

## Examiner's Comments 1 December 2016

### A2 – 2016

Although noted in the past, it is very important that candidates answer the question asked, rather than regurgitate unrelated information. Some candidates were keen to set out the full patent opposition process despite this not being requested in this paper. Full marks for some of the questions in this paper could have been gained by setting out the relevant sections of the Act/Regulations, stressing the importance of understanding the Act and Regulations comprehensively.

#### Q1

This was a straightforward procedural question where a good knowledge of Regulations 161, 159, 154 and 156-158 were all that was required. Most candidates did not appreciate that Regulation 161 provides broad provisions for extensions of time in 'proceedings' under the 2013 Act.

#### Q2

This was a more detailed practical question but was also relatively straightforward. The drawings provided were intentionally simple, but nonetheless of poor quality. There were many inconsistencies both within each set of drawings and between the hand and CAD drawings, and a practical identification of these was required, together with sensible suggestions as to how to improve them. Most candidates did not comment on the possible public disclosure in France and so missed relatively easy marks.

#### Q3

A logical analysis of the facts of this question led to quite a simple answer based on an understanding of the poisonous divisionals issue under the 2013 Act and sections 8 (prior art base) and 59 (priority date of claim). The later claim to the generic metal was anticipated by application 1 which disclosed aluminium. The claim to steel was probably ok, bearing in mind that obviousness was not relevant.

#### Q4

- a) The 3 step test of Mond Nickel was generally well known, but no candidates mentioned Canon KK.
- b) Basic recitation of section 39 would have achieved full marks here although this was rarely done.
- c) A brief discussion of the stricter requirements of support under the 2013 Act was expected, with a brief summary of the leading (mainly UK) case law and the requirement for an enabling disclosure.
- d) Defined as per EMI v Lissen and section 39(1)(c).
- e) NZ practice type issues including unity, lack of repetition, one claim not wholly within another, comprising vs including needed to be identified here.

## **Q5**

Similar to question 5 in 2015, the answers to this question were not clear cut, and so a discussion of whether each of the examples could be considered to be an article under s.2(1), were new and original under s.5(2), were functional or otherwise excluded was expected. A simple 'yes'/'no' answer therefore gained few marks. Many candidates did not understand industrial copyright protection in New Zealand.

## **Q6**

Most candidates adequately recited section 11 with some candidates gaining extra marks for a more detailed understanding of the scope of the provisions. There were no marks for a simple yes/no answer to parts b) or d) as some analysis was required. Few candidates could recall the AT&T questions, but these are in the IPONZ manual, and crucial in dealing with section 11 objections.

## **Q7**

Parts a) to c) of this question were generally well done. Marks were lost for part d) by not considering and discussing the pros and cons of the various options, and whether any changes might be covered by the first application in any case.

## **Q8**

There are separate sections for patent restoration (sections 111-124 and regs 110-114), and infringement of restored patents (section 124(2) and reg 115). Full marks could have been gained with a good understanding of these. Many candidates recalled the general idea of section 124(2) but could not recall the specific detail. Part c) required an understanding of sections 12 and 41 of the Designs Act and section 74 of the Copyright Act. Few candidates mentioned section 74.