

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

As per past years, a significant proportion of candidates did not appear to have managed the exam time well. There are 5 questions with 4 hours of time. That means 48 minutes per question. Every over-spend has a knock-on and cumulative effect. At least 40% of the candidates appeared to be short of time by Question 5, some even to the point of not attempting an answer.

In addition to the 48 minute/question regime, candidates should also take into account fatigue over the course of the 4 hours. One will be thinking faster at the beginning as compared to the end of the 4 hours. This can exacerbate the 'pressure' once one reaches Question 5 (assuming that candidates move through the paper chronologically).

Candidates also need to take note of the points allocation for each sub-question, and not over-write, or under-write.

The length of the answer is hardly important as compared to the quality of answering to the point. Sometimes, a lengthy answer betrays the candidate as one becomes tied-up in knots and end up with contradictions.

The thought-process of the correct answer is methodical and point-filled. If a candidate is not making a point that answers the question, it is wasted effort.

Answering the question is also critical. If what one writes does not address the question, again, nothing is gained.

A passing candidate tends to be one who has competency in all the legal areas called upon such as, concepts, patentability, ownership, exploitation, contentious matters, filing strategy, procedure, PCT, ethics. It helps immensely to have read through the Act and Rules, and to know key points from case law.

Candidates are advised to attempt the paper when they are more prepared. Some candidates are clearly better prepared than others.

During preparation, one tip is to attempt as many past-year papers under actual exam time constraint as possible to practise time management. Some candidates seem to struggle with time management. Furthermore, candidates should look at the answers of the past year papers to learn how to structure their answers and see what is required.

There are still some answers not directed by the facts of the question and appear to just regurgitate the provisions. However, when necessary, the relevant parts of the provisions should be paraphrased or reproduced. For instance, the minimum filing requirements under section 26(1)(a), (b) and (c).

Before sitting for the examination, candidates are encouraged to read through and understand all the provisions/regulations, and how they should be applied. Be meticulous, envisage different scenarios in which the provisions can be applied, and work out how an advice should be structured. When in doubt, consult mentors. Many points are lost because the candidates failed to identify the issues and the corresponding provisions.

Candidates must be up to date with the law changes. It is surprising that some candidates do not seem to know about the changes to the "grace period" provisions.

Candidates should also know basic principles of patent infringement, how to apply them, and should be able to cite some key court decisions. The question on basic principles of patent infringement is overall not well attempted by candidates.

During the actual examination, please read the questions carefully and pay attention to the details of each question to avoid missing any points. Answer according to the points allocated. Some candidates provide lengthy answers for parts with very few marks. Be careful with the calculation of dates and do check your writing to prevent typographical errors. Citations of sections/rules have to be precise. Such errors and inaccurate citations may cost you to lose precious marks.

A surprising number of candidates were not well-prepared for the paper and failed every question attempted.

Most appeared not to have read the latest Singapore cases in respect of Q2, in particular the latest Court of Appeal decision in *Lee Tat Cheng v. Maka GPS Technologies Pte Ltd*. Note that the Singapore patent cases have been listed in the syllabus. Thus, they were unable to set out the infringement tests in any detail (other than in very general terms).

Candidates should take care to cite provisions correctly. Marks are not awarded for citing the right section but wrong sub-section.

Candidates should extract only relevant parts of a provision in their answers.

Potential candidates should practise identifying issues in questions, and then addressing them directly. Some candidates gave long answers which regurgitated possibly relevant legislation but did not apply the provisions correctly, which resulted in wasted time and lost marks.

Although this is becoming rarer, some candidates still left answers blank, whether due to lack of time or inability to spot any relevant issues. This is to be discouraged, as clearly no marks would be awarded. An attempt should at least be made to answer the question to perhaps obtain marks for some of the more obvious issues that are identified.

The overall performance of the candidates is below expectations.

Candidates generally did better on Questions 1 and 3. Most candidates did poorly on Question 2 (parts relating to Singapore case authorities), Questions 4 and 5.

Candidates were better prepared in areas relating to infringement, inventorship and entitlement. Most candidates were generally able to identify the basic concepts of infringement/excluded acts, inventorship and entitlement, but a few candidates failed to differentiate the issues (e.g. proceedings for infringement; S66(1)(c) vs S66(1)(b); S49(1)(a) vs S49(1)(b); S20(1)(b) vs S20(1)(a)).

It appeared that candidates did not prepare well in the area of Singapore case authorities. None of the candidates identified the “doctrine of equivalents” and “variants”, leading to the loss of many marks. Marks can be easily gained in these areas if candidates are well versed with the recent Singapore case *Lee Tat Cheng v Maka* (or any other Singapore cases which advances the propositions). Candidates are reminded that Singapore case authorities are part of the examination syllabus as mentioned in the QE Administrative Instructions.

It was surprising to see that most candidates had difficulty identifying and advising on procedural/prosecution options in Question 4(a). Only very few candidates managed to identify that it was not possible to proceed with Supplementary Examination S29(1)(d) even though the 54-month deadline has not expired in view of the search report that has issued. None of the candidates were able to correctly list down the (two) options that are available to Andrew considering his needs.

It was also surprising to see that most candidates failed to address the “Improved Kits” in Question 5(d) (despite the question stating “all of Sarah’s inventions”) and not being able to identify PCT Articles/Rules and timelines, leading to the loss of many marks.

Some candidates recited the relevant provisions without clearly setting out their reasoning, opinion/conclusions on the issues identified, leading to the loss of marks. A small number of candidates cite entire sections or rules. Candidates are reminded to be mindful of citing entire sections or rules without applying them to the facts given.

Some candidates showed lack of proper time management, leading to marks not being picked up in the process.

Overall, being prepared in just a few areas/topics alone without a good understanding of the remaining core patent concepts and practice and Singapore case authorities is not enough to pass the paper. Candidates who failed showed significant weaknesses in two to three of the questions. Candidates are encouraged to attempt Paper D only after serious preparations have been made.

Most candidates did well on Questions 1 - 3. It could be that most candidates ran out of time with Questions 4 and 5.

Question 4 is particularly badly done overall. This is alarming as the question relates to daily routine prosecution matters – which reflects candidates’ general lack of knowledge / exposure / practice on such routine matters. Only a few candidates identified the fact that an examination report needs to be requested (s29(3)) after issuance of the search report under s29(1)(a), otherwise the application is treated as abandoned. Such oversight can have serious adverse consequences for a client’s application. It is also somewhat surprising that most candidates failed to identify the correct provision for disregarding inventor’s own disclosure.

As always, performance was also generally poor on the question related to PCT provisions. The reason why a non-editable copy of the SPA/SPR is provided to candidates during the examination is to prevent the candidate from simply copying and pasting entire sections of the SPA/SPR into the exam script – this indicates to the Examiner that the candidate does not actually know which section is the relevant one, which should be answer, and therefore the candidate includes the entire section. This does not help at all in getting more marks; to the contrary, if the issue and related provision is not clearly identified within the context of the answer, the mark will unlikely be allocated, as it indicates to the Examiner the candidate does not know the relevant section, and therefore does not deserve a mark.

Also, most candidates went on to analyse whether the pillow in Question 2d) infringes or not when they are told specifically in the question paper that they do not need to analyse that. Time was wasted on such unnecessary analysis when it could have been used elsewhere to gain a few more marks. Similarly, in Question 4, when it is clearly stated in the question the client wants to avoid going through substantive examination, many candidates provided client with the option of

requesting examination based on the search report containing only Category A documents. The point here is to read the question carefully, and see what is required, what is not.

It appears that candidates that scored poorly either did not understand the questions or were not at all familiar with the legal/procedural requirements or case authorities.

It is important to read the questions carefully and to note the specific dates indicated and/or the requirements stipulated by the client in the questions. Such dates and requirements provide good indications as to what the Examiners are looking for in the answers.

Candidates should keep themselves updated with the local case authorities as well as the updates in Singapore patent law. The candidates should also familiarise themselves with the PCT regulations.

Better preparations for the paper are necessary.

Most candidates are generally able to broadly identify issues and legislation related to infringement, inventorship, entitlement, search and examination options, PCT procedures and security clearance topics, but not many are able to provide more in-depth and comprehensive answers.

Few candidates were familiar with the aspects of claim construction, Singapore case law and the Patents (Amendment) Act 2017 that were being tested in this paper.

Many candidates performed poorly for this paper.

Candidates should acquire more in-depth understanding of the SPA and PCT rules. Incorrect PCT rules were cited for the appointment of agents and many indicated the need for PF1 for securing of filing date. A number of candidates incorrectly applied SPA Section 49(1)(b) to Question 3. In particular, majority fared poorly for Question 4, which showed that they were unaware of the correct procedure to switch from local examination to supplementary examination.

Overall, the performance of the candidates this year was vastly inferior as compared to those in the previous years. Candidates should be briefed to manage their time properly.

Several candidates were ill-prepared, especially on the questions pertaining to PCT. Candidates were also losing points for not reading the questions carefully.