

Examiner's comments 2014 – paper E

Again the pass rate was disappointingly low. Those that did pass passed clearly. Those that didn't pass didn't demonstrate sufficiently that they could identify key issues and deal with them well.

Many candidates didn't read the question. The question asked for notes and recommendation. Many wasted time writing a letter, writing out claims, writing out construction of every single claim feature, discussing case law, writing out legal tests. In general, to gain enough marks to pass, a candidate had to demonstrate that they could identify and analyse the key issues, and conclude logically. Pages of superficial analysis on unimportant issues did not achieve this.

For example, many candidates spent a lot of time constructing claim features that were clear cut and did not impact on infringement. While a few marks were allocated to general construction of claim terms, most marks were allocated to identifying and analysing in depth the claim terms that were key to assessing infringement/validity.

The majority of candidates identified at least some key terms for construction. But many just did not take analysis far enough, settling for a superficial analysis without considering and assessing alternative constructions of those key terms.

In many cases, a candidate's answers weren't wrong, but the candidate simply didn't hit enough issues in enough detail to accumulate sufficient marks to pass. For example, many candidates missed marks in infringement and validity sections by not assessing every claim, and in the case of validity, not considering each item of prior art against each claim. Even if the conclusion seems clear cut, it should still be briefly stated.

No marks were provided where a candidate only concluded that: a) a dependent claim was novel and inventive because the independent claim was, and b) a dependent claim wasn't infringed because the independent claim wasn't infringed. Dependent claims had to be analysed in the alternative to receive marks.

Good marks were given where a candidate provided a conclusion backed up with a clear plausible analysis. Where a conclusion was given with little or implausible analysis, then very few marks were given.

Questions 3 and 4 were generally done well.

Some candidates appeared to run out of time and missed marks because they did not address all claims towards the end. Several papers "jumped around", rather than addressing the claims and the questions in sequential order, which made them very hard to mark.

Candidates are reminded that they must write legibly otherwise the examiner may not be able to determine whether or not they have properly answered the questions.

Several papers relied heavily on claim charts for indicating their working/conclusions. While charts are fine, the conclusions should be made in writing with clear reasoning in the main answer otherwise candidates risk not obtaining marks.

Poor time management seemed to be a common problem. The examiner recommends that as part of their preparation candidates sit several practice papers in exam conditions – i.e. no more than 4 hours plus 10 minutes reading time. That will give candidates an awareness of the approach they need to take to answer the paper in the available time. It will also make candidates realise that it is not feasible to repeat claim features several times or spend too long on construing and applying unimportant claim terms.

A good approach may be to spend a substantial period of time at the start of the paper reading all of the material and jotting notes about the key issues or even preparing a mind map, before launching into answering the question in full written form. That way, it will be easier for candidates to check against their notes that they have included all important points in their written answers. That will also make it quicker for candidates to prepare their written answers, meaning that candidates are less likely to run out of time.