

Examiner's comments 2018—Paper E

Most candidates clearly understood the law/process and knew how to construct a validity and infringement analysis. However, many are still robbing themselves of the opportunity for higher marks by failing to answer the 'easy' questions at the end of the paper, and by not dealing with all the dependent claims. Several candidates who failed appeared to know their stuff, but simply didn't answer enough of the paper to get a passing mark.

The main comments/issues regarding this year's paper are as follows:

- Most candidates are dispensing with a recitation of the law, or a discussion of the preliminary steps that would be undertaken in practice. This is a good trend, as you get few if any marks for this and it wastes valuable time.
- Another trend this year was the reliance by some candidates on the *Hickman v Andrews* case to essentially discount one or more of the prior art documents. *Hickman v Andrews* should not be relied on to dismiss a document without even analysing it (a dangerous approach, you would have to think, in an examination setting where marks are given for your reasoning almost more than your conclusions). Every prior art document should be addressed and discussed for novelty and inventive step, even if only briefly.
- Most candidates didn't deal well with the D3 document (the brochure). Many didn't even consider it for novelty (see point above), and few discussed whether it could be mosaiced with either of the other prior art documents.
- Many candidates got a bit muddled with how the key structural elements of the apparatus worked together, such as the collection receptacle, collector portion, and presenting means, and also the wind deflector and the fins. Consequently, some were not consistent in the construction they gave to these elements from claim to claim. If you've construed the 'wind deflector' as the vane 20 only, you can't then find claim 4 (which requires the wind deflector to have a pair of fins) to be infringed. It is certainly valid (and indeed encouraged) to present and discuss alternative construction options, but it has to be clear in your analysis that this is what you're doing.
- As is often the case, many candidates did not pick up the issues relating to specification requirements such as utility, lack of support, and clear/complete enough disclosure. While some of these are 'extra for experts' issues, candidates should always review consistory clauses against the claims, and check for compliance with object statements.
- Many candidates only looked at infringement/validity of claim 1. Although significant marks are allocated to claim 1, candidates missed many valuable marks by not dealing with all the dependent claims. A common characteristic of the passing papers was that the candidates had attempted every question, and commented on every claim, even if only briefly. No marks will be given for a claim chart that just has ticks and crosses for infringement/validity of dependent claims. Claim charts are fine as a summary, but must be backed up with analysis.
- Dependent claims must be considered in the alternative. No marks were given where a candidate concluded that a dependent claim was novel and inventive because the independent claim was, or a dependent claim wasn't infringed because the independent claim wasn't infringed.

- Most candidates had a better handle on mosaicing than in previous years, which is encouraging. It is important however to remember that mosaicing under New Zealand law does not work as it does in the US or Europe, and it is highly unlikely that a New Zealand court would accept a mosaic of three documents, as some candidates argued for.
- And to end with a Grinch-y grumble (or maybe a plea)—try if possible to make your paper easy to read and navigate for the examiner. Most candidates have a pretty good system for this, but if the examiner has to flip back and forward through your paper and try to decipher scribbled hieroglyphics on patent figures it's possible things might get missed.