Patent Bar Exam
Study Guide & Test Prep


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INTRODUCTION

Dear Student,

Thank you for purchasing Patent Bar Exam Study Flashcards—AIA.

I developed these myself after finding that neither textbooks, nor the Manual of Patent Examining Procedure, nor the law itself, nor the USPTO practice tests presented key patent law concepts in an appropriate format for learning.

The extensive changes to patent law created by the America Invents Act (also known as AIA and Leahy-Smith Act) are particularly challenging to study, as the only study materials provided by the US Patent Office are pages from the Federal Register—which are notoriously difficult to decipher, even for experienced patent attorneys.

As an engineer, teacher and public speaker, I believe that the way in which information is presented is a key to learning effectively.

I studied for the patent bar using these very flashcards. I passed the patent bar exam the first time, and I believe I got 100% on the test. (The USPTO doesn’t provide students with the student’s exam score.)

I had no previous law training and took no exam preparation classes. I was 57 years old when I took the test. As you can appreciate, my memory skills are not as sharp as they once were. That is one reason I felt it important to present the patent material in a logical format to make it easier to learn.

Good luck on the test.

– Kim Rubin
IF YOU HAVE NEVER STUDIED LAW, OR ARE COMPLETELY NEW TO PATENT LAW, PLEASE READ THIS SECTION

The structure of patent law, patent procedures, and the patent bar exam, at first, appear quite intimidating. However, compared to many other fields of law (in my opinion) patent law is quite consistent, which makes it easier to learn, at least when presented correctly.

There is a Bible. It is called, The Manual of Patent Examining Procedure, or MPEP. This single massive tome contains everything important for both patent examiners and the patent agents and patent attorneys who prepare and prosecute patents before the examiners. The appendices in this book include the law, itself.

You may not be able to purchase this book as a single printed volume at this time, but you should certainly have a printed copy for study and reference. It is, after all, your Bible in this field.

Also, during the exam, you will be provided with a FULL ELECTRONIC copy of this book, including the law in the appendices. During the exam, you will have a PDF reader on your computer that you will use to access this book. Therefore, it is IMPERATIVE that you both have your own copy and learn how to find answers and material in this book effectively.

Law consists of a hierarchical set of rules; patent law is no different.

We should start by noting that the rights of inventors is in the US Constitution:

“To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;” From the United States Constitution, Article I, Section 8, Clause 8.

After the Constitution, the top of the hierarchy for US patents is Federal LAW. The law is United States Code Title 35. This is abbreviated U.S.C. 35, or 35 USC. You need to recognize this designation instantly. A full reference might be, “35 USC 102(g)” for example.

For international patent applications the top of the hierarchy is the Patent Cooperation Treaty (PCT). This treaty specifies how the 150+ that have signed the treaty must examine and recognize the patents of other countries, if those patent applications have passed through the PCT process as specified in the treaty. These rules are in Appendices P and T (P for PCT; T for Treaty) of the MPEP. PCT rules are heavily tested in the USPTO Patent Bar Exam.

After the law and the treaty comes REGULATIONS. These are written by the patent office itself, the United States Patent and Trademark Office (USPTO, PTO or “Office”). Regulations are also called Rules, but since they both begin with the letter R and are in Appendix R (again, easy to remember), you don’t need differentiate between rules and regulations. These have been published as Title 37 of the Code of Federal Regulations. This is abbreviated 37 CFR. Section numbers are sometimes prefixed by the section symbol, §, for example, 37 CFR §1.495(b). Come to recognize these three letters well.

Even the Regulations are not that extensive. They take up only 331 pages in The Manual of Patent Examining Procedure, in Appendix R.

Another major source of law concerning patents consists of Federal Circuit and Appellate court cases. Since it was created in 1982, the United States Court of Appeals of the Federal Circuit (CAFC) has determined a substantial amount of patent law. You will not have to worry much about court decisions as you take the test, although many aspects of current patent practice are named after the original cases. Technically, the CAFC decisions have precedence over the USPTO Regulations, but actual conflicts rarely happen in practice and at this point, need not concern you. I mention court cases here for legal accuracy and completeness. Once you start your own patent practice, you will look to court cases.

After Regulations (and Court cases), come the Procedures. This is the bulk of the text in The Manual of Patent Examining Procedure (the MPEP), which essentially tells patent examiners (and you) the details of how to proceed in a case. The Manual of Patent Examining Procedure is organized into 27 chapters and 7 appendices. The chapter order proceeds quite logically to follow the progression from filing, prosecuting, appealing to being granted a patent, then corrections. YOU WILL NEED TO MEMORIZE A HANDFUL OF CHAPTER NUMBERS AND SUBJECTS. See the section below MPEP CHAPTERS. The best way to look up information you need during the Patent Bar Exam is by topic, which is to say, by chapter. There is an index in The Manual of Patent Examining Procedure, but the index is nearly useless due to its size and complexity.

When you see a reference such as “Chapter 2100,” it means that chapter of The Manual of Patent Examining Procedure. A full reference might be 2133.03(c), which means section 2133 in chapter 2100, section 33, subsection 03, topic (c). The Manual of Patent Examining Procedure does not use page numbers, but rather the section numbers, which is far more helpful, really.

The Manual of Patent Examining Procedure is written as reference for patent examiners to use on a daily basis. Therefore, it is surprisingly readable and helpful, even if staggeringly large and filled with distracting references. Do not hesitate to dig in to this book on a regular basis. It frequently includes examples to assist in learning the material.

Note: The MPEP is updated regularly (every couple of years) by the USPTO to include changes due to court cases.
To reiterate, here is the hierarchy of importance to you as you study for the exam:

- Law: United States Code Title 35. Example: 35 USC 102(a) (MPEP Appendix L)
- Regulations: Title 37 Code of US Regulations. Example: 37 CFR 1.495(b) (MPEP Appendix R)
- Court Cases: Fed. Cir. or CAFC (or sometimes, US Supreme Court)

Chapter in **The Manual of Patent Examining Procedure**: Example: §2133.03(c)

As the USPTO implements required changes to patent law, and as the MPEP is updated, and as available material with respect to changes in the Exam are available, the first purchaser of these flash cards will be updated. Buyers of Student Edition receive one year of email updates, after registering.
ABOUT THESE FLASHCARDS

Nobody is perfect, and neither are these cards.

I believe the information on these cards tracks closely the USPTO’s historical published patent bar examinations. Note that by necessity many questions and answers contain simplifications from the actual text of the law. However, most of these simplifications relate to repetitious special cases and implementation details appropriate to the text of law, but not to learning the important concepts. Despite trick questions and attention to detail, the USPTO wants to test that you know the most important concepts.

In creating these cards, I tried to strike a balance between the dry “letter of the law” and the use of conversational English. The latter is far easier to study and memorize.

There are purposeful variations in the format of the answers. Some use bullets; some use numbers, and some use memorization hints. Some use exact phrases from the law or the rules. These variations serve two purposes. First, the variation helps break up the monotony of the law text. Second, these variations make memorization easier. Typically, CAPS are used to highlight important words. Bullets (•) are often used for positive points, while dashes (-) are used for negative points—such as a list of prohibited items. Numbered paragraphs are typically used when the number of items is important.

The “section” heading symbol, §, is often used as a prefix for a section, such as 35 USC § 102. It is used most often when the prefix code (35 USC) or rules (37 CFR) is absent. Widely, use of this heading symbol is not consistent. In these flashcards, however, the symbol is generally not used if the complete prefix is provided, and is used if the prefix is missing.

The more important concepts are presented more than once, using different wording.

Cards are in alphabetical order by my title. My titles only roughly track the chapters in the MPEP, on purpose. I have chosen titles to aid in memorization, and to group similar points. The questions you will get when you take the Patent Bar Exam are not ordered. Therefore, it is important that you get used to thinking about questions “out of order.”

Nearly every flashcard has an MPEP, rules or code reference at the bottom. If you are in doubt or confused, please check that reference.

The most important information is marked with an asterisk (*) in the lower left of the question side.
HOW TO USE THESE FLASHCARDS

Physical flashcards are a far more enjoyable way to study that staring at a computer screen, which you will be doing for a large fraction of your working life.

First, work with friends or relatives. This is a proven method to increase the speed of learning. Convince your best friend to read cards to you. You can even turn it into a drinking game (they drink, not you). If you miss an answer, your friend takes a sip.

Divide the cards into subject groups of about 20 cards. Study each group until you have the answer memorized for every card in that group.

As you go through the cards, make three piles. Into the first pile place the cards whose answers you know for sure. You do not need to see 35 USC 103 for the 100th time, for example. The second pile contains cards you do not yet know the answer to. You need to repeat these. The third pile contains cards where you want to look up more information about the question or answer in the MPEP. Almost every card has a reference at the bottom of the card you can use to find at least one relevant part of the MPEP, the rules, or the law as a starting point for more research on that topic.

The cards fit in your pocket. You can take some with you while on the train, or on hold, or hiking. Most cards have room for you to write or highlight. The flashcard paper is both pencil and ink friendly.

The most important information is marked with an asterisk (*) in the lower left of the question side. If your study time is limited, or you find the number of cards initially intimidating, focus on just the * cards. These represent about half of the total material, including the easier to learn information. You should expect a test question dealing with material on every * marked card.
TEST TAKING STRATEGY

If you are just starting to study, you may skip this section for now. Come back to this section when you are two weeks to four weeks away from your exam date.

The exam takes a day. There is a three-hour morning session with 50 questions and another three-hour afternoon session with 50 questions. For each session, you can go back to earlier questions, but there is no connection between the morning and afternoon session. Every question is multiple-choice with five possible answers, A through E.

Test taking strategy is important. Most people who fail the test fail by only a few problems. The test is aggressive. There are no easy questions. Every question is complex. I would say, using my own standard, that nearly every question is a "trick question."

Many people do not finish the test. If you know the material well, and are able to work quickly for hours at a time, you will have a few minutes after each half to go back and either check your work or look up answers you don't know. My experience is that it takes 5 to 10 minutes to review a question and then look up the answer, if you know where to look right away. Thus, you may be able to look up three or four answers, at best, for each half of the test.

What this means is that:

- You had better know 90% of the material cold. (Or at least 90% of the * marked cards.)
- You need a well-rehearsed process of marking questions as to your confidence level so that the few minutes you have at the end of each half is spent most productively.
- You should know how to look up information quickly.

Do not expect any easy questions.

The test taking strategy I strongly recommend closely links the way you track your question answer confidence on your scratch paper, and how you do review and lookup.

I will first describe the "answer grid" you create in your scratch booklet, and then discuss how to use your answer grid for the most effective review strategy.

Please look at the illustration in Fig. 1 below, which shows a sample answer grid. [continued p. 10]
Fig. 1
Hand-drawing Answer Grid on Scratch Paper

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<td>6</td>
<td>7</td>
<td>8</td>
<td>9</td>
<td>10</td>
<td></td>
</tr>
</tbody>
</table>
Fig. 2
Answer Grid in Use

A B C D E A B C D E A B C D E

1 2 3 4 5 6 7 8 9 10

A B C D E A B C D E A B C D E

11 2 3 4 5 6 7 8 9 10

21 2 3 4 5 6 7 8 9 10
You have up to fifteen minutes in front of the testing computer before the timed portion of the test starts. You are allowed to use this time to view a set of screens that tell you how to take the test. However, you will have seen these screens already (the USPTO provides them on their web site at:


You have 50 test questions at a time. Divide the first page of scratch paper into five horizontal segments. Number across the top of each of the five segments, 1..10. At the far left of each segment write the letters, A, B, C, D, and E. This is your answer grid for all fifty questions. You need one grid for the morning and another for the afternoon. You will be provided with fresh scratch paper (and must give up your used scratch paper) for the afternoon session. For each possible question answer, you will place one of three symbols: a checkmark, the word, "No," or a question mark. Look at Fig. 2 to see a sample of the first few questions filled out. THIS IS CRITICAL FOR AN EFFECTIVE REVIEW. Do not use the “Mark” capability built into the test itself. Your paper system is far more effective.

A checkmark means that that answer is correct. A “No” means the answer is wrong. A question mark means that you want to look it up, or think more about it, or you don’t understand it.

Ideally, after you have read all five answers, you have four “No”s and one checkmark. You can see samples like this for questions 1 and 3 in Fig. 2. Select the right answer on your screen and move on.

Many questions are in the negative: which answer is not correct. The best way to answer these is to not change your system. For a question in this format you should end up with four checkmarks and one “No.” You can see a sample of this format for question 6 in Fig. 2. Select the “No” answer on your screen and move on. This approach not only prevents confusion from double negatives, but also helps protect you against missing the “not” in the text of the question. Sometimes, I like to circle an answer (see 6E in Fig. 2.) to be certain of my choice and that I have transferred the desired answer letter to the computer. This allows me to pick the answer I want, then spend just a bit more time reviewing the question, without any risk that I then put the wrong answer into the computer.

Be sure to read all five answers. You will be amazed how many times you find two correct answers on the first read-through, and have to review those two choices more carefully to find your mistake. Or, sometimes, to pick the “better” answer of the two. You can see an example of a changed answer under 4B in Fig. 2.

If you have to guess, do not change your marks on your paper answer grid. These will be helpful if you have time to review the question later. You will be able to go right to your top choices for more thought or for look-ups. You can see in Fig. 2 that for questions 2 and 4, I was not 100% confident. I knew the answer that looked correct, but for at least one of the other answers I was not positive that answer was wrong.
Now that you have selected the best answer for the question on the computer, mark the question number in your answer grid for review. If you leave the number alone (see questions 1, 3 and 6 in Fig. 2.) that means you are confident of your answer and will not do any more review. If you circle the question number (see questions 2 and 4 in Fig. 2.) that means you have picked your best choice, but would ideally like to review. A double circle (see question 5 in Fig. 2.) means you really want to look up that answer in the MPEP, during review. Note I placed a subject note, “35 USC 102(d)” next to the question number to speed review topic lookup.

Another case may be where you have one checkmark, but a couple of blanks. You think you know the answer, but beware, what are those blank answers?? Go back to each answer (say, b and c) and reread it to come with a clear reason why the answer is WRONG. You will be surprised how many times one of those suddenly causes the little grey cells to turn on, and you realize that your checkmark is actually in the wrong place!

Another case will be when you have more than one checkmark. This is quite common. You think that two of the answers are both correct. You now have to go back and re-read the question carefully to find out which of the tentatively “correct” answer is not really correct. There is only ONE correct answer, trust me. Unless you can find the exact and convincing reason to change a check to a NO, circle the question number and move on.

As you prepare your scratch paper before the test starts, you may wish to duplicate from memory the 35 USC 102 (a) thru (d) timelines shown in Fig. 4 below. 35 USC 102 changed dramatically on March 16, 2013. Fig. 4 is the CURRENT LAW. Even if you think you know these completely, people have been known to freeze up during a test. It is comforting, at least, to have a handy written reference. Plus, this will provide you with a handy symbol “key” as you create your own timelines from questions. Which you will do, with the rest of your scratch paper.

I summarize how to use your answer grid in this chart:

<table>
<thead>
<tr>
<th>Answer Confidence</th>
<th>Marking</th>
</tr>
</thead>
<tbody>
<tr>
<td>[1] You are highly confident of your answer.</td>
<td>Leave the number alone.</td>
</tr>
<tr>
<td>[2] You are confident of your answer, but would like to check it.</td>
<td>Draw one circle around the question number.</td>
</tr>
<tr>
<td>[3] You don’t know the answer, but know exactly how to look it up.</td>
<td>Draw two circles around the question number.</td>
</tr>
<tr>
<td>[4] You don’t know the answer.</td>
<td>Draw an X through the question number.</td>
</tr>
</tbody>
</table>
You do not want to spend too much time on any one question. If you think you can answer it, but the answer will take you a long time, put it in category [2 — single circle] and pick your best guess, for now.

On the other hand, you need to check your work on every question before you go to the next question. You will not have time to read questions twice. Therefore, for each answer, go back and read the question with the idea that you have 20 seconds to explain exactly why your answer is correct. Place the words in your head as if you are talking and highlight the exact portion of the question text that supports your answer. In doing this, you may discover that you got a date wrong, or missed a "not", or that your reasoning is suddenly lacking.

Checking your work in this way, immediately AFTER answering every question, will buy you the most improvement for each minute. It is VERY easy to make SIMPLE MISTAKES. The simple mistakes are the fastest to catch and the fastest to correct. How many times have you gotten a wrong answer, only to say, "but I knew the concept, I just read the question wrong!"? You can't afford to make those kinds of errors on this test.

For each half of the test, first answer all the questions, then review. For the review, skip all questions in the [1 — confident] category. You have done your best for that question. Read the questions in the [2 — single circle] category. Either answer them and move them to the [1 — confident] group, or change it to [3 — add a second circle] or [4 — put an X through the question number].

After you have reviewed ALL the [2 — single circle] questions, if you have more time, work on the [3 — double circle] questions. For every [3] question, when you first read it, write down in your scratch booklet the exact area to look up. Scan the question just long enough to get the essence of the problem, not the exact problem. Now, go the chapter of The Manual of Patent Examining Procedure that you have previously indicated on your scratch paper. When you find the relevant text, re-read the question carefully, thinking about exactly what phrase you are looking for. Then, scan The Manual of Patent Examining Procedure as quickly as possible looking for your key phrase. Budget your time. Give yourself only five minutes maximum lookup time to find the answer. If you can't find it, make you best guess and move to the next question.

If you have finished all of the [3 — double circle] questions, it is time to tackle the [4 — X] questions. It is my opinion that every test has a couple of questions that focus on the utmost trivia possible, simply to see if the test taker has the skill to look up the answer. This is to your advantage. Often, the MPEP uses the exact phrase that is in the question. Search the question or one of the possible answers for that key phrase, hopefully one that is extremely unique, like using "red ink," for example. Go to the correct chapter of the MPEP and then search for that phrase. You have a good chance of going to the exact sentence you need to answer the question.
You may be able use this "phrase search" technique for some of the [3 — double circle] questions. As you read the question, look for any series of two to five words that is unusually unique to that topic. If you find such a unique phrase, try using a text search, rather than a manual topic-based search. Obviously, searching for common words like “abandoned” or “obvious” will not help you.

The way you mark the question as a category [2] is to circle the question number ONCE. Note that you still have the checkmarks and NOS under the question number as your starting place when you review.

For either a [3] or a [4] category question, you probably want to write above the question's number a few words identifying the key concept to look up. This will save you precious minutes when you come back because you won't have to study the question from scratch.

If you don't know an answer, you should guess. However, before you guess, you should do two things. First, read each answer carefully with the goal to find a solid reason to eliminate that answer. This is a separate mental strategy from looking for the right answer. Don’t eliminate an answer unless you are certain that it is wrong. Second, use common sense. Say to yourself, “if I were making up the rule, what would I do?” Despite the volume of patent procedure, most of it is consistent and is there to achieve that consistency. For example, how could there be an arbitrary limit on the number of references an examiner could cite? How would someone decide that 12 was OK, but that 13 was too many? Thus, there is no such limit on the number of permissible citations. As a second common sense example, why would sales data alone be usable as a secondary evidence of non-obviousness? A large company might sell millions of something a small company invented. The size of the company has no relationship to patentability.

The MPEP is provided to you during the test as a set of searchable PDF file. Each of the 27 chapters plus seven appendices is a separate file. While at first, that might seem unfortunate, this partitioning is very much to your advantage. You should nearly always be able to determine which chapter (or maybe which of two chapters) contains your answer. Searching 1/34\textsuperscript{th} of all the MPEP is far more effective than searching all of it.

When you search, try hard to find a unique phrase, rather than a single word, to search with. Often, the best search phrases are in the answers to the question, rather than the question itself. Sometimes, one of the answers contains the exact phrasing from the law, which means that a search on that phrase, even if mundane, will go directly to the portion of the MPEP you need. For example, “processing a redacted copy” takes you directly to 37 CFR §1.17 (fees) and to then to §1.217 (publication of a redacted copy of an application).
Appendix R (R is for Rules) contains all of 37 CFR. This appendix is your friend. If you are uncertain of the correct chapter, or a search in the chapter does produce quick results, search here. I found that searching this Appendix R first had good results.

The Patent Cooperation Treaty (the PCT) has its own appendix, T for Treaty. If you don't know the answer to a PCT question, use either this appendix or chapter 1800.
PRACTICE EXAMS

You need to take the USPTO prior exams. These are provided electronically for free on the USPTO web site: http://www.uspto.gov/ip/boards/oed/exam/pastexamresults.jsp

You should take each exam in an environment that is as close to the exam environment as possible. Lock yourself in a room and be certain that there will be no distractions whatsoever. Do not take any break during the three-hour half-test segment. Start with four sheets of scratch paper and a handful of pre-sharpened pencils.

Be CERTAIN to use the answer grid strategy discussed above.

As you search the MPEP during your question review phase, be sure to use Acrobat for searching each PDF chapter. Do NOT use google, because you will not have that searching resource available to you during the test. The two types of searches produce very different results.

You may use the blank paper provided with these flash cards as your practice exam scratch paper. These practice scratch paper booklets are to provide you with realistic practice.
EASY, HARD and TRICK QUESTIONS

There are no easy questions; don’t expect any.

A few (very few) will be short and straightforward, testing knowledge of single, clear concept.

Most questions present a scenario as a sequence of events, then ask you for the “best” response. Your job is to filter the large amount of extraneous material in the question to get to the critical matter. You will need to know and consider multiple regulations to find that critical matter. Given a sequence of actions, you will typically say to yourself, “this one is OK, this next one is OK, this third one is wrong, but this fourth one fixes the third one,” et cetera.

You will frequently need a timeline to clearly understand the events in the questions. See the section below where I explain a superior way to draw a time line from the method often given. (Some texts use the same format for timelines provide in the MPEP, but I consider those graphics to be a poor tool.) The test text will not provide you with graphical timelines.

Are there “trick” questions? In my opinion, they are ALL trick questions. That means that the correct answer often hinges on a small fact hidden in the text. For example, you might compute a due date for a response as 7/4/2008 but the response is not sent until 7/5/2008. You need to know that July 4th is a Federal holiday, and thus the deadline is automatically extended by one day. Since only “7/5/2008” appears in the text of the question, you might not quickly recognize the importance of “July 4th.” You also may be given a clue about days of the week by a word in the scenario such as “Wednesday.” You need to then compute that the basic due date falls on a weekend, and thus the effective due date is the following Monday.

Another trick involves the use of singular or plural nouns. Look very closely at the use of singular or plurals, such as “inventor” or “inventors.”

Not all foreign countries are equal, as you will learn. Some are not members of the Patent Cooperation Treaty (PCT). Pay close attention to all country names provided. There is a list of Recognized Foreign Countries in 201.13 of your online MPEP. You should look at this list now.

Yet another trick has to do with time zones. For faxed or Express Mail submittals the time is the SENDING TIME ZONE. For electronic submittals the time used by the USPTO is RECEIVING TIME ZONE (Washington, D.C.) Pay attention to WHERE the applicant is located if you see any indications that an activity occurs near midnight.

Names may be intentionally confusing. Two inventors may be named Bob and Robert for example, and you must not get them confused. Or, two distinct inventions might be for a post and a pillar.
Deadlines may be expressed in days or months, such as 15, 30 or 45 days, or 1, 2 or 3 months. Do not get these confused. 30 days is not a month. 365 days is not a year. A leap year may be quietly used in a problem to change the number of days in February.

Keep closely in mind the exact description of each event in a question. The following terms are importantly distinct:

- Provisional application date
- Nonprovisional application date
- First Office action
- Non-final Office action
- Final Office action
- Mailing date
- Receipt date
- Notice of allowance
- Publication date
- Issue date
- Statutory period of reply
- Nonstatutory period of reply

Note that patent inventorship may change over the course of prosecution (claims may be dropped, eliminating an inventor). Ownership or assignment may change, too, necessitating a change from micro to small or regular fee schedule.

Petitions and appeals rarely if ever waive a requirement to timely respond to an Office action. Generally a full and complete response is needed AND a petition and appeal. These can be filed at the same time, but the reply to the office action should not be filed AFTER the petition or appeal notice, as that can have a significant and negative impact on either validity of the request or the ability of the response to be properly considered.

There are a handful of critical dates you must memorize, such as November 29, 2000, and December 10, 2004, because the law changed on those dates. AIA has two important effective dates: Sept 16, 2012 and March 16, 2013. Expect a couple of questions specifically to see if you know these dates.

Who signs documents is particularly important on the exam. Many forms do not have to be signed. For some forms, “any responsible person” in the law office may sign. Keep an eye out for the use of “vacations” in questions. (Vacations occur with surprising frequency on the exam.)
Often, more than one answer will be “correct.” The USPTO wants you to pick the “best” answer. For that, you may have to consider fees, or better protecting your clients’ interests. There is a fee table in Appendix R of your online MPEP in §1.16. You should look at this table now. For client interests, you may be given a clue in the text of the question. For example, a client may tell you that she, “wants a patent to issue as soon as possible.”

A great many questions are posed in the negative. For example, “Which of the following is not in accord with USPTO policy and procedure.” The word “not” is critical to observe. However, the USPTO is nice enough to always put that word in bold and italics, so you have no good excuse for missing it. What is harder is that you often end up with double or even triple negatives when contemplating answers. So, mentally, you have to concentrating on keeping track of those negatives or exceptions.

You need to check each answer before moving to the next question. The mental format for checking is distinct from finding the answer. The best method is to start with your selected answer, then explain out loud in your brain, as if you were explaining your answer to an instructor, your reasoning why that answer is the correct one. Start with your mental question review with the phrase, “This answer is correct because ...”

Don’t plan on coming back to re-read questions. Deal with each question thoroughly, then move on.

In order to get comfortable with the answer grid strategy, use this strategy on at least two, and preferably all USPTO sample tests, available on the PTO web site.
WHAT YOU NEED TO KNOW
ABOUT DATES and TIMELINES

The patent office revolves around dates. A giant fraction of the Patent Bar Exam deals with dates. There are three things you need to understand about dates:

(1) **How the Patent Office computes dates.** This relates to holidays, weekends, working hours, moment of delivery, etc. You will have lots of trick questions in this area.

(2) **The regulatory deadlines.** For hundreds of actions, you need to know if the deadline is 30 days, 60 days, 6 months, 9 months, 2 years, or whatever. This is not as hard as it sounds because, fortunately, there is considerable logic and consistency to the numerous deadlines. You do, however, have to memorize these, as they appear on nearly every single question.

(3) **How to graphically represent a timeline with multiple dates.** The MPEP has a graphical technique, but it is very clumsy. I recommend you work with the method that I describe below and illustrate in Fig. 3 and Fig. 4. Many questions will have as many as five dates in a single question. You will need a quick and consistent way to visually map these dates to navigate through the questions of this complexity.

I cannot overemphasize the importance of the three paragraphs above for studying for the Patent Bar Exam.

Please look now at Fig. 3, below. This shows my recommended method of creating timelines for use in answering questions. Start by drawing a horizontal line. Earlier in time is on the left; later in time is on the right. For each key event, like conception, filing and issue, there is a special symbol you draw quickly on the timeline. The filing date, the single most important event, is shown with a bold vertical line. For each event, write the date, including day, month and year below the line.

Working from top to bottom in Fig. 3, you can see the major symbols. The star shows the “available to the public,” such as public use, sale, or disclosure. Publication is shown with a large “P.” As an example of an event of interest in a question, an appeal date is shown and labeled. A patent Issue date is shown with a large “I.” The sixth timeline in Fig. 3 shows what a line might look like with four dates marked. Note that each problem on the exam will have a different set of dates. There may be more than one patent application or publication in the problem. If so, label each duplicated symbol.

Be sure to place each event on the timeline so you can clearly see the order of events. Even if two events are separated by only one day, separate them on the timeline so you can clearly see which occurred first.

Typically, after you have placed the events and dates provided in the question on your timeline, you calculate the time between critical events. One common question tests the “one year grace period” prior to the filing date. Other questions test deadlines, or allowable time windows.
Fig. 3  Timeline Symbols

Basic Time Line

Filing Date
Thick Bar

Early in Time

Later in Time

7/5/11

write date below each event

Disclosure or
Public Use

8/12/10
Public disclosure by inventor, or derived from inventor

8/12/11
Public use, sale or offer for sale

Publication Date
is a “P”

P
1/3/11

Appealed

Events of Interest
are Circled and Labeled

7/5/11

9/30/11

Put Each Event in the
Question on a Line

Appealed

Calculate Times as a Key
Step to the Answer

< 1 year

< 1 year

use a capital “I” for the Issue Date
Fig. 4
35 USC § 102 (a) through (d) as of March 16, 2013

(a1) Available to the public before the filing date is a bar, except for (b).

(a2) Patented or published application by another before the filing date is a bar, except for (b).

(b1) Inventor Discloses < 1 year

(b2) Disclosed information derived from inventor

(c) COMMON OWNERSHIP bars disclosure made < 1 year from being prior art under (a2) above.
   Requires common ownership or joint research agreement AND the patents includes the names of the parties.

(d) EFFECTIVE DATE AS PRIOR ART for (a2) above:
   (1) Filing date; or
   (2) Priority Date.
Any other information you need to answer the question, filing appeal briefs, requesting post-grant review, etc., you mark and label on the timeline, too.

Generally, after you have completed creating the timeline from the question in this fashion, you can immediately answer the question with confidence.

You should use this format for timelines on every single question on the sample exams (previous exam questions) provided by the USPTO (http://www.uspto.gov/ip/boards/oed/exam/pastexamresults.jsp) where a timeline is applicable, even ones where you already know the answer. In this way, you will become both competent and comfortable quickly creating this critical visual tool.

Please look now at Fig. 4, above. This figure illustrates all parts of 35 USC § 102. You should become completely familiar with the details in this figure. You may wish to redraw the figure from memory a few times, to test your recall.
INTERNATIONAL PATENT APPLICATIONS

International patent applications are filed under the Patent Cooperation Treaty, or PCT.

The basic concepts for international patents are the same as for US patents. For example: every patent contains a title, abstract, specification, claims and drawings; there is a right to claim priority to earlier filed applications; amendments may not contain new matter; and the applicant is entitled to one interview.

However, the flow through the international patent system is very different than in the US, terminology is distinct, and the detailed procedures, deadlines and forms are WAY different.

As an example of terminology, what the US calls, "a single inventive concept," the PCT calls, "unity of invention."

I strongly recommend that the student study the PCT rules (MPEP chapter 1800) completely separate from the rest of the MPEP, which relates to US procedures. That way, you are less likely to get the two confused. I suggest that you create a large timeline at the start of PCT study, and refer to it and annotate it regularly as you study. You might consider placing on the timeline as you learn about them:

- Date of prior-filed application (to which priority might be claimed)
- Date of current-filed application
- Receiving Office (RO) and International Board (IB) actions
- Start and end of International Search Report (ISR)
- Amendment deadlines
- Timing of the Demand
- Start and end of International Preliminary Examination Authority (IPEA) actions
- Fee due dates
- Publication (or made available to public) dates
- National Stage deadlines and actions
- Deadlines for claiming priority
WHAT TO MEMORIZE

When you first encounter the numerous procedural rules relating to signatures and communications with the office, and study deadlines, it appears to be an overwhelming amount of material to memorize.

However, most of the procedures and deadlines are pretty consistent and logical.

For example, the list of “what cannot be faxed” is long, but mostly logical. You can’t fax color documents (duh) and you can’t fax documents requiring an original signature (duh). It makes sense that you are not allowed to fax documents under a secrecy order. You need to know that you can’t fax ANY original application, and it is not unreasonable that disciplinary hearings and contested cases before the PTAB (Patent Trial and Appeal Board) are also not permitted to be faxed.

Deadlines rules tend to be moderately consistent. A great many questions deal with deadlines, so memorize as many of these as you can. Statutory deadlines are not extendable (except sometimes: for sufficient and convincing cause); nonstatutory deadlines are often extendable by paying surcharges. Some statutory deadlines, generally relating to appeals and issue, are fixed at two months. All fees, except the application fee, must be paid when the service is requested. (PCT fee rules are slightly more relaxed.)

You generally have three months to reply to an office action but there is a statutory limit of six months, so no extensions beyond that.

Often, to correct errors, you are given one month.

Some notifications (such as changes to a non-publication request) are measured in days, such as 45 days.

There are two kinds of requests for extensions: for cause, and because-I-pay-a-fee. For the latter, make a request and pay the fee—the extension will be granted. For the former, you have to file a petition (and a fee with the petition, of course), and provide your excuse, and the excuse has to match the allowable reasons, and you usually have to provide real evidence, and then the office may or not grant your request.

It is important to know that if you miss a statutory deadline your patent becomes abandoned. While it is possible to revive an abandoned application, the delay has to be “unavoidable,” with a convincing argument.

However, all of the above “What to Memorize” changes when you get into PCT changes. Study PCT time periods separately.
MPEP CHAPTERS

You need to memorize the key chapter number and chapter titles. This is because you will have to know the chapter number in order to search the MPEP during the test. Each chapter is a separate searchable file. Chapter numbers all end in 00. Thus chapter one is 100; chapter 18 is 1800.

The chapters in the MPEP are arranged logically, generally according the “flow” of a patent through the system. For example, chapter 200 covers the types of patent applications, then 300 covers “who can apply.” 600 covers the format of an application, 700 examination, 1200 appeal, 1300 allowance, and 1400 covers correction of issued patents.

I recommend that at some point in your study you take the time to read all of the key chapters’ TOCs (Table of Contents). Here are my suggestions to assist in memorization of the important chapter numbers.

First, the most important chapters, multiples of seven:

700 Examination
1400 Correction
2100 Patentability

Second, multiples of six:

600 Form and Content of Applications
1200 Appeal
1800 PCT

Third, the “front end” chapters:

100 Public Access and Secrecy
200 Types of Applications
300 Ownership and Assignment
400 Representation of the Inventor or Owner
500 Receipt and Handling

The above chapters cover almost 90% of the questions asked on the exam.

At the front of each chapter is that chapter’s Table of Contents. I find these wonderful. The captions used in the chapter TOCs are remarkably specific and useful. Most chapter TOCs are only a page or two. Often, if you have to look up an answer, read through the chapter TOC line by line. You are likely to find the exact section you need. The chapter TOCs are arranged logically, which allows you to read through them pretty quickly.
WHAT TO DO ON
THE DAY OF THE TEST

Arrive early. There will be lots of people, and check-in is surprisingly slow.

You are not permitted to make any phone calls, have any discussions, or refer to any material during breaks, including lunch.

Therefore, do not take your cell phone, any electronics, or any study material into the testing center. Leave all of these in your car, or at home. Anything you take in will be placed in a locker, and you will likely be denied access to your locker until the very end of the test.

Unless it is snowing, leave your watch, sweater, scarf, jacket, cap, hat, and cape in the car. You will have to remove all of these before entering the test room. You will not only have to empty your pockets, you will have to turn them inside out.

In fact, the ONLY things besides basic clothing you should bring into the test center are (1) car keys, (2) your test acknowledgement letter, and (3) your ID. Bring TWO PIECES of ID, at least one of which is government issued with a matching photograph. You had better hope that your test acknowledgement letter has your name IDENTICAL to your ID.

Medication is permitted, but taking it will be supervised, and it will be stored in your locker, which means that you will have to check out and check back into the test room, using up valuable minutes.

Moderate your coffee intake. Bathroom breaks use up valuable minutes.

Expect to be photographed and fingerprinted. Probably multiple times.

Don’t let the environment get to you. The testing center will have winners and losers standing and sitting next to you.

I was 57 years old when I took the test. The proctor told me, “there is another old guy who has been in here eight times, and hasn’t passed yet.” I did NOT need to hear that! Some test takers got kicked out for rule violations they didn’t understand during break and started crying loudly. Be prepared to block out your environment completely.

The USPTO tries to have a sense of humor in the test questions. You may find practitioners with names from The Flintstones or old TV shows. You may find funny inventions, for example, to rescue someone from a desert island. It won’t hurt you take a second and grin to yourself during the test.

You will be given two sharpened pencils to use with your four pages of scratch paper. I had a great proctor.
I would merely hold up my two pencils for a second and he would rush over with two fresh pencils. You have to give up your dull pencils to get fresh ones. In any case, you are entitled to more pencils.

You can also get more scratch paper, but don’t do it. You will have to give up every sheet of your current scratch paper, which means you will lose your answer grid. Write small and don’t run out of space.

This is a good time to review the details of creating and using an answer grid on your scratch paper. This is discussed above under Test Strategy.

One last recommendation: get a good night’s sleep and arrive (early) to the test center calm and alert. Consider packing a quality lunch. Take a walk during your one-hour lunch break to clear your mind and relax.

POST-PURCHASE SUPPORT

For each original Student Edition purchaser, I will provide email support and email updates for any changes or errata for one year.

I very much appreciate hearing from users of these flashcards.
WHAT TO DO AFTER YOU PASS

You will find out immediately at the conclusion of the test if you have passed or not.

There is a slight chance you will be told you have failed, and then discover you have passed later. This is because the USPTO may apply some “post test” corrections relating to non-scoring questions or questions that have been withdrawn from scoring due to recent court cases or changes in policy.

After you pass the USPTO will send you a letter giving you the opportunity to register (and pay a fee, of course). There is a 45-day waiting period in case you are not “of good moral character” plus about 15 to 25 days processing time. You can check your online status a week or two before you receive the confirmation via the postal service.

NOW, you get to really learn how to write and prosecute classes. There are many resources available to help you. Some are free; many are costly.

There is an outstanding book, *Patent It Yourself*, by Nolo Press, which is available new, used or in many libraries. This is not aimed at patent practitioners, but is excellent.


Here are two excellent patent and patent-related blogs:

- Dennis Crouch’s Patently-O
  www.patentlyo.com

- Gene Quinn’s IP Watchdog
  http://ipwatchdog.com/

Networking is an excellent idea. See if there is an IP Law Association in your area. Of course, nothing is better than experience and working closely with an established practitioner. Read patents, particularly well-written ones (you will be able to tell the difference, trust me). Write; review; re-write; repeat.

— Kim Rubin