

Introduction

The mean mark for candidates this year was fairly typical. However, it was noticed that the structure of candidates' answers was unusually poor. There were a number of questions where candidates provided information which was not clearly related to the questions and, of course, this could not be awarded any marks.

The mean marks for all questions can be found below the feedback on individual questions.

Questions

Part A

Question number	Comments on questions
Question 1	Question 1 related generally to priority and mainly to what you can claim priority from. Almost all candidates appreciated that one can claim priority from a US utility patent application and an EP patent application where the GB designation has been withdrawn. Question 1(a)(iii) caused more problems. The essential point is that the earlier application must count as a patent application and so must comprise something which is considered to be a description, although the bar is low. Very few candidates appreciated that the UK Patent Act comprises a specific provision which enables a UK patent application to claim priority from an EP application.
Question 2	Question 2 related to patent assignment. Most candidates were able to list the main points to be included in an assignment document and the potential consequences of failure to record an assignment document. The stamp duty portion of the question, however, caused considerable difficulties. Almost no candidate was aware that assignment documents relating to IP only are exempt from stamp duty. Some candidates produced answers relating to the price of first class stamps in the United Kingdom.
Question 3	Question 3 was a standard question relating to exclusions from patentability. Almost all candidates answered this very well as it was simply a test of knowledge.

Question 4	Question 4 related to <i>Actavis vs Eli Lilly</i>. Rather than asking about the updated <i>Improver</i> questions, the question instead asked about file wrapper estoppel. Many candidates produced multi-page answers relating to the updated <i>Improver</i> questions and barely mentioned file wrapper estoppel. This kind of shotgun approach to answering questions could not be awarded marks.
Question 5	Question 5 asked the candidates to list eight potential disadvantages of licences of right. It was quite a challenging question, requiring candidates to think across the whole of the syllabus. The examiner was pleased to see that many candidates answered this question very well.

Part B

Question 6	Question 6 was the first long question on the paper and related to a new flask developed by Ms. Shah and a patent owned by Cups Are Us Ltd (CAUL). The question fell into two halves: firstly, how CAUL could address failure to pay a renewal fee and secondly, infringement and validity. Many candidates answered the renewal fee part well. Almost all candidates appreciated that the six-month extension during which the renewal fee can be paid as right had expired but one could still pay the renewal fee for a further 13 months provided one could provide evidence that failure to pay the renewal fee was unintentional. The renewal fee was initially due on 30 April 2024. A surprising number of candidates stated that the six-month as of right period therefore expired on 30 October 2024 (rather than 31 October 2024). On this occasion, this answer was accepted. The second half of the question was a simple infringement and validity exercise. Candidates were asked to decide if any of claims 1 to 3 were infringed and also, for each claim, to decide if it was novel and/or inventive over the prior art. Reasonably argued answers were accepted. This part of the question was a prime example of the importance of structuring the answer. Candidates should have split the answer into three sections – Infringement, novelty and inventive step – and for each of these sections, considered each of the claims. A surprising number of candidates
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	failed to do this and mixed the different issues together. Overall, however, the question was answered well. The final part of the question asked for advice as to how to proceed. The deadline for restoration was 30 November 2025 and if CAUL had not filed an application for restoration, the patent would simply lapse. The best advice was therefore to simply do nothing and wait and see what happened. Some candidates suggested writing to CAUL to ask if they had filed an application for restoration. This was, perhaps, not good advice. If an application for restoration had been filed then a number of options would be available: launching at risk, approaching CAUL with a view to obtaining a licence and/or applying to revoke the patent. Many candidates struggled to provide suitable proactive advice for the client.
Question 7	Question 7 related generally to inventorship and ownership. This question was not answered well by candidates. The first part of the question asked candidates to generally discuss ownership and inventorship in view of the facts set out in the question. What the examiner was looking for here was an appreciation that it was not clear from the facts provided whether or not the inventor was an employee, and some discussion of the factors that might influence this. The next two parts of the question related to the disclosure to Teton and the use of the Teton data. The main point was that if the disclosure was not in confidence then it might no longer be possible to patent the invention. A further important point was whether it was possible to include the Teton data in the application without disclosing the confidential Teton method and this should be discussed and agreed with Teton. The final part of the question asked for suggested steps that should be taken by the client, in particular in relation to the inventor. Again, candidates struggled to provide clear advice as to how to proceed. The main points are that the client should, if possible, obtain a confirmatory assignment from the inventor and also enter into an agreement with the inventor regarding future inventions. There was an issue that the inventor might wish to work the invention himself without the permission of your client. This could at least partly be addressed by watching for patent filings and sales by the inventor but also encouraging the inventor to seek his own legal advice as regards working the invention in view of the existing patent owned by your client.

	This question was concerned with providing practical advice to your client. Overall, candidates answered this question very poorly.
Question 8	Question 8 related to a PCT application for a new method of processing vegetable seeds. Plants grown from the seeds have distinctive bright blue leaves and are more resistant to vegetable fly. The first part of the question related to entry of the PCT application into the GB national phase. Most candidates answered this well, identifying the correct steps that need to be taken. Some candidates, however, did not appreciate that one should be expediting prosecution of the PCT application if your client wishes to take action against a potential infringer. The second part of the question asked candidates to identify potential infringers and any defences there may be to infringement. The first infringer, of course, is Seeds Are Us Ltd. Seeds Are Us Ltd are either performing the method or keeping a direct product of the method (i.e. the processed seeds) and so infringed one way or the other. The farmers may also be potentially infringers because they have purchased the seeds from Seeds Are Us Ltd. A more subtle question that only a few candidates identified was whether purchasers of the vegetables grown from the seeds would also be considered to be infringers. This turns on whether the vegetables grown from the seeds would still be considered to be a direct product of the method. Any reasonable argument on this point was accepted. As to defences, the main potential defence would be prior use/validity defences. Many candidates mentioned innocent infringement although, of course, this is not a defence to infringement <i>per se</i> but does potentially limit the remedies available. Finally, the question asked for suggested steps to be taken by the client. Again, many candidates seemed to struggle with this. The main points are that one cannot bring infringement proceedings unless one has a granted GB patent. One should notify Seeds Are Us Ltd of the existence of the application and also potentially the farmers, although this a more nuanced decision as the farmers are also potential customers. Overall, this question was answered well, with most candidates identifying the main points.

Question 9	Question 9 related to patent applications D1 to D4 for which you have recently taken over representation. For each application, candidates were asked how best to proceed. For D1, almost all candidates were able to correctly calculate the divisional deadline. An additional point, however, is that the compliance deadline on the parent was rapidly approaching and one should ask the Patent Office for an update regarding examination. For D2, this was filed in the name of your client but the invention was jointly developed with the client's brother. The deadline for filing the statement of inventorship has passed. Almost all candidates appreciated that one could extend the deadline for filing the statement of inventorship. Surprisingly few candidates, however, realised that assignment of the application from the brother to your client was also necessary. For D3, the Patent Office has issued a notice of intention to grant but the client was not happy with claim one. The main point here is that one could file further claim amendments which would be considered at the discretion of the Patent Office. If one was still within the divisional deadline then one could file a divisional application to the amended claim as of right. As to D4, this mainly related to double-patenting. Here, many candidates structured their answers poorly. If the EP(GB) and GB are for different inventions then one can simply pay the grant fee on the GB. If they are for the same invention then one should try to amend the claims of the GB application to relate to a different invention. If no such amendment is possible, there is little to be gained by paying the grant fee. Again, on the whole, this question was answered well by candidates, although some were let down in places by poor structure of their answers.
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Mean Marks by Question

FC1	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9	Total
Marks available	8	10	10	4	8	20	20	20	20	100
Mean mark	4.6	5.0	8.9	1.4	5.8	12.2	8.8	10.8	10.1	58.1