by the outer ends of the support arms.	And are engaged by the outer ends of the drier support arms.	.	But they are engaged by the umbrella spoke tips (the frame support elements) rather than the outer ends of the drier support arms
<b>Conclusion</b>	Only new wrt Fig. 1 embodiment by virtue of dependency.	Claim 6 new in its own right wrt to this embodiment	Claim 6 new in its own right as well as by dependency.

### **Inventive Step (14 marks)**

There were marks available for discussion of inventive step of each of the claims. Marks are awarded for selecting a suitable starting point and applying the analysis.

Once again the vast majority of candidates scored poorly on inventive step.

A common approach is to simply state “there would be no motivation to combine documents”. In the absence of any reasoning this is not valid argument and will attract no marks.

Most candidates referred to the use of the Pozzoli/Windsurfer approach. However, many candidates simply referred to the case and said nothing about how the case relates to the situation outlined in the paper. Furthermore, a detailed discussion of the case law is not required; rather it should just be applied.

Who is the person skilled in the art (PSA)?

PSA is manufacturer/designer of “housewares” etc? (compare with the client). A manufacturer/designer of rotary laundry airers? (see the introductory description of both documents A and C). A manufacturer/designer of umbrellas? (see document C, P9 L16 “umbrella-like”).

What is the common general knowledge (CGK) of PSA?

Rotary driers “of the type specified” – this could be a standard or generic type recognised in this field of technology. Could just be a definition internal to document A. Document C discloses similar driers, but this is not conclusive evidence that these are a recognised generic type. Dome umbrellas are “Known to nearly everyone” (P2 L32-33).

## Claim 1

The feature missing from document C Figure 1 is a support frame detachably mountable on the drier support arms. Document C Figure 2 etc. provides a support frame, but this is attached mainly to the drier arm bracing struts, not to the drier arms themselves (but could the struts be part of drier support arms?) and not to the drier arm outer ends as narrowly interpreted.

Similarly, the cover frame of Figure 2 could not be used with the cover of Figure 1 without some further modification, as the frame overhangs the outer ends of the drier support arms and impedes attachment of the [top] cover to the radially outer ends of the drier support arms, so that there is no immediately available way of attaching the cover there.

Thus although there is a case for obviousness, it is not clear cut. Expert evidence would be important.

The shortcomings of [dome] umbrella (document D) with respect to claim 1 are its small size - it is not a cover suitable for a rotary clothes drier of the type specified - and lack of attachment means. Document C discloses such covers and refers to the version with its own frame as "umbrella-like" (P9 L16). Dome umbrellas (umbrellas generally?) may be CGK. Is this enough to prompt the PSA to make an umbrella of a suitable size to cover a rotary clothes drier, and provide the required attachment means? It would appear fairly straightforward e.g. to provide means for attaching the shaft of the umbrella to the central pole of the drier. Document C mentions that a variety of different securing means are possible, albeit in the context of securing a cover frame to the drier arm bracing struts (P10, LL7-8). Would it be a routine matter to enlarge an umbrella to fit a rotary clothes drier? A question for the experts, but this is the route Rotabrolly apparently took. They seemed to concede obviousness in the face of IPO objections, though abandonment of the application could have been for other reasons.

Marks were available for any other reasonable points/arguments.

## **Claim 2**

The above arguments apply equally to claim 2. Also, there is no disclosure of a support hub in document C, but the umbrella tip and tip collar is arguably a support hub in document D. The requirement for the support elements to overlie the drier support arms restricts the modified umbrella to one having spokes which are a whole number multiple of the number of drier support arms, so perhaps somewhat less obvious.

## **Claim 3**

Neither document C nor document D appear to contain any suggestion of fastening the spines/spokes to the "outer ends" of rotary drier support arms (narrowly interpreted, to give claim 3 novelty over document C). Document C does not suggest deforming the spines upwardly into an arch shape. But the spokes of a dome (and an ordinary) umbrella are deformed in this way when the umbrella is opened. If an umbrella having the appropriate number of spokes is attached to a drier in the manner suggested above with respect to claim 1, then the drier arm outer ends can be brought into close proximity with the spokes. Would it be obvious to connect the two together, e.g. to fix the umbrella to the drier more securely, to resist lifting by the wind? This is arguable, but on the face of it not a strong case. Expert evidence required.

## **Claim 4**

This is obvious to the extent that any of claims 1-3 are obvious, as both document C Fig. 2 and document D ("...shelter ... even on windy days.") provide skirts as claimed.

## **Claim 5**

Neither of the skirts disclosed in document C Fig. 2 (P11 LL19-20) and document D (bottom edge region of dome) are openable in the manner of a curtain. Openable curtains are a well-known

means for providing access through a fabric barrier – a possible obviousness attack, given that improved access to the laundry hanging space in document D Fig. 2 would be an advantage.

### **Claim 6**

In document C Figure 2 the support elements impede access to the drier arm outer ends for arm-end-in-cover-hole type fastenings (see comments on claim 1 above). In document D, the tip protectors are attached to the tips of the spokes, not the drier support arms. Do they provide “reinforced holes”? This claim appears inventive, but reasonable arguments to the contrary would also get the marks.

### **Amendment (2 marks)**

Amend to correct the dependency of claim 3.

Add a dependent claim to the cover being supported in use solely via the attachment of the resiliently deformable support elements 19 to the outer ends of the support arms 12 of the drier 10. Basis: P5 LL5-9. This feature present in Rotabrolly, but is not disclosed in documents C or D. This is less likely to be contested if done under S27 without notice to Rotabrolly than if done under S75, but would delay start of action against Rotabrolly.

### **Sufficiency (0.5 marks)**

No issues?

### **Advice (9 marks)**

In this section of the paper marks are awarded for summarising conclusions and giving general advice.

The advice of most candidates was generally formulaic and concentrated on telling the client exactly which claims were infringed, which were novel and which were inventive, without any practical advice at all.

Points for discussion:

Patent A is in force and so the client could commence the litigation process (sending a letter before action) straight away.

Many candidates thought an interim injunction was a foregone conclusion, when it is clear that it was not. A prima facie case for infringement exists. The client is more established in the market. But on the other hand Rotabrolly have also been on the market for some time and damage to client may be quantifiable by reference to Rotabrolly's sales/profits. So it is not certain that an application for interim injunction would succeed.

Rotabrolly's patent application is dead and outside statutory reinstatement period; Line Guardian apparently antedates this application so there is no risk of counterclaim for infringement.

Rotabrolly is a manufacturer, so the solicitor's proposed letter to them is not an actionable threat. Letters in similar terms to retailers would be actionable threats. S70(2A)(b) defence to threats action is available to client unless invalidity is based on new prior art – an extensive search found none. Action against retailers is nevertheless better confined to "enquiries" under S70(5)(b) and (c), to avoid risk of Rotabrolly getting in the driving seat, and issue with the liability of advisers.

Undertakings proposed to be asked for by company solicitor are all potential remedies available to client if infringement found.

Claims 1, 2, 4 and 5 are probably infringed, although there are doubts as to the validity of all of the claims.

Explore with client possibility of granting non-exclusive royalty bearing licence to Rotabrolly – income from their sales. The client would be relinquishing market exclusivity but would avoid the expense and uncertainty of litigation, including reducing the risk that the patent is wholly or partly revoked. Any potentially anti-competitive clauses (e.g. restricting sales channels/territory) would need checking for compliance with the block exemption.

Rotabrolly's product appears to be potentially commercially more successful than the patented product – the drier can still be folded with the Rotabrolly in place. The client is free to make equivalent functional improvements. Close or exact copying would require a [cross-] licence of Rotabrolly's UK unregistered design right; find out if this is in the licences of right period.

### Excerpts from Examiners' Notes

Good paper. Consistent.

Not cogent enough.

Confused sufficiency and support. Advice very poor and dangerous.

Not bad. Handwriting difficult to read

Construction not great. Good novelty

Very good paper.

Only dealt with claims 1 to 3. .

Only got thought half the points.

Good paper. Advice not great

Did not really construe terms in construction.

Not enough detail in construction. Definite fail

Lost a lot of marks in novelty

Good paper. Picked up marks all the way through.

Missed point about 'of the type specified' giving antecedents. Didn't do inventive step for claim 1 as found not novel.

Poor construction. Much too light on discussion throughout.

Good paper overall.

Little functional interpretation in construction. Infringement went off the rails a bit. Did N and O on p/art in Doc. A

Con and inf good; weird arguments on nov; IS poor (usual "no motivation" catch all statement)

Flip-flopped like a fish out of water; very, very confused reasoning as a result

OK pass

Con, inf and nov great; IS poor; overall a reasonable pass

Very thorough answer; good in all sections; no waffle or padding

Very poor con leading to poor sections throughout; but still managed to write 75 pages!

Concise, well thought out - a pass.

Clear fail; did not complete the paper

Did not complete claims 4-6 in any section and failed Tried too hard to get to a "set" answer and as a result inf and nov were very poor.

Good IS, one of the few

Advice dangerous and muddled

Did not complete the paper and failed, which is a shame as the points answered were excellent.

Should not have taken the paper; could not even finish construction of claim 1

Out of his/her depth; did not understand the prior art

Dismissed Doc D immediately and did not gain any marks for nov and IS on Doc D - fatal error

Con and nov good; inf OK; just a pass

Con and inf good; nov OK; sneaked a pass

Con, inf and nov good; poor IS and advice; did just enough to pass

Con OK, seemed to struggle for the rest of the paper

Handwriting appalling; could not read a lot of the script

Sat on the fence for Con; which meant nov and inf were tortuous ramblings; a clear fail

Simply appalling – combining features from two embodiments in discussion of novelty