

Introduction

The 2018 FC4 paper was in the new two-part format with shorter, compulsory 'Part A' questions and a choice of longer 'Part B' questions. The candidates submitted well written, legible papers throughout. There were only few candidates answering the wrong number of questions and, even where this was the case, this did not alter the outcome (pass or fail) for the candidates in question. Many candidates impressed with their answers and pass rates were in line with previous years. Only a few candidates appeared not to be ready for the examination.

Questions

Question number	Comments on questions
Question 1	<p>Question 1 was answered well by many candidates. For any question involving a deadline, candidates should clarify the start date. For instance, achieving full marks may require reciting that the maximum deferment period is 30 months from priority, or 2 months from notification. Failure to distinguish between the request to defer publication, and the request to publish a deferred design meant available marks could not be awarded. The former must be made on filing. The latter must be filed within 27 months of the priority date.</p> <p>In Part b), deficiencies must be rectified within a deadline but no later than within 30 months of the priority date.</p>
Question 2	<p>This question had the third highest mean mark across all candidates. A small number of candidates confused non-commercial and experimental purposes. The act refers to “an act which is done privately and for purposes which are non-commercial”, and to “an act which is done for experimental purposes”.</p>
Question 3	<p>This question was generally answered well but was not one of the questions achieving the highest marks, which was surprising given that <i>restitutio</i> is common to most intellectual property registrations.</p> <p>The question asked about the procedure and the requirements a proprietor needs to satisfy before the EUIPO can issue a decision. Therefore, comments on third-party protection rights and on appeal options did not attract marks. It was not necessary to refer to the unintentional criterion to gain the mark for recognising the “due care” criterion. A statement such as “due care which is stricter than unintentional” was accepted, but marks could not be</p>

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	awarded if the relevance of the “unintentional” criterion was unclear. A few candidates referred only to “relevant fees” when marks were available for more specific answers. Any answer relating to a deadline must include its start for full marks to be awarded.
Question 4	This question had the highest mean mark across all candidates. No marks were awarded for intentionally relying on a grace period, as this would leave the client vulnerable to interim third-party activity. Some remarks about the Hague route were not entirely correct, namely that the Hague route would generally avoid the need to appoint a local agent, or that fees for a Hague application are due only on filing, or that designations can be added post filing. No marks could be awarded for references to a Madrid system.
Question 5	Question 5 was answered well. The Act does not use the terms “must fit” and “must match”. While each of these terms attracted half a mark, for full marks it was necessary to recite s.213(3)(b)(i) and (ii). Many candidates did this very well.

Question number	Comments on questions
Question 6	Many candidates answered this question well. A small number confused an action for groundless threats with the question of infringement. Groundless threats provide a remedy for a person accused of infringement unless they are a manufacturer or importer. The answer asked for reasons and most candidates presented a reason for each answer.
Question 7	This question had the second highest mean mark across all candidates. Marks were awarded for references to the “end of the month”, if this identified the correct date. For Part c), questions were awarded for reasonable answers. No marks were awarded for stating that products can be “covered” in different classes. While different classes may be assigned in different registrations, the scope of protection is independent of classification. Presence of invisible-in-normal use features is not in itself a ground for invalidity.
Question 8	This question was generally answered well by most candidates.

Part B

Question number	Comments on question
Question 9	<p>This question was one of the less popular Part B questions but had the second highest mean mark among the candidates attempting it. The question was deliberately unclear on certain aspects, for instance on whether or not Jill was employed by the studio, and what type of agreement Jill had with Joe. This should prompt candidates to explore the options, and many candidates made good attempts at this. Many candidates considered assignment or license options while few candidates considered joint ownership as an option. The possibility for Jill or Joe to obtain rights possibly still owned by the studio was generally overlooked. Few candidates commented on copyright duration.</p> <p>Part b) asked about commercial aspects and so no marks were available for discussion of moral rights.</p> <p>Part c) specifically directed candidates to ignore remedies and no marks were available for reciting these.</p>
Question 10	<p>Question 10 was popular but not one of the best-answered questions of Part B. It was generally necessary to distinguish between a design and a registration and candidates who did so scored good marks.</p> <p>Part a) required application of only a few checks that should be considered in any infringement scenario whether of a design or other IP right.</p> <p>In Part b), many candidates recited prior use exemptions but failed to apply it to the scenario. The critical point was that Abigail could not assign prior use rights she owned to Tara and a few candidates recognised this. Candidates needed to appreciate that prior use defences apply to non-public prior use when this is unsuitable for invalidating a later registration, whereas public prior use would put the validity of a later registration into question.</p> <p>Part d) asked about circumstances in which criminal acts may have been committed and no marks were available for reciting fine levels.</p> <p>Parts c) and e) were answered well.</p>
Question 11	<p>This question was popular and had the highest mean mark of the Part B questions.</p> <p>To achieve full marks in Part b) it was necessary to enquire if Roisin had claimed priority as the question was deliberately unclear on this point. Many candidates correctly identified that a multiple application may contain different priority dates. Some candidates</p>

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	<p>suggested that a certified copy was not required, which is incorrect: a certified copy is required to substantiate a priority claim, but in practice the EUIPO accepts an electronic submission of a certified copy.</p> <p>In Part c) many candidates assumed that a multiple application that is rejected for lack of class identity must be divided. This is not necessarily the case. If it is appropriate to reclassify into a common Locarno class then the EUIPO would probably allow this, thereby avoiding a need for division. If division is required then an application is not automatically divided. Payment of a fee and/or indication of the designs to be maintained is required.</p> <p>The question specifically asked to ensure that the application proceeds to registration and so no marks were available for advice to abandon the application and file a fresh application.</p> <p>In line with other questions, marks were available for calculating deadlines (start, end, and actual date). Many candidates did this systematically and scored well.</p>
Question 12	<p>Question 12 was not popular. Candidates were instructed to ignore registered rights and so no marks were available for discussion in this regard. Good candidates evaluated systematically the different elements: buzzwords, speech bubbles, stick man drawings and combinations of these.</p> <p>In Part b) many candidates recognised correctly that UK design right does not subsist in surface decoration. The question enquired about design rights owned in the UK and this includes EU unregistered design right which covers two-dimensional designs.</p> <p>Part c) was deliberately unclear on whether or not there was infringement and, as so often, we had only the parties' word. Kate had created her own stick figure but only after having seen Taylor's work. Candidates did well by exploring both copyright and design aspects.</p>