Examiners' Report – Paper C 2024

Purpose and extent of the examiners' report

The purpose of the examiners' report is to enable candidates to prepare for future examinations (Regulation on the European qualifying examination for professional representatives, Article 6 (6)).

The examination of 2024 was held online and split in two parts. Technical aspects of the online exam are not part of this report.

1. Introduction

This year's paper involved discussion of novelty, inventive step and added subject-matter, as well as considerations regarding partial priorities and claims comprising both technical and nontechnical features (Guidelines G-VII, 5.4). Attacks based on insufficiency of disclosure (Article 100(b) EPC) are not accepted in Part C of the exam (IPREE, Rule 25(5)). Each part of the examination required dealing with the documents at hand within the allotted time.

The examination documents for part 1 contain a client’s letter, Annex 1 (A1, the patent to be opposed) and Annexes 2 to 5 (A2 – A5). The client’s letter gives information regarding the available parts of A1 and how these parts are related to two priority documents. The client’s letter also gives information regarding amendments to A1 during the examination procedure and information regarding A2 and its priority. Furthermore, the client's letter contains a statement related to specific commercial interests and requests the attorney to cover the most probable fallback positions for claim 1. Only claims 1 – 3 of A1 are available. Independent claim 1 covers a charging pad having a layer of magnetic material with constituents for which ranges are specified. Dependent claim 2 defines restrictions to the ranges in claim 1. Independent claim 3 regards a charging pad having a layer of magnetisable concrete.

In part 2 of the examination, the client's letter gives information regarding the further available parts of A1 and how these parts are related to the two priority documents. The examination documents for part 2 contain A2 – A5 of part 1 and additionally Annexes 6 and 7 (A6, A7). Claims 4 – 7 of A1 are newly provided in part 2 of the examination. Independent claim 4 covers a charging system. Independent claim 5 defines a method for controlling a charging system. Dependent claims 6 and 7 both refer to claims 4 and 5 and define restrictions on a signal received in a method step of claim 5. Regarding dependent claim 6, the restrictions are related to a detection circuit of claim 4. In dependent claim 7 the restrictions are related to a price of electric energy.

In A7 the reference signs in the description do not match those in the figure. This inconsistency does not have a bearing on the attacks but was taken into account during marking the candidates' answers.

2. General comments

All the information necessary to oppose the patent is found in the examination documents, which include Annex 1 and the client’s letters. Candidates shall not use any special knowledge they may have of the technical field of the invention (Implementing provisions to
the Regulation on the European qualifying examination for professional representatives, Rule 22 (3)).

The examination documents comprise definitions of technical nature related to claim features, aspects of the related technical effects and objective technical problems as well as motivations and hints. Accordingly, marks were awarded for use of this information and argumentation based on it.

In candidate's answers, the use of information requires citation of the specific reference in the relevant document (e.g. paragraph, line, claim, figure, as appropriate). If prior art uses different terminology to the feature in a claim, a full reasoning requires an explanation why the meaning is the same, on the basis of the information provided in the Annexes.

For example, in this year's paper the equivalence of the term "solenoid" to the feature "coil" in the claims of Annex 1 was to be established based on the properties listed in A4§3 which correspond to those stated in A1§5 (conductive trace with several concentric windings).

For inventive step attacks the candidate's answers were given marks within the structure of the problem-solution approach (Guidelines G-VII.5), even if an answer did not follow it.

The problem-solution approach requires identification of the closest prior art for each inventive step attack. A substantiated argumentation of the choice includes a reason why some prior art is chosen as the most promising starting point to argue lack of inventive step (which is not necessarily the prior art with “the highest number of common technical features”).

For example, in this year's paper a possible motivation for choosing A3 as closest prior art against claim 1 is that its double-O structure also has the purpose of reducing sensitivity to misalignment (see A1§7 and A3§2).

The argumentation against inventive step should clearly identify the distinguishing features of the claim compared to the closest prior art. The technical effect associated to this difference is an advantage which has to be identified in the patent to be opposed and the appropriate basis must be cited.

The objective technical problem to be solved has to be established based on the technical effect. However, the objective technical problem must not contain pointers towards the claimed solution, so, typically, the objective technical problem and the technical effect are not identical.

A comprehensive reasoning for lack of inventive step includes a substantiated argumentation why another item of prior art would be considered, e.g. by pointing to a specific part of another document that is related to the same purpose or the same objective technical problem.

For example, in this year's paper, the argumentation against inventive step of claim 3 involves the consultation of A4. A substantiated argument why A4 should be consulted requires citing references in A4 related to reducing leakage of unwanted radiation (see A4§5,§6,§8).
The reasoning for lack of inventive step should also include a substantiated argumentation as to "how and why" one arrives at the subject-matter of a claim when combining the teaching of items of prior art. A generic statement such as "By combining A4 and A5 one arrives at claim 5." does not include an explanation of "how and why" the modification would be made.

Alternatively to the argumentation against inventive step set out in the “possible solution”, marks were awarded depending on the argumentation provided, in particular for motivating why and how certain modifications would be made.

Also, if an attack for an antecedent claim has not been awarded marks, the continuation of that attack in a dependent claim was still taken into account depending on its merits.

Marks for attacks on claims 1 – 3 were only awarded if the respective attack was made in part 1 of the examination.

3. Notice of opposition

For the opposition to be admissible it is required that the patent to be opposed as well as the opponent are identified. Payment of the opposition fee has to be indicated. It should be borne in mind that the intended opponent is the company and not the person signing the client’s letter.

All relevant information, a statement of the extent to which the European patent is opposed, opposition grounds, evidence, facts and arguments have to be in the answers. Text submitted as part of a candidate's answer has to be clearly related to a line of argumentation to be awarded marks (this is usually not the case for feature tables or copied claim text pasted arbitrarily with a few features identified).

3.1. Effective dates of the claims and prior art (15 marks)

For part 1 of the exam the information provided in the first letter from the client was to be used to establish the effective dates of claims 1 – 3 as well as the status of A2 to A5 as prior art with respect to these claims.

For part 2 of the exam the information provided in the second letter from the client was to be used to establish the effective dates of claims 4 – 7 as well as the status of A2 to A7 as prior art with respect to these claims.

Claim 1, amended during examination, contains added subject-matter. The instructions from the client regarding the most likely fallback positions were expected to prompt objections to the combinations of subranges disclosed in the originally filed description in anticipation of a restriction by the patentee. This requires an analysis regarding the partial priorities of the disclosed combinations of subranges (cf. G2/98 & G1/15). A full reasoning regarding the effective dates also requires demonstrating that part of the claim was not entitled to priority as neither of the priority documents of A1 were the first application for the subject matter.

The client’s letter contains relevant information regarding EP3383351, its relation to A2, and its publication date. These two documents differ in the status concerning Art. 54 (2) EPC and Art. 54 (3) EPC, wherefore it was expected that candidate’s answers clearly designate which of the documents is used in attacks.
Although A7 is only prior art under Art. 54 (3) EPC, it can be used as evidence for general knowledge available before the priority date of the patent (relevant for the expected attacks against claims 5 and 7).

3.2. Claim 1 (23 marks)

Regarding claim 1 as granted an objection under Art. 100 c EPC was expected.

The argumentation regarding added subject-matter requires essentially the same analysis as for the partial priorities and leads to the identification of disclosed combinations of subranges. These form natural fallback positions against which separate attacks were expected, in line with the instructions from the client.

For the first alternative (with the combination of CoFeNi from 10 to below 20 wt% and FeCuSiB at 30 - 40 wt%) an inventive step attack using A3 and A5 was expected and considered sufficient to comply with the client’s request concerning probable fallback positions.

Marks for attacking the second alternative were awarded in the marking scheme for claim 2 in view of the equivalence in scope.

3.3. Claim 2 (4 marks)

A2 discloses the features of claim 2. For full marks the distinction between EP3383351 (prior art under Art. 54 (2) EPC) and A2 (prior art under Art. 54 (3) EPC) had to be made.

3.4. Claim 3 (12 marks)

An inventive step attack starting from EP3383351 was expected (A2 as such cannot be validly used according to Art. 56 EPC). A3 is not a suitable starting point because it relates to a car charging pad which is incompatible with magnetic concrete (cf. A1§17).

3.5. Claim 4 (8 marks)

A5 discloses a charging system having all features of claim 4, therefore a novelty attack was expected and considered sufficient.

3.6. Claim 5 (15 marks)

A7 discloses a method for controlling a charging system having all features of claim 5. However, A7 is prior art under Art. 54 (3) EPC only, therefore a further attack was expected.

A6 is evidence that OS-Corp’s Model Q was made available to the public by sale before the priority date of A1, therefore the information in A6 regarding Model Q was useable as prior art under Art. 54 (2) EPC. A6 discloses that the battery charging system of Model Q has most of the features of claim 5 but is silent on the aspect of the location of where the electrical connection is caused to be inactive. This difference requires an argumentation under Art. 56 EPC. A complete line of reasoning requires reference to the standard RFC-7511-x of 2017, the properties of which are common general knowledge as shown in A7.

A2 – A5 do not relate to a method for controlling a charging system. A7 and the information on Model P in A6 is late published.
3.7. **Claim 6 (11 marks)**

Claim 6 refers back to both claims 4 and 5. A further link is made by requiring that the signal received in a method step of claim 5 is that provided by the detection circuit of claim 4.

An inventive step attack was expected. A6 Model P is the most promising starting point because it also deals with detecting foreign objects when using wireless charging. The lawn-mower of A5 is not a vehicle and its processing unit is not involved in charging. A6 teaches away from adapting Model Q for wireless-charging. Therefore alternative attacks starting from A5 or Model Q are not plausible as they would require too many modifications.

3.8. **Claim 7 (9 marks)**

Claim 7 also refers back to both claims 4 and 5. However, the only further restriction is related to “a price of electric energy” which candidates were expected to understand as being of commercial nature (the examination documents also contain numerous hints in this respect). Claim 7 is therefore a “mixed type invention” comprising technical and non-technical features.

As technology is evolving quickly, this type of claim is becoming more frequent in practice.

As in previous exams, candidates were expected to apply the problem-solution approach according to the Guidelines G-VII, 5.4. Technical and non-technical features were to be separated to permit a proper argumentation with respect to lack of inventive step of the subject matter of the claim.

This allows making an inventive step attack analogous to that for claim 6, since the only additional feature does not make a technical contribution. However, it was equally acceptable to argue, if the candidate considered that the differences make a technical contribution, that implementation details would be an obvious technical solution with the constraint of making price information accessible (Guidelines G VII 5.4 (iii) (c)).