

Examiners' Report on Paper D/1992

The committee recommends that candidates write clearly and avoid slang and unusual abbreviations. Further, candidates should read questions carefully and answer the questions asked, taking particular care with negatives and positives. The committee was particularly disappointed by the ignorance of the Paris Convention displayed in the answers to Question 2, Part I and section A of Part II. It should be appreciated that it is the interpretation and practice under EPC, not national laws, which is to be used. There was also much lack of knowledge of the operation of PCT. A better knowledge of recovery or correction under Article 121 or 122 and Rule 88 would be helpful.

Part I

Although for simple questions, a few words and a correct reference to the Article or Rule may be enough, there is often a need to provide an explanation as to why or how the reference is relevant. A list of all possible relevant references, a re-statement of the question and a vague answer is not enough. A mere statement that some article does not apply requires the reason to be given for full marks to be achieved. Whilst some answers were too short, particularly from French language candidates, there were many who wrote much to much. It helps to leave some space between answers to different questions.

Part II

Candidates are expected to bear in mind that they are acting in the interest of their client and to give practical recommendations. Candidates should not be surprised if some parts of the answers are the same in different sections.

The following gives Tutors a very abbreviated guide to the possible basis for good answers.

Part I

Question 1 Interruption: Rule 90 EPC. Examination request time limit continues after resumption: Rule 90(4) EPC with a 2 month minimum. A1 publication includes Search Report: 6 months therefrom: Rule 94(2) EPC. Two months from resumption to pay.

Question 2: a). DE priority for contents of DE: EP1 priority for further embodiment: no priority for new embodiment.
 b). EP1 priority only for further embodiment.
 c). same as b). because DE priority already claimed in EP1.

- Question 3: 1a. Yes: T11/82 and Article 123(2) EPC.
1b. Not unless derivable directly from text.
1c. Same as 1b. because prior art disadvantages imply advantages for invention.
2. No: Rule 86(3) EPC second sentence.
- Question 4: a) No: Article 52(2)c, task mental T38/86, no technical effect.
b) Yes: cosmetic: Article 52(4) EPC, T144/83. Tablet possibly patentable per se.
c) Chemical compound possibly patentable per se. Possible objection under Article 53a EPC.
- Question 5: Article 121 inapplicable: more than 2 months elapsed. Argue that Article 122 conditions satisfied and why. Lodge request within two months and before expiry of one year.
- Question 6: Written papers allowed in English or French: Rule 1(1) except amendments: Rule 1(2). Oral proceedings in either language provided conditions met: Rule 2(1).
- Question 7: (a) Withdraw the application: query publication of priority application.
(b) Before technical preparations: 29 April 1992: 18 months less 10 weeks: Rule 48(2), J05/81. Later if prevention is still possible.
- Question 8: Article 48(1) and Rule 82.1 PCT inapplicable: not official postal service. Time limit Article 39 PCT inapplicable. Demand valid before EPO. Enter Regional phase as though Chapter I.
- Question 9: Yes. After entry into EP phase, application deemed European: Article 150(3) EPC. Correction of minor importance. Third parties had access to certified copy with correct number.
- Question 10: Yes. If based upon opponent's facts and arguments (Article 113(1)) already countered by proprietor, but unsuccessfully. No oral proceedings as proprietor did not request: Article 116(1).
- Question 11: a). Yes.
b). No: Rule 32bis. 1a PCT: between filing and publication: also in national or regional phase.
c). No: Guidelines A III 6.10.
d). Yes: technical preparations are complete. No: Rule 32bis. 1c PCT: 15 days.

PART I

Questions	Maximum possible	Individual marks awarded	Where grades awarded are not identical	
			Revision of marks/grade (if any)	Remarks*
1	5			
2	6.5			
3	6.5			
4	6			
5	4.5			
6	3.5			
7	2.5			
8	4			
9	3			
10	3			
11	5.5			
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.

EXAMINATION COMMITTEE III

Candidate's answer-paper No.

Report by examiner No.

PART II

Parts	Maximum possible	Individual marks awarded	Where grades awarded are not identical	
			Revision of marks/grade (if any)	Remarks*
A	12			
B	9			
C1	14.5			
C2	14.5			
TOTAL PART II	50			
TOTAL PART I	50			
TOTAL PARTS I + II	100			
CORRESPONDING GRADE				

Translation of marks into grades

%	Grade
0 - 35	7
35,5 - 45	6
45,5 - 55	5
55,5 - 65	4
65,5 - 75	3
75,5 - 85	2
85,5 - 100	1

* 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.