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Examiner's comments on candidates' performance in QE 2004 Paper D

In general, the performances of the candidates are unsatisfactory.

The following are the most common errors made by this group of candidates:

1. Failure to discuss the issues in sufficient detail

This is the main reason for the low score for most answers. In some cases, this is obviously due to a shortage of time.

In most other cases, the candidates simply did not fully discuss the issues in a logical manner, to show that they are conversant with the law and able to apply the law to the facts.

As an example, a candidate in his answer to Question 1, stated that "The fact that A demands that X stops infringement at once mean that X may have a remedy to groundless threats under S 77(1)". He did not explain the provision Section 77(1), nor did he analyze the facts before applying the law to the facts. This is a very common mistake, in varying degree, for all the candidates.

2. Failure to identify relevant issues/ Discussion on irrelevant issues

These are the other two common mistakes. I have chosen to discuss them at the same time, because they both illustrate the inability of the candidates to identify the issues correctly and concisely.

None of the candidates were able to identify all the relevant issues in all the questions that they have attempted. The most common omissions are:

a. Question 1: Compulsory licence issue
b. Question 2 : The Applicant's right to file a PCT application
c. Question 3 : Publication of a non-English PCT application
d. Question 4 : Parallel Import issue
e. Question 5 : Rule 108(4A)

At the same time, a number of candidates did not appear to understand what the questions required of them, and ended up writing on issues irrelevant to the questions. They read unnecessary issues into the facts, and they also have a propensity to discuss or set out everything they know about an issue without actually answering the question.

For example:

Question 2: The question stated that the client is not a Singapore resident. A candidate nevertheless discussed when the client may be considered a Singapore resident.

Question 3: This question required the candidates to explain the significance of a PCT application, and the need for the PCT application to enter national Phase. However, a few candidates went into the details about the entire PCT procedure, without actually highlighting in their answers the salient points.

Question 4: The question stated that the clients have two patents, and expressly asked the candidates to explain to clients how they may extract maximum benefits from the patents. Although the validity of the patents has not been made an issue, a few candidates, on reading that the patents relate to pharmaceutical products, nevertheless went into a discussion of Sections 16(2) and 16(3).

Question 5: The question clearly stated that the client does not wish to request for PCT examination. One candidate still set out the procedure of filing a Demand, before going on to (correctly) state that this was in fact not what the client wanted.

General: Several candidates, in their answers to several questions, set out extensively the procedures for obtaining the details of a patent, so that they could examine the same to verify clients' instructions. In practice, this is a prudent step to take, but it should not feature as a substantial portion of any answers in this paper, since issues relating to the accuracy or adequacy of patent details were not raised.

3. Not answering questions that are expressly asked

This happened in several answers, and suggests that the candidates did not read the questions carefully.

For example,

a. A few candidates did not provide an answer to the client's liability under Section 34, when the Question 5 expressly asked "would I…have committed an offence in Singapore…".

b. A candidate did not answer the question "how do I apply for *[early]* National Phase entry into Singapore?" [Question 5].

c. A candidate did not set out the deadlines which was expressly asked for in Question 7.

4. Law

Generally, every answer would contain a few errors of law, or errors in the application of the law.

The provision that most candidates were unfamiliar with is Section 66 (extension of patent term) [Question 4].

The other provision that no candidates have correctly identified as being relevant is Section 87(3)(b) [Question 3] – publication of a PCT application not in English.

It would also appear that the candidates were unfamiliar with the transitional provisions of the Patents (Amendment) Act and the Patents (Amendment) Rules 2004. For example, in Question 5:

> 2nd message: A few candidates wrongly answered that an applicant of a PCT application with a filing date before 1 July 2004 may rely on a Chapter I IPRP under the amended Section 29(2)(e).

> 3rd message: Many candidates did not mention Rule 108(4A) when discussing the application for an extension of time for entering PCT National Phase in Singapore, where the delay is more than 4 months. One candidate specifically stated that Rule 108 (4A) did not apply. In fact, Rule 108(4) should apply to the extension of time applications filed on or after 1 July 2004, even if the PCT applications have filing dates prior to 1 July 2004.

5. Poor time management

This is a problem faced by several candidates. As a result, there are several papers that contain either incomplete answers or answers that were obviously hastily composed.