

EUROPEAN QUALIFYING EXAMINATION 1998

PAPER D - PART I

THIS PAPER COMPRISES:

- * QUESTIONS 1 - 9 98/DI/E/1-5
- * ANNEX - CALENDARS FOR 1997 AND 1998 WITH
INDICATION OF THE DAYS ON WHICH AT LEAST ONE
OF THE EPO FILING OFFICES IS NOT OPEN FOR
THE RECEIPT OF DOCUMENTS 98/DI/E/6-7

Question 1

(3 marks)

A communication dated 21 February 1997, setting a time limit of two months for filing a reply, was sent by the EPO to the applicant by registered letter.

- (a) What was the last day for requesting an extension?
- (b) What was the last day for replying to the communication if a two-month extension of the time limit was granted?

Question 2

(5 marks)

Your client himself filed a European patent application on 27 June 1997 claiming priority of a French application dated 28 June 1996. When filing the European application he used EPO Form 1001 and paid the designation fees for DE, FR, GB and IT. Your client now asks you whether it is possible to validly designate ES, NL and SE additionally.

What would be your answer?

Question 3

(6 marks)

- (a) What is the latest date by which a European patent application can be withdrawn if the applicant wants to be sure that publication will be prevented? Will the EPO accept a conditional withdrawal when the condition is that the application should not be withdrawn in the event that publication can no longer be stopped?
- (b) What is the latest date by which a PCT application can be withdrawn if the applicant wants to be sure that publication will be prevented?

- (c) An applicant irrevocably withdraws a European patent application one day after having received notification that the European patent application will be published as an A2 document. What fees, if any, will be refunded by the EPO?
- (d) An applicant irrevocably withdraws a European patent application seven months after publication of the search report, having requested examination and having paid the examination fee. What fees, if any, will be refunded by the EPO?

Question 4

(4 marks)

British company *X* has just acquired from German company *Y* full rights to a PCT application designating EP.

The application was filed in German at the EPO. A valid demand for international preliminary examination was filed by company *Y*. The EPO is ISA and IPEA.

Company *X* would like English rather than German to be used in all forthcoming proceedings, both in the international and in the EPO regional phase.

Is this possible? If so, to what extent?

Question 5

(5 marks)

You have filed a PCT application and have today received the search report from the EPO acting as ISA. The report raises the objection that there are five inventions covered by the claims. The claims relating to the first invention have been searched by the ISA.

Your analysis is that there are only two inventions covered by the claims.

- (a) What action is necessary, and when, in order to have all the claims searched by the ISA?
- (b) How can you challenge the finding of lack of unity?
- (c) Upon entry into the regional phase, according to which provision of the EPC will the Search Division proceed with respect to any claims not searched in the international phase?
- (d) As from when can you file a divisional application?

Question 6

(6 marks)

In opposition proceedings, the proprietor of the patent was invited by the Opposition Division, in accordance with Article 101(2) EPC, to file his observations on the comments filed by the opponent. The invitation set a time limit of 4 months. Due to a sudden, severe illness, the proprietor was unable to observe this time limit in spite of all due care required by the circumstances having been taken. Thereupon he applied in due time for re-establishment of rights, stating the grounds on which the request was based, paying the fee for re-establishment of rights and completing the omitted act.

- (a) Will the opponent be informed of the application for re-establishment of rights?
- (b) Will the opponent be party to the proceedings for re-establishment of rights?
- (c) How do you think the Opposition Division will decide on the request for re-establishment of rights?
- (d) Would a request for further processing under Article 121 EPC have been successful?

Question 7

(8 marks)

An international application was filed on 17 October 1997 with the designations EP and US. A priority of 18 October 1996 was claimed.

Company *A* is the first-named applicant and inventor *B* is named as applicant for the US. The request was signed by the managing director of *A*. It was not possible to obtain *B*'s signature before the end of the priority period as *B* was on holiday at the time of filing.

The receiving Office has invited company *A* to correct the defect, setting a time limit which ended on 6 February 1998. In the meantime, due to the sudden bankruptcy of its main debtor, company *A* faced severe financial difficulties, neglected the application and did not react to the invitation. As a consequence, the receiving Office considered the application withdrawn and despatched the corresponding declaration, dated 17 February 1998.

On 5 March 1998, company *C* bought all the shares of company *A*. *C* asks you whether it is possible to revive the international application or at least to save the designation EP, and if so, what the time limits involved are. *B*'s signature is now available.

Question 8

(3 marks)

In what circumstances does the Enlarged Board of Appeal issue

- (a) a decision?
- (b) an opinion?

Does the legal effect of a decision differ from that of an opinion?

Question 9

(5 marks)

A European patent application was filed on 27.05.1994. The mention of the grant will be published on 13.05.1998.

- (a) When was the last day for validly paying the renewal fee for the fourth year? Up to what date could the fee have been paid with surcharge?
- (b) May a Contracting State impose a national renewal fee for the year in which the mention of the grant was published?
- (c) To whom should the renewal fee for the fifth year be paid?

1997

**INFORMATION FROM THE
EUROPEAN PATENT OFFICE**

Notice from the President of the
European Patent Office dated
2 October 1996 concerning the
days on which EPO filing offices
are closed in 1997

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
1997 are listed below.

JANUARY

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Tage/Days/Jours		München Munich	Den Haag The Hague La Haye	Berlin
Neujahr - New Year's Day - Nouvel An	01.01.1997	x	x	x
Heilige Drei Könige - Epiphany - Epiphanie	06.01.1997	x		
Karfreitag - Good Friday - Vendredi Saint	28.03.1997	x	x	x
Ostermontag - Easter Monday - Lundi de Pâques	31.03.1997	x	x	x
Nationalfeiertag - National Holiday - Fête Nationale	30.04.1997		x	
Maifeiertag - May Day - Fête du travail	01.05.1997	x	x	x
Tag der Befreiung - Liberation Day - Journée de la Libération	05.05.1997		x	
Christi Himmelfahrt - Ascension Day - Ascension	08.05.1997	x	x	x
Pfingstmontag - Whit Monday - Lundi de Pentecôte	19.05.1997	x	x	x
Fronleichnam - Corpus Christi - Fête-Dieu	29.05.1997	x		
Mariä Himmelfahrt - Assumption Day - Assomption	15.08.1997	x	x	
Tag der Deutschen Einheit - Day of German Unity - Fête Nationale	03.10.1997	x		x
Heiliger Abend - Christmas Eve - Veille de Noël	24.12.1997	x	x	x
1. Weihnachtstag - Christmas Day - Noël	25.12.1997	x	x	x
2. Weihnachtstag - Boxing Day - Lendemain de Noël	26.12.1997	x	x	x
Silvester - New Year's Eve - Saint-Sylvestre	31.12.1997	x	x	x

1998

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Heilige Drei Könige - Epiphany - Epiphanie	06.01.1998	x		
Karfreitag - Good Friday - Vendredi Saint	10.04.1998	x	x	x
Ostermontag - Easter Monday - Lundi de Pâques	13.04.1998	x	x	x
Nationalfeiertag - National Holiday - Fête National	30.04.1998		x	
Mai feiertag - May Day - Fête du travail	01.05.1998	x	x	x
Tag der Befreiung - Liberation Day - Journée de la Libération	05.05.1998		x	
Christi Himmelfahrt - Ascension Day - Ascension	21.05.1998	x	x	x
Pfingstmontag - Whit Monday - Lundi de Pentecôte	01.06.1998	x	x	x
Fronleichnam - Corpus Christi - Fête-Dieu	11.06.1998	x		
Heiliger Abend - Christmas Eve - Veille de Noël	24.12.1998	x	x	x
1. Weihnachtstag - Christmas Day - Noël	25.12.1998	x	x	x
Silvester - New Year's Eve - Saint-Sylvestre	31.12.1998	x	x	x