EXAMINERS' REPORT - PRE-EXAMINATION 2019

QUESTION 1

Since you can comply today with the requirements of Rule 40(1)(a), (b) and (c) EPC [*i.e.* providing an indication that a European patent is sought; providing your own or Pietro's contact details; and filing the description of IT-P or a reference to it], the date of filing will be 25 February 2019 (Guidelines, A-II 4.1).

For validly claiming the priority, Gianna must have transferred the priority right to Pietro (and Pietro must be the successor in title) before the filing date of EP-P, Article 87(1) EPC and Guidelines, A-III, 6.1(ii).

A European patent application may be filed in any language, Article 14(2) EPC.

Being a national of the Contracting State Italy and being a natural person, Pietro is entitled to a reduction of the filing fees, Rule 6(3) and (4)(b) EPC and Article 14(4) EPC.

1.1 – TRUE

1.2 – FALSE

1.3 – TRUE

1.4 – FALSE

QUESTION 2

The representative is allowed to make oral submissions, Article 133(2) EPC, see also Guidelines, E-III, 8.5 and G4/95.

Submissions by a person who is not qualified under Article 133 and 134 EPC cannot be made as of right: among others, the request should be filed sufficiently in advance of the oral proceedings. Thus, as a general rule, neither Jane nor Pedro will be allowed to speak.

Sarah would be allowed to make submissions in Portuguese for instance, if the parties and the European patent office agree to use this language (Rule 4(4) EPC), or if the patent proprietor provides for interpretation into the language of proceedings (Rule 4(1) EPC).

2.1 – TRUE

2.2 – FALSE

2.3 – FALSE

2.4 – TRUE

QUESTION 3

Since a favourable written opinion was established, a communication under Rule 71(3) EPC can be expected as the first communication of the examining division.

The renewal fee for the third year is due on 31 January 2020 according to Rule 51(1) EPC. If a renewal fee becomes due before the next possible date for publication of the mention of the grant of the European patent, the decision to grant is not issued and the mention of the grant is not published until the renewal fee has been paid, Rule 71a (4) EPC, Guidelines, C-V, 2. Decision to grant and publication of the mention of the grant may take several months after fulfillment of the requirements of R. 71(5) EPC. Thus, also the renewal fees are due when you fulfil all the requirements of Rule 71(5) EPC on 31 January 2020.

The consent of the wrongly designated person (Alina) is required, Rule 21(1) EPC.

The PCT does not provide for an international application (PCT-Z) to be deemed to be withdrawn, once a patent is granted on the basis of the priority application (EP-Z).

3.1 – TRUE

3.2 – FALSE

3.3 – FALSE

3.4 – FALSE

QUESTION 4

A translation of the description must be filed in one of the official languages within the period of two months, Article 14(2) EPC, Rule 6(1) EPC and Guidelines, A-VII, 1.1.

If the search fee is not paid within one month of the filing of European patent application, the application will be deemed to be withdrawn, Rule 38(1) EPC and Article 78(2) EPC. The time limit under Rule 38(1) EPC is not ruled out for further processing (Article 121(1) and (4) EPC and Rule 135(2) EPC). Consequently, Didier can validly pay the search fee provided he requests further processing.

If Didier does not file claims in accordance with Rule 57(c) and Rule 58 EPC, then Didier cannot validly request further processing, since it is ruled out under Rule 135(2) EPC, see also Guidelines, A-III, 15.

To validly file a European patent application, Didier can file a reference to a previously filed application, wherein the reference contains (i) the filing date of the previous application, (ii) the file number of the previous application, (iii) the office where the previous application was filed and (iv) an indication that this reference replaces the description and any drawings, Rule 40(1)(c) EPC and Guidelines, A-II, 4.1.3.1.

4.1 – TRUE

4.2 – TRUE

4.3 – FALSE

4.4 – TRUE

QUESTION 5

There are no nationality or residence restrictions for filing a European patent application with the EPO, Article 58 EPC.

The EPO is the receiving Office competent for applicant Werner, who has his residence within one of the Contracting States (Germany), Article 151 EPC, Rule 157(1) EPC and Rule 19.1(a) PCT. If there are two (or more) applicants, the requirements of Rule 19.1 PCT regarding where to file are satisfied if the international application is filed with the competent receiving office of at least one of the applicants, Rule 19.2(i) PCT.

A PCT application can be validly filed before the International Bureau (IB) whatever the nationality or residence of the applicant, Rule 19.1(iii) and Rule 19.2 (ii) PCT.

Only the IB can record the residence change upon the applicant's request, Rule 92bis.1.(a) (i)PCT.

5.1– TRUE

5.2 – TRUE

5.3 – TRUE

5.4 – FALSE

QUESTION 6

According to Article 71 EPC, a European patent application can be transferred for one or more designated Contracting States (two or more applicants may be designating different Contracting States, see also Article 59 EPC).

For recording the assignment, Rule 143(1)(w) EPC, the EPO requires the submission of a request (R. 22(1) EPC), the payment of an administrative fee (Rule 22(2) EPC) and also documents providing evidence of the transfer (Rule 22(1) EPC), for example an assignment made in writing and signed by Company A and Company B (Art. 72 EPC, Guidelines E-XIV, 3).

The transfer is effective vis-à-vis the EPO as soon as the documents providing evidence of the transfer have been produced, Rule 22(3) EPC.

A European patent can validly be transferred and the transfer can be recorded even during opposition proceedings, Rule 85 EPC in conjunction with Rule 22 EPC.

6.1 – TRUE

6.2 – FALSE

6.3 – FALSE

6.4 – TRUE

QUESTION 7

The right to the European patent belongs to the applicant who has filed the European patent application with the earliest effective date (i.e. 7.1 is True) provided that the European patent application is published, Article 60(2) EPC (i.e. 7.2 is False).

During proceedings before the European Patent Office, the applicant is deemed to be entitled to exercise the right to a European patent, Article 60(3) EPC.

In the case that EP-X was published after the filing date of EP-Y, EP-X could not be cited as prior art in evaluating the inventive step of EP-Y, but only for assessing novelty under Article 54(3) EPC.

7.1 – TRUE

7.2 – FALSE

7.3 – FALSE

7.4 – FALSE

QUESTION 8

If a period of one month is set for replying to the notification relating to PCT-S, then the time limit expires on 28 February [31 January 2019 + 1 month (=28 February 2019)], Rule 80.2 PCT.

If a period of two months is set for replying to the notification relating to PCT-S, then the time limit expires on 1 April 2019 [31 January 2019 + 2 month (=31 March 2019), extended to 1 April 2019], Rule 80.2 PCT and Rule 80.5 PCT. The PCT provisions do not have the so-called “ten-day-rule”, see for instance Rule 80.6 PCT.

The notification relating to EP-S is deemed to be delivered on Sunday, 10 February 2019, [31 January 2019 +10 days (=10 February 2019)], Rule 126(2) EPC.

If a period of four months is set for replying to the notification relating to EP-S, then the time limit expires on 11 June 2019 , [31 January 2019 +10 days (=10 February 2019)] + 4 months (=10 June 2019), extended to 11 June 2019], Rule 126(2) EPC, Rule 131(4) EPC and Rule 134(1) EPC.

8.1 – FALSE

8.2 – FALSE

8.3 – TRUE

8.4 – FALSE

QUESTION 9

The examination fee for a European patent application is refunded in full, if the European patent application is withdrawn before the Examining Division has assumed responsibility, Article 11(a) Rfees (i.e. 9.1 is True), and it is refunded in part, if the application is withdrawn before expiry of the time limit for replying to the first invitation under Article 94(3) EPC, Article 11(b) Rfees (i.e. 9.3 is True).

Two weeks after the receipt of the invitation will be certainly within the period set in Rule 11(b) Rfees.

There is no provision for refunding (a part of) the opposition fee.

The appeal fee is refunded in full if the appeal is withdrawn before the filing of the statement of grounds of appeal and before the period for filing that statement has expired, Rule 103(1)(b) EPC.

9.1 – TRUE

9.2 – FALSE

9.3 – TRUE

9.4 – TRUE

QUESTION 10

Third party observations can be filed at any stage of the proceedings before the EPO (after publication of a European patent application), Article 115 EPC. Third party observations can be filed also during opposition proceedings, Guidelines, D-X 4.5).

Theresa is not party to the proceedings, Article 115 EPC, second sentence: thus, she will not be summoned to oral proceedings.

In the case of the national prior right D3, the European patent EP-H may contain claims for Germany which are different from those for the other designated States, Rule 138 EPC.

If Hans does not file a copy of D1 with the notice of opposition, he will be invited by the EPO to file this document in due time, Rule 83 EPC: if the document is not filed, the opposition division may decide not to take into account any arguments based on that document.

10.1 – TRUE

10.2 – FALSE

10.3 –TRUE

10.4 – FALSE

QUESTION 11

Claim I.5 relates back to claim I.2 only. The first layer and the second layer are clearly defined.

Claim I.4 relates back to any one of claims I.1 to I.3: there is no clear definition on what the first layer can be or contain when claim I.4 is dependent on claim I.1 and on claim I.2

Claim I.8 contains no clear definition on what the first layer and second layer contains.

Claim I.9 is limited to consist of three layers, i.e. a tablet comprising four layers does not fall under the scope of claim I.9.

11.1 – FALSE

11.2 – FALSE

11.3 – FALSE

11.4 – FALSE

QUESTION 12

The first embodiment of D1 does not disclose a first and a second layer. This embodiment does not destroy the novelty of the subject-matter of claim I.2.

The second embodiment of D1 is a tablet which includes bleaches and detergents (see first sentence of D1) and contains a first layer and a second layer (see last sentence). This embodiment destroys the novelty of the subject-matter of claim I.2.

Claim I.3, when dependent on claim I.2 relates to a tablet comprising one or more bleaches and one or more detergents, comprising a first layer and a second layer, wherein the first layer comprises a detergent. The first embodiment of D1 does not disclose a second layer. This embodiment does not destroy the novelty of the subject-matter of claim I.3, when dependent on claim I.2.

D1, second embodiment, discloses only a first layer and a second layer but no third layer: D1 does not destroy the novelty of the subject-matter of claim I.7

12.1 – FALSE

12.2 – TRUE

12.3 – FALSE

12.4 – FALSE

QUESTION 13

D2 discloses a tablet (first sentence) comprising detergent, builder and bleach, and a first, a second and a third layer, wherein all layers comprise builder (third sentence). Therefore, claim I.8 is not novel over D2. (Note: claim I.8 being dependent on claims I.6, I.2, and I.1

does not define the ingredients of the various layers, apart from the so-called third layer, which includes one or more builders).

D2 discloses a tablet (first sentence) comprising one or more bleaches (a bleach in D2, third sentence) and one or more detergents (a detergent in D2, third sentence), wherein the tablet contains two separate layers and a third layer (see third sentence). Therefore, claim I.7 is not novel over D2.

D2 discloses a tablet comprising two or more layers, wherein the tablet comprises one or more bleaches (a bleach in the first layer of the tablet of D2) and one or more detergents (a detergent in the second layer of D2), wherein the first layer comprises one detergent (the second layer of D2 is considered as the first layer according to claim I.3). Therefore, claim I.3 is not novel over D2.

D2 discloses a tablet including two or more layers, wherein the tablet comprises one or more bleaches (a bleach in the first layer of the tablet of D2) and one or more detergents (a detergent in the second layer of D2), wherein the second layer comprises one bleach (the first layer of D2 is considered as the second layer according to claim I.4). Therefore, claim I.4 is not novel over D2.

13.1 –FALSE

13.2 – FALSE

13.3 – FALSE

13.4 – FALSE

QUESTION 14

Basis for the amendment in 14.1 is the description part b) i).

Basis for the amendment in 14.2 is the description on part b) ii).

Basis for the amendment in 14.3 is the description part d). The value 5% is explicitly disclosed as an endpoint of the range.

There is in the application as filed no direct and unambiguous disclosure to which layer the colorant is added and no basis for deleting the builders.

14.1 – TRUE

14.2 – TRUE

14.3 – TRUE

14.4 – FALSE

QUESTION 15

The closest prior art is that which in one single reference discloses the combination of features which constitutes the most promising starting point for a development leading to the invention, Guidelines, G-VII, 5.1. It need not disclose exactly the same technical problem addressed in the application (and not solved by the subject-matter of claim II.1).

D2 teaches the bleach in a first layer and the detergent in a second layer.

D2 neither deals with the stability of bleach (i.e. 15.3 is True), nor does it mention to separate the layer containing the detergent from the layer containing the bleach by aid of a third layer (i.e. 15.4 is True).

15.1 – FALSE

15.2 – FALSE

15.3 – TRUE

15.4 – TRUE

QUESTION 16

The norm XYZ mesh size is indicated for the support grid 3 which is an optional feature (see paragraphs [004] and [006]), and therefore the mesh size is not described as being essential in the description.

The problem is to strengthen holes and the solution is to employ reinforcing inserts for the holes in the composite structure, consequently the presence of at least one hole is an essential feature in the description (see paragraphs [002]-[003]).

Carbon fibre is a preferred material for the composite fibre. Therefore it is not described as an essential feature in the description (see paragraph [005]).

The problem is to strengthen holes, and the solution is to employ reinforcing inserts for the holes in the composite structure (see paragraphs [002]-[003]). Consequently the presence of at least one reinforcing insert is an essential feature in the description (see paragraph [003]).

16.1 – FALSE

16.2 – TRUE

16.3 – FALSE

16.4 – TRUE

QUESTION 17:

Claim III.2 does not specify that holes pass through the reinforcing inserts. It is not clear from claim III.2 that the reinforcing inserts strengthen the holes. The features as indicated in claim III.2 are not enough for solving the technical problem.

Claim III.1 does not exclude the presence of a support grid (whatever material it is made of) due to the presence of the term “comprising”.

The value of 50 plies of fibre-reinforced composite material lies in the range defined in claim III.8.

There is no direct and unambiguous basis in the application as filed to amend claim III.8 for replacing the range by the specific value of 50 (Guidelines G-VI, 8 and H-V, 3.2).

17.1 – FALSE

17.2 – TRUE

17.3 – TRUE

17.4 – FALSE

QUESTION 18:

D12 discloses a composite structure ((20) in Figure 3, [002]) comprising a stack (23) of plies of fibre-reinforced composite material, and one or more reinforcing inserts (21) and one or more holes (22). Thus, the subject matter of claim III.2 is not novel over D12.

D11 discloses a composite structure ((10) in Figure 2, [002]) comprising a stack(13) of plies of fibre-reinforced composite material , and a support grid (12) which has a norm XYZ

mesh size between 0.5 and 1500 (D11 discloses the range 0.7-2000 and the end-point value 0.7 destroys the novelty of the range claimed in III.5, see Guidelines, G-VI, 8 (ii) (b)). Thus, the subject-matter of claim III.5 is not novel over D11.

D11 discloses a composite structure ((10) in Figure 2, [002]) comprising a stack (13) of plies of fibre-reinforced composite material, and a support grid (12). However D11 does not disclose the norm XYZ mesh size of the support grid (12) between 100 and 150. The selected sub-range is narrow compared to the known range, and sufficiently far removed from any specific values disclosed in the prior art, see Guidelines, G-VI, 8 (ii) (a) and (b). Thus, the subject matter of claim III.6 is novel over D11.

D12 discloses a composite structure ((20) in Figure 3, [002]) comprising a stack (23) having 10 to 100 plies of fibre-reinforced composite material (The range 5 – 90 is disclosed in D12 and the end-point value 90 destroys the novelty of the range claimed in III.8, see Guidelines, G-VI, 8 (ii) (b)). Thus, the subject matter of claim III.8 is not novel over D12.

18.1 – FALSE

18.2 – FALSE

18.3 – TRUE

18.4 – FALSE

QUESTION 19:

Claim A.1 results from the combination of claims 1 to 4 as originally filed, and the feature of paragraph [003] last sentence. Claim A.2 is based on the combination of claims 5 and 6 as originally filed. Therefore, the statements 19.1 and 19.2 are True.

However, there is a potential difference in scope between the wording in the description (e.g. paragraph [003] last sentence) and the wording of claim A.1 (“pass through” vs. “extending through”) in the English version. Also there may be valid counter-arguments in view of an un-allowed intermediate generalization. For this reason it was exceptionally decided to award marks for both answers, True and False, for the statements 19.1 and 19.2.

D12 discloses a composite structure ((20) in Figure 3, [002]) comprising:

- a stack (23) of plies of fibre-reinforced composite material,

- one or more reinforcing inserts (21) and

- one or more holes (22) extending through the reinforcing inserts (see paragraph [002] and Figure 3),but D12 does not disclose a support grid joined to the reinforcing inserts being the characterizing portion of claim A.1.

D12 is directed to strengthen holes for receiving the fastening elements (last sentence of paragraph [001] of D12). The purpose is the same as that of the invention (Guidelines G-VII, 5.1).

19.1 – TRUE or FALSE

19.2 – TRUE or FALSE

19.3 – TRUE

19.4 – TRUE

QUESTION 20:

D11 discloses in paragraph [002] a composite structure comprising a stack (10) of plies of fibre-reinforced composite material and a support grid. It is mentioned that this composite structure (10) is stronger than a structure without a support grid. Since the stack of plies is stronger, the plies of fibre-reinforced composite material are strengthened using a support grid.

D11 just discloses a support grid in a composite structure but no reinforcing inserts. D12 just discloses reinforcing inserts but no support grid. There is no hint in D11 or D12 that a reinforcing insert and a support grid could be joined together.

Although the range as claimed in A.2 falls within the range of D11, D11 does not disclose the norm XYZ mesh size of the support grid (12) between 100 and 150. The selected sub-range is narrow compared to the known range, and sufficiently far removed from any specific values disclosed in the prior art. Further, the selected range is not an arbitrary specimen of the prior art but a purposive selection (see application, paragraph [007], see also Guidelines, G-VI, 8 (ii) (a), (b) and (c)). Hence, the range of claim A.2 is novel over either D11 and D12. Further, it provides the surprising effect of improving the fastening strength considerably (paragraph [007]) and contributes, together with the features of claim A.1, to a combined effect of further improving the strengthening. Thus, the range of claim A.2 contributes to an inventive step. This feature would contribute to patentability over a combination of D11 and D12 and provides a valid argument for novelty and inventive step.

Due to the above arguments, the features of claims A.1 and A.2 taken together are not only a juxtaposition of features but do have a combined technical effect

20.1 – FALSE

20.2 – TRUE

20.3 – FALSE

20.4 – FALSE

Antwortblatt / Answer sheet / Feuille de réponses

Anweisung zum Ausfüllen des Antwortblatts		Instructions on how to fill in the answer sheet		Instructions pour remplir la feuille de réponses	
Füllen Sie das Feld so aus:	Füllen Sie das Feld NICHT so aus:	Fill in the field this way:	DO NOT fill in the field this way:	Remplir le champ de la façon suivante:	NE PAS remplir le champ de la façon suivante:
●	⊗ ◐ ⊠ ◉ ⊜ ○	●	⊗ ◐ ⊠ ◉ ⊜ ○	●	⊗ ◐ ⊠ ◉ ⊜ ○
1. Verwenden Sie einen schwarzen mittelweichen HB Bleistift		1. Use a black medium soft HB pencil		1. Utiliser un crayon noir à mine moyenne HB	
2. Entfernen Sie unbeabsichtigte Markierungen vollständig		2. Erase any unintended marks completely		2. Gommer complètement toutes marques involontaires	
3. Knicken Sie dieses Blatt nicht		3. Do not bend this sheet		3. Ne pas plier cette feuille	

	AUSSAGE / STATEMENT / AFFIRMATION							
	1		2		3		4	
Frage Question Question	wahr true vraie	falsch false fausse	wahr true vraie	falsch false fausse	wahr true vraie	falsch false fausse	wahr true vraie	falsch false fausse
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19	●	●	●	●	●	○	●	○
20	○	●	●	○	○	●	○	●