

Examiners' Comment on Overall Performance of Candidates in QE2019 Paper D

Overall this seems like a passable paper

Unlike previous years, time management seems to be under control.

Paper D has been said to be the easiest paper to pass because it is most dependent on preparation. Where candidates were prepared, it was clear. When candidates were completely unprepared, it was more than clear. One cannot hope to pass without (a) preparation; or (b) in the absence of preparation. Excellent overall experience from practical training.

Where one is not prepared, the tendency is to ignore the question and go off topic, which scores nothing. This could be observed in the marking. Points are allocated only for answering the question.

Candidates are advised to study past question papers and their answers (available online) to study how points are allocated, and the important relationship between question and answer. Clients pay good money for answers to their questions, not for off-topic explorations.

As always, questions related to PCT and Paris Convention provisions are answered poorly.

Candidates also need to be more specific when it comes to citing the relevant provisions. For example, if you are citing a Section of the SG Patents Act which has many subsections, or the subsections have further sub-subsections, simply quoting the Section itself is not sufficient. We cannot determine whether you actually know which of the sub-subsection is the relevant one, and as a result you would not get a mark for it.

Candidates who pass are systematic in their answers – they identify the issue, cite the relevant section (or subsections), then state the facts of the case and apply the law to the facts of the case and make a conclusion on that basis.

Most candidates are clearly underprepared. Many do not manage their time properly and may have spent more time on some questions than others. Candidates must remember that each question is allocated with only 20 marks (or at most 21 with bonus mark). To do better, each question should be attempted.

The general outcome closely follows previous years' trends, i.e. low to average scores with a small number of candidates hovering around (just below) the passing mark. In my experience over the years, the candidates tend to do better on the "bread and butter" topics relating to filing, search and examination procedure, as well as infringement. Most candidates struggled badly on Question 5. The question cannot be said to be "bread and butter" since it presents rarely encountered filing strategy problems and issues. That said, a qualified patent agent should be able to offer creative solutions, such as filing at IB, WIPO to beat the deadline. Probably time pressure had a part to play, being the last question.

It appears that candidates who scored poorly either did not understand the questions or did not read the questions carefully to understand what was required of them.

The candidates should also familiarise themselves with the PCT Regulations.

Better time management and preparation for the Paper appears to be necessary.

Candidates who were better prepared were able to pass. However, the passes were borderline. There are several candidates who were clearly unprepared. They made mistakes like regurgitating the Act without application of the sections to the facts of the questions. Several candidates were not up to date with case laws, and surprisingly, either lack understanding or were unaware of the removal of supplementary examination route, which was a key milestone in our law. Candidates are reminded to look at past year questions and papers to know what is required and how to present their answers in a succinct manner.

As with previous batches of candidates, the competencies of the candidates this year were greatly varied. Well-prepared candidates were able to identify the issues that the questions were testing and provided answers that were well supported by the relevant sections of the SPA and Rules.

Candidate performed fairly well in Q2 and Q4. For the remaining questions, candidate would have performed better if the following issues were identified:

Q1 - law changes effective 1 Jan 2020, omnibus claims are not permitted;

Q3 - timeline for voluntary amendment, discretionary factors for post-grant amendments;

Q5 - protection strategy, selection of IB as RO for the PCT application, filing language can be in Chinese.

Several candidates were ill-prepared, especially on important questions relating to PCT. This is persistent problem through the years. Points were also lost when candidates didn't read the questions carefully.

The overall performance of the candidates is below expectations, with only 1 (out of 10) candidate passing the paper. It was a borderline pass.

Candidates generally scored the highest marks for Question 2.

It appeared that more than half (6 out of 10) of the candidates did not prepare well for the paper with a score of low 30s and below, which may have led to the poor performance of the remaining Questions 1, 3, 4 and 5.

Candidates were better prepared in areas relating to infringement; all candidates (10 out of 10) managed to pass or get a near pass for Question 2.

One candidate did not attempt Question 1 but scored one of the highest marks for Question 2 and Question 3. Similar observations of scoring well in one or two of the questions but very poorly for the remaining questions were noted for candidates with poorer scores. This appears to indicate that such candidates did "selective preparation", spotting topics to focus on during preparations.

It was surprising to see that many candidates had difficulty identifying and advising on procedural/prosecution options in Singapore (e.g. supplementary examination, pre-grant and post-grant amendments, missing parts/incorporation by reference, late declaration of priority) and procedures in the PCT relating to international search and international preliminary examination. Many candidates also failed to advise client on a sound patent prosecution strategy in view of the client's needs and concerns in Question 5.

It appeared that candidates did not prepare well in the area of PCT and the interplay between general patent prosecution in Singapore and PCT. Many candidates were also not well-versed in priority concepts covered under the Paris Convention. Candidates are reminded that PCT and Paris Convention are part of the examination syllabus as mentioned in the Examination Administrative Instructions.

Some candidates recited the relevant provisions without clearly setting out their reasoning, opinion/conclusions on the issues identified, leading to the loss of marks. It was encouraging to see that most candidates this year did not simply cite entire sections or rules without applying them to the facts given (as compared to the previous year).

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 under Singapore patent law, PCT, Paris Convention, Singapore case authorities, is NOT enough to pass the paper, and such candidates would unlikely be fit to advise the public. Candidates who failed showed significant weaknesses in two to three of the questions. Candidates are encouraged to attempt Paper D after serious preparations have been made.