

DRAFTING – PAPER P3
EXAMINERS' COMMENTS

Usually these comments mention how poorly was answered the question, generally speaking. This year is no exception. The principal reason for failure was that candidates did not get under the article before them and see the underlying invention, but rather claimed the article they saw. In addition the paper was too often treated as an academic exercise in which the candidate appeared to feel it necessary to show that he could draft all kinds of method claim as well as article claims. If the paper gave him pictures of a prior art device, then he (including she) felt he should use that drawing in the answer. Many answers did not betray an understanding of what kind of advantages the construction of the invention afforded the manufacturer as distinct from the user.

The Patent Attorney operates at the interface between technology, law and commerce, and the candidate who satisfies the Examiners that he is ready to be allowed to practise in his own name will demonstrate, in his answers to these finals questions, that he has the necessary nous in all three areas. Simple mechanical devices are accordingly used in the exams and good marks get awarded to those candidates who see the invention lying behind the device presented to them, perhaps because they readily perceive another way in which the invention can be realised. Thus for example, good marks were awarded to the candidate who in particular drew our attention to the possibility of a rotary device fulfilling the objectives of the invention. You could imagine even a Rubric Cube kind of dispenser!

Accordingly a very good main claim was one which claimed a housing and a hopper movcably co-opcrating with one another to contain a quantity of a material and when so moved to dispense a predetermined quantity of the contents.

In this way also, the possibility that a fluid or powder might be the content was covered, and one or two candidates did this, whether by accident or design being immaterial. A subsidiary claim could have called for a delivery antechamber, before we got into claims covering the particular device the client was concerned with.

Although quite a few candidates were careful that their main claim was not limited to the dispensing of a single item, this being retained for a subsidiary feature, upon reflection this was probably not so very important. Dispensing a single item allows the user to select exactly how many of the items to dispense on any one occasion.

Candidates who included biasing means in their main claim accordingly failed, except when they included two or more independent claims to the article, one to a dispenser having biasing means, another to the antechamber feature. Candidates should remember that the facility of including a plurality of independent article claims is available to them at the beginning of the patenting process. One candidate actually managed quite a good pass whilst not mentioning biasing means anywhere in his answer!

Notes to the Examiners almost never earn marks, particularly when they say things like "I have drafted a broad claim in order to draw a wide search". One candidate who did this submitted one of the narrower of the failed claims. Candidates might bear in mind that the Examiners are very experienced Patent Attorneys who need little guidance to perceive the kind answer which demonstrates a candidate fit to be let loose on the public in his/her own right. On the other hand with such experience comes age and deteriorating eyesight. Clear writing, on every other line, one new page for every new claim, helps us as well as permitting the candidate space to revise his answer. Nevertheless (or consequently) the P3 Examiners will not be seeing again an answer from the candidate whose lettering was, except for tall ones like "d" and "t", somewhat less than 2mm high!

As intimated above, quite a lot of candidates included claims to a method of dispensing. This might be justifiable where their article claim had managed to cover other than a hand-held or pocket device. Many candidates however did not find a way of trying a claim to making and assembling the dispenser. Claims to manufacturing in two parts, filling and "snapping" closed, were rewarded by the Examiners. Too often candidates did not appear to realise the considerable value and importance of being able to manufacture the dispenser from one raw material, with only two mouldings. The biasing means being integral with the hopper was an important clue to this, and it is quite realistic for an inventor to present a drawing such as was given here, and not to draw attention to this immense advantage.

Too many candidates included highly unnecessary limitations like "rectangular", "at one end", "hand-held" and "downwardly dependant", in their main claim.

Candidates should also not underestimate the importance of subsidiary claims. A less than ideal broad main claim can be, and in some cases was, complemented by well-drafted subsidiary claims to such an extent as to merit a pass. Conversely, borderline main claims were in some cases let down by poor subsidiary claims to such an extent that insufficient marks were gained to merit a pass."

Turning to the Preamble, by which the Examiners mean all the specification leading to but excluding the particular description, (and excluding the Abstract) many candidates saw fit to include a description referring to drawings of the prior art device. We would not have thought that a probably well known and very simple article would require this, and wiser candidates did not refer to such drawings. Note however that this was not a failing, rather an extent of passing or failing, matter. Some candidates rather inappropriately employed terms such as "crude" in their specification to describe the prior art device, and many misused the "two hands" problem.

The Examiners were looking for an argument, sustained throughout the preamble, which justified every aspect of the invention, in other words, the basis for every claim.