

Examiner's Report 2024

FC3 – International Patent Law

Introduction

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

The overall pass rate was in line with the overall pass rate for recent FC3 papers.

Successful candidates were impressive at answering both knowledge-based and scenario-based questions. It was also pleasing to see that the majority of candidates were up to date with the current law, and able to answer questions relating to new parts of the syllabus.

It was noted that some accessible marks were lost when candidates used vague or "hedging" language. It was also apparent that some candidates had not learned the entire syllabus, leaving some answers entirely blank, when even modest knowledge of the relevant law would have allowed them to obtain some marks.

Questions

Part A

Question number	Comments on questions
Question 1	This question related to final stages of EP examination, and subsequent validation of an EP patent. Overall this question was well answered, with some particularly good answers relating to obtaining a unitary patent, which has not been examined before. Candidates are reminded to include the relevant legislation and Rules, set out in the FC3 syllabus, in their examination preparation.
Question 2	This was a straightforward question asking whether some countries operate a "grace period" for the applicant's own prior disclosures. The vast majority of candidates obtained full or nearly full marks on this question.
Question 3	This question related to the procedure for filing an opposition to a granted Japanese patent. Again, the vast majority of candidates had prepared well for this question, and scored very highly.
Question 4	This question focussed on correcting errors during the international phase for a PCT application. This question was not universally well-answered. While most candidates appreciated that a correction must be obvious, not all included in their answer that it must also be obvious that something else was intended than what appears in the document, and that nothing else could have been intended than the proposed correction. Unfortunately, some candidates could not be awarded some accessible marks because they incorrectly calculated the deadline for requesting a correction, even when they had mentioned that the correction must be made 26 months from the priority date. While it is appreciated that examinations are pressured, candidates should take the time to check that they have not made a mistake when calculating deadlines.

Examiner's Report 2024

FC3 – International Patent Law

Question 5	This question asked candidates to discuss the different types of entity status at the USPTO, and to provide a reasoned conclusion on which entity status applied to the client. Most candidates were able to recall the different requirements for micro entity, small entity and large entity. Some candidates missed available marks by not providing their reasoning in answer to Part (c), despite this being clearly stated in the question.
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Part B

Question number	Comments on question
Question 6	Question 6 was extremely popular, with all but two candidates answering this question. The question mainly related to assessing the prior art status of various patent applications against a competitor patent. The majority of candidates answered Part (a) well, correctly characterising the state of the art under Article 54(2) and Article 54(3) EPC. Surprisingly however, some candidates then contradicted their answers from Part (a) when assessing the prior art status of the prior art documents in Part (b) (for example, considering EP-2 to be “novelty-only” prior art, when it had the same priority date as EP-X and therefore was not filed before EP-X). Only a small number of strong candidates correctly stated that it was assumed that the priority entitlement for both the subject patent and the prior art patent applications was valid. On the whole, Part (c) was well answered.
Question 7	Question 7 related to various deadlines for a company's patent/patent application portfolio. On average, candidates struggled the most with this Part B question. Marks could not be awarded, and time was unnecessarily lost, for a discussion of deadlines that did not fall within the next six months, as asked by the question. The candidates who answered this question well clearly set out their answers by separating out each patent/patent application, and were able to discuss the different standards applied by different national patent offices, when evaluating the restoration of priority. Again, a number of candidates unfortunately missed very accessible marks by correctly identifying the 30/31 month national/regional phase entry deadlines, but then miscalculating the date.
Question 8	Question 8 mainly related to devising an international/national prosecution strategy for a client's set of PCT applications. On average, candidates gained the most marks on this Part B question, and it was encouraging to see most devising strategies that took into account the client's stated aims for each PCT application (i.e. using IPE to attempt to obtain an entirely positive opinion for WO-1, and making use of various

Examiner's Report 2024
FC3 – International Patent Law

	acceleration procedures for WO-2). Marks could not be awarded for, and some time was unnecessarily spent on, parts of candidates' answers that were contrary to the client's stated aims. Part (b) related utility models, and was on the whole well answered.
Question 9	Question 9 sought to test candidates' knowledge of patents and utility models in China, as well as the national phase of a PCT application. Well-prepared candidates were able to score highly in Part (a) by providing a detailed discussion on the examination process for Chinese utility models, and in Part (b) by being aware of the various national phase deadlines and excess claim fee levies applied by the national patent offices.