

EUROPEAN QUALIFYING EXAMINATION 2021

Paper D1-1

This paper comprises:

- Question 1: 9 marks
- Question 2: 8 marks
- Question 6: 8 marks

Part I: Legal Questions

QUESTION 1

(9 MARKS)

European patent application EP-A1 was filed in 2018 by applicant A in English. It describes two different inventions, X and Y, and claims invention X only. The European search report was drawn up for invention X only.

A communication pursuant to Article 94(3) EPC setting out a time limit of four months was issued by the EPO on 5 October 2020 and received by applicant A on 8 October 2020. No response has been filed.

Applicant A is now interested in invention Y.

In January 2021, he filed a European divisional application EP-A2 based on EP-A1, claiming and describing invention Y. EP-A2 was filed in French.

What should applicant A do to have invention Y searched by the EPO?

QUESTION 2

(8 MARKS)

On 2 August 2018, applicant B filed US application US-B in English. Despite all due care being taken by applicant B, international application PCT-B claiming priority from US-B was only filed on 9 August 2019. The USPTO, acting as receiving Office, granted the applicant's request for restoration of the right of priority based on the criterion that the failure to file PCT-B within the priority period was unintentional.

Today, 2 March 2021, applicant B took all of the steps required under Rule 159 EPC to enter PCT-B into the European phase before the EPO.

Does applicant B need to take action before the EPO as designated Office to ensure that the restoration of the right of priority is effective in the European phase? If so, what steps are required and when do they need to be taken by?

QUESTION 6

(8 MARKS)

European patent EP-F was granted with a single claim reading "A food composition comprising 1 to 5% meat". The description of EP-F discloses a food composition comprising 1 to 5% beef meat.

The patent proprietor F has become aware of a German national patent application DE-G having an earlier effective date and published after the effective date of EP-F. DE-G discloses a food composition comprising 3% of meat, wherein the meat is pork.

The proprietor F would like to amend EP-F before the EPO in respect of Germany only and proposes a claim for Germany reading "A food composition comprising 1 to 5% beef meat".

The proprietor is looking for your advice.

1. What procedural steps have to be taken before the EPO to request amendment of the claim in respect of Germany?
2. Will the EPO hold allowable a request with the claim proposed by the proprietor ?