

Examiner's report pre-examination 2014

Preliminary remark: the references from the Guidelines are from the version of the Guidelines which was to be used in the present examination.

Question 1

Further processing is excluded in respect of the period under Rule 64 EPC for paying an additional search fee, Article 121(4) EPC and Rule 135(2) EPC. In order to pursue the second invention, the valid options include the following:

- 1) since you have not taken any action, the application is pending (and not withdrawn). You can file a European divisional application to EP-A (Article 76(1) EPC and Rule 36 EPC);
- 2) since the priority period has not yet expired (Article 87(1) EPC), you can file a European patent application EP-B claiming priority from EP-A;
- 3) since the priority period has not yet expired (Article 8(2)(a) PCT and Article 4 C (1) of the Stockholm Act of the Paris Convention for the protection of industrial property), you can also file an international application PCT-B claiming priority from EP-A.

1.1 - False

1.2 - True

1.3 - True

1.4 - True

Question 2

The European divisional application EP-D can be validly filed as long as the earlier application (in this case EP-P) is pending, Rule 36(1) EPC. EP-D has to be filed before the time limit of twenty-four months for filing a divisional application to EP-P has expired. This time limit is triggered by the first communication under Article 94(3) EPC in respect of EP-P, Rule 36(1)(a) EPC as entered into force on 26 October 2010. Even if EP-D contains subject-matter extending beyond the content of the earlier application as originally filed, it cannot be converted into an independent application taking 6 December 2013 as its date of filing (Guidelines C-IX, 1.4 or G1/05, Reasons 11.1). Consequently, EP-P cannot be prior art for EP-D. Although no renewal fee was due in respect of EP-P when EP-D was filed, this fee for EP-P became due on 31 December 2013. The renewal fee due in respect of EP-P shall be also paid for EP-D, Rule 51(3), second sentence, EPC. This fee can be paid within four months from filing without an additional fee, i.e. on 7 April 2014 [6 December 2013 + 4 months (= 6 April 2014), extended to Monday 7 April 2014], Rule 51(3) EPC, Rule 131(4) EPC and Rule 134(1) EPC].

2.1 - False

2.2 - False

2.3 - True

2.4 - False

Question 3

The right of priority can be enjoyed during a period of twelve months from the date of filing of the first application, Article 87(1) EPC. The outcome of the first application plays no role. For instance the first application can be withdrawn, Article 87(3) EPC. In respect of EP-1, the priority period expires on 13 January 2014, [11 January 2013 + 12 months (= 11 January 2014), extended to Monday 13 January 2014, Article 87(1) EPC, Rule 131(4) EPC and Rule 134(1) EPC].

If in EP-2 priority is claimed only from EP-1, the effective date of claim 1 is 11 January 2013. If in EP-2 priority is claimed only from EP-1, the effective date of claim 2 is the date of filing of EP-2, 13 January 2014.

If in EP-2 priority is claimed only from US-1, the effective date of claim 1 is the date of filing of EP-2, 13 January 2014: US-1 is not the first application in respect of the invention of claim 1. If in EP-2 priority is claimed only from US-1, the effective date of claim 2 is 6 September 2013.

3.1 - False

3.2 - True

3.3 - True

3.4 - False

Question 4

The applicant may request examination of European patent application EP-G up to six months after the date on which the European Patent Bulletin mentions the publication of the European search report of EP-G, i.e. on 16 April 2014 [16 October 2013 + 6 months (= 16 April 2014), Rule 70(1) EPC, Rule 131(4) EPC]. To avoid the application being deemed to be withdrawn, the applicant has to comply –among others– with the requirements of Rule 70a(1) and (3) EPC. However, the applicant is not obliged to correct the deficiencies mentioned in the opinion as he may choose only to comment on the opinion, for example if he disagrees with the finding of the Search Division. To avoid the application being deemed to be withdrawn, the examination fee must be paid, Article 94(1) and (2) EPC, and the designation fee must be paid, Rule 39(1) and (2) EPC. Claims fees had to be dealt with at search stage (see Rule 45 EPC).

4.1 - False

4.2 - False

4.3 - True

4.4 - True

Question 5

The renewal fee for the coming year is due on the last day of the month containing the anniversary of the date of filing, Rule 51(1) EPC. On 31 March 2014, the renewal fee for the fourth year is due. The renewal fee with an additional fee may still be paid within six months of the due date, Rule 51(2) EPC. If a renewal fee is not paid in due time, the application is deemed to be withdrawn, Article 86(1) EPC, third sentence. Further

processing for paying a renewal fee is excluded by the provisions of Article 121(4) EPC and Rule 135(2) EPC.

5.1 - False

5.2 - False

5.3 - True

5.4 - False

Question 6

The time limit for filing the requested adapted description expired on 20 February 2014 [10 December + 10 days (= 20 December 2013) + 2 months (= 20 February 2014), Rule 126(2) EPC, Article 94(3) EPC and Rule 131(4) EPC]. If the applicant fails to reply in due time, in this case on 20 February 2014, the application is deemed to be withdrawn, Article 94(4) EPC. An extension may be requested before the expiry of the period only, Rule 132(2) EPC, second sentence, see also Guidelines, E-VII 1.6. Further processing may be requested within two months of the notice of loss of rights, Rule 135(1) EPC. This notice not having been received yet, the period cannot be calculated. As it cannot be less than 2 months from today, 24 February 2014, the last date for validly requesting further processing must be after 22 April 2014.

6.1 - True

6.2 - False

6.3 - False

6.4 - False

Question 7

The requirements for obtaining a date of filing are set forth in Rule 40 EPC: in particular there is no obligation to pay any fee or to file at least one claim. Everything made available to the public (e.g. by oral description) before the date of filing of EP-X is prior art. A disclosure made on the same date as the date of filing of EP-X is not prior art for EP-X, Article 54(2) EPC. If a date of filing is accorded to EP-X, right to priority under the Paris Convention for the protection of industrial property (Article 4 A) can be derived from EP-X, for instance for filing an international application.

7.1 - False

7.2 - False

7.3 - False

7.4 - True

Question 8

Ms De Jong is a national of a contracting state not having English, French or German as an official language, Article 14(4) EPC. She may file documents in Dutch, but has to provide translations into one of the official languages of the EPO. The required translation of the notice of opposition shall be filed within one month of filing the notice of opposition. But it can be filed within the period for filing the notice of opposition, if that period expires later, Rule 6(2) EPC. This is the case, as the period for filing the notice of opposition expires on 26 March 2014 (26 June 2013 + 9 months, Article 99(1) EPC and Rule 131(4) EPC). The required translation of EP-Z shall be filed within two months of filing EP-Z, Article 14(2) EPC, Rule 6(1) EPC. As a Dutch citizen, Ms De Jong is entitled to a reduction of both the filing and the opposition fees, Rule 6(3) EPC.

8.1 - False

8.2 - True

8.3 - True

8.4 - True

Question 9

The state of the art comprises anything made available to the public by means of a written or oral disclosure, by use, or in any other way, before the date of filing of EP-N, Article 54(2) EPC. Such a disclosure can be: a blog entry (see also Guidelines, G-IV 7.5.3.3 and 7.5.4 (c)); comparative tests that are made available to the public with the publication of EP-L, since the files relating to EP-L are open to inspection, Article 128(4) EPC; and statements made during oral proceedings in opposition proceedings, since these proceedings are public, Article 116(4) EPC.

Due to the confidential nature of the international preliminary examination (Chapter II), no access to the file of the international preliminary examination is given to the public before the international preliminary examination report is established, Article 38(1) PCT.

9.1 - True

9.2 - True

9.3 - False

9.4 - True

Question 10

The European patent application must disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art, Article 83 EPC. A lack of sufficiency of disclosure cannot be cured by filing additional technical information, since this would offend the requirements of Article 123(2) EPC (see Guidelines, F-III 2). A correction under Rule 139 EPC is not possible either: if it is obvious how the correction reads, then there cannot be any issue of lack of sufficiency of disclosure. A valid ground for opposition is lack of sufficiency of disclosure, Article 100(b) EPC. EP-T will be published as filed, with embodiment X1, Rule 68(1) EPC. ~~Even if the applicant filed amended application documents with the EPO before the termination of the technical~~

~~preparations for publication, only amended claims would be included in the publication but not an amended description, Rule 68(4) EPC.[*]~~

10.1 - False

10.2 - False

10.3 - False

10.4 - True[*]

[*] Please see D 0002/14, D 0003/14, D0004/14, D 0005/14 and D0006/14

Question 11

The subject matter of claim I reads on a bottle having a base. The wording of claim I is neither limited to comprise a liquid soap dispenser nor to comprise a tube. Hence, even the bottle of Fig. 5 shown without a tube is covered by the scope of claim I.

11.1 - True

11.2 - True

11.3 - True

11.4 - True

Question 12

The bottle in accordance with claim I covers just a bottle with a base (see Question 11). Such bottles are disclosed in each of documents D1 to D4. Any base of a bottle is suitable for touching a tube, but claim I is not limited to comprise a tube. Hence, it is irrelevant if the tubes described in D1 to D4 do touch the base or not.

12.1 - False

12.2 - False

12.3 - False

12.4 - False

Question 13

The subject matter of claim II reads on a liquid soap dispenser with a portion of the tube touching the base of the bottle as in the first embodiment (statement 13.1) and as in D2 (statement 13.3).

The bottle is defined to contain a liquid such as liquid soap, hence the subject matter of claim II is limited to contain a liquid in general.

The tube 430 of D4 is parallel to the base of the bottle, but does not extend along the base of the bottle.

13.1 - True

13.2 - True

13.3 - False

13.4 - True

Question 14

The liquid soap in accordance with claim III may comprise other components. Claim III is not limited to liquid soap compositions comprising at least 75% water and detergent, since the open wording of the claim covers compositions containing further ingredients (statement 14.1), but water and detergent can be at most 80% (statement 14.4). For statement 14.2 “preferably” is equivalent to “in particular” (see Guidelines F-IV, 4.9). “In a bottle...” is considered to be unclear (see Guidelines F-IV, 4.15) since it is ambiguous, if protection is sought for the soap dispenser including the liquid soap composition or for the liquid soap composition only.

14.1 - False

14.2 - True

14.3 - False

14.4 - True

Question 15

All the liquid soap compositions are within the scope of claim III, since they relate to more specific amounts of detergent (22 percent by weight or about 20 percent by weight of glycerine) or to more specific compositions (additionally including a perfume or non-ionic detergent rather than any detergent), i.e. Claim III is not novel over any of the compositions.

15.1 - False

15.2 - False

15.3 - False

15.4 - False

Question 16

For statement 16.1, the last sentence of paragraph [010] of the description of the application explicitly excludes non-ionic detergents.

For statement 16.2 “aqueous suspension” is disclosed only in connection with the prior art discussed in the application in paragraph [002] and in paragraph [002] of D1.

For statement 16.3 note “consisting” which limits the liquid soap composition to the sole listed components, see Guidelines, F-IV, 4.21.

For statement 16.4, it is noted that the mentioned document is prior art under Article 54(3) EPC. Furthermore, no other cited document defines any value or range of glycerine in the liquid soap composition, i.e. this disclaimer does not have the effect to single out specific compositions or to render the subject-matter novel or inventive over these documents (see Guidelines, H-V, 4.1).

16.1 - True

16.2 - False

16.3 - True

16.4 - True

Question 17

For 17.1 it is considered that claim IV.1 is not limited to contain a liquid soap, only that it must be suitable for it, i.e. the dispensing system may also contain hand cream.

For 17.2 it is considered that the wording of the characterizing part of claim IV.1 is not limited to the end part of the tube, but may also refer to any intermediate part of the tube.

The second embodiment shown in Fig. 2 shows all the features defined in claim IV.2.

The right-angled portion as defined in claim IV.3 need not to be the end of the tube being in contact with the base, i.e. the right-angled portion could also be positioned outside the bottle.

17.1 - True

17.2 - False

17.3 - True

17.4 - False

Question 18

For statements 18.1 and 18.2 no technical effects can be derived from features which are undefined or unspecified in claim IV.1. The term “flexible” is not defined in claim IV.1 and the tube is not further specified to imply any flexibility. Further claim IV.1 does not define or specify any dimension.

For statement 18.3 the fact that a part of tube is in contact with the base does not imply that the tube cannot have straight parts.

For statement 18.4 it is noted that the wording of claim IV.1 also covers embodiments in which intermediate parts of the tube may contact the base. The technical effect of statement 18.4 is achieved, however, only when the end part of the tube is in contact with the base. Claim IV.1 does not define where the end part of the tube is positioned with respect to the base of the bottle.

18.1 – False

18.2 – False

18.3 – False

18.4 – False

Question 19

A full overlap of features of the prior art with those of the preamble of the claim to be assessed is not a sufficient criterion to justify the selection of that prior art as the closest prior art (see Guidelines G-VII, 5.1).

Identifying structural differences is a question of novelty and is not a criterion for excluding a document as the closest prior art.

For statement 19.3, D3 does not represent a promising starting point, because there is no functional relation between the tube and the dome-shaped base: there is no contact between the tube and the dome-shaped base and the remainder of the soap is suggested to be washed out with water.

D4 does not represent a promising starting point, because the right-angled portion of the tube of D4 has a completely different function, i.e. to connect the bottle being distant from the hand pump.

19.1 – False

19.2 – False

19.3 – False

19.4 – False

Question 20

The V-shaped well helps to collect the liquid soap into the well and the tube guided into the well helps to extract as much amount of liquid soap as possible from the bottle, i.e. to reduce the amount of liquid soap remaining in the bottle.

For statement 20.2, reference is made to paragraph [007] of the application which explicitly mentions this technical effect.

Paragraph [007] of the application only states that “nearly all the soap can be removed from the bottle”. The application does not teach a complete removal of the soap. The only document providing the solution to this problem is D3, which teaches to wash out the bottle with water.

For statement 20.4 it is noted that claim IV.4 is not limited to the type of soap and this cannot serve as a basis for a valid argument for inventive step.

20.1 – True

20.2 – True

20.3 – False

20.4 – False