

EUROPEAN QUALIFYING EXAMINATION 1995

PAPER D – PART I

This paper comprises:

- Instructions to Candidates 95/D/e/1
- Questions 1-10 95/DI/e/2-7
- Annex - Calendars for 1993, 1994 and 1995 with indication of the days on which at least one of the EPO filing offices is not open for the receipt of documents 95/DI/e/8-10

INSTRUCTIONS TO CANDIDATES

Paper D, **Part I** comprises 10 questions, all of which should be answered - no choice for candidates;

Paper D, **Part II** comprises an inquiry from a client requiring an answer in the form of a legal opinion.

The duration of **Part I** will be 2 1/4 hours, the duration of **Part II** will be 3 hours.

45% of the marks available for Paper D are awarded for Part I, 55 % for Part II.

The answers to questions in **Part I** should be brief and to the point and the candidate must cite any Articles, Rules or other legal basis relevant to his answer.

In **Part II** the candidate should demonstrate his professional ability to master a complex industrial property law situation. He must explain any legal consequences of the situation postulated and preferably cite any Articles, Rules or other legal basis relevant to his answer.

PART I

Question 1

(2 Marks)

A properly signed letter unambiguously withdrawing a European patent application is received at the EPO nine weeks before the expiry of the 18th month from priority date.

Giving reasons, say whether or not the applicant can be sure that the application will be withheld from publication.

Question 2

(3 Marks)

A French applicant filed a first patent application in France on 14 April 1994. He instructed a European Patent Attorney to file an EP patent application claiming priority from the French application. The EP application was filed on 14 April 1995 without paying any fees. On 18 April the representative realises that he has omitted to claim priority from the French application.

It is desirable to retain the priority date of the French application.

- (i) Are there any solutions?
- (ii) Would your answer be different, if the mistake is discovered on 19 April?

Question 3

(5 Marks)

The renewal fee for the third year of a European patent application was due on 30 September 1993. A communication pursuant to Article 86(2) EPC, dated 12 November 1993 was sent to the European representative. On 5 August 1994 the EPO despatched a communication pursuant to Rule 69(1) EPC concerning the ensuing loss of rights under Article 86(3) EPC. On 21 September 1994 the EPO received a letter from the representative promising to pay the renewal fee, the additional fee and the fee for re-establishment of rights, and indicating that "the grounds for re-establishment of rights" would follow. The above-mentioned fees were paid on 28 September 1994. The grounds for re-establishment were received on 6 October 1994.

Explain with reasons whether or not the request for re-establishment is admissible.

Question 4

(6 Marks)

An inventor, named as such in a European patent application, but not as applicant, wishes to challenge the entitlement of the present applicant to the grant of the European patent.

Giving justification for your answer, in which country should the inventor open proceedings, if:

- (i) the inventor is a Swiss national, resident in Switzerland, who worked and works in Austria as an employee of the applicant, which is an Austrian company?

- (ii) the inventor is a French national, resident in Belgium, but who worked as an independent consultant, not an employee, for the applicant, which is a Canadian company?
- (iii) the inventor is a Swedish national, resident in Iceland, but who worked as an independent consultant, not an employee, for the applicant, which is an Icelandic company?

Question 5

(5 Marks)

An international patent application, designating EP, is filed within 12 months of, and claiming the priority of, an identical first European patent application designating the same EPC contracting states.

- (i) Is such priority claim valid? Justify your answer.
- (ii) Assuming that the PCT application enters the European phase would it be possible to obtain a granted patent on the EP application as well as on the international application?

Question 6

(5 Marks)

A European patent has been granted to Company A on a product X. Company B has filed an opposition to the grant at the EPO and submitted that its product Y, having the same composition as product X, was sold without restriction three months before the priority date to company C. The patentee A argues that no one was aware of the composition of product Y at the priority date because its composition could only have been established by chemical analysis. Company C has confirmed in a statement that it had made no such analysis at any time, because product Y had turned out to be of no interest to them. The Opponent B does not dispute this statement by Company C.

Does product Y belong to the state of the art with respect to the opposed patent? Please give reasons.

Question 7

(4 Marks)

A European patent application EP1 is filed at the EPO one week before the end of the priority period. The application EP1 contains no added subject matter over the priority application. No fees are paid. The description refers to two Figures. However the sheet containing Figure 2 is not filed. The applicant asks your advice on how to remedy the omission.

Advise the applicant in the following situations:

- (i) The priority period has not yet expired.
- (ii) It is one week after the end of the priority period.

Question 8**(5 Marks)**

For each of the operations given below indicate when it is due, what the consequences are of failing to perform the operation by the due date/within the normal time limit, and, in the case of such failure, whether either Further Processing under Article 121 EPC or Restitutio under Article 22 EPC is available:

- (i) Designating the inventors of a European (non-divisional) application.
- (ii) Filing the translation - into one of the official languages of the EPO - of a European (non-divisional) application filed in an admissible non-EPO language.

Question 9**(5 Marks)**

Your client wants to obtain patent protection in the following countries: Croatia, Ireland, Liechtenstein, Monaco, Slovenia and Switzerland. He is not interested in individual national filings and does not want to file PCT, but if possible only one European patent application.

Is this possible? What acts should be done, what fees are payable to the EPO and what time limits are involved for each of the countries mentioned above?

Question 10**(5 Marks)**

Your client has a European Patent application, EP1, (originally filed at the EPO on 8 January 1993 claiming priority from an earlier national application of 8 January 1992) which he has been prosecuting himself. Unfortunately, the last communication, dated 7 February 1995, from the EPO on this case was a decision refusing the application under EPC Article 97(1) because your client had not agreed to incorporate an amendment in the claims proposed by the Examiner in the previous official action to make the claims allowable and had responded to that official action merely with further arguments against the Examiner's assessment of the prior art. Your client now says that he would be happy to accept the amendment to the claims suggested by the Examiner. He also tells you that he has paid no fees on the case over the last year.

What actions, if any, should be taken, and by what date, to overcome the refusal of EP1 and to keep the application alive with the minimum of further expense and effort?

1993

Notice of the President of the European Patent Office dated 9 October 1992 concerning the days on which EPO filing offices are closed in 1993

1. Under Rule 85(1) EPC time limits expiring on a day on which at least **one** of the filing offices of the EPO is not open for receipt of documents (closing days) are extended until the first day thereafter on which **all** the filing offices are open for receipt of documents and on which ordinary mail is delivered.

2. The EPO's filing offices in Munich, The Hague and Berlin will be closed for the receipt of documents on every Saturday and Sunday. The other closing days in 1993 are listed below.

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APRIL

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JULY

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OCTOBER

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FEBRUARY

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AUGUST

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SEPTEMBER

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DECEMBER

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Tage – Days – Jours		München	Den Haag	Berlin
Neujahr – New Year's Day – Nouvel An	1.1.1993	X	X	X
Heilige Drei Könige – Epiphany – Epiphanie	6.1.1993	X		X
Karfreitag – Good Friday – Vendredi Saint	9.4.1993	X	X	X
Ostermontag – Easter Monday – Lundi de Pâques	12.4.1993	X	X	X
Nationalfeiertag – National Holiday – Fête Nationale	30.4.1993		X	
Tag der Befreiung – Liberation Day – Journée de la Libération	5.5.1993		X	
Christi Himmelfahrt – Ascension Day – Ascension	20.5.1993	X	X	X
Pfingstmontag – Whit Monday – Lundi de Pentecôte	31.5.1993	X	X	X
Fronleichnam – Corpus Christi – Fête-Dieu	10.6.1993	X		
Allerheiligen – All Saints' Day – Toussaint	1.11.1993	X	X	X
Buß- und Betttag – Day of Prayer and Repentance – Jour de pénitence et de prière	17.11.1993	X		X
Heiliger Abend – Christmas Eve – Veille de Noël	24.12.1993	X	X	X
Silvester – New Year's Eve – Veille de Nouvel An	31.12.1993	X	X	X

1994

Notice of the President of the European Patent Office dated 7 October 1993 concerning the days on which EPO filing offices are closed in 1994

1. Under Rule 85(1) EPC time limits expiring on a day on which at least **one** of the filing offices of the EPO is not open for receipt of documents (closing days) are extended until the first day thereafter on which **all** the filing offices are open for receipt of documents and on which ordinary mail is delivered.

2. The EPO's filing offices in Munich, The Hague and Berlin will be closed for the receipt of documents on every Saturday and Sunday. The other closing days in 1994 are listed below.

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APRIL

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JULY

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OCTOBER

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FEBRUARY

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AUGUST

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NOVEMBER

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SEPTEMBER

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DECEMBER

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Tage – Days – Jours		München Munich	Den Haag The Hague La Haye	Berlin
Heilige Drei Könige – Epiphany – Epiphanie	06.01.1994	X		X
Karfreitag – Good Friday – Vendredi Saint	01.04.1994	X	X	X
Ostermontag – Easter Monday – Lundi de Pâques	04.04.1994	X	X	X
Tag der Befreiung – Liberation Day – Journée de la Libération	05.05.1994		X	
Christi Himmelfahrt – Ascension Day – Ascension	12.05.1994	X	X	X
Pfingstmontag – Whit Monday – Lundi de Pentecôte	23.05.1994	X	X	X
Fronleichnam – Corpus Christi – Fête-Dieu	02.06.1994	X		
Mariä Himmelfahrt – Assumption Day – Assomption	15.08.1994	X	X	X
Tag der Deutschen Einheit – Day of German Unity – Fête Nationale	03.10.1994	X		X
Allerheiligen – All Saints' Day – Toussaint	01.11.1994	X	X	X
Buß- und Betttag – Day of Prayer and Repentance – Jour de pénitence et de prière	16.11.1994	X		X
2. Weihnachtstag – Boxing Day – Lendemain de Noël	26.12.1994	X	X	X

1995

Notice from the President of the European Patent Office dated 10 November 1994 concerning the days on which EPO filing offices are closed in 1995

1. Under Rule 85(1) EPC time limits expiring on a day on which at least one of the filing offices of the EPO is not open for receipt of documents (closing days) are extended until the first day thereafter on which all the filing offices are open for receipt of documents and on which ordinary mail is delivered.

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FEBRUARY

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MAY

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AUGUST

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NOVEMBER

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JUNE

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SEPTEMBER

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DECEMBER

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Tage/Days/Jours		München Munich	Den Haag The Hague La Haye	Berlin
Heilige Drei Könige - Epiphany - Epiphanie	06.01.1995	X		X
Karfreitag - Good Friday - Vendredi Saint	14.04.1995	X	X	X
Ostermontag - Easter Monday - Lundi de Pâques	17.04.1995	X	X	X
Maifeiertag - May Day - Fête du travail	01.05.1995	X	X	X
Tag der Befreiung - Liberation Day - Journée de la Libération	05.05.1995		X	
Christi Himmelfahrt - Ascension Day - Ascension	25.05.1995	X	X	X
Pfingstmontag - Whit Monday - Lundi de Pentecôte	05.06.1995	X	X	X
Fronleichnam - Corpus Christi - Fête-Dieu	15.06.1995	X		
Mariä Himmelfahrt - Assumption Day - Assomption	15.08.1995	X	X	X
Tag der Deutschen Einheit - Day of German Unity - Fête Nationale	03.10.1995	X		X
Allerheiligen - All Saints Day - Toussaint	01.11.1995	X	X	X
1. Weihnachtstag - Christmas Day - Noël	25.12.1995	X	X	X
2. Weihnachtstag - Boxing Day - Lendemain de Noël	26.12.1995	X	X	X

1996

JANUARY

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FEBRUARY

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MARCH

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APRIL

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MAY

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AUGUST

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SEPTEMBER

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OCTOBER

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NOVEMBER

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DECEMBER

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