Examiner's comments on candidates' performance in QE 2005 Paper C

It is clear that the large majority of candidates are taking this exam too early. Two thirds of candidates submitted an extremely poor answer, far below the pass mark.

Candidates are advised to present their answer in the format: "interpretation", "infringement", "validity", "amendment" and "advice". Although it is possible to pass the paper without using this structure, it is common in court judgments, and therefore the one on which the marking schedule is based.

In the interpretation section, it is not sufficient to run through the claim giving a two or three word definition of each feature. While this is fine for features which in fact are clear (and which are either clearly present or not in the prior art and infringing product), for any term which is unclear (particularly if it is going to be relevant in determining infringement and validity) candidates should explain why it is unclear, and then give a reasoned decision about what it means. For example, the claim says that the cabinet has one open "side". Does an upwardly facing opening (as in the Frezor device), count as a "side"? If so, why?

Amendment was done particularly poorly. In paper C, there are unlikely to be any marks available for amendments which exclude the infringing product. Worse still, if you propose such an amendment without pointing out to the client the risk that it excludes the infringing product, you have done something which in real life would be negligent, and which creates a very poor impression with examiners.

Some candidates prefaced their answer papers with a review (often several pages) of the principles of claim interpretation, with extensive case references, but no discussion of how they relate to the question at hand. This earned no marks, and wastes a great deal of time in an exam for which time constraints are tight. Similarly, it is unnecessary to write out a complete set of amended claims: a note of what words you intend to add and where is adequate.

The advice to the client was also poor. Almost no-one suggested monitoring whether prior art G enters the Singapore national phase (it is not prior art here if it does not; few candidates knew this).

Finally, examiners are made nervous by incorrect use of patent jargon – such as by the candidate who argued that various features of the infringing product were "anticipated" by claim 1.