

EUROPEAN QUALIFYING EXAMINATION 2005

PAPER D - PART II

This paper comprises:

- * Client's letter followed by four (4) questions 2005/DII/e/1 - 7

- * Annex: Calendars for 2004 and 2005 with indication of the days on which at least one of the EPO filing offices is not open for the receipt of documents 2005/DII/e/8 - 9

45% of the marks available for paper D are awarded for part I,
55% for part II.

You are a qualified European Patent Attorney and today you received the following letter from the Danish Company “Möller Wind Enterprises” (MÖWE), for whom you hold a general authorization before the EPO. MÖWE sells windmills and has all its development and manufacturing facilities situated in Denmark.

“Dear Madam/Sir,

Earlier today, I had a meeting with Mr. Vinge, an inventor and close friend, who for many years has been active in the field of windmill technology. During this meeting, I became aware of certain facts and problems, which I believe need immediate attention.

On 29.04.2002, Mr. Vinge filed in Danish a European application, EP1, designating all contracting states. Mr. Vinge is applicant and named as inventor. EP1 describes a process for manufacturing a windmill wing having a core made of a foamed plastic material fully encapsulated by a smooth, hard shell. In this way a lighter and less expensive wing is obtainable as compared to prior art wings. The claims are directed to both the process and to the wing. The application includes no drawings. A translation into English was filed on 25.07.2002. EP1 was published in autumn 2003 and the search report cited no relevant documents. Mr. Vinge has been informed by the EPO that publication of the grant of the European patent will take place in early April 2005. The patent will be granted with the same text as the published application.

Also on 29.04.2002 Mr. Vinge filed another European application, EP2, in Danish and designating all contracting states. Again, Mr. Vinge is applicant and is named as inventor. EP2 describes and claims a windmill wing with adjustable flaps. By means of such flaps a wing can be adjusted to almost any wind condition. Shortly after filing, Mr. Vinge realized that the drawings were missing from the application.

Although the claims of EP2 are fully supported by the description and the invention is fully understandable based on the seven pages of description alone, he filed the missing drawings on 25.05.2002. When asked by the EPO, Mr. Vinge requested that the application be re-dated to the date on which the drawings were filed. These drawings contain no further technical information. An English translation was filed on 25.07.2002. EP2 was published in autumn 2003 and again the search report cited no relevant documents. Publication of the grant of the European patent took place on 02.08.2004 and the patent has been duly validated in all designated states.

In order to enable testing and evaluation, Mr. Vinge informed me fully and in all detail about EP1 and EP2 on the 15.05.2002 under a written secrecy agreement.

On 04.07.2002 we celebrated the wedding between Mr. Vinge's daughter and my son. The wedding party took place in my house and garden and some 200 invited guests, including important business associates and contacts of Mr. Vinge and myself, participated. Much to my surprise and immediate concern, I realized that my wife had arranged for a large five tons prototype wing to be placed in the garden for decorative purposes, on the day of the wedding. The wing included flaps according to EP2, a foamed non-visible core according to EP1 and a plurality of small dimples. Dimples are small surface indentations, which are known to be noise reducing. However, I found out that when the dimples are placed exclusively in a very specific region near the wing tip (as in the prototype), they are surprisingly efficient in reducing noise generation. Later the same evening, around 19h00, I managed to put together and file by fax a European patent application, EP3, in English language describing and claiming a wing with this dimple-arrangement and describing the surprising effect of this arrangement. I am applicant and named as inventor. EP3 was published in January 2004 with a search report citing no relevant documents. The application is validly pending in the examination phase before the EPO and all relevant fees have been paid.

Present at the party was also Mr. Cervantes, who owns our main competitor, the Spanish company Don Quichotte Wind Enterprises (DQWE). Mr. Cervantes – who had been invited by Mr. Vinge – is known to run his business in a rather aggressive manner. Shortly after filing EP3, I discussed with Mr. Cervantes and some other guests from the windmill industry my new dimple-based noise-reduction technology.

Later I learned that on the very evening of the wedding, around 23h00, Mr. Cervantes filed also by fax a European application, EP4. He is applicant and named as inventor. EP4 describes and claims a wing with the very same arrangement of dimples as shown by the prototype. EP4 also claims an alternative in the form of a wing with small knobs, i.e. protrusions, in the same region near the wing tip. The dimples and the knobs are – as is commonly known and as also acknowledged in the description of EP4 – equivalents in that they serve substantially the same purpose and obtain substantially the same effect. From the description of EP4, it is clear that the inventive contribution is seen solely in the new and surprising noise reduction resulting from the specific location of the dimples/knobs near the wing tip. EP4 was published in January 2004 with a search report citing no relevant documents. The application is validly pending in the examination phase before the EPO and all relevant fees have been paid.

In their current sales catalogues, both MÖWE and DQWE show wings with dimples. DQWE additionally shows the equivalent knobs. No sales have yet been made by either company. However, the technology is believed to be commercially important, since low noise windmills can be placed closer to residential areas.

Another possible conflict with DQWE may arise due to a PCT application, PCT1, filed in English at the EPO on 15.07.2002 by Mr. Cervantes. He is applicant and named as inventor. PCT1 describes a process for manufacturing a windmill wing having a core made from foamed, recycled plastics. The foamed core is fully encapsulated by a smooth, hard shell making the core as such non-visible. In PCT1, the essence of the invention is seen in the use of recycled plastic, which is a very cheap material in comparison with virgin plastic. Recycled plastic is easily distinguishable from virgin plastic in that it is multi-colored. The claims of PCT1 are directed to the process and to the resulting wing. PCT1 was published in January 2004 with a search report citing no relevant documents. PCT1 was validly regionalized and is pending in the examination phase before the EPO. A corresponding US application was granted in unamended form in February 2005.

To me it appears obvious that Mr. Cervantes somehow had gained knowledge of the foamed core technology of EP1 and based PCT1 on this knowledge. Mr. Vinge – being the only other person apart from me knowing about the interior of the displayed wing - vaguely remembers a late-night discussion at the wedding with Mr. Cervantes about the wing. However, this was shortly before he had to be brought home by Mrs. Vinge and he cannot - or will not - recall the conversation in any detail.

The use of recycled plastic for the foam core is not really new to me, since I have myself considered this obvious choice of material after having learned in May 2002 about the foam core structure of EP1. In fact, the wing shown at the wedding also included a foam core made from recycled plastic material. At that time, I decided to try to keep the use of recycled plastic secret, since the interior of a wing would not be visible. No delivery was made before February 2004, when I delivered some wings with a core of foamed, recycled plastic to a customer in Germany. However, during installation, an accident happened and one of the wings dropped to the ground and broke. With a letter of last week, Mr. Cervantes indicated having recently gained knowledge of this incident, and thus of our use of recycled plastics for foamed wing cores. Consequently, he has invited us to a meeting on 16.04.2005.

We know that DQWE, whose manufacturing facilities all are located in Spain, already has made extensive sales of wings according to the technology disclosed in PCT1 in Europe and in the USA.

Another aspect of commercial importance is a tender for a large contract for supplying wings to a major Californian windmill park where we are competing against DQWE. The deadline for submitting offers is 30.04.05. Strong interest has been expressed by the Californian company in the recently patented flap technology of EP2 and we are convinced that being able to deliver wings with this technology would be vital to securing the order. If getting the order, we would of course prefer to make use of the less expensive recycled plastic material for the foamed cores.

During the meeting earlier today, Mr. Vinge informed me that he would like to retire and give up all business activities. He offered to assign to me all rights resulting from EP1 for the price of EUR 2 million. He also offered EP2 and all national patents resulting from EP2 to me for the price of EUR 5 million. Further, he informed me that the same offer had been made to DQWE. However, for family reasons, Mr. Vinge has given me two days to consider these offers before resuming talks with DQWE. Mr. Vinge also informed me that Mr. Cervantes has deposited a binding agreement to purchase any rights that MÖWE does not purchase.

To assist me in making my decision, Mr. Vinge handed over a copy of his complete files regarding both EP1 and EP2. I noticed that EP1 as originally filed additionally contains the seven pages of text identical to the description of EP2, but that the technical content of these pages appear nowhere in the application as later published. When asked about this, Mr. Vinge explained, that erroneously these pages were omitted when filing the English translation of EP1. All relevant fees for EP1 and EP2 have been duly paid.

I consider the flap technology of vital importance and I am thus inclined to accept buying EP2 for the stated price. As regards EP1, I consider this technology alone as being less important for MÖWE, and as such not worth the asking price of EUR 2 million. In my belief, the foamed core technology is only truly interesting in economical terms when used in combination with the recycled plastics as disclosed by PCT1.

Please advise me urgently in the above matters, in particular on:

1. What is the patent situation regarding:

- the foamed core technology, and
- the use of recycled plastic material?

What should be my strategy and can my position be improved before the upcoming meeting with Mr. Cervantes?

2. What is the patent situation regarding the adjustable flap technology and can I take any actions to improve my position?

3. What is the patent situation regarding the dimples and the equivalent knobs and can I take any actions to improve my position?

4. If hostile actions against DQWE become unavoidable, I would prefer to remain anonymous to not further deteriorate the business climate. What are the options ?

Yours faithfully,

Möller"

Annex 1

2004

INFORMATION FROM THE EUROPEAN PATENT OFFICE

**Notice from the President of the
European Patent Office dated
03 November 2003 concerning the
days on which EPO filing offices are
closed in 2004**

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
2004 are listed below.

JANUARY S M T W T F S 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	FEBRUARY S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29	MARCH S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31
APRIL S M T W T F S 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30	MAY S M T W T F S 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	JUNE S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30
JULY S M T W T F S 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	AUGUST S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	SEPTEMBER S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30
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Tage/Days/Jours 2004		München Munich	Den Haag The Hague La Haye	Berlin
Neujahr - New Year's Day - Nouvel An	01.01.04	x	x	x
Heilige Drei Könige - Epiphany - Epiphanie	06.01.04	x		
Karfreitag - Good Friday - Vendredi Saint	09.04.04	x	x	x
Ostermontag - Easter Monday - Lundi de Pâques	12.04.04	x	x	x
Nationalfeiertag - National Holiday - Fête nationale	30.04.04		x	
Tag der Befreiung - Liberation Day - Journée de la Libération	05.05.04		x	
Christi Himmelfahrt - Ascension Day - Ascension	20.05.04	x	x	x
Pfingstmontag - Whit Monday - Lundi de Pentecôte	31.05.04	x	x	x
Fronleichnam - Corpus Christi - Fête-Dieu	10.06.04	x		
Allerheiligen - All Saints' Day - Toussaint	01.11.04	x		
Heiliger Abend - Christmas Eve - Veille de Noël	24.12.04	x	x	x
Silvester - New Year's Eve - Saint-Sylvestre	31.12.04	x	x	x

Annex 2

2005

INFORMATION FROM THE EUROPEAN PATENT OFFICE

**Notice from the President of the
European Patent Office dated
02 July 2004 concerning the
days on which EPO filing offices are
closed in 2005**

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
2005 are listed below.

JANUARY

S	M	D	M	D	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

FEBRUARY

S	M	D	M	D	F	S
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27	28					

MARCH

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12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

APRIL

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MAY

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29	30	31				

JUNE

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JULY

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31						

AUGUST

S	M	D	M	D	F	S
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SEPTEMBER

S	M	D	M	D	F	S
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24	25	26	27	28	29	30

OCTOBER

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NOVEMBER

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DECEMBER

S	M	D	M	D	F	S
					1	2
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17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

Tage/Days/Jours 2005		München Munich	Den Haag The Hague La Haye	Berlin
Heilige Drei Könige - Epiphany - Epiphanie	06.01.05	x		
Karfreitag - Good Friday - Vendredi Saint	25.03.05	x	x	x
Ostermontag - Easter Monday - Lundi de Pâques	28.03.05	x	x	x
Christi Himmelfahrt - Ascension Day - Ascension	05.05.05	x	x	x
Pfingstmontag - Whit Monday - Lundi de Pentecôte	16.05.05	x	x	x
Fronleichnam - Corpus Christi - Fête-Dieu	26.05.05	x		
Mariä Himmelfahrt - Assumption Day - Assomption	15.08.05	x		
Tag der Deutschen Einheit - Day of German Unity - Fête Nationale	03.10.05	x		x
Allerheiligen - All Saints' Day - Toussaint	01.11.05	x		
2. Weihnachtstag - Boxing Day - Lendemain de Noël	26.12.05	x	x	x