

## Introduction

This year's FC3 question paper followed the format of previous papers and included both knowledge-based and scenario-based questions. Overall, the answers provided by candidates were strong, with many securing excellent marks.

It was again the case that, for scenario-based questions, some candidates extensively reproduced the relevant legal provisions without applying them to the facts of the matter at hand. Such an approach naturally limited the number of marks obtained by the candidate.

The overall pass rate for this FC3 paper was slightly higher than in previous years, reflecting the strength of candidates sitting this year's exam. Generally, the answers to this year's paper were impressive. Candidates are commended on their preparation for this examination.

## Questions

### Part A

Question number	Comments on questions
<b>Question 1</b>	This question sought to test the candidates' knowledge of patent practice before the USPTO, including entity status and information disclosure statement requirements. Candidates answered this question very well, although weaker candidates did not accurately state the criteria for an applicant to claim micro entity status.
<b>Question 2</b>	This question sought to test the candidates' knowledge of divisional filing practice at the European Patent Office. Parts (a) and (b) were well answered. Many candidates struggled with part (c), not appreciating that the application is pending up to the last day of the six-month period for payment of the renewal fee with an additional fee.
<b>Question 3</b>	Question 3 related to the requirements to obtain a filing date for a PCT patent application and national phase requirements relating to Japan, Mexico and Australia.  All parts of this question were well answered, and only the weakest candidates did not secure good marks.  The stronger candidates mentioned the need for at least one applicant to be entitled to file a patent application under the Patent Cooperation Treaty in part (a).

**Examiner's Report 2022**  
**FC3 – International Patent Law**

<b>Question 4</b>	Question 4 was a simple test of candidates' knowledge of the relevant grace periods for prior disclosure in Argentina, Japan, China, South Africa and Australia. Again, candidates performed well, with the majority scoring highly.
<b>Question 5</b>	Question 5 focused on the opposition procedure at the European Patent Office. Almost all candidates secured the mark available in part (a). Pleasingly, the majority of candidates also produced good answers to part (b), demonstrating a good understanding of the relevance of each of the documents as prior art.

Part B

Question number	Comments on question
<b>Question 6</b>	<p>Parts (a) and (b) sought to test the candidates' knowledge of critical dates for patent rights in Germany and the USA. These parts were answered well by the candidates.</p> <p>Part (c) focused on post-grant validity attacks at the USPTO. Again, candidate answers were strong, though the inability of the prior public use to be used in any validity challenge before the USPTO was appreciated by only the best candidates.</p> <p>Part (d) was poorly answered, with a disappointing number of candidates accurately explaining that the applicant would expect a 50% refund of the examination fee if a positive withdrawal of the application was filed.</p> <p>All candidates answered part (e) well, with most appreciating the significance of Taiwan not being a PCT state.</p>
<b>Question 7</b>	<p>Parts (a) to (e) were all answered very well by candidates, leading to high marks.</p> <p>However, marks awarded for part (f) were very low. Few candidates appreciated the availability of a supplementary international search, and fewer still the formalities and deadlines associated with this process.</p>
<b>Question 8</b>	<p>Parts (a) and (b) were generally well answered, with candidates demonstrating a clear understanding of the European Patent Office's approach to unity of invention. Part (c) was also answered well by almost all candidates.</p> <p>Only the strongest candidates scored marks in part (d). Many candidates displayed little knowledge of the purpose of appeal at the European Patent Office and, therefore, why the appeal had such scant chance of success. Whilst candidates overall produced good answers to this paper, responses to this part were disappointing.</p> <p>Part (e) was again answered well, though no credit was given where candidates suggested filing a continuation application as the question requested courses of action available to progress the present US patent application.</p>

**Examiner's Report 2022**  
**FC3 – International Patent Law**

<b>Question 9</b>	<p>Question 9 was the least popular of the Part B questions this year, although marks were comparable with Questions 6, 7 and 8. Candidates who were well-prepared on the requirements for national phase entry in the countries highlighted in parts (a) and (b) scored very highly, whereas others struggled. As such, these parts differentiated well between candidates.</p> <p>Pleasingly, most candidates produced good answers to part (c), demonstrating a clear understanding of the law surrounding excess claim fees at the USPTO.</p> <p>Candidates tended to struggle in part (d), although one or two candidates secured all seven marks available with well-developed notes on the Chinese utility models.</p>
-------------------	---