

Paper E - 2009 - Examiner's Comments

Candidates were provided with an indication of the mark allocations (40% for infringement, 40% for validity and 20% for the legal analysis at the end). Few candidates seemed to use their time in a fashion commensurate with the mark allocation. This was particularly the case for many with regards validity, some writing less than a page or two. While some marks may carry over from an interpretation section into the question of validity, clear linking to the actual disclosures of the prior art must be provided.

Many candidates recited case law or tests that were to be applied in their answer. Candidates are reminded that marks are awarded for the application of these tests, not mere recitation of them. Consequently, this time was generally not well spent as most that did provide such recitation almost fully repeated the test when applying it or did not then apply it properly.

Candidates were expected to focus on the possible ambiguity in claim 1 over "deformation along the length of the body in a direction substantially transverse to the driving direction", namely, was deformation required along the entire length of the body to infringe. Claim 2 was also important, requiring the body to controllably deform with no recitation as to what form this control was to take. Guidance was provided in the description and candidates were expected to refer to this.

At least claims 1, 3, 5-7 and 11 were considered infringed although there was an argument that claim 1 required deformation along the entire length, this being potentially absent in the client's arrangement.

With regards D3 and D4, candidates were expected to refer to *Hickman v Andrews* or the *Workmate* case. For D5, it was necessary to identify that the rate of lowering of the ramp could be set so that the arrangement could act as a speed bump. Discussion over the importance of the active lowering of D5 versus the passive actuation in D1 in response to vehicle weight / speed was expected.

For obviousness, candidates were expected to explore the options based on all documents, even if this was to dismiss them as non-viable. Reasoning had to be provided as to why. At least claims 1, 2, 5, 10 and 11 were considered invalid. There were questions over some features, such as the valves of claim 7, being implicitly disclosed.

For the legal question section, candidates were asked to provide an indication of aspects of the client's device that may be patentable. This was not generally well answered. Potential novel aspects included a speed bump that formed a reservoir through which fluid could be controllably expelled to control the rate of deformation, the valve (possibly in combination with the body if the valve itself lacked novelty), the use of holes in the body used to control the rate of deflation, and the body being self-inflatable.

Another key consideration was ownership. Both your client's and Mr V's potential obligations to TCL needed to be considered, with comments as to how these may vary for the different forms of IP. When discussing other forms of IP, an indication was required as to what aspects of the arrangement they may protect, as well as limitations of them. Many candidates chose to brain dump on topics they were familiar with. For marks to be awarded, this needed to be tied to and focussed on the issues relevant to the client.