

FD4 FINAL Marking Schedule

CONSTRUCTION

CLAIM 1

A lightweight envelope	Defines the field as “lightweight envelopes” or “envelopes” - discussion. “Lightweight” has a definite meaning = paper with a basis weight of <80gsm line 15 to 16 page 3. No marks for defining as between 50gsm and 80gsm. Discussion of implication of claim 6 and line 6 to 7 of page 4. Candidates can construe either way w.r.t paperboard and cardboard falling within scope of claim.	0.5 0.5 1
Comprising a pouch portion for storing documents and a flap portion joined to the pouch portion at a fold line and for sealing the pouch portion	“comprising” = not limited “pouch portion” = enclosed volume for holding documents (e.g. line 34 to 35 page 4 or lines 5 to 6 of page 3) “flap portion” = part of envelope that closes pouch (e.g. p4 lines 12 to 14/line 35 to page 5 line 1, Part 3 Figure 1) “for sealing” = suitable for covering and sealing to secure documents (lines 1 to 3 page 5)	0.5 0.5 0.5 0.5
one of the flap portion and the pouch portion bearing adhesive such that when the flap portion is folded about the fold line to be brought into abutment with the pouch portion the portions are secured together	“At least one” = either of the flap portion and pouch portion have adhesive in a location such that the adhesive on the one portion engages the other portion when folded (e.g. lines 29 to 30 of page 3, lines 1 to 3 page 5). Reasonable discussion about whether this means only one of them has adhesive, or does it cover both having adhesive (specific description only mentions adhesive on both flap and pouch and that identical)	0.5 0.5
the flap further comprising tamper evident means arranged to irreversibly indicate opening of, or an attempt to open, the envelope	<u>Note error:</u> ‘flap’ not ‘flap portion’ “tamper evident means” = specific component/physical feature of envelope that provides a visual clue (e.g. page 3 line 20 to 26) such as slit/perforations. discussion of whether t.e.m. is restricted to slits/perforations or does it include the adhesive? If so, why is adhesive separate integer? Discussion of irreversible – recognition that envelope is permanently changed. Indicate opening or attempt to open - cause a tear line 8-10 page 5, line 17 page 5	0.5 0.5 0.5 0.5 0.5

FD4 FINAL Marking Schedule

and at least located at or towards either side of the flap portion	At least (not limiting) Discussion of “either side” - at one side/at both sides? Discussion of where side is - along the shorter edge? Transverse edge 3t (3e) – line 10 page 5 Located towards - on the major free edge?	0.5 0.5 0.5 0.5
Total		(9.5)

CLAIM 2

An envelope according to Claim 1 wherein said tamper evident means comprises a pair of elongate continuous slits	Claimed envelope has all the features of claim 1, plus the following. TEM ‘comprises’ (no additional mark for discussing “comprises” again) Discussion of pair – 2 Elongate continuous slits: Discussion of elongate, “slits” and continuous vs discontinuous. Through material? At edge? – transverse edge line 11-12 page 5. Does this imply something about where the continuous slits are? Purposive construction: when you start to open you already have traction to tear along the whole length. Deliberate attempt.	0.5 1 0.5
Total		(2)

CLAIM 3

An envelope according to Claim 1 or 2 wherein the tamper evident means comprises a perforated line.	An envelope having all the features of claim 1 or claim 1 + claim 2, plus the following; Comprises Perforated line – line 24-26 page 3, line 16-18 page 5 Discussion of location and purpose	0.5 0.5
Total		(1)

FD4 FINAL Marking Schedule

CLAIM 4

An envelope according to Claim 3	The following features, appended to claims 1+3, or claims 1+2+3.	
wherein the continuous slits and the perforated line together form a continuous line of weakness across at least a major portion of the pouch portion.	<u>Note lack of antecedence</u> of continuous slits when dependent on Claims 1 and 3 “continuous” = without interruption “line of weakness” – causes separation of flap portion – more susceptible to tearing – line 12-14 page 5 Discuss “across at least a major portion” (depending on construction of location of slits may be construed across the entirety) – line 11-12 page 5 (if consistent with construction of claims 2 and 3) <u>Note possible error:</u> should ‘Pouch portion’ read ‘Flap portion’. Should it be pouch as that’s the part you are trying to access, or flap portion as that’s the bit you are trying to tear.	0.5 0.5 0.5 0.5 0.5
Total		(2.5)

CLAIM 5

An envelope according to Claim 1	Having all the features of claim 1, and the following.	
wherein the adhesive is a continuous strip of adhesive,	Continuous – not interrupted. Purpose: presumably to ensure secure retention of documents.	0.5 0.5
which extends across a major portion of the said one of the flap portion and pouch portion	“extends across a major portion” = discussion of how far extends? All the way across/mostly across? Major portion of what? – a transverse dimension across the envelope (see Figures) “one of the” – also covers both but if construed as on both they have to be identical: line 3-4 page 4	0.5 0.5 0.5
Total		(2.5)

FD4 FINAL Marking Schedule

CLAIM 6

An envelope according to Claim 1 formed from paper, paperboard or cardboard.	The following features, appended to claim 1 Either not needed (e.g. candidate has construed “lightweight” as each of a) paper confirming to the definition on page 3, and b) paperboard/cardboard) or inconsistent with Claim 1 re paperboard/cardboard Candidates need to be consistent with their construction of “lightweight”	1
Total		(1)

Dependencies		2
---------------------	--	---

CONSTRUCTION: TOTAL = 20.5 marks

FD4 FINAL Marking Schedule

INFRINGEMENT

CLAIM 1

A lightweight envelope comprising	Feature present- line 15 to 17 page 9; in respect of lightweight envelopes? Discussion of implication as manufacture of a broad range of products may well include “lightweight”. Some activities not infringement, regardless of what claim 6 says, i.e. non “lightweight” paper, cardboard and paperboard	1 0.5
a pouch portion for storing documents and a flap portion joined to the pouch portion at a fold line and for sealing the pouch portion	Pouch present line 12 to 14 (or lines 16-19/24-25/27-28/29-30) of page 8 and Figure (p.10). Flap for sealing present line 12 to 14 (or lines 16-19/24-25/27-28/29-30) of page 8 and Figure (p.10).	0.5 0.5
one of the flap portion and the pouch portion bearing adhesive such that when the flap portion is folded about the fold line to be brought into abutment with the pouch portion the portions are secured together	Feature present – both pouch and flap have adhesive strips (see figure page 10; line 16-19 page 8) What is the extent of adhesive? Does adhesive include colour changing feature at line 20-23 pg 8. NB consistency: if adhesive construed as <u>all</u> adhesive then this gives a problem with what tamper-evidence means is.	0.5 0.5
the flap further comprising tamper evident means arranged to irreversibly indicate opening of, or an attempt to open, the envelope	Feature present – slits tear (line 5 page 9) - glue changes colour (lines 20-21 of page 8/lines 8-10 or 1 – 4 page 9) (+discussion of irreversibility of each)	1 1
and at least located at or towards either side of the flap portion	Feature present or absent depending on ‘at’– glue part of TEM - and on ‘towards’? Must be consistent with Construction.	1
Total		(6.5)

CLAIM 2

An envelope according to Claim 1	Present wrt paper envelopes?	
wherein said tamper evident means comprises a pair of elongate continuous slits	Feature present for at or towards, depending on construction (Figures and lines 5-7 of page 9)	1
Total		(1)

FD4 FINAL Marking Schedule

CLAIM 3

An envelope according to Claim 1 or 2	Present wrt paper envelopes?	
wherein the tamper evident means comprises a perforated line.	Not present	0.5
Total		(0.5)

CLAIM 4

An envelope according to Claim 3	Not Present	
wherein the continuous slits and the perforated line together form a continuous line of weakness across at least a major portion of the pouch portion.	Not present through dependency and in respect of continuous line of weakness	0.5
Total		(0.5)

CLAIM 5

An envelope according to Claim 1	Present	
wherein the adhesive is a continuous strip of adhesive,	Present - Adhesive strips, figure on page 10; line 16 – 17 page 8	0.5
which extends across a major portion of the said one of the flap portion and pouch portion	Present – figure on page 10	0.5
Total	INFRINGED	(1)

FD4 FINAL Marking Schedule

CLAIM 6

An envelope according to Claim 1 formed from paper, paperboard or cardboard.	Not present wrt all materials Line 15 to 16 page 9	0.5
Total		(0.5)

Dependencies		2
Conclusions		2

INFRINGEMENT: TOTAL = 14 Marks

FD4 FINAL Marking Schedule

NOVELTY

Docs C and D fully available as prior art.	0.5
--	-----

CLAIM 1 (marks)

	C		D	
A lightweight envelope comprising	Discussion of whether feature is present or not. Paper is disclosed. Page 11, line 5-9 However, feature absent if construed as <80gsm - no clear disclosure of basis weight.	0.5 0.5	no mention of material and specific basis weight (intrinsic disclosure?) Discuss whether there is a suggestion of paper material)	0.5 0.5
a pouch portion for storing documents and a flap portion joined to the pouch portion at a fold line and for sealing the pouch portion	Pouch present – see figures 2, 3, 4, page 12 line 13. Flap for sealing present	0.5 0.5	Pouch present – see Figures, page 17, lines 10-13. Flap for sealing present	0.5 0.5
one of the flap portion and the pouch portion bearing adhesive such that when the flap portion is folded about the fold line to be brought into abutment with the pouch portion the portions are secured together	Feature present, adhesive strip 22, line 9-10 page 12	0.5	Feature present – see Figures, line 10 – 14 page 17	0.5
the flap further comprising tamper evident means arranged to irreversibly indicate opening of, or an attempt to open, the envelope	Feature present see Figure 4 – diamonds 26 Is the slit 30 part of the TEM? Discuss each in terms of irreversibility	0.5 0.5 1	Feature present – either weakening line 8-9 or frangible portion 10 (figure 3). What is a TEM and what is its purpose? Discuss each in terms of irreversibility	0.5 0.5 1
and at least located at or towards either side of the flap portion	slit 30 extends from one side (see lines 5-6, lines 30 -32 page 12, Figure 4. diamond pattern towards either side Diamond pattern located at either side see Figure 4	0.5 0.5 0.5	Notch located at Frangible portion located on the flap but no disclosure of actual location (page 18 line 27-28)	0.5 0.5 0.5

FD4 FINAL Marking Schedule

			Feature present if weakening line is a TEM (reference 8 of Figure 1 Page 17, lines 27-29)	
Conclusion	Claim new or old depending on discussion of lightweight and at/towards		Claim new or old depending on discussion of lightweight and at/towards	
Total				(12.5)

CLAIM 2 (marks)

An envelope according to Claim 1	Claim 1 novel/not novel		Claim 1 novel/not novel	
wherein said tamper evident means comprises a pair of elongate continuous slits	Absent – slit at one side only – check consistency of materials re line 14 of page 12 Is the slit part of the TEM? Can the diamonds comprise continuous slits?	0.5 0.5 0.5	Discussion of notch vs slit. Absent re pair - discussion	0.5 0.5
Conclusion	Claim 2 new		Claim 2 new.	
Total				(2.5)

CLAIM 3 (marks)

An envelope according to Claim 1 or 2	Old/New re Claim 1 Old re Claim 2		Old/New re Claim 1 Old re Claim 2	
wherein the tamper evident means comprises a perforated line.	Pattern of slits with connectors 24, 26, 28 Are the continuous slits part of the perforations?	0.5 0.5	Does TEM include the weakening line?	0.5
Conclusion	Claim old/new		Claim 3 new by dependency	
Total				(1.5)

CLAIM 4 (marks)

An envelope according to Claim 3	New/old depending		Claims 1, 2 and 3 new.	
wherein the continuous slits and the perforated line together form	No – only one slit Yes across major portion	0.5 0.5	No only one slit/notch Yes across major portion	0.5 0.5

FD4 FINAL Marking Schedule

a continuous line of weakness across at least a major portion of the pouch portion.	Is a zigzag line a continuous line?	0.5		
Conclusion	Claim 4 new		Claim 4 may be new in its own right and is new by dependency	
Total				(2.5)

CLAIM 5 (marks)

An envelope according to Claim 1	Claim old/new depending		Claim 1 new.	
wherein the adhesive is a continuous strip of adhesive,	Feature present	0.5	Feature present line 15-18 page 17	0.5
which extends across a major portion of the said one of the flap portion and pouch portion	Feature present (line 10 page12 and Figure 2)	0.5	Feature present line 15-18 page 17	0.5
Conclusion	Claim 5 anticipated/new depending on construction.		Claim 5 new	
Total				(2)

FD4 FINAL Marking Schedule

CLAIM 6 (marks)

An envelope according to Claim 1	Claim 1 satisfied/not satisfied		Claim 1 new.	
formed from paper, paperboard or cardboard.	Yes to all	0.5	Presumably - intrinsic	0.5
Conclusion	Claim 6 old/ new.		Claim 6 may be new in its own right and by dependency.	
Total				(1)

Dependencies		1		1
Conclusions		1		1

NOVELTY: TOTAL = 26.5 Marks

FD4 FINAL Marking Schedule

INVENTIVE STEP

Introduction (3 marks):

Pozzoli/Windsurfer approach:

Is PSA a manufacturer/designer of “envelopes” in general, or TEM envelopes? Is the skilled person a team of paper and adhesive specialists? (re press release of Envelopes-4-U)

CGK of PSA? Envelopes, tamper evident cardboard envelopes of Document C – see page 2 line 39-42). Does it matter that the cardboard envelopes are only available in Europe? Patent documents **DO NOT** form part of the CGK - the ‘trade is not patent savvy’

Claim 1 (6 marks)

Identify best starting point.

Probably document C. Difference is “lightweight”. Is this intrinsic from CGK. Combine with CGK – sale of cardboard envelopes. Lightweight paper easier to tear = reduced weight for shipping

If PSA is designer of envelopes then may be routine matter to make envelopes from lightweight paper as well as from cardboard. However, if PSA is a designer of tamper-evident envelopes maybe not routine for them to make from lightweight paper as their CGK doesn’t help them to come to the conclusion this is obvious.

Feature missing from Doc D is ‘lightweight’ envelopes. Is this intrinsic from CGK? Is it obvious from CGK in relation to tamper evident cardboard envelopes – note cardboard envelopes the TEM is not visible.

If PSA designer of envelopes, then seemingly a routine matter to make envelopes from paper as well as cardboard.

At/towards issue

Claim 1 is / is not inventive?

FD4 FINAL Marking Schedule

Claim 2 (3 marks)

Pair of slits. Doc C says that slits can be at either side (is this shown in the public domain embodiment? – check with client. Recognise that this might show something different) If LH and RH slits are available it may be obvious to have a slit on both sides on Doc D to facilitate opening from either side.

Claim not inventive

Claim 3 (2 marks)

Is perf line a TEM? Commercial embodiment of Doc C use a perf line.

Claim not inventive

Claim 4 (2 marks)

Comments re Claim 2/3 apply

Claim not inventive

Claim 5 (2 marks)

Comments re Claim 1

Claim not inventive

Claim 6 (1 mark)

Comments re Claim 1

Claim not inventive

Conclusion (1 mark)

Summary of inventive step

Claim	Intro*	1	2	3	4	5	6	Conclusion
Marks	3	6	3	2	2	2	1	1

(*Proper Pozzoli arguments/set up/CGK/skilled person 3 marks)

INVENTIVE STEP: TOTAL = 20 MARKS

FD4 FINAL Marking Schedule

AMENDMENT

Possible amendment to state “both the flap portion and pouch portion bear adhesive”– see line 40 to 44 of Page 3. Advantageous, clearly novel, none of prior art mentions dual layer of adhesive probably inventive too. However, note adhesive must be identical (at line 1 to 5 of page 4) – does that read on to Embodiment in prior art.

This amendment may capture infringement, at least in terms of ‘lightweight paper’ envelopes, unless construed blobs of adhesive as being part of the TEM

Other amendments to rectify errors “flap” to “flap portion” in Claim 1

‘Pouch’ to ‘flap’ in Claim 4

Amendments to rectify Claim dependency of claim 4

Delete Claim 6 – why is it meaningless/contradictory to claim 1

AMENDMENT: TOTAL = 5 MARKS

SUFFICIENCY

The type of adhesive is said to be essential (see line 19 to 21 of page 5) but does not feature in the claim.

Is it possible for skilled person to understand what is required – research effort

No marks for saying “no sufficiency issues”

SUFFICIENCY: TOTAL = 2 MARKS

FD4 FINAL Marking Schedule

ADVICE

Document A is in force - no renewal payment yet

Patent is invalid for lack of inventive step

Saving amendment may render Claims novel and inventive

Question mark over sufficiency

Could sue immediately with application to amend

Is interim injunction available? Recent launch July 2016 but big effect “sales have plummeted”

Big issue about S.39 and/or S.40. Is the client’s patent at risk from an entitlement action? Is the Envelopes-4-U patent at same risk? – it has been developed over two years (line 13 page 8), although no evidence that sales person is one of the inventors.

Initial search did not show up Envelopes-4-U patent apps? Search again. Based on prior art uncovered no grounds to interfere with Envelopes-4-U patent applications, at least with respect to adhesive, likely that their envelope may be independently patentable too. Conduct further searches.

Slim chance of settlement/licence – bad blood?

S.37(5) entitlement - discussion

ADVICE: TOTAL = 12 MARKS

GRAND TOTAL = (C=20.5; Inf=14; Nov=26.5; IS=20; Ame=5; Suff=2; Adv=12) 100 MARKS