

Examiners' Report on Paper B/1990 (Electricity/Mechanics)

Few candidates proposed a broad generic claim designed to cover all the embodiments presented whilst still being arguably inventive against the state of the art cited as Document II. The Committee felt that a good solution on these lines was not possible and was prepared therefore to accept as fully satisfactory a proposal to present two or even three independent claims, provided that the candidate in his response showed an awareness of the consequences in respect of the unity requirements of Article 82 EPC and indicated what he would do in this respect.

A number of candidates restricted protection to one or the other of the two principal aspects - namely the use of a circulating magnetic field to promote and control flow of molten metal or the use of a particular channel geometry to mitigate pinch effect. Such candidates would, in real life, have validly obtained protection for an important aspect whilst losing all rights to the other aspect. The committee considered that such a response was, at best, passable. Such candidates should have proposed some action in respect of the other aspect. The instructions to candidates, in particular as regards the possibility of proposing a divisional application in such circumstances, were apparently disregarded by some candidates.

As in past years, the points scale for Paper B gave equal weight to the solution as such in terms of scope of protection and to the arguments presented in support of the solution claimed. Thus a questionable solution could be rescued by skilled argumentation and a potentially good solution could be largely spoiled by inadequate argumentation. As regards argumentation, it was noteworthy that the problem-solution approach, which could have been followed with advantage, did not occur to many candidates.

Some candidates seemed to believe that point by point refutation of all the objections put forward in the examiners' report was

called for. This is in fact not needed in respect of any objection which is not relevant to the candidate's proposed solution. Similarly, many candidates addressed detailed argumentation to the features of their appendant claims. Important however is to defend the independent claim(s) adequately: when this is done, it is usually neither necessary nor desirable to address elaborate argumentation to the appendant claims.

Amendments to the description, by way of acknowledging the cited prior art and adapting the text - in particular the statement of problem - for consistency with the revised claims, is necessary. Any descriptive passage which is no longer consistent with the revised claims may therefore need amendment. It is normally appropriate to indicate on the given text just what deletions, insertions or word changes are proposed, in preference to re-writing long passages in substitution for the given text.

All amendments are subject to Article 123(2) EPC. Some candidates broadened the main claim by generalising or even omitting some of the originally claimed features without taking into account that such amendments will be viewed by the EPO as inadmissible in view of Article 123(2) unless the applicant can show that the amendment concerned is supported by the application as filed.

FORM, for use by individual examiners, in PAPER B

Schedule of marks

Category	Maximum possible	Individual marks awarded	Where grades awarded are not identical	
			Revision of marks/grade (if any)	Remarks*
Claims	20			
Argument	20			
Description	8			
TOTAL	48			
CORRESPONDING GRADE				

Translation of marks into grades:

- 0 - 6 Grade 7
- 7 - 13 Grade 6
- 14 - 20 Grade 5
- 21 - 27 Grade 4
- 28 - 34 Grade 3
- 35 - 41 Grade 2
- 42 - 48 Grade 1

* to be filled in if both the following requirements are fulfilled:

- (a) the grades awarded by the two individual examiners before their discussion differ by two grades or more;
 - (b) the marks awarded by at least one of the two individual examiners have been changed during their discussion.
- If remarks are to be filled in, they should briefly explain why the examiner has changed his marks.