

EUROPEAN QUALIFYING EXAMINATION 2008

PAPER D – PART I

This paper comprises:

- * Questions 1 – 8 2008/DI/e/1 - 4
 - Question 1 : 7 points
 - Question 2 : 5 points
 - Question 3 : 4 points
 - Question 4 : 5 points
 - Question 5 : 4 points
 - Question 6 : 5 points
 - Question 7 : 5 points
 - Question 8 : 5 points

TOTAL: 40 POINTS

- * Annex: calendars for 2006, 2007 and 2008 with 2008/DI/e/5 - 7
indication of the days on which at least one
of the EPO filing offices is not open for the
receipt of documents

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

QUESTION 1

(7 points)

A Japanese scientist having his residence in Tokyo has written an article for a Japanese scientific journal. The article describes an invention which he would like to protect. The article is in Japanese. As the journal with the article will be published tomorrow, he faxes the article to the EPO today, 4 March 2008, together with a cover sheet indicating in English that a European patent is sought. He only gives his name and e-mail address.

- a) Will the faxed article be considered a European patent application and be accorded a date of filing?
- b) What formal requirements have to be fulfilled for the EPO to start with the search and within what time limits must these requirements be met?

QUESTION 2

(5 points)

You are a European patent attorney. Today, 4 March 2008, a client, Mr X, informs you that he had a severe car accident on 26 February 2008 on his way to the EPO in Munich, where he wanted to file a European patent application EP-X claiming priority from a German utility model DE-U. DE-U was filed on 26 February 2007 and has been made available to the public. Due to the accident, EP-X was not filed. Today, Mr X was able to leave the hospital in a wheelchair and asks you whether it would still make sense to file EP-X and what steps should be taken.

QUESTION 3

(4 points)

In March 2006, a European patent was granted for all contracting states containing two independent claims, one relating to a product and the other one relating to the corresponding manufacturing process. Further, dependent product claims were granted.

A competitor validly filed an opposition to this patent based on a prior European patent application under Article 54(3) EPC validly designating DE, FR, GB, and IT. The prior application is novelty destroying for the independent product claim. What can the patentee do to achieve the broadest valid scope of protection in each of the designated contracting states?

QUESTION 4

(5 points)

In opposition proceedings, Company O's opposition against Company P's European patent EP-P was rejected. Company O validly filed an appeal against this decision. The appeal is still pending.

On 10 January 2008, proceedings for infringement of EP-P were instituted by Company P against your client, Company C.

- a) Can Company C intervene in the appeal proceedings and what steps should be taken?
- b) If so, can Company C continue the appeal proceedings if Company O withdraws the appeal after the intervention has been filed?

QUESTION 5

(4 points)

Applicant A and applicant B filed a European patent application EP-P which is still pending. Applicant A designated NL, and applicant B designated BE.

A divisional application EP-D, filed in the name of applicant A, is divided out from application EP-P. For the divisional application EP-D, only NL is designated.

Applicant A asks you if EP-D will be accepted as a divisional application. What do you advise?

QUESTION 6

(5 points)

The Belgian company B and the Dutch company D jointly filed an international application. Company B is the first named applicant in the request. The application was duly filed for all contracting states. The application was filed on 30 September 2006 without claiming priority. X and Y are designated as inventors. The applicants now decide not to proceed with the international application and wish to avoid its publication.

What has to be done?

QUESTION 7

(5 points)

Company A duly filed an international application without claiming any priority with the EPO as receiving Office on 21 September 2005. Mr Black and Ms Grey were designated as first and second inventors.

Today the application is still in the international phase and it turns out that Ms Grey has been erroneously designated as inventor. Instead, Ms White is the true second inventor.

Company A intends to continue with the international application only in the European phase.

When and how can company A replace Ms Grey with Ms White as inventor?

QUESTION 8

(5 points)

International application PCT-X was filed on 15 May 2006, validly claiming priority from earlier national application NA-X filed on 14 December 2005. The international search report was transmitted to the applicant together with the written opinion of the International Searching Authority on 30 April 2007. Only today, 4 March 2008, the applicant's representative realises that no demand for international preliminary examination was filed.

- a) The representative considers withdrawing the priority claim. Is this still possible?
- b) Is it still possible to have international preliminary examination carried out?

Annex 1

2006

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Sun 01	Wed 01	Wed 01	Sat 01	Mon 01	Thu 01	Sat 01	Tue 01	Fri 01	Sun 01	Wed 01	Fri 01
Mon 02	Thu 02	Thu 02	Sun 02	Tue 02	Fri 02	Sun 02	Wed 02	Sat 02	Mon 02	Thu 02	Sat 02
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Tue 31		Fri 31		Wed 31		Mon 31	Thu 31		Tue 31		Sun 31

Tage / Days / Jours		München Munich	Den Haag The Hague La Haye	Berlin
Heilige Drei Könige – Epiphany – Epiphanie	06.01.2006	x		
Karfreitag – Good Friday – Vendredi Saint	14.04.2006	x	x	x
Ostermontag – Easter Monday – Lundi de Pâques	17.04.2006	x	x	x
Maifeiertag – May Day – Fête du Travail	01.05.2006	x	x	x
Tag der Befreiung – Liberation Day – Journée de la Libération	05.05.2006		x	
Christi Himmelfahrt – Ascension Day – Ascension	25.05.2006	x	x	x
Pfingstmontag – Whit Monday – Lundi de Pentecôte	05.06.2006	x	x	x
Fronleichnam – Corpus Christi – Fête-Dieu	15.06.2006	x		
Mariä Himmelfahrt – Assumption Day – Assomption	15.08.2006	x		
Tag der deutschen Einheit – Day of German Unity – Fête Nationale	03.10.2006	x		x
Allerheiligen – All Saints' Day – Toussaint	01.11.2006	x		
1. Weihnachtstag – Christmas Day – Noël	25.12.2006	x	x	x
2. Weihnachtstag – Boxing Day – Lendemain de Noël	26.12.2006	x	x	x

Annex 2

2007

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Mon 01	Thu 01	Thu 01	Sun 01	Tue 01	Fri 01	Sun 01	Wed 01	Sat 01	Mon 01	Thu 01	Sat 01
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Tage / Days / Jours		München Munich	Den Haag The Hague La Haye	Berlin
Neujahr – New Year's Day – Nouvel An	01.01.2007	x	x	x
Karfreitag – Good Friday – Vendredi Saint	06.04.2007	x	x	x
Ostermontag – Easter Monday – Lundi de Pâques	09.04.2007	x	x	x
Nationalfeiertag – National Holiday – Fête nationale	30.04.2007		x	
Mai feiertag – May Day – Fête du Travail	01.05.2007	x	x	x
Christi Himmelfahrt – Ascension Day – Ascension	17.05.2007	x	x	x
Pfingstmontag – Whit Monday – Lundi de Pentecôte	28.05.2007	x	x	x
Fronleichnam – Corpus Christi – Fête-Dieu	07.06.2007	x		
Mariä Himmelfahrt – Assumption Day – Assomption	15.08.2007	x		
Tag der deutschen Einheit – Day of German Unity – Fête nationale	03.10.2007	x		x
Allerheiligen – All Saints' Day – Toussaint	01.11.2007	x		
Heiliger Abend – Christmas Eve – Veille de Noël	24.12.2007	x	x	x
1. Weihnachtstag – Christmas Day – Noël	25.12.2007	x	x	x
2. Weihnachtstag – Boxing Day – Lendemain de Noël	26.12.2007	x	x	x
Silvester – New Year's Eve – Saint-Sylvestre	31.12.2007	x	x	x

Annex 3

2008

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Tue 01	Fri 01	Sat 01	Tue 01	Thu 01	Sun 01	Tue 01	Fri 01	Mon 01	Wed 01	Sat 01	Mon 01
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Thu 31		Mon 31		Sat 31		Thu 31	Sun 31		Fri 31		Wed 31

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Neujahr - New Year's Day - Nouvel An	01.01.08	x	x	x
Karfreitag - Good Friday - Vendredi Saint	21.03.08	x	x	x
Ostermontag - Easter Monday - Lundi de Pâques	24.03.08	x	x	x
Nationalfeiertag - National Holiday - Fête Nationale	30.04.08		x	
Maifeiertag - May Day - Fête du Travail	01.05.08	x	x	x
Christi Himmelfahrt - Ascension Day - Ascension	01.05.08	x	x	x
Tag der Befreiung - Liberation Day - Journée de la Liberation	05.05.08		x	
Pfingstmontag - Whit Monday - Lundi de Pentecôte	12.05.08	x	x	x
Fronleichnam - Corpus Christi - Fête-Dieu	22.05.08	x		
Mariä Himmelfahrt - Assumption Day - Assomption	15.08.08	x		
Tag der Deutschen Einheit - Day of German Unity - Fête Nationale	03.10.08	x		x
Heiliger Abend - Christmas Eve - Veille de Noël	24.12.08	x	x	x
1. Weihnachtstag - Christmas Day - Noël	25.12.08	x	x	x
2. Weihnachtstag - Boxing Day - Lendemain de Noël	26.12.08	x	x	x
Silvester - New Year's Eve - Saint-Sylvestre	31.12.08	x	x	x