

Examiners' Comments on Overall Performance of Candidates in QE2018 Paper C

This year's Paper C was not a difficult paper.

Unfortunately, many candidates did not show a reasonable grasp of claim construction techniques, or the ability to perform a logical and persuasive infringement and validity analysis.

A common mistake made by the candidates in claim construction was simply by breaking down a claim and glossing over the broken claim parts in a superficial and random manner. Much time was accordingly lost and valuable marks were not gained.

Candidates are reminded that claim construction essentially involves clarifying the meaning of unclear claim language, followed by a detailed discussion of the embodiments that possibly fall within the scope of the claimed invention as well as any other configurations that may possibly fall outside.

For instance, an important aspect of the claimed invention related to the means of the central retention of the second disc being "*spaced from a periphery of said first region*". Whilst many candidates interpreted this to mean a *vertical* displacement of the central retention means of the second disc from the first region, they however failed to discuss whether the same claim language also covers a *horizontal* displacement of the same central retention means, such that projections of said central retention means fall *inside* and *outside* the first region.

Some candidates also did not show at least a reasonable knowledge of the Singapore patent law, presumably due to the lack of preparation and/or adequate practice in tackling Paper C under the exam conditions.

For this paper, the technology in question was not difficult. However, most candidates rode on the construction of the phrase "spaced from the periphery of said region" in claim 1 and many failed to adequately consider and construe this phrase. This resulted in knock-on effects on the infringement and validity sections.

The advice section was also poorly done in some cases. Whilst most of the candidates were able to identify the key issues, it was not enough to simply mention these terms without elaborating on the effects of, for example, whether there was or was not innocent infringement or groundless threats. The additional question on the novelty grace period was not addressed in a number of instances, likely because of time pressures.

Overall, most candidates failed to recognise that the language of claim 1 (also supported by the description and drawings) does not restrict the central retention means of the second disc to only one position. This translates to the loss of many marks in the construction section.

In the infringement and novelty analysis sections, there were candidates who took into consideration discs positioned in the container, which in turn implied that discs were essential features in claim 1. This attracted heavy penalty.

Inventive step arguments for the claims were generally not well-developed.

For the advice section, while there were several issues (more than previous years) for candidates to identify and discuss, such issues were not unusual and were fairly common in the past year papers, so it was expected that the candidates could have readily identified the issues and linked

them to the facts and circumstances posed in the question paper. However, many candidates, while correctly identified the issues, merely listed the 'standard' options or advice without adequately providing the rationale for such advice. This, in turn, led to many marks not earned.

This was a construction-centric paper. If the candidates construed the contentious terms well, the candidates would most likely to have passed. The contentious terms can be identified by reading the prior art and alleged infringing article, to give clues on the extent to which the terms should be construed.

Validity and infringement would be based on the construction of these contentious terms. The "glossing over" of the contentious terms means that the candidates appeared to be performing construction in isolation and not having the prior art and alleged infringing article in mind.