

## **Examiners' Comments on Candidates' Overall Performances in QE2014 Paper A**

- The Pass/Fail results for the subset of papers marked by the present examiner appear to be within the "typical" range for this paper.
- The main reasons for a fail result were:

Presenting a main claim that was not clearly novel over the US patent reference. Candidates were expected to recognize that the US patent reference discloses a "bracket" attached to a "board", the bracket defining a short "channel" into which a "stake" was receiving for mounting the board to the ground.

The inclusion of several "unnecessary" (i.e. considered too limiting on view of the prior art provided in the paper) features in the main claim (e.g. "two plurality of brackets", "stake", "stake with pin" etc). A significant number of candidates presented a main claim including two or more features, making it difficult (although not impossible) to achieve a pass result, especially if additional points were lost for clarity issues.

- Another issue in the paper was the second embodiment of the bracket briefly described in the material from the client (i.e. with an additional plate). This was generally well handled, with most candidates offering a main claim that covered both types of brackets.
- Another issue was to differentiate from the "recycled floorboards" prior art in which nails are guided in through holes in the board. This was generally well handled, with most candidates offering a main that was clearly novel (i.e. defining some form of "bracket" mounted on the board/ element) over that prior art.
- The difficult part of the exam was providing a claim with clear novelty over the US patent reference (which discloses a bracket which can be attached to a panel, and which defines a short channel along which a stake can slide). Provided this was done, and that marks were not thrown away by limiting claim 1 with features which the paper mentions are optional (e.g. the pin), it was easy to obtain a pass mark. A couple of candidates were able to obtain a high mark despite presenting a claim-set with significant shortcomings in clarity.
- A couple of months before the exam, the present examiner gave a presentation for candidates at IPOS at which he mentioned explicitly that using "vertical" in an apparatus claim is bad practice for almost all inventions. (On a literal level, it means that the claim is only infringed by an apparatus in one orientation; so, on a literal level, an infringing article would stop infringing if it is put on its side!) It is disappointing that, despite this, about half of candidates used the term in this exam. This is a minor issue (hopefully a judge would use common sense to interpret the claim, as in the Catnic case), and the number of marks lost was therefore very low, but it does show that candidates are not being sufficiently self-critical in reviewing their proposed main claim.

- The passing rate of our group (1 of 13) Candidates equals 7% is below the average passing rate of about 20% of recent years.
- Notably the majority of candidates were a very clear fail since the claims read on the prior art.
- There was hardly any paper that was in principle claiming the invention but was too broad/unclear as it was the case in previous years.
- It thus looks like that the candidates were not reading the prior art carefully enough and understood the difference between invention and the prior art.
- Candidates tend to give an incomplete discussion of the prior art, missing out the television embodiment, the U.S. patent, or both, thereby losing easy marks.
- It would appear that some candidates did not fully understand the functioning of the securing mechanism and left out critical elements of the apparatus claim.
- Many candidates did not grasp the significance of requiring the stake to be received along a side surface of the board, which resulted in the putting forward of a claim that lacked novelty. This is the main reason for the high failure.
- Some candidates either misread the question or misunderstood it and ended up claiming an apparatus that was not the client's intended invention.
- Nearly all the candidates were able to provide an adequate background and list the existing disadvantages of the current apparatus.
- Overall, it appeared that most candidates lacked sufficient training before attempting this year's paper.