

CIPA Informals Committee Response to the New EQE Proposal and Consultation

The CIPA Informals Committee is the representative body for student members of the UK Chartered Institute of Patent Attorneys.

Competences

We consider that the proposal suitably removes repetition of competencies in the main examinations, reducing the burden on candidates to sit lengthy examinations and providing increased flexibility.

We request that consideration is given to the knock-on effect the changes to the exams will have on candidates with national qualification systems. Presently EQE Papers A and B provide exemptions to sitting two UK qualifying examinations, FD2 and FD3. It will be advantageous to candidates resident in the UK (and indeed in various member states of the EPC) to ensure that successful completion of the EQE main examinations will continue to address all the competencies of the UK drafting (FD2) and amendments of specifications (FD3) papers (or other national requirements that currently acknowledge exemptions for passing one or more EQE main examinations). In particular, we consider that the new style EQE exams should encompass drafting a new patent application and responding to an office action. This will not only to ensure that the current system for exemptions continues to exist, but will also ensure that candidates who pass new style EQE exams will be tested on these particular skills. Patent drafting and prosecution are core skills for a patent attorney, and ought to be examined. According the proposed structure of the new EQE exams, candidates may be able to pass without being tested on all core competencies for these skills, such as drafting a new patent application or responding to an EPO office action.

M4 covers advising a client with respect to IP protection in other jurisdictions (US, JP, CN, KR). A clear definition of the extent of the knowledge required for each of these jurisdictions is needed.

Assessment methodologies

There is a suggestion that there will be chemistry and non-chemistry versions for M1. Will the non-chemistry paper have increased pre-requisite mechanical knowledge which may not be accessible to people with non-mechanical backgrounds, such as candidates in the life sciences or computing fields, who also do not have the pre-requisite knowledge to sit a chemistry version? Further clarity is also needed around how this will be implemented.

Candidates should not be examined on their “test taking” skills. The number of different question formats should be kept to a minimum to avoid tricking or confusing the candidate who is under time pressure and may be experiencing examination stress which will increase the likelihood that they will misread the instructions for answering the question or make errors.

We agree with adapting the EQE for an online platform as this resembles the conditions of the profession today by allowing candidates to type answers and refer to online resources on the EPO website. A wider range of resources could be provided including the PCT on the WIPO website and the legislation of other jurisdictions if this knowledge is required for the exams.

Adaptability

The uncertainty of the types of work that will be tested in M2 or M3 may cause unnecessary stress to candidates. Whilst we agree that the EQE should be less formulaic and allow for adaptability of the exam and for various types of work to be tested, clear guidance should be provided to candidates on what is expected of them to gain marks in the examination.

Design and modularity

The modular system gives candidates an opportunity to build on their legal knowledge and their skills and also provides the choice to sit exams when they are ready. We consider that candidates should have the option to sit the exams when they are ready after the pre-requisite period of time, to follow the modular path or to sit all the examinations in a single sitting.

All examinations should be offered at every available sitting. If examinations are held every six months, candidates should not be disadvantaged due to the examinations coinciding with national examinations, carer responsibilities during school holidays, or religious holidays. This would be reduced if all the examinations are to be offered twice a year.

F2, M2 and M4 are provided in two parts. Clarity is needed on whether these two parts will be sat on the same day. It is preferred that the two parts of an exam will be sat on the same day as spreading the exams over a longer period will increase stress and create the feeling of adding extra exams. Clarity is also needed on whether a candidate can pass one part of an exam and fail the other part. Will candidates need to retake both parts of the exam and pass both parts again in the next sitting? In other words, would it be possible to only resit one part of the exam if needed?

Further clarification on the timing of releasing results is needed. Currently, EQE results for the main examination are released around three to four months after the examinations. If examinations are held every six months, this would not provide candidates with sufficient time to decide whether to repeat an examination they failed or to sit the subsequent examination and to study for the chosen examination.

The Exam guidance must also make it clear whether candidates are required to pass an earlier module to progress. For example, would a candidate have to pass M2 to take M3, and so on? Would this be the same for F1 and F2, or can these exams be taken in any order or even concurrently?

Model papers and online platform

Further clarity is required on how questions in the new online format will be marked and should be provided prior to each examination. For example, if multiple answers can be selected, will candidates be required to match all answers to score the marks, and if only a subset of correct answers are selected will a proportion of the marks be awarded accordingly, or will no marks be awarded? Will there be a pre-EQE-style system of unequal mark allocation depending on how many answers are right or wrong?

Clearer instructions are also required for the new format of the online examinations. For example, the question needs to be clear if the candidate should select one answer, select multiple answers, or if drag and drop whether all the answers should be used and whether answers can be re-used or multiple answers can be selected. Thorough checking is needed prior to the examinations as there were errors in the online platform, for example where instructions suggested multiple answers could be selected and only one answer was selectable.

On a related point, we also note that in recent years there have been some mistakes in several papers, often with far-reaching consequences (e.g. not just a typo, but, for example, in the 2022 pre-EQE, Question 20 did not indicate which claim to consider when answering a multiple choice question about which document is or isn't a suitable choice of the closest prior art). Thus in general, the papers need to be checked more thoroughly to make sure such mistakes are not present. Even though compensation is often awarded for such errors (e.g., Pre-EQE, Question 20 of 2022 and Paper D, Question 5 of 2022), it can cause candidates to waste a lot of time trying to work out what the question is asking, resulting in less time to spend on the rest of the paper.

A number of the questions have word limits. We consider that this will place an additional burden on candidates during the exam to provide succinct answers under time pressure. The number of words used will differ between languages creating a disparity for candidates. Candidates may also resort to using shortcuts that will not be clear to markers, particularly markers who are marking in their non-native language.

Further clarity on the consequence of exceeding a word limit is required. The online system allowed for an answer to exceed the word limit. For example, will answers exceeding the word limit receive a mark of zero, or will these be assessed on a case-by-case basis to determine whether a candidate has copied and pasted sections of the guidelines or merely required additional words to convey their reasoning. If there is to be a word limit, we recommend that there is at least a counter for the answer boxes so that candidates can keep track of the number of words. This way they can edit to reduce the number of words if there is time. We do not think that the answer box should be limited so that once the word count is reached, no more words can be typed, as this will interrupt the candidate's flow of writing, requiring them to either leave an incomplete answer, or edit their answer before they can complete it.

In the F2 (applied law) paper, selecting dates from the list is time consuming and it is easy to select the wrong option from the list. It would be preferable to provide a preferred format (e.g. DD/MM/YYYY) to candidates and allow the candidates to type the answer in a text box.

In the M1 paper, the figures provided below the written text are easy to miss if you don't scroll all the way down. Upon opening the figures, it will not be apparent to all candidates that the figures can be moved around the screen and away from the text and questions.

In the M3 paper, the textboxes for long answers which allow for 500 or up to 1000 words are too small. This makes it difficult for candidates to review their typed answers. Further clarity on how to answer the questions in this paper is required. The advice to "Answer as would a D1 question in 2022" is not clear as most candidates preparing for M3 will not have sat the exams previously. A range of examples of questions in the new EQE style must be provided at least one year before the transition period begins.

The F2 (claim analysis), M1 and M3 papers require a lot of scrolling. For papers utilising the WiseFlow system to allow candidates to progress through the questions in the paper (F1, F2, M1, M3), the question and answer should fit onto a single screen as candidates need to continuously refer between parts of the question and their answer. Guidance is needed as to the size of the screen, for example candidates should be notified if a standard laptop screen is not suitable. Candidates must be permitted to print the paper prior to entering the lockdown browser if the question and answer will not fit on a single screen.

Candidates must also be permitted to print the M2 and M4 papers prior to entering the lockdown browser.

Further consideration is needed to determine whether the new format is suitable for visually impaired candidates or candidates who have mobility or dexterity issues and who may utilise an assistive software or other means of assistance as there is increased complexity in answering the new drag and drop style questions. We strongly recommend consulting an organisation that specialises in diversity and inclusivity in the legal field, such as IP Inclusive, or an independent diversity and inclusivity consultant, in particular a consultant with expertise in online examinations.

Implementation

Further clarity is needed around transitional arrangements. Transition from the old to the new formats should not disadvantage candidates, in particular candidates who began training with the old format of the EQEs and candidates who failed one or more of their EQEs. If the transitional arrangement are only available for 2-3 years, this may place unnecessary pressure on candidates to take all four main exams when eligible and to pass the first time. Clear guidance must be provided if candidates who have passed one or more of papers A, B, C or D will gain exemptions from the new exams during the transition period.

Model papers should be provided at least one year prior to introducing the new EQE style exams. Most candidates currently revise for the EQEs using past papers, and start their preparation around one year in advance.

The foundation examinations (F1 and F2) have a greater complexity due to the increased number of answer options available to candidates. Clarity around whether there will be changes to the pass mark (currently 70% for the pre-examination) is needed in view of the increased complexity.

FEMIP

Fédération Européenne des Mandataires
de l'Industrie en Propriété Industrielle

Europäischer Verband der
Industrie-Patentanwälte

European Federation of Agents
of Industry in Industrial Property

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July 18, 2022

Re.: EQE

Ladies and Gentlemen,

During our 2022 General Assembly we discussed the New EQE Concept and would like to provide our feedback.

We are open to a modernized approach.

From the professionals in industry point of view, we have a vital interest in an excellent professional education and talent development. The skills that a successful candidate acquires in the preparation of a practical and demanding EQE are essential for the professional education and talent development of a patent attorney working in industry.

Therefore, we are in favor of modernizing the EQE towards a more practically oriented EQE rather than a more formal one. We do not want to reduce the requirements of the EQE which reduction may be the result of putting too much emphasis on improvements in administering the exam. A modernized EQE should provide the same level of skill testing and quality as the pre-Covid EQE.

Yours sincerely,



Beat Weibel
President of FEMIP



FÉDÉRATION INTERNATIONALE DES CONSEILS
EN PROPRIÉTÉ INTELLECTUELLE

INTERNATIONAL FEDERATION OF
INTELLECTUAL PROPERTY ATTORNEYS

INTERNATIONALE FÖDERATION
VON PATENTANWÄLTEN

Julian Crump
President

20 September 2022

Mr. Xavier Seuba
Director Patent Academy and EQE
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RE // EPO – European Qualification Examination

Dear Xavier,

Thank you again for taking the time on 24 August 2022 to explain the principles and details of the projected new European Qualification Examination.

We apologise for the delay in following up in writing, but thank you for allowing us additional time to reflect on the proposed changes and to provide our comments.

FICPI's position on the changes, and on the training of patent practitioners in general, is the following:

1) Practice vs. Patent law

A widely shared opinion among FICPI members is that the practical training of new entrants to the profession is much more important than the acquisition of extensive legal knowledge.

In this regard, our belief is that, beside basic knowledge of patent law, doctrine and case law, the most important skills to develop as a young trainee are “invention spotting”, i.e. the ability to analyse technical subject-matter and reduce it to its salient technical features, and a mastery of language, i.e. conveying complex technical concepts and legal arguments in words with clarity and precision. It is very important to understand that these are practical skills which can only be acquired through repeated practice under the continuous supervision of an experienced attorney; they cannot be learned in an academic way. In our members' experience, it typically takes 1-2 years before a candidate has the ability always to say what they mean and up to 3-4 years before they are able consistently to identify an

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“invention” from a client’s disclosure. These timescales cannot be shortened while ensuring that a newly qualified patent attorney will always fail safe when working for a client.

This is the reason why FICPI believes that at least one of the foundations modules should include a significant portion dedicated to the use of language (drafting, arguing, ...) rather than assessing, at least as far as F1 is concerned, the knowledge of the candidates on the EPC, the PCT, the Paris convention, and the TRIPS agreement, which all are substantial bodies of law. The "legal" orientation of F1, F2 would mean that candidates have to focus on theory at the very start of their careers (a significant part of the theory being of little use at that time), and thus dedicate less time to working on real cases under supervision of a qualified person, developing their analytical and linguistic skills.

2) Scope of the exam

In our opinion, it is not the role of the European Patent Organisation to assess the skills of practitioners in domains other than practice before the EPO and Boards of Appeals. For instance, the ability to "work under time pressure", relationships with clients, etc. are topics that should remain in the hands of a candidate’s firm or corporate department.

In addition, many of the member states of the EPC have their own special training and qualification systems for non-EPO skills and having an EQE that would neatly fit into this landscape seems impossible.

3) Pace of the examination

For a variety of reasons, many candidates to the EQE, as well as their managers, prefer that the preparation for the exam should be intensive, i.e. concentrated in a limited period of time. The nature of the EQE, covering many legal and procedural situations that a trainee will hardly see even once in his/her career, is quite distinct from the acquisition of the fundamentals of patent practice over years and does not integrate well with the actual learning curve of trainees.

The new EQE structure impliedly recommends a pace where every six months, a candidate would have to put his/her files aside and focus of the next EQE hurdle, which is unsatisfactory as far as good IP firm management and client satisfaction are concerned.

In addition, national training requirements (e.g. going through CEIPI in France or one of the available training courses in the UK such as the one offered by Queen Mary College, London,

after a short period of practice) seems likely to interfere with the proposed new EQE calendar. As a minimum we would strongly suggest that the start of the new EQE be deferred until at least 18-24 months after the start of training, if the new extended format is to be retained.

4) Practical format of the exam

Multiple choice questionnaires, although they indeed have benefits for assessing candidates with simple, yes-or-no type questions, and requiring little marking time, should not become commonplace for assessing candidates: even a multiple choice question on different ways to express an inventive concept, to take one example, can never replace the assessment, by an experienced practitioner, of whether a candidate has acquired the ability to express an invention in words of their own choosing, which is essential for successful practice as a patent attorney.

5) Cost aspects

The project clearly has an objective of reducing the overall cost of running the EQE. However significant extra costs will have to be borne by IP firms and corporate departments as candidates will have to dedicate a significant part of their time to EQE preparation over a period of at least 3,5 years, leaving little time to follow other important educational activities which will be useful in their professional lives (litigation, licensing, IP management, languages,...).

6) Training

The various academic organisations in Europe, who have developed over decades courses adapted to provide excellent preparation for the EQE in its current form, will have to redesign their course structures completely, and this could lead to a transition period that would jeopardize the proper preparation of candidates.

* * *



Julian Crump
President

Our Federation sincerely hopes that these comments will be taken into consideration and remains open to further discussion.

Yours sincerely,

Julian Crump
FICPI President

Subject: IP Inclusive's submissions to the proposal and consultation on the new EQE [AAT-DMSI TER AL.FID14927]
From: Marianne Privett
Date: 15.07.22, 15:53
To: "'helpdesk@eqe.org'" <helpdesk@eqe.org>
CC:

Dear Examination Secretariat

I submit the following for and on behalf of IP Inclusive.

Please note that a copy of these submissions will be forwarded to CIPA and the epi, and a copy will be published on the IP Inclusive website.

Kind regards,

Marianne

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New EQE - Proposal and consultation

IP Inclusive's submissions

1 Introduction

IP Inclusive is a collection of UK-based individuals and organisations in the intellectual property (IP) sector, who have come together to make our community more inclusive, diverse, open and fair. IP Ability is the IP Inclusive community for disabled people and carers working within the IP professions in the UK. IP Ability aims to provide a supportive and informative network focusing on issues relating to disability, neurodiversity and health conditions of all kinds, be they mental or physical, visible or invisible, permanent or temporary, sudden onset or progressive. The Women in IP community tries to tackle issues that people face as women within the IP professions. The IP Non-traditional Family Network is a community for people in solo parent families, blended families, adoptive families, LGBT+ families and other non-traditional families in the UK IP professions. All IP Inclusive communities welcome allies.

IP Inclusive welcome the proposition to reform the EQE. Reforming the format of the examination is an excellent opportunity to utilise the benefits of technology and improve the experience of all candidates. Reforming the rules and procedures surrounding the examination is also an excellent opportunity to ensure the examination provides a fair and consistent assessment of all candidates' ability to practise as European Patent Attorneys (EPAs). Ensuring the examination provides a diverse range of candidates with the opportunity to demonstrate their ability to practise as EPAs is consistent with the epi's policy on diversity and inclusion¹, which policy includes reference to training:

"**epi** aims to have a positive impact on its members and other stakeholders by promoting D&I within our field, and will endeavour to follow best practice guidelines to support the ideals of D&I. Thus, **epi** will take these into account when setting and implementing its policies, practices & procedures, training and education, and other events and activities."

2 Potential Problems

IP Ability recognise that online examinations will often suit disabled candidates better than paper based examinations. Furthermore, it is clear that WISEflow was designed with accessibility in mind². However, IP Ability are concerned that designing an online examination to suit non-disabled candidates, then adapting the examination to suit disabled candidates as and when such candidates request adjustments could result in a less than optimum experience for all candidates.

IP Ability are also aware that disabled candidates for the EQE in its current form often experience difficulties in satisfying the Secretariat that they qualify for compensation in accordance with Rule 17 of the Regulation on the European qualifying examination for professional representatives (REE). For example, some disabled candidates with lifelong conditions are asked to provide evidence from medical practitioners each time they apply for compensation (e.g. when resitting one of the papers) even if it should be clear that their disability will not have changed in the time since they were last awarded compensation. The uncertainty resulting from an unclear procedure for requesting compensation causes unnecessary and unjust stress for disabled candidates. In addition, disabled candidates are sometimes uncertain as to whether they will qualify for compensation until close to the time that the EQE is due to be held, which hampers their ability to adequately prepare for the examination.

Childcare responsibilities still tend to fall disproportionately on women. Hence, Women in IP are concerned that the timing of the examination could disproportionately affect some women if the examination clashed with time periods with additional childcare responsibilities such as school holidays and the end of the school year (which is typically very busy). Some solo parents are unable to rely on their children's other parent to share childcare responsibilities, and may find it difficult to find family and friend support over the examination period to ensure their children are cared for. Hence, the IP Non-traditional

Family Network are concerned that the timing of the examination could disproportionately affect some candidates who are solo parents if the examination clashed with time periods with additional childcare responsibilities such as school holidays and the end of the school year.

3 Proposed solution

IP Ability urge the EPO-epi working group to consider the diverse needs of disabled candidates when designing the examination. UNIwise, who developed and delivered WISEflow, developed it on the basis that it should be designed to meet the needs of all the people who want to use it³. Hence, WISEflow has the potential to offer an accessible examination system and all EQE candidates should be able to benefit from its design since, to quote from UNIwise⁴:

“Many of the things we develop in WISEflow to aid disabled students also support the configuration of the overall design of WISEflow, giving the collective user base a better and more streamlined exam and assessment experience.”

Designing the examination to suit disabled candidates will include choosing to make use of some of the features within WISEflow. For example, WISEflow allows candidates the option of customising fonts and font sizes⁴, which benefits visually impaired candidates without the organisation administering the examination having to design and implement an adjustment as and when a visually impaired candidate highlights their need. Furthermore, WISEflow's lockdown browser can enable access to some assistive technologies⁴ whilst some assistive technologies can only be accessed outside of the lockdown browser⁵. Assistive technologies can benefit a wide range of disabled candidates including visually impaired candidates, physically impaired candidates and dyslexic candidates. Therefore, we ask that access to assistive technologies be considered in the design of the examination, including the examination being designed so that some candidates can be allowed to remove the lockdown browser so that they can use external programs. To help those designing the examination determine which features may help a diverse range of disabled candidates, we recommend employing the services of a specialist accessibility consultant

Designing the examination to suit disabled candidates will also include choosing *not* to make use of some of the features within WISEflow so as to avoid disadvantaging some disabled candidates. For example, although candidates using screen readers can “drag and drop” answers into place, once in place, the screen reader does not allow them to check their answers. (A blind law student kindly volunteered to test the model papers and this example is based on his feedback.) Clearly this disadvantages candidates using screen readers since candidates must be enabled to complete the examination and check their answers before submitting them. As above, to help those designing the

examination determine which features may disadvantage some disabled candidates, we recommend employing the services of a specialist accessibility consultant.

Although, as stated above, online examinations will often suit disabled candidates better than paper based examinations this is not true for all disabled candidates. For example, some candidates may experience migraines when using a computer. Designing the examination such that it may be printed onto paper and assessed without the use of a computer (except when a candidate downloads a paper at the beginning and submits their answer at the end) would assist such candidates. As above, to help those designing the examination determine how best to accommodate disabled candidates whose impairment affects their ability to be assessed using an online examination, we recommend employing the services of a specialist accessibility consultant.

The REE will need to be rewritten or substantially revised to suit the reformed EQE. When the REE is rewritten or revised, we ask that the procedures used to assess whether disabled candidates are awarded compensation also be rewritten or revised so that disabled candidates are able to follow a clear procedure and are awarded fair compensation. To help those rewriting or revising such procedures, we recommend surveying the procedures used by universities across EPC member states (since many candidates will be familiar with such procedures) and the procedures used by other professional services organisations to assess a disabled candidates' ability to practise as, for example, an accountant, an architect or a lawyer. Employing the services of a specialist disability advisor and/or a specialist occupational health practitioner should help with this task.

It is noted that the proposed new EQE is being designed with two sessions a year instead of the existing one session. Two sessions will require candidates with childcare responsibilities to make suitable arrangements twice a year instead of once. For parents of school aged children, it is likely to be more difficult to make suitable arrangements during school holidays and the end of the school year when a family's normal routine is disrupted. Therefore, Women in IP and the IP Non-traditional Family Network urge the EPO-epi working group to review the timing of school holidays and the end of the school year in EPC states with a significant number of candidates (e.g. Austria, Belgium, Denmark, France, Germany, Ireland, Italy, the Netherlands, Spain, Sweden and the United Kingdom) and arrange the examination to avoid the school holidays. Doing so should reduce any potential disadvantage caused to candidates with responsibilities for school aged children.

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4 Summary

IP Ability urge the EPO-epi working group to consider how best to optimise the format of the examination to suit the diverse needs of disabled candidates. IP Ability also ask that the EPO-epi working group ensure that the procedures used to assess whether disabled candidates are awarded compensation for the reformed EQE are clear and comparable to the procedures used to assess whether disabled candidates are awarded

compensation when sitting comparable examinations. Women in IP and the IP Non-traditional Family Network IP also urge the EPO-epi working group to consider the timing of the examination and recommend timings that avoid the school holidays and the end of the school year in the majority of EPC states.

5 References

1. <https://patentepi.org/en/diversity-and-inclusion.html>
2. <https://www.uniwise.co.uk/blog/o6xcsjoil6yz18wk8uya5yx7t6gaec>
3. <https://www.uniwise.co.uk/accessibility>
4. <https://www.uniwise.co.uk/blog/m6ayk447m8kucvlqd98oldr2zkcoup>
5. <https://wiseflow.zendesk.com/hc/en-gb/articles/360025979234-Accessibility-in-WISEflow>

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Comments on EQE Consultation

Ladies and gentlemen,

On behalf of Siemens, we thank the Examination Secretariat for the opportunity to provide feedback on the New EQE Proposal and would like to comment as follows. We stand ready to further explain any of the points below.

Introductory comments

The Siemens IP department is among the largest inhouse IP departments in Europe. At peak about 150 attorneys and attorney candidates worked for Siemens IP, and in several years we had more than 30 candidates sitting at least one paper of the EQE. We train engineers and scientists inhouse and we require all European personnel employed at attorney level to pass the EQE. Only after they have passed the EQE they will be allowed to act without supervision before the EPO and the respective national office.

Consequently, the EQE, and the level of professional expertise it demonstrates, is, and always has been, crucially important to us as a company and to the persons working in the IP organization, more important than the respective national qualifications.

Also, when hiring talents from the outside the EQE is THE key performance indicator in the process, again both for us as a company as well as for talents seeking opportunities.

Therefore, for us, and we believe for the industry as a whole, any modernized EQE has to provide the same level of skill testing and quality as the pre-Covid EQE, and quite frankly we cannot see how the proposed new EQE can live up to these requirements.

Detailed comments

Let us look at a typical work mix of a European Patent Attorney in the industry. 60% of the time will be spent on drafting patent applications and responding to office actions. Oppositions occur infrequently, say 10-15% of the time. The remaining time is spent providing legal counselling. As is apparent this work mix is well represented in the pre-Covid EQE, papers A-D. The match between practice and exam structure has never been criticized. That is

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WEEE-Reg.-No. DE 23691322

not to say that there is no room for improvement when it comes to individual exam papers and how they reflect daily practice. As to the format, we agree that the EQE has to move from handwritten to digital, but we see absolutely no reason to change the structure of the EQE as radically as proposed.

Further it should be noted that an attorney's work is always creative. The attorney work product is a new text (and perhaps drawings). The core task of an attorney is understanding an allegedly new technical concept, understanding prior art and other conflicts, devising a prosecution/filing/negotiation strategy to protect/defend/attack, drafting claims and/or an opinion in accordance with said strategy, and handling all this in accordance with the legal provisions laid down in the EPC/PCT/UPC agreement/national laws.

Thus, tackling any meaningful exam paper has to begin with a blank document. We see no room whatsoever for multiple choice questions or similar formats in the main exam. It may have its place in the pre-exam (but, as a side note, we believe the pre-exam is superfluous, creating unnecessary burdens for the candidates, their employers, and the exam committees. It was introduced solely to make candidates aware that they in fact have to study for the main exam, and to cut the cost for marking papers drafted by unprepared candidates – a goal which could have been achieved more effectively by simply limiting the number of attempts for each paper, ultimately blocking those unwilling to properly study from the profession).

We consider the perceived redundancy between papers A, B and C as a positive factor ensuring the high quality of the exam, and not as something to be eradicated. The rationale is that in the past EQE candidates had to deal with three different technical concepts within two days and had to demonstrate that they are able to understand these concepts versus the prior art and draft claims / argue correspondingly. Coming back to the work mix we are of the opinion that at least papers A and B need to be kept, whereas we agree that paper C could more flexibly be chosen from: drafting an opposition, responding to an opposition, drafting an appeal, responding to an appeal.

Overall, it seems that the concept paper is providing more of a training plan, see in particular the step-by-step approach shown in the illustrations on page 7. For such a training plan short exams such as proposed may be suitable. However, as is the norm for any exam giving access to the position of a legal advisor, there needs to be a comprehensive, multi-part final exam across the entire bandwidth of the matters handled by the attorney-to-be. We thus insist that, regardless of intermediate tests showing the progress of a candidate, the final exam has to be similar in breadth and depth to the pre-Covid EQE. We owe this "fit-to-practice" test to our clients.

Also, we feel that stretching the examination process over 2 years may have negative effects on the employer-employee relationships at it can be expected that the candidates are distracted from their daily work by having to study for and sit and potentially re-sit every 6 months.

We note that the authors of the concept paper seem to equate the concepts of "complex" and "complicated". Take for example any pre-Covid paper C. Those were highly complex problems, so the first step for the candidate was to reduce complexity and to not lose track over dates, documents, etc. This could easily take two hours and required solving sub-problems with varying degrees of "complicated". We consider the ability to deal with complexity an essential skill (during oral proceedings, for example). In the new approach, "complex" problems are no longer possible because of the arbitrarily chosen time constraints, and the authors propose to fill this gap by increasing the level of "complicated", if at all. We disagree with the concept that a complicated problem is an acceptable substitute for a complex one.

About the time constraints: we strongly disagree with the apparent rule than not more than 2 hours can be spent in front of a computer screen (which is so ridiculous that the authors of the concept paper do not even comment on it). Daily practice when drafting an application or office action response is such that entire days are spent working in front of a screen. If toilet breaks are a problem for the chosen exam environment, then that is an unmistakable indicator that the wrong environment was chosen and must not be used as an argument in favor of shortening the exams.

All in all it appears that the proposal was drafted with the economics of the examination process in mind such as e-assessment methodologies and that neither the needs of the clients nor those of the employers of the prospective European patent attorneys have played any role during the creation of the concept. As mentioned, we agree that the EQE should be held digitally as to reflect the working conditions of the patent attorney. We question however if the exam needs to be online (EU data protection laws in our view prohibit constant video surveillance of a candidate, thus posing an unresolvable conflict for us the employer; we see a high risk for fraud attempts; and the tools have several shortcomings). Instead, in the post-pandemic world, we propose to set up smaller, local exam

centers on demand, with standardized hardware. We see no need to change the exam structure, potentially with improvements to the contents of paper C as outlined above.

As a side note: We propose to re-introduce separate papers A/B for Electricity/Mechanics and Chemistry. Candidates need to demonstrate their ability to find the inventive concept uniting multiple embodiments which is much less of a challenge with the necessarily less complex subject matter of the joint papers A/B since 2017.

As another side note: We would appreciate if candidates from countries that do not share a language with the EPO were to be given access to automatic translators during the exam, along with the possibility to copy/paste from the exam papers.

Response to questions from the questionnaire (not numbered because the numbering of the questionnaire is dynamic)

Section I – Competences

Question: The EPO-epi working group has broken down the current papers into specific and transversal competences.

Comment: This is a rather academic exercise. With the pre-Covid papers, all skills were tested – some explicitly, some implicitly. There is no benefit in breaking down the current papers, other than identifying and eliminating redundancies, which we think should not be eliminated. Hence, we disagree with the statement.

Question: The concept paper also introduces the notion of transversal competences, i.e. a general aptitude, for instance the ability to work with large amounts of information under time pressure.

Comment: As outlined above, the amount of information that can be presented in a 2-hour paper is necessarily much more limited versus a 6-hour paper. Therefore, the question and the statement it entails are misleading: Under the new "large" is about one-third of the old "large", i.e. not large. Hence, we disagree with the statement.

Question: The concept paper also defines knowledge elements related to the what, the how and the strategic view related to the competences identified. These are also reflected in the syllabi of the modules.

Comment: There appears to be no clear definition of "knowledge elements", so this is difficult to comment on.

Question: Do you agree with this statement? "To be "fit-to-practice", EQE candidates must first gain knowledge and subsequently develop skills to acquire competences".

and

Question: In the proposed new EQE, the sequence of the assessment starts with assessing knowledge elements, then skills for applying that knowledge and finally ability to tackle the strategic elements involved in providing advice or determining the best way forward.

Comment: From our long experience with preparing candidates for the EQE we confer that "knowledge" and "skills" cannot be as clearly distinguished as the questions suggest, so we disagree. We particularly disagree with the conclusions the authors seem to be drawing, namely the sequence chosen for the six modules. Also, drafting a patent application for example requires technical knowledge (which is not an element of the patent attorney training but necessarily a key factor in tackling a patent attorney exam such as the EQE) and drafting skills, contravening the above statement/approach. Same goes for office action responses.

Question: The new format of the EQE focuses on the competences that an attorney must have to represent clients before the EPO. Many European patent attorneys have developed competences that go beyond representation before the EPO and relate to, for example, commercial transactions, IP enforcement or patent litigation.

Would you agree with the development in future of an EQE that goes beyond representing clients before the EPO but still maintains a connection with that? Tick all options you deem appropriate.

Comment: The EQE should remain limited to competences required for representation beyond the EPO. We do not think that the EPO should be involved in assessing skills that go beyond.

Question: Please list the competences that can only be acquired in actual practice

Comment: Training of patent attorneys happens "on the job" in most jurisdictions. Except for legal knowledge (paper D1) we believe it is not possible to train in any other way than in actual practice (in particular competences required for papers A-C).

Section II -- Assessment methodologies

Question: The re-design of the EQE aims to update the evaluation approach and combine testing methodologies. In addition to the current written-based questions, the new exam adds several evaluation techniques, some of them with automated marking, to make a more robust online exam. A variety of evaluation techniques are included. Do you consider the variety of evaluation techniques to be an asset of the proposed new EQE?

Comment: Decidedly not, see detailed comments on the job of an attorney being a creative one. We disagree with the allegation that automated marking makes a more robust online exam.

Question: The re-design of the EQE also takes into account the working conditions of future patent attorneys, such as working under time pressure and handling resources and documentation digitally (typing vs handwriting).

Comment: We agree, but the proposal is taking this way too far. In short: digital exam – yes (but the exam software needs to actually resemble the working conditions, i.e., allow multi-monitor setups and printing of documents, digital highlighting, copy/pasting to digital notebooks, online search for unknown technical terms, access to machine translation systems, etc.); online exam – only if truly feasible, which is not yet the case.

Section III -- Adaptability

Question: The scope of situations which can be evaluated has been broadened in the new format, making it possible to specifically target different topics each year from among those included in the syllabus of the module concerned.

Comment: Also the old format would have allowed for more adaptability. The limitations lie in the REE/IPREE that require, for example, paper C to be an opposition. Therefore, more adaptability could easily be achieved by amending the REE/IPREE independently of the format/structure.

Question: The design of the examination based on declarative knowledge, its application and its strategic component allows the exam to be adapted to future content and situations. If a new specific competence needs to be assessed, its elements (declarative, application, strategic) can be readily incorporated into the proposed modules.

Comment: Again, this is not a property exclusive to the new format and more a problem of the constraints imposed by the REE/IPREE, if at all. Also, distinguishing between "declarative knowledge, its application and its strategic component" is another rather academic exercise and has no apparent practical benefit when it comes to determining whether or not a candidate is able to create high quality work products required for representing clients in all proceedings before the EPO.

Section IV – Design & modularity

Question: The proposed system builds on a modular evaluation scheme of cumulative knowledge and increasing complexity. Whether candidates follow the proposed path or decide, like now, to take all exams at the end is a matter of choice.

Comment: We disagree with the proposed path, as outlined above. Therefore, at least, the flexibility needs to exist to take all exams at the end. Realistically however, if given the choice we expect candidates to follow the path because clearly it is much easier to tackle the exam in the small steps prescribed by the path. We expect that the complexity of the examination will increase because of the proposed path. Noting that volunteers are already hard to find we believe that the increased workload, including online invigilation, will not be manageable.

Question: The proposed six modules move gradually from acquiring legal and procedural knowledge towards applying that knowledge and practical skills.

Comment: We see this progression, but we disagree with the design of the modules. The examination should not be a training syllabus. On a more general note, there appears to be too much focus on basic, "non-creative" skills (F1, F2, M1, M2). Having only two out of six modules requiring creative skills is inadequate. Consequently, we feel that at least some of the time and effort spent on the other four modules is wasted, both for the exam committees and the candidates.

Question: In the new e-EQE, fundamental levels of declarative knowledge are subject to stand-alone e-assessment methodologies, whereas subsequent exams target procedural and metacognitive knowledge in supervised free-text format.

Comment: We disagree. The entire exam should be fully free-text complex papers similar in breadth and depth to the existing papers – see in the detailed comments above. The skills set required to pass paper A (understanding an unknown technical concept overarching more than one embodiment, finding the inventive concept linking the embodiments, creating a claim set distinct from the prior art, making the strategic decision to draft one or more independent claims, etc.) is not being holistically tested in the new concept.

Question: Please elaborate on why, indicating what aspect is missing from the new EQE as compared with the old-style EQE that would raise the bar?

Comments:

- Subject matter of Paper A as a whole is missing, see the point above.
- Complexity of the papers due to time constraints is missing, as stated above.
- Every exam paper (except D1 which is a knowledge test) should require the candidates to think about the core problem for a longer period, as is the case in daily practice.
- Too much time (our estimate from the syllabi is 8.5 hours in total) is spent in the new EQE with multiple choice / drag and drop type questions. Daily practice does not entail multiple choice. Note that for the pre-EQE the percentage of correct answers required to pass had to be raised from 50% to 70% and still the pass rates are constantly above 70% (at 87% in 2021), so apparently dealing with multiple choice questions is much easier than projected by the makers of the pre-EQE.

Sincerely yours,



Beat Weibel
Head of Siemens Intellectual Property



Hendrik Promies
Principal IP Counsel
Siemens IP Professional Education Coordinator

Response from the Maastricht University EQE-team to the User Consultation with respect to the New e:EQE

On the following pages, you will find the response of the Maastricht University EQE-team to the User Consultation with respect to the New e:EQE.

This response has been written by me, with input from Natasja Duhayon and Professor Emeritus Cees Mulder, and is consented to by Professor Anselm Kamperman Sanders.

Please get in touch if you have any questions or wish to receive more information from us.

Kind regards,

A handwritten signature in blue ink, appearing to read 'Nyske Blokhuis', with a long horizontal flourish extending to the right.

Nyske Blokhuis

1. General structure of the exam, order of the modules and syllabus

We support the modular approach of the proposed exam structure, with a gradual build-up of the level of knowledge, skills, insights and general mastery of professional competences that is required to pass the different exam modules.

Looking at the level of difficulty of the proposed modules, we propose that the timing of modules M2 and M3 is switched. The level of mastery of professional competences that is required for M2 appears to be (and in our opinion, should be) higher than the level of mastery that is required for M3. Also, in our opinion, a proper preparation for M2 takes a longer period of on-the-job training than M3. Therefore too, it makes sense to switch the order of M2 and M3.

In the current EQE-structure, we often see candidates struggle with the transition from the legal questions of the pre-exam to preparing for paper D. The syllabus for both is the same, so they have already studied everything in preparation for the pre-exam. Some are puzzled how to actually proceed to deepen their knowledge, and others are over-confident because they feel “they know everything already” because they studied for and passed the pre-exam.

We think it would help the candidates in preparing effectively if there would be a gradual build-up in the contents of the syllabus, in particular for the legal exams. For example:

- for F1: only EPC, PCT and some chapters of the Guidelines,
- for M3: EPC, PCT, full Guidelines and most important G-decisions, Unitary Patent
- for M4: EPC, PCT, full Guidelines, relevant case-law, Unitary Patent, some basic knowledge of the UPC, some basic knowledge of national patent laws of main EPC Contracting States and of the other IP-5 offices (e.g. availability and nature of utility models, grace period, continuations/continuation-in-part)

We think this would help the candidates to obtain a more structured approach in their studying, and also reflects better the gradual build-up of knowledge, skills and insights that are required for passing the subsequent modules.

In addition, this proposed structure of the syllabus, with a repetition of the basic elements and the gradual incorporation of more complicated matters therein, stimulates a true understanding of the legal aspects and the development of insights by the candidate. The organizing and connecting of new knowledge in relation to knowledge and experience a

candidate already has, is a known and effective strategy in didactics, as it forms part of what is called “constructive learning”. It is an antidote to candidates cramming knowledge into their short term memory and forgetting it straight after the exam.

In addition, if the candidates would need to go through the entire syllabus already for module F1, it would be impossible to sit the F1 module after 6 months or even one year from the start of the training period.

2. Level of the exams

We are aware of the discussion within the profession about the level of difficulty and/or complexity of the new EQE. However, based on the level of difficulty that was shown in the mock exams, we are convinced that the required level of difficulty and complexity can be obtained with the proposed format.

Overall, we are of the opinion that a candidate who has the level of mastery required for the passing the current EQE, should generally also be able to pass the new EQE. Any change in the required level of mastery for passing the EQE – whether it would result in raising or lowering the bar – should be supported by the profession.

With the current proposal, and the mock exams that were provided, we have the impression that the required level of mastery to pass the EQE is somewhat higher than what is currently needed to pass the EQE. In our opinion, care should be taken not to overshoot in raising the bar. The required level of mastery of a candidate to pass the EQE should not be that of a senior level patent attorney who “has seen everything there is to see” in the profession.

Rather, passing the EQE should be seen as getting your driver’s license – you do not have to know everything yet but in the EQE you have to show that:

- a) you have sufficient knowledge, skills and insight to master the fundamental tasks of a European patent attorney to adequately represent your clients/company before the EPO, and
- b) you are at a level that is generally accepted as allowing to build your knowledge, skills and insights from this point onwards towards mastering the more complex and/or less regularly occurring tasks of a senior level European patent attorney.

As an example, a candidate should know that it is possible to hear a witness during oral proceedings, but does not need to know how to question a witness during oral proceedings. Or, for example with respect to the practice of the other IP-5 offices, the candidates should

know enough about for example the nature and availability of utility models to advise a client, but should for example not have to know about the formal requirements for claim dependencies. After all, in practice, European patent attorneys generally work in close relationships with local patent attorneys who are registered before the other IP5-offices in their cases before these offices.

As a further point, we are of the opinion that care should be taken to match the level of difficulty and complexity of the different modules with their respective timing in the proposed EQE-time schedule.

For example, the current F1 and F2 modules are scheduled within the first year of the training period, while the current pre-exam can only be taken after two years of training. If it is really envisaged that candidates take the F1 and F2 modules in their first year, the level of these modules should be lower than the level of the current pre-exam.

We are of the opinion that lowering the level of the F1 and F2 modules to a level below that of the current pre-exam is not desirable in view of their “gatekeeper function” for the Main exam modules of the EQE. Therefore, we propose to reconsider the proposed time schedule for the F1 and F2.

We are of the opinion that the F1 module should not be taken any earlier than 12 months from the start of the training period. This also reflects to the candidates and to the profession as a whole that the Foundation modules should be taken seriously.

If the level of the F2 module is the same or higher than the level of the current pre-exam, we are of the opinion that the F2 module should not be taken any earlier than 18 months from the start of the training period. Based on what we see in our current pre-exam courses, only the top candidates will have a fair chance of being successful after 18 months in such a module.

Similar considerations apply with respect to the main modules. It is our proposal that both the M1 and M3 module can be taken after 30 months training period and both the M2 and M4 module after 36 months training period.

If the proposed schedule is not changed and also the level of difficulty and complexity of the various modules is not changed, at least the candidates should be informed in a fair manner about the level of difficulty and complexity of the different modules. This however entails the

risk that candidates will go and try the exams while they are not ready yet, in the hope to get lucky and pass anyway. We think this is undesirable.

This could however for example be mitigated by applying a progressive marking scheme for the F1 and F2 modules. As an example: when taking one of the Foundation modules for the first time, the level to pass is set at x points (e.g. $x = 60$ points). If a candidate resits the module for the first time, the pass level will for example be set at $x+5$ points (e.g. 65 points), and for the second and any further attempt, the pass level will e.g. be set at $x+10$ points (e.g. 70 points). The progressive marking scheme should only apply to the Foundation modules.

3. Practical modules M1 and M2

Drafting patent claims from scratch, amending claims, and drafting arguments with respect to novelty, inventive step and allowability of amendments from scratch (both to defend and to attack claims) are the practical core competences of a European patent attorney. It should not be possible for a candidate to pass the EQE without properly demonstrating that he/she has acquired mastery of all these core competences to the desired level.

The current proposal for M1 and M2, and the format as shown in the mock exams, opens the possibility that a candidate could pass without demonstrating a sufficient level of capability in all of these core competences.

For example, if the M2 module is designed as a reply to an opposition, this M2 module does not test the competence of drafting claims from scratch. The M1 module may or may not contain a question that requires to draft a claim from scratch, as also the content of the M1 is designed to be unpredictable. So, a candidate who happens to encounter an M1 module without claim drafting from scratch (e.g. only evaluating claims drafted by someone else) and an M2 module that involves preparing a reply to an opposition, does not have to demonstrate that he/she can draft claims from scratch but can still pass the EQE. Even worse, a candidate who knows he/she is not good enough at for example claim drafting, could just go and try the modules several times with the hope of at some point getting lucky and encountering a combination of M1 and M2 that does not involve claim drafting from scratch.

We consider this not acceptable in view of the quality standards of the EQE as a reliable gateway to the patent profession.

Our proposal is therefore to make sure that the following core competences are always part of any combination of M1 and M2:

- drafting a set of claims (independent + dependent) from scratch
- drafting arguments for defending claims from scratch, in relation to novelty, inventive step and allowability of amendments
- drafting arguments against claims from scratch, again in relation to novelty, inventive step and allowability of amendments

In a practical way, this could be realized for example by splitting up M2 in three submodules, one focusing on drafting a claims set from scratch, one focusing on drafting arguments from scratch for defending a claim/small claims set and one focusing on drafting arguments from scratch against a claim/small claims set.

Of course, the context in which these tasks of the submodules may be carried out can be varied (e.g. drafting a first application or drafting a divisional, the latter including a decision which possible subject-matter for a divisional would give the most relevant protection).

If this line would be followed, it is our proposal that candidates should score a pass for all three submodules, so no compensation being available between the three submodules.

In general, we are of the opinion that compensation between different modules should not be available.

As an alternative, if it is not possible to create three submodules in M2, it can be contemplated to include a submodule for claim drafting in M1. And again, then the candidates should get a pass on this M1 submodule and on all submodules of M2 individually to pass the EQE (no compensation between these submodules).

The use of these three submodules would also make transitional provisions with respect to the current EQE easier:

- a candidate who has passed current paper A will not have to sit the submodule about claim drafting
- a candidate who has passed current paper B will not have to sit the submodule about defending claims
- a candidate who has passed current paper C will not have to sit the submodule about arguing against claims

If the creating of three submodules would increase the overall exam time too much, it can in our opinion be considered to reduce the time for module M4.

In our opinion, the Main exam (sub)modules relating to claim drafting, defending claims, and arguing against claims would benefit from returning to the format of providing e.g. an electro/mechanical paper and a chemistry paper. This allows to require more creativity of the candidates in solving the papers, e.g. by requiring them to come up with their own words in the claim drafting instead of providing all necessary words already in the paper. This helps to prevent that the papers become a word game.

4. Timing of the modules

With respect to the timing of the exams throughout the year, exams in March and September are proposed. March aligns with the current EQE, and as far as we are aware September does not or hardly collide with any national exams (which to our knowledge often take place in October/November).

We are of the opinion that each module should be offered once or twice a year, and no more than twice a year. This allows to safeguard the quality of the exam papers better and stimulates the formation of study groups for candidates who are preparing for the exam modules. We see that candidates who prepare together with other candidates generally have better exam results. In addition, such study groups often are a basis for solid social relationships within the profession throughout the candidates' further careers.

5. Format of the questions in F1, F2, M1

We support the different formats of the questions in the F1, F2 and M1 modules. We have the impression that these different formats allow to test the candidate's knowledge and insights better than the current True/False format of the pre-exam.

In addition, questions in for example a drag-and-drop format seem to rely less on subtle linguistic formulations than the current True/False-format. This makes drag-and-drop-like questions easier to understand for non-native speakers and reduces the problem of multiple different possible interpretations.

Care should be taken however to present the questions in a balanced way. The question formats should be aligned with and optimised for what that question aims to test. Variation in question formats just for the sake of having different question formats should be avoided.

Optimisation of the exam platform (whether this is Wiseflow or a different platform) should be a continuing point of attention.

6. Transitional provisions for candidates who already passed a part of the current EQE

In order to provide a smooth transition between the current EQE and the new EQE, lenient transitional provisions should be implemented. In view of the competences required and comparing the current exam papers with the new modules as defined in the proposal, we suggest the following transitional provisions:

- Foundation module F1 is somewhat below the level of the current pre-exam, F2 is at a higher level than the current pre-exam. To keep things simple: if a candidate has passed the current pre-exam, sitting F1 and F2 can be skipped.
- Exam modules M1 and M2 bear resemblance with current EQE Papers A, B and C, module M1 has more in common with current Paper B, whereas module M2 covers a lot of aspects of current Papers A and C. So, if a candidate passed Paper B, he/she can skip M1 and a candidate who passed Papers A and C can skip module M2. Compensable fail for A, B and/or C is not sufficient.
- Although there are also differences in the scope of M3 and M4 modules, a candidate who passed the D Paper, can skip both M3 and M4. Compensable fail for D is not sufficient.
- Once a candidate is taking F1 and F2, he/she must sit all modules M1-M4.
- Transitional provisions with respect to the Main exam modules only apply if a candidate has passed at least two current main exam papers (compensable fail is not sufficient).

7. Transition to the new e:EQE

Where possible, we advocate a quick transition to the new format of the EQE. We are of the opinion that a new e:EQE format will benefit the candidates as well as the profession as a whole.

A possible time schedule that could be:

- In 2024, the Foundation modules could be given for the first time – in that year there will be no pre-exam (passing the current pre-exam or the new F1 and F2 give access to the Main Exam).
- In 2024, the Main Exam (A, B, C, and D) will still be in the current format.

- In 2025, apart from the Foundation modules, also the Main Exams will be according to the new e:EQE format. In addition, in 2025, there will no longer be the current Main Exam.

This approach ensures minimal overlap between the two EQE-formats. The transitional provisions ensure there is a smooth transfer from the current to the new system. If it takes more time to get things up and running, add +1 to the years mentioned above. Anyhow, the current pre-exam should be replaced as soon as possible by the Foundation modules, because the format of the pre-exam appears to be getting obsolete.

The proposed time schedule for the transition to the new e:EQE and the accompanying transitional provisions should be communicated to the (future) EQE candidates as soon as possible.



Response to consultation on the proposals for a new EQE

Introduction

This submission is made on behalf of the Chartered Institute of Patent Attorneys (CIPA). CIPA is the UK's largest intellectual property organisation. It is the professional and examining body for patent attorneys in the UK, representing virtually all the 2,400 registered patent attorneys in the UK, whether employed in industry or private practice. Total membership is over 4,000 and includes trainee patent attorneys, judges, barristers and other professionals with an interest in protecting innovation through the use of intellectual property rights (patents, trade marks, designs and copyright).

Information about the consultation and the proposals for a new EQE were sent to all CIPA members by email and members were invited to send any comments that they may have to CIPA. This submission is a collation of the comments received from CIPA members.

General

Most of the responses received by CIPA did not provide comments in direct response to the specific questions set out in the online questionnaire on the EPO website as the questionnaire contained relatively few open questions and they found the format too restrictive. Many respondents made it clear that they had registered with WISEflow and had tried the model exam papers in that environment. Their responses are therefore directly relevant to some of the questions in the online questionnaire, particularly those in the sections of the questionnaire relating to "Assessment methodologies" and "Design & Modularity". Other respondents raised more general concerns and questions about the proposals that are outside the scope of the online questionnaire. We have therefore attempted to divide the comments that we have received into two categories, one relating to specific topics included in the online questionnaire and the other relating to more general concerns and questions about the proposals.

1. Specific topics included in the online questionnaire

We have grouped these comments under the headings used in the online questionnaire.

(I) Competences

No specific objections were received to the use of a competence-based approach to the design of the new EQE and some respondents positively approved this approach. However, most respondents raised a number of concerns around the testing of what they considered to be key competences and the stated intention to test competences that go beyond representation before the EPO. The change in approach and the specific skills that are examined in the new EQE also affects the ability of national examining bodies to grant exemptions from national exams, and this will be discussed further below.

(i) Testing of key competences

It was appreciated that the proposal removes repetition of competences in the main examinations, thereby reducing the burden on candidates to sit lengthy examinations and



providing increased flexibility. It is understood that M1-M4 include elements of current papers A, B, C and D and these elements may appear in more than one module as well as additional procedures before the EPO, such as filing an appeal, dealing with a summons to oral proceedings and responding to a notice of opposition. However, it is clear from the proposed structure of the new EQE exams that not all of these procedures can or will be tested in one set of exams. Respondents were therefore concerned that it may be possible for candidates to pass the new EQE without being tested on certain key competences.

With regard to key competences, it was generally considered that patent drafting, in particular drafting claims from scratch, responding to office actions (including amendment) and filing oppositions are core skills for a patent attorney, and ought to be examined in every set of exams. According to the proposed structure of the new EQE exams, candidates may be able to pass without being tested on all core competences for these skills and this is a major concern. The possible failure to test skills in drafting a new patent application was a particular concern for many.

One respondent acknowledged that, under the existing system, multiple papers include some level of assessing a claim against the prior art. However, they considered that this is so fundamental to the role of a patent attorney that testing this multiple times from different angles provides a more reliable and robust measure of competence.

It was noted that present Paper C is one of the few tests of a candidate's ability to use the problem-solution approach to attack the validity of a claim. Being able to draft an effective notice of opposition is an important part of an European patent attorney's skillset. They therefore considered that it is essential that this is tested in every set of exams.

In summary, although it was appreciated that the proposal removes repetition of competences in the main examinations, there was considerable concern that this was at the expense of testing key competencies, such as drafting patent applications, responding to office actions (including amendment) and filing oppositions. The overwhelming view was that these key competences should be tested in every set of exams to ensure that candidates are indeed "fit-to-practise", which is the stated aim of the new EQE.

(ii) Testing competences that go beyond representation before the EPO

It is apparent from some of the questions in the online questionnaire and other published material that it is envisaged that the new EQE may test competences that extend beyond representation at the EPO. It was noted in this respect that the summary of the content of module M4 included the following:

- advising a client with respect to IP protection in other jurisdictions (US, JP, CN, KR)
- advising a client regarding infringement and remedies in certain jurisdictions, e.g. the UK
- advising on freedom to operate and negotiation/licensing strategies

It was also noted that the model M4 paper included a question about protection in China.



Although some respondents could see a benefit in extending the syllabus to cover at least some of these topics, the vast majority were not in favour of this and felt that the EQE should be limited to testing a candidate's knowledge and ability to represent applicants in EPO proceedings. Indeed, there was a general concern that extending competences beyond representation before the EPO would divert attention away from the core day-to-day work of a European patent attorney acting before the EPO.

It was also pointed out that the role of the patent attorney is very varied, and the competencies required of attorneys outside those central to representing clients before the EPO will vary depending on their employer, role and jurisdiction. For instance, there are significant differences in the day-to-day work of attorneys working in industry when compared with those working in private practice. The new EQE therefore needs to reflect the working experience of all patent attorneys, whether in industry or in private practice. If a selection of these additional competencies are made mandatory to be considered to be "fit-to-practise", certain parts of the profession where some of these skills are not routinely required could be disadvantaged.

One respondent also questioned if the EPO would have the authority or competence to examine skills outside those required to represent applicants before the EPO when none of these additional topics are dealt with directly in the EPC.

In summary, the view of the majority of respondents was that the purpose of the EQE is to test a candidate's knowledge and ability to represent applicants in EPO proceedings. The exams should therefore only test a candidate's knowledge of the EPC and appropriate parts of the PCT. To attempt to test these additional skills is inappropriate and could be prejudicial to certain candidates. Indeed, it could result in a dramatic drop in EQE pass rates. If these additional competences are to be tested, they must be tested fairly. It is therefore vital that the syllabus is clear as to the extent of the knowledge that will be required for each topic.

(iii) Exemptions from national exams

At present, if a candidate passes Papers A and B of the EQE, or passes the EQE as a whole, may apply for an exemption from two (FD2 and FD3) of the four UK qualifying patent exams. However, this is only possible because the same competences are tested in Paper A/ FD2 and Paper B/FD3. If the core skills of drafting and amendment are no longer tested in each set of European exams, it is hard to see how exemptions from national exams can continue to be granted on the basis of passing the new EQE. This will be discussed in more detail below.

(II) Assessment methodologies

It was appreciated that trying to run the existing EQE in an online environment from 2021 had not been straightforward. There was therefore no fundamental opposition to re-designing the EQE for an online platform. Indeed, many felt that re-designing the format of the examination is an excellent opportunity to utilise the benefits of technology and improve the experience for all candidates. However, having tried the model papers in WISEflow, many concerns were raised about the proposed format of the new EQE. These concerns are grouped under specific headings below. Some question formats presented particular difficulties for disabled candidates, and these are also mentioned briefly below.



Question 17 in the online questionnaire suggests that the re-design of the EQE takes into account the real-life working conditions of future patent attorneys. Although several respondents agreed that the new EQE should be matched to real-life situations, it was generally felt that the new EQE did not achieve this. In particular, it was considered that the focus on increasing the ways in which knowledge can be tested diverges from the conditions of today's profession in which the vast majority of an attorney's work involves drafting a set of claims, an examination response or an opposition, and preparing letters or emails, or some other form of extended writing. Questions that are to be answered with true/false or by selecting one from a range of answers from a drop-down menu is not representative of the professional working environment. No patent attorney in real life produces a multiple-choice output!

In view of the above, some respondents expressed a preference for retention of the existing EQE in a form which is better adapted to an online environment on the basis that this represented a better test of real-life work. However, others felt that simply converting the existing paper-based exams to be written on an electronic medium is not the answer due to health and safety issues.

(i) Nature of exams

It is not currently clear if the new EQE will be open book exams. If they will be open book, it needs to be made clear which "books" or online resources can be consulted during the exams. Allowing candidates to refer to online resources on the EPO website would mirror the everyday practice of today's patent attorneys. If the new EQE is to test competences that go beyond representation before the EPO, then it may be necessary to permit access to a wider range of resources.

(ii) Question formats

The model papers use a variety of different mechanisms for answering the questions, e.g. multiple choice, drop down menus, drag and drop, rating choice/rank order, multi-point scale matrices, true/false questions and fill-in answers, as well as free text. It was generally felt that this introduced an unnecessary degree of complexity to the exams and increased the potential to confuse candidates. Indeed, several respondents commented that the proposed new format appears to focus on the style of question at the expense of testing the core competencies of the candidate. In many instances it was felt that different styles of question were being used not because they added value in terms of testing the competence of the attorney, but just because they could be used. Just because WISEflow can handle these different types of question does not mean that they should all be used. Most respondents favoured the use of simple free text answers on the basis that these are easily understood by everyone, more equivalent to normal working conditions and less susceptible to technical issues. If different question formats are to be used, it was considered that these should be kept to a minimum to avoid confusion.

The expanded use of multiple-choice questions was a concern to some. The pre-examination has proved how difficult it is to draft multiple choice style questions without ambiguity. It was generally believed that argumentation is crucial, and the widespread use of multiple-choice questions is completely at odds with this. Indeed, candidates have been told for years that the final answer is not the most important thing to get marks, but rather the way you defend or argue your position.



One respondent commented on the use of what they termed “time-penalty” questions where the candidate is only required to answer sub-question B if they select a particular answer in sub-question A. An example of such a question is where sub-question A requires a “True” or “False” answer and sub-question B only needs to be answered if the candidate selected “False” in sub-question A. If the correct answer is “True”, the candidate has wasted time in answering sub-question B if they selected “False” in sub-question A.

In addition, the way in which a number of the questions were presented resulted in multiple scrollbars being on screen at once. This was a particular problem in M1 and M3. This makes it very difficult to navigate through the question to locate the necessary text or answer field.

It was also noted that the Main exam legal papers break down the required answers into a series of sub-answers or steps, thus forcing an answer structure onto the candidate. This also leads the candidate through the necessary thought process to arrive at an answer. Although this may be helpful to some candidates, it does not replicate real life. In practice, attorneys need to process all of the information available to them and determine their own “answer” structure (be that in response to an examination report, verbally during a hearing or in oral or written form to a client). Such question formats are therefore not a test of real-life situations.

It was generally considered that increasing the range of ways in which questions are being asked will not increase the quality of the exams. It is therefore not clear how increasing the variety of ways in which questions are asked adds value to the examination of whether a candidate is competent to practise before the EPO. Rather, it was generally considered that this is an unnecessary distraction that adds a level of unpredictability for candidates who will not know the format for each question in advance. It was felt that this would be unsettling for candidates who must expend significant time and mental energy simply ensuring that the questions are answered in the correct manner rather than considering the content of the question itself.

It was also suggested that further consideration needs to be given as to how best to optimise the format of the examination to suit the diverse needs of disabled candidates. In particular, further consideration is needed to determine whether the new format is suitable for visually impaired candidates or candidates who have mobility or dexterity issues and who may utilise an assistive software as some disabled candidates may have particular difficulties with certain types of question. For instance, blind and visually impaired students using screen readers are likely to have issues with drag and drop formats. Also, candidates with dyslexia or related conditions may struggle to deal with multiple question formats.

(iii) Clarity of instructions

There is a general lack of guidance on how to answer questions. Clearer instructions are therefore required for the new question formats of the online examinations. For example, the question needs to state clearly if the candidate should select one answer, select multiple answers or, if drag and drop, whether all the answers should be used and whether answers can be re-used or multiple answers can be selected. On many occasions, in particular in F1, F2, M1 and M3, it was not immediately apparent what was required to answer a specific question (see, for example, Q16 of F1). If more than one answer is right in a multiple-choice question, then the instructions should state this explicitly. Indeed, it seems that some questions are missing fundamental statements such as “select all that apply”. There was therefore a concern that a candidate may lose marks, not because they do not understand the



knowledge being tested by a question, but because they have misunderstood the way in which a question should be answered.

In addition, there was lack of clarity in all model papers on the number of questions to answer. In this respect there were a number of pages that had to be scrolled through to display additional questions (e.g. from A to N!). The chance of missing a question is therefore very high, given that the overview feature does not allow a candidate to check if all fields have been completed.

(iv) Word limits

A number of the questions have maximum word or character limits. Whilst this may encourage brevity in answers, candidates should not be prevented from answering questions to the level of detail that they see fit. If candidates have to observe a word/character limit, this will place an additional burden on candidates during the exam to provide succinct answers that cover all elements of the question. This is a challenge under time pressure and will cause additional stress. Moreover, the number of words used will differ between languages creating a disparity between candidates. Candidates may also resort to using abbreviations that will not be clear to markers, particularly markers who are not marking in their native language. It was therefore generally considered that there should be no word or character limits in questions.

We note that the online system allowed an answer to exceed the word limit. Further clarity is therefore required regarding the consequences of exceeding a word limit. For example, will answers exceeding the word limit receive a mark of zero, or will these be assessed on a case-by-case basis to determine whether a candidate has copied and pasted sections of the guidelines or merely required additional words to convey their reasoning. If there is to be a word limit, we consider that there should at least be a counter for the answer boxes so that candidates can easily keep track of the number of words. This would allow candidates to edit their answers to reduce the number of words if there is time. In our view, the answer box should not be limited so that, once the word count has been reached, no more words can be typed. This would interrupt the candidates' flow of writing, requiring them to either leave an incomplete answer, or edit their answer before they can complete it.

(v) Marking

Several respondents indicated that further clarity is needed on how questions will be marked in the new online format. This is especially important in view of the proposed increase in the use of automated marking. It is not always clear in the model papers how many marks are associated with a given question. For example, for questions where it is necessary to drag and drop 5 statements into 2 boxes, will 5 marks be awarded or only 1 mark? If multiple answers can be selected, will candidates be required to match all answers to score the marks? If only a subset of correct answers are selected will a proportion of the marks be awarded accordingly, or will no marks be awarded? When highlighting a passage of a text, is a candidate more likely to lose a mark by highlighting too much, or too little? Will there be a pre-EQE-style system of unequal mark allocation depending on how many answers are right or wrong? If different question styles are to be included, it must be made clear how they will be marked and guidance should be provided prior to each exam. This is crucial as, if the number of marks is not clearly shown, it is hard for candidates to know how long to spend on each question to maximise marks.



The potential advantages of being able to provide answers to questions in a way that they can be marked by computer, such as reducing the time taken to receive the results, were appreciated. This could be beneficial in alerting candidates to the potential to move on to the next module or the need to re-sit at an earlier stage. However, any paper that included free text portions would still need to be marked by a human examiner capable of assessing such answers. Thus, by mixing question formats in a single paper, some of the potential benefits of automated marking would be immediately lost.

(vi) Errors in papers

In recent years there have been a number of significant errors in several papers. These have included incomplete instructions in a question, multiple possible interpretations of a question, recurrent translation errors and, on one occasion, parts of one paper were only available in German initially. Although compensation is often awarded for such errors, these errors are unsettling and can cause candidates to waste a lot of time trying to work out what the question is asking, resulting in less time to spend on the rest of the paper. This can often have far-reaching consequences. Given that candidates spend months and even years preparing for these exams, the presence of such errors in the exam papers is not acceptable.

It was felt by some that the number of errors in the exam papers has been increasing recently. The drafting of exam papers therefore requires increased diligence and exam papers need to be checked more thoroughly to make sure that such mistakes are not present. This issue has not been fixed in the proposed new EQE since several respondents noted that there were errors in the online platform, for example where instructions suggested multiple answers could be selected and only one answer could in fact be selected.

One respondent commented that these errors are fundamental in the sense that the marking scheme had to be changed to accommodate the errors. They felt that such changes were not necessarily wrong in the circumstances, but the outcome was that the level needed in practice to pass the exam was different from the level originally intended by the Examiners. Although the new EQE could help in this respect, it was noted that, in general, transitioning to a new scheme tends to lead to an increase in errors. This respondent therefore suggested deferring the new exam until the smooth running of the EQE is re-established.

There was some concern that the use of so many different question formats was likely to result in further errors. Clearly, these issues must be addressed before the new EQE is introduced.

(vii) Ability to print exam papers

Several respondents commented on the difficulty of being able to fit the question and answer on a single screen. If this cannot be achieved, it was felt that candidates should be permitted to print the paper, or parts thereof, prior to entering the lockdown browser. This is a particular issue for M1, M2 and M4.

It was recognised that attorneys are increasingly working digitally and requiring candidates to type, rather than hand-write, answers is therefore appropriate. However, many attorneys still use hard copies of documents to supplement digital working. Forcing a candidate to work only digitally is not representative of the working conditions of a significant proportion of the patent attorney profession. Moreover, those candidates who normally work in a paperless environment usually have at least two screens so that documents can be easily compared.



It was also pointed out that use of a computer can induce migraines in some candidates. Such candidates need to have the option to download and print the exam paper.

(viii) Different versions of M1

There is a suggestion that there could be chemistry and non-chemistry versions for M1. Some concern was expressed as to whether this means that the non-chemistry paper will require an increased level of mechanical knowledge which may make it less accessible to people with non-mechanical backgrounds, such as candidates in the life sciences or computing fields. This is important since such candidates do not have the necessary knowledge to sit a chemistry version of the paper. Further clarity is also needed around how different versions of the exam papers will be implemented. For instance, will it be possible for candidates to choose which of a non-chemistry or chemistry version of certain papers (e.g. M1) they sit? If so, will that restrict them only to that choice if they have to re-sit? This must be clarified before the new EQE is implemented as it affects how candidates prepare for the exams.

(ix) Ease of use of WISEflow platform

As noted above, several respondents commented on the difficulty of being able to fit the question and answer on a single screen. To allow candidates to progress through the questions in a paper (F1, F2, M1, M3), the question and answer must fit onto a single screen as candidates need to continuously refer between parts of the question and their answer. It is also not clear if split screens will be possible.

One respondent commented that they found the lockdown version of WISEflow not easy to use. In particular, they found it challenging trying to copy from the question paper and put it into their answer and, in fact, they eventually gave up trying to show an amendment! Candidates will therefore need to become familiar with what they can and cannot do in WISEflow and opportunities will need to be provided for candidates to gain this familiarity.

(x) Particular issues with specific papers

Many respondents had registered with WISEflow and had tried the model exam papers in that environment. Their comments with regard to their experience in testing the model papers is set out below.

Foundation 1 (F1) and Foundation 2 (F2)

It was noted that these exams have a greater complexity than the current pre-exam due to the increased number of question types that have been used and the corresponding increase in the answer options available to candidates. The question was therefore raised as to whether or not there will be changes to the pass mark (currently 70% for the pre-exam) to allow for the increased complexity.

More specifically, as noted above, it was not immediately apparent to a candidate what was required to answer a specific question (see, for example, Q16 of F1).

In the F2 (Applied Procedural Patent Law) paper, selecting dates from a list is time consuming and it is easy to select the wrong option from the list. It would be preferable to provide a



preferred/expected format (e.g. DD/MM/YYYY) to candidates and allow the candidates to type their answer in a text box.

In the F2 (Applied Procedural Patent Law) paper, one respondent noted that Question 19 is ambiguous. In order to decide whether statements (a) to (d) are true, the candidate has to know whether the sequence of the 105 nucleotide molecule is disclosed in Example 5 or, alternatively, whether Example 5 simply states that the sensor has a 105 nucleotide sequence attached to it, without the sequence being disclosed.

The F2 (Claim Analysis) paper requires a lot of scrolling and it is hard for candidates to keep track. In particular, the fact that a lot of scrolling is required can make it difficult for candidates to hold information in their head. This problem could be mitigated if split screens are possible. Alternatively, splitting the questions into 1 question per page could reduce the amount of scrolling that is required. This is a particular problem if questions are going to be present in all three languages at once as in the current exams.

In the F2 (Claim Analysis) paper, Questions 21-28 ask the question “Is the amendment allowable?” One respondent considered that this is ambiguous. For example, in Question 27, the amendment to Claim 1 introduces an aesthetic feature which will not serve any purpose even if it does not add subject matter, and the amendment to Claim 2 introduces a feature that is objectionable under Art. 84 for a lack of clarity, even if it does not add subject matter. The question should therefore read “Is the amendment allowable under Art. 123(2)?”.

More generally, as noted above, disabled candidates are likely to have difficulty with certain question formats, such as drag and drop, and dyslexic candidates may struggle to deal with multiple question formats.

Main 1 to 4 (M1 to M4)

As noted above, on many occasions, in particular in M1 and M3, it was not immediately apparent to a candidate what was required to answer a specific question.

The way in which a number of the questions were presented (e.g. in M1) resulted in multiple scrollbars being on screen at once. This makes it very difficult to navigate through the question to locate the necessary text or answer field.

In M1, the figures provided below the written text are easy to miss if the candidate does not scroll all the way down. Upon opening the figures, it will not be immediately apparent to all candidates that the figures can be moved around the screen and away from the text and questions. The Figures also pop up over the answer box so that the answer box is obscured.

It is also not clear if candidates will be able to print the exam paper or parts thereof, such as the description, prior art, etc.

Both the M1 and M3 papers require a lot of scrolling, making it hard for candidates to keep track of their thoughts and answers, as previously discussed.

In the M3 paper, the textboxes for long answers which allow for 500 or up to 1000 words are too small. This makes it difficult for candidates to review their typed answers. Further clarity is also required on how to answer the questions in this paper. The advice to “Answer the M3



paper as you would answer a D1 question in 2022” is not clear as most candidates preparing for M3 will not have taken the current exams previously. It is therefore essential that a range of examples of questions in the style of the new EQE are provided at least one year before the transition period begins.

With regard to both parts of M4, candidates need to know in advance if these can be printed, either in full or in part. Ideally, printing should be allowed for the reasons set out in section (vii) above.

In relation to M2, one respondent commented that they did not find the lockdown version of WISEflow easy to use. Candidates will therefore need to become familiar with what they can and cannot do in WISEflow for M2 and M4 where they are effectively using a word processing package which may operate differently from the packages used day-to-day.

(III) Adaptability

It was recognised that the format of the new EQE is more adaptable than the current EQE and makes it potentially easier to target different topics from the syllabus each year. However, the uncertainty of the types of work that will be tested in M2 or M4 may cause unnecessary stress to candidates. Whilst some agreed that the EQE should be less formulaic and allow for adaptability of the exam and for various types of work to be tested, this option needs to be carefully implemented. In particular, clear guidance should be provided to candidates on what is expected of them to gain marks in the examination to aid their preparation for the exams.

(IV) Design & modularity

We understand that, in the new EQE, F1 and F2 are similar to the current pre-exam with the level of F1 being lower than that of the current exam, and the level of F2 being a bit higher. F2 contains two parts. M1 and M2 bear some resemblance to current Papers A, B and C, with M1 having more in common with Paper B and M2 covering many aspects from Papers A and C. Each of M1 and M2 contains two papers. M3 and M4 are similar to current Papers D1 and D2 respectively, with M4 also having two parts.

It was appreciated that parts of the new syllabus appear to be comparable with the current EQE. However, there was some concern that the new EQE does not appear to test some aspects of the current EQE. For instance, drafting a patent specification, in particular the claims, and preparing an opposition (previously tested in Papers A and C respectively) will no longer necessarily be tested in each sitting of the new EQE. These are considered to be key skills for a patent attorney. Thus, the fact that these skills will not be routinely tested was considered to be a major weakness in the new EQE.

It was noted that the new EQE places a greater emphasis on the law and advising clients. There were no objections to this, provided that it is tested fairly. However, the fundamental skills of a patent attorney early in their career, such as drafting, responding to office actions and filing oppositions, must still be tested.

One respondent also raised the possibility that trainee patent attorneys working in industry may be disadvantaged in comparison to those working in private practice due to the type of work that they are exposed to. For example, since attorneys working in industry have only one client (i.e. the company that they work for), the scope of the advice that they may be asked



to provide is likely to be very different and less diverse. Clearly, it would be wrong for any particular type of candidate to be disadvantaged in this way. It is therefore important that input is sought from patent attorneys from all backgrounds (i.e. both in industry and in private practice) to ensure that the new EQE does not favour candidates with a particular background.

Some respondents thought it likely that the M1 – M4 exams would be very difficult for many students, given that the range of situations and topics that candidates could be faced with, even in M1, could be highly diverse and challenging. The uncertainty surrounding the type of document that the candidate will be required to draft in M2 is problematic. Inevitably, this will result in candidates preparing a multitude of templates for every eventuality that could arise. The proposal for the new EQE suggests that this paper could be taken after 24 months of training. However, it is very unlikely that candidates will have been exposed in their day-to-day work to all of the documents which may need to be drafted. For example, M2 could require a candidate to draft a Notice of Opposition or Grounds of Appeal or responses thereto. Unless a candidate has had the opportunity to work on both the offensive and defensive side of Oppositions **and** Appeals, they will not have the necessary real-life experience to handle these tasks effectively (especially after just 24 months). In contrast, Papers A, B and C of the current EQE give clarity to trainers across the profession that they need to ensure their trainees get drafting, prosecution and offensive opposition experience.

As noted above, each of the new modules aims to test skills from multiple previous papers with M1 and M2 covering some aspects of Papers A, B and C. Given the flexibility of these modules, it is difficult to see how consistency can be ensured from year to year. Inevitably, some years will focus more on skills that were previously tested in paper C whereas other years will focus more on skills that were previously tested in Paper A. It therefore has to be questioned if such a system is fair to all candidates.

In the current EQE, the papers are not taken sequentially, although candidates must pass the pre-exam before they can progress to Papers A to D, which comprise the main exam. Currently, it is not possible to sit the pre-exam until a candidate has been in full-time training for at least 2 years and it is not possible to sit Papers A to D until a candidate has been in full-time training for at least 3 years. Candidates can choose whether they sit one or more papers in a given year and are free to select the papers they sit and the order in which they sit them. However, the majority of candidates choose to sit all of Papers A to D in one sitting after 3 years.

We are told that the proposed new EQE “builds on a modular evaluation scheme of cumulative knowledge and increasing complexity”. A specific sequencing and timing is proposed for the different modules with a minimum number of months of full-time training specified before the exam for any particular module can be taken. It is recommended that F1 and F2 are taken after 12 months full-time training. The period of full-time training that is required before M1 to M4 can be taken is 18 months for M1, 24 months for M2, 30 months for M3 and 36 months for M4. Whether candidates follow the proposed sequential path or decide to take all the exams at the same time at the end of the qualification period is a matter of choice for the candidate, although passing the foundation modules (F1 and F2) is again a pre-requisite for taking the main exams (M1 to M4).

There were no specific objections to the gradual increase in the complexity of the exams in the new proposal. One respondent was of the view that the sequence of taking the exams



should be compulsory so that there is a clear progression both for the candidates and their tutors. Another respondent felt that taking the exams for all the Main modules at the same time defeats the purpose of having a gradual increase in complexity. However, the vast majority of respondents felt that candidates should be allowed maximum flexibility as to when they choose to sit the exams. This could be sequentially every six months, in groups at the end of the minimum periods or something in between, depending on when a candidate feels ready. Those who want to sit all the Main exams in a single sitting could do so after 36 months.

If this degree of flexibility is to work, it is essential that candidates are not disadvantaged by choosing not to sit exams every 6 months. The papers should therefore not be preferentially designed to be taken in that way. Taking exams every 6 months is a significant change from the current system and has a significant and ongoing impact on a candidate's life (and potentially their mental health) as it would mean taking exams for many years without any break from exams and exam preparation in contrast to the current system. Some candidates may prefer the "every 6 months" approach, but others will prefer or need to delay and space the exams out over the same total period so that multiple papers can be taken together. This may often be needed due to external factors, such as religious holidays or carer responsibilities during school holidays. There is also the need for many candidates to sit exams for national qualifications which may coincide with the EQE. Flexibility to delay or group different EQE papers is therefore essential. However, this will only work if all EQE examinations are offered at every available sitting, i.e. twice a year.

Further clarification is also needed on the timing of exam results. Currently, EQE results for the main examination are released around three to four months after the exams. If the exams are held every six months, this timescale would not provide candidates with sufficient time to decide if they should repeat an exam they had failed or sit the subsequent examination in the next sitting and to study for the chosen examination.

As noted above, F2, M1, M2 and M4 each contain two parts. It has not yet been specified if both parts of an exam will be taken on the same day, although CIPA understands that this is intended. If this is the case, this needs to be confirmed so that candidates know what to expect. We understand that taking both parts of an exam on the same day is the preference of candidates to avoid the exams being spread over a longer period with the associated increase in stress.

It is also not clear if a candidate can pass one part of a two-part exam and fail the other part. If that is possible, it needs to be made clear if candidates will need to retake and pass both parts of the exam, or if it is possible to re-sit only one part of the exam.

With regard to the specific papers, Annex 2 to the Concept Paper indicates that F1 and F2 can be taken interchangeably, but it is suggested that F1 is taken before F2. However, it is not clear if F1 and F2 can be taken in the same sitting. If this is possible, then this should be taken into account when setting the timetable for the exams.

One respondent based in industry questioned if the content of F1 and F2 is suitable for taking after 12 months of full-time training when the current pre-exam can only be taken after 24 months of full-time training. They considered that this timeline would require training to be arranged in a different manner to ensure that trainees receive suitable training on all aspects tested (for example, quite detailed aspects of PCT). They believe that this timeline is



particularly challenging for candidates working in industry whose early training is not only focused on studying the law, but also understanding the business.

Regarding M2, the syllabus indicates that candidates could be asked to prepare documents which could relate to any of 8 different topics. The list of tasks includes drafting claims and a description, replying to Office actions, amending claims and drafting a notice of opposition, which are all currently tested in Papers A to C. However, these specific tasks will not all be tested in each set of exams. As noted above, these are considered to be key skills for a patent attorney which should be tested in every set of exams.

It was also noted that one of the possible skills that could be tested is preparing a draft reply to a WO-ISA. It was observed that, in real-life, this often involves reducing the overall number of claims from 100s to 15 or thereabouts. However, it is not clear whether this aspect will be tested. If it is, then candidates may focus on reducing the overall number of claims rather than addressing the objections raised in the WO-ISA, as was probably intended. Clarification in this respect is therefore needed.

As has already been discussed, the syllabus of M4 indicates that candidates could be tested on 7 different topics. It is clear from the list of topics that candidates may be examined on subjects such as overseas IP protection (US, JP, CN, KR), infringement, freedom-to-operate and negotiation/licensing. These topics are not related to practice before the EPO and, as such, would appear to fall outside the remit of an examination established to test the competence of an attorney to practice before the EPO.

More generally, the approach of selecting one or more topics from a set of different options leaves open the possibility of a candidate passing the EQE and being deemed “fit to practise” before the EPO without ever having been tested on one or many key aspects of practising before the EPO. For example, from the material provided, it appears possible that a candidate may be able to qualify as a European Patent Attorney without having been tested on drafting, amendment or oppositions, for example. This comment relates equally to M2 and M4.

(V) General questions on the online examination platform

There was a general view that WISEflow is a suboptimal platform. Feedback from candidates who took the 2021 and 2022 online EQE exams raised a number of concerns and issues regarding the WISEflow platform, including the interface crashing, poor formatting issues, difficulty highlighting and/or making notes. It is therefore a concern that the new EQE proposals appear to be committed to the use of the WISEflow platform.

If the new EQE is aiming to be more “practical”, it would be helpful if this is also reflected in the platform used to conduct the exam. For example, a basic text editor is not what most people would use during day-to-day practice. In addition, not being able to have multiple windows open simultaneously in the WISEflow platform took a lot of getting used to and made navigating between multiple documents very time-consuming.

Those respondents who tried the model papers for F1, F2, M1 and M3 utilising the WISEflow platform experienced a number of problems. One common complaint was that the way in which a number of the questions were presented (e.g. in M1 and M3) resulted in multiple scroll-bars being on screen at once. This makes it very difficult to navigate through the question to locate the necessary text or answer field. This was a significant problem for those



working on a laptop screen, but was still a problem for those who tested the paper using a laptop with 2 standalone 22 inch monitors.

Another issue was that candidates were not allowed to open two or more windows in parallel and were unable to fit sufficient information onto a single screen. This made it very difficult to read, draft and compare information and therefore be able to answer questions efficiently. The comment was made that, to allow candidates to progress through the questions in the paper, the question and answer should fit onto a single screen as candidates need to continuously refer between parts of the question and their answer.

Some respondents commented on the huge degree of technical requirements to be able to sit the exams (e.g. a specific camera, microphone, no windows, neutral walls, no earplugs, a laptop which has no use restrictions, no antivirus software, no update in place, no automatic stand by in case of inactivity for too long a period, the need for a laser printer to be able to show highlighting etc.). It is specifically mentioned that the use of a professional laptop is not recommended (because of the restriction of use). This means that candidates need to have an additional personal laptop which may mean significant additional expense for a candidate. One respondent commented that, generally, they think that candidates are finding preparing all the technical requirements almost more stressful than taking the exam itself. At the very least, guidance should be provided as to the recommended screen size, and candidates should be notified if a standard laptop screen is not suitable.

2. General concerns and questions about the proposals

(a) Issues for disabled people and carers

CIPA has read the submission made for and on behalf of IP Inclusive and fully endorses the points made in that submission.

Some specific issues for disabled and dyslexic candidates and those prone to migraines with regard to the proposed assessment methodologies are highlighted above. However, it is important that the diverse needs of disabled candidates are considered when designing the exams rather than trying to adapt the exams to suit disabled candidates as and when such candidates request adjustments. We therefore fully support the recommendation of IP Inclusive that the services of a specialist accessibility consultant, particularly one with expertise in online examinations, should be employed to help those designing the exams to determine which features may help (or hinder) a diverse range of disabled candidates.

It was also noted by some respondents that disabled candidates for the current EQE have often experienced difficulties in satisfying the Secretariat that they qualify for compensation, and this causes unnecessary stress for those candidates. There also seems to be ongoing discrimination against those with dyslexia. The advent of the new EQE therefore provides an ideal opportunity to revise the Regulation on the European qualifying examination for professional representatives (REE) to resolve these issues.

(b) Start date for new EQE and transitional arrangements

No guidance has been provided as to when the new EQE will commence, other than it will not be in 2023. Similarly, no guidance has been provided regarding how the transitional provisions will work, particularly in terms of how long the current EQE papers will run in parallel (assuming



that will be the case for those that have already started preparing for the current EQE). This is causing a considerable amount of stress amongst recent entrants to the profession. Therefore, the sooner this can be settled, the better.

It is important that the transition from the old to the new formats should not disadvantage candidates, especially those candidates who began training for the old format of the EQE or those candidates who failed one or more papers of the current EQEs. If the transitional arrangements are only available for 2-3 years, this may place unnecessary pressure on candidates to take all four main exams when eligible and to pass the first time. Clear guidance must be provided if candidates who have passed one or more of papers A, B, C and D will gain exemptions from the new exams during the transition period.

(c) Proposed timing and frequency of exams

Exams for the current EQE take place in March each year. However, it has been suggested in the Concept paper that the exams for the new EQE may take place in January and June each year. This could be problematical due to potential clashes with national qualifying exams and overlap with training and study periods. It could also create problems for those with childcare responsibilities.

In the UK, the national qualifying exams comprise two sets of exams which are provided by the Patent Examination Board (PEB). The PEB is a committee of CIPA that is accredited by the Intellectual Property Regulation Board (IPReg), which is the regulator of the UK profession. Candidates must first pass, or be exempted from, the Foundation Certificate (FC) exams and then pass, the Final Diploma (FD) exams. The FC and FD exams currently take place in October each year. Indeed, the predecessors of these exams were moved from February/March to October many years ago to avoid clashing with the EQE.

It is possible to obtain an exemption from the FC exams by completing one of the IPReg-accredited FC courses at Bournemouth University, Brunel University or Queen Mary University of London.

The course provided by Bournemouth University (Postgraduate Certificate in Intellectual Property) is part-time and is delivered over 5 months, starting in January with exams in June.

The course provided by Brunel University (Intellectual Property Law Postgraduate Certificate) is part-time and takes 8 months to complete. The programme runs from the end of September to the end of March, but it is also possible to start the course in January and complete it over 1 year.

The course provided by Queen Mary University of London (Intellectual Property Law Postgraduate Certificate) is a full-time course. It runs from mid-September to mid-December each year with exams in January.

It will be clear from the above that the proposal to hold the exams for the new EQE in January and June will result in direct clashes with the exams for the Queen Mary and Bournemouth courses. Also, the January date will fall in the middle of the shorter programme for the Brunel course and make it difficult to prepare for the EQE at the same time. Candidates may therefore be forced to choose between taking exams to advance their qualification in the UK or taking an EQE exam.



We also understand that the national qualifying exams in Belgium and Italy also take place in June.

We appreciate that it will be difficult to identify times of the year that completely avoid clashes with national qualifying exams and training for these exams. However, the university courses mentioned above have been scheduled to fit around the current EQE in March and the UK national exams in October. Moving the EQE to January and June would have serious knock-on effects for candidates relying on these courses to secure exemptions from the FC exams. Some respondents have therefore suggested that March should be retained as one of the dates for the exams for the new EQE.

Clearly, it will be necessary to consider the current timetables for the national qualifying exams of all nations. However, we believe that particular consideration should be given to those countries which provide the largest numbers of candidates for the EQE, such as Germany and the UK. We therefore ask that CIPA and the PEB be consulted to fully understand the consequences for UK candidates of moving the EQE exam dates to January and June with a view to finding a time that minimises any detrimental impact on candidates. Other national bodies should also be consulted with regard to the impact on their national qualification process.

We also note that holding the exams for the new EQE in January and June may create difficulties for those with childcare responsibilities. In most of the UK, the school year runs from early- September to early/mid-July with holidays of several weeks during the year from late-December to early-January and late-March to mid-April, depending on when Easter falls. In addition, public examinations for schools take place from mid-May to end-June. It can be very difficult (and expensive) for those with childcare responsibilities to find alternative childcare during school holidays and the end of the school year can be very busy due to public examinations and other end of year activities. Childcare responsibilities still tend to fall disproportionately on women. Thus, choosing times of the year which clash with childcare responsibilities is potentially discriminatory.

The subject of clashes with childcare responsibilities is discussed at length in the submission from IP Inclusive and CIPA endorses those submissions. If at all possible, the timing of the new EQE should avoid major school holidays and the end of the school year in the majority of EPC states.

Concerns were also expressed that setting the exam dates for the new EQE in January and June could prolong the time taken for some UK candidates to qualify.

Typically, most new graduates in the UK start their training to become a patent attorney in September/October each year. This is traditionally the time that new graduate schemes start in most professions in the UK since it aligns with the academic year.

Under the current proposal, the first opportunity for such new graduates to take F1/F2 will be the January that falls 15-17 months after they started training. This is not a problem for those candidates who take the FC exams in the UK since they will have taken those exams in the preceding October. Indeed, it will potentially shorten the training period for such candidates by 2 months. However, it is a potential problem for those employers who send their candidates on the university courses mentioned above to secure exemption from the FC papers.



It is generally felt that some in-house work experience is desirable before a candidate attends any of the dedicated university courses in order to get the most out of the course. Thus, many employers choose to send their candidates on the Queen Mary course after they have completed 12 months of in-house work experience. Since the Queen Mary exams are in January, such candidates would not be able to take the F1/F2 exams until the June that falls 20-22 months after they started training. Qualification for such candidates could therefore be potentially prolonged by 3 months.

Some employers choose to send their candidates on the Bournemouth course, which starts in January and has exams in June. If employers choose not to send their candidates on the Bournemouth course until they have completed 12 months of in-house work experience, the candidates would not be able to take the F1/F2 exams until the January that falls 27-29 months after they started training. This would result in a huge delay in qualification.

Some employers choose to send their candidates on the Brunel course after they have completed 12 months of in-house work experience. If the programme which runs from the end of September to the end of March is selected, the candidates would not be able to take the F1/F2 exams until the June that falls 20-22 months after they started training as the January exam date would fall in the middle of the course. Thus, qualification for such candidates could be potentially prolonged by 3 months. If the programme which runs for a year starting in January is selected, the candidates would not be able to sit the F1/F2 exams until the January that falls 27-29 months after they started training. Again, this would result in a huge delay in qualification.

It therefore seems likely that setting the exam dates for the new EQE in January and June would at the very least force employers to reconsider their training programmes. If candidates end up having to start university courses before they have gained sufficient in-house work experience, this is likely to be detrimental to the candidates.

Given the likelihood that some clashes are likely to occur between exam dates and training, it is clearly vital that candidates are able to take or re-take all 6 exams of the new EQE more than once a year. All papers of the EQE should therefore be offered at every sitting, i.e. twice each year, to minimise possible delays in the qualification process. If this is not possible for all EQE exams, multiple sittings for papers F1 and F2 should be prioritised as these are the first barriers to entering the profession. These papers will also be less onerous to administer and mark if they are to be presented in a format which allows at least some automated marking. As has been previously noted, the timing of exam results is also important, especially in the context of candidates who need to re-take exams.

(d) Training for new EQEs

The proposed changes to the EQE will have a major impact on how candidates are trained.

We have already discussed how the changes could affect the decisions of employers as to when, or indeed if, they decide to send their candidates on the university courses that provide exemptions from the UK FC exams. However, some organisations run their own internal training programmes for the EQE, and these will have to be completely re-designed to take account of the proposed new timings and the proposed new format and content. The same is true for those commercial organisations which provide dedicated training courses for the EQE.



The proposal does not make clear what training, if any, will be provided by the EPO to prepare candidates for the new EQE.

The provision of model papers as part of the proposal was very much appreciated. However, it is difficult to provide comprehensive feedback without seeing model solutions. It is particularly important to see the level of detail that is required of candidates and the general distribution/allocation of marks to be able to design an effective training programme.

Several respondents felt that model papers (and model answers) should be provided at least one year prior to introducing the new EQE. Most candidates currently prepare for the EQE using past papers and start their preparation around one year in advance. Candidates for the new style exams will therefore be disadvantaged if they are not able to practice a range of questions.

(e) Exemptions from national exams

The changes to the EQE will inevitably have knock-on effects for candidates in those countries, like the UK, with national qualification systems.

At present, students who have passed the EQE may apply for exemptions from two of the four UK qualifying patent exams. Specifically, IPReg recognises success in passing the EQE as equivalent to passing papers FD2 and FD3 of the UK national qualifying exams. This is only possible because the same competences are tested in Papers A and FD2 (i.e., drafting) and Papers B and FD3 (i.e. amendment). It is also possible to obtain exemptions with a compensable fail.

It is at present unclear if the new EQE can provide a basis for exemptions from any of the UK qualifying exams. If the core skills of drafting and amendment are no longer tested in each set of European exams, it is hard to see how exemptions from papers FD2 and FD3 of the UK national exams can continue to be granted on the basis of passing the new EQE. If exemptions from any of the UK qualifying exams are no longer possible, and no changes are made by the UK PEB to the UK exam format, this is likely to result in a more difficult (and longer) path to UK qualification for some candidates, with re-take opportunities available only once per year.

(f) Eligibility to sit the new EQE

At present, it is necessary to have a university-level scientific or technical qualification to be eligible to register and enrol for the EQE. The current REE and Implementing provisions to the REE (IPREE) simply require that a candidate should have a bachelor's degree or equivalent academic degree awarded at the end of a full-time course of a minimum of three years, with at least 80% of the course hours taken to obtain this degree having been devoted to scientific and/or technical subjects.

It is clear that the REE and IPREE will need to be amended to accommodate the proposed changes to the EQE. However, CIPA is aware that there is some discussion as to whether candidates should have at least a master's level degree in order to be eligible for the EQE and this may be made a requirement when the REE and IPREE are revised.

We cannot see any justification for changing the eligibility criteria to require a master's degree. Certainly, there is no evidence that candidates who only have a bachelor's degree have any



difficulty in passing the EQE. Indeed, most (if not all) candidates who have a bachelor's degree come from the UK and the UK regularly achieves the highest pass rates for the EQE of all the EPC countries.

We would also point out that some students who wish to become patent attorneys will have already started or be about to start three-year bachelor degrees. To move the goalpost now would therefore be manifestly unfair to such candidates.

The UK is one of the few (possibly only) countries in the EPC that routinely offers bachelor's degrees in scientific and/or technical subjects of three years in length. Thus, if the eligibility criteria are changed to require a master's degree, this would be clear discrimination against UK candidates.

Conclusions

As indicated above, this submission is a collation of comments received from CIPA members. Some of the comments are very detailed and we would refer you to the foregoing for a full appreciation of the points raised. However, for convenience, the main concerns are set out below:

- The approach of selecting one or more topics from a set of different options, especially in M2 and M4, leaves open the possibility of a candidate passing the EQE and being deemed “fit to practise” before the EPO without ever having been tested on one or many key aspects of practising before the EPO. Key competences, such as drafting patent applications, in particular claims, responding to office actions (including amendment) and filing oppositions should be tested in every set of the Main exams to ensure that candidates are indeed “fit-to-practice”.
- The purpose of the EQE is to test a candidate's knowledge and aptitude to represent applicants in EPO proceedings. The exams should therefore only test a candidate's knowledge of the EPC and appropriate parts of the PCT. It is not necessary to test candidates with respect to IP protection in other jurisdictions (US, JP, CN, KR), infringement, freedom-to-operate and negotiation/licensing strategies.
- It needs to be made clear if the exams will be open book and, if so, which “books” or online resources can be consulted during the exams.
- The use of a variety of different mechanisms for answering the questions introduces an unnecessary degree of complexity to the exams and increases the potential to confuse candidates.
- The proposed new format appears to focus on the style of question at the expense of testing the core competencies of the candidate. Increasing the range of ways in which questions are being asked will not increase the quality of the exams and can be distracting for candidates. Just because it is possible to set different styles or formats of question does not mean that they should all be used. Simple free text answers are often all that is required.
- Clearer instructions are required for the new question formats of the online examinations.
- A number of the questions have maximum word or character limits. These should be removed as candidates should not be prevented from answering questions to the level of detail that they see fit. If candidates have to observe a word/character limit, this will place an additional burden on candidates during the exam to provide succinct answers that cover all elements of the question.



- Further clarity is needed on how questions will be marked in the new online format. This is especially important in view of the proposed increase in the use of automated marking.
- Papers should be carefully checked to eliminate the types of error that have been present in previous papers.
- Candidates should be permitted to print the paper, or parts thereof, prior to entering the lockdown browser. This is a particular issue for M1, M2 and M4.
- It must be clarified if there will be chemistry and non-chemistry versions for M1 before the new EQE is implemented as it affects how candidates prepare for the exams.
- The uncertainty surrounding the type of document that the candidate will be required to draft in M2 is problematic as it will inevitably result in candidates preparing a multitude of templates for every eventuality that could arise.
- It is very unlikely that candidates will have been exposed in their day-to-day work to all of the documents which may need to be drafted in M2 after 24 months of training.
- Candidates should be allowed maximum flexibility as to when they choose to take the exams.
- If this degree of flexibility is to work, it is essential that candidates are not disadvantaged by choosing not to sit exams every 6 months. The papers should therefore not be preferentially designed to be taken in that way.
- Further clarification is also needed on the timing of exam results. If the exams are held every six months, the current practice of releasing results around three to four months after the exams would not provide candidates with sufficient time to decide if they should repeat an exam they had failed or take the subsequent examination in the next sitting and carry out the necessary preparation.
- WISEflow is a suboptimal platform which causes many operational difficulties for candidates. Practical issues which make it very difficult for candidates to answer questions efficiently must be resolved.
- The equipment requirements associated with use of the WISEflow platform should ideally be simplified. At the very least, guidance should be provided as to the recommended screen size.
- The diverse needs of disabled candidates, including those with dyslexia, should be considered when designing the exams. The services of a specialist accessibility consultant should be employed to help those designing the exams to determine which features may help (or hinder) a diverse range of disabled candidates.
- The date on which the new EQE will commence should be settled as soon as possible.
- Guidance is also required regarding how the transitional provisions will work in practice, particularly in terms of how long the current EQE papers will run in parallel.
- The current timetables for the national qualifying exams of all nations should be considered with a view to avoiding potential clashes. Particular consideration should be given to those countries which provide the largest numbers of candidates for the EQE, such as Germany and the UK.
- The needs of those with childcare responsibilities should also be taken into account when scheduling the dates of the new EQE.
- Care should be taken to ensure that the qualification process for candidates is not unnecessarily prolonged by the choice of exam dates which clash with national exams, university course exams etc.
- In view of possible clashes, it is vital that candidates are able to take or re-take all 6 exams of the new EQE more than once a year. All papers of the EQE should therefore be offered at every sitting, i.e. twice each year, to minimise possible delays in the qualification process.



- The proposed changes to the EQE will have a major impact on how candidates are trained. To assist with training, model papers (and model answers) should be provided at least one year prior to introducing the new EQE.
- It is at present unclear if the new EQE can provide a basis for exemptions from any of the UK qualifying exams. If the core skills of drafting and amendment are no longer tested in each set of European exams, it is hard to see how exemptions from papers FD2 and FD3 of the UK national exams can continue to be granted on the basis of passing the new EQE. This is likely to result in a more difficult (and longer) path to UK qualification for some candidates.
- There is no justification for changing the eligibility criteria to register and enrol for the EQE to require a master's degree instead of a bachelor's degree. As the UK is one of the few (possibly only) countries in the EPC that routinely offers bachelor's degrees in scientific and/or technical subjects of three years in length, this would be clear discrimination against UK candidates.

A handwritten signature in black ink, appearing to read 'Lee Davies'.

Lee Davies
Chief Executive



Response to the New EQE Proposal and Consultation August 2022

Date: 31st August 2022

Submitted via email to: helpdesk@eqe.org and education@patentepi.org

Introduction

Please find GSK's feedback to the joint EPO/epi's consultation on proposals for the "New EQE".

GSK is a Global Biopharma company which is headquartered in Brentford, UK. GSK currently employs over 35 Qualified European Patent Attorneys but is also one of the only Pharma companies who actively recruits Trainee Patent Attorneys on an annual basis.

This feedback is provided following an internal review of the proposal by GSK's Patent Training Committee. This Committee sits within GSK's Intellectual Property Department and oversees the training of all of GSK's Trainee Patent Attorneys, including Trainee Patent Attorneys residing in the United Kingdom, Switzerland, Italy and Belgium. As a result, we feel well placed to provide feedback on the proposals, notably because the views of Trainee Patent Attorneys across more than one EPC Contracting State have been taken into consideration.

Our feedback is provided in this format because the Online Questionnaire that was provided by the Joint Working Group offered no option for submissions from Industry¹.

Response to the Proposal

GSK's Patent Training Committee is in favour of evaluating and, if required, reforming the EQE's in order to raise standards of quality. We are, furthermore, supportive of reforms to modernise the exams and bring them into line with the day-to-day practice of a patent attorney, to the extent this is possible.

However, it is unclear to GSK's Patent Training Committee why such a substantial reform has been proposed by the Joint Working Group. It is the extent of the reform which is concerning, since it results in a large degree of uncertainty for companies who rely on training and hiring high-quality European Patent Attorneys.

¹ Question 1 in the Online Questionnaire requires the submitter to declare whether they are a Professional representative, an EQE Candidate, a National Patent Office, a Training Institution or an IP Professional. GSK does not fall into any of these options, and there was no "free-text" option available.

Response to the New EQE Proposal and Consultation August 2022

For example, such a radical reform leaves it almost impossible to predict:

- a) What standard candidates need to be at in order to pass the new EQEs.
- b) Whether a candidate who has passed the new EQE has been sufficiently tested in all competencies required of a European Patent Attorney.
- c) What day-to-day work (and what specific training) our prospective Trainee Patent Attorneys will require in order to be well-placed to succeed in the new EQEs.
- d) What transitional provisions will be provided for Trainee Patent Attorneys who are pursuing qualification at the time the new EQE is rolled out. Furthermore what “knock-on” effect reforming the EQE will have on a Trainee Patent Attorney’s plans to obtain other National Qualifications (e.g. UK) in view of exemptions currently available to certain UK Advanced Levels examinations for passing Paper A and B.
- e) What impact will the new EQE have on candidates suffering from a disability?

This list is non-exhaustive.

As a result, **GSK’s Patent Training Committee does not support the currently tabled proposal to reform the EQEs.**

To reiterate, this does not mean that we are never in favour of reforming the EQEs. It is more a question of the **extent** of the reform which we are against.

Our experience is that the current EQEs, for the most part, appropriately assess the required competencies required of European Patent Attorneys. For example, they test a candidate’s ability to know and understand the law (e.g. pre-examination and D1), tackle complex problems and advise clients (e.g. D2), analyse and understand inventions (claim analysis of pre-examination, papers A, B and C) and draft patent documents (paper A, paper B and paper C).

It is however often commented that the current EQEs are too predictable and, in certain cases, have become more of a puzzle to be solved, rather than a reflection of real-life patent practice. We understand this concern. We do however consider that attempts should first be made to rectify this issue within the current EQE examination framework, rather than looking to reform the whole system. For example, Paper B and C could be modified to remove so-called “*perfect solutions*”. Instead, the papers could be structured where a number of possible solutions



Response to the New EQE Proposal and Consultation August 2022

are available, yet the marks are principally obtained for how the approach taken is argued and not merely for “spotting” the examiners pre-designed solutions.

Furthermore, the new approach does not appear to provide any solution to one of the major issues currently faced by EQE candidates, namely the difficulties for non-native speaking (non-English, French or German speaking) candidates. It is surprising, given the substantial changes being proposed, that the language barrier issue has not been addressed.

In sum, GSK’s Patent Training Committee is supportive of the efforts to modernise and improve the EQEs. We do however consider that the current proposals go too far and leaves industry with too much uncertainty. As a result, we cannot place our support behind the currently tabled proposal.

In the interest of full transparency, we do however wish to provide our more specific feedback on the proposal, which can be found in **Annex 1** below. This feedback was also provided as input into a response that has been submitted by the Chartered Institute of Patent Attorneys (CIPA).

We hope the joint working group will find this feedback helpful.

Yours faithfully,

GSK Patent Training Committee

Annex 1

GSK Patent Training Committee's specific feedback on the joint EPO-epi Working Group's proposal for the new EQE

General:

- **Errors in Examination Papers:** The drafting of the EQE examination papers require further attention/diligence. Since the EQEs moved online in 2021, it appears that the situation is getting worse with regular errors being reported. For example, recurrent translation errors, missing figure numerals or drafting errors leading to multiple possible interpretations are not considered acceptable and do not reflect the high standard which is required.
- **Expanded Use of Multiple-Choice Questions (MCQs):** The expanded use of MCQ is a concern. The pre-examination has proven how difficult it is to draft MCQ style questions without ambiguity. It is a concern that the increased use of MCQs in the new EQE proposals will lead to more widespread normalisation.
- **Model Papers:** We appreciated the Working Group providing model papers and especially appreciated these being made available within Wiseflow (i.e. to provide a realistic view of the paper). However, it is difficult to provide comprehensive feedback without seeing what the model solution would be. We think it's important to see the level of detail that is required of candidates and the general distribution/allocation of marks.
- **Inconsistent answer formats:** The MCQ sections use inconsistent answer formats, e.g., drag/drop, select from a drop-down box, MCQ plus free-text etc... This is unsettling for candidates who must expend significant mental energy simply ensuring the questions are answered in the correct manner. We consider this is unfair, especially to candidates with dyslexia (or related conditions). Just because Wiseflow can handle these different types of question format, doesn't mean all should be used.
- **Limiting character numbers:** We are concerned about the proposals to provide "free-text" answer options that are limited by how many characters can be typed. Whilst this may encourage brevity in answers (e.g. not cutting/pasting the Guidelines), candidates shouldn't be blocked from answering the questions to the level of details that they see fit. It also adds to the stress of sitting the exam – imagine being under significant time pressure and having to worry about cutting down the number of characters in one of your answers (rather than focussing on the rest of the paper)? This is likely to further disadvantage non-EN, FR or DE speaking candidates.

Technology:

- **Wiseflow remains a suboptimal platform:** Feedback from 2021 and 2022 EQE Candidates raised concerns/issues with the Wiseflow platform including the interface crashing, poor formatting issues, difficulty

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highlighting/making notes etc... It is a concern that the new EQE proposals appear committed to the Wiseflow platform. If the new EQE is aiming to be more “practical”, it would be helpful if this is also reflected in the platform used to conduct the exam. For example, a basic text editor is not what most people would use during day-to-day practice. In addition, not being able to have multiple windows open simultaneously took a lot of getting used to, as navigating between multiple documents in Wiseflow can be time-consuming.

Timing/Frequency of Exams:

- **Timelines:** The timelines in the Concept Paper appear to suggest moving the EQEs to January/June. This risks significant clashes with National Examinations which candidates also need to sit. For example:
 - PGCert in IP Law at Queen Mary University of London (UK) – Jan
 - Advanced Level Exams (UK) – Oct
 - Belgian/Italian Patent Examinations – June

As such, we are keen to see the March date of the EQE retained.

- **Staggering of the Exams:** We are supportive of the gradual increase in complexity of the exams in the new proposals. However, if all the Main Module exams can be sat in one go, this defeats the purpose. If this format is pursued, the gradually increasing complexity should be enforced.

Content of the Exams:

- **M2:** The uncertainty surrounding what document you are going to be required to draft in M2 is problematic. It will result in candidates preparing a multitude of templates for every eventually that could arise. The Concept Paper also suggests sitting this paper after 24 months of training, however within 2 years it is very unlikely that candidates will have been exposed (in their day-to-day work/training) to all of the documents which may need to be drafted. For example, M2 could present the requirement to draft Notices of Opposition or Grounds of Appeal or responses thereto. Unless a candidate has had the opportunity to work on both the offensive and defensive side of Oppositions **and** Appeals (unlikely after just 24-months) they will not have the requisite real-life experience to handle these tasks effectively. Papers A, B and C of the current EQEs give clarity to trainers across the profession that they need to ensure their trainees get drafting, prosecution and offensive opposition experience.
- **F1 and F2 after just 12 months:** Our impression is that the content of F1 and F2 is similar to the legal part of the pre-exam (as well as some competencies from the claim analysis and papers A & B). We wonder if the content of F1-F2 is suitable for being sat after 12 months from enrolment vs 24 months from enrolment for the pre-exam. This timeline would require arranging training in a different manner to ensure that trainees receive suitable training on all aspects tested (for example, quite detailed aspects of the PCT). We believe this timeline is challenging for in-house candidates whose early training is not only focused on studying the law but also understanding the business.

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- **Year-on-Year Consistency:** Each of the modules aim to pull in skills required from multiple papers e.g. skills required for Paper A, B and C. Given the flexibility of these modules, how does one go about ensuring consistency year-on-year? Some years will be C heavy and others will be A heavy? Is that fair? Furthermore, this leaves open the possibility that a candidate may pass the EQE without being tested on one or more key aspects of the day-to-day practice of a patent attorney (e.g. without being tested on drafting a patent application).

End

Education Team
epi – European Patent Institute
Secretariat: Bayerstrasse 83
80335 Munich
Germany

26 July 2022

Dear Sir/Madam

I enclose Mewburn Ellis's response to the proposed changes to the European Qualifying Examinations (EQEs) to become a qualified European patent attorney. Mewburn Ellis is one of the largest patent attorney firms in Europe, and we typically place over 20 candidates on the pre-EQE and EQE every year.

We are broadly in support of the changes outlined within the consultation and feel the proposed modular system aligns to the stated aims of bringing the exams closer to the professional practice of today's patent attorneys. Staggering the exams over a two year period, and taken in the order recommended, will likely lessen the exam burden on students, as it facilitates continuous learning and development, rather than an intensive single set of exams at the end of the training period. We continue to be supportive of the online examination format, rather than reverting back to in-person examinations.

We are, however, concerned about the interaction of the European qualifying training and examination with the national qualifications that are sought by candidates. There is a strong potential for training to overlap and for examinations to clash. This may lead to delayed qualification for the candidates or may increase the burden on candidates who must prepare for multiple examinations in close succession. Careful thought must be given to this, and the representative national bodies should be consulted, and an opportunity given for these bodies and the European Examination Secretariat to adapt their training and qualification timings.

Interaction with national professional qualifications

Mewburn Ellis has a presence in both the UK and Germany, and so we include below comments around how the proposed EQE timeline interacts with UK and German national patent attorney professional qualifications. National professional bodies will no doubt provide detailed responses and all relevant nations' professional qualifications will need consideration – particularly the UK, France and Germany as the largest source of EQE students – in light of the proposed changes to the EQE.

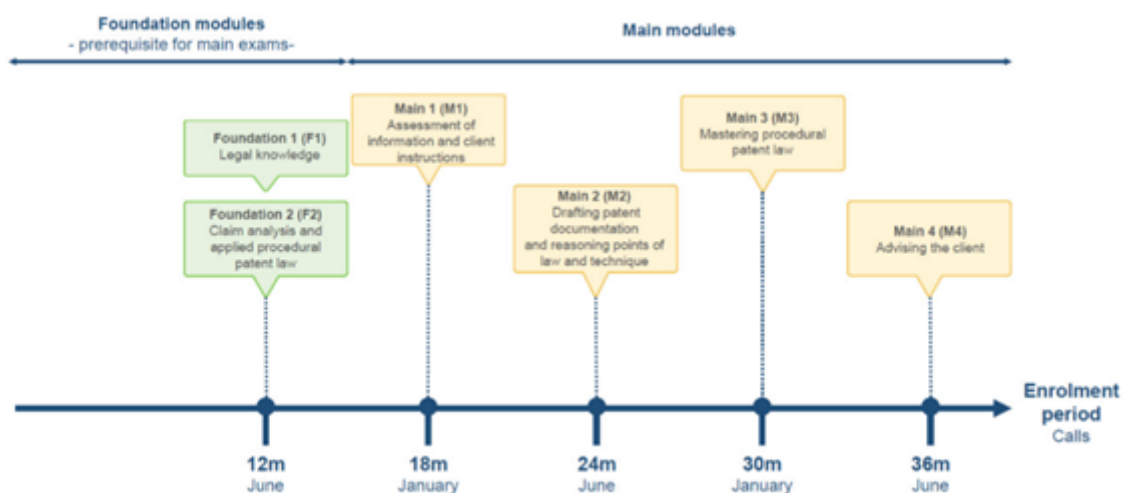
- UK

In the UK, patent attorney graduate schemes typically begin in September, aligned to the UK academic year which runs September to June. This is the case for Mewburn's annual intake of patent graduates. Historically, following a September start, Mewburn's trainee patent attorneys have undertaken approximately twelve months in-house work experience with the Firm, before completing a full time, four month Post Graduate Certificate in Intellectual Property (typically with Queen Mary University of London) from September to January, which provides exemption from the foundation element of the UK national patent attorney qualifying examinations. The examinations for this qualification are held in January.

From September 2022 onwards, Mewburn's graduate intake will study for their Post Graduate Certificate in Intellectual Property with Bournemouth University, which will start four months after they join the Firm in September and runs for six months, January to June, with examinations in June. This is a virtual learning course so that our trainees are able to work at the same time as studying towards their certificate.

A large number of patent attorney firms in the UK use either the full time Queen Mary course or the virtual Bournemouth course so that their trainees are able to achieve exemption from the foundation element of the UK patent attorney examinations. Careful consideration will need to be given to how the EQE timings fit with both of these course timetables. A candidate may be forced to choose between a UK examination and an EQE examination (e.g. January dates clash with Queen Mary exams, June dates clash with Bournemouth exams).

From a UK perspective, this will need further consultation with Chartered Institute of Patent Attorneys (CIPA) and the UK Patent Examination Board (PEB) to fully understand the consequences. More broadly, we strongly recommend consultation with all national professions so that EQEs and national examinations can be sequenced for the benefit of the candidates.



The following comments are based upon the proposed timelines for the new EQEs as shown in the diagram above.

Currently, we (Mewburn Ellis) encourage our trainee attorneys to attempt all UK and EQE exams at the earliest opportunity, taking resits as required. Many UK based firms take the same approach for the EQE exams and encourage their trainee attorneys to sit at least some of the UK exams at the earliest opportunity. For the EQE papers, this typically means our students sit the pre-EQE paper at approximately 30 months after entering the profession and all main EQE papers 42 months after joining the profession. Assuming all exams are passed first time (we enjoy a high pass rate as a Firm), and exam results are received c.3 months following the last EQE exam in March, the earliest our students are currently able to achieve dual UK and EQE qualification approximately 45 months after joining the profession.

Under the proposed changes to the EQE, assuming that the 12 month pre-requisite prior to taking F1 and F2 begins at the date of entry to the profession (in the UK this is typically September each year), this would mean that Mewburn graduates would be unable to attempt their EQE F1 and F2 papers for the first time until they have been in the profession for c.22 months. This would seem an undue delay.

Assuming our students pass both their F1 and F2 exams first time, and then each of their M1-4 EQE exams first time, this would then mean the earliest our students would be able to achieve dual UK and EQE qualification would be approximately 49 months after joining the profession, 4 months later than under current arrangements. Whilst on the face of it this is not a significant additional length of time to dual qualification, what remains unclear is how students will fare taking the new, untested exams and the impact that pass rates/resits will have on the time to qualification.

Currently, students who have passed their EQE exams may apply for exemptions from two of the four UK qualifying patent exams; the regulator for the UK profession, IPReg, recognises success in the EQE's as equivalent to passing FD2 and FD3 EQE. It is unclear whether the new EQE format will facilitate the use of EQE papers to provide exemptions to any UK exams. If exemptions from UK exams are no longer possible, and no changes are made by the UK PEB to the UK exam format, this may mean a more difficult (and longer) path to UK qualification for some students, with resit opportunities available only once per year.

- Germany

The timeline for the German national qualification depends on the date of the admission by the Patentanwaltsskammer, the German patent institute. Usually, there is a three to six month probation period before the patent attorney firm allows application for admission to the first training period, which is 26 months training with a patent attorney firm. Once admitted to the first training period, a trainee can apply for the Hagenstudium (study of law at the University of Hagen), which is undertaken in parallel. The Hagenstudium begins in February, June or October, depending on the time point of the admission by the Patentanwaltsskammer, and lasts 24 months (the admission for the first training period is prerequisite for the Hagenstudium).

After completing the 26 months training at the patent attorney firm, it is then possible to apply for the second and third training period. This training period begins in February, June or October, depending on the end of the first training period, and lasts nine months. Once the second and third training period is completed, written and oral exams are taken.

The beginning of the above training periods set the dates for German national exams, term papers, in-class lessons etc. It is not, therefore, easy to say how the new EQE format will affect the German qualification and vice versa. The January and June examination dates outlined in the diagram above may present challenges for individuals around clashes with German national examination papers and training, dependent upon the dates that training periods are commenced. This will need further consultation with the Patentanwaltsskammer to fully understand the consequences.

EQE paper timing and frequency

Whilst we appreciate that it will be difficult to identify months in the year that completely avoids clashes with national patent attorney examinations and training, careful consideration should be given to the point(s) in the year that the new EQE examinations are offered, so as to align as closely as possible to typical intakes into the profession (thereby reducing the number of months to qualification) and to avoid said clashes as far as possible.

In addition, we would strongly recommend offering students the opportunities to attempt/resit exams more than once per year. This would provide students with greater flexibility to attempt their EQEs around the timings of national qualifications and training. If this is not possible for all EQE exams, we would recommend prioritising multiple sittings for papers F1 and F2, as these are the first barriers to entering the profession and will be less onerous to administer and mark, given their online/multiple choice format.

Paper-specific feedback

We have reviewed the proposed modular format and the aim of gradually developing the competencies required to become a patent attorney as the examinations progress. We expect that there is still detailed consideration to be given to the content of each exam and further information will be shared. We provide the following comments based on our initial impressions of the M1 to M4 exams.

We think it is likely that the M1 – M4 exams would be very difficult for many students, given that the range of situations and topics that candidates could be faced with, even at M1, could be highly diverse and challenging. It could be argued that it is more important at this stage of a trainee attorney's career they have a good grasp of the essentials of the role – i.e. drafting and amendment – which were well reflected in the old papers A and B. In addition, trainee patent attorneys working in-house for individual organisations (rather than for patent attorney firms) may be disadvantaged due to type of work they are exposed to. For example, there is only a single client (i.e. their company) for in house attorneys and therefore the advice an in house attorney might provide is very different and less diverse.

The new EQEs place greater emphasis on the law and advising clients; we think on the whole this is a good thing if tested fairly. The fundamental role of a patent attorney early in their career must still be tested, which involves drafting, responding to office actions and filing oppositions. It will be important to seek input from patent attorneys (both in house and from attorney firms) to ensure that these examinations strike the right balance between practice and theory, between “doing” and “advising”, reflective of both the in house and attorney firm experience.

Parts of the new syllabus appear comparable with the current EQEs. The M2 paper examples provided seem to be very similar to the current Paper B and the M4 examples seem to be very similar to one part of the current Paper D.

What does not appear to be tested in any of the papers is anything comparable to the current Paper C (writing the grounds for opposition; dealing with different documents; finding your way through all the disclosed embodiments; finding possible attacks, etc). This appears as a weakness in the papers, as the opposition work is a major component of attorney work, and the current Paper C is a useful test of a candidate’s ability to construct a meaningful attack on a European patent.

We could not see a paper that is similar to the current Paper A (drafting a patent application including claims). Rather than drafting your own claims/application, it seems that you now have to select from several possibilities. This could make the paper easier. One of our trainee patent attorneys commented that they felt that formulating your own claims instead of selecting the right answer from several preformulated possibilities is more impactful in terms of learning. They preferred the current Paper A in this regard.

- **Online paper format**

We consider the online system itself to be self-explanatory and clear and we did not experience any issues accessing or testing the online modules.

We note that compared to the current EQE format, there is less opportunity to for trainee attorneys to enter their own free text across the papers. One of our trainees commented that she felt that participants who can type quickly are given an unfair advantage by the current format and so the new format with reduced free text may increase exam fairness, or the perception of fairness. In addition, the same trainee commented that on occasion, candidates are asked explicitly for the legal basis through extra questions. This feels helpful as it reminds candidates to always include the legal basis, which has cost candidates marks in the past.

As mentioned above, regarding the content of the questions themselves, it seems that most of the questions are similar to the questions in the current EQE. What could make the questions “more easy” (at least on the face of it) is the multiple formats of questions and answers; “drag and drop” is nice, true/false, multiple choice, writing your own answer, easily selecting dates (instead of typing them), etc. There is less room for error.

Training for EQEs

The proposal does not make clear what training will be provided by the EPO to prepare students for the new EQE exams. For example, one of our trainee attorneys suggested that within the fee for the foundation exams, the EPO could enrol all candidates onto their current online course, which is seen as useful course that formed a strong basis for learning the basic skills of being an attorney.

Yours faithfully



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For and on behalf of Mewburn Ellis LLP



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For and on behalf of Mewburn Ellis LLP



Dear Colleagues

We write to provide feedback on the proposal for the new EQE. As an initial point, we are grateful for the resources that have already been provided relating to the proposed new EQE, and for the opportunity to review and comment on these.

Exam dates

The proposal documents suggest that, at some stage, multiple sittings of the new EQEs will be available each year.

We request that all of the new EQE examinations are made available each March. We consider that holding examinations in March would be least disruptive in view of existing training systems. For example, an examination session in March avoids clashing with UK national examinations (which are held annually in October).

We consider that a March exam sitting would also be less disruptive to candidates' personal lives than a January exam sitting. A January exam sitting would be likely to lead to candidates revising over the Christmas holiday period every year for a number of years. This would have a detrimental effect on candidates' welfare.

If a second sitting of the examinations does become available, we request that the second sitting is each September, *i.e.* six months after the March exams. If a second examination period does become available, we request that all of the exams are offered in both the March and September sittings. A September exam sitting would avoid clashing with the summer holiday period and the (October) national UK exams.

“Gatekeeping”

The proposal documents indicate that the foundation examinations (F1 and F2) are

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the only “gatekeeping” examinations - *i.e.* that once candidates pass F1 and F2 they will be free to sit the remaining examinations in any order. We agree with this approach. For example, if a candidate passes F1 and F2, they should (if they wish) be able to wait until they have conducted 36 months of continuous training, and then sit all of M1 to M4 at the same time in the next available examination period.

Transitional arrangements

We consider that it is crucial that the “old-style” EQEs continue to be offered for all candidates who have started in the current system. If the final old-style pre-EQE examination is held in March 2024, we request that old style EQE final examinations are held until at least 2027 (and ideally 2028). This would give candidates at least two opportunities to resit any final examinations that they fail to pass in the March 2025 examinations.

We appreciate that it will be challenging to offer one sitting of the old-style EQE examinations and two sittings of the new EQE examinations in a given year. We consider that the EPO should prioritise continuing to offer old-style EQE papers above introducing a second (e.g. September) exam period for the new EQE examinations.

We request that consideration be given for candidates who have only passed a subset of EQE finals examinations after the final period for sitting old-style EQE examinations. For example, if a candidate has passed (old style) papers A, B and D, and has no further opportunity to resit paper C, they should not be made to sit and pass all of the new-style main examinations M1 to M4. For example, a reasonable compromise would be for them to have to pass M4 (*i.e.* the “highest-level” new examination) only.

UK examination waivers

At present, successfully passing the EQEs is deemed to be equivalent to passing the UK drafting (FD2) and amendment (FD3) examinations.

We request that the EPO and EPI engage with CIPA, the UK Patent Examination Board (PEB) and IPREG to ensure that this arrangement is maintained when the new-style EQEs come into force.

If this is not maintained, the overall examination burden on many UK-based EQE candidates will be drastically increased.

General comments on the model examination papers and Wiseflow

The model examination papers do not have marks per question allocated. Candidates need to know how many marks are available per question to be able to allocate time appropriately. We request that all of the examination papers do clearly indicate the number of marks available for each question.

It is also not clear to us whether candidates will be able to freely move between questions in Wiseflow while an examination is in progress. We request that this option is available. First, this is essential so that candidates can allocate time to questions appropriately (e.g. candidates need to be able to quickly review later questions to determine how much time they should allocate for remaining questions). Second, candidates should be able to change an earlier answer if they realise they have made a mistake or omitted information. Third, a key part of good examination technique is reviewing answers at the end of an examination. This will only be possible if candidates can freely move between questions in Wiseflow.

While these comments may appear to be relatively minor points of detail compared with wider feedback on the fundamental structure of the proposed new examination arrangements, we believe they are extremely important for ensuring that the new arrangements will be enthusiastically received. In particular, it will be very important for candidates themselves to feel that the new examination papers do not have, “hard coded” into their format, elements that feel like backwards steps compared with the format of previous examination papers.

Specific comments on the model examination papers and questions

We assume that the model papers are merely exemplary, and improvements to question setting and quality control would occur when preparing final examination papers. Nonetheless, we would like for completeness to highlight some clarity issues with the model examination papers.

The curriculum content of these examinations is (and should be) challenging. However, the questions themselves should be as clear as possible, to minimise cognitive load that is required to access the questions, and so that candidates can easily access and fully focus on the content of the exam. This is particularly important for candidates sitting an examination in a language that is not their mother-tongue.

The model examination papers use a large number of question types. For example, the M1 paper includes questions where the answer format is: just multiple choice, multiple choice with the option of adding text only if none of the multiple choice answers are correct, multiple choice where you have to additionally give a free text answer, true/false questions, drag and drop, drag and drop with an optional explanatory free text option, free text answers etc. For the multiple choice questions you also have a mixture of click buttons, drop down menus and drag and drops.

We request that the final examination papers use a small number of question types consistently so candidates become familiar with what the paper will “look” like, and how they are expected to answer. This will not change the content or difficulty of the *examination itself*, but should reduce the complexity in *accessing* the examination. The focus should be on breadth of coverage of the curriculum, and not breadth of coverage of question types accessible with the technology.

In the model examination papers, the questions themselves are often a very minor part of each Wiseflow page. For example, below, the orange ring circles the actual question:

Patent application filed on 14 January 2021

[Patent Application](#)

D2 (European patent application published in 2005) (2 pages)

Heat exchanger assembly

[0001] The present invention relates to a heat exchanger assembly. In particular, it relates to a heat exchanger assembly for a vehicle comprising two heat exchangers, e.g. a radiator and a condenser.

[0002] Nowadays vehicles are provided with a condenser for cooling the refrigerant of the air conditioner cycle and a radiator for cooling the water used as engine coolant. The condenser and the radiator both use external air to cool the refrigerant and the water respectively. Both heat exchangers are provided with headers or tanks, tubes and fins between the tubes, and are arranged in series with respect to the direction of the air flow at the front part of the vehicle. Due to the fact that space in the front part of the vehicle is restricted, there is a need to improve the relative arrangement of the radiator and the condenser.

[0003] The aim of the present invention is therefore to optimise the arrangement of the heat exchanger assembly.

[0004] This is achieved by the heat exchanger assembly defined in the claim.

[0005] An example of the invention is described with reference to the accompanying figures.

[0006] Figure 1 discloses a condenser 10 and a radiator 20. The condenser 10 has inlet and outlet headers 11, 12 and tubes 13 disposed between the headers. Refrigerant entering through the inlet header exchanges heat with air flowing between the tubes. In this way the refrigerant is cooled and condensed, leaving the condenser through the outlet header 12. Parallel to the condenser 10, the radiator 20 is placed having inlet and outlet headers 21, 22 and parallel tubes 23 in between. In the radiator, water flowing through the tubes exchanges heat with the air passing between the tubes via fins 30, and is therefore cooled.

1 of 2

Product claim as filed:

Aluminium heat exchanger for use with oil as a first fluid and air as a second fluid, the heat exchanger comprising: two tanks (10), tubes (11) extending between the tanks (10) for the flow of a first fluid, corrugated fins (12) between the tubes (11) providing channels for the flow of a second fluid, wherein the tubes are coated with an aluminium zinc alloy containing 2 to 4 wt% of zinc, and wherein the tubes, the fins and the tanks have been joined by brazing with a brazing alloy (13) and borax flux (14).

Please indicate where individual features of the product claim can be found in D2:

Feature	In D2: Yes/No	Where in D2
Aluminium heat exchanger for use with oil as a first fluid and air as a second fluid		
two tanks		
tubes extending between the tanks for the flow of a first fluid		
corrugated fins between the tubes providing channels for the flow of a second fluid		
the tubes are coated with an aluminium zinc alloy containing 2 to 4 wt% of zinc		
the tubes, the fins and the tanks have been joined by brazing with a brazing alloy and borax flux		

It will inevitably take candidates time to actually locate the question, work out exactly what they are expected to do, and then go back to the start of the question. It would be easy for candidates to misread the question here, or not understand what they need to do. They may therefore lose marks due to a misunderstanding, rather than a lack of knowledge or skills relating to the curriculum content. Again, this is likely to be particularly problematic for a candidate sitting an examination in an unfamiliar language, who is likely to be less able to quickly skim-read an entire webpage to determine what the essential information is.

Question clarity could be improved by putting the question itself in much larger font at the start of the question, and more clearly explaining what candidates are expected to do.¹

¹ See <https://filestore.aqa.org.uk/resources/science/AQA-GCSE-SCIENCE-QUESTIONS-CLEAR.PDF> This document is a guide on general principles of clear question design. It relates to UK GCSE science examinations, but the principle of making questions as clear as possible so candidates can focus properly on the content of the exam applies equally to any examination.

Summary

Thank you for taking our comments into consideration.

We would be happy to provide further feedback or answer any questions that you may have on our comments. Please do contact us at mail@jakemp.com if you have any questions.

A handwritten signature in black ink, appearing to read "J A Kemp". The signature is written in a cursive, flowing style.

J A Kemp LLP



Abteilung IV des Vorstands

European Patent Office
European Qualifying Examination
Examination Secretariat
80298 München

Via e-mail to: helpdesk@eqe.org

Ihr Zeichen

Unser Zeichen

Y/63 - IV/09/21

Datum

12.08.2022

Modernising the EQE

Dear Madam, Dear Sir,

The German Chamber of Patent Attorneys (Patentanwältskammer - PAK), representing more than 4,000 German patent attorneys and thereby the largest national group of patent attorneys within Europe, would like to take the opportunity to partake in the ongoing consultation on the new EQE and provide comments on the proposal published online. We truly welcome the initiative but we sincerely regret, despite our offer to the EPO president, not having been involved in drafting the framework in order to transform the EQE. We would like to renew our offer to assist with better aligning the proposal with the goal which is a comprehensive fit-to-practice test over the entire range of professional activities of a European Patent Attorney.

The EQE is an important cornerstone of the IP profession in Europe, even more so when looking forward to the coming into force of the UPC agreement where having passed the EQE is one of the key requirements for a patent attorney to be able to represent clients before the UPC.

The EQE, and the level of professional expertise which it demonstrates, is, and always has been, an important factor for employers and employees alike in the hiring and talent development process.

We appreciate the opportunity to provide feedback, late in the process as it may be, not only as a group within epi but also as a national body with in-depth experience in drafting exam papers and examining German patent attorney candidates: PAK members contribute and mark exam papers and act as examiners in the national examination process and act as tutors and instructors for national candidates - who will likely become EQE candidates at some point.

Comments on the new EQE concept

We note that the new EQE differs from the old EQE in many respects, and in the following we would like to comment on a few key changes.

1. Why take the candidates by the hand? Why make the exam easier to pass?

We note that the concept takes the candidates by the hand in many respects, and frankly we do not understand this nor do we agree. It is notable that EQE candidates are adults that must have a university degree and at least three years of relevant professional experience, cf. Art. 11 REE. Thus, they can be expected to self-organize and study for a post-grad qualification with a clear focus. Being well organized and focused is, by the way, an important skill for an attorney-to-be.

Additionally, many of the proposed changes make the EQE easier to pass, and this is another aspect we neither understand nor do we agree. Having passed the EQE gives a 2-year reduction to some candidates in our national exam, and this privilege of course is based on the fact that the EQE is a challenging exam to tackle. Were this to become easier, the privilege (which primarily affects candidates in industry) will eventually have to be reconsidered.

1.1. Timeline?

An obvious example of "taking the candidates by the hand" is the proposed timeline. As per page 7 of the concept paper it is envisaged to split up the EQE into a series of five tests, six modules, and eleven "papers" distributed over two years. We find this highly unusual for an examination giving access to a legal profession, where typically all skills of the future practitioner of law are tested in a thorough set of final exams often held on consecutive days, as is the case with the German patent attorney exam and in other EPC member states. Splitting a challenging exam into small portions makes passing the exam significantly easier because candidates can study specifically for the one test instead of having to prepare for sitting four papers in rapid succession (which in fact are five papers because D1 and D2 have little in common).

The examination timeline inter alia imposes a study timeline, which from the concept paper's perspective may even be a desired effect. It should be noted however that different people have different ways to study and while the proposed study timeline may work for some candidates, it will be quite unnatural to others. Noting further that all EQE candidates are adults that have undergone an academic education they can be expected to know how to study best.

Finally, requiring candidates to undergo a test every six months (plus re-sits) poses a considerable challenge for the employer-employee relationship.

For the reasons above we strongly disagree with the proposed exam timeline, even if it is "only" offered as an option to the candidates. The exam should be held in full in one week for all candidates.

We further propose to use this opportunity and eliminate the pre-exam and similar superficial testing from the EQE. As can be seen from the pass rates, the pre-exam is not a challenge at all. It rather does create additional burdens for all involved (the candidates, their employers, the Examination Committee), in particular added cost. As the F-modules are clearly designed to replace the pre-exam **we propose to eliminate the F-modules from the concept.**

It should further be noted that **most of the content of the proposed F-modules is placed wrongly in the timeline.** Candidates do typically not commence their IP careers by studying the law - they will primarily be involved in drafting applications and responses to substantive communications during their first one or two years and learn the material and procedural law as their understanding of IP deepens. Hence, it makes no sense to test legal knowledge after only one year. We propose to test these skills at the end of the period stipulated by Art. 11 REE.

1.2. Guided Exam?

We note that in at least some of the sample papers, for example M1, the candidates are once more "taken by the hand", i.e. guided through the paper(s), from item to item, with the items being a curious mix of multiple choice, drag & drop, and short type-in-a-textbox style tasks.

As with the timeline, this makes the respective paper(s) significantly easier to tackle as the candidates are provided with a clear structure. Under the old EQE, part of the challenge for the candidate was/is to organize the information provided, devise a strategy on how to solve the problem(s), and organize the solution in a blank document. Candidates who were on the right track or even knew the solution could still fail if they failed to bring their thoughts into a format understandable by the markers.

We thus propose to use the traditional "blank document" approach for the entire exam as this provides an adequate level of challenge and reflects the daily practice of a patent attorney much better. D1-type questions may of course be structured using one textbox per problem.

1.3. Exam duration?

According to annex 2 of the concept paper, no exam paper is envisaged to last longer than 2.5 hours. Unfortunately, no argument in favour of this limitation is presented in the concept paper.

We strongly disagree with limiting the time to 2.5 hours and splitting up the modules into submodules, because this is another unwarranted act of "taking by the hand".

We know from own experience that it is impossible to set an adequately challenging problem requiring the candidate to understand embodiments and the alleged invention embodied therein, and to draft claims and/or (counter)arguments in a paper requiring less than 4 hours, be it an A-, 8- or C-style problem. Hence, limiting the time to 2 or 2.5 hours inadvertently entails reduced complexity and an ultimately simplified exam.

We further note that a shorter exam means less stress for the candidate, making the exam significantly easier in yet another dimension. And while the candidates may complain about the stress involved in taking the EQE - stress is and will always be part of the daily life in the legal profession.

1.4. E-assessment / auto scoring?

The new EQE intends to make extensive use of E-assessment methods. The exam syllabi in annex 2 are a bit vague, for example for module F2 the ratio between auto-scored and free text is not specified, or M1 where "around 50% of the questions are in the form of multiple choice questions". We estimate that at least 8 hours out of approximately 20 are envisaged to be multiple choice or similar, non-creative tasks.

As is well known, these exam techniques can only test passive knowledge and therefore, according to our opinion, have no place in an exam allowing access to a legal profession. And once more, the relevant exam portions end up being significantly easier and candidates are "taken by the hand" without good reason. At best, multiple choice tests can be utilized to check the study progress of a candidate but this clearly falls outside the scope of the EQE.

To elaborate further, the pre-exam has clearly shown that multiple choice exams are unsuitable in the EQE context. They are an immense challenge to create but apparently no real challenge for the candidates (70% of points are required vs. 50%

in the normal exam, and yet constantly more than 70%, usually more than 80% of the candidates pass). At best, the pre-exam serves as a reminder to candidates that they have to study, but is way too expensive for this simple message.

Unfortunately, the concept paper is silent on the shortcomings of multiple choice and drag & drop type questions and does not weigh the shortcomings against the benefits. For us, the shortcomings clearly outweigh the potential benefits and **we therefore propose to remove all E-assessment / auto scoring elements from the new EQE.**

2. Subject matter

The concept paper proposes to disassemble papers A, B, C, D1, 02 into skill elements, remove redundancies, and reassemble the pieces in a completely different manner. During reassembly each item was apparently checked for "e-assessability".

We disagree with this approach and the results. The purpose of this exercise remains a mystery. The comments in the concept appear to be justifications for the approach, not explanations, and they are interwoven with comments on the timeline which the concept paper sees as the only possible alternative.

Looking at Art. 1(4) REE, it would have been possible to solve any issues the old EQE has developed over time (in particular that it no longer reflects daily practice, that papers A, B and C are often mosaic-like, that the exam is predictable) by simply breaking with the traditions and routines of the Examination Committees. Also, Art. 1(4) REE could have easily been amended in order to allow for more flexibility, i.e. include appeals, without completely breaking the structure of the EQE.

Further, the concept paper does not hint at what safeguards have been built in such that the new EQE does not fall into the same trap as the old EQE, in particular in terms of providing a mosaic in the free-text portions. On the contrary, it is foreseeable that annex 1 will soon be used to tick off individual items versus infinitesimally small problems and sub-problems, and that quality of a new EQE

paper will be measured by how many annex 1 items it combines, rather than to what extent it tests the fitness to practice of the candidates.

In other words, we do not believe that the new format will sustainably solve the problems of the old format.

Much more could be said about the shortcomings of the concept in terms of subject matter. For example the skills that used to be tested in a non-mosaic paper A of the more distant past (understanding an invention from more than one embodiment, understanding the prior art, and drafting a meaningful claim set) is underrepresented. The brief exercises in M1 are inept in this regard, both in depth as well as in format (see 1.2. above), whereas the procedural aspects appear to have become overly pronounced. This does not reflect practice well because a patent attorney's primary task is to translate between technology and patent documents/claims in various constellations, and this skill needs to be thoroughly tested, much more than envisaged in the concept.

Accordingly, if the new module format is maintained, we consider it essential that more emphasis is given in the modules on the essential techniques of claim drafting and claim amendment.

3. Online examination

It is obvious that the decision to hold the EQE online has already been taken. Other options are not listed in the concept paper. It is unclear why such alternatives are no longer being considered.

However, we see substantial problems with online examinations.

First, the candidates bear the risk of technical problems on their end (for example internet connection issues, power glitches, and software instabilities and incompatibilities, which might suddenly arise from required updates on their systems, days or even hours before the exam). The concept paper is completely silent on those issues, let alone potential remedies.

Second, online invigilation is a point of concern. Once more, the concept paper is completely silent on the practical and legal ramifications.

a) Active invigilators have reported that online invigilation is an extremely cumbersome task and prone to errors in that fraud attempts remain potentially undetected because the invigilator may be exhausted from staring at a screen non-stop or because he/she is distracted, either by the environment or by one particular candidate. The invigilation process is faced with the same technical problems as are the candidates, and a level of unfairness is introduced if the individual invigilator has to decide whether and to what extent a broken or frozen video stream from any given candidate can be tolerated or not. The candidate may not even be aware of the problem, creating potential legal uncertainties, possibly followed by unnecessary appeals.

b) It should be noted that solutions are commercially available designed for the single purpose of cheating: software drivers showing a recording of video instead of a live stream; virtual machine implementations that allow the candidate to run other software in parallel; hardware for mirroring the screen to another room undetectable by the proctoring software; etc. Such cheating solutions are designed to always be one step ahead of any countermeasures the proctoring software provides, hence there is a risk of undetected fraud attempts which we consider to be higher than in the offline world.

c) The legal situation regarding online video and audio surveillance is unclear at best, for example with respect to the EU GDPR. What might have been acceptable during the pandemic may not be in the post-pandemic world. There are data privacy experts who say that video surveillance is acceptable but audio surveillance is not. There are data privacy experts who say that comprehensive surveillance is acceptable but recording is not. There are data privacy experts who say that surveillance by a human is acceptable but AI-assisted fraud detection is not, etc. This is a major concern for employers who require their employees to take the exam because in that situation the argument that the candidate voluntarily submits to a potentially overarching surveillance falls flat.

Furthermore, the online EQE 2021 and 2022 show significantly lower fail rates vs. the ten years before, in particular for papers A and D, see below:

	A	B	C	D
2022	27	16	39	29
2021	21	35	43	8
2019	15	37	41	40
2018	38	20	42	55
2017	38	19	37	48
2016	37 (E/M) 31 (C)	23 (E/M) 37 (C)	52	47
2015	30 (E/M) 30 (C)	31 (E/M) 12 (C)	52	35
2014	37 (E/M) 43 (C)	42 (E/M) 27 (C)	56	55
2013	36 (E/M) 40 (C)	32 (E/M) 27 (C)	47	45
2012	37 (E/M) 36 (C)	34 (E/M) 37 (C)	58	56
2011	35 (E/M) 55 (C)	25 (E/M) 35 (C)	56	64
2010	42 (E/M) 39 (C)	33 (E/M) 46 (C)	50	46
Average 2010-2019	36	30	49	49

Fail rates in percent. Source <https://www.epo.org/Jearning/eqe/statistics.html>

We assume that this was unintended. As no other explanation is evident, we assume that this is as a consequence of the online format and its aforementioned shortcomings. Unfortunately, the concept paper does not take notice of this development nor is any explanation provided elsewhere.

Because these points have been left open (and because they have not yet been answered for other organizations like universities, either), **we disagree with the proposal in the concept paper to conduct the exam online and instead propose to have a computer-based EQE in smaller, more localized exam centres requiring only short travel.**

4. Complete incompatibility of new and old EQE

This is a problem so obvious that it is quite surprising that it has not been addressed in the concept paper at all. For us it is difficult to comprehend why the new EQE was designed with absolutely no regard for backward compatibility.

And while backward compatibility is not a key concern there does not appear to be any good reason to completely destroy it. Also for this reason **we disagree with the level of disruptiveness** the concept bears and would like to renew our request to rethink the concept, also with backward compatibility in mind.

5. Conclusion

We have the grave concerns that an EQE designed in accordance with the concept paper can even begin to match the depth and difficulty level of earlier EQEs (before they became mosaic-like). The fundamental changes do not seem to be driven by the consideration of making the EQE more practice-oriented (for example, by eliminating formalisms in paper design). Rather, other reasons seem to have been decisive, about which we can only speculate - but the envisaged high proportion (for approximately 30% of the exam) of machine-based evaluation and the focus on a purely online examination suggest that extraneous considerations such as economics have played key roles.

In other words, we are convinced that the complexity and degree of difficulty (and thus the quality) of the EQE will, in our view, be significantly reduced by the approach which is school-like and not appropriate for a post-academic qualification of young professionals. It is of little consequence that individual modules can be designed to reflect daily practice, because it is simply not possible to present a problem that corresponds in complexity to a paper C, for example, within 2.5 hours.

Yours sincerely,



Dr. Wolfram H. Müller
Chairman

Consultation New EQE - A competences based modular approach

Executive summary

The concept paper, its Annexes 1 and 2, and the Model papers present a proposal for a New EQE. Apart from aiming to make the EQE more suitable for online testing, the reform also introduces new testing schemes and extends the competences tested (or rather, defines the existing competences to cover more scenarios in which the same essential core competences are tested), with specific and transversal competences being distributed differently over the exam papers.

In the document annexed to this executive summary, we first analyze the current EQE and next we address the proposal in detail (the New EQE concept paper, Annex 1, Annex 2 and the Model papers). We refer to the annexed documents for all details.

We believe that the proposal has a few deficiencies which need to be improved:

1. The concept paper does not describe **which aspects of the current EQE shall be maintained**. We believe that an analysis of the benefits and disadvantages of the current EQE is an essential step before designing a new EQE: the good aspects shall be maintained while the disadvantages shall be remedied by design in the new EQE. Without a detailed assessment and evaluation, the risk is that some of the EQE key goodies (e.g., every candidate is tested at EQE exit level on each of the four specific competences) are lost and some issues are kept (e.g., ambiguous T/F statements).
2. **Applying substantive patent law by drafting applications/claims, amending/defending claims** (e.g., in response to objections in e.g., a search opinion, an office action, a notice of opposition or summons) **and attacking claims** (opposition) are **essential competences that every candidate shall master to pass the EQE**.
However, testing of the three main groups drafting (now paper A; SC01; in M1 at entry-intermediate level and M2 at intermediate-expert), amending/defending (now paper B; SC02; in M1 and M2), and attacking (now paper C; in M1 and M2) is reduced in the proposal by about a factor of 2 in number of exam hours compared to the current EQE. Moreover, part of the testing in the new system is only at entry-intermediate level, whereas all current ABC exams are at expert level. Also, the M1 module not fully free text, whereas free texts is generally considered to be the only appropriate form to test claim drafting, amending/defending and attacking at the EQE exit level.
We believe that the number of hours to test SC01, SC02 and SC03 (at EQE exit level) is too small, and shall be increased to be similar to that of the current EQE.
3. We **appreciate that M3** (development of D1 – legal questions) **and M4** (development of D2 – opinion and advice in view of business needs) **are split**, so that a candidate needs to show that he masters legal understanding/legal reasoning in M3 (SC04-T03) as well as providing advice based on the rights that the client and the competitor (can) have in M4 (SC04-T01).
4. The proposal offers **no guarantee that a candidate needs to master each of the specific competences SC01-SC04** and each of the transversal competences T01-T06 to be able to

pass. When taking the set of Model papers as an example: M1 and the two cases in M2 all address SC02 (amend/defend) and fail to test SC01 (drafting) and SC03 (attacking) at a level appropriate for passing the EQE.

We believe that **each of the three core competences SC01, SC02 and SC03 needs to be tested and passed individually**, also when a candidate sits the different modules at different moments in time.

We also believe that T05 (Work under time pressure with large amounts of information) shall be tested; it is not listed in Annex 1, so there is a risk that it is overlooked.

5. M1, M2 and M4 have relatively small cases, in contrast to current A, B and C. As a result, transversal competence **T05 “Work under time pressure with large amounts of information” is not tested in the proposal.**

We believe that T05 shall also be tested, and that at least some of the papers for SDC01, SC02 and SC03 shall be considerably longer than 2 hours.

6. The **syllabi for the various modules are still unclear**. As currently with Pre-Exam and main exam, the syllabus is essentially the same for all modules, in particular for the legal track F1 – F2.1 – M1 – M3 and for the claims analysis track F1 – F2.2 – M1 – M2.

A better definition of which topics are part of the syllabus for each of the modules is needed, for example by indicating which sections of the Guidelines are part of a specific module and **which are not**.

7. Some of the new question formats, and the variation between a variety of them in a single exam, seem to rather complicate the question due to its form, rather than focusing the question on an element of the identified specific and transversal competences. As a result, **the focus shifts from testing understanding of the law and its application to understanding question formats**. E.g., a drag-drop question with 2 boxes and 5 statements is in essence not different from 2x5 true-false statements – the latter being easier to understand conceptually. E.g., breaking a free-text answer into several steps with dedicated answer boxes distracts a well-prepared candidate from writing his answer according to his understanding and rather adversely forces him into the think- and answer style of the drafter of the question; it also requires a lot of scrolling as all sub-questions spread over multiple pages. **Priority shall be given to an adequately testing of competences and not to the ease of marking.**

Also, we do not believe that multiple choice questions or whatever type are suitable for any of the main exam modules.

We believe that the questions should not use too many different formats; main exam modules shall use free-text as much as possible. We also believe that the choice of the question format shall be made such that well-prepared candidates are not adversely affected while badly-prepared candidates shall not benefit from the format.

8. We doubt whether a purely declarative module F1 serves a purpose and suggest **to discard the purely declarative knowledge module F1**. Testing declarative knowledge does not test any of the listed competences, but only basic competences “lookup” or “memorizing”; it is also well known from literature that **declarative testing does not at all test understanding**. If it is nevertheless introduced, we propose that candidates can choose to skip F1, and can get an exemption for F1 when passing F2.

9. We consider that the **timelines** (“Time since registration”) shall be **realistic**. We also note that a too quick sitting of exams increases the risk of mere memorizing and less understanding, whereas a candidate shall develop his skills and understanding in his first phase on the job.

We consider 12 month too early for F1 and F2; **we propose 18 month for F1 and F2.**

A 6-month period between F1/F2 and M1 seems reasonable; we propose 24 month for M1. (but see next item)

A 12-month period between M1 and M2/M3/M4 seems reasonable, so we propose 36 months for M2/M3/M4, with the recommendation to take M4 after 42 months.

10. The **M1** from the Model papers is largely a multiple choice and drag&drop exam, which **hardly goes beyond what a candidate needs to do in the Model Paper for F2.2**. The only free-text claim drafting question in the Model paper asked to draft a claim for a divisional, so is -in view of Art.76(1)- more like an amendment exercise (as the two exercises in the M2 model paper) than a drafting exercise. Also, the M1 Model paper cannot be said to be beyond basic level. There seems no real justification or need for M1 in between F2.2 and M3. **We suggest to discard M1, or to merge M1 and F2.2.**

That could result in:

- 18 months since registration for F1 and F2/M1,
- 30 months for M2/M3 – on condition that F1 and F2/M1 have been passed, and
- 36 months for M4 – on condition that F1 and F2/M1 have been passed.

Note: an alternative timeline could be:

- 18 months since registration for F1 and F2/M1,
- 24 months for M3 – on condition that F1 and F2/M1 have been passed,
- 30 months for M2 – on condition that F1 and F2/M1 have been passed, and
- 36 months for M4 – on condition that F1 and F2/M1 have been passed.

11. Assuming that a complete REE and IPREE for the new EQE will be available in Q3 or Q4 2022, together with a complete set of Mock papers (including model answers and marking) that is in line with the new REE /IPREE:

The fundamental modules of the new EQE may be held for the first time in Q1 2025. A Main exam 2025 shall still be held according to the current system, with A, B, C and D.

Preferably also a Pre-Exam according to the current system shall be held in March 2025.

Main modules of the new EQE may be held for the first time in Q1 2026, or possibly Q3 2025 (if a 6m gap between F1/F2 and M1 is envisaged).

An exemption scheme shall be put in place for candidates that already passed the pre-exam or one or more main exam papers. It may be considered that compensable fails are not considered when granting an exemption for M2 and M4.

DeltaPatents, 15 July 2022

Note: Please refer to our full report on the following pages for our full comments. Therein, we first analyze the current EQE and next we address the proposal in detail (the New EQE concept paper, Annex 1, Annex 2 and the Model papers).

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Consultation

New EQE – A competences based modular approach

Comments DeltaPatents to the Concept Paper and its Annexes 1-2 and to the Model Papers

July 2022

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Detailed feedback

Introductory comments

The New EQE paper “European Qualifying Examination – A competences based modular proposal” (hereafter the “New EQE paper” or “the concept paper”) presents a proposal for a new EQE.

Before we address the proposal in the concept paper, its Annexes and the Model papers in detail, we note that the concept paper fails to describe its starting point in detail, i.e., the current EQE, and its strengths and weaknesses. The current EQE is a well-established examination system, and only deducing some competences from it but not looking at the current EQE in its entirety does not do justice to its strengths and has the risk that some of its merits do not get the attention they require in a new EQE. Keep what is good (in more or less the same way) and improve to get rid of any problems; if it is not wrong do not fix it. To us it appears that the proposal relies heavily on advice from external experts that are not experts in this field, with a main risk that everything gets changed because you look at it from a different perspective but actually it was not wrong – and where things that were very good are not recognized by those external experts. For example, we support that the EQE looks at (required) competences (even in two dimensions) and uses that in improving the EQE, but it seems that the current exam does a good job in covering it (as we discuss below), so that there is no need to drastically change.

We will fill in the gap from the concept paper, and will summarize the current EQE and identify strengths and weaknesses in the following, as well as identify which benefits from the current EQE need to be kept in a new EQE.

The current EQE

Pre-exam

Multiple choice (T/F), two parts (legal part, substantive=claims analysis part), examined and marked as one. Open book (Printed material, limited availability of online legal texts in exam platform). Can be taken as of 24 months from registration (assuming full-time employment; registration can be done as of the start of employment as trainee patent attorney).

Most statements of the 20 questions require applying the procedural or substantive law to the facts of the case. No, or a small minority (typically less than 5% of the statements) are purely declarative statements (where a legal requirement *er se* is tested, e.g., to indicate where the time limit to file a translation of an EP application is 1m (F, R.6(1): 2), without the need to calculate the time limit).

Strength:

- Fast marking, can be done by a computer. Candidates can have their results in principle instantly.
- Easy to put in an online exam platform (as long as all required information/documents can be easily accessed during the exam).
- The open book form allows to focus the testing on understanding and applying the law (especially, the Guidelines) and more-or-less reflects real-life practice.

- An easily be split into parts with breaks in between, which could even be scheduled on different days if need be (the Pre-Exams of 2021 and 2022 were split into 4 parts: 2 legal parts of 70 minutes each and 2 claims parts of 70 minutes each)

Weakness:

- It is very difficult and time-consuming to draft unambiguous T/F questions. It has also appeared to be very difficult to have exact correspondence between the three language versions. Neutralizations were necessary in all Pre-Exams since 2014. (Note: there is no discussion of this in the New EQE proposal, whereas it is a basic prerequisite that unambiguous questions can be drafted, especially for multiple choice questions and similar question formats).
- A candidate cannot give any comments to his answer. Hence, if a candidate deviates for good reasons from the expected solution (e.g., because he noted an unambiguity, or because he had a different, also correct, interpretation), the marker cannot be aware of that and will incorrectly consider the answer wrong.
- Due to the exclusive use of T/F-statements, about 50% of the statements would be answered correctly (resulting, with the marking scheme used, in 29 out of 100 marks). Hence, effectively only half of all questions is used to test the candidate's knowledge and skills.
- Legal part: the syllabus is basically the same as for the legal part of the main exam. This is not OK: different exams should have objectively identifiable differences in the syllabus. The current mere indication "at Pre-Exam, knowledge level is that of a candidate with two-year experience" is insufficient, as it is unclear and ill-defined; also, questions have been asked that are clearly beyond this level as they were directed to topics that a candidate will never have encountered in his first two years (e.g., RE in FP period in Pre-Exam 2012; interlocutory revision in a recent exam).
- Claims analysis part: some topics, such as clarity and amendment, are difficult to test in T/F format, as they require interpretation of the complete set of documents and not just (as in the legal part) a 5-line question and a 1-line statement. For this and other reasons, many Pre-Exams needed neutralizations of several questions in the claims analysis part. It seems that the claims analysis part struggles more with designing unambiguous statements, as there has not been an improvement over the years in the amount of neutralizations.
- Claims analysis part: a considerable number of documents needs to be consulted question, statement, claims, amended claims, several prior art documents). In the current online exams, not all of these could be printed, and it was also not possible to see all the documents side-by-side, nor to annotate all of them (annotation was only reliable possible in a single tab). In our view, candidates shall have essentially all documents available for printing, with possibly an exception for 1 or 2 pages.

Possible improvements:

- Multiple-choice is much more difficult on parts involving reasoning, and especially in parts where a lot of interpretation is needed (as in the claims part). The current style true/false 'works' but could benefit from more modern style questions where reasons for the answers can be assessed better, and which allows for different answers due to interpretation differences and possible (perceived) ambiguities.
- The pre-exam is now marked as a single paper, while the two parts cover different skills/competences. Both parts shall be tested and passed separately.

Paper A, B, and C

Each of A, B and C cover a separate part of the three key substantive acts/competences to be done by patent attorneys: drafting/creating, amending/defending, attacking. Full free-text answer. Open book (Printed material, limited availability of online legal texts in exam platform). Fully human-corrected. Can be taken as of 24 months from registration (assuming full-time employment), provided the Pre-Exam has been passed.

Strength:

- Each of Paper A, B and C seems to reasonably cover essential understanding, skills, and competences. If a candidate would write a real-life patent application, draft a real-life response, or draft a real-life notice of opposition in the same way as in the exam, he would do a perfect job for his client. It is important that **all three skills** are separately assessed and must be **individually passed**.
- Reflect daily practice to a large extent. It is important that the complexity of the paper in terms of complexity of the (expected) claims, length and number of documents reflects daily practice, and is not a too much simplification.
- Human marking creates robustness for alternatively worded answers or even alternative answers that deviate from the expected solution.
- The open book form allows to focus the testing on understanding and applying the law (especially, the Guidelines part F-H) and more-or-less reflects real-life practice.

Weakness:

- Can sometimes be too long/too technical causing problems for non-native speakers and candidates from a far removed technical field.
- Human marking takes a considerable amount of time, as every individual answer has to be marked in detail by two markers, and because -due to the nature of the tasks- the answers are of considerable length with a lot of freedom in the way how they are structured.
- For A, B and C, a considerable number of documentation needs to be consulted (letter from clients, claims, prior art). In the current online exams, not all of these could be printed, and it was also not possible to see all the documents side-by-side, nor to annotate all of them (annotation was only reliably possible in a single tab). In our view, candidates shall have essentially all documents available for printing, with possibly an exception for 1 or 2 pages – in current paper B, too little can be printed.
- The length of the C paper (5 hours) has been considered too long for a single exam session in the online exam. The split into two parts seems a reasonable solution, provided that the design of the paper is optimized for that.

Paper D (D1 + D2)

Two parts (D1: legal questions, largely procedural; D2: opinion/advice), marked as one. Full free-text answer. Open book (Printed material, limited availability of online legal texts in exam platform). Fully human-corrected. Can be taken as of 24 months from registration (assuming full-time employment), provided the Pre-Exam has been passed.

Strength:

- The D1 design (number of questions, type of questions) allows to test the legal knowledge, skill and understanding over a wide range of the syllabus.

- The D2 design (length/complexity, type of topics) allows to test where the candidates can formulate a good legal opinion, comprising a detailed validity analysis of the situation as it currently stands, substantive and procedural improvements, and advice in respect of the rights that the patent/applications provide and how to deal with (cross-)infringement.
- The open book form allows to focus the testing on understanding and applying the law (especially, the EPC Art/Rules and the Guidelines) and more-or-less reflects real-life practice.
- The current D seems in the current for to cover both aspect in an OK form
- D can be easily split into two separate papers, a 2- or 2½ -hour D1 and a 3-hour D2, so that a candidate does not need to take the complete D in one long 5-hour block.
- The D1 questions are so short that they can be presented online with an answer box beneath/below, so that a candidate can take the D1 from the screen while seeing the complete question and the complete answer with no (or only little) scrolling.
- Human marking creates robustness for alternatively worded answers or even alternative answers that deviate from the expected solution.
- The open book form allows to focus the testing on understanding and applying the law, and thus to test the true competences.

Weakness:

- D1 and D2 should be two separate papers, since the underlying competences are rather different and a candidate shall pass each individually (and not be allowed to, e.g., compensate a poor D2 with a good D1).
- A candidate can pass the D paper even if he considers the patent to give a positive right and concluded “You have a patent in Germany so you are free to produce in Germany, even though the competitor also has a relevant patent there”, because D2 only uses positive marking. Such type of serious errors as to what right a patent actually gives shall be penalized and it shall not be able to pass with such comment.
- The advice papers is limited in scope (general rules on infringement; no national details; no national case law such as equivalence or indirect infringement), but it should only be considered to extending the advice scope if there is a well-defined syllabus and well-defined study material available for such extension. Herein, it should be noted that the legal competence of a European patent attorney does not extend to national patent law in EPC states, nor outside EPC states (Art.134a EPC, Rule 153 EPC).
- Human marking takes a considerable amount of time, as every individual answer has to be marked in detail by two markers, and because -due to the nature of the D2- the answers to the D2 part are of considerable length with a lot of freedom in the way how they are structured.
- In the current online exams, none of the D1 questions nor D2 could be printed. For D1 that is not an issue (see under Strength), but for the 4- to 5-page D2 it is a major disadvantage compared to having the D2 available in print on the desk.

Conclusions on the current EQE

The current EQE is composed of the Pre-Exam and Main exam, which are to be taken as separate modules, which can be taken as of 24 months and 36 month from registration (assuming full-time employment; registration can be done as of the start of employment as trainee patent attorney; for an EPO examiner, 12 months more are required). The Pre-Exam is an entry exam which must be passed before the four main exam modules A, B, C and D can be taken. The complete EQE is open book (Printed material, limited availability of online legal texts in exam platform).

The current Pre-Exam tests the complete syllabus (same as for main exam) and all competences, in T/F format. The T/F format has led to regular neutralizations due to, in particular, ambiguities in a question or statement, differences between languages. The need for such neutralizations shall be reduced (note that, in the Concept paper, this aspect is fully ignored). The Pre-Exam could benefit from more modern style questions where reasons for the answers can be assessed better, and which allows for different answers due to interpretation differences and possible (perceived) ambiguities. An improvement could be in requiring individual passes for the legal part and the claims part.

The current main exam tests, and requires an individual pass (ignoring the limited degree of possible compensation) for **all 4 main skills/competences**:

- A) drafting/creating,
- B) amending/defending,
- C) attacking,
- D) legal questions (D1) and legal opinion/advice (D2)

All 4 exams require **free-text answers** whereby a candidate's understanding of the paper as a whole as well as individual (explicit as well as implicit) aspects of a paper is tested, and where a sound reasoning needs to be presented in support of the drafted claim/ amendment/ attach/ legal answer/ advice.

It is important that **all four skill/competences A-D** are separately assessed in a free-text form and must be **individually passed at EQE exit level**.

We recommend that the two skills/competences of D, legal questions (D1) and legal opinion/advice (D2) also require an individual pass at EQE exit level due to their different nature as well as individual importance.

Paper A-D use free-text answers that are hand-marked, thus marking takes longer than for the Pre-Exam. There may be some room for part computer-marked/assisted marking but the three key substantive skills/competences, the legal reasoning skill/competence and the advise skill/competences should always involve also (largely) human-assessment. Human marking creates robustness for alternatively worded answers or even alternative answers that deviate from the expected solution.

Pre-Exam, A, B, C and D have been adapted in the current EQE for the online exam. For Pre-Exam, C and D, the current adaptations (split into parts) seems OK, even though the design may be better adapted for the split in paper C. We do not consider it necessary to make adjustments to A and B, except that more of the documents shall be available for printing – or, if that will not allowed, the exam platform shall be able to view all documents side-by-side on two monitors, including an annotation possibility.

Which benefits shall be kept from current EQE in a new EQE

For the assessment of the proposed new EQE, we see as key starting points:

- Stick to the known unless there is an identifiable problem or if a (sub-)competence is not covered and it is very likely/sure that the new proposal solves that. If it is not wrong do not fix it.
- If additional exams would be introduced, there shall always be at least 5 exams that need to be passed individually at EQE exit level:
 - 1) drafting/creating,
 - 2) amending/defending,
 - 3) attacking,

- 4) legal questions,
- 5) legal opinion/advice
- The open book form allows to focus the testing on understanding and applying the law (especially, the Guidelines) and more-or-less reflects real-life practice.
- It is very difficult to get a digital exam to work for this type of exam at a high quality level. We should aim to keep the same quality and use digital marking where this does not lower the quality and gives a benefit.
- Preparation time of candidates should be similar to required for the current exam.
- It shall not be significantly more difficult, nor significantly more easy, to pass the EQE than it currently is.
- The moment at which an exam can be taken for the first time (time since enrolment) shall be realistic.
 - o We consider a pre-exam/ fundamental module not realistic before 18 months.
 - o We consider main exams not realistic before 30 (possible for some, 24) months.
- The three-year experience requirement shall be kept as a requirement for entry on the list, even though/if the complete EQE may already have been passed earlier.
- For each part: a clear, well-defined syllabus, specific for that paper. If that is not possible it cannot be objectively examined.

Comments to the concept paper

In the following, we will provide our comments on the concept paper, Annex 1 “Competences”, Annex 2 “Tables summarising the modules” and the Model papers.

To 1 - A competences based modular approach

The “New EQE paper” provides in its Introduction that:

“This proposal goes far beyond merely transposing the existing EQE into an online environment, which is a transitory state between the previous on-site format and a qualification system adapted to the digital setting. The re-design of the EQE aims to update the evaluation approach, combine testing methodologies and bring the exam closer to the profession by mirroring working conditions for patent attorney, while continuing to ensure the highest standards of quality.”

Section 2.1.2 provides “Two types of competences were mapped: specific and transversal”, and lists **four main groups of specific competences** SC01 – SC04 and six transversal competences T01 – T06.

To 2.1 Design of the new EQE - Competence analysis

The analysis of current papers into specific and transversal competences has been very thorough and detailed. However, we also note some deficiencies and points that require attention.

Historical analysis

The analysis presented has as its basis an analysis of the **historical** focus rather than current and the **future needs**. Some future needs seem to have been added to the historical list by ad-hoc defined competences; a thorough analysis as to why they are defined as they are lacking – it seems to be based on a “brainstorm” of the study group, rather than of a detailed analysis of theoretical and practical needs starting from the current and future professional needs for a qualified attorney rather than starting from a historical analysis.

Development of competences

When (essential) competences are defined, the use of a rubric or similar tool would be preferred to allow to check whether all competences have been tested and passed at the required level for a candidate to have passed the EQE as a whole, as to check whether the designed paper, in all combinations with papers from the current as well as previous exam year, cover all required (essential) competences (see below).

In the current proposal, the long list of competences reflects in 4 main modules, of which M2 includes basically all competences, but without a guarantee that the core sub-competences all need to be passed. Missing from the proposal is a required minimum per competence. How does one guarantee that all competences are passed, considering that candidates can take M1-M4 in various rounds?

Further, no importance is indicated/ priority given to specific key combinations is specific and transversal competences, e.g., SC03 (oppose) + T04 (novelty & inv step reasoning) / T06 (amendment reasoning) are listed in Annex 1 as SC03-09 and SC03-06, but not prioritized; also not in Annex 2.

It would be appreciated if Annex 2 were to be extended with an overview as to which competences need to be passed (and, at which level) for a candidate to pass the EQE as a whole.

Guarantees that the EQE can only be passed when mastering all competences

Although 4 specific and essential competences are listed in the “Concept paper” (SC01, SC02, SC03, SC04), each of them being more detailed with many specific competences in Annex 1, there is no guarantee in the overall proposal that all 4 essential competences continue to be tested and need to be passed, whereas there is clearly a wish and need that all candidates need to master those essential competences at an appropriate level.

Hereto, we propose to slightly redefine the 4 competences SC01, SC02, SC03 and SC04 to not just cover the specific situations of the current EQE papers A, B, C and D, but to also include the “broader scenarios”, such as letting SC02 also cover amendments in response to a notice of opposition. The redefined essential competences could then be named as:

SC01 – Drafting an application

SC02 – Defending and/or amending claims in response to a challenge (OA, summons, response to notice of opposition, grounds of appeal)

SC03 – Attacking a patent application or a patent (opposition, opposition appeal by opponent, ...)

SC04 – Legal understanding and legal opinion.

In the set of module papers, drafting a patent application or a claim for a first filing in a full free-text format (SC01), at EQE exit level, is not at all covered: it should have been in the Model paper for M2, but the two parts of M2 both relate to amending and/or defending existing claims. Further the Model paper for M1 only required the drafting of a claim for a divisional application, which is significantly different from drafting a claim for a first filing in view of Art. 76(1) EPC: drafting a claim for a divisional is more like an amendment (similarity between Art.76(1) and Art. 123(2)) than drafting a claim from fresh; also, the scope of the claim was very limited (manufacturing claim for a product for which there was already a product claim).

In the set of module papers, attacking a patent in a full free-text format (SC03), at EQE exit level, is not at all covered: it should have been in M2, but the two parts of M2 both relate to amending and/or defending existing claims. In our view, module M2 shall not be tested with 2 further unspecified exercise as in the proposal, but should be tested with:

- 3 exercises
- of which at least one exercise should comprise defending and/or amending existing or newly drafted claims (SC01, SC02) and
- of which at least one exercise should comprise attacking claims (SC03)

Competences in Annex 1 and 2

The numbering of the competences in Annex 1 is not used in Annex 2 – it is thus difficult to see where and how all competences are tested.

It would be appreciated if Annex 1 were to be extended with an additional column indicating in which modules each of those competences are tested.

Competences in different situations: “broader scope of situations that can be evaluated”

Testing competences in different situations (amendments in response to search opinion, amendments in response to office action, amendments in response to summons for oral proceedings in examination, amendments in response to notice of opposition, ...) is presented as taking away the predictability and creating uncertainty as to what the exam will exactly look like. However, the

competence itself (amendments to overcome deficiencies and defending patentability) is the same for all situations, and the different situations only cause uncertainty and discomfort to candidates while not truly adding value.

In our view, such unnecessary complications should be prevented and an exam shall test the competence that it is meant to test without any side-complications, especially where those are of a legal nature (arguing admissibility of late-filed submissions at various stages/ in various scenarios) and are of a high-level nature so that they should not be part of M1 or M2, but of M3 and M4.

To 2.1.3 – Modular approach – Testing of the Competences

In a competences based modular approach, one would expect that **each** of the main groups of specific competences SC01 – SC04 as well as each of T01 – T06 would be tested and would need to be passed individually, so that a candidate can only pass if he is sufficiently competent on all skills. This is however not at all guaranteed in the Proposal. The Model Papers present a set of papers wherein SC01 and SC03 are not tested at EQE end level – not all main groups of specific competences are tested. The six transversal competences are not all tested either. See below.

a) The transversal competences

As transversal competences represent supportive skills to the main groups, they will need to be tested in the context of one or more of the main groups. For example, SC02 is tested in combination with T01, T02, T04 and T06 in an “office action/ amend & defend” case in M2. All of T1 – T06 seem to be tested in the Model papers, except for T05: T05/ Work with large amounts of information is not listed in Annex 1, nor in Annex 2 (not in any of sections 1.2, 2.2, 3.2., 45.2, 5.2 and 6.2), nor does any of the Model papers have more than a page amount of information.

It seems that, even though identified as a key transversal competence, “T05 – Work under time pressure with large amounts of information” is not covered by the New EQE.

We believe that “T05 – Work under time pressure with large amounts of information” needs to be covered and tested.

When reading the complete documentation, it seems that competence “T06 – Explain, reason and/or argue changes and decisions” is considered to cover both substantive aspects (explaining/reasoning amendments) and legal aspects (explaining/reasoning as part of answering a legal question, largely procedural). The Model papers, the current EQE papers, as well as Annex 1 and 2, show that T06 relates to two transversal competences.

We believe that these two need to be listed separately so that is also guaranteed that a candidate is tested with a sufficient score:

- “T06 – Explain, reason and/or argue status and changes to patent documents”
- “T07 – Explain, reason and/or argue status and changes to legal situations”

b) The four main groups of specific competences

The proposal shows that the syllabus of modules (F2.2) M1 and M2 covers three of the four main groups of specific competences: SC01, SC02 and SC03. However, the proposal does not include any guarantee that every set of modules M1 and M2 (from the same or different EQE half years) tests the candidate on each of these three main competences. Also, the proposal does not include any guarantee that even if a combination M1 and M2 tests the candidate on each of these three main competences, that a candidate needs to master each of these three competences individually at a sufficient level:

- M1 is only at an entry-intermediate level and not at EQE end-level; in the model paper, M1 had its emphasis on competence SC02 (a claim had to be drafted for a divisional – that is more like amending as in SC02 than like drafting from scratch as in SC01).
- M2 has only two main exercises and can thus at best test two out of the three main competences – but may, as in the Model papers, also test just one competence (SC02)

We agree with the New EQE paper that SC01, SC02 and SC03 represent three main groups of specific competences.

We consider it however inappropriate that the Proposal allows a candidate to pass without having shown a sufficient level in each of these three specific competences; and we consider that a set of papers as the proposed Model papers are not adequate as it does not test the SC01 and SC03 competences at M2 level (and wherein M1 and M2 together are almost fully addressing the SC02 competence).

We consider that:

- **it is necessary that every candidate is tested on each of the three main groups of specific competences SC01, SC02 and SC03,**
- a candidate needs to master each of these three main competences SC01, SC02 and SC03 at a sufficient level, so that
- the New EQE needs to have three papers directed to SC01, SC02 and SC03 individually, i.e., **requiring individual PASSes,**
- **with each paper being at EQE exit level.**

For example, M2 could have three exam papers, each lasting between 2 and 2.5 hours, which need to be passed individually. As in the proposal, “The competences tested in [this 3-paper] M2 include developing a full argumentation, and thus require detailed, free-text replies. No automated marking is being considered for this module.”

With such 3-paper/ 3-competence M2, it may be possible to drop M1 (or give an exemption for M1 as soon as at least two of the three M2-papers have been passed)

c) Show how competences progress, where they are tested, and at which level

The concept paper, its annexes and the Model papers do not explicitly show how the competences are distributed over the modules, and at which level a competence shall be mastered in each module. The “Basic”, “Entry”, “Intermediate”, “Advanced” and “Expert” qualifications do not suffice as a definition.

We recommend the use of a rubric or similar tool to define and check whether all essential/competences are tested and are passed at the required level for each of the modules, so as to check whether the designed paper covers all required (essential) competences at the required level. The rubric should be used when designing the exam paper. E.g., a simple, draft example of a rubric for aspects of SC01 and its increased level of mastering the competence could roughly be:

SC01 @ F2.2		
Poor	Adequate	Good
The candidate cannot assess whether a given claim covers all embodiments and/or	The candidate can assess whether a given claim covers all embodiments and is novel, and can conclude whether a claim is inventive	The candidate can assess whether a given claim covers all embodiments and/or is novel and inventive and can, based on a given closest prior

whether a given claim lacks novelty		art, identify the objective technical problem from a given description.
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SC01 @ M1		
Poor	Adequate	Good
The candidate can draft a claim that covers all (2-3) embodiments, but is not novel	The candidate can draft a claim that covers all (2-3) embodiments, is novel and is inventive w.r.t. (2-3) prior art embodiments, and can argue novelty, but fails in arguing inventive step using PSA.	The candidate can draft a claim that covers all (2-3) embodiments, is novel and is inventive w.r.t. (2-3) prior art embodiments, and can argue novelty and inventive step using PSA.

Also, and even more importantly, we recommend the use of a rubric or similar tool to define and check whether all competences have been tested and passed at the required level in the EQE as a whole, as to check whether the EQE as a whole (in all combinations of main papers from the current as well as previous exam years) covers all required essential/main competences.

To 2.1.4 – Assessment: General comments on MC questions

MC questions

The concept paper describes that:

“T The new EQE builds on activities to be conducted by candidates in exam conditions that range from extensive free text responses to a variety of automated and semi-automated exercises. It presupposes evaluation modalities that include manual correction and a varying level of auto-correction.

The tools available allow for several alternative auto-score systems, such as text entries, matching of concepts, establishment of correct sequences, true/false statements, multiple-choice questions, hotspots to mark correct answers, chains of questions, and filling in forms. These options are selectively proposed in the modules developed. The working group found that auto-scored exercises are more suited for the initial modules, which assess declarative and procedural knowledge”

With respect to multiple choice exams, Ten Boske et al.¹ advise: “The overall recommendation for the use of multiple choice tests based on the literature: if carefully constructed from a test matrix, and taking into account the levels of the Bloom taxonomy and the rules of construction, the test format is well suited for large groups of students. **Avoid questions that focus on reproduction. Construct questions that test understanding and application of relevant knowledge, knowing that this requires more time and expertise.** Make sure, as a program together, that the structure of the testing program is of good quality, with a balanced mix of test forms, based on the competencies to be acquired. Make optimal use of the formative possibilities of multiple choice tests, as effective

¹ Reference: “Nut en waarde van multiple choice toetsen”, Bert ten Boske (Faculteit Techniek/HvA), Veronica Bruijns (Onderwijs en Onderzoek/HvA), attached as “Bruijns, Ten Boske -Nut en waarde van multiple choice toetsen.pdf”

support for the learning process of both student and teacher. Increase student engagement through the use of innovative practices in the use of multiple choice tests. (Translated with www.DeepL.com/Translator (free version))”

Ten Boske et al. also note several disadvantages, such as:

- “Constructing multiple choice tests for assessing higher order skills requires considerable expertise and time. This goal is easier to achieve with the construction of open-ended questions and assignments.”
- “The closed-ended question format with standardized answers does not allow for personal interpretation/completion/creativity and assessment of the student's thought process. It invites guessing.”
- “Answering multiple choice questions correctly can falsely give the impression that students have understood the material.”

We believe that these disadvantages shall be taken into serious consideration, and in particular that the emphasis of all modules, fundamental as well as main, shall be on testing the candidate's understanding and skill. No priority shall be given to ease of marking.

Number of MC questions

In our view, some questions in the F1 and M1 modules **focus too much on reproduction** (e.g., giving the corresponding articles in PCT and EPC), and should in view of the recommendations and disadvantages given by Ten Boske et al. not be included in any test of any EQE module.

Further, in view of the listed disadvantages, it is strongly preferred to use open text answers rather than multiple choice questions and closed-ended questions. Hence, the number of multiple choice questions and closed-ended questions, the time needed to answer those and the majority of marks available from them should not form the major part of the tests, and preferably not more than 25-33%.

To 2.2 – Sequence and timing of the modules

In the current EQE, legal study requires pre-exam prep 4-9 months towards Pre-Exam, followed by 2-5 month break, followed by 4-9 months further study = increase level, understanding and skills/applying towards D1 and D2. A, B, C preparation is relatively independent of D preparation; it is based on Pre-Exam preparation plus specific A, B or C preparation.

In the proposal for the New EQE, legal competences and claim amend/defend/attack competences are mixed and advanced legal aspects may already be tested during an intermediate level claims paper. For example, if admissibility aspects of late-filed submissions in opposition (Art.114 EPC and case law) and in appeal (RPBA) are to become part of an amendment/defense paper, a very advanced legal study, understanding and practice is needed for M2, well before M3 is taken... that sequence seems non-optimal.

For a step-up modular approach, first the legal level in general needs to be enhanced to D1 level (M3), before late-filed/admittance can be addressed in the detail required in an opposition or appeal case (M2).

Also, already currently quite some candidates consider the 1 year between Pre-Exam and Paper D (D1) too long: their legal knowledge has dropped significantly when they start preparation for D1 in autumn or winter. At the same time other candidates believe that they do not need any further

preparation for paper D if they passed the Pre-Exam with high marks, e.g., above 85 marks. Hence, in order to give an incentive for follow-up study after the F1/F2 module and M1 have been passed, we suggest that the clear difficulty difference towards M1 and M3 must be clarified and the recommended time between M1 and M3 shall be 6m rather than (30-18=) 12m. Hereto, we propose that M2 and M3 are swapped compared to the current sequence.

To 2.2 – Definition of the modules: too limited attention to substantive skills & competences

Attention to main “claims/patentability” competence (substantive skills & competence)

The M2 module is titled “Drafting patent documentation and reasoning points of law and technique”. It specifies in Annex 2, 4.1: “The competences tested in M2 include developing a full argumentation, and thus require detailed, free-text replies. No automated marking is being considered for this module.”

We agree to the latter and conclude that for testing SC01, SC02 and SC03 at EQE end level, the New EQE requires a candidate to demonstrate EQE end level with detailed, free-text answers.

In the Current EQE, SC01, SC02 and SC03 are tested with 3 drafting/amendment/defense papers: A, B, and C – total about 14 hours exam. In the proposal for the New EQE, there is only a single (1) drafting/amendment/defense paper requiring a free-text response and at EQE end level, i.e., module M2, which is only 5 (!) Hours. **We consider the reduction from 14 hours to only 5 hours a too big a reduction.**

We also observe that these 5 hours are too few to test all competences and skills at the required level. Also we note that, in the Model paper, **only one of the three main competences SC01, SC02, SC03 was tested, i.e. SC02** (see also above).

Further, if an M2 would have a C exercise and a candidate fails on SC03-aspects, he can resit until he only gets SC01/SC02 aspects... so can pass without mastering the specific main competence SC04. That is certainly not a wanted situation.

The new EQE shall require, as the current EQE, that a candidate passes each of the competences SC01, SC02 and SC03 individually at EQE end level.

Time of introduction of a new EQE

The concept paper is silent about the time of introduction of the new EQE as well as about any transitional provisions. We believe that those aspects shall be part of the consolation.

The New EQE website provides “The EQE 2023 will be conducted under the current regulations.”, which suggests that the EQE 2024 may already be conducted in the new format.

However, only with well-defined competences and prioritization, as well as (more) Model papers that reflect the (to be changed) testing of the competences, candidates can schedule their study activities and tutors and training institutions can develop appropriate training material and courses.

Any changes in competences or the way they are tested need to be known well in advance to allow candidates and tutors and training institutions to adapt. As the current EQE requires 2 years before the Pre-Exam can be taken and candidates and their employers will have made their planning in activities and course & exam budgets accordingly, a new style of the EQE will need to be announced at least 2 years in advance.

As at this moment the new EQE has not yet been finalized² and will not be finalized before Q4 2022, so that the definition of the new EQE still remains uncertain³. Therefore, an introduction can in our view not be before (Q4 2022 + 2 years =) Q4 2024, so with **F1 and F2 being offered for the first time in 2025 and the EQE 2025 also still offering the current main exam papers A, B, C and D** for all candidates already having passed the Pre-Exam in 2024 or earlier.

An introduction in 2024 would be too early: candidates and employers now prepare for a first examination under the current regulations, and hence prepare for the Pre-Exam, to be taken 2 years after start and registration. So, candidates that started as trainee before 1/3/2022 will have planned to sit Pre-Exam 2024 and main exam in 2025. These candidates should not suddenly be faced with a different exam system and should be able to sit as planned. Thus, an introduction of the first foundation modules of a new EQE shall in our view not be before 2025, so with F1 and F2 to be offered for the first time in Q1 2025, but EQE 2025 still offer the current main exam papers A, B, C and D for all candidates that passed the Pre-Exam in 2024 or earlier.

Also candidates that started as trainee in between 1/3/2022 and today may already have planned to take a first Pre-Exam in 2025 and main exam in 2026. These candidates should preferably be able to continue as currently planned. However, as they will not yet have started studying for Pre-Exam 2025, it would probably be acceptable if these can take F1 and F2 in 2025 (replacing the Pre-Exam) and all new main modules M1, M2, M3 and M4 in 2026, such that they can be qualified at the same moment as currently envisaged.

Known problems and risks

The recent online EQE papers (EQE 2021, EQE 2022) have suffered from various errors, requiring neutralization of a complete 25-mark Part in D 2021 (irregular start of D1.1), many successful appeals in B 2021 (no highlighting of a proposed amendments in the EN version), neutralization of a complete 25-mark part in Pre-Exam 2022 (Poly-X/Poly-Y error in DE question), neutralization of a 5-mark question in Pre-Exam 2022 (Q.20: part of the question not presented in Wiseflow), neutralization of a 5-mark question in D1 2022 (Q.5: wrong date in English version), ...

Also, several errors resulting in neutralizations happened in almost all Pre-Exams, mostly due to some (significant or slight) ambiguities in the questions. Surprisingly, while experiences with Pre-Exam design developed since 2012 to 2022, the need for neutralizations has only increased in Pre-Exams – which may be an indication that designing true/false questions in an unambiguous way is much more difficult than open questions (and, unfortunately, still not well-mastered).

² Today (15 July 2022) the status is “in consultation”: initially the consultation was indicated to run until 15 July 2022, but the deadline was removed in early July from the New EQE website and no new deadline has been indicated so far.

³ “**Depending on the outcome of the consultation**, a fully-fledged reform of the Regulation on the European qualifying examination (REE) and its implementing provisions (IPREE) will follow”; “Your feedback is important and will help to pave the way for **an adjusted design** of the EQE.”

With even more of the papers being composed of, or comprising, (auto-scored) multiple choice, true/false, drop-down, drag&drop and alike questions, the need for drafting unambiguous questions increases. Designing these types of questions is known to be more difficult than usual free-text questions. Thus, the worry about the need to neutralize questions remains: multiple choice questions are almost by definition prone to the need for neutralization as they do not leave room for dealing with ambiguity. Persons not seeing the ambiguity will be better off than (often better prepared) candidates that do see the ambiguity, so that there is always a risk of unequal treatment (neutralization of a single Q cannot compensate for the possible excessive loss of time that it took a candidate that ran into an ambiguity issue). Further, even a non-ambiguous question in view of the Committee and the Examination Board may be ambiguous for some candidates. For example, the Q on whether a Chinese applicant can validly file a PCT with the EPO: yes, if considering R.19.4 PCT, but also with no if considering just R.12.1 PCT+ R.157(1)&(2) EPC.

Also, the risk of differences between the three language versions remains. It will need to be clarified in the IPREE how ambiguities and language differences will be dealt with.

The new EQE concept paper does not indicate how this increased difficulty in exam design will be dealt with so that fewer neutralizations will be necessary. While at the same time keeping an equal level playing field for all candidates, in all three languages, and at any location and hardware setup. The new EQE concept paper does not take away the worries that the same or similar errors will also appear in the new EQE. On the contrary, using more advanced options from Wiseflow increases the risk that errors are made when loading the system, in three languages, with the exam papers.

Further, as was experienced with the Model papers, the wiseflow pages are often very long so that a lot of scrolling is needed. Hereby, it may be easily overlooked that there is another sub-question at the bottom of the same page. The Overview that Wiseflow gives at the end of the flow then indicates that all questions have been answered. However, the indication does NOT relate to every question, but only to every "Wiseflow page": as soon as one question on a wiseflow page has been answered, the page as a whole is marked completed. The same applies if there are four T/F statements and only some, but not all four, were answered. The overview page needs to be improved, so that it gives a reliable indication as to whether all questions and sub-questions have been answered!

We believe that issues with the current EQE need to be solved before moving to a new EQE, at least with respect to all aspects that will remain.

General comments to the Model papers

Note: extensive, detailed comments are given in the section "General comments to the Model papers" below.

- The Model papers are not always in line with the New EQE concept paper. For example:
 - F1 has 40 rather than 20 questions;
 - The F1 Model paper is not purely declarative;
 - in F2, some topics are (far) beyond basic level; ...

This makes the scope and the intended level of each module unclear, and the Model papers in part rather lead to confusion than to clarity as to what is intended with every module.

A new set of Model Papers will be necessary that is fully compliant with the new EQE concept and the (to be drafted) new REE/IPREE.

- In the Model papers of F2, M1 and M3, many questions are so long that a lot of scrolling is needed within a question. Hence, a candidate can no longer see the question and no longer see his answers to the previous sub-questions/“steps” of the question.

We believe that, if a question is broken down in multiple steps, a candidate should not need scrolling when answering: a full overview over the complete question and answers shall be possible.
- Wiseflow with its locked browser only allows the use of a single screen. This is too limited and fails to meet the promise from the New EQE concept paper (in section 1) that “The re-design of the EQE aims to [...] bring the exam closer to the profession by mirroring working conditions for patent attorney [...].”

We believe that, to mirror working conditions for a patent attorney, the use of two or more screens shall be allowed.

It is noted that in most Model papers, one or more separate pdfs need to be opened. A modernized EQE shall allow having each pdf open in a separate window that a candidate can position and size at his own choice.
- Wiseflow requires to answer in the integrated editor, which is different from the de-facto standard in real life (Microsoft Word). As a result, it does not come with the same functionality as candidates are used to in real life. E.g., it does not include spelling correction - the lack of spelling correction is detrimental to people than type with many errors; further, typed answers with typing errors run the risk of not being considered as correct when a computer performs auto-marking by, e.g., comparing text strings.
- After hand-in, Wiseflow does not allow to a candidate to download his complete answer (except where the answer is fully written in the editor in the LockedDown browser).

Wiseflow only allows to view the questions and answers in the format of the paper, i.e., one question at a time and possibly requiring scrolling. That is very inconvenient if candidates want to compare their answers to those of other candidates or tutors.

We believe that it should be made possible to download the full answers after the exam is done as pdf.
- In F1, F2 and M1, the Model papers comprise an Overview which indicates which Wiseflow page with questions have been answered and which not. However, many questions are split into several sub-questions and, especially in F2.2, a single Wiseflow page may comprise multiple questions: in these situations, the Overview already indicates “completed” as soon as one of the (sub-)questions on the page has been answered, rather than if all (sub-)questions have been answered.

This shall be improved, so that the Overview gives a reliable indication as to whether everything has been answered or whether (accidentally) some (sub-)questions have been skipped on one of the Wiseflow pages.
- In some Mock papers, e.g., M1, some of the Wiseflow pages comprise a long first sub-question, e.g., “Please indicate where individual features of the product claim can be found” dfrag&drop table that fills the complete height of the screen. It is then easily overlooked (as Roel did) that there one or more questions below that table (e.g., “Add a short reasoning where needed”: free-text box and “Please determine whether the product claim as filed by the applicant is novel.”: pull-down menu Yes/No).

The system should give a warning if such sub-questions are skipped when proceeding with the Next-button to the next question.

- With many different question styles within a single test (F1, F2, M1), candidates have no indication as to how much time would be appropriate for a single Q. For example, a single T/F question will need less time than a double drag-4-statements-into-2-boxes question. **A fair conduct requires an indication as to the time** expected to be needed for a single Q, as in current D1, **as well as the marks available.**
- M2 and M4 model papers are still pdf-based, with pdfs of multiple pages. They are still essentially a printed-paper exam that has been put online.
How does that match the “designed for online exam” promise?
- Both example papers of the M2 Model paper test one and the same competence: SC02 (amend/defend). SC01 drafting and SC03 attacking are not tested at all in M2. Also, M1 (at a lower level) does not really test drafting: the only drafting exercise is directed to a claim for a divisional – which is more like an amendment in view of Art.76(1). Further, M1 is not at EQE exit level, so that it would also not be sufficient if SC01 would have been tested in M1. We believe that a candidate shall be tested on each of the competences SC01, SC02 and SC03 (drafting, amend/defend, and attach, resp.) at EQE exit level and shall pass each of these individually to be able to pass the EQE.
- If the New EQE will proceed, at least two more mock papers for each of the exams shall be made available so that candidates can prepare well. As the definition of all modules will change due to the consultation, the current mocks will need to be adapted to accommodate for the changes.

Detailed comments to Annex 1

- Annex 1 shows a list of transversal competences and specific competences. However, there is no prioritization.
- Annex 1 indicates in its opening paragraph that the list also comprises evaluation criteria. However, we cannot recognize any evaluation criteria. A criterion is “a standard on which a judgment or decision may be based”, so it relates to a measure (quantitatively or qualitatively) that indicates to what extent/degree a competence is mastered. The table however just shows a long list of detailed sub-competences, but without any indication as to what criterion is to be applied to such sub-competence and also without any indication as to which modules may test those sub-competences (which could possibly be seen as an indirect way to indicate the degree to which it should be mastered).
Even if the list is somehow understood as a list of “evaluation criteria”, the Annex lacks a description as to how these criteria are to be applied when designing the exams, and how they can be used in exam preparation.
- Annex 1 does not link any of the specific sub-competences SC01-01 – SC01-15, SC02-01 – SC02-11, SC03-01 – SC03-10, SC04 (many), SC04-01 – SC04-05i to T05.
As the table is presumably used to define the Modules, this suggests that T05 “Work under time pressure with large amounts of information” is not given attention in designing the Modules and the tests.
- The balance between the specific competences of SC04 and SC01/SC02/SC03 is not in balance: almost 3 of the 5 pages of Annex 1 list SC04 competences; the other 2 pages list SC01, SC02 and SC03 competences. The SC04 competences seem to have been drafted at a much greater level of detail than the others (and/or many detailed specific competences for SC01/02/03 are missing) – that has the risk that the other competences get too little attention in the overall design.
- The Annex lacks a description as to why the specific competences were split as they are: why not more, or less? What is the purpose of the split into sub-competences?
- The Annex lacks a description as to how the listed competences shall be used in designing the syllabi and the exams for all modules, and how the various competences shall be balanced and weighted within an exam paper.
- The list of SC02 does not include any procedural aspect of current paper B, whereas, e.g., PACE has been part of the model answer in the past.
- The list of SC02 does not include any Art.52 and 53 aspects of current paper B, whereas, e.g., they have been part of, e.g. B 2021.
- The list of SC02 does not include assessment of full/partial priority.
- SC02-06 is not very accurate and its scope is unclear: does it mean reference signs, and correct two-part form?
- SC0210 seems to be ill-phrased. It now reads “... identifying the best fall-back position from those available and KEEPING the others”, where it is probably meant to read “... identifying the best fallback position from those available and DELETING the others”
- SC02-11 is currently explicitly not part of the B paper (see IPREE).

- The list of SC03 does not include assessment of full/partial priority (especially of OR-claims and generic OR-claims) as an explicit special competence. It seems to be included in SC03-02. In my view, it is a separate competence that needs to get explicit attention.
- SC03-03 seems to cover three competences: 1) retrieving information on publication dates which is not readily available (e.g., citation of previous documents); 2) assessing whether information is public or confidential; and 3) recognizing information which was considered as common general knowledge before the effective date of the patent filing. Due to their different nature, it seems appropriate to list them separately as individual specific competences.
- SC03-07 is ill-phrased: it suggests that novelty of individual features matters, but novelty needs to be assessed of the claim as a whole, and not of individual features. And also in the contents of inventive step, it is the constellation of features of a prior art embodiment that sets the preamble, not individual features.
- SC03-10 is ill-phrased: non-technical features may contribute to the invention (e.g., as they show up as a constraint to be met in the OTP). The term “invention” in SC03-10 should read “inventive step”.
- The term “due” in “SC-04 (5th row) ... suggesting actions which are due in the future (renewal fee payment) and advising the client” is unfortunate, as -for all other fees than the renewal- the due date for a fee payment is the first day on which it can be validly paid, which may well be in the past. I suggest to replace “due” by “to be performed”.
- Where the table in Annex 1 says “identifying”, it should in almost all cases be “identifying and explaining”, as most entries require an explanation/argumentation – e.g., SC03-05: “...identifying whether the patent extends...”; SC04-01 “...identifying the conditions for filing for a patent” will certainly also require a discussion/explanation as to why those are (not) fulfilled; ...
- There seems to be an error in the table in Annex 1: the first 8 entries of SC04 all have the same general number “SC04” rather than that they are individually numbered. That makes referring cumbersome.
- SC04-04c shall also include a general notion of equivalent infringement in EPC states (following Art.69 and the Protocol). It needs to be clarified to which extend candidates need to be aware on equivalence under the various national law.
- It may be considered to add indirect infringement in EPC states to SC04. However, it has an even bigger risk of non-harmonization throughout the EPC territory.
- “Measures” (such as preliminary injunction, conserving evidence, ...) are hinted to in the M4 model paper, but not listed in the table. They are probably too different in the various EPC states, and we suggest to keep them outside the scope of the EQE.
- No references to other jurisdictions (US, JP; IP5) or national jurisdictions in the EPC territory) are listed in the transversal competences, while US/JP (to the extent relevant in proceedings before the EPO) and EPC states (as far as relevant for EP patent applications and patents – National Law tables) are part of the current REE/IPREE. Also, these occur in Annex 1 -without any detail as to the scope of that national law- as well as in the Model papers M3 and M4 - but without a model answer and marking scheme being provided with the consultation, so that we could not determine the scope and detail of the required answer and the expected knowledge and which aspects national law of non-EO jurisdictions and of EPC states was expected-.

- It is also noted that in the table in Annex 1, the absence or presence of a mention of TC06 seems rather arbitrary: it should in my view also belong to, e.g., SC03-05, SC04 (first row), SC04 “identifying interplay”, SC04-01, SC04-04, SC04-05.

Detailed comments to Annex 2

Annex 2 - General

- We note that it is nowhere indicated where the exams will be open book or closed book. We thus assumed that the current practice will continue to apply as to what candidates can bring, i.e.:
 - Open book based on paper material brought by candidates in combination with selection of online/digital legal texts provided by the EQE
 - Candidate can bring any paper material
 - Candidate can access a selection of online/digital legal texts as made available by the EQE:
 - At least the EPO legal texts of the current REE/IPREE
 - As well as the Euro-PCT Guide
 - At least the PCT legal texts of the current REE/IPREE (currently not possible for practical reasons)
 - As well as the PCT Applicant's Guide Introduction to the International Phase / Introduction to the National Phase (currently not possible for practical reasons)
 - As well as, for the main modules (only), the PCT Applicant's Guide Annexes as well as the overview on the PCT Resources website (PCT/PC/WTO states, Entry time limits, Incompatibilities and Reservations, Restoration of Priority Overview, ...) (currently not possible for practical reasons)
- We also assumed that candidates cannot access their own hard drive or any other electronic sources
- If any of the Fundamental modules or Main modules would be closed book, or would allow more electronic access, the character and difficulty of the modules could be very different from what we conclude based on the above.
- We note that a closed book exam is not appropriate as it would be a strange deviation from daily professional practice.

We specifically note that a declarative exam, as far as it is believed to be useful -which we doubt⁴-, would become a mere test of the competence "learning lists by heart" rather than the overall competence "develop and show understanding and skills".

⁴ We consider that only testing **application** of knowledge is useful for an exam, **not** to test purely declarative knowledge. One can actually have a good factual reproduction of the law without understanding how to apply it (e.g., one may recite Art. 123(2) by heart, but always fail to correctly assess extension of subject-matter). Our view is supported by the current Pre-Exam: the current Pre-Exam includes hardly any purely knowledge questions (less than 5%) – even in the Pre-Exam, almost all attention is to testing the application of the law (understanding, skills) .

Our view is also supported by the literature: Miller uses a competence triangle/pyramid: Knows – knows how – Shows how – Does. In our view, in an EQE, "Knows how" (possibly in F1, F2) and "Shows how" and "Does" (M1-M4) are to be tested, not the mere "Knows". Bax, et al, when discussing Miller, indicates also that "It is not intended to link the layers of the triangle to training stages (e.g., knows in year one, does in year four)."

References:

"Toetsen van VCM", A. Bax et al in "Toetsen in het hoger onderwijs", H. van Berkel en A. Bax (Bohn Stafleu van Loghum 2006), section 23.4.2, referring to Miller.

G.E Miller, "The assessment of clinical skills/competence/performance", Academic Medicine 65, 63-67 (1990) - https://journals.lww.com/academicmedicine/Abstract/1990/09000/The_assessment_of_clinical.45.aspx

- The tables and second paragraph of each section in 6.2 comprise extensive lists of contents and competences tested. However, several tables for several modules comprise the same aspect, e.g., “EPC procedural aspects”.

It is not clear as to how, e.g., F1, M1 and M3 differ in scope of the topics that are considered to be part of “EPC procedural aspects”. This repeats the situation from the Pre-Exam vs main exam, which both have the same syllabus in the IPREE and where only the -informal- information “to a level expected from a candidate at two year experience” was given as a guidance; despite the latter, the very first Pre-Exam already had a question on re-establishment in the further processing period – which is certainly beyond that level! Later the Pre-Exam had questions on, e.g., interlocutory revision or renewals during stay.

We believe that it is required to define the syllabus (of at least F1, F2, M1), in more detail, and to also explicitly indicate what is not included. For example, a list of Guidelines paragraphs that are covered and a list of paragraphs that are not covered.

- Annex 2, table in 1.1 specifies 12 months as “**Minimum level of required experience**”, which is assumed to run from registration under Rule 28 IPREE. However, tables 2.1 (F2: 12m), 3.1 (M1: 18m), 4.1 (M2: 24m), 5.1 (M3: 30m) and 6.1 (M4: 36m) specify “Time since **enrolment**”. The last page of the “Modular approach” document also refers to “Time since **enrolment**”.

The latter term “enrolment” seems incorrect: enrolment usually refers to enrolling to a certain paper, but what does it refer to here:

- does it refer to the registration (which would match the graph on page 7 of the New EQE concept paper (so that you can have F1 after 12m and F2 also after 12m), or
- does it refer to the enrolment for F1 (so that you can have F2 12m after enrolling to F1; for Pre-Exam, enrolment can be done as of May i.e. 9m before exam, so that this would mean F1 after 12m and F2 after ~15m)?

We assume that “enrolment” should read “registration”, and suggest that this term is used in all tables, including that for F1, and in the main description (the “Modular approach” document).

Annex 2, section 1 - F1

- General comments:
 - Too many different topics which are not relevant or are too difficult for a trainee patent attorney at an early stage in the career: such as:
 - Organs of the EPO,
 - limitation and revocation, petition for review,
 - fee payment methods,
 - whether or not the EPO as RO charges an amount equal to the transmittal fee when the failsafe is applied.
- The concept paper and the Model exams give the impression that different ways of answering questions in the online environment are tried out, but too much variety is merely adding extra difficulty for candidates which is not testing any key competences, but rather distracting from it.

- It should also be possible in F1 to provide comments on a particular answer, in cases where a declarative statement is not entirely clear or is possibly true depending on a further circumstance.
- The breadth of topics covered in F1 mock was much wider than in F2. This incurs the risk of an overload of information at too early a stage. The foundation-level syllabus should be narrower in scope compared with later modules.
- 1.1 - Content:
 - What is difference between “Basic knowledge” and “General knowledge”?
 - The lists of topics in 1, 2 and 3 seem to cover the complete EPC (substantive, procedural) and PCT., including explicitly advanced topics as opposition, intervention and appeal – we recommend that a selection is made of topics that candidates may realistically have dealt with in their first 12 month on the job, and thus exclude, for example, opposition, intervention and appeal, as well as advanced topics of the aspects listed (stay/interruption as aspect of right to file and/or time limits; renewal fees for divisionals; sequence listings as part of filing formalities).

Also, the F1 syllabus covers not only all EPC and PCT, but even more: TRIPS, national law, IP5. The model paper F1 also shows some difficult advanced topics, e.g., Q.16 of the set of 40 (CHECK). More guidance as to the topics and level needed for F1 is needed, so that a) candidates know what to study; b) study load in the first 12m is acceptable; c) the difference between level and scope of knowledge for F1 and M3 is clear.

 - Rather than listing all topics in 1, 2 and 3, we propose to use a detailed list of Articles, Rules and Guidelines sections (exhaustive) to define the syllabus for F1.
- 1.1 – Level:
 - F1 uses the term “Basic” level whereas F2 uses the term “Entry” level: what is the difference?
 - The model paper is generally the same type of questions/topics and difficulty as the current Pre-Exam, however, the F1 can already be taken after 12m, whereas the Pre-Exam can only be taken after 2 yrs. This suggests that a candidate needs to already have the same degree of knowledge and understanding already 1 year earlier. To my knowledge, it has not been argued that the Pre-Exam was at a too low level in view of its timing, or that it came too late, so that the timing and level of the Pre-Exam seemed appropriate.

Ergo, adjustment of the F1 level (or timing) or F1 scope of the syllabus seems appropriate. We Suggest to adjust the level and the syllabus, by providing a well- and accurately defined syllabus, e.g., by exhaustively listing which Art, Rule and Guidelines paragraphs are covered (so as to exclude, e.g., opposition, appeal, stay, ...).

 - The Model paper seems to go beyond “Basic” or Entry, as it has, e.g., a question on admissibility of opposition (Q.16). one on the interaction between limitation and opposition (Q.32), one on (partial/full) reimbursement of the appeal fee (Q.34), and closure of the national route (Q.40).
- 1.1 - Type of knowledge:
 - Testing purely on declarative knowledge is in our view too limited. It is well-established that testing declarative knowledge does not at all test understanding, whereas the latter is what should be tested in an exam, even at

entry level. Testing understanding of a well-defined limited list of topics is in our view much to be preferred over testing “look-up” skills for these declarative questions.

- In the Model paper, **not all questions are of declarative nature**. E.g., a declarative question would ask for the opposition time limit with the answer being “9m from the publ of the mention of the grant in the Bulletin”, whereas the Model paper asks to calculate the date; also, a Art. 133(2) question would ask whether “an applicant from outside the EPC ”needs a prof rep for filing an EP application”, whereas the Model papers asks where a JP person can do EP entry himself; Q.5 asks to apply Art.87 and R.52(2); ...

So, the Model paper is not in line with the description in Annex 2: it goes beyond being purely declarative. Note that we welcome the latter, but in view of the suggested timing, the scope, and the conflict between Annex 2 and Model paper, adjustments are needed, and the Model paper indicates that a purely declarative paper cannot be made.

If F1 were to become of purely declarative nature, we doubt where it is useful at all. An example of a purely declarative model paper would need to be provided as a follow-up to this consultation round to be able to check its usefulness.

- We propose to drop the idea of having F1 as a purely declarative paper. We rather propose to have a paper which tests where candidates understand and are able to apply the law at Basic/Entry level, i.e., substantially the same type of questions as in the current Pre-Exam, and at about the same time; so after 18m (to pull it a but earlier) or 24m after registration.

However, as F2 seems to already have that scope that, F1 may be dropped.

- 1.1 – Minimum level of experience:
 - The Model paper is too difficult be done at only 12m after registration (start of training period). See also above.
 - If the Model paper would be a purely declarative paper, it could possibly be done after 12m, but as F2 can be taken at that same time, there seems to be no used for an F1.
 - We propose to drop F1 and to delay F2 a bit, so that candidates can master F2 at the time they meet the minimum requirements.
- 1.1 - Type of exam:
 - See other comments on multiple-choice questions.
 - If not all questions are of the same type and worth the same number of marks, an indication as to the number of marks per question needs to be given in the exam paper.
- 1.1 - Question types
 - Annex 2 specifies 20 questions with 406 statements and 2 hours, but the model exam paper has 40 questions with 2 to 3x8=24 (Q.27, drag&drop) statements or equivalents thereof, which is not in line with the number of questions, nor in line with the number of statements per question, while there is no indication that this set of Qs would, e.g., require double time. Consequently, the consultation as a whole (“New EQE” concept paper + Model exam papers) does not allow to form a clear picture as to the level and difficulty.
- 1.1 - Relationship with other papers
 - The paper says “No equivalent in the present system”, but the paper seems to correspond to part of the legal part of the Pre-Exam. The Pre-Exam also has

some declarative questions, but most of the Pre-Exam questions require to apply the law.

- 1.2 – Content and competences
 - The competence codes of Annex 1 are not used.
 - As Annex 1 did not specify which competences had to be developed at which level (e.g., via a rubric) at each phase of testing/minimum time from registration, it cannot be assessed whether the competences in Annex 2 are in line with Annex 1.
 - 3 – TRIPS: a more detailed specification will be needed, as TRIPS is not only about patents, as and TRIPS defines many measures only in general terms while it leaves the implementation to the individual states. As it seems inappropriate to know anything about national law at F1-level, a reference to TRIPS in general is not appropriate and a more detailed specification will be needed.
 - 5 and 11 seem to be essentially the same.
 - 11 lacks novelty (i.e., the effect of a prior art disclosure on the claim, to paraphrase the D committee)

Annex 2, section 2 – F2

- General comments:
 - In the legal part of the Model Mock paper F2.1, the level of the questions in the Mock papers seems generally OK, although again some topics which are too advanced for a beginner. For example:
 - Q7 SISA offices (debatable if anyone really needs to know this) and if AG annexes not available for online lookup, too much paper reference material is needed.
 - Q10 restoration of priority and where to file based on unintentional criteria seems too advanced.
 - Q11 transfers and representation also seems too advanced.
 - In the claims part of the Model Mock paper F2.2, the level seems OK, but:
 - If it not possible to have the patent applications on screen at the same time as the questions, then it must be possible to print these out.
- The breadth of topics covered in F1 mock was much wider than in F2. This incurs the risk of an overload of information at too early a stage. The foundation-level syllabus should be narrower in scope compared with later modules.
- 2.1 - Content:
 - It is proposed to use the same terminology as in M1, and to clarify that F2 (F2.2) is limited to claims analysis of “claims drafted by others”
- 2.1 – Level:
 - F1 uses the term “Basic” level whereas F2 uses the term “Entry” level: what is the difference?
- 2.1 - Type of knowledge:
 - The proposed mix of declarative and procedural knowledge, i.e., practical application, reflects that of the current Pre-Exam. We consider that appropriate.
 - As F2 tests, in an early stage, declarative and procedural knowledge, we propose to drop (the purely declarative) F1 and keep F2.
- 2.1 – Follow-up modules

- In designing the possible sequences of all papers, fundamental and main, candidate's development needs to be considered.
- Herein, (F1,) F2.2, M3 and M4 follow one line of development (the legal competence in the broadest sense); and (F1,), F2.2, M1 and M2 follow another line of development the claims competence in the broadest sense).
In each of these lines of development, the time between successive modules shall not be too long. E.g., there should not a mandatory time of more than 18m between the earliest and the latest in each line (F1/F2.1 – M4; F1/F2.2 – M2).
- 2.1 – Minimum level of experience / Time since enrolment:
 - The earlier entry “Minimum level of experience” is here called “Time since enrolment”. We believe that the term “enrolment” is incorrect, and that the section should read “Time since registration”, referring to Rule 28 IPREE.
 - The F2 Model paper is too difficult be done at only 12m after registration (start of training period). See also above.
 - We propose to drop F1 and to delay F2 a bit, so that candidates can master F2 at the time they meet the minimum requirements, i.e., where candidates can show that they understand and are able to apply the law at Basic/Entry level, i.e., substantially the same type of questions as in the current Pre-Exam, and at about the same time; so after 18m (to pull it a bit earlier) or 24m after registration. However, as F2 seems to already have that scope that, F1 may be dropped.
- 2.1 - Type of exam & number of exams:
 - See other comments on multiple-choice questions.
 - The F2.1 and F2.2 exams are proposed o be tested with two exams of 2 hours each. However, compared to the current Pre-Exam, the length of these exams cannot be understood: F2.2 corresponds to the Pre-Exam 2012 (4 hours in total, 2 hours for claims), but requires much more extensive answering: rather than just giving T or F, also a reasoning must be given to support your answer – with such an extra task, more time shall be available compared to that in the Pre-Exam. Moreover, many of the F2.2 multiple-choice questions (requiring a single or multiple selections) as well as the “fill in the blank spaces” and the “highlight features” questions require a large number of answers (such as 13 answers in F2.2, Q.13)
Also, the Pre-Exam only had 20 T/F statements, whereas F2.2 has more (28) questions. This also calls for more time.
Lastly, the Pre-Exam can only be taken after 2 years whereas F2.2 is proposed to be taken after 1 year, i.e. with less experience – that also calls for more time, even if the questions would be exactly the same.
So, based on the Model papers and a comparison with the well-established Pre-Exam (where, in 2021 and 2022, candidates even got 70×140 minutes for 20 questions), it seems that the 2 hour length of F2.2 is not adequate (and/or the design of the model paper does not reflect the intended paper length).
 - F2.2 part 2 comprises 3 inventive step questions, while F2.2 part 3 comprises 8 amendments questions, i.e., inv step: amendments is tested in a 3:8 ratio.
We believe that this ratio is not well-balanced: the ratio should be about 50%:50%, in view of the importance of both topics as well as in view of the number of aspects that can/need to be tested for each topics. With only 3 questions in F2.2, the various steps of problem-solution cannot be tested with sufficient depth and detail (i - closest prior art selection justified more than a

single question, as does ii - determining the objective technical problem and even more iii – assessing obvious/ could-would/ incentive to combine), This 50:50 ratio is also currently recognized as appropriate in the current exam papers Pre-Exam, B and C (with some variation between different years). We propose to have 5 inventive step questions and 5 amendment questions in F2.2.

- We propose to test the two F2.1 and F2.2 separately, i.e. to require passes for each of them separately (rather than compensating a poor legal part with a high claims part or vice versa, as now in the Pre-Exam). It could be allowed to take those at different moments in time.
E.g., for F2.1, a minimum time since registration of 18m (or 24m) could apply; for F2.2, a minimum time since registration of 18m (or 24m) could apply; F.2.1 and F.2.2 could be taken together (e.g., F.2.1 in the morning, F2.2 in the afternoon) or separately (6m apart; the system should allow so from the start).
- A number of 3 parts with 28 questions (specified as 15+5+8) in total with fixed numbers in F2.2 seems arbitrary, and seems also very limiting for the design of the exam. We suggest to consider to define the exam as having 2-4 parts with in total 25-30 questions. Also the time shall be appropriate, where the current reference (10 questions with 4 T/F statements in 70 minutes at two years' experience level as with the current online Pre-Exam; or 20 such questions in 120 minutes) shall serve as a guidance.
- If not all questions are of the same type and worth the same number of marks, an indication as to the number of marks per question needs to be given in the exam paper.

- 2.1 – Relationship:

- The wording “An amendments exercise incorporates aspects of the present A, B and C exams requires more in-depth knowledge of cases where modifications are not allowable” cannot be well understood. Does the term “modifications” require “amendments”? If so, how can A paper aspects be relevant, as A does not relate to amendments at all?

Further, the Pre-Exam requires a 2 year experience level, whereas the proposed F2 requires a 12 month experience level: that does not justify to include more knowledge, let alone the required knowledge being more in-depth. The F2 questions and required knowledge should be adjusted to a 12 month experience level, or the required experience level shall be increased. The Pre-Exam shall serve as a guidance.

Note: in our view, the required experience level/ supervision period/ time since registration shall be realistic and fair. Putting a too short period (here, 12m) makes candidates that are at a realistic level at 12m fail, as the paper will not meet expectations. Further, it creates a non-equally leveled playing field between candidates that can take a realistic study effort besides their full-time patent attorney trainee job and candidates that can for whatever reason dedicate more time for studying at the cost of their “normal patent work” – a too short required period may thus provide the wrong message and behaviour to candidates: “we recommend that you give absolute priority to studying, if necessary at the cost of getting practical experience”, rather than “you need to gain practical experience and next to that you will also require a significant study effort”.

- 2.2 – The description in 2.2 is not consistent with the table in 2.1:
 - The table gives “Level - Entry”, whereas 2.2 gives “between entry and intermediate level”. This leaves doubt as to the level tested.
We assume that the level is “Entry”, as given in the table, because M1 (scheduled 6m later) is “Entry – Intermediate” (according to 3.1).
We assume that “Entry” refers to “Entry to the EQE” and not “Entry to being a qualified patent attorney” which corresponds to the level after you passed the EQE.
Further, we consider some of the listed topics and topics tested in the model paper not to be at Entry-level, such as introducing disclaimers by amendment – such topics are Intermediate/Advanced.
 - 2.2 only describes the competences for F2.2 (Claim analysis), but fails to describe the competences for F2.1 (Applied procedural law of the EPC and PCT).
 - 2.2 does not link to the competences and their numbering in Annex 1

Annex 2, section 3 - M1

- We find it difficult to see the added value of M1:
 - Claims analysis aspects are already tested at Entry (en Entry-Intermediate, see above) level in required previous module F2, while they are also tested in the follow-up module M2. Further, M1 and M2 can be taken at the same time (which would be at 24m or later, in view of the requirements for M2).
 - The choice to add M1 seems to be rather motivated by platform possibilities (various types of multiple-choice; indication of terms / passages in the text) than by what types of competences all need to be tested – which all have a large degree of formulating your own claim / amendment / argument / attack/ ...
The examples on the Model papers also do not show a clear benefit of having M1.
 - We would rather:
 - delete M1 and its 3 hour test (which is 50% auto-scored multiple choice and 50% free-text), and add **a third 2-3 hour test to M2** (open questions), so that **M2 will test all three** essential skills of drafting, amending/defending as well as attacking (which cannot be done now as it has only 2 parts), or
 - **combine F2.2 and M1 into a single module**, composed of a (max 40%) of auto-answer marked & guided steps part, and a (min 60%) free-text part.
- 3.1 – Minimum level of experience / Time since enrolment (M1: 18 months):
 - The earlier entry “Minimum level of experience” is here called “Time since enrolment”. We believe that the term “enrolment” is incorrect, and that the section should read “Time since registration”, referring to Rule 28 IPREE.
- 3.2 – The description in 3.2 is not consistent with the table in 3.1:
 - The table gives “Entry - Intermediate”, whereas 3.2 gives “at intermediate to advanced level”. This leaves doubt as to the level tested.
We assume that the level is “Entry - Intermediate”, as given in the table, because M2 (scheduled 6m later) is “Intermediate - Advanced”.

Annex 2 , section 4 - M2

- 4.1 Content & 4.2: M2 seems to gather all competences SC01, SC02 and SC03 in a single module, with each competence comprising specific competences already in A, B and C and also further specific competences – the latter essentially relating to the same competence (e.g., amending and/or defending claims) but in another situation (not in response to a search opinion/ office action, but, e.g., in response to a notice of opposition).
- The current EQE tests those three competences in three specific situations (drafting claims + part of description from scratch, amending/defending not in response to a search opinion/ office action, drafting notice of opposition and in particular attacks). These three core competences are not all tested in every M2 exam according to the current proposal, as the exam has only two exercises.

When reading the “New EQE concept paper” and considering the importance of all 3 core competences, it appeared only a theoretical possibility that an M2 exam would only test one of the three, e.g., only amending/defending, albeit in a different situation (“with a different sauce over the same thing”). However, to our big surprise and worry, the M2 Model paper did exactly that: the first exercise was on amending/defending the claims (after summons in examination) and the second exercise as on amending the claims (in response to a notice of opposition). So, both exercises tested the same competence (SC02) – the only difference between them was in the sauce used.

- We believe that it should not be possible to pass the EQE without having been tested and without having passed on all three essential core competences: drafting claims, amending/defending claims, attacking claims.
- Further, we believe that the sauce used shall not be used to confuse candidates by putting a rather standard drafting exercise in an uncommon and strange procedural situation: a competence shall be tested without confusing it with the “dealing with unexpected procedural complications and confusion. A sauce shall only be used to put further limits as to the type of amendments made, e.g., to test Art.123(3) with amendments during opposition.
- Lastly, the M2 description and model papers suggest that advanced legal concepts such as late-filed submissions in first or even in second instance may need to be discussed. Not only is that at a difficulty level of M3/M4, and not M2; it is also not part of the competences that need to be tested in M2 – it is not a sauce, it is a side-dish. Side dishes should not be part of a competence-designed exam paper where the competence does not include the side-dish.
- The competences listed in 4.2 include all competences of current papers A, B and C., plus some with a new sauce (9. “PCT Ch.II reply to WO=ISA” is not really different from a reply to an Art.94(3) EPC communication in item 2)., which are now tested in 3 dedicated papers.

In the proposed New EQE, there is a risk that M1, M2 first exercise and M2 second exercise all relate to the same essential core competence, e.g., defend/amend in M1 as well as (as in the Model paper) in both M2-exercises. The risk occurs in a single anticipated combination (M1 and M2 at the same time; M1 followed by M2 after 6m), but even more when they are taken at non-anticipated times, e.g., M2 first and M1 1 year later. The only way to guarantee that all three essential core competences are tested for each candidate is to have dedicated papers, at Advanced level (=EQE output) for each of the core competences.

We consider it necessary and appropriate to require that each candidates must pass each of the competences 1+4 (drafting – development of A), 2+3+4++6+7 (amending and defending – development of B) and 5 (attacking – development of C) individually.

We thus propose to have module M2 comprise 3 tests that much each be passed individually, i.e., without any compensation between these 3 tests:

- M2-1: competence 1 with sub-competence 4 (drafting – development of A),
- M2-2: competence 2 with sub-competencea+3+4++6+7 (amending and defending – development of B) and
- M2-3: competence 5 (attacking – development of C)

We also consider legal aspects as admissibility of late-filed submissions to be outside the scope of M2, and we propose to test those aspects as part of M3 and/or M4.

- It has been used as an argument by the New EQE working group that it is not needed to test all main competences, as candidates will need to prepare for all anyway.

However, we believe that this argument shall fail for various reasons.

Firstly, this may hold in a university or alike where education and examination are combined, and where the education comprises intermediate tests (“progress tests”, practical assignments, ...), so that the competences are all tested during education in informal or formal tests and assignments so that the final examination can test a subset of the main competences.

Secondly, candidates do not even all get an extensive training – some candidates simply go to the exam and will just give it a try. These candidates will currently not pass, as they need a pass for each of A, B and C (and D; apart from compensation); in the proposed scheme, they could retry until they get a “lucky” combination, e.g., only two B-like exercises but no A and no C as in the Model paper. These candidates may this only have shown to master one main competence (B: amend/defend), which having shown to fail the others, possibly multiple times.

Thus, it is required that the list of competences is prioritized and that each exam has the guarantee to test all of the “main competences” and also requiring candidates to pass each of these and not just a subset or a specific combination.

Thirdly, it seems to have been recognized for the current D paper that its two parts D1 and D2 need to be tested individually, as (further developed) M3 and M4, as they address different competences and the parts are both too important on themselves to allow a combined grade – and by that a possible 30% score on one part compensated by a 70% score on another part. We cannot understand why the opposite is done for A, B and C.

Fourthly, exercises in M1 cannot replace 2-2,5 hour (or longer) exercises in M2. We believe although that drafting, amending and attacking basics can be tested in M1 (as they are now in the Pre-Exam) at a very basic level, open-text answers of exercises of significant length are needed to adequately test M2-competences at intermediate-advanced level.

Lastly, as the New EQE documentation does not describe which minimum requirements as to which competences need to be present in each exam/ exercise and to which extent, it is not possible to form an objective view as to whether the above is a deficiency of the New EQE approach, or just of its documentation; however, the set of Model papers of M2 consists of two amend/defend (“B”) exercises, and no A or C aspects.

- 4.1 – Content:

- Item 6 “Drafting notice of opposition or appeal”: does that also include admissibility discussions, late-filed submissions (with the appeal), RPBA2020 requirements? Needs to be clarified.
- 4.1 – Minimum level of experience / Time since enrolment (M2: 24 months):
 - The earlier entry “Minimum level of experience” is here called “Time since enrolment”. We believe that the term “enrolment” is incorrect, and that the section should read “Time since registration”, referring to Rule 28 IPREE.
 - We doubt whether 24m since registration is appropriate, especially if all M1 and M2 tests need to be taken at the same time.

We note that currently, a candidates needs at least 3 yrs experience to sit papers A-C, and the pass rates show that this is a realistic and fair requirement (if the requirement would be too severe compared to the difficulty of the papers, the pass rates and scores would be higher; of it would be too relaxed, the pass rates would be lower); it this seems that 24m is too short as a generally realistic requirement. We also note that the supervised training period for practical experience is currently 3 years and we assume that that, even though this period will disappear as a requirement to sit the exam, it will remain the same 3 year requirements as requirement for entry on the list; there is thus also no real need to pull all main exam papers forward as much as 12 month to 24 months, as the entry on the list can nevertheless not be earlier than 3 years.

Currently, many candidates take AB in their first main exam year, and postpone C to the second as opposition is generally considered more difficult. It is not known what the effect is on objective and perceived difficulty level is opposition is tested in a 2-2,5 hour exercise (see table 4.1): it may become less difficult (which is not preferred in view of its importance), or more difficult (if only the difficult bits are kept when reducing the length of an opposition paper).

Moreover, **no Model Paper is provided which addresses the opposition/attack competence**, so that the consultation cannot be said to cover the aspect of a 2,5-hour notice of opposition paper – the latter is in our view indispensable for getting a good picture as to how the change of EQE structure may (negatively or positively) affect the testing of this core competence.

 - **We propose to reshape M1 and the two M2 exercises into a MA, MB and MC, with MA relating to a further development of A (focus on drafting claims and, e.g., also add a letter to the client why the claim is not as broad as what the client suggests), MB a further development of B (focus on amend/defend; preferably without the additional sauces that are now proposed), and MC a further development of C (focus on attacking, and, e.g., also add a letter to the client why a certain document cannot be used in an attack, or why a claim cannot be attacked).**

Herein, MA and MB could have a minimum period of 24m and MC of 30m, to reflect the (perceived) difference in difficulty and to give candidates an incentive to take the tests at different moments in time, so as to gradually develop and test their skills and competences.
- 4.2, item 5 “Drafting notice of opposition or appeal”:
 - h. relates to “the opening section of a notice of opposition [...] for the purposes of meeting the formal requirements”. However, there is no such item to that of the formal requirements of the notice and the grounds of appeal: is that not also

to be listed as a separate entry (and, if so, is Art.12 RPBA2020 to be covered)?

We recommend to add it (if it is decided to keep to have various sauces)

- 4.2, item 6 “PCT Chapter II: draft reply to WO-ISA”:
 - If also reply to the second WO-IPEA (which will always be issued before a negative IPER) also to be covered?
We recommend to add it (if it is decided to keep to have various sauces).
- 4.2 does not cover amending on entry under Rule 159(1)(b) EPC, nor responding to the WO-ISA or IPER under Rule 161 EPC.
 - We recommend to add these (if it is decided to keep to have various sauces).

Annex 2, section 5 - M3

- M3 is a further development of D1, part of competence SC04
- It is welcomed that D1 and D2 have turned into two individual papers, M3 and M4, which requires individual pass of the legal (procedural and substantive) and advice competences. W.r.t. M3, , it is particularly welcomed that a candidates will not be able to pass the EQE without having shown an adequate legal knowledge and understanding (whereas he can now pass paper D with a high D2 and a very poor D1).
- General comments:
 - The level of difficulty is fine (as long as it is known in advance which aspects of national procedures will be included in the syllabus).
 - As long as some traditional D1 questions are kept where the candidate must construct a logically reasoned answer and form the majority of the questions/marks, a minority of the new-style questions with, e.g., T/F statements or steps could be included. BUT the breakdown of the questions into various steps should done with care and was overdone in the Model paper. For example, in the mock environment it took too bloody long to provide the legal basis and brief reasoning for a long list of statements via a table - per statement would be much better (more efficient, more intuitive).
- 5.1 – Content/scope & 5.2: The syllabus as far as defined in 5.1 and 5.2, seems to be the same as for current D1 (not extended with IP5 or TRIPS, nor with further national law aspects): EPC and PCT only.
 - The table for M3 does not refer to US, JP and/or IP5
 - The table for M3 does not refer to national law of EPC contracting states
 - However, Q4 of M3 relates to RCE in US – that is not in line with the syllabus
- As the Model paper suggests that the syllabus is to be expanded, the syllabus is not defined in this consultation. The latter makes it difficult to get a good picture as to what M3 is all intended to cover.
- The table of M3 in section 5.1 does currently not include priority, extension of subject-matter acc Art.123(2) and Art.76(1), extension of scope acc Art.123(3) and other patentability-related aspects.
We believe these do belong in M3 (as they also are in D1 now). E.g., the legal understanding of partial priority can be very well tested in M3, and should not be left to be a relatively small sub-topic in an M4 paper.
- The table of M3 in section 5.1 does currently not include extension states and validation states. Is that intended?

- The table of M3 in section 5.1 does currently not include the EP Patent with Unitary Effect, nor the Unified Patent Court and proceedings before that court (national, regional and central divisions). Is that intended?
 - If the EP Patent with Unitary Effect, we consider that the acts to get unitary effect (within 1m after grant file request and, for the time being, a translation; and remedies if 1m is missed) as well as the territorial scope are to be covered, and possibly renewals, but no more detail – the scope of the Unitary Patent Guide may be adequate.
 - If the UPC is included, we consider that it shall be included at a general level, but that it should not include the procedural details before the court (details w.r.t time limits, formalities, ...). After all, only a minority or only a small majority of the EPC states participate in the court. Exclusive competence for EP-Unitary and EP-classical shall be covered; opt-out may be skipped as it is a temporal measure and difficult/ choice may be more subjective than objective.
- 5.1 – Number of exams/ duration/ question type: The duration of 100 minutes multiple-choice and 80 minutes free-text seems to be rather arbitrary. Also, we believe that it is wrongly balanced as the emphasis should not be on multiple choice (which also puts a very high standard to the quality/unambiguity of the questions, as we know from the Pre-Exam), but on presenting as well-reasoned answer that shows the candidate's understanding and mastering the tested competences at the required level.
We thus suggest a duration of 90 minutes multiple-choice and 120 minutes free text, or no multiple choice at all.
- 5.1 – Type: The M3 is proposed to be of a hybrid type.
We doubt whether multiple-choice questions (multi-select, drop down, rank, drag&drop) are appropriate at the Advanced level of M3. We propose to use free-text answers as a rule. We also note that some of the questions of the Model paper are presented in a step-wise form. We doubt whether that is suitable for an exam – such a form seems more suitable for studying, where candidates need guidance to come to a correct understanding and correct argumentation, than for testing. In our opinion, formats suitable for studying are not necessarily appropriate for exams, and the format needs to be selected for its purpose. Some more comfort or easy or marking shall not compromise the real purpose of the exam, which is to test candidates as to their competences. Further, a step-wise form for answering forces a candidate into a specific reasoning mode, whereas not all candidates will have the same way to come to an answer; e.g., some candidates may first answer Yes and then give a reasoning “top-down” from conclusions down to the steps and the facts, whereas others start bottom up to build-up the reasoning and in the end come to the conclusion Yes – both styles are appropriate and shall be accepted in an exam. Lastly, some well-prepared candidates may get confused by being forced into a step-wise answering, whereas some poorly-prepared candidates may get too much guidance and be able to present an answer to each of the steps without understanding the complete picture.
- 5.2 – The description in 5.2 is not consistent with the table in 5.1:
 - The table gives “Advanced”, whereas 5.2 gives “at a level of difficulty transiting from advanced to expert”, which indicates a level higher than advanced. This leaves doubt as to the level tested and needs clarification and consistency.
- 5.2 – The sequence of competences listed is somewhat strange.

- E.g., item 1 (aspects of oral proceedings) would be expected further down in the list and not at its top.

We propose that the competences in 5.2 are presented in a more natural order.
- 5.2, item 17-19 (acknowledging prior art in descry/ create fall-back / file notice of oppo)
 - It is not well-understood what is meant with items 17 -19 in section 5.2: these competences rather seem to belong in M2. If these are intended to be part of M3, further clarification of the meaning and scope of items 17-19 is requested, and in particular the difference (or correspondence) with M2.
- No marks are indicated in the Mock paper for each of the questions in M3.
We consider an indication of the marks necessary to allow a candidate to work efficiently and to have an indication as to how extensive the answer shall be.
- No model answers were made available for the mock papers. We could thus not see what the expected answer is, and what reasoning/detail/legal basis shall be given.
As a consequence, giving an opinion on the length of the paper and the required type of answers is difficult.
- A full consultation shall include model answers as well as a marking scheme, as well as a detailed syllabus (some questions address unexpected topics which, in our view, do not all belong in an EQE) – see below).

Annex 2, section 6 - M4

- M4 is a further development of DII, with less emphasis on the patentability discussion of the situation as it currently stands and less emphasis on improving the patent situation, but more emphasis on advice: effect of patent portfolios, infringement, measures.
We noted that one of the exercises in the Model papers included a time line – presumably to save the candidate time in analyzing the validity of the patent portfolio; we doubt whether including such a time line in the paper meets that purpose as the timing of events and the facts of the paper are best understood when reading the paper – getting the events and facts when reading the paper also tests the correct understanding of these. Further, candidates use different ways as to how they make a timeline and presenting a timeline in one specific format may not have benefits to all candidates. We believe that understanding of the facts based on a text is a crucial competence (as was also recognized in the competence analysis as transversal competenceTC05), and shall continue to be tested in M4.
- We appreciate that M3 (legal questions) and M4 (opinion/advice) will be tested separately, as they test different competences, and as candidates will not be able to pass the EQE anymore with a poor D1 or a poor D2 with “compensation” by the other part (and sometimes even with very serious errors as to what the rights conferred by a patent (application) really are).
- General comments:
 - The intention is to place more emphasis on client advice and less on patentability analysis. Fine as such, but does this mean that there will simply be fewer disclosures and you still need to do a complete analysis of priority validity, identify ALL prior art etc etc or will a “sloppier” approach than currently required in a D2 be allowed.
 - There is a disadvantage to have F1/M1 and M3 far apart in time, as candidates may have forgotten all legal knowledge and need to start again from scratch when preparing for M4. It could thus be advantages for M3 preparation to swap M2 and

M3 chronologically compared to the current proposal. However, if M4 would then be 12 month after M3, there would be too much time between M3 (D1) and M4 (D2), while analysis of a situation / description of (procedural) steps to be taken in M4 still requires a lot of M3 (D1) knowledge. Candidates will thus need clarity as to what will need to be brushed up before sitting M4?

- 6.1 – Content (item 4) and 6.2:
 - Item 4 describes “[...] so as to draft independent claims covering all potential embodiments and dependent claims to define fall-back positions”, and 6.2 describes “The objective of the exams drafted at this level is to assess whether the candidate has acquired the competences needed to present arguments for the purposes of drafting claims and legal documents, including claims and their amendment, responses to Office actions and notices of opposition or appeal.”, as is also detailed in items 9 and 10 in 6.2

Is it intended that M4 covers true drafting of main and dependent claims according to Paper A/SC01 for a first application, as well as amending claims as in Paper B/SC02 or attacking claims in detail as in Paper C SC03 ? Or is it to be understood as in current DII, where a mere indication as what a claim should be directed to is sufficient?

We believe that true claim drafting/amending/attacking shall not be part of M4, but that indications as to what can be claimed/amended/attacked in the indicative way as in current paper DII shall be part of M4 (as being part of assessing portfolios and improvements in view of business needs).
- 6.1 – Content (items 5, 6) & 6.2:
 - It is not clear from the description what level of detail a candidate needs for assessing infringement according to specific national law/case law (e.g., equivalent infringement, indirect infringement) in specific EPC countries and in specific IP5 countries.

A clear definition of “infringing activities” and a reference to a document (as now in Rule 22(1) IPREE for the current syllabus) seems necessary.

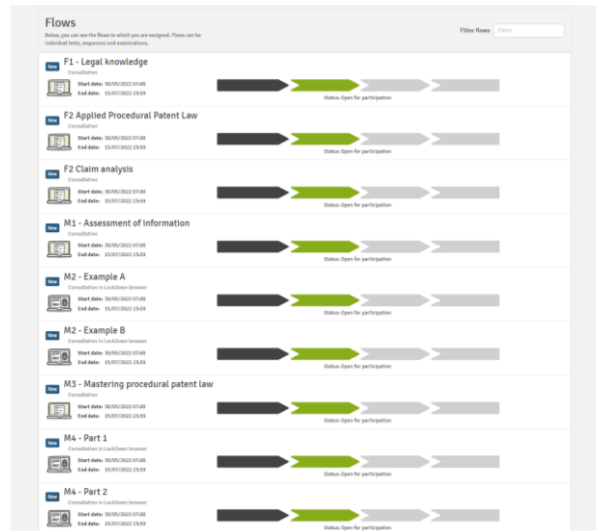
“remedies in certain jurisdictions” seems to refer to Art. 42 – 49 & 50 TRIPS (Article 43 Evidence, Article 44 Injunctions, Article 45 Damages, Article 46 Other Remedies, Article 47 Right of Information, Article 48 Indemnification of the Defendant, Article 50 Provisional measures).

It is not clear from the description what level of detail a candidate needs on legal measures/en remedies for enforcement or relief according to specific national law/case law (e.g., saisie in France, disclosure in UK, discovery in US; kort geding in NL) in specific EPC countries and in specific IP5 countries. Even if the list of countries would be limited to, e.g., UK/DE/FR: what to know of their national law? Which are appropriate legal texts?

 - A clear definition of “remedies in certain jurisdictions” and a reference to a document (as now in Rule 22(1) IPREE for the current syllabus) seems necessary.
- 6.1 – Level:
 - How is “Expert” level different from “Advanced”?
 - How would you rate current A, B, C and D papers on the scale Basic – Entry – Intermediate – Advanced – Expert?
- 6.1 – Number of exams / duration / question types :

- It is appreciated that it has been recognized that the competences for M4 can only be tested with open questions requiring free-text answers.
- The proposal defines the M4 exam to be 5 exercises split into two parts (2 cases and 3 cases), each part lasting 2 h 10.
It is not clear why the length of a part would need to be defined as 2 h 10, and not as “between 2 and 3 hours”. We propose the latter.
- If the total exam time for M1/M2/M3/M4 would become too much when M2 is made into a 3-competences model with 3 tests (SC01, SC02, SC03), even when dropping M1, it could be considered to reduce M4 to one part of 1 h 30 (1 or 2 cases) and one part of 2 h (1 long case), i.e. a total of 3 h 30.
- The list of competences in 6.2 does not seem to be fully in line with the definition of the Content in 6.1. E.g., 6.2 does not include a reference to US, JP, CN, KR (item 3 in 6.1 – Content) nor to “identifying infringing activities and remedies in certain jurisdictions, e.g. UK” (item 5 in 6.1). The only possible coverage of these two aspects seems to be the phrase “know infringing activities (in comparative patent law)” in item 5 of 6.2.
We believe the coverage of detailed knowledge of law other than EPC/PCT shall not be covered by the EQE (apart from national law of contracting states as explicitly referred to in the EPC and given in the national law tables). We also note that Art. 134a(1)(d) and Rule 153 limit the competence and privilege to “validity, scope of protection or infringement of a **European patent** or a **European patent application**”
- M4 “5. Advise client with respect to the rights conferred by a patent and acts required to enforce a patent (potentially by identifying infringing activities and remedies in certain jurisdictions, e.g., UK)”.
“certain” is not defined: which states are to be covered?
See above to M4.3, and also referring to M4 model paper: does a candidate really need to know the differences between equivalence case law in UK, DE and FR? The paper as well as the model paper suggests so. We believe that is not appropriate, as it is not the competence of an EP attorney, but should be left to the national attorney/lawyer/judge.
“infringing activities” may be referred to, in the general sense of TRIPS, but not in the particular implementation in the various national laws.
What is meant with “remedies”? If the measures in TRIPS are meant, then the same comment holds as for equivalence. Would one need to know “saisie”, “conservatoir beslag”, the Enforcement Directive, ...? All seems to be covered by “remedies”, so this needs clarification and needs to stay within the competences of an EP attorney (also in view of the scope of the client-attorney privilege of the EPC).

Detailed comments to the Mock Papers



As the New EQE website indicates:

“The material provided for the consultation will include, in addition to the concept paper, details of the proposed modules, the list of competences tested, **a set of model examination papers for these modules** and a questionnaire. The model papers, produced by a joint EPO-epi team, will give an idea of how the future EQE might look. Please actively contribute once the model papers and questionnaire are available.”

Unfortunately, the model papers **did not include**:

- any indication as to the number of marks per question (apart from M4);
- any indication as to the time available (nominally) per question,
- any answers to the questions,
- any indication how the different types of sub-questions are rated (various multiple choice formats, drag&drop, pull-down, free-text); e.g., if a T/F sub-question is followed by a “provide argument” box, it is very relevant to know the relative marking and the effect of inconsistency between the two answers;
- any indication as to how ambiguities in the question and/or alternative answers are dealt with;
- any explanatory comments as to why certain question format were chosen.

Without this information, it is impossible to assess whether the papers are at the intended level and what the real expectation level of the designer of the paper, and the designers of the New EQE, is.

Note: In the following, we address the design and scope of the respective papers, as well as the individual questions and exercises. Some comments go into, what may appear, small details of questions of the Model paper, but such details often have a significant impact on how the scope/syllabus/level of the module is understood (e.g., a question being too difficult for a certain module due to a detail in the question or its wording) or in creating an unclarity / ambiguity to the question, or unclarity as to what a certain aspect of a module is supposed to comprise (e.g., w.r.t. M4: Annex 2 describes “identifying infringing activities and remedies in certain jurisdictions, e.g. UK”

and the wording of M4, part 2, Wind turbine suggesting the need to discuss differences in equivalent infringement case law between UK, DE and FR) such that the syllabus will need clarification.

F1 - Legal knowledge

Consultation

Start date: 30/05/2022 07:00

End date: 15/07/2022 23:59

- I do not see how the promise that ambiguities and language differences will be less than for pre-exam is met: how? (while keeping “equal treatment” = not disadvantaging candidates that answered a question correct that is left out of the marking (rather than neutralized))
- It is not indicated how long this flow takes... seems a lot for 2 hours...
- Moreover, the flow has 40 Qs while documentation says 20 Qs.
 - This leaves doubt as to how long the paper will be and how difficult the paper will be (doing double amount of Qs in the same time makes it more difficult).
 - Note that some Qs are a single Q, whereas others are multiple (e.g. 2 x 3 items not filed/not admissible for oppo)
- Some Qs not unambiguous, e.g., “valid” filing of a PCT with EPO by a JP:
 - R.12.1(a) PCT + R.157(1) EPC = invalid, or R.19.4 = valid as IA and date saved?
- In Q.1, “the following shall not be regarded as inventions”, only 1 out of 6 options could be selected – one could not select, e.g., a + b (only one of a-d, or e=none or f = all)
- It is not immediately/directly apparent from the wording of Q.1, Q.2, Q.13, Q.19, Q.20, ... whether only a single choice (Q.1) or multiple choices (Q.2) shall/can be made.
It is suggested to add “Select one” and “Multiple statements may be selected possible”
- Some Qs seem not very interesting and not worth asking, e.g. Q.2 (which are part of the EPC), Q.4 (EPC-PCT correspondence – can be easily answered with a correct reference book, requires no knowledge nor understanding of the law),
- Q.6 just asks for one date (expiry of a time limit; as Q.35 and Q.39) vs
Q.10 asks for a single choice between Yes and No vs
Q.36 requires a single choice of various alternatives (so, like 5 T/F statements but with correlation) vs
Q.16 asking for 2 x 4 combinations (2 boxes – oppo not filed or not admissible; 4 statements): does not seem well-balanced (effectively 1 vs 8 questions!); Q./4 even 2 x 5; and Q.27 3 x 8; and Q.34 5 x 5!!!
- Q.21, last statement is unclear; the rO will send such invitation, but will also require a late furnishing fee – the latter is not included in the statement, so the statement is True but incomplete, i.e. False?
- Q.26 has a sequence of T/F statements. The first asks what the rO is, the second asks where the fee need to be paid – how is the correction between these statements dealt with in the marking: if one selects a wrong rO in the first Q, than selecting that same office as rO in the second Q is less wrong than is they are not consistent.
- Q.28 is confusing as it says “a European patent application filed before the filing date of DE-U and published after the filing date of EP-A.”. This is not wrong, but it would be more accurate to say “a European patent application filed before the filing date of DE-U and published after the filing date of DE-U.” in view of the valid priority from DE-U.

- The usefulness of Q.33 (bodies of the EPO) is doubted.
- Q.39 asks for the last day to file a demand. This depends however of what one aims for, and that is not indicated in the exam: get into ch.II examination under R/.54bis.1 (22m/3m), or to get longer than 20/21m for states that have a reservation under Art.22(1) PCT → 30/31m for ... (LU 20, TZ 21) under Art.39(1)(a) (19m – election effected) – AG-IP 10.050
- It is not indicated in the drag&drop questions whether:
 - Every statement needs to be dragged in exactly one box, or
 - Some statements may be dragged in two(or more as in Q.27) boxes, or
 - Some statements may be left apart, i.e., not dragged in any of the boxes, or
 - Some boxes may be left empty
 Nor what the effect is on the marking if:
 - A statement is dragged in multiple boxes even though only one is correct;
 - A statement is not used;
 - Whether not dragging into any box scores lower or better than dragging into a wrong box
- Although the documentation says “20 questions with 4-6 statements.”, the paper also includes single questions asking for a date (Q.4, Q.6) and a question with only Yes/No options (Q.10), a question with a single statement with 3 options (Q.13), and a question with drag&drop boxes (Q.16: 2x4;

F2 Applied Procedural Patent Law

Consultation

Start date: 30/05/2022 07:00, 2 hours, 20Qs, MC & open

End date: 15/07/2022 23:59

- Some Qs requires a T/F or highlight first and then an argumentation to support the T/F or highlight answer.
Will the argumentation also be looked at if the T/F or highlight answer is incorrect?
- As F1, mix of various question types.
- As F1, no indication of number of marks per Q. So not clear how to allocate time for the 4 T/F statements of Q.1 vs the 4 box x 6 drag & drop + legal basis of Q.2, etc.
Time/mark indication needed!
- Q.2, 30-% reduction statement: the question fails to refer to the declaration that is needed to get the reduction [R/6(6) EPC] – consequently, the “The payable filing fee will be reduced by 30%” is ambiguous.
- Q.8-b: by when must translation be filed (PCT transmitted to IB under R.19.4) as filed with EPO in IT: not clear whether only R.12.3(a) must be considered, or also R.12.3(c), or even R.12.3(d). In view of the transmittal under R.19.4, it is likely that IB=RO sends invitation...
As the answer is from a pull-down menu and allows no argumentation, the question will need to be neutralized in view of this unclarity.
- Q.9-c) asks for the fee for the intervention, but that will depend on whether the intervention is filed before or after 1/4/2022 (deadline is 22/2/22 + 3M = 22/5/2022),

when the fee amount changes.

The question should have been drafted to be robust for fee changes, i.e., with other dates.

- Q.10-b) (time limit for restoration of prio) will be answered wrongly if Q.10-a) (expiry of prio) is answered wrongly, as the time limit for restoration of priority is an aggregated time limit.

This would result in double penalization, which is in principle to be prevented.

Care should be taken to prevent double penalization,

- Q.10: is it really expected at F2 level that the DE office does not allow restoration of prio under R.26bis.3 (<https://www.wipo.int/pct/en/texts/restoration.html#D>) ? In my view, that is advanced level., whereas the documentation says F2 is entry level at 12m since enrolment.
- Q.13: last statement adding a dependent claim to ABCD will be to the discretion of the examining division – Rule 137(3): the statement does not take this into account..
- Q.14: for each option (out of 4), a candidate needs to indicate the deadline. This results in a double penalization of candidates that suggest incorrect options, as they have the option incorrect and will need to spend time on calculating a time limit for which there is no marks.

Double penalization should be prevented as much as possible.

- Q.15-a) asks for the earliest possible date of international publication (bearing in mind that PCT applications are published on Thursdays)?
 - A candidate can only give a date, but as the **earliest possible** publication depends on whether the applicant asks for early publication or not, the answer cannot be given (I assume that the expected answer is not based on filing a request for early publication today and tasking the time for technical preparations into account – if it does, the Q is not at entry level...). So, the question is not unambiguous.
 - Further, the question has an error: PCT applications are **not** published on Thursdays if the IB is closed on that Thursday, but -usually- on the following Friday (see, e.g., PCTR Newsletter April 2022 - Change to Publication Schedule: Publication of 27 May 2022, https://www.wipo.int/edocs/pctndocs/en/2022/pct_news_2022_4.pdf). Such an error in the question makes the question ill-phrased and requires it to be neutralized.
- Q.15-d) fails to recognize that the fees for the demand can also be paid to the IB, as well as (I think) to any other office under the (rather new) fee transfer service.
- Q.17-(iii) is imprecise: new examples can be added to the description when filing the divisional if they are directly and unambiguously derivable from the parent application, e.g., if they are a copy of the subject-matter of a dependent claim that was not, as such, present in the description of the parent. Adding the original claims as clauses is very common, and cannot be objected to (even though the clauses cannot be maintained until grant.
As a result, the statement is not unambiguous or may be understood differently, so that the statement needs to be neutralized. It seems that the risk for neutralizations in the New EQE is not reduced to that in the Pre-Exam...
- In Q.18: the lower amount is conditional on the filing of the statement under R.6(4) – that is not reflected in the question and the answer options.

- Q.19: are sequence listings and procedural deficiencies considered entry level? I do not think many candidates and tutors will agree to that.
This as well as some earlier questions show that a definition of entry level is required.
- Q.20 asks for ISAs for rO=Chili / applicant = Argentinian + Colombian + Chilean, and their language requirements. That seems not covered by the current REE/IPREE.
Will all Applicant's Guide Annexes be part of the syllabus? If so, these shall all be available online during the exam, as otherwise way too many trees need to be cut down for all candidates to print over 1600 pages of AG-IP Annexes, which goes against the EPO environmental policy and also does not serve a purpose.
- Q.20 asks for ISAs for rO=Chili / applicant = Argentinian + Colombian + Chilean, and their language requirements: nis that considered entry level? I do not think many candidates and tutors will agree to that.
This as well as some earlier questions show that a definition of entry level is required.

F2 Claim analysis

Consultation, 2 hours

Start date: 30/05/2022 07:00

End date: 15/07/2022 23:59

Part 1- Q 1-10:

- The highlighting features to indicate why an embodiment is not covered or what makes a claim new are nice ways to test.
But: the length of each question as a whole requires scrolling, and one may easily accidentally (un-)highlight a word when scrolling. This question format will need to be protected against accidental highlighting.
- Q.3 & Q.4: Pre-amble questions are ambiguous when an object has an attribute and the difference is in a different attribute. E.g., if the prior art has a metal foil and the invention has a plastic foil, one could argue that both of the following are ok:
 - Object having a foil, characterized in that the foil is a plastic foil;
 - Object, characterized in that the foil is a plastic foil;
 However, one may also argue that the first is incorrect, as the prior art does not show the genus foil, but only the species metal foil, and it is not allowed to read a generalization in the prior art – G 2/978, G 1/03.
On the other hand, ignoring in the second one that the prior art has some type of foil is counterintuitive.
So, pre-amble questions need special care, to prevent situations like the one above. (See also a functional feature as attribute in Pre-Exam 2018, statement 12.2, which was neutralized)
- Q.10: you need to argue inventive step in just 50 words... is that possible: you need to identify the closest prior art and indicate why, you need to identify the distinguishing feature and derive the effect and from that the OTP, and then you need to argue obviousness (could-would/ incentives): a complete reasoning is not possible in 50 words. Questions asking for an argumentation shall allow enough words. It is understandable

that the committee wants concise reasoning, but they shall not be forced to be more concise than what is necessary!

Part 1- Q 11-15:

- Similar as above.

Part 2 – Q.16-17:

- 3 external pdfs are needed, which can not all be viewed at the same time.
Requires an update to the system to easily see multiple documents, and to compare different documents.
- Q.16: are reference numbers so important that you want a candidate to spend time to find and insert 13 reference numbers in a claim?
In our view, exam time shall be used for more interesting aspects, where understanding and applying of the claims analysis principles are tested and not such formal details.
- Q.17: a phrasing like “product 1 comprises all the features of claim V” is to be prevented.
For example, if the claim defines a vehicle and product 1 is a car, product 1 does not comprise the general concept of vehicle! But it is within its scope of protection!

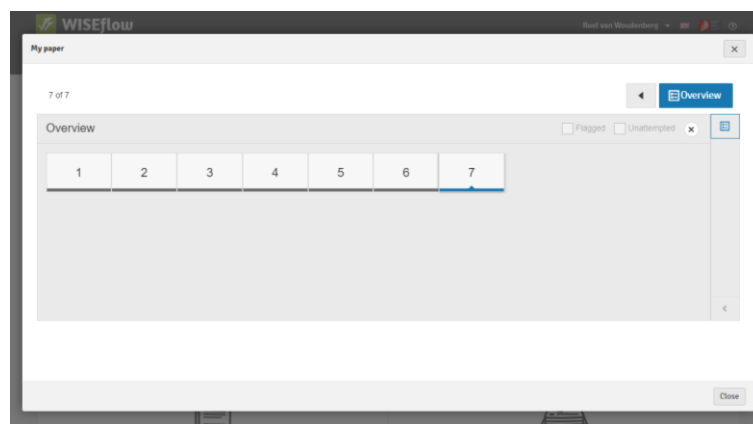
Part 2 – Q.18-20 (various, inv step)

- Again, 3 external pdfs are needed: see above.
- Q.18 asks for novelty w.r.t. 3 prior art documents, so will it get 3x as many marks as questions that test novelty w.r.t. 1 prior art document/embodiment?

Part 3 – Q.21-28 (amendments)

- 1 external pdfs are needed: see above.
- Q.18 asks for novelty w.r.t. 3 prior art documents, so will it get 3x as many marks as questions that test novelty w.r.t. 1 prior art document/embodiment?

F2 Overview



- In the overview, it appears that all questions are answered. However, the indication does NOT relate to every question, but only to every “Wiseflow page”: as soon as one

question on a wiseflow page has been answered, the page as a whole is marked completed.

This is very misleading as all “Wiseflow pages” have multiple questions: page 1 = Q.1-4; Page 2 = Q. 5-7; page 3 = Q.8-10; page 4 = Q.11 – 15; page 5 = Q.16-17; page 6 = Q.18-20; page 7 = Q.21-28.

I checked the Overview page before I submitted my answer and all seemed complete.

However, when I checked my answers afterward, it appeared that I had not answered Q.10. The overview page needs to be improved, so that this cannot happen!

Moreover, Q.10 was at the bottom of a long page, after Q.8 and Q.9. When I answered Q.9, I probably did not see that there was another question, and the Next-button simply allowed me to proceed without a warning that I did not answer Q.10. The Next-action needs to be improved, so that this cannot happen!

M1 - Assessment of information

Consultation

Start date: 30/05/2022 07:00

End date: 15/07/2022 23:59

M1, general

- Most of the questions present a long description of the application or a document in the left column of the Wiseflow browser. However, it is not possible to annotate in that part.

Annotation shall be possible in the in-line texts as well as in the pdfs

- Several times, the next question uses the same description of the application or a document as the previous question in the left column of the Wiseflow browser. A candidate may consider it necessary to check carefully whether the text is the same or different.

If texts are identical in subsequent questions, they should not be repeated, but a single copy shall be available. That copy shall also allow annotation.

- Some of the Wiseflow pages comprise a “Please indicate where individual features of the product claim can be found” drag&drop table that fills the complete height of the screen. It is then easily overlooked (as Roel did) that there are one or more questions below that table (“Add a short reasoning where needed”: free-text box and “Please determine whether the product claim as filed by the applicant is novel.”: pull-down menu Yes/No). The system should give a warning if such sub-questions are skipped when proceeding with the Next-button to the next question.
- The usefulness of the “Line Reader” could not be understood.

M1, task 1

- Page 1: The “Which of these claims describes the invention best” may seem a relatively easy question, but it is not indicated how much time a candidate has available for this. Further, the “Box for a free text claim” may be used as an alternative to selecting one, which may require extra time compared to a selection.

Also, a candidate could use the “Box for a free text claim” to draft a claim which is also the same as he best version, but differs by a minor aspect: how will that be marked? Or what if a candidates simply types a rephrased version of the best claim?

- Page 2: The “Which features can be found” drag&drop question (5 features, 7 pars + implicit + Yes + No) seems not very useful as it is a simple lookup exercise. Further, individual features are not important, it is the embodiments as a whole that are directly and unambiguously derivable.
- Page 3: “Drafting” a claim by using keep/remove or add of features seems to be a very artificial way to compose a claim. It is also not indicated how a candidate needs to act if he/she considers multiple alternatives to satisfy the requirements.
The phrasing also suggests that one could compare the broadness of a claim that has “10 or 20 um” added vs one that has “two or more pouches” added.
This question format seems to be too complicated for its purpose: test which features are needed for clear, new and inventive claim.
Limiting to a “common thickness” does not seem to be inventive.
- Page 4: The Q “Does the claim fulfil the following provisions? Art. 54/ 84/ 123(2)” is legally incorrect: if the claim violates Art.123(2), no filing date is attributed to this claim and novelty cannot be assessed. So, a candidate that would consider it to violate 123(2) cannot give a legally sound answer to the 54(2)-question.
This will require a full neutralization of this question.
- Page 4: Further, the Q “Does the claim fulfil the following provisions? Art. 54/ 84/ 123(2)” only has single box of 100 words max to argue novelty, clarity/ conciseness/ support and basis/ extension of subject-matter:
 - It seems difficult to argue that in 100 words if following the standards that the C paper has set as to how to argue each of these three requirements
 - What if a candidate argues just 123(2) if he considers it to be extension. Then there is no legal reason to also argue 54 and 84

M1, task 2

- Page 1: As above, the “Where can features can be found” drag&drop question (10 features, Yes/No, 4 pars; but contrary to the above no “implicit”) seems not very useful as it is a simple lookup exercise. Further, individual features are not important, it is the embodiments as a whole that are directly and unambiguously derivable.
The “short reasoning box where needed” is useful, but is reasoning not always needed?
The “conclusion” question at the end is easily overlooked. Measures should be taken that such short questions after long texts cannot be accidentally overlooked, e.g., by making a response mandatory.
- Page 6: idem
- Page 6: The format on the screen is very cumbersome:
 - the feature table does not fit on the screen, it is too long
 - the patent application needs to be viewed in a separate pdf window
 - the D2 document is not visible in full – to see the complete text or to see the figures, a button needs to be clicked.A better screen layout is strongly needed.

- Page 7: normal drafting question, including basis (support). But the needed documents (application, D1, D2) cannot be seen side-by-side. This needs to be improved. If application, D1, D2 are printable in advance, this needs to be announced.
- Page 8: inventive step question – taking inv step step-by-step: nice question, but with the same issues as on page 7. Further, not all boxes can be seen at the same time on the screen.

M2 - Drafting patent documentation and reasoning points of law and technique

M2 - Example A

Consultation in LockDown browser

Start date: 30/05/2022 07:00

End date: 15/07/2022 23:59

- Example A requires a response to summons for oral proceedings in examination in accordance with competence SC02. He needs to file written submissions and a short letter explaining to the client what he did and why,
- The substantive part is unnecessarily complicated with taking over representation. In our view, those aspects can better be tested in M3. Also, it unnecessarily takes time that can otherwise be used for the substantive matters.
- The new option to also check auxiliary requests is considered useful. However, it needs careful instructions to the candidates: do the main and aux requests both need to be admissible and allowable (if so, why file the aux)? Or can a candidate just draft a main and aux to have two attempts, and can he get full marks if only one of them is allowable (and does it matter which)? Is it OK to file a non-allowable main exam or -if late-filed- main or aux that will not be admitted?
- The new option to also draft a short note to the client as to why he picked a solution and/or why other solutions were not picked is welcomed. It allows to argue why, e.g., wish 1) from the client could not be fully met and why an alternative choice was made.
- Candidates will need guidance as to how many marks are available for the written submission and how many for the (max 200 word) letter to the client, E.g., this may guide them to, if they still have 20 minutes to go, decide whether to continue with the written submissions and forget about the letter or whether they should accept incomplete written submissions and focus on the letter.
- Page 2 of the paper says “As you will see, we do not have a lot of time to prepare our written submissions.”. but the paper nowhere indicates when the written submissions need to be filed. So, a candidate will not know whether they can be timeline filed, or whether the R.116-date has already passed. There seems to be no reason for the “not a lot of time statement”: these type of statements should not be given as they may confuse clients.
Further, we believe any late-filed argumentation or admissibility arguments should not already be tested in M2 – these topics are at the level of M3/M4 and shall be postponed until those papers.

M2 - Example B

Consultation in LockDown browser

Start date: 30/05/2022 07:00

End date: 15/07/2022 23:59

- Need to draft grounds of appeal and defend the requests (from the proprietor) on file, in acc competence SC02
 - We observe that this M2 does not test any claim attack competence (SC03 - “paper C”), whereas we believe it is an indispensable competence that needs to be tested and passed by every candidate to be able to pass the EQE.
 - We observe that this M2 does not test any claim drafting competence (SC-01 - “paper A”), whereas we believe it is an indispensable competence that needs to be tested and passed by every candidate to be able to pass the EQE.
 - Defending claims in opposition, without any amendments, is merely a variant on paper B than on paper C. Example A was however also already testing defending claims (with amendments),. So, in this M2 exam, Task 1 and Task 2 focus on the same competence = argumentation in favor of patentability. The different circumstances of Task 1 and Task 2 are in our view not sufficient to test the same competence twice, nor to not test the claim drafting and claim attacking competence at all. The advertised competence-based approach does herein fail to meet its promise, as two core competences are not tested in M2 (and only at a very basic level in M1, which is insufficient for a full EQE pass).
- Uses a pdf of 18 pages: is it really adapted to an on-screen online exam?
- Will this pdf be printable?
- The additional uncertainty of the type of paper seems to fit no other purpose than to create a level of confusion, at the cost of a clear target = type of competence tested.
 - Rather than knowing in advance that an A, B or C paper needs to be answered, candidates are not informed about this in advance.
 - Further, the type of paper may be obscured by hiding amendments in a response to a notice of opposition or alike, rather than simply a search opinion or office action.
 - This confuses the claims drafting/amendment/attack competences with procedural complications and legal complications, such as arguing why a late-filed submission is/is not admissible.
 - These legal competences are however at an M3 level, which is scheduled only after M2 – which indicates that also the Working Group considered this an advanced legal topic that is only to be tested at a later moment in time.
 - We thus propose to:
 - Delete the legal and procedural elements that were planned to be added to M2 (compared to B and C);
 - Not create confusion by letting candidates be in doubt about the type of paper, so not creating a single M2 module with 2 papers, but testing the drafting, amending and attacking competences in free-text form in 3 dedicated papers, as in current A, B and C. These dedicated papers can each have a length of 2-2,5 hours, i.e. reduced to current A, B and C.

- Comment on the paper (M2, Example B):
 - Annex 1, page 4, shows an underlined and/or in the claims of the B1 publication. That seems rather odd, and is confusing to candidates. Was it intended?

M3 - Mastering procedural patent law

Consultation

Start date: 30/05/2022 07:00

End date: 15/07/2022 23:59

- M3 is a further development of D1, part of competence SC04. See above for comments on the syllabus.
- The breakdown into many different sub-questions (Q.1, Q.2, ...) suggest an independency, but there is a large dependency, e.g., between a and b, with the risk of double penalization. This dependency shall be prevented. It could be prevented by using less sub-questions which are organized such that they are independent. Or, e.g., Q.2a shall be formulated as "Argue why the third applicant is considered the common representative of all applicant" rather than "Who is", so that the outcome of Q.2a is given in the question and any further answer is not dependent on it.
Note that breaking down the question into many sub-questions may also have the risk of creating an unclarity as to what has to be answered under which sub-question. E.g., in Q.5-c, d and e, OP2, transfer of opposition may be mentioned in every of these boxes, and in Q.10-b, a well-reasoned answer will already include the legal basis that is asked for in Q.10-c (Note: if giving arguments in b, and legal basis in c, the link between the reasoning steps and the specific legal basis gets lost.).
If a breakdown is done, the answering shall be unique and unambiguous per sub-question, and the breakdown shall not be artificial (so as to, e.g., force candidates to provide a reasoning without legal basis in b) and to provide the various legal basis in c) as in, e.g., Q.10).
- The question formats for Q.3 and Q.4 are much more suitable for a well-prepared candidate. They test not only the answering of readily provided steps, but also test the understanding of the question as a whole and all (implicit) steps in their context.
- Note that, if one wants to breakdown questions into parts, that may be done without negative effects for candidates if the question presents two scenarios as in Q.4 (1: EP3-HK; 2: US3): then, it would be a natural and intuitive choice to add two answer boxes, one for scenario (1) and one for scenario (2), but that is not done in Q.4. It is done in Q.6.
- If a T/F format is used (with an open text field as a next sub-question to give some arguments), multiple statements shall not be mutually exclusive. This is however the case in Q.5, first 2 T/F statements, which ask respectively "Montenegro is an extension state and therefore PROP2 can file amended claims without appointing a professional representative" and " ...contracting state...".
- Q.1 is from DI 2011 (two invitations, Rule 62a, Rule 69/70/70a), but with the answering split into steps, each step having a 100-mark box or having a date,

This format is easier for the (less-well prepared) candidates, as it already gives them the full agenda as to what to discuss.

The format makes the marking somewhat simpler, as the various aspects of the complete answer are in pre-defined boxes (sub-questions).

But, the added value vs a full open question as currently is very limited. Rather, the side-effects that not all sub-questions can be seen on the screen at the same time introduces an unnecessary complication to the candidate – such unnecessary complications should be prevented.

Further, the splitting into sub-questions may give unclarities as to what needs to be answered where and may leave the candidate confused and hence unnecessarily loose time or even go wrong, especially the well-prepared candidate that understand the system in full (see below for f) and g)) – such unnecessary unclarity should be prevented; as shall putting well-prepared candidates in a worse position than ill-prepared candidates. The format requires less understanding as to what the legal situation is and how it can be improved, as the breakdown into the large number of sub-questions/steps already provides the candidates a template as to what to address and hints for each specific step: it becomes an exercise to fill in the gaps of a reasoning, rather than to come up with a reasoning based on a candidate's understanding and skills. However, well-prepared candidates get the burden of dividing his answer (obtained from his understanding of the question even without having seen over the various sub-questions) over the plurality of answer boxes all on their own specific format – the question format makes him loose quite some time for this dividing, time that is just used for easy-marking reasons which cannot be used for testing his understanding and skills.

- Q.1-a) and Q.1c) provide answer boxes of 100 words to answer "The first invitation from the EPO is a communication pursuant to:" and "If the deadline for replying to the first communication is missed, give the legal basis why further processing is not available as a remedy.", respectively. As 100 words are available, it suggests that a lot more is needed than just the legal basis, i.e. just "R.62a(1)" and "R.135(2)" respectively: the size of the box thus puts the candidate in doubt as to what he shall all answer.
Causing this kind of doubt shall be prevented.
- Q.1-e) asks for "legal basis for the time period for the second invitation".
That question seems ill-defined: the legal basis is Rule 70a(1), but you will also need Rule 70(1) due to its reference in Rule 70a(1) to get to the length of 6m. Also, you can add Rule 131(4), and possibly Rule 134(1) for the calculation of the expiry of time period.
Are indeed all these Rules meant to be in the answer? Or just Rule 70a(1)? What if just giving Rule 70(1) – that is in the end the rule that defines the time period?
- Q.1-f) asks for fees and legal basis "to proceed" – that anticipates on g) which asks about FP, and this introduces an unclarity as to what is meant with the fees in f): is FP for each of the missed acts to be included or not?
Without the splitting into sub-questions, this issue would not arise and a well-prepared candidate will have no problem to answer on all these (then possibly implicit) aspects.
- Q.1-f suggest to use a table, while the answer box is a free-text box (allowing unformatted text as well as free text).
If the answer is wanted in a table format, then the answer box should also be in such table format and not in another type of format.
Further, answering in a table takes a lot of time compared to simply adding the applicable legal basis top every specific step of the reasoning.

- Contrary to the original question in DI 2011, the question now explicitly mentions a divisional in I) ff: that is also a clear hint for the answers to the previous sub-questions. This simplifies the question to an unnecessary degree, without as need thereto.
- Overall, in our opinion, the open-text format of DI 2011 matches the topics better than the version in the model paper with the many sub-questions, and the open text format should be used as a rule for questions like this in M3.
Care should be taken to not use a question format for the sole reasons that it is available and makes the marking more easy, but that the question format is chosen so as to optimally test the legal skills and understanding of candidates, wherein well-prepared candidates can score well without being disturbed by a question format, and wherein ill-prepared candidate are not helped to score high due to the use of too much guidance: the question and its format shall be discriminative, with the wanted result.
- Q.2 is a PCT filed in Spanish at the Chilean office by an Argentinian in Argentina, a Colombian in Colombia and a Chilean in Chile. No common representative or common agent is appointed.
- Q.2-a) gives a 200-word limit box for legal basis: that suggests that a lot of legal basis is required. It is suggested to better select the size of the boxes to more or less reflect the amount of answer to be given.
Also, a candidate could give a single rule (PCT Rule 90.2(b)) which can be considered the legal basis for “Who will be considered by the rO as the common representative”, but other candidates could supplement that with Rule 19.1 or its specific sub-pars, and possibly also Rule 18.3 and/or Art.9(1).
Guidance is needed as to how extensive one should be with “legal basis” if the question asked for just that.
Note that in the original DI question, the problem would not arise as the full argumentation requires multiple steps, each requiring specific legal basis; further, in the current DI, specific legal basis per argumentation step is required rather than a whole lump of legal basis for the reasoning as a whole. The issue as to how much legal is thus introduced by the rather artificial breakdown of the question into sub-questions, and could -and should- have been prevented by asking for a full reasoning. See also the last comment to Q.1 above.
- Q.2-b) for ISAs for rO=Chili / applicant = Colombian. That is not really covered by the current REE/IPREE as it requires the Applicant’s Guide Annexes to answer this, which are not listed in Rule 22(1) IPREE.
Will all Applicant’s Guide Annexes be part of the syllabus? If so, these shall all be available online during the exam, as otherwise way too many trees need to be cut down for all candidates to print over 1600 pages of AG-IP Annexes, which goes against the EPO environmental policy and also does not serve a purpose.
It is noted that an answer based on lookup in the Applicant’s Guide Annexes does not test understanding. But merely tests whether a candidate can look-up a fact that he does not need to know in a well-structured, alphabetic, reference. We doubt whether that is worth testing, and we prefer to test more relevant skills and understanding.
- Q.2-c) asks for legal basis as to which Box needs to be used to indicate a choice of ISA (Box No. VII).
This question is ill-phrased or at least unclear, as there is no PCT Rule that mentions a specific box. The only Art/Rule that a candidate could cite is PCT Art.4(1)(i) and Rule

4.1(b)(iv) + Rule 4.14bis – but that just refers to the indication, not to a specific Box. Or is a reference to the Applicant's Guide Introduction International Phase AG-IP 5.072 expected? The syllabus needs to be clarified, well-defined, specific and accurate. Or, is it expected to refer to the mandatory use of Form PCT/RO/101, under Rule 3.1 and 3.2 (together with Rule 4.1(b)(iv))? Still, that does not refer to Box No. VII...

Box No. VII INTERNATIONAL SEARCHING AUTHORITY
Choice of International Searching Authority (ISA) (if more than one International Searching Authority is competent to carry out the international search, indicate the Authority chosen; the two-letter code may be used):
ISA/ _____

Form PCT/RO/101 (second sheet) (July 2022)

See Notes to the request form

BOX No. VII

Choice of International Searching Authority (ISA)
(Rules 4.1(b)(iv) and 4.14bis): If two or more International Searching Authorities are competent for carrying out the international search in relation to the international application – depending on the language in which that application is filed and the receiving Office with which it is filed – the name of the competent Authority chosen by the applicant must be indicated in the space provided, either by its full name or two-letter code.

Box No. VII: International Searching Authority

Rule 4.1(b)(iv)
4.14bis

5.072. **Must an applicant indicate a choice of International Searching Authority?** Where two or more International Searching Authorities are competent to carry out the international search, the applicant must indicate the Authority chosen in the appropriate space in Box No. VII. For details on which International Searching Authorities are competent, see Annex C and paragraph 7.002.

THE REQUEST

Rule 3.1
3.2
3.4
4
89ter
Section 102

5.015. **What is the form of the request?** Where the international application is filed on paper, the request must be made on a printed form (Form PCT/RO/101) to be filled in with the required indications or be presented as a computer print-out complying with the Administrative Instructions. A filled-in sample and a blank copy of the Form PCT/RO/101 are available from the Internet website address indicated below. Any prospective applicant may also obtain copies of the printed request Form PCT/RO/101, free of charge, from the receiving Office with which he plans to file his international application or from the International Bureau. To facilitate preparation of the request, the International Bureau has prepared downloadable PDF (portable document format) versions on its website. These may be downloaded from <https://www.wipo.int/pct/en/forms/> and completed using a computer or printed out and filled in using a typewriter. The request, and instructions on how to complete the editable version, is also available from that site.

- It is noted that Q.2-e) has 6 statements and f) requires the legal basis for T/F for each of those statement: this is quite an extensive question.
Further, it needs to be indicated in the REE/IPREE or Instructions to the candidates whether GL/PCT-EPO and the Euro-PCT Guide (which is considered a Notice of the EPO) can serve as legal basis as a full-mark alternative to PCT Rules and/or EPC Rules (e.g., Rule 157(2) EPC) and/or EPO-WIPO Agreement (esp the various paragraphs of Art. 3 and the Annexes).
In Particular where automated marking is considered, a very clear definition as to what can serve as legal basis and how it is to be presented is required (well before the exam, at least 1-1.5 year, so that candidates can practice and course material can be adapted to be conform the requirements).
- Q.3 addresses Art.54(3) prior art and the effect on patentability.
This seems not to be in line with the definition in the New EQE concept paper, which is defined in Table in 5.1 “Mastering EPC/PCT **procedural** aspects”.

We however also consider that a question like this must be within the M3 scope, so that we suggest to clarify the scope in the table and not limiting the table to procedural aspects only. For example, an explicit reference to patentability requirements shall be included, including also extension of subject matter and scope under Art.123(2), 76(1) and 123(3).

- Q.4(1) asks about the Hong Kong registration (via an EP patent application, which I the EP phase of a PCT).

We doubt whether such “exotic topic” shall be part of the EQE.

- Q.4(2) asks how to remedy a missed RCE, that was missed due to an avoidable error, in the US. It asks explicitly to analyse the situation and to suggest some options to remedy to be checked with the US attorney/agent.

We doubt whether such aspects of US national law shall be part of the EQE. If such types of topics are part of the EQE, a clear and exhaustive definition of which national law topics are part of the exam shall be provided together with a reference to the documents needed therefor, preferably in the IPREE (as now in Rule 22(1) IPREE).

- The IPREE will need to detail the details of national law of the IP5 countries aspects – this goes beyond what is currently in the IPREE for US and JP: Art.13(2)(b) REE “the United States of America and Japan to the extent that they are of importance in connection with **proceedings before the EPO.**”
 - Also, the IPREE shall provide a legal text that describes the national law aspects of all IP5 states.
- Q.5 addresses transfer of oppo (G 4/88), representation (ME opponent, after transfer), the need for an appointment of a prof rep (in our view, this is an incorrect or otherwise unclear statement: the *appointment* always needs to be done, but not the *authorization*), institution of proceedings for preserving evidence to determine infringement as (insufficient) basis for entitlement (GL D-VII, 6(i) referring to T 439/17).
- Q.5-a) “INT should bring the relevant prior art to the attention of the EPO” is an unclear statement: there is no legal requirement to do so, but if they do as TPO then it will be considered as it is (prima facie) highly relevant. So, both T and F can be argued. The term “should” should come with an effect or a consequence if such a term is used; see also D 3/19 mutatis mutandis (on the term “must”)
- Q.5-e) tests partially the same as Q.5-a in the aspect that TPO may be filed. This has the risk of double penalization and should be prevented.
- Q.6 is a classical open question, addressing a.o. R.63, Art.57/83 and extension beyond the parent Art.76(1).
See remark to Q.3
- Q.7 is a classical open question, addressing a.o. interruption due to legal incapacity of the representative. Requires procedural steps and time limits (incl after resumption).
- Q.8 is a classical language question., but not fully in free-text form.
- Q.8-a) has 15 T/F statements.
Not all statements are unambiguous. E.g., statement (11) “Translation of the notice of opposition against EP-can still be filed” is incorrect, as the term “still” implies that the statement only tests a time limit, whereas no translation of the notice (which was in

Italian) can be filed at all, as Mr McX could not validly use Italian in the first place. Also, statement (14) “An opposition against EP-3 filed yesterday, in Italian, by an Italian living in the UK is validly filed” cannot be answered, as it depends on whether a translation will be duly filed under Rule 6(2) – without such translation, the opposition is deemed not filed (Art.14(4)).

- Q.8-b) requires legal basis to be provided for the (15) statements of a) in one big free-text box. That is not efficient and has the risk of inconsistencies due to the format used. It is suggested to present a) and b) together as a single three-column table with the statements in a first column, and where candidates can choose T/F in the second column and give the legal basis in the third column.
- Q.8-c) asks for legal reasoning for 3 of the statements above. It is doubted whether this has an additional value on top of the already cited legal basis in Q.8-b: citing legal basis corresponds in our view to give a legal reasoning (step-by-step arguments with legal basis for each argument) and then take out the arguments so that only the legal basis is left.
- Q.9 correspond to the sequence listing question Q.5 of DI 2015, but split into steps. We refer to our comments to Q.1 above.
We also note that such a step-wise question is not so suitable for an exam, but it may be well-suitable for studying while candidates need guidance to come to a correct understanding and correct argumentation. In our opinion, formats suitable for studying are not necessary appropriate for exams, and the format needs to be selected for its purpose.
- Q.10 is a refund question corresponding to a recent (Q.3 of D 202?) exam, but in MC format (Q.10-a): 7 statements with 4 options each (EP-C1, EP-C2, Both, None), so more or less equivalent to 4 x 2 T/F statements + conclusions (to get to both or none), The 4-column EP-C1, EP-C2, Both, None answering columns (of which a single choice needs to be made) are not efficient and confusing. Just two columns, EP-C1 and EP-C2, would be sufficient (while allowing a candidate to select 0, one or both columns). The format needs to be optimized for the candidate’s use, not for ease of marking.
- Q.10-b-f) are however a repetition of some of the MC statements of a). Such repetition shall be avoided as it may confuse a candidate and may result into inconsistencies. In this case, a) can-and shall- be deleted without impact on what is tested.
- Q.10-g) third statement “An applicant may validly pay the examination fee on the date of filing the EP application” is ambiguous and unclear: the examination fee becomes due when the request for examination is filed (GL A-X, 5.5.2), so that the examination fee may be paid straight away on the date of filing of the European patent application ONLY if the request for examination is filed on that day, e.g., if the application is filed with EPO Form 1001. That form may however also be filed at a later date. The reference to the filing date in the statement is thus not a reference to the legally relevant act. It was said that the New EQE would be less prone to ambiguities than the Pre-Exam, but at it uses -in part- the same True/False format (or equivalents such as multiple-choice and drag&drop), we cannot see any indication as to why it would not have the same issues.
- Q.11 is derived from Q.5 of DI 2017.
NB: As in the original question, Q.11 the question fails to indicate in which language PCT-

G was filed, so that statements identifying the EPO as receiving office are ambiguous (Rule 157(2) EPC; PCT Rule 19.4), as for example the third statement of a)

- Q.11 is again a step-wise version of an earlier free-text question. Some steps are tested in multiple choice, some steps are free-text.

We refer to our comments to Q.1 and Q.9 above.

We also note that, although Q.11-a) is presumably in T/F format so that as candidate will consider adding priority (originally Q.5-a in DI 2011) before restoration (originally Q.5-c in DI 2011). However, some candidates may rather get confused than being helped by the set of statements in a), so it may be doubted whether T/F statements as introduction to free-text questions are in cases like this most appropriate.

- In answering Q.10-d and e), it is not clear whether one needs to consider the situation without or with adding the missing priority and with or without a successful restoration - the first is asked in a) and the latter is asked in c), but not given as a precondition for d and e).

If breakdown is done in steps, care shall be taken as to clearly define the situation for subsequent sub-questions. Otherwise, the sub-questions or the question as a whole may become unclear or ambiguous, and it may also have the risk that candidates answer two possible scenarios (without and with restoration) while only one is expected.

(Unfortunately, with no model answers available, it is difficult to see what was really expected from candidates)

M4 - Advising the client

M4 - Part 1

Consultation in LockDown browser

Start date: 30/05/2022 07:00

End date: 15/07/2022 23:59

- M4 comprises cases of D2-like nature, but of reduced length, assessing competence SC04
- The full free-text form I appreciated.
- It is welcomed that D1 and D2 have turned into two individual papers, M3 and M4, which requires individual pass of the legal (procedural and substantive) and advice competences. W.r.t. M4, it is particularly welcomed that a candidates will not be able to pass the EQE without having shown an adequate understanding of what a patent is in term of rights and adequate advice, whereas a candidate can currently pass paper D even when advising “You have a patent on this product so you can freely produce and sell the claimed product”, even when the product is within the scope of a patent from the competitor.
- Syllabus a bit extended / made explicit:
 - US en JP extended to US, JP, CN, KR (so, complete IP5)
 - But not described to what extent
 - It seems that specific knowledge of the national law of EPC states in view of infringement and judicial measures is required, as the table in 6.1 specifically refers to specific identification of infringing activities (suggests that it requires national case law on, e.g., equivalence) and remedies (suggests that it requires

knowledge on, e.g., civil measures, how to obtain damages, how to achieve recall or destruction of infringing goods): “5. Advise client with respect to the rights conferred by a patent and acts required to enforce a patent (potentially by identifying infringing activities and remedies in certain jurisdictions, e.g. UK” and “6. Analyse whether the client has freedom to operate...”)

As the questions in the Model Mock papers suggest detailed knowledge is needed of Ips national law, and of national differences in EPC state (case) law such as equivalence in DE/FR/UK case law, a detailed syllabus will be needed to clearly define the scope. Herein, it should be noted that a EP attorney is not qualified to assess national infringement and national procedures – that is exclusive to the national patent attorneys.

- TRIPS is not mentioned in 6.1 and 6.2, although it was mentioned in the New EQE concept paper.
- The New EQE concept paper and its Annexes does not describe why M4 is split into 2 parts, of 2 resp 3 cases, and whether each of these 5 cases will be directed to a specific competence. Also, the duration 2 h 10 minutes per part (total 4 h 20) is not substantiated. It is suggested to split the paper in a first part of 2 hours and a second part of 2h 30 min.
- In M4, part 1, FAT-CAT case, the timeline is already given to the candidates. Presumably this is done to save some exam time.
However, making the timeline is an important part of understanding the paper and the facts. Providing the timeline makes a candidate skip the steps of gathering the facts and organizing them in a timeline and of understanding them. The “saved” time is thus saved at the cost of reduced understanding of the facts. We do not believe that giving a timeline with the paper makes the answering more efficient – it may rather work out the opposite way, as candidates rush to use the timeline and due to that rush overlook entries in the timeline – which they would have at least a vague memory of when they drafted the timeline themselves.
Also, the timeline is provided in a format as preferred by the drafter of the exam paper, which may be similar to that appreciated and made by some candidates, while it may differ from the format used by others (vertical vs horizontal, double-side vs single-sided, upward vs downward, date format, ...): the timeline as provided with the paper will thus (at best) only be advantageous for some of the candidates, but not for all.
So, in our view, the assumption that providing a timeline saves time for a candidate should be dropped. Consequently, the duration of the paper should include time to draft the timeline.
- In M4, part 1, FAT-CAT case, an amount of five million euros is mentioned. It may depend much on the daily practice and field of a candidate whether the candidates considers that a lot of money or a usual amount, and whether spending it would violate or be compatible with “keeping the cost at a minimum” as required in [011].
In our view, valuations in terms of a quantified value should not be used in the exam.

M4 - Part 2

Consultation in LockDown browser

Start date: 30/05/2022 07:00

End date: 15/07/2022 23:59

- M4 comprises cases of D2-like nature

M4, Part 2, Protection in China (10 points, 20 minutes)

- Suggests that we need to consider entry into China with utility model, or patent application, or both. Also requiring protection for methods claims is required. Do we really need to know the details on the difference in scope between Chinese patents and utility models? And to as from what moment on they can give provisional protection and full protection with the PCT appl being filed in French? The Q suggests we need to know the same level of detail for early entry into China and the possible choices as with EOP-entry – that cannot be intended as it is also not within the competence of an EP attorney (as is, e.g., clear from the scope of the client-attorney privilege in Art.134a EPC and Rule 153 EPC).
(Unfortunately, with no model answers available, it is difficult to see what was really expected from candidates)
 - The IPREE will need to detail the details of national law of the IP5 countries aspects – this goes beyond what is currently in the IPREE for US and JP: Art.13(2)(b) REE “the United States of America and Japan to the extent that they are of importance in connection with **proceedings before the EPO.**” And also, the IPREE shall provide a legal text that describes the national law aspects of all IP5 states.

M4, part 2, Wind turbine blades (15 points, 35 minutes):

- The case relates to wind turbine blades with dimples or, with knobs. A candidate needs to discuss its equivalence in view of “The dimples and the knobs serve substantially the same purpose and obtain substantially the same effect”
Question b) reads: “Give advice to your client on how to proceed after grant of EP-D, in particular in the United Kingdom, France and Germany.”
It is not clear whether this question is to
 - a) procedural acts, such as validation (the same for all, in view of London Agreement), or
 - b) enforcing your dimple patent against the competitor who makes a knobs product, so replying on equivalence under Art. 2 of the Protocol on Art. 69 EPC and the applicable national law -and practice/ case law- of the 3 countries.Does a candidate really need to know the differences between equivalence case law in UK, DE and FR? The paper as well as the model paper suggests so. We believe that is not appropriate, as it is not the competence of an EP attorney, but should be left to the national attorney/lawyer/judge.
Would the answer also need to cover how a patentee needs to approach infringer, e.g., whether a writ is needed if provisional protection is to be used or a mere publication is enough?
The REE/IPREE will need to provide clarification as to which elements of national (case) law are covered, and needs to remain within the competences of an EP attorney (also in view of the scope of the client-attorney privilege of the EPC).

M4, Part 2, Silwave (25 marks, 1 h 15 min):

- Is grace period under US law and JP law part of the exam? It may be doubted whether that is covered by the current Art. 13(2) REE which says: “a **general** knowledge of the national laws of the United States of America and Japan **to the extent that they are of importance in connection with proceedings before the EPO**”.

Using the grace period in US and/or JP to get protection there does however not fall under this definition, as they are not important for proceedings before the EPO.

Also, in Art.134a EPC and Rule 153 EPC prevent in our view to address detailed patentability (and procedural) discussions for US and JP protection.

DeltaPatents, 15 July 2022

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