

Introduction

This year's examination presented candidates with a mix of short form answer questions and long form questions, where a fundamental knowledge of patent laws of key jurisdictions was necessary. In general, the short form questions were relatively well answered. The long form questions were not as well answered with many candidates failing to gain marks. Pleasingly the overall pass rate was very high with some candidates scoring very highly indeed.

As with previous years, most candidates seem to have a general understanding of some of the more commonly tested jurisdictions such as EP, US, PCT and China but the details of core provisions were lacking in many cases.

Most questions in the examination were looking for a clearly directed answer. A number of candidates appeared to write down everything that they could think of. This approach wastes valuable time and results in confused candidate answers.

A revised syllabus has been issued for the 2018 examination detailing the knowledge that candidates will require to pass the examination. It should be borne in mind that questions may cover any subject listed in the syllabus and that detailed knowledge of the core EP, US, PCT and Chinese jurisdictions will be required along with a more general understanding of other discrete topics from other jurisdictions, as will be detailed in the new syllabus.

| Question number | Comments on questions |
|-------------------|---|
| Question 1 | <p>This question was split into 3 parts and was answered by around 50% of candidates.</p> <p>Most candidates understood the basic requirements for small entity status. The application to the facts of the question was missing from many answers. Almost all candidates recognised the differences in fees for small and micro entity status. Micro entity status was not well defined by a number of candidates with many answers misstating the relevant requirements or not providing enough detail to justify marks.</p> <p>Part B was generally well answered.</p> <p>The answers to Part C resulted in very low marks for most candidates. In most cases the answers given were vague or not applied to the facts of the question. Given the importance of IDF in US prosecution it is quite surprising that candidates did not have a greater knowledge of the requirements.</p> |

Examiner's Report 2017
FC3 – International Patent Law

| | |
|--------------------------|---|
| <p>Question 2</p> | <p>This question was split into 3 parts and was answered by most candidates.</p> <p>Part A Around 50% of candidates answered this question poorly. Many candidates did not appreciate that examination can only be accelerated after the Examining Division has taken responsibility for the case or that accelerated examination must be requested on the relevant form. Those candidates that scored poorly also did not appreciate the time limits applied while an application is part of the PACE program. More positively, most candidates did understand that the application would re-enter the examination queue if an extension time was requested to a deadline and that accelerated examination could not be requested again.</p> <p>Part B Most candidates correctly identified that on national phase entry amendments and arguments should be filed to address any objections raised by the EPO as ISA and that any excess claims fees should be paid. Not many candidates correctly identified that voluntary amendments could also be filed. Surprisingly, some candidates did not correctly state the applicable time limit for responding to the R161 communication.</p> <p>Part C While many candidates appeared to understand the deadline for filing an EP divisional patent application, in some cases the written answers were not specific enough to justify awarding of the mark. A common example is <i>'before grant of EP1'</i>. Most candidates scored poorly in relation to fees for divisional applications of second or subsequent generations. Similarly, most candidates scored poorly in relation to the fees payable before publication of the EP divisional application. Most answers stated that examination and designation fees were due before publication. These are not actually due until 6 months from publication of the EP divisional search report.</p> |
| <p>Question 3</p> | <p>This question was answered well by most candidates. For example, the majority of candidates were able to identify three countries where software inventions are patentable 'as such' and three countries where business method inventions are patentable 'as such'. Likewise, most candidates identified that the EPO might not search inventions which appear to be software or business method related 'as such'.</p> |

Examiner's Report 2017
FC3 – International Patent Law

| | |
|-------------------|--|
| | <p>The part of the question that caused some candidates difficulty was parts c) and d) which asked about restoration of priority right when a PCT application is filed outside of the 12-month priority period and the consequent effect in the US and China. Around 50% of candidates missed the restoration of priority aspect of the question completely. Those that did identify this issue generally provided strong answers.</p> |
| Question 4 | <p>This question was split into two parts and was answered by most candidates.</p> <p>Part A This part of the question was answered very well by nearly every candidates who answered this question.</p> <p>Part B Again, this part of the question was answered very well by most candidates.</p> <p>Weaker candidates did not provide sufficient detail in their answers to some of the part B scenarios and in some cases this resulted in marks not being awarded. For example, a number of candidates did not specify by when applications should be filed in Europe when relying on the international convention and abuse of disclosure grace periods. Others were somewhat vague with their conclusion again resulting in marks not being awarded.</p> |
| Question 5 | <p>This question was split into two parts and was not a popular question.</p> <p>Part A Most candidates did not appreciate the search and substantive examination procedures in either Germany or Italy. For example, hardly any candidates mentioned that search or examination in Germany is optional or that either procedure can be requested by a third party. Most answers managed to identify the seven year time limit for requesting substantive examination and the format of the substantive examination procedure. Answers relating to Italian search and examination procedure were generally very poor.</p> <p>Candidates' knowledge relating to utility model term varied and most candidates identified the maximum term but not the initial term.</p> |

Examiner's Report 2017
FC3 – International Patent Law

| | |
|-------------------|--|
| | <p>Part B</p> <p>This part of the question was not well answered with most candidates providing vague answers that did not answer the question sufficiently to justify awarding of marks.</p> |
| Question 6 | <p>This question was split into two parts.</p> <p>Part A asked candidates questions relating to PCT procedure. This part of the question was generally well answered although a number of candidates seemed to have little knowledge of the International Preliminary Examination Procedure.</p> <p>Part B asked candidates to discuss national phase entry deadlines for a number of countries and any extensions available. This part of the question was also well answered. It is acknowledged that there is a degree of overlap between parts c) and d) hence where an answer to one part would also attract marks available on the other part, marks were awarded accordingly.</p> |