

Examiner's comments for paper D

Question 1

Question 1 was generally well done.

Some students clearly identified that the invention did not need to be limited to a clothes peg, but a surprising number of students failed to identify the broader application of the peg.

Mostly, the background of the invention was well done. Those students that lost significant marks here gave little reference to the prior art or relied almost entirely on the prior art drawings to describe features of the prior art pegs.

Students who answered the question particularly well were able to identify the essential features of the invention in the main statement of invention without including inessential features and without including the prior art. A significant portion of students produced statements of invention that included the prior art - particularly those that related to the integral construction. The best answers identified that several aspects of the peg would be novel over the prior art: padded jaws, an actuatable peg with integral construction, a peg with a spring located between the handles.

Generally, most students included all or almost all the preferred features of the invention in the preference clauses.

A small number of marks were given to the brief description of the drawings. Students who lost marks here included an incorrect description of the view(s) illustrated, referred to the prior art as being 'the invention' and/or failed to include a reference to drawings that were described in and attached to the specification.

Marks were awarded for the detailed description of the invention also. The examiner was looking for a logical introduction to features of the invention using appropriate terminology. The examiner deliberately included all terminology in the question to assist students. It was surprising, therefore, to find that some students had used their own terminology and that, sometimes, their alternative terminology was unclear. These students unfortunately lost marks as a result. The examiner was also looking for support for all of the essential integers of the statements of invention, and which might furnish support for clarifying amendments if required.

Question 2

Students appeared to have greater difficulty with question 2, although most students successfully avoided claiming the prior art. Unfortunately, many students failed to identify the essential features of the invention and several students produced an incredibly narrow independent claim. A helpful hint - generally, in the drafting exam, if your main claim is a page long or longer, it's quite likely to be too narrow.

Most students identified that the dispenser could be used for dispensing pastes and liquids and not just toothpaste. This was good to see.

Most students recognised that the actuating mechanism of the dispenser could work in two ways (as described in the question). A good number of students effectively claimed both forms of actuating mechanism in their main claim, while others at least referred to each form separately in the dependent claims. Students who did particularly poorly failed to identify the alternative actuation mechanism at all, even in the dependent claims.

The best answers included a set of well thought through dependent claims, narrowing progressively and in logical steps to specific mechanisms. Many candidates moved directly from the broadest claim to a narrow dependent claim.

A few students lost marks due to incorrect claim dependencies, probably as a result of rushing. Marks were also deducted where antecedents were not provided.

A small number of marks were given for omnibus claims. It was surprising to see errors in the omnibus claims and, sometimes, no omnibus claims at all. These are easy marks that needn't be lost.

Surprisingly, only one or two candidates claimed a dispenser with paste or liquid in it. This is the form in which it is most likely to be sold in retail outlets and in which the product will reach the highest price. In other words, this is the form in which you would most likely recognise that an infringement has occurred and in which you will most likely obtain the greatest account of profits from a successful infringement action.

The examiner encourages students to think carefully about the claims and their purpose. It was surprising to see also a claim to the method of use of the invention, when really such a claim is of next to no value and it would be incredibly difficult to identify an infringement of this type of claim. By thinking carefully about how you should properly claim the invention, you can focus on producing a good claim set rather than using up precious time writing every type of claim that you can think of.