

COMMENTS - PAPER D - 2009 – DRAFTING

General comment

All candidates were able to demonstrate that they understood the basics of drafting patent specifications. But on the day, relatively few were convincing in demonstrating that they could draft a good main claim or main statement of invention. However, the unsuccessful candidates did enough to suggest that with further drafting practice they could pass a future drafting examination.

Statements of Invention and Claims

Drafting the main statement of inventions and claims is a critical part of drafting. The candidates who did not pass did not score highly enough on aspect of drafting.

The main statement of invention (Question 1) and the main claim (Question 2) were allocated 50% of the marks and a score of less than 30% of the available marks in either inevitably led to an overall mark of less than 50%.

Almost all candidates drafted claims and statements of invention that met 3 essential requirements:

- (1) the scope included the invention specifically described
- (2) the scope did not include prior art
- (3) the claim was understandable.

Where candidates did have problems with these criteria, it appeared to reflect an unfortunate choice of words.

The problem for almost all candidates was that they drafted claims that were either too narrow or too broad and vague. To score well it was necessary to include all of the features essential to the invention – without including non-essential features that would allow competitors to easily avoid the claim by making minor alterations.

Examples of non-essential features for Question 1 included specifying that the fulcrum was V-shaped or extended substantially across the width of the trap. Other non-essential features included the weight at the top of the closure and a second closure at the

bait end. The description of Question 2 provided a wealth of non-essential features that often unnecessarily appeared in claim 1.

Some candidates avoided the trap of going too narrow – but went too broad and vague. Sometimes the claims clearly included inoperative embodiments and it was difficult to envisage how the claimed devices worked. For example in Question 1 in some statements of invention, it was unclear that the tipping of the trap would cause the trap door to close.

Other parts

The candidates generally scored well in drafting the title, field of invention, background, object clause, specific description and labelling of Figures for Question 1. The same applied to the background art and object clauses for Question 2.