



Examiners' Comments on Candidates' Performances in QE 2007 Paper C

Insufficient Preparation

1. Most of the candidates gave very poor answers and as a result could not be seen as fit to advise clients on the issues of validity and infringement. Far too many candidates seemed unprepared and not to have any idea how to approach the major topics in the paper.

General Remarks

2. The Examiners noted that not many candidates have taken into account the remarks for the candidates which have been put on the IPOS homepage before the QE.
3. In the first place, time management of most candidates shows that they lack practice. Only very few candidates have taken into account that there have been only 20 marks for the law question while 80 marks have been available for the infringement/invalidity part. One candidate has even dedicated two thirds of his answer paper to law questions.
4. Time management plays also a role for the interpretation of the claim elements. While an interpretation is only necessary where there is a literal difference between the wording of the claim and the prior art or between the wording of the claim and the infringing device, some candidates have dedicated up to one third of their answer papers.

Specific Remarks

5. In the exam paper (letter of the client) it was expressly stated that the client is an expert in the field and that he knows the meaning of the technical language in his area. The prior art documents have been clear, too. It was therefore not necessary to interpret clear expressions such as "security brace", "with respect to each other", "a foot", etc. Candidates thereby often wasted time which was obviously lacking for the rest of the paper.
6. Candidates should also mind that it not helpful to interpret a claim element without telling why one needs to interpret this element. At least a short remark, such as "I do this interpretation for matching element "xxx" of claim 2 with the wording of document D6 at page yy, line zz", would be helpful when the interpretation of the claim elements is collectively presented before the evaluation of infringement and invalidity.
7. While UK judgments follow generally a structure where the all interpretations are collectively presented before the evaluation of infringement and invalidity, it seems that - for the purpose of the QE - it is worth thinking of including the

interpretation of each feature which needs to be interpreted into the evaluation of infringement and invalidity. Care should be taken that one interpretation of a certain wording done in the infringement section does not contradict another interpretation of the same wording done in the invalidity section. This is the reason why collectively presenting the interpretation before the evaluation of infringement and invalidity is still the preferred approach.

8. Among the law issues of this years' QE, the evaluation of the relevant dates of the claims was important because the result of the invalidity section depends this information. This takes usually not longer than five minutes but brings in valuable marks on the candidate's account.
9. Often candidates did not identify the right relevant date of claim 4 and therefore used the document D3 for an inventive step attack. This is a very serious mistake which shows that the candidate has not understood the concept of the relevant prior art. A bonus point has been granted to those candidates which expressly stated that document D3 could not be used for assessing inventive step of claim 4.
10. Other candidates demonstrated lack of practice because they either did not state the relevant date of claim 4 at all or they did state the relevant date of claim 4 wrongly. One candidate even stated that claim 4 has two priority dates, which is wrong.

Basic Working Techniques

11. Apart from poor time management, the lack of basic working techniques seems to be a problem for some candidates.
12. Some candidates did not state all elements of the claims when assessing infringement with document D6. A good attack systematically cites element by element of claim. If only one element in the assessment of the claims is missing then the candidate will have at least a very negative bias.
13. Other candidates failed to collect marks in the infringement section because they did not cite from where they were taking the relevant disclosure in D6. Note that a good citation first cites the element of the claim in the language of the claim. It also refers to a Figure in the reference document where the element is shown, it then cites the expression in the reference which is used for that element and it finally says where further information about that specific element can be found in the description (e.g. "P2, L19" as abbreviation for "page 2, line 19"). If an element is not shown in a Figure then one would leave the reference number away. The same applies to the invalidity section.
14. Most inventive step attacks that have been presented did not state clearly which element of the claim comes from which document when two or more documents have been combined. Candidates also should note that the fact that two teachings taken together provide all elements of a claim is not yet sufficient. This is only the starting point of an inventive step attack. A further requirement is that the candidate states at least one good reason why the person skilled in the art would want to combine the two documents in the way that he has described. A

pure statement that the two documents just nicely fit together or purely citing advantages of such a combination is not sufficient. Combinations which do obviously not work or which the skilled person would not make because they are considered to be forbidden are also not considered to be appropriate.

15. In the infringement section for claim 2, most candidates have not taken into account that there may still be non-literal infringement, even if the infringement does not exactly have all limitations of the claims. The classic test therefore is the "Improver questions" but other tests from other jurisdictions are accepted, too, if the candidate shows that he understands the underlying concept.
16. Readability is an important issue, too. Examiners are generous with marks but they can only mark what they are able to read. Candidates should take that into account and check their handwriting with a third party on readability. Only very few common abbreviations should be used, such as for "claim", "Section", "Rule", "document", "page", "line", and "column". Some candidates have been using abbreviations and symbols to such an extent that it was impossible to understand what they wanted to say.

Time Management

17. The candidates all found it challenging to complete their answers in the time available. Many of the candidates however clearly did not use the time available well. The majority of the candidates provided a detailed interpretation of the claims of document D1. This only attracted few marks as the interpretation of majority of the features of the claims was clear and not controversial in the light of documents D2 to D6. The best candidates managed to address most of the issues in the examination paper, even if time pressure meant that they could not provide complete arguments for each issue.

Candidates' Performance

18. The analysis of the question whether Securistick infringes Patent SG 000001 was generally the best part of the candidates' answers. Most candidates realized that it was necessary to compare each and every feature of each claim in document D1 with the features in the Securistick manual (D6). The approach necessary to determine whether there is non-literal infringement was also used by most candidates.
19. The analysis of the validity of the SG 000001 was the worst part of most candidates' answers. Although most candidates managed to attack claim 1 on the basis of document D2, there few of the potential attacks against claims 2-4 were identified.
20. The law questions posed in the letter to the candidate, when answered, were generally answered well. Many candidates lost marks by not providing an answer to some of the questions.