

# Examiner Comments - 2011 - A1 - Examiner Comments DOC

## General Comments

Similar to previous years, candidates are reminded to answer the questions asked and, where necessary, to provide clear coherent advice setting out a preferred course of action and any potential pitfalls or downsides that may result.

Further, candidates are reminded to better pace themselves to ensure that all questions are answered to a sufficient degree. Often, answers for the first few questions were longer than those for later questions even though the earlier questions may have been worth half (or less) the number of marks.

## Comments on Specific Questions

1. Candidates were expected to comment on the possibility of patent and design protection, the time limits for filing each and the possibility of insufficient disclosure / representations.
2. Most candidates demonstrated a basic knowledge of Crown use but few were aware that it was allowable to sell off remaining stock when the state of emergency terminated.
3. Answers were expected to include discussion of alternative strategies that could aid their, particularly the merits of pre-grant opposition v. revocation and the fact that a pre-grant opposition would push back MCI from initiating infringement proceedings.
4.
  - a) Most candidates recognised the patentee could initiate proceedings but many failed to appreciate that an exclusive licensee could do so provided the licence was registered or appropriate notice was given to the infringer. The discussion of available remedies was generally disappointing with few getting beyond the possibility of an award of damages. Since the alleged infringer had just started selling their product, comments on interim relief and the requirements therefor were expected.
  - b) Most candidates recognised that parallel importation was no defence to infringement.
5.
  - a) Discussion was expected of the requirements for restoration, the possibility of opposition thereto and subsequent processing of the application through to acceptance.

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b & c) The grounds of prior publication and prior claiming were reasonably well discussed.

6. a) While most candidates showed a reasonable knowledge around employee inventions, few considered the possible impact of use by the inventors of SDL's potentially confidential information.

b) Most candidates proposed negotiating a licence with the inventors but the question asked for recommendation for safeguarding SDL's position during such negotiations. Answers were expected to consider putting in place a confidentiality agreement in the interim, as well as the possibility of injunctive relief to prevent disclosure. Further, there was the possibility of SDL filing a patent application and discussion over who should be listed as applicants was then expected.

7. a) Most candidates provided discussion of the requirements for fair basis but discussion of the wider requirements for patentability was expected. Answers for this question were generally fairly short which should have raised alarm bells in view of the marks on offer.

b) Candidates were expected to comment on restrictions on amendments post-acceptance and the possibility of filing a patent of addition or a new, non-related application.

8. a) Candidates were expected to consider whether each of the relevant parties infringed, including discussion of joint tortfeasorship, whether sale of the remotes could infringe and whether there were any specific issues relating to the retrofitted kit.

b) While there is an exception to infringement for vessels temporarily in port, the use of the vehicle in a car show would go beyond what was allowable.

c) Most candidates failed to recognise that it was the receivers being marked and since they were not claimed, an issue of false marking arose.