

FD2¹ Drafting of Specifications: 1.5 day Course Description

Course summary

This intensive one-and-a-half-day course is designed to help prepare trainee patent attorneys for the Final Diploma (FD) Amendment of Specifications paper. The **Examination Guidance** describes FD2 as *“a test of competence to understand a simple technical problem and, primarily, to draft claims for a new patent application that clearly define the invention and give the maximum potential for protection in view of the disclosed information. While the technical problem will differ from paper to paper, candidates will always be expected to draft GB claims, both independent and dependent; and to draft a specification, either whole or in part, made up of an introduction, prior art review, object, statement(s) of invention, specific description and abstract”*. Candidates are expected to have underpinning knowledge of the relevant law (see **Annexe A**), built up from study at Foundation Certificate and beyond, and practical experience.

The emphasis of the course is practical and focused on the challenges the exam presents and the competencies that FD2 tests. There will be advice from the tutors on what is expected in exam answers and opportunities for participants to practise drafting claims and answering past questions, with individual feedback from the tutors with the objective that individuals’ drafting skills improve during the course.

Content

Each session contains a session title, session summary and set of learning outcomes. The learning outcomes of the sessions have been mapped to the tested competencies set out in the **FD2 Syllabus**.

¹ Formerly the P3 paper.

Pre-course preparation

Summary

Annexe B provides guidance on preparing for the course and the later exam. Participants will be asked to read the FD2 syllabus, the examination guidance, instructions to past papers, some recommended papers/books and answer (and send in) a specified past paper set by the tutors. They will need to also revisit their Foundation Certificate and subsequent knowledge of the relevant sections of the Patents Act and seek out relevant experience on drafting patent applications. The better prepared participants are, the more they – and the group - will get out of this intensive course.

Expected learning outcomes

At the completion of your pre-course preparation, participants be able to:

- describe the scope of the FD2 syllabus and the knowledge and competencies required;
- understand the format of the exam and its instructions;
- by answering the past paper set by the tutors, have a good understanding of the challenges posed by the exam;
- as far as possible, have the level of practical experience set out on pages 1-2 of the Examination Guidance; and
- recall and describe the areas of law and practice that are tested in FD2.

Session 1: Overview of How to Approach FD2 and Starting to Draft a Claim

Session summary

In this session, the tutors provide, through a presentation, an overview of what are the key demands of FD2, the examiner's expectations and general techniques for answering the paper. Participants will be taught a structure for setting out a claim which assists in evaluating which claim features are essential to defining the inventive concept and drafting a novel claim. Additionally, the participants will be presented with two past drafting papers considered to be relatively simple to which participants are expected to draft an appropriate number of independent claims. The tutors will provide one-to-one advice to participants on their answers and challenges they face in answering the questions. The tutors will also provide advice to the group as common issues emerge during the practice. This approach will be followed throughout all the Drafting Practice sessions and is a key element of the interactive and intensive personal tutoring character of the course.

Expected learning outcomes

At the end of this session, participants will be able to:

- discuss what the examiner expects in a FD2 answer;
- recognise how best to read the question, mark up the paper, analyse the problem and prepare an answer;
- recognise how best to allocate time to different tasks;
- recognise the challenges in identifying and understanding the inventive concept/s described in the exam;
- start identifying, understanding and claiming the inventive concept/s;
- appreciate how to structure claims;
- recognise an appropriate style to use in answering the question and useful words to use; and

Sessions 2-5: Claim structure and Drafting Practice and Feedback on Claim Drafting

Session summary

In this session, a glossary is also introduced and the participants taken through the key points for drafting a patent description and abstract. The participants will be presented with a series of short and fuller length FD2 questions which require them to draft independent claims. The tutors will focus on the drafting of independent claims since it is the most difficult task in the exam and have selected a mix of questions, including a number of older short questions that are not available on the PEB website. As noted above, the tutors will provide one-to-one advice to participants on their answers and challenges they face in answering the questions. The tutors will also provide advice to the group as common issues emerge during the practice. During the one-to one sessions and in the group feedback the features and structure of dependent claims will be discussed together with techniques for drafting the description to properly support the claims.

Expected learning outcomes

At the end of this session, participants will be able to recognise and demonstrate, through their answers to past questions, improvements in their ability to read and analyse FD2 questions and draft claims, abstracts, letters and introductions that demonstrate the FD2 competencies of:

- seeing the overall picture;
- accurately interpreting technical information;
- assimilating and making use of data, information, themes and ideas;
- recognising inventive concepts;
- analysing an invention for essential and inessential features, and distinguishing features of an invention from those of the prior art;
- drafting specification and claims of reasonable scope, based on the information available;
- Identifying key issues and considering how best to present these in drafting;
- drafting in an accurate, clear and easy to understand language;
- drafting claims that are suitable for use as a priority basis in other jurisdictions and for successful prosecution in the UK;
- drafting in a way that reflects the client's needs and priorities, is based on reasonable analysis of information available and meets the requirements of relevant law and good practice;
- demonstrating a thorough knowledge and understanding of the relevant aspects of law and practice relating to patentability in the UK; and
- exploiting that knowledge in preparing draft specifications and claims.

Session 6: Work Through Pre-Course P3 1995 Paper and Feedback on Answers

Session summary

The tutors will take the participants through the 1995 Exam paper set as pre-course work in an interactive session designed to allow participants to apply what they have learnt in the previous sessions to an exam paper they are very familiar with. The tutors will also make systemic points on the answers participants submitted on the P3 paper.

Expected learning outcomes

At the end of this session, participants will be able to:

- apply the techniques taught and practiced in the earlier session to identify the inventive concept/s and develop a full set of claims directed to the inventive concept/s and fall-back positions;
- understand how to structure and draft a description that properly supports the claims; and
- identify, from the feedback on the 1995 paper, specific areas where they have strengths to build on and weaknesses to remedy.

Session 7: Summary, Evaluation and Final Preparations for the FD2 Exam

Session summary

In this closing session, the tutors will summarise key points of advice on how to tackle the FD2 exam and structure answers for maximum impact. Participants will be asked to complete evaluations on the content of the course, delivery and achievement of expected learning outcomes. The tutors will then advise on how participants can best make use of the remaining weeks before the exam to prepare - with guidance on further practice of past exam papers and on materials to read.

Expected learning outcomes

At the end of this session, participants will be able to:

- recall the key pieces of advice from the tutors on how to tackle FD2 and structure answers;
- plan their final stages of revision and practice for the exam; and
- identify areas where they need to do further reading and practice.

ANNEXE A: EXTRACTS FROM THE FD2 SYLLABUS²
SETTING OUT CONTENT THEMES AND RELEVANT LEGAL PROVISIONS

CONTENT THEMES	LEGAL PROVISIONS	
	Patents Act 1977	Patent Rules 2007
1. The law and practice relating to patentable inventions in the UK	PA1 – Patentable inventions PA2 – Novelty PA3 – Inventive step PA4 – Industrial application PA125 – Extent of invention	PR5
2. The needs of lay clients		
3. The requirements for claims of a patent specification suitable for filing in a UK patent application	PA 14 – Making of an application	PR 16
4. Requirements for a description within a patent specification suitable for filing in a UK patent application	PA14 – Making of an application	PR12
5. The requirements for an abstract of a patent specification suitable for filing in a UK patent application	PA14 – Making of an application	PR15

² You should read the full syllabus (http://www.cipa.org.uk/download/FD22015_Final.pdf) to understand the Learning Outcomes you will have to demonstrate in the examination to show that you have the required knowledge and skills.

ANNEXE B: HOW TO PREPARE FOR FD2 AND THE COURSE

A. General preparation for FD2

1. Read and familiarise yourself with the FD2 syllabus to understand:

- which areas of the law you are expected to know;
- what you will have to demonstrate in the exam to show that you have the required knowledge and skills; and
- what practical experience it is helpful for candidates to have.

The syllabus is available from the Patent Examination Board website.

2. Read and familiarise yourself with recent past FD2 (P3) exam papers, Examiner's Reports, Mark Scheme (for 2014 onwards) and Sample Pass Scripts, to understand the format and requirements of the exam.

- Exam papers from 2003 onwards, Examiner's Reports, the Mark Scheme and Sample Pass Scripts are available online from the Patent Examination Board website.
- Exam papers for 1991-2002 are available at <https://www.dropbox.com/sh/iv8w7cx9oqneqwh/AADNmghnxqdGZjPw3u-f6hOTa>

3. Seek out opportunities in your office to obtain the recommended practical experience set out on pages 1-2 of the Examination Guidance.

Discuss this with your training supervisor/line manager.

4. Build on your notes from Foundation Certificate to ensure you are up to date on the areas of law and practice that are set out in the FD2 syllabus and tested in the exam. It is recommended that you read.

- CIPA's *The Patents Training Manual*, chapters 11 and 12. Available from CIPA.
- CIPA's *How to Pass P3* (Iain Russell: latest edn.). Available from CIPA.
- CIPA's *Fundamentals of Patent Drafting* (Paul Cole: 2006). Available from CIPA.
- *Brushing up Our Drafting* (E.W.E. Micklethwaite: *CIPA Journal* June and July 2003)
- *Drafting for the Examination Question P3* (Robert D. Weston: *CIPA Journal* November 2003)
- *CIPA Guide to the Patents Act* ('Black Book': latest edn., and supplement)
- *The Manual of Patent Practice* (latest edn.), pub. IPO
- (and listen to) to the lectures in the Informals area of the CIPA website on FD2 (P3).

B. Specific preparation for this course

5. Attempt the 1995 P3 past paper (Ejector Seat) and e-mail your answers to the tutor at least a week before the course³.

- This exam paper is available at <https://www.dropbox.com/sh/iv8w7cx9oqneqwh/AADNmghnxqdGZjPw3u-f6hOTa>

³ We will provide details of where to email/send your paper in a pre-course notification which we will email at least 4-6 weeks before the start of the course.

ANNEXE C: TRENDS IN OVERALL PASS RATES FOR P3

Figure 1, drawing on PEB data for all candidates, indicates that, since 2000, the pass rate for FD2 (P3) has fluctuated substantially year to year: from a low of 26% in 2000 to a high of 60% in 2009. **Figure 2** indicates that the linear trend for passing has been gradually upwards. The mean pass rate over the period 2000-14 was 37% as against 53% for FD1 (P2), 52% for FD3 (P4) and 43% for FD4 (P6).

Figure 1: Trends in Pass Rates for All Candidates in the P2, P3, P4 and P6 Papers 2000 to 2014

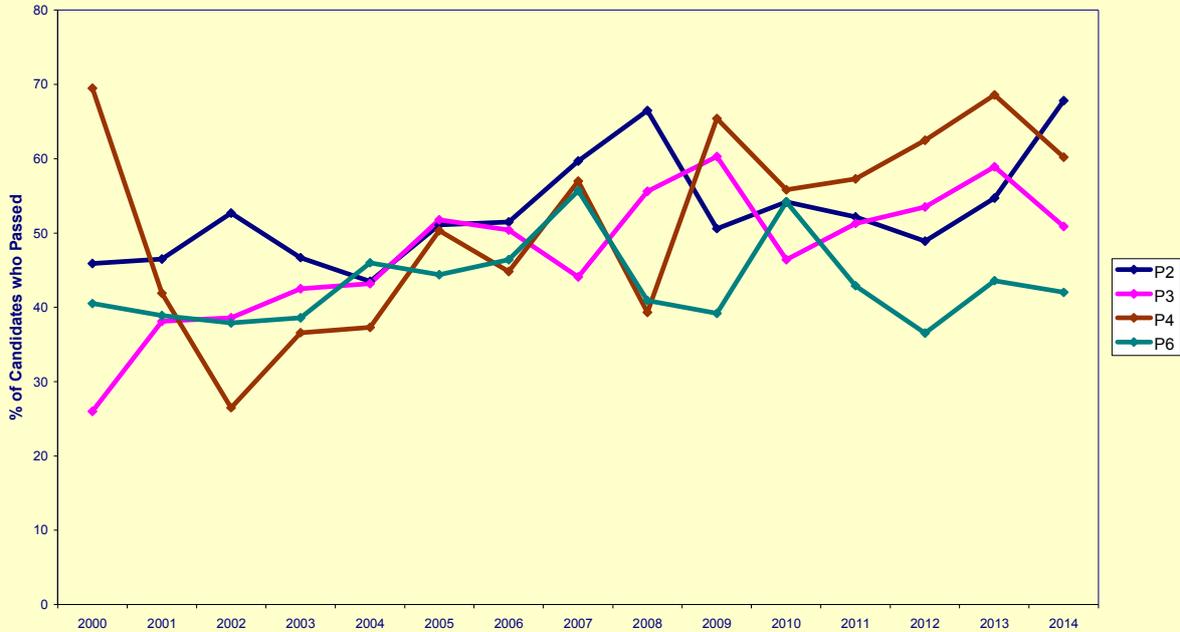
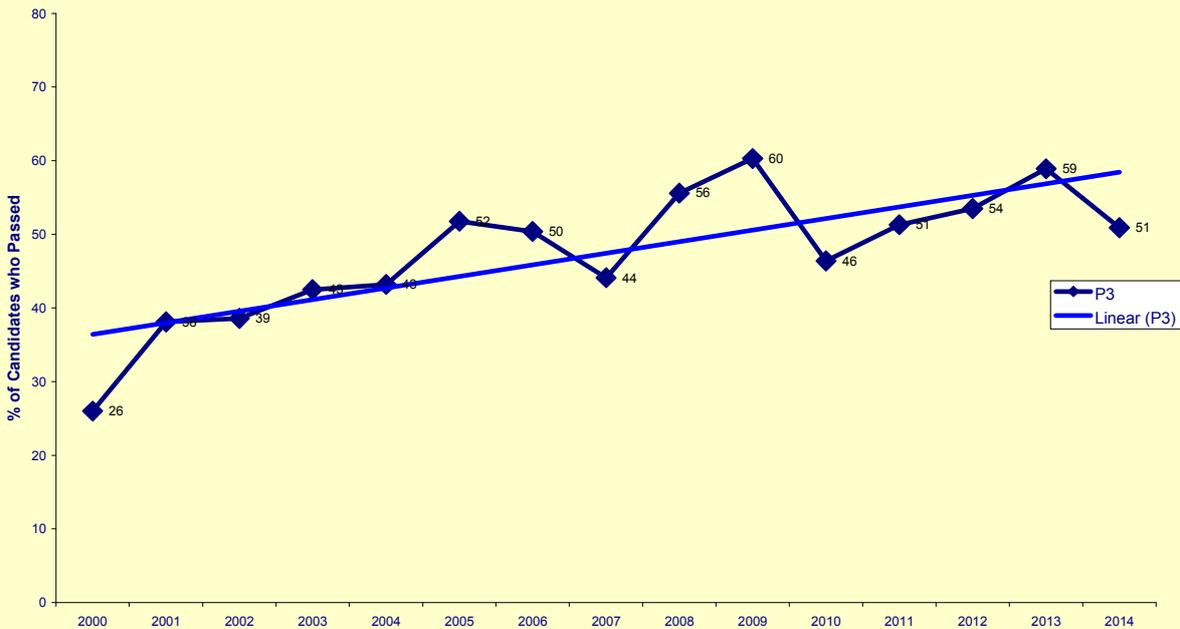
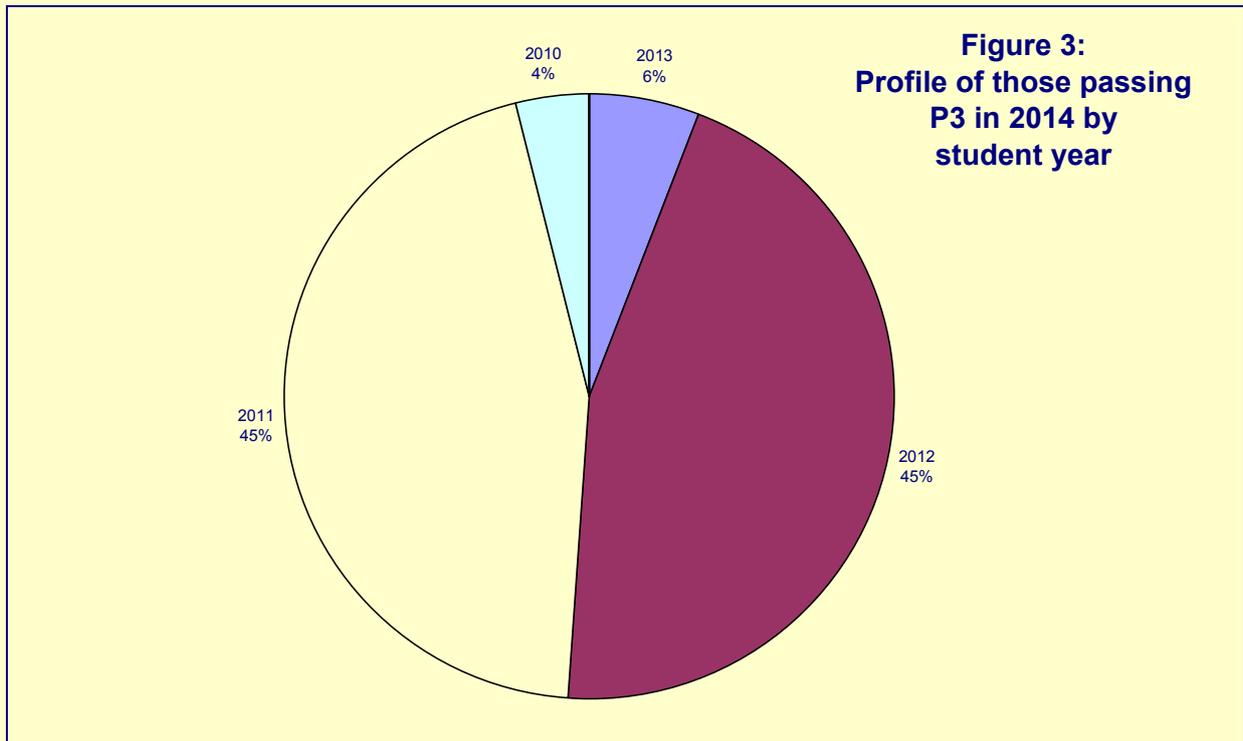


Figure 2: Trends in P3 Pass Rate for All Candidates: 2000-14

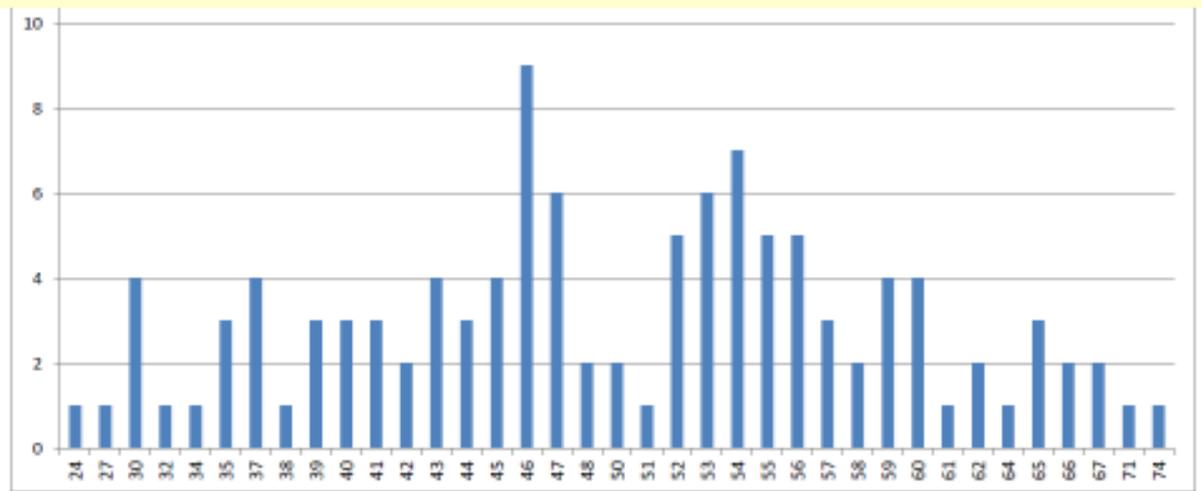


Our analysis (**Figure 3**) indicates that more than a half of those who passed P3 in 2014 had been students in the profession for under three years.



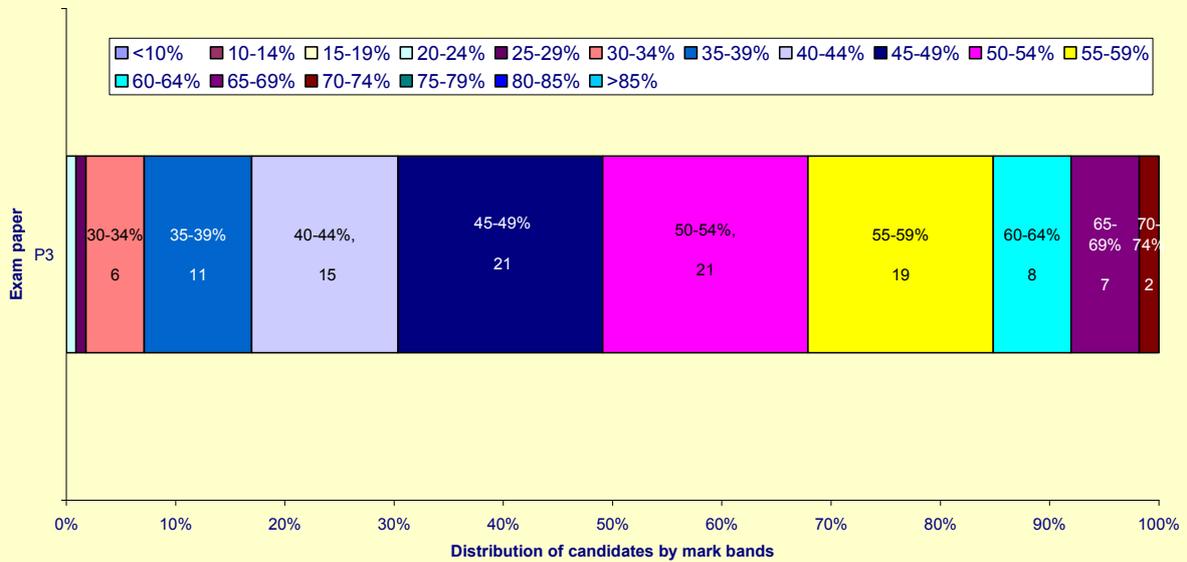
In 2014, the PEB published (**Figure 4**) the distribution of marks for all the candidates who took the P4 exam.

Figure 4: The mark distribution of P3 exam candidates in 2014



This is the first year PEB has published this information, so we do not whether this mark distribution is typical. But analysis of the marks indicates that, 42, or 38% of all candidates secured marks of between 45 and 54, with 21 candidates (19% of all) “narrow passes” securing marks of 50 to 54, and 21 (19%) ‘narrow fails’, with marks of 45 to 49 (see **Figure 5**).

**Figure 5: Distribution of Candidates' Marks
in 2014 P3 Exam**
(112 candidates)



This points to the importance of candidates ensuring that candidates maximise all possible marks available, as one or two marks can make the difference between a pass and a fail.