CANADIAN PATENT AGENT QUALIFYING EXAMINATION

GUIDE TO WRITING THE PATENT AGENT EXAM

PAPER A – PATENT DRAFTING

These guidelines describe in a general manner the contents and criteria for the Patent Agent Examination - Paper A. 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

The purpose of Paper A (Patent Drafting) of the Patent Agent Examination is to measure the basic competencies necessary for a patent agent to draft a patent application for filing in Canada.

The examination will measure a candidate's ability to (1) understand a client's disclosure, (2) analyze prior art relevant to this invention, (3) identify the point(s) of invention of the client's disclosure, and (4) prepare a patent application that is based on and reflects the analysis and conclusions made in previous items (1) to (3) and is focused on a point of invention both disclosed by the client and patentable over the prior art.

2.0   Examination Content

The examination will always include Part A. The examination may include an additional Part B.

PART A will consist of a "long answer question" and will test a candidate's ability to identify an invention(s) and draft a patent application that is consistent therewith.

PART B, if included, will consist of a "short answer question" to further test a candidate's ability to identify an invention(s) and/or draft part of a patent application (for instance, an independent claim, and possibly dependent claims linked thereto), consistent with a point of invention identified by the candidate or provided to the candidate in the question.

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2.1   PART A

Part A will contain one question relating to specific invention-determination and patent application drafting issues or scenarios.

The question will be framed around a single general subject matter.

Candidates should not import their own knowledge of the subject matter.

Questions can be set in the context of a letter (typically with drawings) from a client to his/her patent agent, wherein the inventive device (or other) is described, with an indication of advantages resulting from the features that are considered important by the client.

A sampling of documents will also be provided. The documents will constitute applicable prior art, but can include non-citable documents, for example consisting of inventor-derived documents published during the one-year grace period.

The prior art is presented as having been uncovered in a search conducted on the basis of the client's disclosure provided in his/her letter. The intent is for the candidate to identify the broadest inventive feature of commercial value and to draft one independent claim, which covers the invention as broadly as possible. The goal is for the candidate to use this particular feature to validly distinguish over the prior art. The candidate should not use an obscure feature that may be inventive but does not appear to have much commercial value according to the client's letter.

Should the candidate's analysis reveal more than one point of invention that in the candidate's opinion is commercially useful and should not be made the subject of a dependent claim, the candidate is expected to identify each additional point of invention and to draft a distinct independent claim (or respective independent claims) thereon.

The exam question may also request that specific independent claims (e.g. one or more "device" claims, a method claim, a use claim, a kit claim, etc...) be drafted.

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In such a case, the candidate is expected to draft at least all the requested independent claims.

In drafting the dependent claims, the candidate is expected to choose relevant features defining the selected point(s) of invention in greater detail. The dependent claims must be relevant to the point of invention (and properly narrowed) to gradually define more narrow protection, in the event that the independent base claim is later on judged non patentable, for instance, in view of newly uncovered prior art.

The exam question may ask that the candidate restrict himself or herself to a specific number of dependent claims. If such is the case, the candidate should identify those features that he or she believes to be the most worthy of being claimed in dependent form and draft only the requested number of dependent claims, no more and no less.

The candidate is expected to draft a Background of the Invention section that will provide details on the prior art, including a short explanation of the prior art and "polite" shortcomings thereof. Then, a Summary of the Invention section should be drafted that will include an invention statement (for each point of invention identified), which represents a "layperson's summary of the invention". The reader should naturally flow from the Background to the Summary, with these sections guiding the reader to the invention claimed in the Claims.

A Detailed Description of the Invention section should be drafted. If the invention relates to an apparatus, this section should include a description of all relevant structures, the operation and functionality of each, how they are linked to one another and how the invention is used practically. If the invention relates to a method, the Description should include the relevant steps of the method, how they are linked to each other and how the invention is used practically. The Description must address with more details the point(s) of invention, including the subject matter recited in the dependent claims. Variants and optional features should be identified as such. The Description should make reference to the drawings where applicable (which is usually the case). The language should be clear and concise, with emphasis on the inventive concept.

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Full marks for the Description will not be awarded if the candidate merely copies the inventor's text and, historically, lower marks have been awarded for exclusively cutting and pasting portions from the examination itself.

The answer must include a short and appropriate Title, as well as a short and appropriate Abstract, unless instructed otherwise.

2.2   PART B

Part B, if included, will typically contain one question relating to a specific claim drafting issue or scenario.

The question will be framed around a single general subject matter.

The question will include a description of the invention. If no prior art is provided, the question will provide a description of the general point of invention. The expected type of independent claim (device/product, method, etc.) will be indicated.

If dependent claims are required, the candidate is expected to choose relevant features defining the identified point of invention in greater detail. The dependent claims must be relevant to the point of invention (and properly narrowed to define more limited protection), in the event that the independent base claim is later on judged non patentable, for instance, in view of newly uncovered prior art.

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3.0   Mark Distribution

PART A will represent 100% of overall grade unless **PART B** is included, in which case the cumulative total grade of both parts is 100% and the marks will be allocated proportionally to the relative time required to answer each part.

APPENDIX A provides a list of examples of competencies that can be tested. APPENDIX A is NOT comprehensive.

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APPENDIX A

Competencies to be tested

The competencies exemplified in the Table hereinbelow will be expected in the respective sections of the patent application drafted by the candidate as an answer to the Question of Part A. For instance, claim 1 will have to be broad but valid. Further independent claims (e.g. other "device" claims, method claim, use claim, kit claim, etc.) will have to be provided if requested. The dependent claims must limit the features of the independent claim and have proper antecedence in the claims to which they refer. In effect the structure of the claims should provide backup independent claims positions in the event prior art or lack of support rejections are encountered in prosecution. The "Description of the Preferred/Illustrative Embodiments" will include structure, operation and variants.

ISSUES	COMPETENCIES ADDRESSED (EXPECTED RESPONSES)
Consistency throughout the specification	Consistent use of terminology and reference numbers All parts of specification consistently directed to the same point(s) of invention Candidate must respect the different points of invention identified in the Question (where applicable)
Abstract - proper	As per Section 79 of the *Patent Rules*
Title - proper	Detailed and concise as per Sub-section 80(1)(a) of the *Patent Rules*
Field of the invention – proper	Proper identification of technical field to which the invention relates without being overly limiting
Background of the invention – proper and relevant in view of invention at hand	Proper description of prior art, e.g. which is relevant to the invention at hand, so that the "validity" of the invention statement in the "Summary of the Invention" can be evaluated Correct characterization of teachings of prior art references
Summary of the Invention – proper and appropriate	Candidate clearly (and succinctly) presents the commercially useful point(s) of invention from his/her analysis of the client's disclosure

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ISSUES	COMPETENCIES ADDRESSED (EXPECTED RESPONSES)
presentation and discussion of "invention statement(s)"	versus the prior art; (effectively a layperson's summary of the invention)
Description of the Drawings	Proper (brief, but useful) description of each figure
Description of the Preferred Embodiments (structure, operation, variants; overall clarity and organisation)	Proper as to structure, operation and variants of described invention Proper reference to the drawings Proper use of reference numerals Overall clarity and organisation
Drawings – proper numerals thereon	Idem
Independent claims – clarity, scope, support, types	Proper scope: broad but distinguished over prior art For each independent claim: - main inventive feature - clear and unambiguous wording - claims recite sufficient elements for proper operation - proper cooperation between claimed elements; - proper balance of structural and functional based claiming approaches (including not just claiming a desired result) - claimed subject matter properly supported in description - process or method claims must include specific steps and must be devoid of any unnecessary structural limitations - claim covers at least the variants described - proper use of words of approximation (substantially, approximately, generally, about, etc.) - claim logically organized - terminology in claim consistent with description - candidate has respected the minimum types of claims requested in the Question, if applicable
Dependent claims – provide	- relevant limitations of the independent claim to provide

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ISSUES	COMPETENCIES ADDRESSED (EXPECTED RESPONSES)
backup positions for the independent claim, narrow the independent claims with relevant features	appropriate narrowing protection with proper antecedence in claims to which they are appended - candidate has respected the number of dependent claims requested in Question, if applicable

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