

Paper E Comments, 2012

Many candidates were let down by their chosen answer structure because they appeared to run out of time.

Candidates that analysed validity (both novelty and inventiveness) with a claim-by-claim or issue-by-issue structure, that considered each of the prior art documents at the same time, generally wrote better answers and appeared to have adequate time to finish their answers. In contrast, answers were often incomplete and rushed where candidates analysed the novelty of all claims against one document at a time and then inventiveness in the same way.

Candidates that took the time to clearly construe the claims and identify the particular integers at issue up front wrote better papers because they avoided excess re-writing of claim language. Candidates that did not, and who appeared to be thinking as they wrote rather than identifying issues in advance, struggled to write coherent answers.

Some candidates wrote out significant sections of the claims in their paper. In most cases that approach merely wasted time.

Candidates were expected to provide practical advice, not a recitation of the law - the aim of the paper is to advise a client on risks and opportunities, not educate them on theory. Candidates should attempt to demonstrate their knowledge of the law through application to avoid wasting time in the exam.

Few candidates

- analysed the dependent claims for infringement or validity - analysing only independent claims will very rarely be sufficient to pass Paper E,
- properly considered each of the embodiments of Jeff's apparatus,
- applied a purposive construction to infringement of dependent claims requiring, for example, "generally cylindrical" spacers,
- recognised the differences in language between claims that otherwise appeared very similar or adequately analysed those differences (e.g. the dependent claims defining the spacer shape),
- were able to provide a credible analysis of inventiveness - most answers were tautological,
- grappled adequately with external fair basis and/or considered whether there had been any prior use in New Zealand,
- identified an issue of obtaining, or
- had anything relevant to say in relation to question 3.