
EUROPEAN QUALIFYING EXAMINATION 2002

PAPER D – PART I

This paper comprises:

- * Questions 1 - 10 2002/DI/e/1-6
- * Annex – Calendars for 2001 and 2002 with indication of the days on which at least one of the EPO filing offices is not open for the receipt of documents 2002/DI/e/7-8

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

Question 1**(2 points)**

You are required to file a European patent application for company "Firmament". The sole inventor, Mr Man, asks you if you could arrange for his name not to appear in the application as published. What will be your answer?

Question 2**(7 points)**

You are a European patent attorney and have today been asked how a client's patent application may be saved in the following situation:

The European patent application was duly filed on 8 May 1999 without any priority claim, and the request for examination was duly filed. On 11 July 2001, the examining division issued a communication pursuant to Article 96(2) EPC inviting your client to file his observations within a period of four months. It was not possible for your client to file a reply as bankruptcy proceedings were initiated against him on 5 December 2000 and he was barred from proceeding with this application.

In a communication dated 14 October 2001 the applicant's attention was drawn to Article 86(2) and (3) EPC.

In a communication dated 18 December 2001 your client was informed that the European patent application was deemed to have been withdrawn pursuant to Article 96(3) EPC. On 19 March 2002 the bankruptcy proceedings were terminated and your client was no longer barred from proceeding with the application.

- a) Is there a way to save the application?
- b) What would be your answer if the bankruptcy proceedings did not bar your client from proceeding with the application?

Question 3**(6 points)**

On 19 December 2001 you filed a PCT application at the EPO claiming priority from a European patent application filed on 19 August 2001.

Today, 20 March 2002, you received a telephone call from your client who instructs you also to claim priority from a German utility model filed on 27 December 2000.

- 1) Is this possible? If so, what is the last date on which the applicant can add the priority claim?
- 2) Your client further informs you that the certified copy of the priority document of the German utility model will not be issued by the German Patent and Trademark Office before 20 May 2002. What can you undertake?

Question 4**(4 points)**

A Cypriot applicant living in England telephones you today, 20 March 2002, and asks you to arrange for his PCT application to enter the EP regional phase and the US national phase.

He filed the PCT application with the UK Patent Office on 18 September 1999 without claiming priority. On the last day of the 19-month period after filing, he filed a demand for international preliminary examination with the UK Patent Office, electing all the designated States, including US and EP.

Was the demand for preliminary examination correctly filed? What is the latest date for you to arrange for entry into the US national phase and the EP regional phase?

Question 5**(4 points)**

On 15 October 2001 company A filed a European patent application for an invention, validly claiming priority from a French application with a filing date of 27 October 2000.

B works in the research division of company A and is under an obligation of secrecy according to his labour contract. When B was informed that he would not be promoted he decided to harm company A.

Do the following disclosures form part of the state of the art for company A's European patent application, if

- a) B disclosed the same invention at a conference on 25 October 2000?
- b) on 11 August 2000 B filed his own European patent application which claims the same invention and was published at his request on 10 October 2001?
- c) on 12 October 2000 B filed his own European patent application which claims the same invention and was published at his request on 15 November 2001?

Question 6**(6 points)**

The AMOI company, which manufactures electric motors, has developed three new motors, M1, M2 and M3. The AMOI company filed in France on 3 January 1997 a first application FR which describes only motor M1.

A European application EP1 claiming priority from FR was filed with the EPO on 12 December 1997 and published with the search report on 6 June 1998. Application EP1 describes motors M1, M2 and M3 and comprises a single claim relating only to motor M1 but not to motors M2 and M3. The mention of grant of EP1 was published in the European Patent Bulletin on 7 July 2000. The claim was granted as filed.

EP2, a European divisional application based on EP1, was filed with the EPO on 8 August 1998 and published with the search report on 11 November 1998. Application EP2 contains the same description as EP1 and a single claim relating to motor M2 but not to motor M3. During the examination procedure a new independent claim was added to cover motor M3. The mention of grant of EP2 was published in the European Patent Bulletin on 10 May 2001. The granted set of claims comprises the claim as published, which covers motor M2, and the new added claim covering M3.

- a) From when, at the earliest, could rights for motors M1, M2 and M3 be conferred by EP1 and EP2?
- b) Until when, at the latest, are rights for motors M1, M2 and M3 conferred by EP1 and EP2?

Question 7

(4 points)

A European patent application was filed on 18 February 2002. The intention was to claim priority from a Dutch patent application filed on 16 February 2001.

Is the priority claim valid in the following circumstances? If not, can it be corrected and how?

- a) The declaration of priority was contained in the request for grant. The Dutch application was deemed to be withdrawn as of 8 June 2001 due to the non-payment of the filing fee and the search fee.
- b) The declaration of priority was not contained in the request for grant but was filed by a separate letter on 19 March 2002.
- c) The declaration of priority was contained in the request for grant but incorrectly mentioned Germany as state and 18 February 2001 as the date of the previous application.

Question 8**(6 points)**

Ms Sumo filed a Japanese patent application in her name on 10 October 2000. On 4 October 2001 she prepared the request for grant of a European patent claiming priority from the Japanese patent application. In this request Ms Sumo stated that the priority application was a Japanese patent application and indicated the filing date and filing number of the earlier application. The European patent application is a complete translation in English of the Japanese patent application. In order to send this request to the EPO in Munich, Ms Sumo delivered it on the same day without a priority document to a delivery service in Japan. Today Ms Sumo sent you a fax letter together with a copy of the EPO's confirmation of receipt, which indicates as date of receipt 31 October 2001.

Is the priority claim valid?

If so, are there any further steps to be taken in this respect?

Question 9**(3 points)**

In the course of opposition proceedings, you submitted on behalf of your client, who is the patent proprietor, a new set of claims consisting of two independent apparatus claims, based on dependent claims 2 and 3 as granted. The sole opponent withdrew his opposition after validly filing his statement of grounds and submitting a document which was prejudicial to the novelty of claim 1 as granted.

You received the opposition division's decision on 18 March 2002.

The decision revoked the patent for lack of unity of invention. It seems clear from the decision that the subject-matter of the two claims is considered new, inventive and in accordance with the provisions of Art. 123 EPC, but not unitary.

Your client would like to appeal but is afraid that the cost would be too high. Do you think that he has a chance of success?

Question 10**(3 points)**

On 29 September 2000 Mr Ouzo filed validly an international patent application in English. The international preliminary examination report was prepared by the EPO. Mr Ouzo is of Greek nationality and has his residence in South Africa.

- a) For entering the regional phase before the EPO, can Mr Ouzo be represented by a Greek lawyer?
- b) What examination fee has to be paid if the request for examination is filed in Greek in EPO Form 1200 (Entry into the European phase)?

2001

**INFORMATION FROM THE
EUROPEAN PATENT OFFICE**

Notice from the President of the European Patent Office dated 18 October 2000 concerning the days on which EPO filing offices are closed in 2001.

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 2001 are listed below.

JANUARY

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FEBRUARY

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Tag/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

2002

INFORMATION FROM THE EUROPEAN PATENT OFFICE

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Karfreitag - Good Friday - Vendredi Saint	29.03.02	x	x	x
Ostermontag - Easter Monday - Lundi de Pâques	01.04.02	x	x	x
Nationalfeiertag - National Holiday - Fête nationale	30.04.02		x	
Maifeiertag - May Day - Fête du travail	01.05.02	x	x	x
Christi Himmelfahrt - Ascension Day - Ascension	09.05.02	x	x	x
Pfingstmontag - Whit Monday - Lundi de Pentecôte	20.05.02	x	x	x
Fronleichnam - Corpus Christi - Fête-Dieu	30.05.02	x		
Mariä Himmelfahrt - Assumption Day - Assomption	15.08.02	x		
Tag der Deutschen Einheit - Day of German Unity - Fête Nationale	03.10.02	x		x
Allerheiligen - All Saints' Day - Toussaint	01.11.02	x		
Heiliger Abend - Christmas Eve - Veille de Noël	24.12.02	x	x	x
1. Weihnachtstag - Christmas Day - Noël	25.12.02	x	x	x
2. Weihnachtstag - Boxing Day - Lendemain de Noël	26.12.02	x	x	x
Silvester - New Year's Eve - Saint-Sylvestre	31.12.02	x	x	x