

FD3¹ Amendment of Specifications: Course Description

Course summary

This intensive one-and-a-half-day revision course is designed to help prepare trainee patent attorneys for the Final Diploma (FD) Amendment of Specifications paper. The **Examination Guidance** describes FD3 as “a test of the competence to respond to patentability objections by argument and amendment while ensuring that the patent claims remaining in an application (or proposed for a divisional application) not only meet the requirements for patentability (including e.g. clarity) and amendment but are still of commercial value to the applicant”. 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 FD3 tests. There will be advice from the tutors on what is expected in preparing amended claims, a supporting letter to UKIPO and memorandum to the client, as required in FD3. There are then opportunities for participants to practise and consider past papers, with feedback from the tutors.

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 **FD3 Syllabus**.

¹ Formerly the P4 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 FD3 syllabus, the examination guidance, instructions to past papers, some recommended papers/books and answer (and send in) the FD3 (P4) paper from the most recent exam. They will need to also revisit their 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 will be able to:

- describe the scope of the FD3 syllabus and the knowledge and competencies required;
- recall 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 2-3 of the Examination Guidance; and
- recall and describe the areas of law and practice that are tested in FD3.

Session 1: How to Approach FD3 – Exam Technique and Legal Issues

Session summary

In this session, the tutors provide, through a presentation, an overview of what are the key demands of FD3 and advice on how to tackle the paper. The presentation covers: what candidates are required to do; the allocation of marks to the claims, the response and the memo; what proportion of time should be allocated to different tasks; reading the paper; choice of amendment; response; the memorandum to client; and presentation. The tutors also discuss legal issues relevant to FD3: novelty; inventive step; added subject matter; and, procedural points.

Expected learning outcomes

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

- discuss what the examiner expects in a FD3 answer;
- recognise how best to read the question, analyse the problem and prepare an answer;
- recognise how best to allocate time to different tasks;
- appreciate how to choose the amendment;
- recognise an appropriate style to use in answering the question; and
- identify where they may have gaps in the legal knowledge required for FD3.

Session 2: Analysis of the 2015 FD3 (P4) Paper

Session summary

In this session, the tutors will provide systemic feedback on the answers to the 2015 FD3 (P4) exam which participants were asked to do as pre-course work. The tutors and group will analyse the challenges posed in the 2015 exam, where marks were distributed and the examiner's comments.

Expected learning outcomes

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

- identify areas where they can improve their analysis and response to a FD3 question;
- recognise how the tutors general advice, in Session 1, should be applied to an actual paper; and
- recognise what are the examiner's expectations.

Sessions 3-6: Practice and Analysis of the 2011, 2012, 2013 and 2014 FD3 (P4) Papers²

Session summary

In these sessions, the group will divide into two groups, with each tutor overseeing one of the groups as they practise and consider, in turn, the FD3 (P4) past papers of 2011, 2012, 2013 and 2014. The tutors will provide group and individual feedback on each paper with the purpose of reinforcing the learning and advice provided in Sessions 1 and 2 so that participants' improve their skills in preparing responses to UKIPO, revised claims and other amendments and the memo to the client.

Expected learning outcomes

At the end of these sessions, participants will be able to recognise and demonstrate, through their answers, improvements in their ability to read and analyse FD3 questions and prepare responses, revised claims and memoranda that reflect the FD3 competencies of:

- seeing the overall picture;
- assimilating and making use of data, information, themes and ideas;
- accurately interpreting patents and technical information. and recognising inventive concepts;
- analysing an invention for essential and inessential features, and distinguishing features of an invention from those of the prior art;
- proposing actions on the basis of the information that has been provided in the question only;
- Identifying key issues and considering how best to present these to the benefit of the client;
- writing in a logical, cohesive, clear, understandable and persuasive manner to advise and inform the recipient;
- providing outcomes that reflects the client's needs and priorities;
- presenting proposals that are based on analysis of evidence and risks, and are practicable and achievable;
- presenting outcomes that comply with relevant legislation and represent good practice with a good appreciation of commercial realities of the situation presented;

² At this stage, we expect that at least three of these will be the papers considered as the basis for sessions 3-6 in the 2015 course. We will inform you at least 4-6 six weeks before the course if the tutors would like you to look at a different (older) paper instead of one of these four papers.

- demonstrating a thorough knowledge and understanding of the relevant aspects of law and practice relating to the amendment of a UK patent application in response to patentability objections; and
- exploiting that knowledge in preparing amendments and preparing arguments in support of his/her case.

Session 7: Summary, Evaluation and Final Preparations for the FD3 Exam

Session summary

In this closing session, the tutors will summarise key points of advice on how to tackle the FD3 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 FD3 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 FD3 SYLLABUS³
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 law and practice relating to the amendment of UK patent applications during the search and examination procedure	PA 14 – Making an application PA 15 – Date of filing application PA 17 – Preliminary examination and search PA 18 – Substantive examination and grant or refusal of patent PA 19 – General power to amend PA 21 – Observations by third parties PA 76 – Amendments of applications and patents not to include added matter PA 117 – Correction of errors in patents and applications	PR105
4. The requirements for claims of a patent specification suitable for grant of a UK patent	PA 14 – Making an application PA 19 – General power to amend PA 76 – Amendments of applications and patents not to include added matter PA 117 – Correction of errors in patents and applications	PR12 PR105
5. Requirements for filing a response to the UK examination report		
6. Advise lay clients during the process of amending a UK patent application	See all sections of the Patents Acts above and PA5 – Priority date PA6 – Disclosure of matter etc., between earlier and later applications	

³ You should read the full syllabus 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 FD3 AND THE COURSE

A. General preparation for FD3

1. Read and familiarise yourself with the FD3 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

4. Familiarise yourself with recent past FD3 (P4) exam papers, to understand the format and requirements of the exam.

- Exam papers for 2003 onwards are available online from the Patent Examination Board website

3. Seek out opportunities in your office to obtain the recommended practical experience set out on pages 2-3 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 FD3 syllabus and tested in the exam. It is recommended that you read.

- CIPA's *The Patents Training Manual*, chapter 17. Available from CIPA.
- *CIPA Guide to the Patents Act* ('Black Book': latest edition, and supplement) Ed. Paul Cole
- *The Manual of Patent Practice (latest edb.)*, pub. IPO
- (and listen to) the lectures in the Informals area of the CIPA website on FD3 (P4).

B. Specific preparation for this course

5. Attempt the 2015 P4 past paper and e-mail your answers to the tutor at least 10-14 days before the course.

6. Read and come prepared to discuss at the course the P4 papers from 2014, 2013, 2012 and 2011⁴.

⁴ At this stage, we expect that at least three of these will be the papers considered as the basis for sessions 3-6 in the 2016 course. We will inform you at least 4-6 six weeks before the course if the tutors would like you to look at a different (older) paper instead of one of these four papers.

ANNEXE C: TRENDS IN OVERALL PASS RATES FOR P4

Figure 1, drawing on PEB data for all candidates, indicates that, since 2000, the pass rate for FD3 (P4) has fluctuated substantially year to year: from a low of 27% in 2005 to a high of 70% in 2000 (and 69% in 2013). **Figure 2** indicates that the linear trend for passing has been gradually upwards. The mean pass rate over the period 2000-14 was 52% as against 53% for FD1 (P2), 47% for FD2 (P3) 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

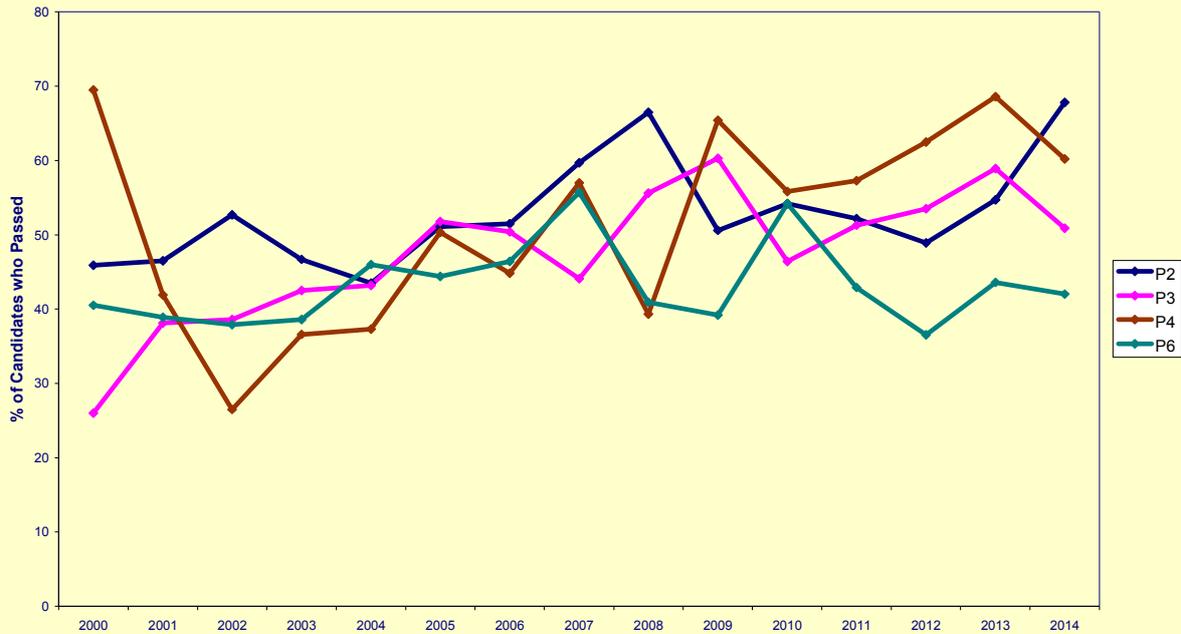
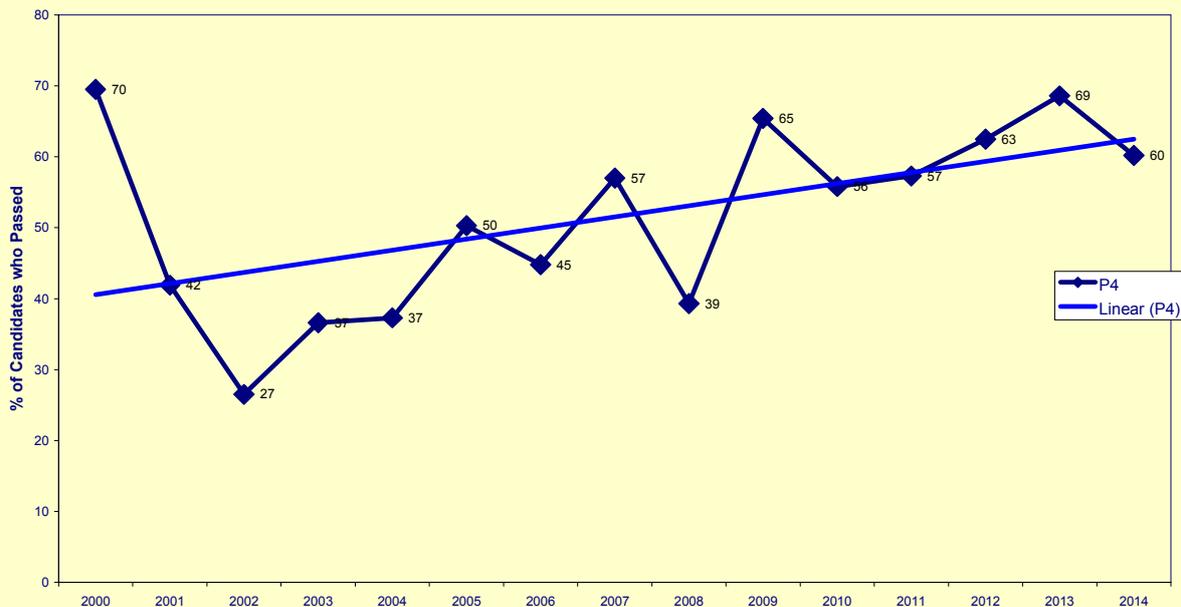
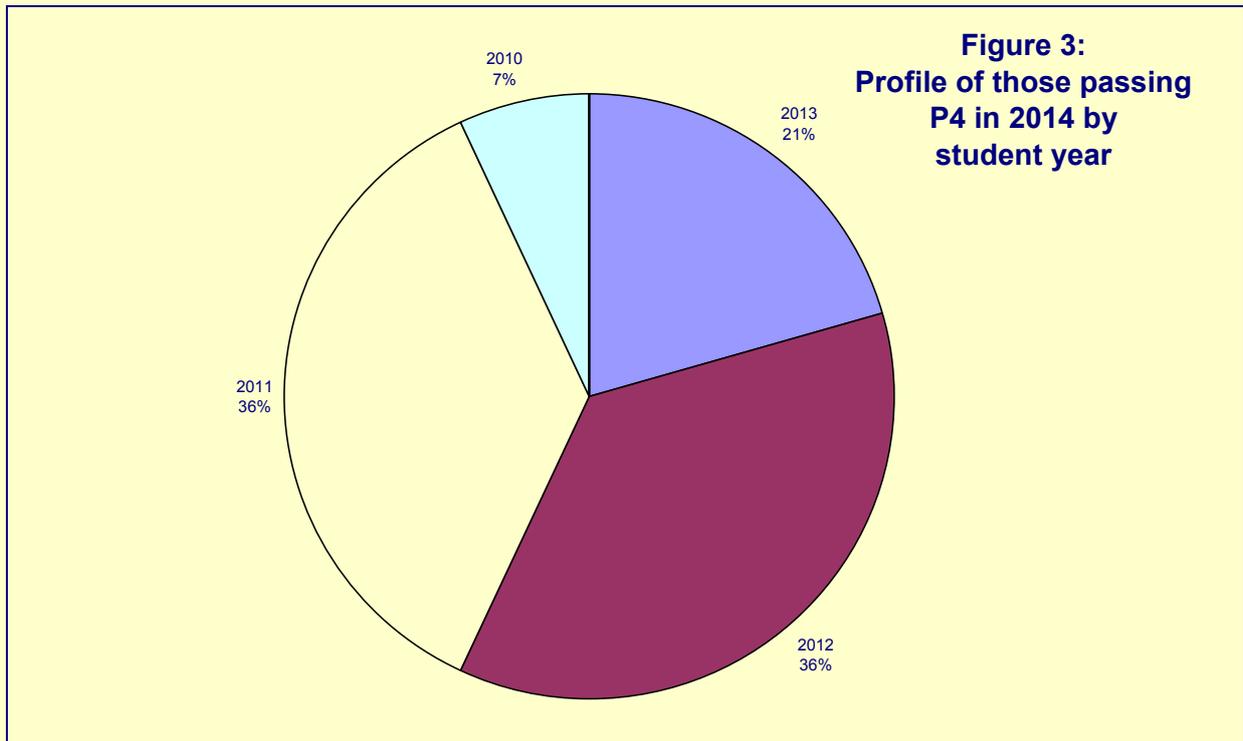


Figure 2: Trends in P4 Pass Rate for All Candidates: 2000-14

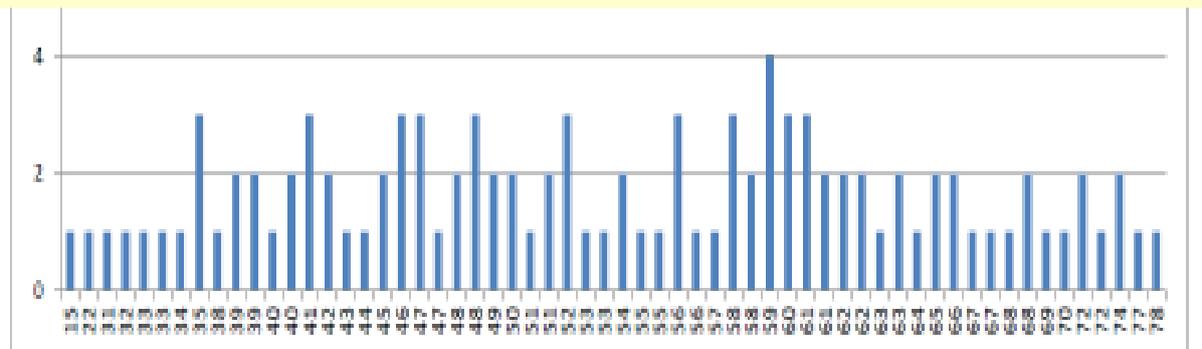


Our analysis (**Figure 3**) indicates that more than a half of those who passed P4 in 2014 had been students in the profession for under three years.



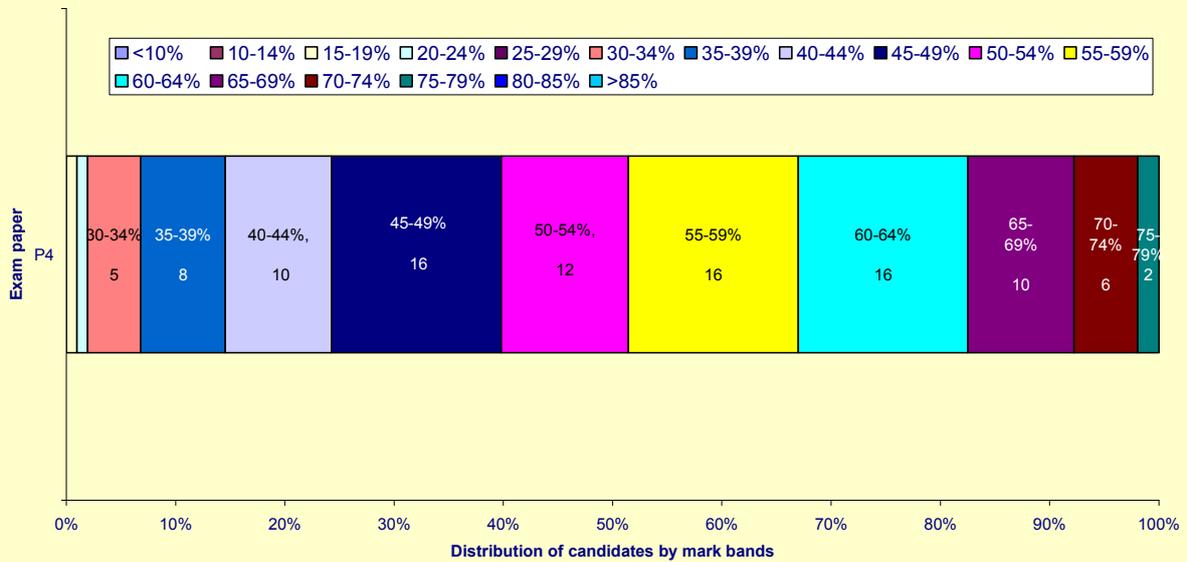
In 2014, the PEB published (**Figure 4**) the distribution of marks for all the candidates who took the P4 exam.

Figure 4: The mark distribution of P4 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, 28, or 27% of all candidates secured marks of between 45 and 54, with 12 candidates (12% of all) “narrow passes”, securing marks of 50 to 54, and 16 (15%) ‘narrow fails’, with marks of 45 to 49 (see **Figure 5**).

**Figure 5: Distribution of Candidates' Marks
in 2014 P4 Exam
(103 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.