



## Examiners' Comments on Candidates' Performance in QE 2007 Paper D

### Overall Performance

1. The overall performance for Paper D is not of a high standard. In some instances, candidates did not make full use or appreciate all the facts given. This led to unwillingness to adopt a position on an issue or provide clear advice. Candidates also did not provide answers substantive enough to earn the full marks allocated to a question.
2. There was quite a big disparity in the quality of the candidates. Some candidates were clearly unprepared for the exam and showed a poor grasp of patent law, scoring well below the passing mark. However, the candidates who passed demonstrated a fairly good grasp of patent law and were clear passes.
3. All the candidates did not answer the questions fully thus not gaining marks. Also, they do not appear to understand the questions and the requirements, thus obtaining low marks.
4. Many candidates went off tangent with their answers. A few candidates did not even attempt to answer a few of the questions. Time management was poor.
5. Candidates need to read the question and to answer it. There are instances of "correct" answers appearing in the wrong place which means that the specific question is not being answered.
6. Candidates need to appreciate that their answers should identify the law (including explanation of relevant provisions) followed by an application of the law. This is sorely missing in many of the answers.
7. The candidates in general did not display a sufficiently good or adequate grasp of the patent law and practice in Singapore. The ones who failed were not able to identify the main issues, did not explain the legal basis or did not cite the provisions or the correct provisions. These candidates generally do not have a good command of the English language, and do not express themselves or write well and clearly, which would be essential when one practices as a patent agent.
8. Greater emphasis should be put on writing complete sentences rather than in point form, as one would not be advising in point form during practice.
9. "Bonus marks" are few, rare and very specific and as such, candidates should not engage in long rambly discussions or "shotgun" points that are not relevant – they waste time in the exam and waste time in practice.

10. Candidates tended to be noticeably either good in legal substance or in procedure – rarely both. Both are however, needed in practice.

### Individual Questions

11. Candidates find it difficult in certain questions especially question 1 to pick issues.
12. In question 1, an issue that the candidates were required to discuss was the effects of priority claim, improvement vs original invention and the impact of the newspaper publication. This issue was not handled well by almost all candidates, with almost of them failing to discuss if a second application is filed for claims 1 and 2, whether both claims will be entitled to priority. This is important in view of the intervening publication in the newspaper.
13. In question 1, the candidates were also tested on breach of confidence under Section 14(4). Again, this was not handled well. Many candidates identified correctly that the publication in the newspaper will not fall under Section 14(4)(d) (learned society) exclusion but failed to identify that Section 14(4)(a) or (b) is likely to apply.
14. It should also be noted that confidentiality was discussed substantially in the GCIP and it might well be that the candidates who failed to provide a suitable answer has forgotten the teachings of the GCIP. No doubt, paper D is a practical paper but the candidates should be reminded that a good grasp of what is taught in the course will no doubt provide good grounding and foundations to pass paper D and assist the patent agent in everyday practice.
15. Question 2 on infringement issues was rather well done, perhaps because groundless threats issues have been recurring themes in the past few years.
16. On sub-question 2(c), most candidates knew that a misrepresentation must be material in the sense that it must have led IPOS to grant the patent for the patent to be revoked under Section 80. It is heartening to know that the majority of the candidates are familiar with Singapore court decisions and for the purposes of this question, the Trek case.
17. Part (c) of question 3 required the candidates to advise what happens if it was Jan 2007 instead of March 2007. In other words, the question required the candidates to explain whether (or what circumstances) the circumstances in the question would satisfy the requirements of “reasonable care”. Unfortunately, most candidates did not provide any suitable reasoning. Simply stating the relevant provisions and saying that we should argue that there is reasonable care without explaining why will not earn the full marks allocated for this section.
18. In question 4, the candidates were required to answer the implications of filing the PCT and Malaysian applications simultaneously. The candidates were supposed to indicate that it is the filing of the Malaysia application that would contravene Section 34, but not the PCT application. Most candidates failed to do so and indicated that filing of the PCT application also contravened Section 34.

19. For a number of candidates, it is a matter of lack of time when it comes to question 5 since for those candidates who managed a fairly decent attempt, scored sufficient marks to pass.
20. Overall, the candidates seem to be more familiar with procedures / forms than substantive issues, as can be seen from the better average score for Question 5 compared to the other questions.