EXAMINERS' REPORT PRE-EXAMINATION 2018

Question 1

Under Article 123(2) EPC, it is not allowable to add matter to a European patent present only in the priority document for that patent, Guidelines, H-IV 2.2.5. [Note that there is an exception under Rule 56(3) EPC]. Intermediate generalisations may be allowable under specific circumstances, see Guidelines, H-V 3.2.1. The abstract may not be taken into account for any purpose other than for technical information, Article 85 EPC. Subject-matter present only in claims filed after the date of filing (as is the case for claims filed in reply to a communication under Rule 58 in conjunction with Rule 57(c) EPC) goes beyond the subject-matter of the application as filed (description and drawings), see also Guidelines, H-IV 2.2.3.

1.1 – False
1.2 – False
1.3 – False
1.4 – False

Question 2

If Daniela ignores the invitation, then any reference to the drawings will be deemed to be deleted, Rule 56(4)(a) EPC (the legal consequence is not that the application is deemed to be withdrawn). If the missing drawings are filed within two months of the notification of that communication [22 February + 10 days (4 March 2018) + 2 months], i.e. 4 May 2018 (Rule 56(1) EPC, Rule 126(2) EPC, Rule 131(4) EPC) the application shall be re-dated to the date on which the missing drawings were filed, Rule 56(2) EPC. According to Rule 135(2) EPC, further processing is ruled out in respect of the period under Rule 56(2) EPC. An applicant may file missing parts of the description or

missing drawings of his own motion within two months of the date of filing, Rule 56(2) EPC and Guidelines, A-II 5.2.

2.1 – False
2.2 – True
2.3 – False
2.4 – True

Question 3

The validity of the priority right as such is not a ground for opposition, since it is not mentioned in Article 100 EPC. If the priority of EP-A is not valid, then the effective date of EP-A in accordance with Article 89 EPC is the filing date of EP-A (29 February 2016). In such a case, FR-B is state of the art according to Article 54(2) EPC, and it can be used to attack novelty (and inventive step) of EP-A. The national application FR-B can only be prior art under Article 54(2) EPC and not under Article 54(3) EPC. Lack of novelty and lack of sufficiency of disclosure are separate grounds for opposition, Article 100 EPC. Moreover, the objection of lack of sufficiency of disclosure was raised after the expiration of the opposition period (see G10/91 and Guidelines, D-V, 2.2). Thus, the objection of lack of sufficiency is considered to be a fresh ground for opposition.

3.1 – True
3.2 – True
3.3 – False
3.4 – True

Question 4

The time limit for replying to the communication under Rule 71(3) EPC expires on [22 October 2017 + 10 days (1 November 2017) + 4 months] 1 March 2018

(Rule 71(3) EPC, Rule 126(2) EPC and Rule 131(4) EPC). If the applicant pays the fee for grant and publishing and files the required translation of the claims, then this is considered to be an approval of the text, Rule 71(5) EPC. An appeal against the decision to grant would be an appeal of a not adversely affected party. The applicant can disagree to the text proposed, provided he requests reasoned amendments (Rule 71(6) EPC). The examining division may not resume the examination proceedings (cf. GL edition 2016 C-V, 4.7) and consequently may not consider third party observations after the decision to grant has been handed over to the EPO's internal postal service, Rule 71a(2) EPC, see also G12/91 and GL edition 2016 E-V, 3. In the present case of statement 4.4, the applicant has already received the decision to grant and therefore it is correct to answer “true”. In view of arguments raised on appeal the examining division responsible for issuing a technical opinion under Article 25 EPC may consider third party observations, which were filed after notification of the decision to grant. On account of this rare possibility the statement 4.4 has been neutralised and marks are awarded for both answers.

4.1 - True
4.2 - False
4.3 - True
4.4 - True or False

Question 5

The renewal fee for the third year of the European patent application stemming from PCT-E are only due on 31 July 2018 (Rule 159(1)(g) EPC, Article 86(1) EPC, Rule 51(1) EPC). The time limit for entry into the European phase expires on [29 July 2015 + 31 months =] 28 February 2018, Rule 159(1) EPC and Rule 131(4) EPC). According to Rule 159(1)(c) EPC, the filing fee must be paid on entry into the European phase. Hence, for validly entering the European phase *today*, it is necessary to pay the filing fee. In view of arguments raised on appeal it appears that the statement 5.3 could be understood as referring to the concept of “entry” versus “early entry” into

the European phase with regard to 26 February 2018. This would additionally require the lifting of the processing ban before the 31-month time limit has expired by filing a request for early entry (cf. GL E-IX, 2.8 and OJ EPO 213, 156). Thus in view of this interpretation it was decided to neutralise the statement 5.3 and award marks for both answers. According to Rule 159(1)(f) EPC and Rule 70(1) EPC, the request for examination must be filed up to six months after the date on which the European search report is published in the European Patent Bulletin: the international publication of the search report takes the place of the European search report and the mention of its publication in the European Patent Bulletin, Article 153(6) EPC (see also GL C-II, 1.2). The request for examination may be filed until May 2018 (November 2017 + 6 months).

5.1 – False
5.2 – False
5.3 – True or False
5.4 – False

Question 6

Where no priority is claimed, the translation of an international application has to be supplied within thirty-one months from the date of filing, i.e. sometime in March 2018. If the translation is not filed in due time, the European patent application is deemed to be withdrawn (Rule 160(1) and (2) EPC), and further processing can be requested, Article 121(1) EPC and Rule 135(1) EPC. In proceedings before the EPO, Juana must be represented by a professional representative, Article 133(2) EPC. Juana is not entitled to a reduction of the examination fee, since she is neither resident in nor a national of a contracting state of the EPC, Rule 6(4) EPC and Article 14(4) EPC.

6.1 – False
6.2 – True
6.3 – True
6.4 – False

Question 7

Any infringement of a European patent is dealt with by national law, Article 64(3) EPC. A patent gives the patent proprietor the right to exclude third parties from using the protected invention: it does not automatically allow the patent proprietor to produce and sell matter that is protected by the patent. The obligation to pay renewal fees to the EPO terminates in 2017, with the payment of the renewal fee due in respect of the year in which the mention of the grant of the European patent is published in the European Patent Bulletin, Article 86(2) EPC.

7.1 - False
7.2 - False
7.3 - False
7.4 - True

Question 8

The EPO has acted as the International Searching Authority. The EPO will, among others, invite the applicant to amend the description and claims in accordance with Rule 161(1) EPC soon after Euro-PCT-M enters the European phase. Any amendment or comment can be filed within six months of that communication. If in the application documents which are to serve as the basis of the examination an invention is claimed that was not searched by the EPO as the International Searching authority, the applicant will be invited to pay further search fees in respect of any such invention, Rule 164(2)(a) EPC. The present set of claims includes at present 35 claims, and therefore claims fees are due in accordance with Rule 162(1) EPC: however, the legal consequence of not paying claims fees for some claims is that these claims shall be deemed to be abandoned, Rule 162 (4) EPC. The application is not

deemed to be withdrawn, if the applicant fails to comment today, since he may do so within the period set in accordance with Rule 161(1) EPC.

8.1 - True
8.2 - True
8.3 - False
8.4 - False

Question 9

The statement setting out the grounds for the appeal must be filed at the latest on 16 April 2018 [6 December 2017 + 10 days (Rule 126(2) EPC) + 4 months (Article 108 EPC and Rule 131(4) EPC) = 16 April 2018]. An application is pending if it was refused and if no appeal has yet been filed until the expiry of the time limit for filing the notice of appeal [6 December 2017 + 10 days (Rule 126(2) EPC) + 2 months (Article 108 EPC and Rule 131(4) EPC) = 16 February 2018], see also G1/09. An interlocutory revision is never possible on the basis of an auxiliary request, even if it would overcome the grounds for refusal, Guidelines, E-XI, 7.4.3. If interlocutory revision is to be granted, the applicant must address convincingly all grounds for refusal, i.e. novelty over D1 and inventive step over D2.

9.1 – False
9.2 – True
9.3 – False
9.4 – False

Question 10

A decision (such as a decision to refuse a patent application) may not be based on facts and evidence (such as a new document) on which the applicant did not have the opportunity to be heard, Article 113(1) EPC and

G4/92. The examining division can exercise the discretion not to admit requests filed during prosecution of the application, such as after summons to oral proceedings have been issued. However, the discretion is exercised under Rule 137(3) EPC (see also Guidelines, H-II, 2.7.1), since the time frame for filing amendments in respect of EP-S under Rule 116(1) and (2) EPC was still open. The examining division may hold oral proceedings in the absence of the party duly summoned, Rule 115(2) EPC. The examining division has three technically qualified examiners, Article 18(2) EPC.

10.1 – False
10.2 – False
10.3 – True
10.4 – False

Question 11

11.1 – False: Claim I.1 claims a jug, while the application describes in the final paragraph [015] of the application one embodiment where the lid is mounted on a filter carrier which is separate from a jug on which it may be mounted. Furthermore, paragraph [014] refers to an alternative detector having submergible electrodes which does not increment in response to the movement of the blocking mechanism. Thus, there are embodiments of the application not covered by subject-matter of claim I.1.

11.2 – True: The description of D1 in paragraph [003] makes clear that the flap 105 is slid to open or close the aperture 104 and when in the open position flap 105 contacts the detector 116. The last sentence of this paragraph explicitly states that the incrementation results from the movement from the closed position to the open position. The first embodiment of D1 does not disclose the characterising feature of claim I.1 namely "a counter configured to automatically increment in response to said blocking mechanism moving from an open to a closed position".

11.3 – False: The second embodiment of document D1 shows jug (101) for filtering water, comprising: a lid (103), an aperture (104) provided through said lid (103); a blocking mechanism (flap 105) mounted on the lid (103) at the aperture (104) and displaceable between a closed position, in which it closes said aperture, and an open position; a counter configured to automatically increment in response to said blocking mechanism moving from an open to a closed position (paragraph 4), wherein said blocking mechanism (flap 105) is pivotable in an anti-clockwise direction between said closed and said open position. Although Figure 2 shows the flap pivoting in a clockwise direction, it is clear that the jug disclosed in the second embodiment can be viewed from the other direction as indeed the jug of Figure 1 is, in which case the flap will pivot in an anti-clockwise direction. This is also explained in paragraph [007] of the description of the application. The feature “anti-clockwise direction” does not limit the scope of claim I.2, since this direction depends on the orientation of the jug with respect to the observer. Thus, the subject-matter of claim I.2 is not novel over the second embodiment of document D1.

11.4 – True: The second embodiment of document D2 shows a jug (201) for filtering water, comprising: a lid (203), an aperture (204) provided through said lid (203); but no blocking mechanism displaceable between a closed position, in which it closes said aperture, and an open position (see paragraph [010], last sentence of D2). Thus, the subject-matter of claim I.1 is novel over the second embodiment of document D2.

Question 12

12.1 – True: The second embodiment of document D2 shows a jug (201) for filtering water, comprising: a lid (203), an aperture (204) provided through said lid (203); but no blocking mechanism displaceable between a closed position, in which it closes said aperture, and an open position (see paragraph [010], last sentence of D2).Thus, claim II.1 is novel over the second embodiment document D2.

12.2 – See below: The third embodiment of document D1 discloses a jug (101) for filtering water, comprising: a lid (103), an aperture (104) provided through said lid (103); a blocking mechanism (flap 105) mounted on the lid (103) at the aperture (104) and displaceable between a closed position, in which it closes said aperture, and an open position. The third embodiment of D1 discloses a counter, but not a counter configured to automatically increment in response to water being added to the jug. Strictly, the counter should be mentioned in the preamble of claim II.1. Nevertheless, it is possible to consider the counter being automatically incremented as a single feature, so that the present two-part form would also be correct. For this reason it was exceptionally decided to award marks for both answers.

12.3 – False: The characterising feature of claim II.1 is disclosed in the first embodiment of document D2 namely a counter (211) configured to automatically increment in response to water being added to the jug (see paragraph 8 of D2). Thus, the two part form is not correct with respect to the first embodiment document D2.

12.4 – See below: The wording of claim II.1 is such that the subject-matter is claimed as a result to be achieved. In effect claim II.1 claims a solution to the underlying technical problem without providing technical details of the essential features required to achieve this. As a general rule, claims which attempt to define the invention by a result to be achieved should not be allowed, in particular if they only amount to claiming the underlying technical problem. The technical features that provide the solution to the technical problem should be included in the independent claim. Since claim II.1 misses at least the definition of a detector, claim II.1 does not meet the requirements of Article 84, see Guidelines F IV 4.10 and the answer to 12.4 is “True”. However, the answer to statement 12.4 was perceived to be quite difficult in the frame of the pre-examination and it was decided to award marks for both answers.

Question 13

13.1 –See below: The application does not explicitly disclose an embodiment with both a detector operable to detect a flap moving and one detecting a level of a liquid. Nevertheless, since this subject-matter is disclosed in the dependent claims, i.e. in the application as filed, it is permissible to amend the description so that it includes this subject-matter (Guidelines F-IV, 6.6). In view of these arguments both possible answers are considered to be correct. For this reason it was exceptionally decided to award marks for both answers.

13.2 – False: The first embodiment of document D2 discloses a jug (201) for filtering water, comprising: a lid (203), an aperture (duct 204) provided through said lid (203); a blocking mechanism (blade 213a and guide 214; paragraph [009] of D2) mounted on the lid (203) at the aperture (204) and displaceable between a closed position, in which it closes said aperture (204), and an open position; comprising a counter configured to automatically increment in response to water being added to the jug and further comprising a detector configured to detect said blocking mechanism moving from said open to said closed position, said counter configured to increment in response to a signal received from said detector (see paragraph [009], signal transmitted each time flexible guide 214 contacts turbine blade 213a and thereby closes aperture 204). Thus, subject-matter of claim II.2 is not novel over the first embodiment of document D2.

13.3 – True: The first embodiment of document D2 does not disclose biasing means associated with said blocking mechanism (turbine blade 213a and flexible guide 214) for biasing said blocking mechanism towards said closed position. Although the guide 214 is flexible, the turbine rotates and comes to rest in any position, and has no biasing means to urge it to towards contacting the flexible guide. Thus, the subject-matter of claim II.4 is novel over the first embodiment of document D2.

13.4 – True: The first embodiment of the application comprises a jug (1) for filtering water, comprising: a lid (3), an aperture (4) provided through said

lid (3); a blocking mechanism (5) mounted on the lid (3) at the aperture (4) and displaceable between a closed position, in which it closes said aperture, and an open position; a counter configured to automatically increment in response to water being added to the jug; and a detector (12) configured to detect said blocking mechanism moving from said open to said closed position, said counter configured to increment in response to a signal received from said detector (paragraph [012] of the application). Thus, the first embodiment is covered by the scope of claim II.2.

Question 14

14.1 – True: There is basis in the application for both reaching and exceeding a predetermined level (see paragraph [014] of the application).

14.2 – False: The second embodiment of document D1 discloses a jug (101) for filtering water, comprising: a lid (103), an aperture (104) provided through said lid (103); a blocking mechanism (105) mounted on the lid (103) at the aperture (104) and displaceable between a closed position, in which it closes said aperture, and an open position; a detector (116) for detecting water being added to the jug; a counter (111) configured to increment in response to said detector detecting water being added to said jug; wherein said detector is configured to detect water being added to the jug by detecting said blocking mechanism moving from said open to said closed position (see paragraph [004] disclosing the second embodiment of D1, since the movement of the blocking mechanism is suitable for detecting water being added, GL F-IV, 4.13). Thus, the subject-matter of claim III.2 is not novel over D1.

14.3 – True: The feature of the counter being configured to increment in response to a signal received from said detector can be deleted from claim III.2 as it is now present in amendment claim III.1 from which claim III.2 depends. The features of amended claim III.2 correspond to the features of claim II.2 (as both include the feature of the independent claim from which they depend).

14.4 – True: Document D2 does not disclose “a detector configured to detect a level of water within said jug reaching a predetermined level”, in D2 an amount of water added to a jug is automatically detected using a turbine. There is no disclosure of detecting a water level and thus, the subject-matter of claim III.3 is novel over document D2.

Question 15

15.1 – False: The application as filed discloses water and conductive liquid, but not liquid in general (see paragraph [014]). Thus, there is no basis for this generalisation and claim III.1 with such an amendment would not meet the requirements of Article 123(2).

15.2 – False: The application as filed does not mention a turbine. Only document D2 mentions a turbine. Document D2 is neither a document according to the state of the art under Article 54(3) nor can the disclosure of document D2 be viewed as an accidental anticipation of claim III.1, and nor can a turbine be considered to be non-technical (see G1/03 and G2/03). Thus, a disclaimer excluding this feature would not be allowable under Article 123(2).

15.3 – False: The third embodiment of the application detects water being added to the jug by detecting a rise in the water level within the jug, not by detecting movement of the blocking means. Thus, the third embodiment of the application is not covered by the scope of claim III.2.

15.4 – True: None of the embodiments of document D1 disclose “biasing means associated with said blocking mechanism (5) for urging said blocking mechanism into said closed position in a rest position and for allowing its passage into the open position under the action of the flow of water admitted into the jug through the aperture”. Thus, the subject-matter of such an

amended claim is novel over D1. Such an amended claim set meets the requirement of Article 54 with respect to document D1.

Question 16

16.1 – False: Claims IV.1 and IV.2 do not relate to inter-related products in the sense of Rule 43(2) (a) EPC as the jug and the filter carrier are presented as alternative solutions (Rule 43(2) (c) EPC), they are not disclosed as working together or complementing each other (see Guidelines F-IV 3.2(i)).

16.2 – False: Claims IV.1 and IV.2 do not relate to different uses of an apparatus, in the sense of Rule 43(2) (b) EPC; rather they relate to alternative solutions. The difference lies in the apparatus itself and not in its use.

16.3 – False: To meet the requirements of unity of invention Rule 44(1) EPC requires the two inventions to have the same or corresponding special technical features. A special technical feature is one that defines a contribution that the claimed invention considered as a whole makes over the prior art. In this case a filter cartridge is known (see introduction to the application) and as such cannot be regarded as a special technical feature. Thus, whether or not this feature is in both claims is immaterial when determining unity of invention.

16.4 – True: Claims IV.1 and IV.2 have the same characterising feature. This feature is not disclosed in D1. As noted previously Rule 44(1) EPC states that to meet the requirement of unity of invention the two inventions shall have the same special technical feature that defines a contribution that the claimed invention considered as a whole makes over the prior art. The common special technical feature in this case can be viewed as the characterising feature of both claims.

Question 17

17.1 – True: Providing a blocking mechanism that pivots towards the base of the jug when moving from a closed to an open position along with a biasing means that allows this movement in response to a flow of water allows the blocking mechanism to open automatically in response to a flow of water. This effect of the characterising features is supported in paragraph [009] of the application.

17.2 – True: Paragraph [009] of the application indicates that biasing means that allows the blocking mechanism to pass into the open position under the action of the flow of water provides a jug that can be filled without using both hands. This solves the problem of providing a jug that is easy to manipulate when filling.

17.3 – False: The lid disclosed in document D3 is suitable for use on many different jugs including water filters (see paragraph [001] of D3). Thus, the statement that D3 is not directed to a lid used with a filtering device is incorrect. Furthermore, the advantages provided by D3 of making the jug easier to manipulate when filling are also applicable to the jug of D1.

17.4 – False: Claim V.1 does not address the objective technical problem of providing a blocking mechanism for a filter lid that **only** opens in response to a flow of water. The blocking mechanism of claim V.1 could, for example, open in response to another comparable external downward force on the flap such as one provided by a user's hand.

Question 18

18.1 – True: As distinguishing feature 3) detects water in the jug reaching a predetermined level (paragraph [014] of the application), the level of water in a jug is an indication of an amount of water that is in the jug.

18.2 – False: Distinguishing feature 3) provides an indication of how much water there is in the jug rather than explicitly indicating the number of times water is added to the jug. Thus, feature 3 does not address the problem of how to more accurately determine the number of times water is added to the jug.

18.3 – False: Paragraph [014] of the description discloses the possibility of false positives arising from the detector of distinguishing feature 3) when for example the jug is manipulated to pour water, i.e. not only when water is added to the jug. Thus, feature 3) does not address the objective technical problem of providing a means that can only generate a signal for incrementing a counter in response to water being added to the jug.

18.4 – True: None of the cited documents D1 to D3 suggest the provision of a water level detector to determine water being added to a jug. Thus, arriving at such a detector from a combination of the teachings of these documents is not obvious.

Question 19

19.1 – False: There is no water level detector in claim VI.1 and thus, the presence of a water level detector in D4 is not a valid argument for document D4 to be considered the closest prior art to claim VI.1.

19.2 – False: It is not only document D4 that addresses the technical problem of improving the accuracy of a filter exhaustion detecting means, document D2 also addresses this technical problem (see paragraphs 3 and 4 of D2). Thus, it is not a valid argument for considering document D4 to be the closest prior art to claim VI.1.

19.3 – False: Document D2 also discloses a blocking mechanism (flexible guide 214 and turbine blade 213a, see paragraph 009) which opens by tilting

towards said jug (see first embodiment where turbine blades turn towards the jug under action of water). Furthermore D3 discloses a container lid that is used on a jug (see paragraph [001] with a blocking mechanism that opens by pivoting towards the jug base (see Figure 3). Thus, D4 is not the only document that discloses a jug that has a blocking mechanism that moves into an open position by pivoting towards the base and it is not a valid argument for considering document D4 to be the closest prior art to claim VI.1.

19.4 – False: The Figure 2 embodiment of document D4 provides a blocking mechanism that can be opened with a tap. Thus, the objective technical problem of how to provide a jug that allows filling of the jug without the need to manually manipulate the lid is not a technical problem in light jug of D4.

Question 20

20.1 – False: The objective technical problem is to provide an alternative means, for determining the exhaustion of a filter cartridge and document D1 does disclose an alternative means. Such an alternative means may be less accurate but may have other advantages. An alternative does not need to be better in all respects to be in certain circumstances selected by the skilled person.

20.2 – True: Neither D4 nor the third embodiment of D1 provide a detector configured to detect said blocking mechanism moving from said open to said closed position. In the third embodiment of D1 there is a counter that is manually incremented, while D4 detects a water level within the jug. Therefore a combination of D4 and the third embodiment of D1 would not provide a jug according to claim VI.1.

20.3 – False: Replacing the lid of D4 with that of D2 would not result in a jug according to the subject-matter of claim VI.1 as the lid of D2 has no biasing means for biasing the blocking means towards the closed position. Therefore

a combination of D4 and the lid of D2 would not provide a jug according to claim VI.1.

20.4 – True: Document D3 discloses a lid for any container that is easy to fill. Although it can be used on a filter jug it does not disclose a means of determining an exhaustion of a filter and as such a skilled person looking for an alternative means for doing this would not look to this document.

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							
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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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18	●	○	○	●	○	●	●	○
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