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EUROPEAN QUALIFYING EXAMINATION 2024

Paper D1-1

This Paper comprises:

Part I: Legal Questions

Question 1: 14 marks

Question 2: 12 marks

QUESTION 1

(14 MARKS)

On 5 January 2024, applicant D filed international application PCT-3 at the Spanish Patent and Trademark Office (SPTO) acting as receiving office. The PCT request indicates the EPO as International Searching Authority (ISA). The filing fee, search fee and transmittal fee have been duly paid.

In a notification dated 17 January 2024, the SPTO invited applicant D to furnish a translation.

- (a) In which language was PCT-3 filed and what steps does applicant D have to take for the ISA to start the search?
- (b) Applicant D wants to file amended claims and correct an obvious mistake in the description at the lowest possible cost during the international phase. In what language, when and where do the respective documents have to be filed?

QUESTION 2

(12 MARKS)

In November 2021, company C filed European patent application EP-2. Only the filing and search fees were paid.

The publication of the European search report, which was accompanied by a negative search opinion, was mentioned in European Patent Bulletin of 17 May 2023.

On 26 May 2023, the EPO issued a communication pursuant to Rule 69 EPC and an invitation pursuant to Rule 70a(1) EPC.

No further acts were performed by company C. Due to an isolated mistake within a normally satisfactory monitoring system, company C became aware only today of a communication from the EPO dated 12 December 2023 noting that there has been a loss of rights.

Is it still possible for company C to prosecute EP-2? If so, what steps have to be taken and by when?