

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.

6.0 Logistics

The 2022 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.

Live Proctor Check-Ins: During the week of November 14-18, 2022, candidates will be able to connect with a live proctor to test their login and systems. The practice

exams questions (from the 2021 exams) will be available in the platform during this check-in so that candidates can also test the response functionality. The intent of these sessions is to confirm your set up and familiarize yourself with the platform, navigation, responding to questions etc. It is NOT a full mock exam experience.

Use of Reference Materials: You may print, and pre-tab/pre-highlight the attached versions of the Patent Act and Patent Rules and have them with you as reference materials during the exams. Nothing can be written on these materials other than page numbers or section numbers in the table of contents or on the tabs themselves. They can be stapled or bound with spiral binding or metal rings. The proctor will check your materials before the exam begins. The Act and Rules will still be available in the Exam Aids section of the platform.

Incident Reports: MonitorEDU will now be using Google Meets to support their proctoring services (see instructions for downloading the applications below). This will now allow exam sessions to be recorded. The recordings will be saved with MonitorEDU for a finite period of time. Therefore, if something occurs during your exam that you think CPATA should be aware of (i.e. continuous disconnection, issues with accommodations, technical issues etc.), please send a request to schedule@monitoredu.com with your name, candidate number and the date of the exam when the incident occurred, to request that they share the exam recording with CPATA for further investigation. These requests must be submitted to MonitorEDU prior to the release of the examination results.

Multiple Monitors: You can only use one monitor but you can choose which monitor you use – so if you have a laptop and a 2nd screen, if you can make it work so that only your 2nd screen is on, then you can use that instead of the laptop screen. The key is that only 1 monitor is being used.

Snacks and Water: You may have a drink with you but it must be in a clear vessel (clear bottle, cup, glass etc.) with no labels (i.e. if you have a bottle with a label on it, you must remove the label). You may also have snacks with you but they must be in a clear ziplock style bag so that the proctor can see what is in the bag. Also, please tell the proctor at the beginning when you are checking in that you would like to have snacks during the exam so they are aware.

Blank paper or lined paper, pens/pencils/highlighters are permitted for notetaking during the exam. The electronic notepad will still be available in the Exam Aids section of the platform.

Printing of Background Exam Materials: All of the exam materials will be on the platform. However, to assist in decreasing anxiety related to viewing multiple materials at the same time (i.e. images, text etc.), the background materials will also be emailed to candidates approximately 15 minutes prior the start of each exam paper so that they can be printed out to have and use during the exam as well as have it on the screen in the platform. The responses will still be typed into the exam platform and no other reference materials will be permitted.

Email confirmation from MonitorEDU: You will receive an email confirmation from MonitorEDU about a week before the exams that will provide you with the protocol for the exam days and some system set up information.

Ear Plugs: If you wish to wear ear plugs during the exam, they will need to be new foam ones that are still in the package. Candidates must open them up in front of the proctor. Candidates must advise CPATA if they wish to use ear plugs prior to the start of the exam so that the proctors can be informed.

Jewelry: To support the integrity of the exam security, you will be asked to remove any jewelry before the exam (i.e. earrings, necklace, bracelet etc.).

Privacy Policies: MonitorEDU does have their privacy policies available in both English and French:

English: <https://monitoredu.com/privacy>

French: <https://monitoredu.com/privacy-fr>

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

<https://youtu.be/cInMjEaHlq0>

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

<https://monitoredu.com/faq>

A few additional notes:

You will need to have the Google Meets application pre-downloaded on your cell phone or tablet.

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://securebrowser.paradigmtesting.com/>

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

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)