

INFRINGEMENT & VALIDITY, FD4: 17/Q ON 29-30 JUNE 2017

Location:

Milton Keynes, 10am on 29th to 4.30pm on 30th

Tutor:

Philip Barnes (IP Asset Partnership): Phil has had experience as a P6/FD4 examiner and has presented FD4 courses for JDD since 2015.

Features of this course

In common with our other 1.8 day courses, the tutor will set out, through an initial presentation, guidance on how to approach the FD4 paper, where marks are won (and lost) and how to maximise your performance.

There will then follow, during the course, practice of a past paper and personalised feedback from the tutor.

This course differs from the other 1.8 day courses in that:

1. You will be asked ahead of the course to submit an answer to a specified recent past paper. Your answer will be marked by the tutor, with personalised feedback provided.
2. You will be asked to answer **two further** recent past papers – one during the course and one after – and, again, your answers will be marked and personalised feedback provided by the tutor.

This will enable you, and the tutor, to identify progress in your effectiveness in answering FD4 and help identify areas to concentrate on during the remaining weeks of practice ahead of the exam.

Obviously this high level of tutor interaction incurs additional costs and this is why the course fee is higher than for the other 1.8 day courses.

ANNEX A: PREPARING FOR FD4 AND THIS COURSE

A. General preparation for FD4

1. Read and familiarise yourself with the FD4 syllabus to understand:

- what knowledge and skills you need for the exam;
- what you will have to demonstrate in the exam to show that you have the required knowledge and skills; and
- the key sections of legal provisions relevant to FD4.

The syllabus is available from the Patent Examination Board (PEB) website.

2. Ensure you are up to date on the areas of law and practice that are set out in the FD4 syllabus and tested in the exam. The key reference books are:

- **CIPA Guide to the Patents Act** ('Black Book': latest edition, Ed. Paul Cole, and supplement), including the relevant cases.
- **Terrell on the Law of Patents** (latest edition).

3. Read (and listen to):

- ***Infringement & Validity: How to Pass FD4/ P6*** (Nigel Frankland: 2015). Available from CIPA.
- The FD4 (P6) lectures in the Informals area of the CIPA website.

4. As noted in the Examination Guidance issued until 2014 for P6

- Ensure you are familiar with **case law** relating to interpretation of claims by UK courts and assessment of novelty, obviousness and infringement.
- It is a good idea to study at least **three decisions**, to learn how the UK courts deal with interpretation.

5. Seek out opportunities to get relevant practical experience in two areas which will assist in the FD4 exam:

- i. Drafting and prosecution: to assist candidates in interpreting a claim and establishing the validity of the claim, as interpreted, against prior art as well as determining whether there is infringement of a valid claim.
- ii. Advising on "freedom to use" or in connection with infringement proceedings:
 - "Freedom to use" exercises assist in understanding the three-way situation of a patent, possible infringement and prior art which is tested in FD4. In drafting and prosecution training, candidates must learn to criticise the work done (e.g. claims drafted) and assess whether the work would withstand an attack on validity and be effective to deter a possible infringer. If a candidate can get experience of a real-life "freedom to use" situation it would be a useful exercise if the candidate is given the basic papers (e.g. from a previous

situation) and asked to prepare a report. This can be compared with the eventual advice given.

- Involvement in infringement proceedings, or in part of their preparation, will assist in appreciating that others will often take a different (at least initial) interpretation of a given claim. As suitable real-life infringement situations are not common, using a past example as an exercise is recommended.

B. Specific preparation for this course and the FD4 exam

The FD4 exam is a test of skill that can only be acquired by **practice**. This course will provide direction, focus and support for your preparations: with guidance on how to tackle a FD4 paper and how to structure answers, and feedback on your work. But merely coming on this course will not give you the necessary level of skill. You need to be prepared to set aside sufficient time before and after the course to practice and refine your technique.

FD4 is a difficult exam in which marks are clustered closely either side of the 50 mark pass hurdle. Gaining an extra 4 to 5 marks may mean the difference between a pass and a fail, so practice to improve your skills and give you resilience is key.

Ahead of the course:

- Read Nigel Frankland's ***Infringement & Validity: How to pass FD4/P6*** (2015).
- Attempt the past paper the tutor will specify and email your answer two weeks before the course so that it can be marked by the tutor. You will need to allocate a full day to this.

During the course

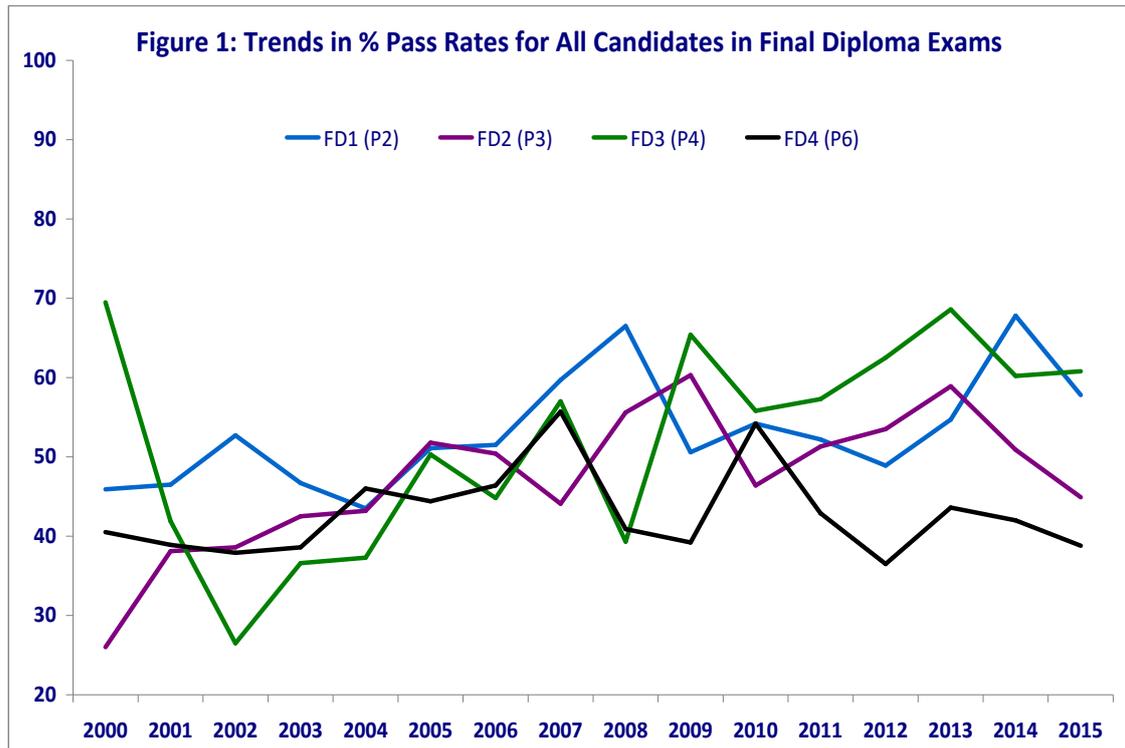
- You will be asked to answer a recent P6/FD4 paper specified by the tutor, which will be marked with feedback from the tutor, .

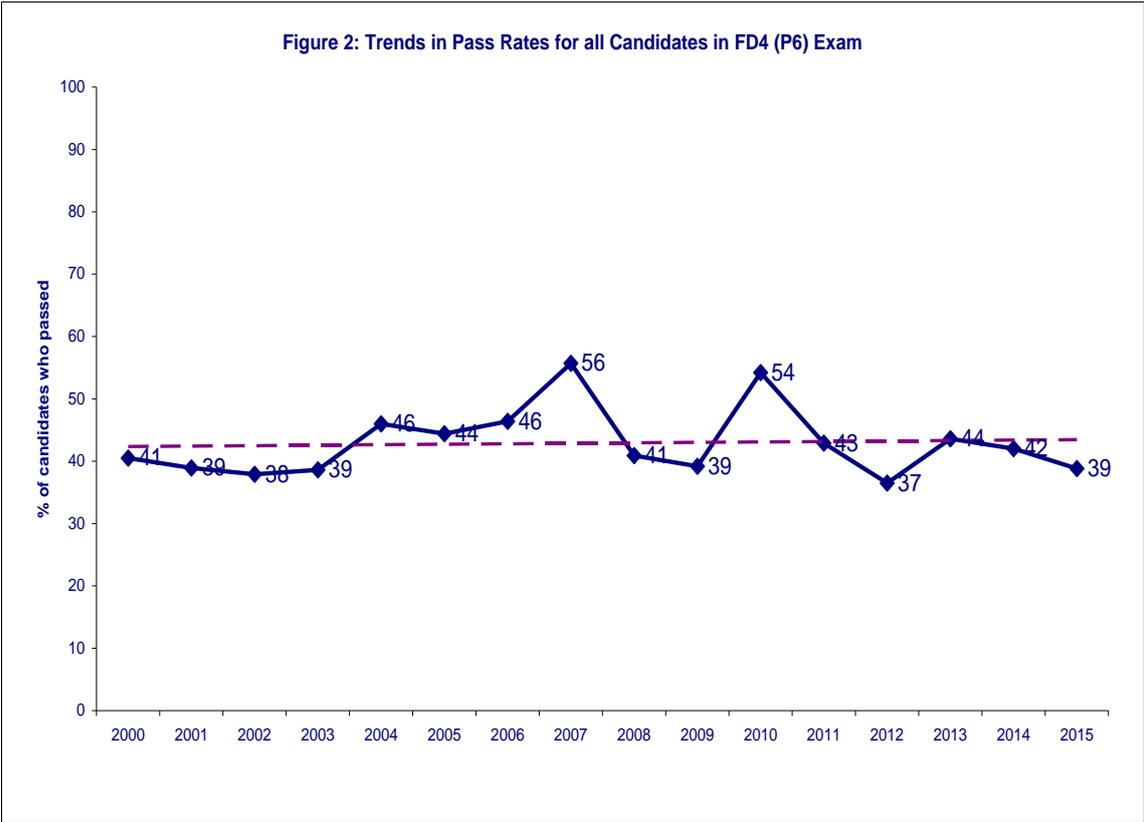
After the course:

- You will be asked to answer another recent P6/FD4 paper which the tutor will mark and provide personalised feedback.
- Thereafter, you should also aim to answer another two or more papers to reinforce what you have learned and hone, through practice, your skills.

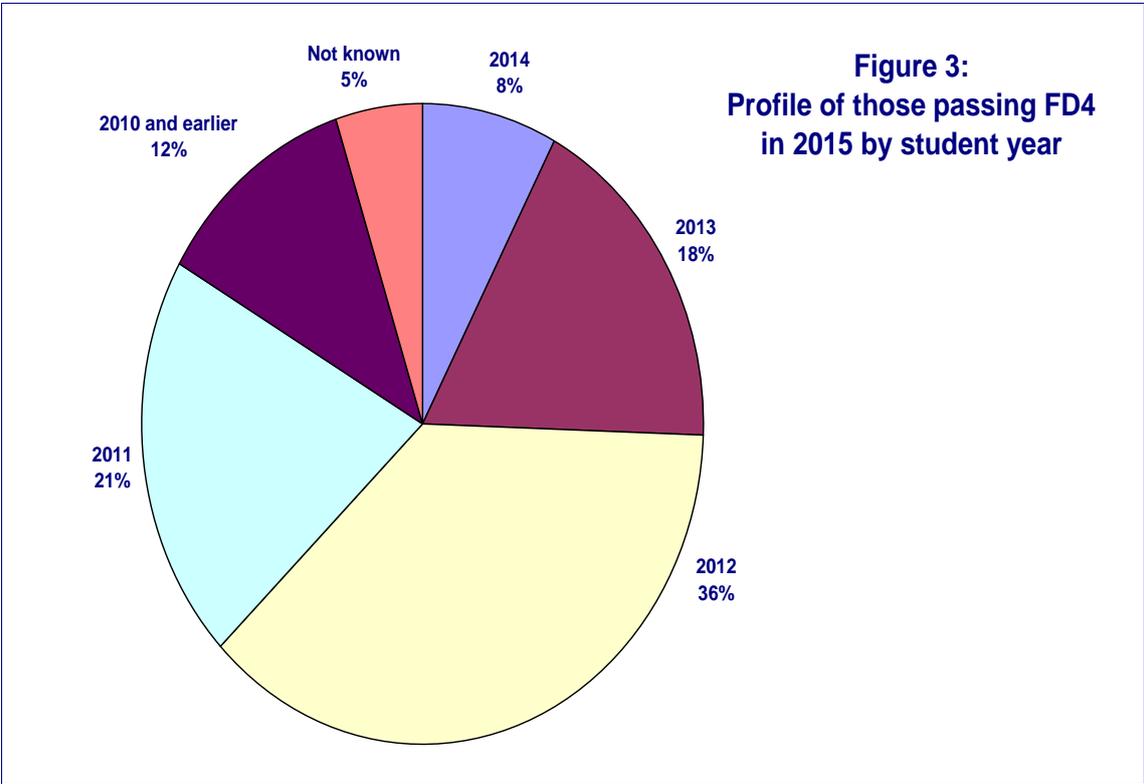
ANNEX B: TRENDS IN OVERALL PASS RATES FOR FD4 (P6)

Figure 1, drawing on PEB data for all candidates, indicates that FD4 (P6) has the lowest average pass rate of all the Final Diploma papers. Since 2000, the P6 rate has fluctuated between a high of 56% in 2007 to a low of 37% in 2012 (see **Figure 2**). The mean pass rate over the period 2000-14 has been 43% as against 47% for FD2 (P3), 52% for FD3 (P4) and 53% for FD1 (P2).





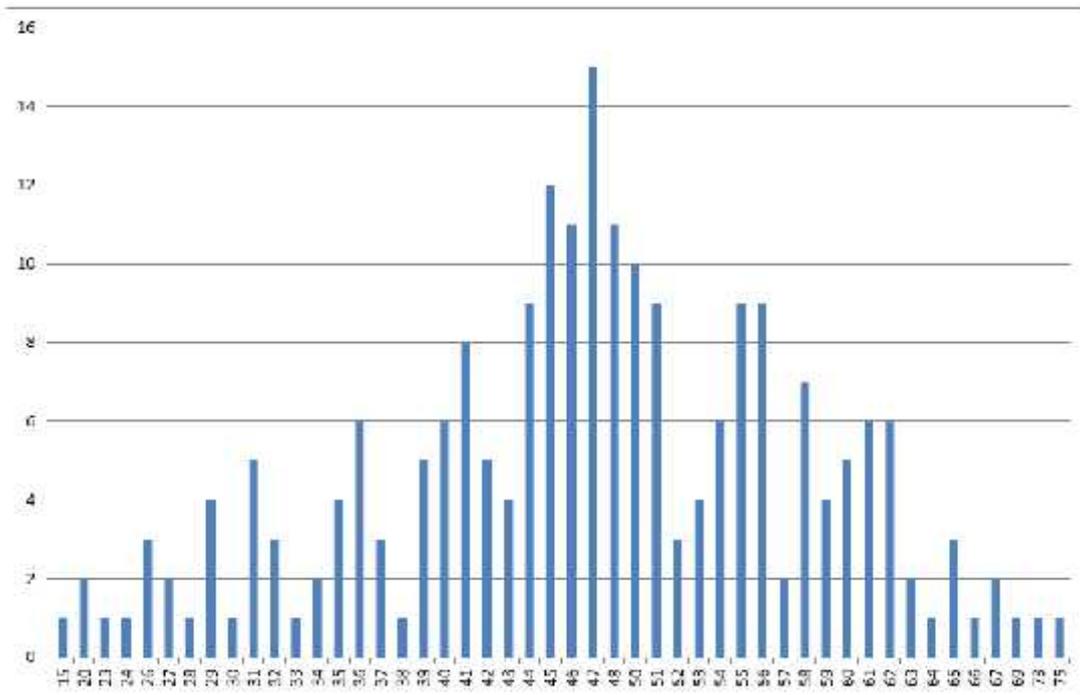
Our analysis (**Figure 3**) indicates that three-quarters of those who passed FD4 in 2015 had been in the profession for over two years and a third for four years or more.



In 2014, the PEB published (**Figure 4**) the distribution of marks for all the candidates who took the FD4 (P6) exam.

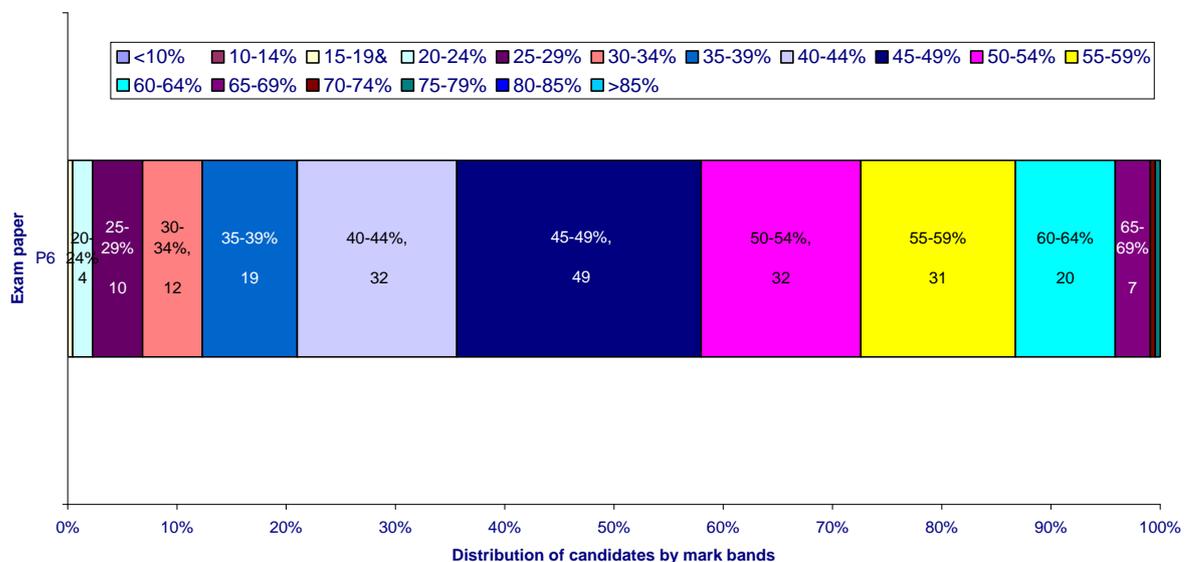
Figure 4: The mark distribution of P6 exam candidates in 2014

P6 Distribution of marks 2014



This was 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, 105, or nearly half of all candidates secured marks of between 39 and 51, while 49 candidates (22% of all) were “narrow fails”, with marks of between 45 and 49 (see **Figure 5**).

Figure 5: Distribution of Candidates' Marks in 2014 P6 Exam (219 candidates)



This points to the importance of candidates ensuring that they maximise all possible marks available, as one or two marks can make the difference between a pass and a fail. For example, the **2014 Examiner's Report** noted that two points were available for Sufficiency, but few candidates obtained these.

And the **2015 Examiner's Report** noted that it is important that candidates attempt all of the sections, "if they do not attempt all of the sections, or if they provide a cursory attempt on, say, inventive step, they are unlikely to meet the assessment criteria and pass the paper".

One candidate who was successful in the exam has provided this sound advice to future candidates:

"Practice is the only thing which will help you to pass the exam – read through Nigel Frankland's book to understand the exam technique, and then apply the same logic to real-world infringement cases that you might be working on. The exam is primarily a study in spotting the relevant features in the claims, and then comparing and contrasting with the infringing device, and everything will fall into place in your head much more quickly if you apply the exam-style to a case you are working on".