

Examiners' Report on Paper D/1992

The committee recommends that candidates write clearly and avoid slang and unusual abbreviations. Further, candidates should read questions carefully and answer the questions asked, taking particular care with negatives and positives. The committee was particularly disappointed by the ignorance of the Paris Convention displayed in the answers to Question 2, Part I and section A of Part II. It should be appreciated that it is the interpretation and practice under EPC, not national laws, which is to be used. There was also much lack of knowledge of the operation of PCT. A better knowledge of recovery or correction under Article 121 or 122 and Rule 88 would be helpful.

Part II

Candidates are expected to bear in mind that they are acting in the interest of their client and to give practical recommendations. Candidates should not be surprised if some parts of the answers are the same in different sections.

The following gives Tutors a very abbreviated guide to the possible basis for good answers.

Part II

Section A

(A simple and fundamental matter)

Feature A is a subject of GB-K and has priority 3 June 1991, that is before loss of chip. EP-L publication in March 1992 before loss of Tester, involved publication of certified copy of GB-K. Thus Titanic cannot avoid total anticipation of Feature A if they file now. Abacus can avoid anticipation by filing a new EP application and claiming priority from GB-K. This must be before 3 June 1992, but preferably at once with a request for accelerated publication and prosecution in order to obtain rights to stop Titanic. (No need to discuss complicated actions under Article 61 EPC).

Section B

Too late to correct designation in EP-L: J21/84: application published. EP-N possible but sufficiently early to give warning to others and only if also in parent application. Request under Rule 88 EPC should be made as soon as possible. Inspect file to be certain of designations and dates.

Section C1

Appeal validly filed, but grounds due 16 March 1992 (14 March Saturday). Inspect file for letter received 16 March. Sufficient to constitute Grounds (T13/82)? Unlikely. But if sufficient, could lead to Board of Appeal deciding to grant patent. If not, was letter received 1 April sufficient as request for restitutio in integrum? If so, and this is granted, patent could be granted, but Abacus could argue for rights under Article 122(6) EPC if conditions satisfied.

Section C2

PCT application published in Japanese with English language abstract. German language abstract suggests another application (DE, AT?). Check. Deadline 31 months for filing translation. Now 36 months. Can apply for restitutio in integrum: J12/87. Although this is excluded for time limit of Article 94(2) by Article 122(5), this does not apply for Euro-PCT cases. If restoration allowed, Abacus may benefit from Article 122(6) if satisfied.

PART I

Questions	Maximum possible	Individual marks awarded	Where grades awarded are not identical	
			Revision of marks/grade (if any)	Remarks*
1	5			
2	6.5			
3	6.5			
4	6			
5	4.5			
6	3.5			
7	2.5			
8	4			
9	3			
10	3			
11	5.5			
Total Part I	50			

* to be filled in if both the following requirements are fulfilled:

- (a) the grades awarded by the two individual examiners before their discussion differ by two grades or more;
 (b) the marks awarded by at least one of the two individual examiners have been changed during their discussion.
 If remarks are to be filled in, they should briefly explain **why** the examiner has changed his marks.

EXAMINATION COMMITTEE III

Candidate's answer-paper No.

Report by examiner No.

PART II

Parts	Maximum possible	Individual marks awarded	Where grades awarded are not identical	
			Revision of marks/grade (if any)	Remarks*
A	12			
B	9			
C1	14.5			
C2	14.5			
TOTAL PART II	50			
TOTAL PART I	50			
TOTAL PARTS I + II	100			
CORRESPONDING GRADE				

Translation of marks into grades

%	Grade
0 - 35	7
35,5 - 45	6
45,5 - 55	5
55,5 - 65	4
65,5 - 75	3
75,5 - 85	2
85,5 - 100	1

* to be filled in if both the following requirements are fulfilled:

- (a) the grades awarded by the two individual examiners before their discussion differ by two grades or more;
 - (b) the marks awarded by at least one of the two individual examiners have been changed during their discussion.
- If remarks are to be filled in, they should briefly explain **why** the examiner has changed his marks.