

Patent Attorney Examiner comments 2014

Paper C

Overall the exam was well answered as reflected by the high pass rate. Some candidates lost marks by not reading the questions properly or by not attempting questions - likely due to not allocating enough time for each question.

Question 1: generally this question was poorly answered with few candidates able to clearly explain the Myriad and Mayo v Prometheus cases and apply the findings to the scenario. Few candidates also understood the differences between US and European law in this field.

Question 2: generally well answered although few understood the options to delay prosecution in Europe (further processing) or China (allow lapse and restore within 2 months). Accelerating examination was much better understood.

Question 3: this was generally well answered and most candidates scored well.

Question 4: this question was to test the prior art rules pre and post "raising the bar" - most understood the differences and generally this question was well answered.

Question 5: this question tested candidates knowledge of the AIA and most candidates answered this question well.

Question 6: this question concerned the PPH and different arrangements between countries. Part (a) was answered well but less candidates understood the significance of Australia only having a PPH agreement with the US in part (b).

Question 7: this question tested candidates knowledge of the PCT national phase proceed urges and was answered very well by nearly all candidates even though Ireland was mistakenly included (not in syllabus) - the question was marked to take this into account.

Question 8: this question concerned restoration of priority and post-dating - candidates who suggested filing a new application and abandoning priority did not receive marks for this suggestion as the question clearly stated that the invention had been published.

Question 9: part (a) of this question concerned grace period countries and was generally well answered - part (b) related to possible claim formats - very few candidates suggested novel composition claims and not many mentioned use limited product claims for Europe.

Question 10: this question was answered reasonably well although only a couple of candidates understood what a species election was - most answered the second part well regarding a final office action.

Question 11: very few candidates mentioned the need to consider foreign filing licenses, or that you could file at IP Australia and USPTO and they would forward application to WIPO. Restored priority was reasonably well understood but few answered part (c) well - i.e. the different standards for evidence in each country and which countries don't recognise a restored priority