

Examiner's Comments 2011

Paper A2

General

As with previous years, many candidates wrote long expositions on the general subject matter suggested by the question, rather than addressing the specific issues asked for. Reference to completely unrelated matters "FYI" is never likely to result in extra marks.

Q1. This question was not well done. Relatively few candidates took a structured approach and worked through the issues.

Very few candidates recognised the possibility that Bowman could file his own patent application and apply to have it antedated to the date of the Kruger patent if successful in revocation proceedings on the ground of obtaining.

Surprisingly no candidates referred to *Oraka Technologies Ltd v Geostel Vision Ltd*.

Q2. Not well done in general. A number of candidates discussed the possibility of protecting the pattern in isolation from any article. Note that handkerchiefs are specifically included in the definition of "textile piece goods".

Q3. There was a surprising lack of knowledge about the steps involved in applying to cancel a design registration.

Q4. Many candidates recognised that a shape which is solely dictated by function is not registerable, but decided that the aesthetic considerations overrode that in this case, even though there is no suggestion that any part of the hull shape is designed to appeal to the eye.

Q5. This question was generally quite well done, although there was a widespread belief that the handle could be protected regardless of the shape of the vessel it was applied to. Some candidates also failed to recognise that a registration for a set of articles would be infringed by the sale of a single item in the set.

Q6. Generally well done, although many candidates disregarded the fact that the client wanted to prevent the patent from proceeding to grant, and so spent time discussing the options for revocation in detail.

Some candidates noted the possibility of filing prior art publications under s22, but very few discussed the advantage of a s21 opposition being *inter parties*.

No candidates were aware of the unusual provisions of s7(2A)(a) in respect of the requirement for a subsequently filed application to be filed in the same country as the original in order for it to be used for a priority claim.

Q7. This question was generally well done.

Q8. This question was also quite well done, although a number of candidates referred to s23(2) to support a contention that the importer could not be named as the inventor.

Q9. Most candidates recognised that the inventor's friend could not be named as an inventor, but it was surprising how many thought that an assignment was necessary for her to be named as a co-applicant. The rights of co-applicants were generally well recognised.