

Introduction

This year's pass rate (67.79%) was better than last year (54.65%) and in fact over several previous years although the range of marks being achieved was comparable to previous papers. It is still of concern that some candidates are scoring very badly on finals standard papers perhaps indicating they are attempting the papers too soon in their professional careers. It is advised that Finals examinations are only attempted by those who have worked towards them and believe they are ready to sit the examination.

Candidates are reminded to read the questions and in particular the bold text at the end of each question carefully and to avoid 'question spotting' type revision in their preparation. The candidates who scored well this year identified the key issue at the heart of the question and worked through it methodically using the information provided. Most marks are awarded for the most pertinent issues and spending time on peripheral issues or on areas that are not identified as being of concern do not attract marks and waste candidates valuable time.

Questions

Part A

Question number	Comments on questions
Question 1	<p>The average mark on this question was 4 out of 5.</p> <p>Most candidates scored well on this question which was a straightforward query regarding the payment of renewal fees.</p> <p>Question 1 was only a 5 mark question yet some candidates still wrote 4 or 5 pages for their answer. This leads to doubt as to whether the candidate understands the issue that needs addressing or is simply 'falling upon' the answer.</p> <p>It was important that candidates rationalised their answers correctly. For example although there was a mark for encouraging payment of the renewal fees and surcharge as soon as possible a reason should have been given. For example, because this surcharge increases monthly for your client and it is good practise not to incur your client unnecessary fees. Those candidates who advised paying asap but for the wrong reason e.g. to avoid third party rights accruing – which of course don't arise in the grace period – did not receive the mark for their advice.</p> <p>A couple of candidates calculated the due dates from the grant date.</p>
Question 2	<p>The average mark on this question was 6 out of 10.</p> <p>This year's design question related to unregistered designs <u>only</u> (and was clearly indicated as such in the instructions to candidates) yet again some candidates felt it necessary to discuss registered protection which</p>

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	<p>simply wastes time and shows a lack of attention to instructions.</p> <p>This year's design question was well answered in comparison to previous years. However, too many candidates are making basic errors such as listing two possible deadlines but not advising their client which of the two dates is the one that applies – especially in cases such as this one where the earlier date is the critical date. Other candidates merely mentioned the shorter date without explaining why they felt this date was the relevant one in this situation – your client needs clear information. Also many candidates stated the correct time periods of 10 or 15 years but without explaining they ran from the end of the calendar year – this can have potentially a 12 month difference in exclusivity period for your client and is vital information to convey. Only a handful of candidates discussed the possibility of licences of right applying in the last 5 years: even fewer calculated this date correctly and appreciated that within a short time frame this was likely. This question was very simple in respect of Community Unregistered Design – the rights had expired. More candidates could have realised this earlier in their answers and saved significant amounts of time.</p> <p>The word 'replica' was used deliberately to imply copying but few candidates drew any conclusions in this respect.</p> <p>Finally, some candidates misunderstood the must-fit exclusion thinking that it excluded the whole spoiler rather than just the part which fits to the vehicle.</p>
Question 3	<p>The average mark on this question was 4 out of 9.</p> <p>The main reason candidates lost marks on this question was due to not giving enough information regarding a suggested action. If you are advising your client to take an action (in this case regarding entitlement) then it is important to also detail what outcome you are aiming for, what time scales may be important and how the action is put into practise. Very few candidates gained the marks for relevant time periods.</p> <p>Many candidates made suggestions about amicable agreements between the brothers when it is clear from the question they are not amicable and have rival businesses. Candidates should accept the facts they are given and use them appropriately.</p> <p>Another issue is candidates not being convincing in their advice to their clients. Comments like '<i>a new application could be filed</i>' does not earn credit. The credit is given for appreciating that despite the published PCT application which is now citeable prior art, your client appears to have novel and inventive improvements which should be made the subject of a new application as this is in the best commercial interests of your client. Some didn't realise that there were two sets of improvements – one made by each brother – that had to be treated differently.</p>
Question 4	<p>The average mark on this question was 4 out of 10.</p>

	<p>Overall this question was well answered with many candidates taking a methodical approach and achieving high marks. The main area that marks were lost is in those candidates who were able to recite the law but then did not apply it to the facts of the question. Stating that acts of selling are actionable required further explanation that this was because the party was not also a manufacturer or importer. Many candidates commented on whether the patentee has reason to believe the claim was invalid in a relevant respect but did not go on to discuss the clear search report and the fact that the Olympic clock may be considered a niche item from some time ago. Information in the questions is given to candidates for a reason and expected to be used in their analysis.</p> <p>Some candidates went into auto-pilot and churned out relief as including declaration of non-infringement and injunction against infringement – these are not correct for a groundless threats action which should be a declaration that the threats were not valid and an injunction against further threats. This is a good example where if candidates wrote less and left more time to read over their answers these small errors may be spotted and additional marks picked up.</p>
<p>Question 5</p>	<p>The average mark on this question was 3 out of 7.</p> <p>Question 5 as a whole was the most poorly answered question on the paper. All that was required of candidates was to state the relevant priority date for the various different embodiments of GB1 and to discuss the affect that any previous disclosure may have had on the patentability of Class X, Compound A, Compound B and the combination of A+B.</p> <p>Many candidates made statements that the priority claims were valid (due to being filed within 12months) but made no further comments on the subject matter in the differing documents and the relevant date against which each embodiment should be assessed against the state of the art. It was not sufficient for candidates to discuss whole applications e.g. P1, P2 etc as being valid over disclosures – instead the subject matter needed to be referred to with respect to Class X, Compound B etc.</p> <p>Many candidates also assumed incorrectly that as A and B were known that a combination of them could not be inventive. The question made it clear that this combination was '<i>particularly effective</i>' and that this should have been taken as an indication of a surprising technical effect and therefore inventive step.</p>
<p>Question 6</p>	<p>The average mark on this question was 4 out of 9</p> <p>This question related to the possibility of amendment/correction of subject matter (a range) and the possibility of amendment/correction of a missing page (missing parts). Many candidates despite realising that the error was not correctable as it would not be obvious what was originally intended went on to</p>

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	<p>advise trying to correct the error anyway. This shows a lack of confidence either in the assessment of the problem or in candidates concern of how to manage clients. The fact is that sometimes there is nothing that can be done to fix an error and attorneys should not avoid making clients aware of this.</p> <p>Too many candidates believed the priority document could be used as basis for the amendment.</p> <p>The second part was less well dealt with and many candidates did not understand the process for avoiding re-dating of the application.</p>
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Part B

Question number	Comments on question
Question 7	<p>Q7 was attempted by most candidates (82%) and generally scored well, with an average mark of 12 being achieved. This was a fairly typical P2 style question where a discussion of infringement and validity was required.</p> <p>Lots of candidates missed out on marks again for the same reason as in previous years - a statement that something is prior art is not a statement of validity but rather is simply a conclusion on the timing/availability of a disclosure.</p> <p>Following on from this - vague comments such as '<i>claim 1 may not be valid because of the magazine article</i>' cannot attract marks. It is important to explain why the magazine article affects the validity of the claim – a discussion regarding when the article was available in addition to the subject matter it discloses followed by a conclusion that it is novelty destroying was expected. Likewise the combination of the two pieces of prior art cannot be used for novelty but can be for inventive step of claim 2.</p> <p>Virtually no candidates discussed whether the 2013 renewal had been validly paid and if so why. In addition many candidates assuming that the 2013 renewal fee paid in March had been paid on time and not in the grace period then assumed that the 2014 renewal fee was due in March. This meant a number of marks were lost for incorrectly calculating the renewal date, grace period, and period for restoration. Careless errors such as writing 2013 instead of 2014 etc can cost candidates dearly. Dates are critical to the job of a patent attorney and these should always be rigorously checked.</p> <p>Most candidates appreciated the difference between activities started during the grace period or those started after the grace period but before publication of the notice of restoration, however, there was a poor showing on discussion of the client's position in respect of the good faith requirement and continuance of activities.</p>

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Question 8	<p>Q8 was attempted by most (71%) candidates and scored an average of 13 marks.</p> <p>The section relating to employee inventions was well dealt with although candidates need to be more familiar with specific legal tests and to use the words from the act - it was not correct to use the term '<i>outstanding benefit</i>', as this relates to compensation when the invention was initially owned by the employer, whereas in this case the original owner was Bill and the invention then assigned to the employer – in this case the legal test is 'adequate benefit'.</p> <p>The section on contributory infringement was answered well with regards to the sales of pinion cogs although some candidates did not explain why they came to the conclusion as to whether the cog was an essential element or not. Other candidates stated categorically that the cog was not an essential element but then argued that there was a case for contributory infringement. Consistency is critical in the advice to the client and if a final decision cannot be made as something comes down to opinion rather than fact then it is important to develop both sides of an argument.</p> <p>The activity of offering a repair service was dealt with less well and although many candidates discussed repair vs manufacture and seemed aware of recent case law, many it seemed were unfamiliar with the relevant considerations needed to make such a claim.</p> <p>Many candidates spent time discussing in detail the steps necessary to obtain an interim injunction.</p>
Question 9	<p>Only 37% of candidates chose to answer Q9 with an average mark obtained being 10.</p> <p>The low number of candidates approaching this question may be because candidates prefer to do the first two long answer questions they come to, however past history shows this not to be the case.</p> <p>This question related to a number of different companies all selling or offering to sell compounds which were covered by a patent application. A discussion was required on whether the activities of each company were infringing acts, whether any exemptions from infringement applied, and whether the claims were valid over the prior art.</p> <p>Candidates needed to work through this question methodically to gain marks and very few did this well. Frequently candidates stated that '<i>company X were infringing</i>' without explaining why – keeping, offering to dispose, disposing etc or with what item.</p>

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	<p>Many candidates correctly identified that the US publication date (deliberately highlighted by quotation marks) could have referred to either 8th October or 10th August because dates are often recorded differently in the US than to those in Europe – this could have an impact on the validity of compound C. This is a basic practise point and good candidates should have been aware of it.</p>
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