

THE JOINT EXAMINATION BOARD

EXAMINERS' COMMENTS

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This question was not generally well answered, for three main reasons. Firstly, very few candidates demonstrated that they had stood back from the apparatus to consider, in the light of the given prior art and what must be accepted as common general knowledge, what the invention might be. A lot of candidates claimed what they saw, in the drawings. Secondly, it is important to try to consider the nature of the industry in which it is hoped that the invention will find its use. This leads to the third reason. Many candidates produced answers which treated the question as an academic, bordering on esoteric, exercise. A suite of apparatus claims in hardware terms were vital to an answer to this question.

Within the realm of common general knowledge must surely come any crane, especially any crane on wheels and the breakdown truck (AA type) which hauls a broken down vehicle up a ramp and on to its back or which carries a little crane.

As to the nature of the industry, the manufacturers of vehicles such as lorries may, in cases such as this, build the lorry chassis and cab etc and buy in for assembly to the chassis lifting gear of the type described in this question. The lifting gear may be in various forms and be made to fit the vehicle chassis of different manufacturers. Ideally candidates' answers would have reflected "a lifting gear for a vehicle", and many did. The absence of this was not necessarily regarded as fatal however.

What the Examiners did regard as fatal was the absence of separate claims to a load, cargo or container, for every candidate should have appreciated that these could be made by manufacturers totally independent of the lorry builder. Most candidates did include such claims, though many directed their main "container" claim to roller means at the rear of the container rather than to "engaging means" such as a bale bar, at the front. Although about one candidate did claim a container in the terms "a container having a base and a bale bar ..." and one or two claimed a "cargo" or a "load". The rollers at the rear end of the load, incidentally, while not being at all a red herring, are not too practical in a context in which the loads are as likely as not to be lying in mud.

On the other hand, most candidates included "method" claims. The Examiners did not see much use for these and came to the conclusion that candidates had included them in order to demonstrate that they could write such claims and not from a realistic appraisal of their importance (bearing in mind that container claims were relatively more frequently absent). This is another reason why high marks were not awarded this year.

All that said, the Examiners were impressed with the variety of the main claims offered which were passable. One typical route to success was the functional main claim which called for:

"apparatus which in use engages the front end of a load, tips it and hauls it on to a vehicle in such a way that the load was always in contact either with first base or the vehicle."

However this main claim was only acceptable when followed by acceptable apparatus claims. An acceptable main apparatus claim was along the lines:

"Apparatus for hauling a load onto a vehicle comprising a substantially centrally mountable hook arm in which the hook will at rest lie forward of where the load will sit on the vehicle and arranged so that the hook arm can pivot over the rear of the vehicle to engage the front end of a load, tip it and pivot it over the rear of the vehicle ..."

Some candidates included the container in what was apparently their main claim. This was only acceptable – assuming the claim was not otherwise too narrow – when there were later claims to the vehicle or the apparatus and to the container alone.

A main claim which was too narrow was one in which was claimed a hook arm articulated to a base arm which in turn was articulated to the base. As pointed out at the beginning of these comments, candidates are expected to stand back from the disclosure to determine what the invention might be, for which cover is necessary. There is a variety of ways in which the hook might be got from behind the cab to over the rear of the vehicle, and they include a hook arm which is telescopically mounted to the base arm.

Another unacceptable main claim was one which called for a vehicle “not having struts to support the rear of the vehicle”. Negative claiming is a matter of last resort, and was not necessary, indeed positively disadvantageous in the present case.

One or two candidates suggested that two arms in parallel remained a possibility. This was mechanically unnecessary, and therefore uneconomic.

This brings us to the issue of dealing with the prior art in the preamble of the patent specification. The traditional skip vehicle is very much still in use, as candidates must have been well aware. It is accordingly inaccurate to state:

“Skip vehicles have been proposed ...”

as one or two candidates did. It is equally unnecessary and wrong to allege that traditional skip vehicles are dangerous. It should have occurred to candidates that there was probably a size limit to the traditional skip vehicle, and that the apparatus our client was seeking cover for was for handling larger containers. Certainly the prior art skip vehicle would be unsuitable for such large containers. In the circumstances of the present case denigration of the prior art is unnecessary. Your client might be trying to license his invention to a manufacturer of such a vehicle.

Many candidates sought to ensure that there was cover for marine and other use. This was less important than adequately broad cover for the apparatus.

The Examiners were unimpressed at the number of candidates who chose to use the word “system” to label the equipment. “System” is an ambiguous word and can refer to both apparatus and method. Its use in patent claims is generally sloppy and to be avoided.

There were also candidates who used words like “slide”, when “draw” would have been proper given that rollers might be included on the container base. It is also noted that some candidates said “drawn toward the vehicle”. In fact there could be circumstances in which it is the lorry being drawn to the container as it loads it over the back!

Some candidates submitted long notes to the Examiner. These are deemed not particularly persuasive given what the question asks for, even when the candidate states, for example;

“I would ask the client if the containers themselves are novel”

It was a fair inference from the question that the containers are indeed novel. Generally speaking this question requires draft claims and at least part of a patent specification. If the candidate thinks a matter should possibly be included, then he should include it.

Candidates are commended for having noted Examiners' earlier advice to write on every other line of the paper and to use one sheet of paper per claim. They may also care to note that the Examiners are relatively unconcerned whether they use the sub-headings "Field of the Invention" etc often found in patent specifications these days.