

Examiner's comments for Paper D 2019

The comments below refer to the answers prepared by candidates for the 2019 exam. These comments relate to common mistakes and areas for improvement.

Write an answer for each question or part of the specification

About half of the candidates this year did not write a letter to the client or did not write very much beyond the claims. This limits the marks candidates can get for this paper. It's important to write a good detailed description and write enough for the other parts of the specification, such as the background and the brief description of the drawings.

The main claim should cover both versions of the product described by your client

The question described a prototype and the client's preferred commercial form of the invention. A good main claim should be broad enough to cover both versions. For example, a claim to a disc with a plurality of protrusions doesn't cover the prototype so you need to make sure you have claims that do.

The main claim shouldn't be easy for a competitor to work around

All candidates drafted claims that were novel over the prior art, but the scope of the claims was often too narrow or used terminology that was too specific. After you've done a first draft of your claim, you should read through the claim carefully and think if there are any features that could be removed or modified by a competitor to avoid infringement.

Use accurate terminology in the claims

The terminology used in most answers was often too narrow for the claims and a bit clunky too. For example, using terms such as 'planar sheet' when defining the mat, or referring to the spikes as being 'for receiving the user's back'. Other examples include defining the disc having flat upper and lower surfaces. That type of description is better in the detailed description.

The main claim should include the alternatives described in the detailed description

Your detailed description should provide support for the claims and describe the preferred version of the invention in detail. When you can think of alternative features, you should describe them in the description section. Some candidates included alternatives in their detailed descriptions, which was great. But most candidates didn't describe all the alternatives that were mentioned in the question. Again, this limits the marks you can get. For example, you should mention the straps, the magnets, the different retention means, and the different shaped discs. Especially when those features weren't shown in the drawings.

It's often necessary to use different terminology in the description compared to the claims. You just need to make sure the connection between the description and claims is clear.

Include some dependent claims that have an intermediate scope of protection

When you're drafting your dependent claims, don't go straight to the specific features of the preferred version of the invention. You should try to think about claims that have an intermediate scope. After you've drafted your dependent claims, make sure each has the correct dependency and antecedent for each feature. Also, remember that you can use multiple dependencies in New Zealand, so you should use them in your answer for this exam.

Protecting more than one invention

It is acceptable to include two or more independent claims that do not have unity with each other. Another option is to include claims directed to a first concept and then include statements of invention directed to the other concepts. Either option gives the client the opportunity to file one or two divisional applications. You can then explain the approach you have taken in the letter to your client. For this question, you were expected to draft claims to the mat and claims to the spikes/discs.

Title, field of the invention, and background

The background, brief description of the drawings, summary of the invention, and object of the invention were not done well by most candidates.

Check that your title and field of the invention is consistent with the claims. For example, if you have claims for the mat and the disc, your title and field should also refer to the mat and the disc.

The background section can be quite short, but it still needs to describe the prior art from the question and not give away the invention. For example, don't mention that the spikes of a traditional bed of nails are not detachable and then claim detachable spikes.

If your object is to solve a problem with the prior art, the background needs to describe a problem. For this question, it was not necessary to write more than one or two objects of the invention.

The letter to the client should include useful information

The letter to the client is an opportunity to explain the terminology used in the claims and the process used when the specification was prepared. The letter is also an opportunity to show that you understand the invention. Only half of the candidates prepared a letter, which limited the marks they could receive for this paper.

Standard paragraphs and summary of the invention

There was no allocation in this paper for standard paragraphs, such as including a definition of 'comprising'. Don't memorise a holdall clause, or the definition of comprising to re-write in the exam. Although these are important in real life, you're not expected to know these paragraphs off by heart!

A few candidates wrote out the statements of invention in full. Since your time is limited, you can save time by including a short reference to the claims in the summary of the invention section. It is not necessary to write the claims out word for word in the summary of the invention section.

Mark allocation

Claims	50
Detailed description, including alternative embodiments, brief description of the drawings, summary, background, and object	40
Letter to the client	10