



**Europäisches
Patentamt**

**European
Patent Office**

**Office européen
des brevets**

**Europäische
Eignungsprüfung**

**European
qualifying examination**

**Examen européen de
qualification**

Prüfungssekretariat

Examination Secretariat

Secrétariat d'examen

EUROPEAN QUALIFYING EXAMINATION 2000

PAPER D - PART I

THIS PAPER COMPRISES:

* QUESTIONS I - II

2000/DI/E/1-5

* ANNEX - CALENDARS FOR 1999 AND 2000 WITH
INDICATION OF THE DAYS ON WHICH AT LEAST ONE
OF THE EPO FILING OFFICES IS NOT OPEN FOR
THE RECEIPT OF DOCUMENTS

2000/DI/E/6-7

45% OF THE MARKS AVAILABLE FOR PAPER D ARE AWARDED FOR PART I, 55%
FOR PART II.

Question 1 (2 marks)

Can third parties obtain inspection of the files of a published international application for which international preliminary examination is being carried out before the EPO?

Question 2 (4 marks)

In appeal proceedings following opposition you are representing the proprietor of the patent. Some months ago the sole opponent, who is also sole appellant, introduced into the proceedings a document which was in all respects prejudicial to novelty. Recently, however, he surprisingly withdrew his opposition. Your client would now like to know whether to expect his patent to be revoked. What do you tell him?

Question 3 (3 marks)

An Argentinian company validly files a patent application in Argentina. This company instructs a European patent attorney in Spain to file an identical European application, claiming priority from the Argentinian application. A copy of the Argentinian application is enclosed.

Where is it possible for the Spanish patent attorney to file the European application and in what language(s)?

Question 4 (4 marks)

An international application was filed in the US on 5 May 1998 claiming a priority of 5 May 1997. The USPTO drew up the international search report. The pamphlet containing the international search report was published on 5 November 1998.

International preliminary examination was not requested and the application entered the regional phase before the EPO on 5 February 1999. The supplementary search report was published on 1 September 1999.

What was the latest day for filing the request for examination without paying a surcharge?

Question 5 (3 marks)

In respect of a European patent application, a communication according to Rule 51(4) EPC has been sent indicating that the examining division intends to grant the existing text of the application as a European patent. The professional representative has been requested by his client to make a number of amendments to the text in which the EPO proposes to grant the application, and in any case to file a European divisional application in respect of the subject-matter of a sub-claim.

- (a) Is a further Rule 51(4) EPC communication sent if the examining division consents to the proposed amendments without reservation?
- (b) By when at the latest must the European divisional application have been filed?

Question 6 (4 marks)

What date of filing will be given to the application in the following situations? In each case the EPO Request for Grant (Form 1001) is used and the documents are filed directly with the EPO in Munich on 1 March 2000.

- (a) The application is filed in English and consists of a description of the invention, drawings but no claims. A set of claims for the application is filed on 21 March 2000.
- (b) The description, claims and drawings were filed with all the documents in the German language except for the text in the drawings which were computer program flow charts in English. Replacement drawings with the text of the flow charts in German were filed on 20 March 2000.
- (c) The description, claims and drawings were filed by a Latvian applicant in Latvian. A translation of all the documents into German was filed on 17 March 2000.

Question 7 (5 marks)

On 12.11.1999 you receive a telephone call from a Swiss firm which wants you to represent them before the EPO. No prior representative has been appointed. The client informs you that he has filed an opposition against a European patent and that at the end of the oral proceedings which took place on 11.11.1999, the Opposition Division announced the decision to reject the opposition. The client intends to file an appeal against this decision. One week later you submit the authorisation to the EPO. The authorisation was received by the EPO on 23.11.1999.

On 03.03.2000, you receive a letter from your client informing you that in the meantime he has received the written decision of the EPO to reject the opposition. The decision is dated 03.12.1999 and is annexed to the letter. Moreover, he asks you to file the appeal. He explains to you that due to the pressure of business before Christmas and his winter holiday, he had forgotten to forward the decision to you.

Is it still possible to validly file the appeal?

Question 8 (7 marks)

On instructions from your client, you keep a watch on a competitor's EP application filed 16.03.98 and claiming priority of a previous JP application filed 18.03.97. In the search report, only "A"-documents were cited. By a recent inspection of the files, you found out that neither a translation of the previous application into one of the official languages of the EPO, nor a declaration confirming identity of the text of the previous JP application and the EP application has been filed. You further noted that the EP application contains more text than the previous JP application, and that a reply to a first communication in accordance with Article 96 (2) EPC is due.

Your client has just become aware of an article published on 24.06.97 which describes subject-matter identical to that of the competitor's EP application. He wants you to check the relevance of this article in the light of the previous JP application.

- (a) How would you proceed if your client instructs you to obtain as soon as possible a translation of the previous JP application without having to pay the costs for the translation?
- (b) Do you think that proceeding this way would be the best in the interest of your client?

Question 9 (4 marks)

A new client informs you that he has an opposition pending against a competitor's European patent. Claim 1 of this patent as granted contained a limitation to a special, technically relevant parameter range which provides a technical contribution to the claimed subject-matter and which had been introduced during the grant procedure by amendment of claim 1 as originally filed.

In his notice of opposition, your client has demonstrated that the introduced parameter range was not contained in the application as originally filed, nor was there a basis for replacing this feature. He asks you what is the likely outcome of the opposition.

Question 10 (5 marks)

The mention of the grant of your client's European patent was published on 26.05.99. At the same time, the specification of the European patent containing the description and a set of claims was published in English; French and German translations of the claims were included.

No opposition was filed. Today (05.04.2000), your client informs you that he has just noted an obvious error in the French translation of the claims filed with the EPO, namely, that one of the claims has been omitted.

He asks you whether this error can be corrected before the EPO.

Question 11 (4 marks)

The applicant for a PCT application received an unfavourable written opinion dated 20 December 1999 pursuant to Rule 66.2 PCT. A three month deadline for response was given. The PCT application had been filed with the EPO on 16 February 1998 and did not claim any priorities.

The applicant contacts you today (05.04.2000) because he is fearful of his application being rejected and asks you to file arguments and amendments to overcome the examiner's objections.

What advice would you give your client ?

1999

INFORMATION FROM THE EUROPEAN PATENT OFFICE

Notice from the President of the European Patent Office dated 17 September 1998 concerning the days on which EPO filing offices are closed in 1999

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.

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 1999 are listed below.

JANUARY

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FEBRUARY

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SEPTEMBER

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OCTOBER

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DECEMBER

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Tage/Days/Jours		München Munich	Den Haag The Hague La Haye	Berlin
Neujahr - New Year's Day - Nouvel An	01.01.1999	x	x	x
Heilige Drei Könige - Epiphany - Epiphanie	06.01.1999	x		
Karfreitag - Good Friday - Vendredi Saint	02.04.1999	x	x	x
Ostermontag - Easter Monday - Lundi de Pâques	05.04.1999	x	x	x
Nationalfeiertag - National Holiday - Fête National	30.04.1999		x	
Tag der Befreiung - Liberation Day - Journée de la Libération	05.05.1999		x	
Christi Himmelfahrt - Ascension Day - Ascension	13.05.1999	x	x	x
Pfingstmontag - Whit Monday - Lundi de Pentecôte	24.05.1999	x	x	x
Fronleichnam - Corpus Christi - Fête-Dieu	03.06.1999	x		
Allerheiligen - All Saints' Day - Toussaint	01.11.1999	x		
Heiliger Abend - Christmas Eve - Veille de Noël	24.12.1999	x	x	x
Silvester - New Year's Eve - Saint-Sylvestre	31.12.1999	x	x	x

**INFORMATION FROM THE
EUROPEAN PATENT OFFICE**

Notice from the President of the European Patent Office dated 30 September 1999 concerning the days on which EPO filing offices are closed in 2000

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NOVEMBER

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EPA geschlossen - EPO closed - OEB fermé	03.01.00	x	x	x
EPA geschlossen - EPO closed - OEB fermé	04.01.00	x	x	x
Heilige Drei Könige - Epiphany - Epiphanie	06.01.00	x		
Karfreitag - Good Friday - Vendredi Saint	21.04.00	x	x	x
Ostermontag - Easter Monday - Lundi de Pâques	24.04.00	x	x	x
Maifeiertag - May Day - Fête du travail	01.05.00	x	x	x
Tag der Befreiung - Liberation Day - Journée de la Libération	05.05.00		x	
Christi Himmelfahrt - Ascension Day - Ascension	01.06.00	x	x	x
Pfingstmontag - Whit Monday - Lundi de Pentecôte	12.06.00	x	x	x
Fronleichnam - Corpus Christi - Fête-Dieu	22.06.00	x		
Maria Himmelfahrt - Assumption Day - Assomption	15.08.00	x		
Tag der Deutschen Einheit - Day of German Unity - Fête Nationale	03.10.00	x		x
Allerheiligen - All Saints' Day - Toussaint	01.11.00	x		
1. Weihnachtstag - Christmas Day - Noël	25.12.00	x	x	x
2. Weihnachtstag - Boxing Day - Lendemain de Noël	26.12.00	x	x	x