

## **Introduction**

This year's FC3 question paper followed the format of previous papers and included both knowledge-based and scenario-based questions.

Pleasingly, candidates tended to answer both the knowledge-based and scenario-based questions with equal skill reflecting an understanding of the syllabus and an ability to apply this understanding to the hypothetical scenarios posed by the paper. It was clear that, on the whole, candidates had prepared well for this examination. This preparation was reflected in some impressive answers.

One weakness for some candidates was their knowledge of the formal tasks associated with patent rights, such as the payment of renewal fees. Whilst this weakness may be because candidates are not exposed to these tasks on a regular basis, they must be understood and the relevant provisions known and applied.

Candidates should be precise in their language to ensure they access available marks, as imprecise language sometimes weakens the answer to the extent that marks cannot be awarded.

There were instances where candidates failed to achieve available marks because their answers did not relate to the current law. Candidates are reminded to ensure their study materials are up to date.

## **Questions**

### **Part A**

<b>Question number</b>	<b>Comments on questions</b>
<b>Question 1</b>	<p>Question 1 tested the candidates' knowledge of the advantages and disadvantages of applying for patent protection at the European Patent Office rather than via national patent applications, and of the further processing and re-establishment procedures before the European Patent Office.</p> <p>Overall, question 1 was answered well. Candidates generally scored highly in parts (a) and (b), with most candidates able to state the advantages and disadvantages necessary to gain the marks.</p> <p>Part (c) was also answered well, with candidates able to describe the procedure for further processing at the European Patent Office.</p>

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	<p>Answers to part (d) were more variable, with candidates often incorrectly specifying the deadline for re-establishment or unable to provide the necessary details to gain full marks. Many candidates also incorrectly stated that the bar for restoration was to demonstrate that the deadline was missed “unintentionally” rather than the correct standard of “all due care”.</p>
<p><b>Question 2</b></p>	<p>Question 2 sought to test candidates’ knowledge of the availability of utility models, and was answered well by almost all candidates. Part (a) was very well answered, with candidates demonstrating the knowledge required to obtain good marks. Good candidates also scored well in part (b), whereas weaker candidates tended to miss this mark.</p>
<p><b>Question 3</b></p>	<p>Question 3 focused mainly on the search and examination procedure before the German Patent Office.</p> <p>Answers to Question 3 were more variable in quality, with some candidates providing excellent outlines of the search and examination procedure in Germany, whereas others struggled. Few candidates scored high marks on part (a).</p> <p>Most candidates picked up the mark for part (b).</p>
<p><b>Question 4</b></p>	<p>Question 4 focused on national phase entry in Singapore and the subsequent options for search and examination.</p> <p>Parts (a) and (b) were generally answered well.</p> <p>For part (c), some candidates provided excellent answers, whereas failed to achieve available marks as they described the law as it was pre-2020.</p>
<p><b>Question 5</b></p>	<p>Question 5 focused on testing candidates’ knowledge of the opposition procedure at the European Patent Office. Pleasingly, given the importance of the subject matter, this question was generally answered to a high standard.</p> <p>Part (a) was answered well with almost all candidates appreciating that anyone except the proprietor could oppose a patent before the EPO. Part (b) differentiated well, with weaker candidates often failing to identify that a patent can only be opposed in respect of all designated states.</p> <p>Part (c) elicited strong answers, though some candidates did not specify that the notice of opposition should contain the title of the invention or the name of the proprietor of the patent. Some</p>

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	<p>candidates also omitted to say that the notice of opposition must state the extent to which the patent was opposed.</p>
<b>Question 6</b>	<p>Question 6 tested candidates' knowledge of the deadline to request national patent applications derived from PCT applications in six countries on the syllabus.</p> <p>Answers to Question 6 varied greatly, with good candidates picking up full marks having given correct responses. However, weaker candidates often obtained few of the available marks.</p>

**Part B**

<b>Question number</b>	<b>Comments on question</b>
<b>Question 7</b>	<p>Question 7 was popular, with the majority of candidates attempting this question.</p> <p>Question 7 tested the candidates' knowledge and application of law related to the PCT, specifically procedures during the international phase.</p> <p>Part (a) was, on the whole, well answered, with the majority of candidates appreciating the involvement of the UK-based client, which was sufficient to allow a PCT to be filed.</p> <p>Candidates also generally scored well on part (b), recognising this was not a fatal defect in the application and that there would be a chance to correct the lack of signature.</p> <p>Very few candidates were awarded any marks on part (c), with only the strongest candidates providing the correct answer. Part (d) was answered well, with candidates usually recognising the 30-month deadline.</p> <p>Parts (e), (f) and (g) were well answered with candidates explaining their answers well and including the salient points. Candidates were especially good at explaining the advantages and disadvantages of international preliminary examination.</p> <p>Part (h) was also generally well answered. Some candidates discussed alternative methods of pursuing the second invention, and these were awarded the appropriate marks.</p>
<b>Question 8</b>	<p>Question 8 was the most popular of all the Section B questions, probably because it focused on an area where most candidates are comfortable – prosecution before the USPTO.</p>

	<p>Part (a) was almost universally well answered. Entity status is an important item on the FC3 syllabus and is tested most years. As such, it is perhaps unsurprising that candidates scored well in this part of the question, though it is pleasing to see candidates with a strong knowledge of the facts in this area given the real-world advantages for clients.</p> <p>Part (b) was also well answered, though fewer candidates could identify the consequences of fraudulently making a small entity declaration.</p> <p>Parts (d) and (e) were well answered, with it being especially pleasing that candidates could identify that FARMI's disclosure of Compound X in the journal meant that US-A was considered novel over US-B. There was a very pleasing application of knowledge to a scenario-based question, reflecting the strength of the candidate cohort.</p> <p>Part (f) was well answered by many candidates who described the relevant procedure in detail. However, when candidates went wrong, it was usually due to a failure to apply their knowledge to the scenario successfully. A disappointing number of candidates correctly discussed the fact the priority deadline had been missed and that the invention had been disclosed, but then suggested filing a direct application anyway, even though this approach could not be successful. Candidates must apply their knowledge to the scenario presented to score well.</p>
<p><b>Question 9</b></p>	<p>Question 9 was the least popular of the Section B questions, and focused on procedures before the EPO.</p> <p>Part (a) was well answered with candidates presenting a good understanding of the PACE system at the EPO. When candidates lost marks, it was generally for not highlighting that PACE could be requested in both search and examination stages. Pleasingly, candidates generally appreciated that using any extension periods or further processing periods would irrevocably remove the application from PACE.</p> <p>Part (b) produced some weaker answers, though Validation States were described well by many candidates. The process of obtaining protection in validation states, as requested in part (c), was less well understood by candidates, with weaker candidates often achieving few marks in this part of the question.</p> <p>Part (d) produced a number of strong answers with most candidates applying the necessary test and coming to the correct</p>

	<p>conclusion, demonstrating successful application of their knowledge to the facts of the scenario.</p> <p>A number of candidates produced relatively weak answers for part (e), with few candidates able to identify if the third-party observations were timely filed, and fewer still able to explain how they would be handled by the Examiner. It is essential that candidates recognise when proceedings cease being pending at the EPO, and the impact this has on the options for clients.</p>
<b>Question 10</b>	<p>Question 10 focused on patentable subject matter and utility models. It was a popular question with candidates who tended to score highly.</p> <p>Parts (a) to (d) were well answered, although candidates tended to provide weaker answers to part (b). Some candidates focused solely on the legality of the house alarm, gaining this mark whilst neglecting to talk about the provisions of Article 53(a) EPC.</p> <p>When candidates lost marks in part (d), it was usually due to a lack of detail and specificity in their answers. Candidates should be precise in their language to ensure they are awarded marks, as imprecise language sometimes undermines the accuracy of an answer to the extent that marks cannot be awarded.</p> <p>Part (e) was well answered, with candidates able to identify that utility models would be an appropriate route forward, and the advantages and disadvantages to such an approach.</p>