

Introduction

This FC3 paper followed the standard format of knowledge-based questions in Part A and scenario-based questions in Part B. In general, Part A was answered well or very well by the vast majority of candidates. Part B was answered less well even by those candidates who scored highly on the paper overall. As with any scenario-based exam question, it is essential to apply the legal provisions relied upon to the facts of the question. Many candidates reeled off pages of text that had no real relevance to the questions being asked. Not only does this approach waste the candidate's valuable time, it often distracts from the core issues that the question poses and in most cases results in less marks than a well-structured and concise answer would attract.

The Examiner is only able to award marks for statements that are relevant to the questions being asked and which are accurate. It is noted that many candidates seemed to understand the legal issues that were being tested but simply reciting the law, particularly for Part B questions, will not achieve a pass.

The overall pass rate for this FC3 paper was comparable with previous years.

Questions

Part A

Question number	Comments on questions
Question 1	This question sought to test candidates' knowledge on the changes to Canadian patent practice, particularly with regard to the changes to national phase entry extensions. Surprisingly, a number of candidates did not correctly calculate the base 30 month deadline for entering the Canadian national phase. Pleasingly, the majority of candidates did appreciate the changes to the rules, at least in terms of the 12 month extension no longer being available as of right. Fewer candidates provided details around the requirements for the extension of time request to be accepted.
Question 2	This question sought to test candidates' knowledge of the rules of the EPO Board of Appeal. A significant number of candidates stated that an appeal could only be based on factors that had not previously been before the Examining Division. Many candidates also neglected to conclude whether the new auxiliary request and support amendments should be admitted even though this was

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	specifically asked. A mark cannot be awarded if a direct question is not answered.
Question 3	This question sought to test candidates knowledge of options for responding to an EP R71(3) communication. This question was generally answered very well.
Question 4	<p>This question started off by asking candidates to identify the national phase filing deadline for the US. Most candidates answered this part of the question correctly.</p> <p>The second part of the question called for a discussion on the requirements for the three entity types at the USPTO. The vast majority of candidates did not mention large entities. There was some very good discussion on what constitutes a micro or small entity. The question specifically asked for the “entity types” to be identified so at least one easy mark was lost by a number of candidates.</p> <p>While most candidates did provide a conclusion, it is noted that some candidates seemed to make up their own facts in order to derive their conclusion. This generally led to an incorrect conclusion.</p>

Part B

Question number	Comments on question
Question 5	This question was looking for identification of 4 countries where utility model protection could be sought. This question was answered well across the board.
Question 6	This question called for a discussion on EPO claims fees. Most candidates explained the fee structure very well and identified the deadline for paying claims fees. Part (ii) of this question was less well answered in terms of detail but most candidates did seem to appreciate how claims fees could be reduced.
Question 7	This question asked candidates to list subject matter that is not regarded as an invention within the meaning of Article 52(1) EPC. Most candidates secured full marks for this question.
Question 8	This question called for a list of countries that operate a grace period. Most candidates secured full marks for this question.

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Question 9	<p>This question called for a discussion on a range of US patent matters. Parts (a) and (b) related to IDS requirements. Part (c) related to options for attacking validity of a granted US patent. This question was answered by most candidates. The candidates who did attempt it generally obtained higher marks for it than the other Part B questions they attempted.</p>
Question 10	<p>This question was answered by most candidates. It asked candidates to discuss patent protection in a range of countries taking into account a potential breach of confidence. Most candidates obtained full marks for a discussion of protection available directly in the countries listed. However, very few candidates discussed first filing a PCT application and the requirements for doing so.</p>
Question 11	<p>This question sought to broadly test candidates' knowledge of a range of matters that could present when working for an international organization. Part (a) called for a discussion on validity of priority claim at the EPO. Part (b) asked for identification of 3 patent offices that can act as ISA for a PCT application in the name of a US company. Part (c) asked for a discussion around whether a European applicant can file a PCT application with the USPTO as receiving office. Part (d) asked for a discussion on how written submissions for oral proceedings should be prepared. Part (e) asked for alternatives to filing written submissions.</p> <p>This question was not very popular and in general, where it was attempted, it was not answered well.</p> <p>While the majority of candidates understood the general principles being asked, many marks could not be awarded as the amount of detail and application to the facts in candidates' answers was not sufficient to attract higher marks.</p>
Question 12	<p>This question asked candidates to derive a patent filing strategy based on details of how the client files applications for inventions of defined rank. Many answers failed to discuss PCT applications at all. There were also very few answers that discussed the need for applications to be first filed in the US to avoid obtaining a foreign filing licence. The crux of the question was around keeping costs to a minimum. While some of the strategies proposed would be fine under normal circumstances, no marks could be awarded where the proposed strategy would result in high costs during the identified time period.</p>