

## **CANDIDATE'S ANSWER**

**D, EQE 2016**

### **QUESTION 1 – EPC**

**a)** Examining division (ED) refused EP-A during oral proceedings (OP). The decision (A 97(2)) was notified to the applicant with a letter dated 14.07.2015. The letter is deemed received (rule 126(2)) on 24.07.2015.

The applicant may appeal this decision from the ED (A 106(1)) since he is adversely affected by the decision of the ED (A 107). The notice of appeal shall be filed at the EPO within 2 months from notification of the decision (A 108) (R 111(1), the decision in OP shall be put in writing). The time limit for filing an appeal is thus (and paying the appeal fee, A 108, R fees 2(1) Item 11):

24.07.2015 + 2m (A 108, r 131(4)) → 24.09.2015 (Thu)

Grounds of appeal shall be filed on: 24.07.2015 + 4m (A 108, r 131(4)) → 24.11.2015 (Tue)

**b)1** On 18.09.2015 A filed notice of appeal and paid appeal fee. He did it on time (A 108).

The grounds of appeal shall be filed on:

24.07.2015 + 4m (A 108, r 131(4)) → 24.11.2015 (Tue)

Before filing the grounds of appeal, A withdrew the appeal on 5.10.2015.

According to r 103(1)(b), the appeal fee shall be reimbursed in full if the appeal is withdrawn before filing the statements of grounds, and before the period has expired. Since he withdrew the appeal on 5.10.2015, without having filed the grounds, and before the period of A 108 having expired (24.11.2015, see above), the appeal fee will be reimbursed in full.

**b2)** He filed the grounds on time (A 108, see above).

R 100(2) → The EPO invited A to file observations, and A immediately withdrew the appeal.

Under R 103(2)(b), the appeal fee shall be reimbursed at 50% if appeal is withdrawn after expiry of period under R 103(1)(b) (period for filing the grounds of appeal, Art. 108), because the applicant withdrew the appeal when no date for oral proceedings had been set, and before the expiry of the period set by the Board to file observations (r 100(2)), which is usually calculated with r 132(2). Since the applicant withdrew the appeal “immediately” after having received the communication under R 100(2), the appeal fee will be reimbursed at 50%.

Appeal fee is (Rfees 2(1) Item 11), 1860 €.

## QUESTION 2

PCT-B filed with the Italian Patent and Trademark Office (IPTO) acting as Receiving Office (rO). PCT Applicant's Guide International Phase (PCT AG IP), annex C, IPTO is a rO competent to receive International applications (IA) for nationals and residents of Italy.

Both PCT-B and PCT-C are in the name of MAXIMA (applicant), an Italian firm with place of business in Italy. PCT-B is correctly filed at IPTO as rO (A 9(1)PCT, A 10 PCT, r 19.1(a)(i)(ii) PCT).

PCT-B is in Italian. IPTO accepts Italian as the language in which the IA may be filed (AG IP, Annex C, Italian PTO), A 3(4)(i) PCT, r 12.1(a) PCT.

The request shall be in English, French or German (AG, IP, IP, Annex C, r 12.1(c) PCT.

Fees are not necessary for getting an international filing date (A 11(1) PCT, r 20.2(a) PCT). Accordingly, if the remaining requirements of A 11(1) PCT are fulfilled, PCT-B will have an international filing date on 7.02.2015.

For PCT-C, the same applicant and invention apply.

PCT-C was in Italian, which is a language not accepted by the EPO as language of the IA. Even if MAXIMA is also entitled to file the application at the EPO as rO (Maxima is entitled to file an IA because is a national or resident of a PCT contracting state, Italy, A 9(1)PCT), A 10 PCT, r 19.1(b) PCT, AG IP, Annex C, the EPO as rO is competent for national and residents of EPC contracting states, such as Italy, see also r 157(1) EPC.

However, PCT-C is in Italian, not EN, FR or DE, languages in which the IA may be filed at the EPO as rO (AG IP, Annex C, EP). According to r 19.4(a)(ii) PCT, Italian is not accepted by the EPO as rO under r 12.1(a) PCT, but accepted by the IB (International Bureau) under that rule; the application PCT-B shall be considered to

have been received by the EPO on behalf of the IB under r 19.1(a)(iii) PCT, and will be promptly transmitted to the IB (r 19.4(b) PCT). (The EPO does not charge any transmittal fee under r 19.4(b) PCT, OJ 1993, 764). The application is considered to have been received by the IB on the date it was received at the EPO (8.02.2016) except for the calculation of time limit to pay the fees (r 14.1(c), r 15.3, r 16.1(f) PCT), r 19.4(c) PCT.

Under the PCT, the Paris convention (PC) regulates the conditions and effect of priority (A 8(2)(a) PCT, A 4 PC).

A 4(A)(1) PC → since PCT-B and PCT-B are filed in the name of the same applicant, this is complied with.

In addition, both relate to the same invention (A 4 PC).

PCT-C was filed within the priority year (12 months from filing date of PCT-B, A 4(C)(1) PC, r 2.4(a) PCT):

7.02.2015	—————→	7.02.2016 (Sunday)
	+12 m	A 4(C)(1) PC
		r 2.4(a) PCT
		r 80.2 PCT

7.02.2016 is Sunday (EPO was closed), so under r 2.4(b) PCT, r 80.5 PCT and PC A 4(C)(3), the priority period is extended to 8.2.2016, Monday, date on which PCT-C was filed. The priority will then be considered valid.

**b)** As described above, PCT-C is considered to have been filed at the IB as rO. The ISA (International searching authority) for PCT-C is the EPO (r 35.3(a) PCT), since the EPO would have been competent rO under r 19.1(a)(i) or (ii), (b) PCT.

The IA shall be translated into an EPO official language (A 14(1) EPC), EN, FR or DE (r 12.3(a) PCT), which are all languages of publication (r 48.3(a) PCT) and accepted by the rO under r 12.1(a) PCT (IB accepts all languages).

It should be filed to the receiving office (IB in this case), r 12.3(a) PCT. If the application has sequence listing, it may not be translated (r 12.3(b) PCT). This should be filed to the IB within 1 month from the date of receipt of the application, namely (r 12.3(a) PCT):

8.02.2016 + 1 month (r 12.3(a) PCT, r 80.2 PCT) → 8.03.2016 (Tue).

### QUESTION 3

PCT-D was filed in Russian. Russian is a PCT publication language (r 48.3(a) PCT), and a language accepted by the Russian Patent office as receiving office (rO), AG IP, Annex C, RU (r 12.1(a) PCT).

**a)** The Netherlands (NL) → NL has closed the national route (A 4(i)(ii), A 45(2) PCT) – The EPO will act as designated office (dO) if this applicant wants protection in this country (via EP patent, then validated in NL), see AG IP, 5.053 and A 153(1)(a) EPC. The same applies to Italy. The national route is closed, and to Lithuania. These three countries (NL, IT, LT) have closed the national route, so it's only possible to obtain patent protection via EP patent (entering the regional phase at the EPO, and, if a patent is granted, validating it in those countries).

The applicant shall enter the EP regional phase (A 22(1) / A 39(1) PCT, r 159(1) EPC) within 31 months from priority (at the latest), namely 31 months from April 2014 (r 159(1), r 131(4) EPC), November 2017.

Once a EP patent has been granted, validation in NL, IT and LT may take place, provided the national requirements are met (A 65(1) EPC).

**b)** The applicable time limit for performing the acts for entry in the EP phase at the EPO is 31 months from priority date (r 159(1) EPC, A 22(3) and 39(1)(b) PCT). Since the applicant has expressly requested early processing with his letter of 1.03.2016, (A 23(2) or 40(2) PCT), this can be done if the requirements for the request to be effective are complied with (OJ 2013, 156, point 6).

The applicant must comply with the requirements of r 159(1) EPC as if the 31-month time limit expired today. Fees have already been paid (r 159(1)(c) EPC). In addition the following has to be made:

- File a translation into EPO language (A 14(1) EPC), r 159(1)(a) EPC (the IA will be published in RU, see above).
- Pay search fee (an supplementary ESR (European search report) is necessary because EPO was not ISA, A 153(7) EPC). The search fee (Rfees 2(1)

Item 2 EPC) will be reduced by 190€ because RU was ISA, see OJ 2005 548 and Guidelines for Examination at the EPO (GL), A-X, 9.3) – r 159(1)(e) EPC.

- The request for examination (including the Examination fee (Rfees 2(1) Item 6 EPC) and the designation fee (Rfees 2(1) Item 3 EPC), r 159(1)(f) and (d) EPC, respectively, are not yet due, because the time limit under A 94(1), r 70(1) EPC and A 79(2), r 39(1) EPC, for requesting examination and paying designation fees, respectively has not yet elapsed (6 months from publication of ESR, = ISR (A 153(6) EPC, namely by April 2016, so they are not yet due.

- He should specify the documents on which the grant procedure is to be based (R 159(1)(b) EPC.

- No renewal fees are yet due (A 86(1), r 51(1) EPC) (they are due at the end of June 2016 for the 3<sup>rd</sup> year, so they can't be paid on 1.03.2016), r 159(1)(g) EPC.

**c)** Since he wants examination to start as soon as possible, he should pay the examination fee (r 159(1)(f) EPC and designation fee (r 159(1)(d) EPC).

The applicant may waive his right to be asked whether he wishes to proceed further under r 70(2) EPC, and may request PACE. He has to explicitly waive his right to the communication pursuant to r 161(2) EPC and r 162 EPC, and pay all claims fees due (r 45 EPC, Rfees 2(1)Item 15 EPC).

PACE request and waivers have to be filed separately (OJ 2015, A 93.6).

## QUESTION 4

**a)** R 48.3a PCT → Japanese is a PCT publication language.

Claims 1-16 → INV 1

Claim 17 → INV 2 not unitary with INV 1

Since the EPO was not the ISA, a supplementary search report will be established (A 153(7) EPC).

**a1)** Under r 161(2) EPC – If the applicant did not amend the claims and did not pay claim fees under r 162(1)(2) EPC, the claims concerned (r 45(1) EPC, claims 16 and 17 in this case) shall be deemed to be abandoned (r 162(4) EPC).

The supplementary ESR will be based on claims 1-15 (A 153(7) EPC, r 162(1)(2) EPC, r 162(4) EPC).

**a2)** No, he can't, since claim 16 is considered to be abandoned (r 162(4) EPC), and it's subject-matter is not otherwise to be found in the description, so it's addition will be contrary to A 123(2) EPC. The only remedy would be to file a divisional application (A 76(1), r 36 EPC).

**a3)** Not in this case, since the search (supplementary ESR) was only based on claims 1-15 (INV 1, unitary), so the EPO did not invite the applicant under R 164(1)(a)(b) EPC to pay further search fees, so the subject-matter of claim 17 was not searched. Even if this subject-matter was in the application (description), it was not searched, and amended claims may not contain unsearched matter (r 137(5) EPC), so since claim 17 and claims 1-15 (inv 2 and inv 1) are not unitary, the subject-matter of claim 17 can't be the subject of EP-E.

**b)** Yes, they are. Under r 71(4) EPC, since there are 19 claims and no claim fees were paid under r 162 EPC, 4 claim fees are due. They should be paid within 4 months of the notification from the examining division under r 71(3) EPC. If they are not paid, the application is deemed to be withdrawn (r 71(7) EPC).

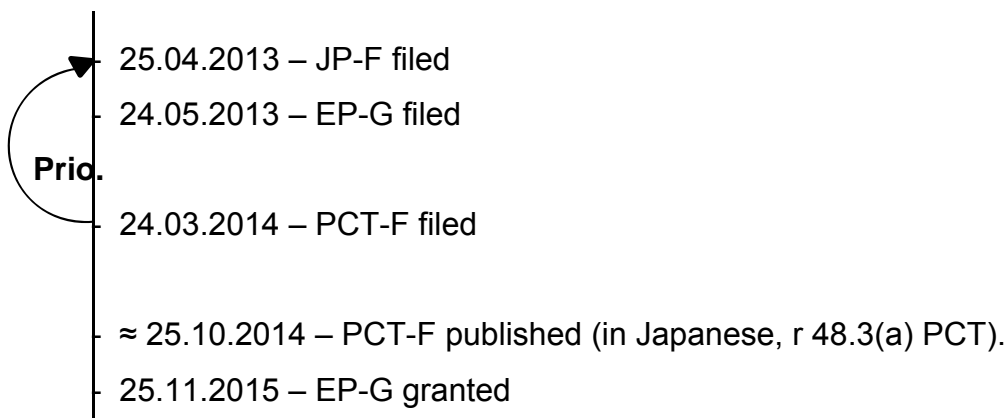
Claim fees: Rfees 2(1) Item 15 EPC.



## QUESTION 5

Effective date of subject-matter F: 25.04.2013

Since PCT-F was filed on 24.03.2014 and claims priority of 25.04.2013, under A 21(2)(a) PCT, PCT-F was published around the end of October 2014 (18m from priority, A 21(2)(a), r 80.2 PCT, 25.10.2014).



PCT-F did not pay the filing fee (r 159(1)(c) EPC). The EPO issued a notification of loss of rights dated 15.01.2016.

A 153 EPC and R 165 EPC: A PCT application is not included in the state of the art for the purposes of A 54(3) EPC (which would be the case here) unless the PCT applicant (Company F) has paid the filing fee (R 159(1)(c) EPC) and has supplied the EPO a translation of the application in EN, FR or DE (r 159(1)(a) EPC, which is required in this case.

Accordingly, the applicant needs to pay the filing fee under r 159(1)(c) EPC for PCT-F to be novelty destroying (A 54(3) EPC) for EP-G.

The filing fee can be paid if further processing are requested (A 121(1), r 135(1) EPC). This should be done within 2 months from the notification from the EPO:

15.01.2016 → r 126(2) EPC: deemed received on 25.01.2016 → 2 month (A 121(1), r 135(1) EPC) → 25.03.2016 (Fri → Holiday (Good Friday), r 134(1) EPC) → 26.03.2016 (Saturday, EPO closed, r 134(1) EPC) → 28.03.2016 (Easter

Monday, r 134(1) EPC) → 29.03.2016 (Tuesday). He should pay the filing fee (r 159(1)(c) EPC, Rfees 2(1).1 and the further processing fee (r 135(1) EPC), which is 50% of the filing fee (Rfees 2(1) Item 12 EPC).

If this is done, an opposition (A 99 EPC) shall be filed on the grounds of lack of novelty (A 100(a) EPC) based on PCT-F (A 54(3) EPC).

I assume the translation into EPO language (A 14(1) EPC) has been filed because the question says all documents necessary for entering the regional phase have been filed on 25.11.2015, namely 31m from priority date, r 159(1) EPC).

The notice of opposition shall be filed at the latest on:

25.11.2015 → 9 months (A 99(1) EPC, r 131(4) EPC) → 25.08.2016  
(Thu)

The opposition fee (Rfees 2(1) Item 10, A 99(1) EPC) shall be paid. Grounds: lack of novelty (A 100(a), A 54(3) EPC) based on PCT-F.

## LEGAL OPINION

**1. a)** Plastic coffee capsules having elliptical rib were first claimed and disclosed in CH-BC, filed on 1.8.2014 by BC. PCT-BC, filed by BC on 3.08.2015 (within the priority year according to A 4(C)(1) PC (1.8.2015 is a Saturday, PC A 4(C)(3) → 3.8.15, Mon)) also discloses this subject matter. The effective filing date of plastic coffee capsules having an elliptical rib of PCT-BC is thus 1.8.04. It appears that there is no disclosure of this subject-matter prior to 1.8.04, so this subject-matter (sm) is new. In addition, since the presence of a rib has the effect of making the capsule more rigid, leading to more reliable piercing step ([3] of the letter of the client), this sm is inventive. It's also sufficiently disclosed, since capsules with ribs having elliptical cross-section can be made of any plastic material (plastic material, [4] of the letter of the client). If PCT-BC enters the different national/regional phases, it's likely that this claim will proceed to grant (in addition, the search report did not mention any relevant prior art). The EPO regional phase can be entered at the latest on

1.08.2014 + 31m (r 159(1), r 131(4) EPC) → 1.3.2017 (I don't have 2017 calendar).

This subject-matter (sm) is also disclosed in FR-SA, filed by SA on 12.12.2014, from which PCT-SA validly claims priority (same applicant, same invention, filed within the priority year (12.12.2015 is a Saturday, so the priority period expires on Monday 14.12.2015, PC A 4(C)3). But this was not claimed in these applications.

BC can obtain patent protection for this sm because there is no prior art disclosing plastic capsules having an elliptical rib, and this is inventive and sufficiently disclosed, as discussed above.

**1. b.** Plastic coffee capsules having a triangular rib are disclosed for the first time in FR-SA, filed on 12.12.2014 by SA. However, these capsules are not claimed in this application. This sm is also disclosed in PCT-SA, which validly claims priority from FR-SA (see above point 1.a). This is not claimed in this PCT-SA application. As the situation currently stands, no patent will be granted with this subject-matter.

However, if PCT-SA is amended to a claim directed to plastic capsules having a triangular rib, the effective filing date of this claim would be 12.12.2014. There is no prior art disclosing this sm, so they are new. They are also sufficiently disclosed, since if the cross-section is triangular, they can be made of any material. With regard to inventive step, CH-BC and PCT-BC disclose plastic capsules having an elliptical rib. If PCT-BC enters validly the EPO-regional phase, (paying the filing fee, because since it was filed in German no translation is required) and so does PCT-SA, PCT-BC would be prior art under A 54(3) EPC, relevant only for novelty. Since the presence of a rib has the effect of capsules more rigids and with a more reliable piercing step, the claim would also be inventive. Should PCT-SA include a claim to plastic coffee capsules having a triangular rib, at least at the EPO, SA could get a patent granted with a claim to this sm.

**1. c** Plastic coffee capsules having a rib (without specifying the cross section), without specifying the type of plastic material are first claimed and disclosed in CH-BC, and in PCT-BC, which validly claims priority of CH-BC. These applications were filed by the same applicant, BC, and both contain this sm. Even if PCT-BC was filed on 3.08.2015, the priority period expired on this day, because 1.8.2015 was a Saturday and the EPO was closed. The effective date of the claim to a plastic coffee capsule having a rib of PCT-BC is thus 1.8.2014. Should PCT-BC pay the filing fee at the EPO for entering the regional phase (and so does PCT-SA), PCT-BC would be novelty-destroying (A 54(3) EPC) for claim of PCT-SA.

However, it has to be noted that it is impossible to produce coffee capsule having ribs of other shapes of the cross-section (other than triangular or elliptical) if the material is not plastic X. Since neither CH-BC nor PCT-BC disclose material X, the subject-matter of this claim will not probably proceed to grant if this is noticed by the Examiner (namely the EPO examiner, or the opposition division if the patent is granted), because the claim is not sufficiently disclosed, namely the application does not teach how to produce a plastic coffee capsule with a rib which section is not triangular or elliptical (A 83 EPC). It can also be argued that the claim lacks inventive step (A 56 EPC) because the effect is not achieved over the whole scope claimed.

Accordingly, it's likely that this claim does not proceed to grant (and, if it does, it could be revoked in opposition proceedings).

FR-SA (and PCT-SA validly claiming priority) also have a claim to this sm, and disclose it in the description. I see the same sufficiency problem than in CH-BC and PCT-BC; however, FR-SA (and PCT-SA) disclose that, when the cross section of the rib is not triangular/elliptical, the material shall be X. If this is introduced in the claim (one should carefully check if there is enough basis for this amendment, at least at the EPO (A 123(2) EPC), this claim could proceed to grant, since the disclosure of PCT-BC, even if it's prior art under A 54(3) EPC (if both PCT-BC and PCT-SA validly enter the EP regional phase), it's not an enabled disclosure, and, moreover, by specifying material X, the claim would be novel and inventive (the combination of material X with a rib of any shape was not disclosed or suggested in the prior art).

**1. d** Plastic coffee capsules made of material X have been disclosed in document D (published 2 years before filing date of EP1-BC, so before all these patent applications were filed). Accordingly, a claim directed to this subject-matter, will not be novel over document D and will not be proceed to grant. EP1 BC discloses and claims coffee capsules made of X (EP1 BC is also full prior art for all the patent applications) and this claim has been granted and has survived the opposition, probably because the EPO was not aware of document D. Unless the appeal is successful (see below), the patent will be maintained with this claim. Of course, national revocation proceedings may be initiated on the grounds of lack of novelty (A 138(1)(a) EPC).

**1. e** Coffee powder containing additive G was first claimed and disclosed in FR1-SA, filed on 10.6.13 by SA. This application was withdrawn in August 2013 (I assume that it was not published, probably not because usually publication takes place after 18 months from priority date/filing date), without leaving any rights outstanding and without having served as a basis for claiming a right of priority. Assuming that this application was not published (and of course, this subject-matter not made publically available), FR2-SA (filed also in France, as FR1-SA, by the same applicant, SA) could be considered as the first application in the sense of A 87(4) EPC and A 4C(4) PC.

Accordingly, FR2-SA is the “first application” in this sense for this sm. Since FR-1-SA was not made available to the public, and the search report of FR-2A does not mention any relevant prior art, SA may get a claim to this subject-matter via FR-2A. The subject-matter, in addition to novel, is also inventive, since additive G has the effect of leading to surprisingly good coffee, since the aromas are extracted very well (see [6] of the letter of the client).

PCT-BC, filed by BC, also claims and discloses a coffee powder containing G. The effective filing date of this claim is 3.8.2015, because this sm was not disclosed in the priority document CH-BC.

Probably FR2-SA was not published before PCT-BC was filed, so it's not prior art for PCT-BC (maybe only in France as a national prior right, one should check this with a French patent attorney), so probably PCT-BC can proceed to grant in many countries (including the EPO!) with a claim directed to coffee powder containing G (which would be novel and inventive, as disclosed above, and also sufficiently disclosed because G is known (for a different use)). Even if PCT-SA has in its disclosure the disclosure of FR-2SA, PCT-SA does not claim the priority of FR-2SA, so, if a claim in PCT-SA was directed to coffee powder comprising G, this claim would not be novel at least in the EPO (A 54(3), if PCT-BC and PCT-SA validly enter the EP regional phase).

Accordingly, SA may get a patent to a claim directed to this sm in France, via FR-2SA, and BC in many countries (PCT), via PCT-BC (with the exception of France possibly, see above).

## 2. Improve the situation of SA

I would recommend to amend PCT-SA to include a claim directed to plastic coffee capsules having a triangular rib. You can do it under A 19 PCT, before publication (which will take place soon after 12.06.2016, namely 18m after priority date, A 21(2)(a) PCT), after receipt of the ISR (r 46.1 PCT) so that the application is published with this claim, and then, provisional protection (A 29 PCT) may be invoked, if the national requirements are fulfilled. If the PCT-SA proceeds to grant, you may claim compensation from any party based on provisional protection conferred by PCT-SA, provided the national requirements are met, if any party offers, sells or manufactures plastic coffee capsules with triangular ribs.

- For plastic capsules having a rib, you can also amend PCT-SA to delete this claim or to limit it by material X, if basis in the application, as already discussed above. I would recommend to do it (amend if possible), since this claim is not sufficiently disclosed. In addition, you may file third party observations to PCT-BC, noting the lack of sufficiency of this claim.

Third party observations can be filed once the application has been published, which has happened on 11.2.2016.

You can also file third party observations once the application enters the EPO regional phase.

- With regard to plastic capsules of material X, the notice of appeal was filed in the wrong language (Dutch) because, even if the patent attorney is Dutch, this does not matter; the party (you) are French, and thus, you can't use Dutch in the notice of appeal. It should be filed in the EPO official language (A 14(1) EPC, r 3(1) EPC, because A 14(4) EPC does not apply). If we don't do anything, the notice of appeal will be deemed not filed (A 14(4) EPC). We should file the notice of appeal in an EPO language before the time limit of A 108 EPC expires, namely within 2 months from notification of the decision, which is:

Decision dated 30.12.2015, deemed received (r 126(2) EPC) on 9.01.2016. 2 months (A 108, r 131(4) EPC) → 9.3.2016 (Wed)

We are still on time.

Afterwards, 4 months from notification of the decision (9.01.2016, 4m (A 108, r 131(4) EPC) → 9.05.2016 (Mon)), namely on or before 9.05.2016, we have to file the grounds of appeal (not in Dutch!), stating the reasons clearly, and filing document D. The grounds will be the same as in opposition, namely lack of novelty. Document D was not in opposition proceedings, but will be admitted by the Board of Appeal if they consider that D is prima facie highly relevant in the sense that it can be reasonably expected to change eventual result and is thus highly likely to prejudice the maintenance of the patent.

This may be the case here, but we have to see what the Board decides.

- With regard to coffee powder containing additive G, we need to add the priority of FR2-SA to PCT-SA, so that we can amend PCT-SA and claim this subject-matter, and have a patent on this. To do so, you have to file a notice to the rO or IB within the later of:

-**(a)** 4m from international filing date (r 26bis.1(a) PCT):

14.12.2015 + 4m → 14.4.2016 (Thu)

-**(b)** 16m from priority date (r 26bis.1(a) PCT):

12.12.2014 + 16m → 12.4.2016 (Tue),

namely by 14.4.2016, adding the priority of FR2-SA.

If this is done, and you add a claim to this subject-matter in PCT-SA, this will likely proceed to grant, because its effective filing date will be 12.12.14 (see below discussion on why FR-2SA is the first application for this subject-matter and no FR1-SA), and PCT-BC will not be prior art. In addition, PCT-SA will be prior art under A 54(3) EPC (if both PCT-BC and PCT-SA validly enter the regional phase at the EPO), and thus novelty-destroying for this subject-matter in PCT-BC.



**3.** After having taken this actions:

- BC can stop you from selling plastic coffee capsules having an elliptical rib because of PCT-BC (and CH-BC, in Switzerland) in countries where PCT-BC is granted (i.e. EP).

- You can stop BC from selling plastic coffee capsules with a triangular rib via PCT-SA, (if you validly enter EP regional phase) in EP (and other countries, if a patent is granted).

- With regard to capsules having a rib, if this is limited in PCT-SA to material X, then you can stop BC from selling these capsules (with material X). Otherwise, since capsules having a rib with any other material and ribs with cross-sections different from elliptical/triangular will not proceed to grant (and can't be manufactured), this is not an issue.

- With regard to capsules of material X, if the appeal is successful, neither BC can stop you from selling nor can you stop them to sell these capsules. If the appeal is not successful, and you are not successful in national revocation proceedings, BC could stop you from selling them, but this is unlikely.

- Coffee powder with additive G, if you get patent PCT-SA with this claim, which is likely, you may stop BC from selling this product in EP (if PCT-SA is granted in the EP regional phase).

- Time limit for entering the EP regional phase for:

PCT-BC:

1.8.2014 + 31m (r 159(1) EPC) → 1.3.2017

PCT-SA: 12.12.14 + 31m (r 159(1) EPC) → 12.7.17

You can request early entry in the EP regional phase, by performing all acts of r 159(1) EPC, and waive your right to communication under r 161/162, request PACE, in order to accelerate the proceedings before the EPO and have a patent as soon as possible.

If you are interested in manufacturing, selling and offering plastic coffee capsules with elliptical rib, you need a license from BC. You can offer in exchange a license to them for coffee powder comprising G, or for capsules with material X and a rib with any cross-section, if you finally get a patent granted with his subject-matter, or for plastic capsules with a triangular rib.

**Examination Committee III: Paper D - Marking Details - Candidate No**

Category		Max. possible	Marks Marker	Marker
Part I	Part I-Question 1	6	6	6
Part I	Part I-Question 2	10	8	7
Part I	Part I-Question 3	7	6	6
Part I	Part I-Question 4	9	8	8
Part I	Part I-Question 5	8	8	8
Part II	Part II-Question 1a	7	6	5
Part II	Part II-Question 1b	6	5	5
Part II	Part II-Question 1c	9	8	7
Part II	Part II-Question 1d	6	5	5
Part II	Part II-Question 1e	7	7	7
Part II	Part II-Question 2	18	13	13
Part II	Part II-Question 3	7	7	7
<b>Total</b>			<b>87</b>	<b>84</b>

Examination Committee III agrees on 86 points and recommends the grade PASS