

Introduction

The technology concerned a device to apply colouring liquid to hair, with the invention relating to an improved structure of the head of the device that holds and applies the liquid to strands of hair. Candidates seemed comfortable with the subject matter and did not appear to struggle for time in the exam.

In general, the paper was well tackled; however, better marks could be obtained by being more thorough in the response to the IPO and particularly in the notes to the client.

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

Task

Claim 1

The amendment that was most in line with securing valuable protection for the client, according with their wishes and providing a good argument for patentability to the IPO, was that the tongs had a U-shaped guide on the second end. The challenge of the question paper was to find the wording for the amendment that was more than just in the right direction, but achieving the right balance between enough structural details and being overly limiting.

A good amendment included details of the spatial relationship of the guide with the brush, and how these components were arranged to operate to apply the treatment to the hair. Without these details, there was a risk that the claim could still read on to features in the prior art that showed something that could be interpreted as a U-shaped guide.

Candidates are strongly advised not to invent language that does not exist in the original specification when making amendments. This would very likely result in an added matter objection.

Further marks were available for broadening Claim 1 to recite “at least one” row of bristles and for tidying up some of the language, for example colouring/treatment.

A reduced mark was given for unnecessary limitations to Claim 1, because this overly limited the scope for the client and could enable a work-around, or for inadequate limitations to Claim 1, for example not providing structural and functional limitations between the components.

It was possible to get a reasonable mark for Claim 1 with an alternative amendment, for example to the arch-shaped bristles or the interchangeable brushes/guides. However, this generally made it harder to argue for the patentability of the claim and did not serve the client quite as well.

Dependent Claims

Candidates generally achieved good marks in revising the dependent claims. The best marks were obtained by adding new dependent claims that were in line with the client's interests and gave good fall back options for patentability. A kit of parts claim was desirable. A "scattergun" approach was generally not successful.

There were also amendments to the dependencies of a couple of claims that needed addressing.

Response to IPO

When discussing the basis for amendments, better marks can be obtained by explaining why the quoted parts of the application as filed provide the wording used for a particular combination of features in the amendments, rather than simply listing the passages used.

To address the excluded subject matter objection, it was possible to argue against this objection by explaining that the claimed method was cosmetic and thus not excluded. While some candidates amended the method claim, this was not required. Candidates failed to access available marks in this section by deleting the method claim.

To obtain good marks when arguing for novelty, it is insufficient simply to state that a prior art document does not disclose a particular feature. It is expected that candidates discuss the interpretation of a feature in the amended claim and why the prior art does not disclose such a feature.

In this question paper, marks were available for discussing why various features in the prior art could not be interpreted as a U-shaped guide. This argument was helped by an amendment that linked the guide structurally and functionally to other claim integers.

Inventive step arguments were generally well structured and presented. While it is acceptable to structure an argument using the EPO's problem-solution approach, using the UK's Windsurfing-Pozzoli test is preferred.

A Form 51 was not expected, as Ms Pitstock describes Mr Barber as a colleague.

Client note

This was the least well tackled section of the paper. Marks are generally achieved for a thorough and methodical approach.

In particular, more successful responses discussed the following:

- Why the Examiner's objections were valid and claim 1 needed to be amended
- Why the chosen amendment had been made, including:
 - Details of why the amendment followed the client's interests

Examiner's Report 2025

FD3 – Amendment of Specifications

- How the amendment provided good novelty and inventive step arguments (though not simply cutting and pasting comments from the IPO response)
- Referencing the client's comments about the benefits of the invention
- Why alternative amendment options were not chosen
- Why the particular wording of claim 1 had been chosen.

Good answers also took into account the client's situation and discussed other relevant issues, including:

- Why new dependent claims were added
- How the method claim was useful
- Why a kit of parts was added
- Whether divisional application(s) could be filed and to what, including their prospects
- The status of the prior art, including any risk of infringement
- The timing of the response, including potential acceleration
- The prototypes developed.

Mean Marks by Section

FD3	Claim 1	Dependent claims	Letter	Notes	Total
Marks available	10	25	34	31	100
Mean mark	16.5	6.4	18.5	12.8	54.2