

EUROPEAN QUALIFYING EXAMINATION 2007

PAPER D – PART I

This paper comprises:

* Questions 1 – 10

2007/DI/e/1 - 5

- Question 1 : 4 points
- Question 2 : 4 points
- Question 3 : 3 points
- Question 4 : 6 points
- Question 5 : 3 points
- Question 6 : 5 points
- Question 7 : 3 points
- Question 8 : 4 points
- Question 9 : 5 points
- Question 10 : 3 points

TOTAL: 40 POINTS

- * Annex: calendars for 2006 and 2007 with indication of the days on which at least one of the EPO filing offices is not open for the receipt of documents

2007/DI/e/6 - 7

40% of the marks available for paper D are awarded for part I,
60% for part II.

Question 1

(4 points)

On 6 March 2007, a Czech company files an international application in English at the European Patent Office. No priority has been claimed. Which fees are directly incurred by this filing, where and within what time limits can these fees be paid? Which of these fees are refundable?

Question 2

(4 points)

US company A filed an international application PCT1 with the USPTO. The application was searched by the USPTO and published by the International Bureau. Company A wants examination of PCT1 in the European phase before the EPO to be started as soon as possible. What steps have to be taken?

Question 3

(3 points)

On 9 August 2004, company X filed a German patent application DE-X disclosing subject-matter A.

On 9 August 2005, company X filed an international application PCT-X, claiming priority from DE-X. PCT-X discloses in addition to subject-matter A also subject-matter A+B (A in combination with B).

The applicant indicated on form PCT/RO/101 that Germany was not designated for any kind of national protection.

Company X asks you whether it is still possible to obtain patent protection in Germany for subject-matter A and subject-matter A+B via PCT-X.

Question 4

(6 points)

On 1 February 2005 an applicant filed a European patent application EP-1 describing and claiming subject-matter A. EP-1 claims priority from a German national application DE-1 filed on 1 March 2004. DE-1 discloses subject-matter A.

The search report mentions a German patent application DE-0 filed by the same applicant and disclosing subject-matter A. DE-0 was filed on 1 June 2003 and was withdrawn on 1 July 2004.

Due to an internal processing error of the German Patent and Trademark Office, DE-0 was published on 1 October 2004, although the applicant had duly filed the letter withdrawing DE-0 in order to prevent publication of DE-0.

Does DE-0 form prior art for EP-1?

Question 5

(3 points)

- a) A first application of applicant A was put into the automated mail-box of the EPO in Munich on 5 March 2006. A second application of applicant A having the same content as and claiming priority from the first application was put into the automated mail-box of the EPO in Munich on 6 March 2007. Has the priority been validly claimed?
- b) A first application of applicant B was put into the automated mail-box of the EPO in Munich on 3 March 2006. A second application of applicant B having the same content as and claiming priority from the first application was put into the automated mail-box of the EPO in Munich on 5 March 2007. Has the priority been validly claimed?

Question 6

(5 points)

Polish inventor A filed a European patent application EP1 as a first filing on 22 December 2005. EP1 and all associated rights were validly transferred to Polish company M under the Polish national provisions in November 2006. The transfer documents were filed with the EPO on 27 December 2006 together with a request for registration of the transfer and payment of the due fee.

On 22 December 2006, company M filed a European patent application EP2 claiming priority from EP1.

Was the priority from EP1 validly claimed for EP2?

Question 7

(3 points)

European patent application EP-A1 was validly filed in 1999. The mention of the grant of the corresponding European patent EP-B1 will be published on 2 May 2007.

- a) Until when can a divisional application relating to EP-A1 be filed?
- b) Could failure to file the divisional application by that date be remedied by a request for restitutio in integrum, assuming that all due care required by the circumstances had been taken?

Question 8

(4 points)

In opposition proceedings against European patent EP-B, opponent Mr. A argued that a public prior use had occurred. The opposition division held oral proceedings and took evidence by hearing Mr. A and Mr. X, a client of Mr. A.

Are Mr. A and Mr. X entitled to reimbursement of their expenses for travel and subsistence?

Question 9

(5 points)

Company A filed a European patent application EP on 13 March 2003. EP contains the following claims:

Independent claim 1: Feature A

Dependent claim 2: Combination of features A and B

Dependent claim 3: Combination of features A, B and C.

The European search report of EP mentions European patent application D1. In addition, a German national patent application D2 has been brought to the attention of the EPO by third party observations under Article 115(1) EPC. D1 was filed on 12 January 2002 and published on 16 July 2003 together with the search report. D2 was filed on 28 January 2002 and published on 31 July 2003. D1 discloses feature A. D2 discloses the combination of features A and B.

How can the applicant obtain a European patent giving the broadest possible protection which cannot be invalidated by the cited documents in any of the contracting states?

Question 10

(3 points)

The grant of a European patent to an Irish company was mentioned in the European Patent Bulletin on 29 November 2006. The language of the proceedings was English. The company would like to have this patent validated in GB, FR and TR. Today, 6 March 2007, it is noticed that no action has been taken yet.

How should the company proceed?

Annex 1

2006

INFORMATION FROM THE EUROPEAN PATENT OFFICE

**Notice from the President of the
European Patent Office dated
14 October 2005 concerning the
days on which EPO filing offices are
closed in 2006**

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
2006 are listed below.

JANUARY 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	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	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 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	MAY 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	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 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	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
OCTOBER 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	NOVEMBER 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	DECEMBER 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

Tage/Days/Jours 2006		München Munich	Den Haag The Hague La Haye	Berlin
Heilige Drei Könige - Epiphany - Epiphanie	06.01.06	x		
Karfreitag - Good Friday - Vendredi Saint	14.04.06	x	x	x
Ostermontag - Easter Monday - Lundi de Pâques	17.04.06	x	x	x
Maifeiertag - May Day - Fête du Travail	01.05.06	x	x	x
Nationalfeiertag - National Holiday - Fête Nationale	05.05.06		x	
Christi Himmelfahrt - Ascension Day - Ascension	25.05.06	x	x	x
Pfingstmontag - Whit Monday - Lundi de Pentecôte	05.06.06	x	x	x
Fronleichnam - Corpus Christi - Fête-Dieu	15.06.06	x		
Mariä Himmelfahrt - Assumption Day - Assomption	15.08.06	x		
Tag der Deutschen Einheit - Day of German Unity - Fête Nationale	03.10.06	x		x
Allerheiligen - All Saints' Day - Toussaint	01.11.06	x		
1. Weihnachtstag - Christmas Day - Noël	25.12.06	x	x	x
2. Weihnachtstag - Boxing Day - Lendemain de Noël	26.12.06	x	x	x

Annex 2

2007

INFORMATION FROM THE EUROPEAN PATENT OFFICE

**Notice from the President of the
European Patent Office dated
14 July 2006 concerning the
days on which EPO filing offices are
closed in 2007**

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
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Sunday. The other closing days in
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JANUARY 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	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	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
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Tage/Days/Jours 2007		München Munich	Den Haag The Hague La Haye	Berlin
Neujahr - New Year's Day - Nouvel An	01.01.07	x	x	x
Karfreitag - Good Friday - Vendredi Saint	06.04.07	x	x	x
Ostermontag - Easter Monday - Lundi de Pâques	09.04.07	x	x	x
Nationalfeiertag - National Holiday - Fête nationale	30.04.07		x	
Maifeiertag - May Day - Fête du Travail	01.05.07	x	x	x
Christi Himmelfahrt - Ascension Day - Ascension	17.05.07	x	x	x
Pfingstmontag - Whit Monday - Lundi de Pentecôte	28.05.07	x	x	x
Fronleichnam - Corpus Christi - Fête-Dieu	07.06.07	x		
Mariä Himmelfahrt - Assumption Day - Assomption	15.08.07	x		
Tag der Deutschen Einheit - Day of German Unity - Fête Nationale	03.10.07	x		x
Allerheiligen - All Saints' Day - Toussaint	01.11.07	x		
Heiliger Abend - Christmas Eve - Veille de Noël	24.12.07	x	x	x
1. Weihnachtstag - Christmas Day - Noël	25.12.07	x	x	x
2. Weihnachtstag - Boxing Day - Lendemain de Noël	26.12.07	x	x	x
Silvester - New Year's Eve - Saint-Sylvestre	31.12.07	x	x	x