

Examiner's Comments: Paper A1 2015

As with most years, there was quite a range in marks, with some candidates showing a good grasp of the basic principles, while others had a very poor understanding. The main issue seems to be applying the law to the facts, and candidates are reminded that they are not only expected to know the relevant law, but must be able to apply it to the basic fact scenarios. Generally, questions 1, 2 and 6 were answered better, while candidates struggled with questions 3, 4 and 7.

Main issues were:

Question 1

Generally well answered, with part A losing most points with candidates failing to express the issue as being a collocation, where no unexpected results is obtained.

Question 2

A surprisingly number of candidates lost marks on part A. This part required candidates to list options for challenging the patent, surprisingly few mentioned re-examination, and many struggled with giving advantages and disadvantages, especially targeted to George's position.

In part's B and C, candidates seemed to either understand the issue (had Sam and Joe illegally obtained the invention) and scored well, or missed the point entirely. Few mentioned employment contracts and the importance of checking these.

Question 3

In general this question was answered ok, however, many candidates lost marks in part C, bringing down their score. Many seemed to fail to recognise that claims to the material in the new example may not be entitled to the priority date, and if divided into a divisional, the parent could become relevant prior art under the new act. Few mentioned any potential inventor issue.

Question 4

Overall this question was not answered well with a large number of candidates not knowing the relevant provisions for late entry into New Zealand or Restoration of Priority on a New Zealand national phase application. For part B candidates needed to recognise that Restoration of Priority is not binding on individual national offices and that New Zealand has a "due care" threshold, which will need to be addressed.

Question 5

Some candidates struggled with these well-known patent terms, with marks ranging from a good pass to very poor. Candidates struggled with "Purposive construction" and "claim-by-result" the most, with only a couple that seemed familiar with the no fume case!

Question 6

This question was generally answered better with most candidates getting a pass mark. Most recognised in part A that if Greg is already producing this could be prior use. In part B most recognised the issue of support for whether the other metals were specifically disclosed in the specification; however, only a couple also discussed the issue of whether examples for one metal would be sufficient to claim all transition metals.

Part C had a range of marks with some candidates recognising that options included using the new data as evidence, or filing a new application claiming priority to the current NZ application, with a PCT claiming priority giving her options for protecting abroad).

Question 7

Generally candidates understood that while there is no obligation to disclose and the importance of ensuring the claims are valid in part A and B. A lot of students did not seem to appreciate the changes in the law for post acceptance amendments though.

In part C the candidate needed to recognise that the standard for fair basis in NZ has changed to “supported” meaning a more literal fair basis is likely to be required and therefore the exact wording used in Japan may not be allowed in NZ.