

Examiners' Report on Paper D/1991

The Committee again pleads for legible writing.

Part I

Candidates should appreciate that a few words and a correct reference to the Article or Rule may be all that is needed, e.g. for questions 1 to 5. Almost no one answered the first part of question 6 concerned with priority document drawings. To obtain good marks the questions should be read carefully and answers given to all points.

Part II

None of the different aspects of this question was particularly complex, but it was necessary to apply the provisions of EPC to the situations revealed. Although a client may not need to be told what provisions apply, it may help candidates to note them and derive the consequences correctly. Again, the question should be read carefully. Each section ended with a client's request which should have been answered. Many candidates did not gain marks because they failed to give the advice asked for.

PART I

Answer to Question 1

Communication deemed to be notified on
31 July 1990.

Rule 78 (2) EPC

Time limit expires on 30 September 1990
= Sunday -> 1 Oct. 1990

Rule 83 (4) EPC

Answer to Question 2

(a) Article 91 (4) EPC

(b) Article 79 (3) EPC

Answer to Question 3

(a) Rule 35 (13) EPC

(b) No

Rule 40 EPC

Answer to Question 4

(a) No

Rule 84 EPC

(b) Request for further processing

Art. 121 EPC

(c) Immediately

Art. 121 EPC or Legal Advice 13/82

OJ 1982, 196

Answer to Question 5

(a) International Bureau

Art. 19(1) PCT

(b) Yes

Rule 46.1 PCT

Answer to Question 6

- (a) Even if the application was accompanied by the priority document, rectification pursuant to Rule 91.1 (a) and (b) PCT is not allowable. Pursuant to Rule 91.1 (c) PCT the omission of entire sheets cannot be rectified, even if the omission clearly results from inattention.
- (b) He can furnish the drawings:
with the legal consequences as in Art. 14(2), second sentence, PCT
- Applicable time limit:
Within 30 days from the filing date of the international application
Rule 20.2(a) (iii) PCT
That is until 31 October 1989
Rule 80.3 PCT
- (c) If he does not furnish the drawings within the applicable time limit according to (b) the references shall be considered non-existent
Art. 14(2), second sentence, PCT

Answer to Question 7

- (a) (i) Due date 28 February 1991 under
Rule 37(1) EPC
- (ii) Fee with surcharge, due 28 August 1991,
Art. 86(2) EPC - not 2 September (the first EPO working day after 31 August - a Saturday), R 83 (4)
- (b) Yes. The faxed debit order is acceptable to the EPO and need not be confirmed by letter. Anyone may pay fees in an application -
Legal Advice 6/80

Answer to Question 8

To cover the technical features:

he may file an EP application designating the EPC countries of his choice, and/or national patent applications,

or utility model applications (where the latter form of protection exists),

within 12 months from the Japanese filing date.

Art. 4(E)2, Art. 4(C)1 PUC.

To cover the aesthetic features:

aesthetic creations are not patentable under the EPC, Art. 52(2)(b) EPC. He may register designs or file design applications, as the case may be, in the countries of his choice where such form of protection exists, Art. 4 (E) PUC,

within 6 months from the Japanese filing date

Art. 4(C)2, Art 4 (E) 1 PUC.

Answer to Question 9

(a) Yes.

The absence of the power of attorney is noted in the minutes of the oral proceedings.

The EPO sets a term for subsequent filing of the power of attorney; if this term is missed, the actions of the representative are deemed not to have taken place;

Rule 101 (4) EPC; Guidelines E III 8.3

(b) The employee is not authorised to represent his firm (as Finland is not a contracting state of the EPC);

with the consent of the opposition division

he can be heard as a technical expert;

the applicant himself has to take care of translation into the language of the proceedings, unless an application for translation is made to the EPO not later than 1 month before the date of the hearing;

Art. 133 (2) and (3); Rule 2 (1) EPC

.../...

Answer to Question 10

- (a) Industrial property rights A-C;
European patent applications are assignable
(even just for one of the designated
contracting states) Art. 71 EPC
The assignment needs to be in the written
form and to be signed by X and Y; Art 72 EPC
The transfer of rights is registered upon
application , subject to the payment of fees,
and proof only becomes effective with respect
to the EPO with filing of the application for
registration and after receipt of the documents
mentioned in Rule 20(1) EPC and within the scope
of the proof
Rule 20 (1) to (3) EPC
- (b) Industrial property rights D and G:
During the opposition period or the duration of
opposition proceedings a transfer of rights (for
the purposes of proceedings to be carried out
before the EPO) can be registered
Rule 61 EPC
- (c) Industrial property rights E and F:
The national regulations are applicable;
Article 2 (2) EPC

Answer to Question 11

Transfer of the opposition of W possible in
principle, as business enterprise, in whose
interest opposition was filed, has been taken over
G 4/88, Official Journal EPO 89, 480

Dutch, however, is not a language for the German
according to Article 14 (4) Clause 1 EPC. The
German opponent cannot file in the Dutch language.

The opposition is therefore deemed not to have
been entered according to Article 14 (5) EPC
T 149/85, Official Journal EPO 86, 103

Answer to Question 12

X cannot ask for a suspension of the proceedings.

Only Y is entitled to do so (Rule 13 (1) EPC).

X can withdraw the application up to the moment that Y proves to the EPO that he has opened proceedings concerning entitlement against X (Rule 14 EPC)

X will have to bear in mind that a withdrawal can make him liable for damages under national law.

Answer to Question 13

(a) Yes - J 22/88 OJ 6/90, 244

(b) The financial difficulties were unavoidable and the requester has exercised all due care in seeking financial assistance.

EXAMINATION COMMITTEE III

Candidate's answer-paper No.

Report by examiner No.

PART I

| Questions | Maximum-possible | Individual marks awarded | Where grades awarded are not identical | |
|--------------|------------------|--------------------------|--|----------|
| | | | Revision of marks/grade (if any) | Remarks* |
| 1 | 2 | | | |
| 2 | 2 | | | |
| 3 | 2 | | | |
| 4 | 4 | | | |
| 5 | 2 | | | |
| 6 | 6 | | | |
| 7 | 4,5 | | | |
| 8 | 5 | | | |
| 9 | 4 | | | |
| 10 | 8 | | | |
| 11 | 4,5 | | | |
| 12 | 3 | | | |
| 13 | 3 | | | |
| Total Part I | 50 | | | |

* to be filled in if both the following requirements are fulfilled:

(a) the grades awarded by the two individual examiners before their discussion differ by two grades or more;

(b) the marks awarded by at least one of the two individual examiners have been changed during their discussion.

If remarks are to be filled in, they should briefly explain why the examiner has changed his marks.