

Candidates were expected to provide practical advice, not a recitation of the law - the aim of the paper is to advise a client on risks and opportunities, not educate them on theory. Candidates should attempt to demonstrate their knowledge of the law through application of the law to the facts.

In this exam, the prior art was reasonably simple and the disclosures straight forward. As a consequence candidates were expected to review the prior art disclosures in full and to comment on the claim set of D2 in full particularly having regard to some of the subtle differences between the claims (set out below).

Most candidates

- identified either the mouthpiece valves or the three-way valves as the feature of concern,
- adequately analysed claims 1, 10 and 14 for question 1 and for novelty under question 2,
- took a consistent approach to their interpretation between questions 1 and 2, and
- correctly identified sections 41 and 42 as options for challenging validity, rather than section 21.

Few candidates

- identified and analysed both the mouthpiece valves and the three-way valves,
- considered all three mouthpiece valve choices,
- adequately discussed the concept of manual interaction and/or analysed it purposively,
- recognised the differences in language between claims that otherwise appeared very similar or adequately analysed those differences (e.g. claims 1 and 10, 3 and 16),
- analysed all claims for infringement and validity,
- correctly identified all of the relevant features of the prior art – i.e. (1) the various valves: D3 ('997) describes a push-pull valve (100) and a check valve (80) in Figure 7, D4 ('858) describes a one-way valve (32) in Figure 6d, D5 ('952) describes a valve

47 in Figure 21, (2) D5 describes a splitter valve 47 in Figure 21 that draws from two compartments, (3) D5 describes a system with two separate compartments, and (4) the prior use in Australia of multiple bottles (if available in NZ),

- were able to sensibly analyse inventiveness,
- considered whether there had been any prior use in New Zealand,
- identified any contributory infringement issues that were clearly a risk given the different scope of claims 1, 10 and 14, the multiple parties involved and the uncertainty about exactly what was in the client's packaged product, or
- had anything relevant to say in relation to question 3, including whether the client should search more and file his own application.

In addition, candidates should put more effort into structuring their answers, particularly on validity.

Candidates that analysed validity (both novelty and inventiveness) with a claim-by-claim structure, considering each of D3 to D5 at the same time, generally wrote better answers and appeared to have adequate time to finish their answers. In contrast, answers were often incomplete and rushed where candidates analysed the novelty of all 17 claims against D3, then against D4, then against D5, and then inventiveness of any novel claims against D3, then D4 and then D5.

Candidates that took the time to clearly construe the claims and identify the particular integers at issue up front also wrote better papers because they avoided excess re-writing of claim language. Candidates that did not do so struggled to write coherent answers.