Examiners' Comments on Candidates' Overall Performance in QE2010 Paper C

General comments

In general, candidates may have spent too much time on the infringement section, leaving little time to explore the issues of the next 2 sections. Most Candidates wasted time by interpreting nearly every word or phrase in each claim. Only words or phrases that could be considered as contentious or that have a legal meaning should be interpreted. Such words or phrases in this paper are: "for", "resilient means", "towards an opposing surface" and "along substantially the whole of the channel." Too few candidates were able to address the priority issues correctly. This was necessary to analyze which claims were novel. Successful candidates also addressed the infringement issues and the other validity issues, including inventive step and relatedness correctly. Some even proposed sensible post-grant amendments. Infringement was addressed well by some candidates who really selected the concepts which have an impact on infringement and/or validity and construed these concepts correctly. No candidate tried to check whether the submarine embodiment of the product was infringing the Patent.

Comments on candidates

1. Most candidates failed to analyse the priority issue properly. Failing to do so leads to a very different conclusion, which makes it very hard to pass (conversely, most candidates who got this issue right passed overall). Priority is increasingly being tested in the Singapore examinations. It is also of critical importance in advising clients, especially US clients since US law is so different. This year's paper was inspired by a real life case having a different technical field, but which suffered from a similar priority problem. Invalid patents claiming priority from a US continuation application had been obtained in several countries before the problem was noticed.

2. Few candidates spotted the "related" issue, despite the fact that most patent trainees in Singapore spend much time obtaining Singapore patents corresponding to patents already granted overseas, and are therefore giving attention to this issue on an almost daily basis.

3. A surprising proportion of candidates did not mention deleting claim 1 (even when they had found it invalid) and proposed conforming claim 2 to the corresponding US claim, even though that broadens the scope of the claim.

4. Nearly all candidates scored poorly on the validity section because they did not identify that US1 anticipated claim 1. Furthermore, when considering inventive step, some candidates did not attempt to combine D1 with the admitted prior art of SG1000.

5. The majority of candidates did not address the validity issues related to section 30(3)(c) of the Singapore Patents Act and how the claims could be amended to be considered valid and still cover the Windy product.

6. Few if any of the candidates indicated that a renewal fee should have been paid by 1 Aug 2010 and it can be paid until 1 Feb 2011.

7. Patent exam papers rarely mention facts of no importance at all, so it was odd that no-one picked up the reference to the under-sea use of the Windy product.