

Introduction

Questions this year involved more straightforward scenarios rather than simple recall of rote learning. Many candidates struggled with this. Whilst many candidates produced papers of a high quality, the spread of marks was wider than in previous years.

Many candidates struggled to adequately answer the scenario-type questions mainly due to a lack of organisation of their answers, rather than lack of legal knowledge. As has been mentioned in previous reports, candidates would do well to consider each question before starting to write the answer, to ensure that they methodically address all the issues and all parts of the questions. The answers provided by many candidates had a “stream of consciousness” feel to them and in some cases, not all parts of the question were answered.

Questions

Part A

Question number	Comments on questions
Question 1	Question 1 related to the grounds on which a controller can revoke a patent on their own initiative. These grounds are, in fact, quite restricted – the patent is not novel due to earlier novelty-only prior art, the invention is not novel or inventive or there is double-patenting. This question was a simple test of rote learning but candidates did surprisingly badly, with many candidates confusing the answer to this question with the answer to question 2.
Question 2	In contrast to question 1, question 2 asked in which proceedings validity of a patent can be put in issue. On the whole, this question was answered well by candidates. Very few candidates, however, noted that validity can be put in issue in infringement proceedings under section 61 and also infringement proceedings under section 69. Again, this was a simple test of rote learning.
Question 3	Question 3 was a scenario-type question relating to foreign filings. This was answered well by candidates. Almost all candidates were aware that the options were either to obtain a foreign filing permit or to file first in the UK and then wait a short while before filing abroad.
Question 4	Question 4 was another short scenario type question. On the whole, this was answered well. Irrespective of whether the application is refused or about to be refused the answer is substantially the same: request reinstatement/ a discretionary extension of time along with evidence and a response to the office action.
Question 5	Question 5 related to payment of a grant fee at UK IPO. Almost all candidates were able to identify that a grant fee is payable if there are excess pages or excess claims. Most candidates also knew the deadline for payment of the fee. Surprisingly few candidates, however, knew of the extension to the deadline.
Question 6	Question 6 related to a UK patent application in which the dimensions of tiny ball bearings were accidentally expressed in miles rather than millimetres. Many candidates correctly identified that one should file a request for

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	correction of an obvious error on the grounds that one does not measure tiny ball bearings in miles. Fewer candidates, however, appeared to appreciate the point that not only must it be obvious that there has been a mistake but that it must also be obvious what the correction is. In this case, it was far from clear that the request for correction would be accepted by UK IPO. One should also be filing a further application with the correct dimensions as a fallback position.
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Part B

Question 7	Question 7 was not a popular question and candidates who attempted it typically did not do well. This question did not require a great deal of legal knowledge, merely the ability to systematically marshal the provided information, work out all of the possible alternatives and consider each in turn. For both the product claim and method claim of D3, one needed to decide if the claim was entitled to priority and, if so/if not, whether it was patentable. One also needed to consider both alternatives of whether the earliest document D1 was considered to be withdrawn leaving no rights outstanding or not. Considering all of the possible combinations would take some time, but each one was individually easy to resolve. The only subtle point in this question, in the examiner's opinion, is that if D1 was considered to be withdrawn and had been published in error by the Patent Office then it does not count as prior art. Otherwise, it would count as novelty-only prior art.
Question 8	Question 8 is a standard question which makes an appearance almost every year. Candidates were asked to summarise two cases of the UK courts, one related to claim construction and the other relating to novelty or inventive step. In many cases, the standard of answers from candidates was very high. Candidates had clearly spent time preparing answers in advance of the examination. The examiner is surprised to note that there are still candidates who are not able to adequately answer this question. Even though the expected form of answer is broken down into four parts for the candidates' convenience, there are some candidates who did not follow this template and so unnecessarily did not access available marks. Some candidates had only a very cursory knowledge of the decisions and scored poorly.
Question 9	This question related to a bottle opener comprising a known handle and a known head. The question merely asked candidates to write notes for a meeting with the client. The examiner was expecting the candidates to address two topics – patentability of the bottle opener and potential infringement of two earlier patents. As to patentability many candidates simply accepted the client's statement that the bottle opener was not patentable. However, whilst the handle and head were individually known the combination of the two was new. It also had

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	surprising technical benefit. There is a good argument the bottle opener is patentable. As to D1, most candidates appreciated that restoration was still possible although the client may have acquired third party rights. Candidates found EP1 to be more problematic, with many candidates being of the opinion that since one did not know when the application was filed one could not know if the renewal fee was overdue. EP1 however had only recently been granted and so it must still be possible to pay the renewal fee (if any) at UK IPO.
Question 10	Question 10 was somewhat similar to that of question 7 in that careful marshalling of the information and all the possibilities was required in order to score well. The parties that one needed to consider were the Chinese manufacturer, the UK distributor, hair salons and members of the public. Many candidates simply dismissed the Chinese manufacturer on the grounds that since they were based in China, no infringement was possible. Only a small number of candidates considered the possibility that the Chinese manufacturer might, in fact, be selling the product in the United Kingdom. Almost all candidates recognised that the members of the public had a defence on the grounds that their use of the method was for private and non-commercial purposes. Again, this was not a difficult question once one had correctly identified all of the parties. One then simply needed to consider possible direct or indirect infringement for each party, along with any defences to infringement that may be available.