

CANADIAN PATENT AGENT QUALIFYING EXAMINATION

GUIDE TO WRITING THE PATENT AGENT EXAM

PAPER D – PATENT INFRINGEMENT

These guidelines describe in a general manner the contents and criteria for the Patent Agent Examination - Paper D. Specific content and rating is the responsibility of the Examining Board, based on their considered judgement.

The actual contents of the Examination may change without notice and may differ from the contents of this general guidance document.

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1.0 Introduction

Paper D (Infringement) of the Patent Agent Examination measures the basic competencies necessary for a patent agent to deal with the legal issues related to the infringement of claims in Canadian patents and basic skills for patent agency practice.

The examination is four (4) hours in length.

2.0 Examination Content

The examination consists of two (2) parts:

PART A consists of “long answer questions” and tests a candidate’s ability to provide reasoned analysis of claim infringement issues (legal, analytical, knowledge).

PART B consists of “short answer questions” and tests a candidate’s general patent practice-based knowledge necessary to practice as a patent agent.

2.1 PART A – Long Answer Questions

What is tested and rated:

IN PART A, candidates are rated on three categories of competencies:

- (1) Legal competencies that require the candidate to exhibit understanding of Canadian patent law, including case law, on the issue of infringement and more specifically on the various types of infringement, and grounds for defense, as well as the types of remedies available, for example: infringement by importation, inducement to infringe, infringement by repair, Gillette defense, injunctive relief, accounting of profits, limitation period, etc.;
- (2) Analytical competencies that require the candidate to (a) exhibit an understanding of the inventive subject matter, claim construction and claim scope and to identify analytical issues which need to be addressed, for example the effect of minor modifications on infringement, (b) exhibit an understanding of the invention claimed and why a feature must be considered essential, (c) explain and predict given the fact patterns how the specific infringement situation will be dealt with by law; and
- (3) Knowledge competencies that require candidates to recall and explain how specific sub-issues of infringement will be dealt with by law.

Contents of PART A

Part A contains questions relating to specific infringement issues or scenarios. Questions elicit responses that require demonstration of the above three competencies.

All questions will be framed around a single patent, but may be related to different products/processes, different designs, or different manufacturers/users.

Questions can be set in the context of an analysis of one or more issues provided to a client. The client may be the patentee/licensee or the manufacturer/user/importer. Scoring is based on the degree to which the candidate arrives at reasoned opinions and conclusions properly supported by applicable statutory or case law, provides suitable recommendations for further analysis as required (such as suggestions or options for design-around to avoid infringement) and discusses and provides strategic options. No points will be awarded for a dissertation on statutory or case law (Boilerplate) provided without any relation to a specific question.

INSTRUCTIONS TO CANDIDATES

You will be asked to prepare a response to each question/issue. Consider each question separately and independently of the other questions. Do not provide extraneous commentary if not directly relevant to the question. Statements regarding the pertinent law, analysis and argument are required to adequately address each issue. A separate treatise of the law applicable to infringement is not required and will not be scored. Case law should be cited only in support of an analytical reasoning, argument or position. Do not import your own technical knowledge into the response. Use only the technical data provided in the documentation provided.

Appendix A provides a list of examples of issues that may be tested.

Appendix A is **NOT** comprehensive.

2.2 PART B – Short Answer Questions

What is tested and rated:

For the short answer component, the examination tests knowledge-based issues that are not linked or associated with the long answer component. Consider each question separately and independently of the other questions. Candidates are rated on the correctness and clarity of the answer and appropriate statutory or case law citation, when appropriate to the answer.

3.0 Mark Distribution

PART A The long answer component represents 70-80% of the overall grade.

PART B The short answer component represents 20-30% of the overall grade.

4.0 Scoring

PART A

Candidates are awarded marks for:

- dealing correctly with key issue(s)
- dealing correctly with all other issues
- clarity of response/answers, and
- appropriate statutory or case law citation.

PART B

Candidates are rated on the correctness and clarity of the answer and appropriate statutory or case law citation, when appropriate to the answer.

5.0 Examination Rules

The link to access the examination will be sent to you via e-mail at the date and time specified in the Admission e-mail. Unless you specify an alternate e-mail address, the exam will be sent electronically to the e-mail address provided on your Class 3 Licence Agent Application Form.

It is your responsibility to ensure that your environment is adequate for testing (see below). The exam will be provided in both official languages. The exam will be administered in the official language as selected by you on the exam registration form.

You are responsible for managing your time accordingly when answering the questions. Any time missed due to late start will be deducted from the total examination time.

As this is an individual exam, you are strictly forbidden from consulting any other individuals. It is strongly recommended that you isolate yourself to complete your exam. **Your exam will be remotely proctored by a live proctor through the MonitorEDU exam platform (see below).**

The **only resources allowed** while completing the written exam are:

- the [Patent Act](#);
- the [Patent Rules](#); and
- a hardcopy dictionary (English, French, English/French).

You are NOT allowed to consult any other resource. A secure browser will prevent you from accessing other resources on your computer.

All information and data disclosed to you by the College of Patent Agents and Trademark Agents in this written examination shall be treated as confidential and shall not be disclosed or made known to any other person or entity. All written or recorded materials provided to you or prepared by you pursuant to this written examination are deemed the property of the College of Patent Agents and Trademark Agents of Canada.

Logistics

The 2021 Patent Agent Qualifying Examination will be electronically administered and remotely proctored by MonitorEDU/Paradigm Testing. Please review the following information to ensure that your computer systems meet the requirements. Additional detailed information regarding the protocol for logging in will be provided to exam candidates closer to the exam dates. Exam candidates will also be able to login prior to the exam and practise with a few previous exam questions to become familiar with the system.

To become familiar with the process please watch this video below:

<https://youtu.be/cInMjEaH1q0>

To test your equipment and to see frequently asked questions please visit:

<https://monitoredu.com/fag>

A few additional notes:

For your exam we recommend you use the internet browser Google Chrome for the best experience. If your computer does not already have this browser, you may download it here: <https://www.google.com/chrome/>

Please make sure you have disabled all popup blockers.

Chrome Mac

- 1) Click on the 3 Dots in the Upper-Right Hand Corner
- 2) Click on "Settings" on the dropdown menu
- 3) Click on "Privacy and security" on the left side menu
- 4) Click on "Site Settings" in the center menu
- 5) Click on "Pop-ups and redirects" in the center menu (May need to scroll)
- 6) Ensure the first radial button is selected "Sites can send pop-ups and redirects"
- 7) Click on "Add"
- 8) Copy this URL: <https://paradigmtesting.excelindia.com/> and paste it into the box

Chrome PC

- 1) Click on the 3 Dots in the Upper-Right Hand Corner
- 2) Click on "Settings" on the dropdown menu
- 3) Click on "Privacy and security" on the left side menu
- 4) Click on "Site Settings" in the center menu
- 5) Click on "Pop-ups and redirects" in the center menu (May need to scroll)
- 6) Ensure the first radial button is selected "Sites can send pop-ups and redirects"

If you are testing on a Mac computer, please have the most up to date OS operating system on your device. We require High Sierra 10.13 or higher for your exam.

If you have tested with them before please delete and reinstall the newest version of the secure browser:

<https://clients.paradigmtesting.com/remote-proctoring-files/>

Before connecting with your proctor please make sure the following programs are not running in the background on your computer.

- 1) Skype
 - 2) Microsoft Teams
 - 3) Slack
 - 4) GoToMeeting
 - 5) Zoom Meeting
 - 6) Cisco Webex
 - 7) Team Viewer
- 6.0

APPENDIX A

Examples of Legal, Analytical and Knowledge Issues

The following are examples of issues that may be tested.

Appendix A is NOT comprehensive.

ISSUE
Construction of Claims
Infringement
Patent in Force
Gillette Defense
Limitation period
Inducement to Infringe
Import and Export
Remedies
Parts and Repair
Prior User Rights (s.56)
Experimentation (s. 55.3)
Process for new product
Exceptions (s. 55.2)
File Wrapper Estoppel (s. 53.1)
Third Party Rights (s. 55.11)
Standard-Essential Patents (s. 52.1)
Modifying a Granted Patent (Reissue, Re-Examination, Disclaimer)