

CHAPTER 10 - WRITING YOUR ANSWER - EFFECTIVE DATES AND PRIOR ART

10.1 A separate paragraph about effective dates?

You can put the information about effective dates in a separate paragraph, or start each attack with addressing the effective date of the claim that is attacked. Both options are OK, as long as the information is somewhere in your answer.

The sections with the "Possible solution" in the Examiners' report in the Compendium generally contain a separate paragraph in which the effective dates of the claims are discussed, so that may be the preferred option. But if it somehow does not work for you, just make sure the effective dates of all claims are discussed somewhere in your answer.

No matter which approach you take, make sure your answer contains for each claim and for each alternative in a claim:

- what the effective date for that claim or alternative is, and
- whether the effective date is based on the filing date or on a priority date, and
- why this filing date or priority date is the basis for that effective date.

For example, you could write:

"The effective date of claim 3, in respect of the first claimed alternative (feature X), is ... (date, month, year), which is the filing date of Annex 1. This alternative of claim 3 was not disclosed in the priority application, as in the priority application claim 3 only contained the other alternative (feature Y) and paragraph 17 of the description of the patent as granted was not present in the priority application. Therefore, claim 3, in respect of the first claimed alternative is not entitled to the priority date."

It is important to explain why a claim is or is not entitled to priority to obtain full marks for this topic.

10.2 Formulation: effective date of claim

The analysis of the effective dates of the claims generally boils down to an analysis of the validity of the priority claim(s). For each claim, you have to explain why the priority is or is not valid. This explanation can be very short if the situation is obvious, but in some cases it could require a longer explanation.

Examples of suitable formulations:

- The patent does not claim priority. Therefore, for all claims, the effective date is the filing date, which is ...
- The subject-matter of claims 1, 2 and 5 of the patent is also disclosed in the priority document (see paragraph ... /claim ...). Therefore, they validly claim priority. Their effective date is the priority date, which is ...
- The subject-matter of claim 3 was not disclosed in the priority document. Therefore, claim 3 is not entitled to priority. The effective date of claim 3 is the filing date, which is ...
- Claim 6 contains two options, which are the combination of features A, B and C ("claim 6a") and the combination of features A, B and D ("claim 6b"). The priority document only contains