

Examiners' Report on Paper D/1997

An amazing number of candidates failed to read questions properly or completely and, as a result, many marks were lost unnecessarily. The message has once again to be, ***READ CAREFULLY BEFORE WRITING***. If there is any doubt on the part of candidates, we should make it clear that we do not give any marks at all for an essay, however brilliant, on an unasked topic. Therefore, if you do not know the answer to a question, deliberately writing something on a topic you know is no better than saying nothing; in fact, it is worse because you lose time as well as marks.

Many candidates were also again using out-of-date reference books – including old versions of the EPC.

Candidates should understand Rule 69 and the differences between requesting a decision, filing an appeal, further processing and restitutio in integrum. Many made no choice and gave them as alternatives and others always chose inappropriately or suggested only one course, such as appeal, as a solution for every problem.

As a further general point, far too many candidates overlooked the date on which they were taking the exam or the dates given in the question. If the question does not specifically take the candidate to an earlier date, the candidate should relate the dates in the question to the date of the exam, i.e. when the question refers to today, it means the exam date.

Candidates should know that the ten days rule applies at the beginning and not at the end of a term.

It was pleasing that this year candidates generally performed better on Part II and for the first time for many years, or ever, there were a large number of candidates who performed better at answering Part II than they did Part I.

Part II

- A1. This was answered well by almost all candidates. Even though specifically asked to advise on the point, some candidates, in this part and elsewhere, failed to advise on the question of obtaining rights in the USA.
- A2. The most significant failure here was the omission to file US and EP applications or a PCT application to ensure that your client had the optimum protection. It was clear from candidates' answers that they had not considered this since they discussed that the client needed to use Art. 61 to be able to have an application for the invention. The right to a European patent under Art. 60 was often not considered. Many were completely unrealistic with respect to the time scales that were likely to be involved and also ignored the fact that one would not be likely to know that an application had been filed by Reckitt or Pastawinna until it had been published. As a result, a lot of the courses of action suggested by candidates would be disastrous for the client.
- B. This part was generally answered well, although the majority seemed unaware that a divisional has to be filed by the same applicants as for the parent application but could name Overtake as the sole inventor. For this reason much of the expected advice on the procedural matters was wrong. The majority of candidates overlooked the fact that if there had been no other disclosure earlier than publication of the application it was still possible to file in the US by virtue of the US grace period of one year. There was no evidence in the question to suggest Donna Overtake's legal incapacity yet many candidates concentrated on interruption of the proceedings under Rule 90 without considering anything else.
- C. In this part the main problems with the answers arose with those candidates who overlooked that the deadline for the US national phase expired on the day following the day of the examination. Otherwise candidates answered this part well.
- C'. Perhaps because of time pressure, this part was not answered well by most candidates. Many confused the situation as regards priority of the two applications B and C. Very few really gave sound advice on what was possible although many did at least cite G2/88 and G6/88. The possibility of obtaining a broad use claim was often overlooked and candidates concentrated on racing shoe soles.

Paper D Schedule of marks

Question	Maximum Possible	Marks awarded		Revision of mark/grade (if any)		Marking by further examiners	
		Exr	Exr	Exr	Exr	Exr	Exr

PART I

1	2.5						
2	6						
3	6						
4	5						
5	4						
6	2.5						
7	5						
8	3						
9	5						
10	6						
Total Part I		45					

PART II

A1	6						
A2	16						
B	14						
C	10						
C'	9						
Total Part II		55					

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

Total Parts I + II	100						
---------------------------	------------	--	--	--	--	--	--

Corresponding Grade							
----------------------------	--	--	--	--	--	--	--

Remarks (if any)

Grade recommended to Board _____

Munich, 4 September 1997

I. Muir - Chairman of Committee III