

## **Introduction**

The 2022 paper included a relatively short client letter. Candidates made good use of the time to work out what was needed in the main claims, to suitably protect the client's position.

The main claims were generally dealt with very well, and there was considerable flexibility in the mark scheme to reward candidates who had "safe" device and also method claims, as is explained below. Although it was possible to achieve the Pass mark with just a set of device claims, candidates who did not include any sort of method claim rarely accumulated enough marks elsewhere to pass. Examples of those achieving the Pass mark with just a device claim were thus few and far between, emphasising the importance of carefully considering the appropriate claim types to protect the invention being disclosed.

Candidates are also reminded that not every type of independent claim is always necessary. For some reason candidates appear to claim routinely a "kit of parts" whenever there is any sort of device or apparatus. There have been recent papers where a kit made sense. However, that is based on the disclosure, and what would be useful to the client. Including all claim types from a list of claim types simply wastes time that could be better spent accessing marks elsewhere.

A surprising number of candidates limited themselves to 15 claims, possibly in view of the EPO's excess claim fees structure, rather than the 25 that can be included in the UK without additional charge, as may be important if a client has noted costs. This resulted in the inability to acquire dependent claims which could have been important, as well those available for corresponding statements of invention.

The quality of the specific description and the statements of inventions varied significantly between candidates. Those that expanded on the claim features and advantages in the statements of invention section gained the most marks. Such advantages are almost always noted (somewhere) by a client to save candidates risking using their own, personal knowledge or assumption. Higher marks were obtained for the specific description section by candidates who provided a detailed and clear description of the structure of the various embodiments and then explained in detail how they were used. Significantly fewer marks were obtained when large blocks of text were simply cut and pasted from the client's letter with little extra thought.

## The invention

The most primitive form of the 2022 invention was a frame which provided a (flat) reference surface against which a pallet could be secured, using what was described as a “releasable securing means”. That alone gave novelty and an arguable inventive step over the prior art method of checking if a (wooden) pallet was not too warped or having one person stand on one corner of a pallet to be checked, and have another person compare any curvature against what is assumed to be a flat surface, using a simple visual check.

A *safe* claim would also include reference to a “measuring means” in that main claim, which gave a clearer inventive step as it set out how that comparison would be achieved, and avoided the inventive step argument risk of the releasable securing means being caught by one person standing on a pallet corner.

A method of using such apparatus was expected. It was possible to broaden such a method to not rely on the apparatus disclosed, which attracted only two more marks than including it.

## Main claim

There was flexibility in the mark scheme for how the device part of the invention was claimed.

Candidates were told expressly: “A *frame* is a term known to people who work with pallets,” and the vast majority used that term. Many added the sensible qualifier that the frame comprised a flat surface, or otherwise acted as a reference. A releasable securing means and its purpose was also expected.

The measuring means was not deemed essential to the invention. However, it was brave to risk a claim with just the two features given the obvious additional advantages of including them, and thus candidates were not penalised if they included the measuring means to their main claim.

Where a claim *not* including them was rewarded, the Examiners expected to see measuring means referred to in a high order claim (meaning the candidate likely recognised them as an important feature, and thus considered them a good fallback position to include). In total up to 19 marks were available for those three features and an explanation of their interaction, regardless of whether they were set out in one or two claims.

A basic method setting out that a pallet could be releasably secured to a flat surface of a frame – not forgetting the skilled person was clear what a “frame” was – and measurement of deflection away from that flat surface, was also rewarded with up to 5 marks.

## Dependent claims

The majority of the dependent device claims followed a format the candidates should recognise from past papers. In general, candidates can expect to find features, often with alternatives, and supersets thereof, set out. They may not always be in convenient clusters in the disclosure, which is why reading the client letter several times is sensible, reducing the risk simple marks from recognition of the patterns are missed.

This year the mark scheme grouped dependent claims together in themes, hopefully allowing candidates to see how and where such marks were both expected to be set out, and how dependencies might work. Those for the “material” for the frame are a good example of this format. Candidates were told: *“The frame 9 needs to be light so one person can use it, but strong so it does not warp or deflect itself. Manufacturing it from a substantially rigid material helps.”*

Candidates should take the hint that the frame should comprise a “substantially rigid material”. In this case wording such as the more definitive *“the frame is a substantially rigid material”* was not penalised and the mark was awarded. The advantages of this particular material are of course there for the corresponding statement of invention.

Where the language was not a 100% pattern match, candidates were expected to appreciate when told: *“Steel or composite are easily available and largely rigid materials”* meant a dependent claim *to your frame, when comprising or being a “substantially rigid material”* meant that the substantially rigid material was steel **or** composite, was expected. That such materials are *“easily available”* is a straightforward advantage for that corresponding statement of invention covering both alternatives.

Dependent claims for the method permitted reference to the device if it was not already in the claim. Up to 11 marks were available for explaining the broader possible use of the device over mere deployment of the disclosed features. Candidates were given an explanation of the removal of a pallet, and then different types of rotation. The penultimate paragraph, and two Figures, were used to assist. Many candidates picked out the key words of perhaps *“flip”* or *“rotate”*. However few went on to explain what they meant despite the explanation and Figures, and risked using relative terms that lacked clarity. Respective parts of a pallet were deliberately set out to allow candidates room to explain what they meant by *“flip”* or *“rotate”* in relation to such things as the *“upper face”* and/ or *“sides”*, and even a *“corner”*.

Marks were not deducted, but candidates are reminded claims need to be clearer than a casual reader saying *“we know what you mean”*. If there is language there, it is sensible to consider including it. A *“long claim”* in itself is not necessarily a bad thing, if it gives the reader clarity, and does not introduce any undue limitation.

## **Introduction and background**

Simply copying and pasting will not generally suffice. Even with as short a disclosure as this one, the disclosure will likely need some re-ordering and thought. Most candidates had little difficulty in largely copying the explanation of the prior art, and methods used. It is also useful to set out the problems that will be addressed, to leave the reader under no illusion as to what the aim of the claims will be.

## **Statements of invention**

Candidates are not expected to have specific subject matter knowledge, and they are not penalised for not being familiar with it. Unless there are remarkably obvious advantages to a feature being included, it is reasonable to expect them to be set out, even if, per the materials explained above, on occasion they can appear trite, and such explanations may well be disburbed about the client letter.

Candidates should certainly be prepared to spend time explaining complex claims. Most candidates appreciated this, scoring well as a result.

## **Specific description**

Generally speaking the Examiners are looking for the function, structure, operation and alternatives to be made clear. For example, if the material in the example given was said to be or comprise, say, steel, at some point saying it could equally be or include composite, or any substantially rigid material, would be awarded available marks. As the method would take longer to explain, particularly if the extended uses were disclosed, the flipping or rotation about axes or in respect of those parts of the frame explained by the client, it was apportioned a higher amount of the total available. In this case the explanation of the pallet motion relative to the device had a significant explanation in the client letter, much of which could be copied by candidates, and if suitably amended (to ensure inclusion of, for example, element numerals indicating features shown in the Figures), could score highly.

This year several candidates appeared to spend very little time on this whole section. That was a surprise given the brevity of disclosure, as large amounts of the description can be gleaned from having spent time understanding how the invention works and what those dependent claims are. If the answer provided is significantly lacking in this area, few marks can be awarded, and the candidate risks not achieving a pass.

## **Abstract**

The vast majority of scripts had an Abstract, which remains a positive trend. Where there is no guarantee an abstract will feature in future papers, Candidates are advised to look at previous mark schemes, as there is a pattern to what is being sought, and thus what is rewarded. Easy marks can be gained from ensuring the title is not just the word “Abstract”, and stipulating which of the Figures should be used. In general candidates will be expected to set out the field and/ or main use, and explain the main features in independent claims. This year there was a tendency to stay quiet about any method claimed. Those that did make a reasonable reference to one were duly rewarded. Consistent use of reference numerals is also expected. This year with such simple technology, it was all too easy for Candidates to refer to a “pallet” in their introductory statement, but forget to use a reference numeral, when the strong likelihood was element 1 in all of their marked up Figures would be a “pallet 1”, ie that term is something shown in the Figures, denoted as 1.

The Examiners appreciate this is often the last task done at the end of the exam, but it makes sense for Candidates to just check they have got the basics covered, to ensure they add, for example, the title if they've missed it, or add in reference numerals against terms from the Figures, in order to ensure they can achieve as many marks as possible.