

Examiner's comments 2015—Paper E

The pass rate was again low. By and large, the candidates fell into two groups—those who clearly understood the point of what they were being asked to do and the process for doing it (and passed), and those who didn't. Knowledge of the law is not enough on its own to secure a pass in this paper.

The most significant issues noted with the failing papers were:

- failure to identify and thoroughly discuss the key claim construction issues
- poor obviousness analysis
- lack of attention given to dependent claims.

Most candidates dealt poorly with the construction of the features 'attached to' and 'apertures', and consequently lost a lot of marks. Even those who did note these issues often didn't conduct a good purposive analysis. Reciting the legal test is not enough. Candidates must show that they understand how the analysis works in practice.

The analysis of obviousness was almost uniformly poor. Important components of the analysis such as identification of the inventive concept, identification of the common general knowledge, the motivation of the skilled person, and the mosaicing of the prior art documents (one of which incorporated the other) were not covered or were done badly.

Many candidates only looked at infringement/validity of claims 1 and 2. Although this was where the bulk of the marks lay, candidates missed valuable marks by not dealing with all the dependent claims. A common characteristic of the passing papers was that the candidates had attempted every question, and commented on every claim, even if only briefly.

No marks were given where a candidate concluded that a dependent claim was novel and inventive because the independent claim was, or a dependent claim wasn't infringed because the independent claim wasn't infringed. Dependent claims must be considered in the alternative.

Many candidates didn't manage their time well. In some cases this resulted in candidates who clearly knew what they were doing running out of time and not doing enough to pass. Many candidates wasted time by rewriting the claims and effectively analysing every claim integer. A better technique would be to make brief notes on an initial claim review, and only return to those features where there is clearly a construction issue. Claims charts are fine as a summary, but must be backed up with analysis.

Questions 2(a) and 3 were generally well done. Disappointingly, however, some candidates don't understand the transitional provisions of the Patents Act 2013 as they apply to third party challenge. This is pretty fundamental to Paper E, and it is reasonable to expect all candidates to understand how the legislation works.

The examiner recommends all candidates sit several practice papers under exam conditions before attempting Paper E, and (if possible) discuss the papers with a senior practitioner. Although this is time-consuming, it will assist candidates with time management and help to develop issue-spotting and analytical skills.