

EUROPEAN QUALIFYING EXAMINATION 2023

Paper D1-2

This Paper comprises:

Part I: Legal Questions

Question 4: 7 marks

Question 5: 11 marks

Question 6: 10 marks

QUESTION 4

(7 MARKS)

European patent EP-E was assigned from company E to company F. The transfer of ownership was recorded in the European Patent Register in November 2022. EP-E was revoked by a written decision of the opposition division issued on 19 December 2022.

In February 2023 you received an email from company F instructing you to file an appeal on its behalf. On 28 February 2023 you filed notice of appeal and paid the appeal fee.

Today, you realise that the notice of appeal was erroneously filed in the name of company E, rather than in the name of company F.

- (a) What is the current status regarding the admissibility of the appeal?
- (b) How can you improve the situation?

QUESTION 5

(11 MARKS)

On 2 December 2022 Portuguese applicant G filed international patent application PCT-G in English with the Portuguese Patent Office (INPI).

By invitation dated 9 December 2022, INPI invited G to file an abstract. Despite taking all due care, G filed the missing abstract with INPI only on 3 March 2023.

Yesterday, G received a notification from INPI declaring PCT-G withdrawn.

- (a) Why was PCT-G declared withdrawn? What will be the legal consequence of this withdrawal in the designated states of PCT-G if nothing is done?
- (b) Applicant G wants to revive PCT-G before the EPO. What procedural steps must applicant G carry out?

QUESTION 6

(10 MARKS)

European patent application EP-H describes a product P, a method only resulting in product P and a particular use of product P as a fertiliser to enhance plant growth.

EP-H was granted with a single claim to product P.

Opposition was validly filed against EP-H based on the ground of lack of novelty. The opponent cited EP-J, a document under Article 54(3) EPC that discloses the same product P, wherein P is obtained by a different method, and the use of product P as a detergent.

- (a) How should EP-H be amended to provide the maximum scope of protection? Give reasons why EP-H as amended meets the requirements of Articles 123 and 54 EPC.
- (b) How would your answer to (a) change if EP-H described product P for use as a medicament rather than describing the use of product P as a fertiliser?