
EUROPEAN QUALIFYING EXAMINATION 2001

PAPER D – PART II

THIS PAPER COMPRISES:

- * CLIENT'S LETTER 2001/DII/E/1-4
- * ANNEX – CALENDARS FOR 2000 AND 2001 WITH
INDICATION OF THE DAYS ON WHICH AT LEAST ONE
OF THE EPO FILING OFFICES IS NOT OPEN FOR
THE RECEIPT OF DOCUMENTS 2001/DII/E/5-6

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

You have agreed to act as representative for a British company, The Boggy Chemical Company ("Boggy"). Boggy's head of research, who had been acting as representative, has written to you as follows:

5 "In late 1998 we developed a new class of polymers which we refer to as blottanes. Blottanes were developed as part of our research into moisture-absorbent fibrous materials. Blottanes were found to have an extremely high affinity for water. Other materials are known that can absorb and release high quantities of water, but they deteriorate after several cycles of wetting and drying. Blottanes do not have this problem. We found blottanes to be difficult to process
10 and the production method we developed is only capable of making short fibres, and not capable of forming continuous fibres. Until recently (I will explain below) we could see no apparent way of making thread from these short fibres. We could however make non-woven textiles and papers out of these fibres. One blottane in particular, which we called product X, was dramatically better than the other blottanes since it was found to absorb odours. However,
15 because of raw material costs, product X is more expensive to make than the other blottanes.

On Thursday, 15 October 1998, we filed British application B-GB1, which described blottanes in general and how they can be made in the form of short fibres. B-GB1 also described the use
20 of blottanes and product X as moisture-retaining material in composts, and mentioned that the non-woven textiles and papers could be used in such applications as disposable nappies, tampons and incontinence clothing. B-GB1 had two claims, one directed to blottanes in general and the other directed to product X. In mid-1999 we started approaching potential users of blottanes to see whether they would be interested in blottanes and product X.

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On Wednesday, 1 September 1999, we filed a PCT application, B-PCT, claiming the priority of B-GB1, designating the USA, Europe and Japan only, and with a description and claims
30 identical to B-GB1. In January 2000, we received the PCT search report which had no citations.

Also in January 2000 we granted a licence to the Swiss company Pure Agrochemical.

Pure are licensed to use blottanes in composts and in connection with the licence they asked that a European divisional application be filed directed solely to composts, and that it should be assigned to them when granted. Pure were not interested in product X, as they had no
5 need to absorb odours. On 1 February 2000 we entered the European regional phase early, as application B-EU1, without any amendments and paying designation fees for all EPC contracting states. That same day we filed a divisional application, B-EU2, which has claims and a description directed solely to composts containing blottanes. To keep down future translation costs, the description of B-EU2 as filed is much shorter than that of B-EU1 and
10 mentions neither the other uses of blottanes nor product X. Designation fees for B-EU2 were paid for all EPC contracting states.

At about this time we also had very strong interest from Feuchtfurcht GmbH, a manufacturer
15 of disposable nappies, in using product X in their products. On 18 February 2000, we filed the demand for international preliminary examination in respect of B-PCT, requested accelerated prosecution of B-EU1 and asked for an interview with the examiner to discuss both B-PCT and B-EU1.

20 In April 2000, B-PCT was published and in May 2000 we attended an interview with the examiner to discuss B-PCT and B-EU1. The interview went well and the examiner was prepared to accept the patentability of the claims as filed. In August 2000, the communication under Rule 51(4) EPC was issued on B-EU1, as was the international preliminary examination
25 report on B-PCT. In October 2000, I approved the text of application B-EU1 and in January 2001, I received the communication under Rule 51(6) EPC. On 1 March 2001, I paid the grant fee and filed the translations of the claims and asked for immediate grant.

30 Until two weeks ago I thought we were in a good position. However, I have now received the search report on B-EU2. The search report reveals a European application, NF-EU1, in the name of Niffy Shoe Liners Ltd., an Irish company, who manufacture disposable shoe

liners. NF-EU1 was filed on Tuesday, 1 June 1999, and claims the priority of NF-IE1 filed on Thursday, 15 October 1998. NF-EU1 has the same description and claims as NF-IE1.

Niffy's application describes product A, a member of a new class of polymers, and also the moisture-absorbent properties of the new class of polymers in general. This class in fact is

5 the identical class of polymers as blottanes and I will refer to it hereafter as blottanes. NF-EU1 also discloses an ingenious process for making blottanes in the form of continuous fibres and describes the use of these fibres in the form of a woven textile in shoe liners. No other specific uses for blottanes are disclosed. NF-EU1 claims use of blottanes in general as moisture-absorbent materials, blottanes in the form of a woven textile, and the process for producing the
10 continuous fibres from blottanes. The examination fee and all designation fees in respect of NF-EU1 were paid in November 2000.

The search report also reveals an earlier application by Niffy, NF-EU2. NF-EU2 was filed
15 on Wednesday, 30 September 1998. NF-EU2 describes blottanes in general, the same process for producing the continuous fibres as disclosed in NF-EU1, and product A in the form of a woven textile for use in shoe liners. NF-EU2 also describes product A as having anti-static properties and preventing static build-up in shoes in contrast to other blottanes, which NF-EU2 refers to as of no practical use. NF-EU2 has claims directed to use of product A for its anti-
20 static properties, product A in the form of a woven textile, and the process for producing the continuous fibres from blottanes. NF-EU2 claims the priority of, and has the same description as, an Irish application, NF-IE2, filed on 1 October 1997. NF-EU2 was published as an A2 document in April 1999. Mention of the A3 publication was published in the Bulletin in August 2000. From inspection of the electronic register, the designation fees for NF-EU2 do
25 not appear to have been paid; the renewal fee due in September 2000 has however been paid.

Luckily, neither NF-EU1 nor NF-EU2 describes product X.

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- 1) Could you please advise us in detail as to the patentability in the EPC contracting states of the subject matter of NF-EU1 and NF-EU2?
- 2) Could you please advise us whether the subject matter of B-EU1 and B-EU2 is patentable in the EPC contracting states, in view of the Niffy applications? If not, is there any action we can take to improve our position?
- 3) Could the Niffy applications cause us any problems in exploiting blottanes in the EPC contracting states?
- 4) What action can we take to stop Niffy using blottanes in the EPC contracting states?

Feuchtfurcht have recently advised that they would like a European divisional application with claims directed to disposable nappies containing product X to be filed, or, less preferably, to have such claims in B-EU1. They are willing to pay 1 000 000 Euros for assignment of such a divisional application. They have also asked whether we can supply product X in the form of a woven textile.

- 5) Can we validly file such a European divisional application based on B-EU1 or B-EU2?
- 6) Can Niffy stop us from supplying product X as a woven textile to Feuchtfurcht in the EPC contracting states?"

Note: For calendars please see pages 34 and 35

Annex 1

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

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 2000 are listed below.

2000

JANUARY

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FEBRUARY

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SEPTEMBER

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Tage/Days/Jours 2000		München Munich	Den Haag The Hague La Haye	Berlin
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		
Mariä 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

2001

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FEBRUARY

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APRIL

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JULY

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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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Tage/Days/Jours 2001		München Munich	Den Haag The Hague La Haye	Berlin
Neujahr - New Year's Day - Nouvel An	01.01.01	x	x	x
Karfreitag - Good Friday - Vendredi Saint	13.04.01	x	x	x
Ostermontag - Easter Monday - Lundi de Pâques	16.04.01	x	x	x
Nationalfeiertag - National Holiday - Fête nationale	30.04.01		x	
Maifeiertag - May Day - Fête du travail	01.05.01	x	x	x
Christi Himmelfahrt - Ascension Day - Ascension	24.05.01	x	x	x
Pfingstmontag - Whit Monday - Lundi de Pentecôte	04.06.01	x	x	x
Fronleichnam - Corpus Christi - Fête-Dieu	14.06.01	x		
Mariä Himmelfahrt - Assumption Day - Assomption	15.08.01	x		
Tag der Deutschen Einheit - Day of German Unity - Fête Nationale	03.10.01	x		x
Allerheiligen - All Saints' Day - Toussaint	01.11.01	x		
Heiliger Abend - Christmas Eve - Veille de Noël	24.12.01	x	x	x
1. Weihnachtstag - Christmas Day - Noël	25.12.01	x	x	x
2. Weihnachtstag - Boxing Day - Lendemain de Noël	26.12.01	x	x	x
Silvester - New Year's Eve - Saint-Sylvestre	31.12.01	x	x	x