Examiners' Report – Paper M2 2026

Purpose and extent of the examiner's report

Pursuant to Rule 6(6) IPREE, the Examination Board has decided to set the grade threshold for passing part 1 to 42% (8 marks) of the total achievable marks (19 marks) and for passing part 2 to 50% (10 marks) of the total achievable marks (20 marks).

Question 2 of Part 1 (M2-1, Q2) has been disregarded from the exam due to a discrepancy between the three official languages.

The criteria for determining the threshold take into account that the paper is designed to test the interpretative knowledge of the candidate at a level that can be expected after two years of professional experience.

General comments

Candidates are reminded that they should pay attention to the way questions are asked and should not simply repeat information from the paper in the answer. Repeating information per se is not awarded any marks. Alternative answers for the markers to choose from, one being correct and one being wrong, do not attract any marks.

In Paper M2, full marks are awarded only when the full legal basis is cited to support the analysis. Alternative correct reasoning and relevant legal basis not mentioned in the possible solution also attracted marks.

In general, marks are lost due to missing or incomplete legal basis. Candidates are reminded that citing an article or rule is not sufficient, but the relevant paragraph or sub-paragraph is required. Citing only the legal basis or repeating its wording without any further explanation, reasoning or providing advice generally does not attract any marks. It is noted in this respect that the online examination with direct access to part of the syllabus in electronic form, appears to be regarded as an invitation to copy articles, rules and paragraphs from the guidelines, for which full marks are only awarded if, apart from the copied text, the explanation is also provided in the context of the situation in the question. For instance, reciting that an application can be withdrawn within the 30-month

period of Rule 90bis.1 PCT, without appreciating that this period has not yet expired, does not usually attract marks. Candidates are reminded to bring their own calendars for date calculations.

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Question 1 (10 marks)

This question was rather adequately answered. However, very few candidates realised that, due to the processing ban, a divisional application relating to a Euro-PCT application cannot be filed before the Euro-PCT application is processed by the EPO, which is after the expiration of 31 months or after a request for early entry.

Most candidates realised that the Japanese text of PCT-A is the text of Euro-PCT-A as originally filed, so that its translation into English may be brought in line with the Japanese text. Some candidates however speculated that it is no longer possible during opposition proceedings or did not realize that the correction would extend the conferred protection of the patent.

Candidates struggled with the interpretation of part (c) of the question and the possible remedies available for correcting the error. Any valid reasoning explaining why the application documents of DIV2 can be corrected using Rule 56a (4) EPC could also attract full marks.

Question 2 (6 marks)

This question was neutralised due to an error in the German version, where EP1 was erroneously called D1.

Question 3 (9 marks)

For many candidates, this question appears to have been one of the most challenging in Paper M2. Many candidates recognised that the claimed subject-matter was not sufficiently disclosed and an opposition should be filed. Few indicated that this was necessary because E was infringing. Even fewer realized that the temperature was a limiting technical requirement, which is relaxed if the upper limit of the numerical range is lowered. The set of tiles that are heat resistant up to a temperature of 400 °C is larger than the set of tiles that are heat-resistant up to 1300 °C.

Question 4 (8 marks)

This question was generally well answered. Many candidates recognised that withdrawal is regulated by Rule 90bis.1 PCT. However, candidates are reminded that blindly copying the rule, including options that do not apply, will not attract marks. When an application has not entered Chapter II, the IPEA option is not available. While many candidates recognised that the EPO is a competent rO, few indicated that this is also due to the application being filed in English and/or realized that representation requirements apply for a US resident. Candidates often missed that the withdrawal needs to be signed and/or to indicate the specific requirements in each situation.

Question 5 (12 marks)

This question was generally well answered. Most candidates realised that the due date for paying renewal fees shifted to the date of the registration of the unitary effect. Fewer recognised that payment without a surcharge was possible within three months or with surcharge within six months and that it was calculated from the shifted date. The subsequent requests for re-establishment and limitation were reasonably well scored. However, some candidates lost marks by referring to the legal basis for re-establishment under the EPC or for not specifying the exact sub-paragraphs of the cited rules.

Possible Solution – Paper M2 2026.

Reference to legal bases refer to the situation on 31 October 2025.

Answer to Question 1 (10 marks)

(a) No, DIV1 was not validly filed. All acts of Rule 159(1) EPC were completed and, hence the earlier application Euro-PCT-A was pending, Rule 36(1) EPC. However, Article 23(1) PCT prevents the filing of divisional applications relating to pending Euro-PCT applications before they are processed by the EPO, G1/09 (r. 3.2.5). On 10 October 2024, when DIV1 was filed, the time limit under Rule 159(1) EPC had not yet expired, because 06 February 2023 + 31 months → 06 September 2025 (Sat) → 08 September 2025 (Mon), nor had early processing been effectively requested GL/PCT-EPO (2025) E-IX, 2.8.

(b) Yes, the patent will be revoked. The Japanese text of PCT-A is the text of Euro-PCT-A as originally filed, GL/EPO A-VII, 7. The ground for opposition under Article 100 (c) EPC prejudices the maintenance of the patent as granted because “iron” was not disclosed in the originally filed application. Under Article 14(2) EPC, 2nd sentence, the translation from Japanese into English may be corrected during opposition proceedings. However, replacing "iron" by "metal" will not be allowed since the correction would extend the conferred protection, Article 123(3) EPC, because “metal” is a genus of “iron“.

(c) No, the intended incorrect translation of the claims and description can no longer be included in DIV2. DIV2 was validly filed, Rule 36(1) EPC, because Euro-PCT-A was pending until the day before the mention of grant, GL/EP A-IV, 1.1.1. Because DIV2 was filed in English, GL/EPO A-IV, 1.3.3, the text of DIV2 in English is the authentic text, Article 70(1) EPC. The Japanese text of the parent application cannot be used to correct the translation error. Rule 56a(3) EPC cannot be used because redating would lead to the requirements of Rule 36(1) EPC not being fulfilled, as the parent application is no longer pending; DIV2 would thus not be validly filed. The remedy under Rule 56a(4) EPC is not

applicable as the incorrectly translated description and claims are not completely contained in the Japanese priority application.

Answer to Question 2 (6 marks)

No, a valid patent cannot be obtained from EP-C by disclaiming rubber A1. The subject-matter of EP-C splits into partial subject-matters A1 and the rest A-A1, G1/15. For the priority claim to be valid, inter.alia, EP0 must be the "first application", Article 87(1) EPC. For subject-matter A1, the first application is however EP1. The claim to priority is not valid for A1, independently of the content of EP0. It can only be partially valid for A-A1. Therefore, EP1 is prior art under Article 54(2) EPC for subject-matter A1. The specific embodiment A1 of EP1 is novelty destroying for claimed subject-matter A of EP-C.

The subject-matter A-A1 is not disclosed in EP-C, a disclosed disclaimer is therefore not possible, Article 123(2) EPC.

A1 cannot, moreover, be disclaimed by way of an undisclosed disclaimer, G1/03, because

- EP1 is not prior art under Article 54(3) EPC for subject-matter A1; and
- EP1 is not an accidental disclosure; and
- A1 is not excluded from patentability for non-technical reasons, rubber is technical.

Answer to Question 3 (9 marks)

D's tiles infringe EP-E, as B + C + 1300 °C falls under the scope of protection of B + 1300 °C. To be able to continue commercialising tiles comprising B + C that are heat-resistant up to a temperature of 1300 °C, D must file an opposition against EP-E by 11 June 2025 + 9 months, Article 99(1) EPC, → 11 March 2026 (Wed), on the ground of Article 100(b) EPC, and pay the opposition fee, Article 99(1) EPC. D1 needs to be submitted as evidence that the invention is not sufficiently disclosed, as the effect as expressed in the claim is not achieved by the tiles comprising only B. D1 may not be disregarded even though it is post-published, G2/21.

The ground of opposition under Article 100(b) EPC prejudices the maintenance of the patent as granted. E cannot amend in an allowable way, because the only disclosed fallback position, i.e. tiles comprising B and being heat-resistant up to a temperature of 400 °C, would contravene Article 123(3) EPC. Heat resistance up to 1300 °C is a stricter requirement than heat-resistance up to 400 °C. An amendment to 400 °C would therefore broaden the claimed scope. EP-E will therefore be revoked.

Answer to Question 4 (8 marks)

(a) Withdrawal is possible, because we are within 30 months from priority date, Rule 90bis.1(a) PCT. There are two options to file the withdrawal, at the EPO as rO or at the IB, Rule 90bis.1(b) PCT.

(b) EPO is competent rO because F is Slovenian national and the application is filed in English, Rule 19.1(a)(ii) PCT, Rule 12.1(a) PCT in combination with AG Annex C. EPO as rO applies EPC representation requirements, Article 27.7 PCT and Article 133(2) EPC. Because F is resident in the US, F needs to appoint an agent before the EPO. The agent needs a separate power of attorney for withdrawal of the application, Rule 90.4(e) PCT. The withdrawal needs to be signed by the appointed agent, Rule 90.3(a) PCT and Rule 90bis.5 PCT.

Before the IB, F can file the withdrawal themselves, Rule 90bis.1(b) PCT. The withdrawal needs to be signed by F, Rule 90bis.5 PCT.

Answer to Question 5 (12 marks)

The renewal fee for the fourth year would normally have fallen due on 31 July 2025, Rule 13(2) UPR. However, this date falls in the period defined in Rule 13(5) UPR. The due date for the renewal fee for the fourth year is therefore shifted to 18 August 2025. This renewal fee can be paid within three months from the due date without any additional fee, Rule 13(5) UPR. If not paid, it can still be paid with an additional fee within six months, Rule 13(3) UPR, 18 August 2025 + 6 months → 18 February 2026 (Wed).

This time limit has expired, and the patent with unitary effect has lapsed according to Rule 14 UPR. In order for the lapse not to have ensued, the proprietor needs to request re-

establishment of rights and pay the re-establishment fee, complete the omitted acts, i.e. pay the renewal fee with the additional fee, and state the reasons for all due care, Rule 22(3) UPR. This is possible, Rule 22(2) UPR, as we are still within

- two months from the removal of the cause of non-compliance, which is today, GL/UP 4.2.2, pointing to GL/EPO E-VIII, 3.1.3, i.e. before 3 March 2026 + 2 months → 3 May 2026 (Sun) → 4 May 2026 (Mon); and
- one year of 18 February 2026 + 1 year → 18 February 2027 (Thu).

The request for re-establishment is likely to be granted, so that the legal consequences of not paying the renewal fees shall be deemed not to have ensued, Rule 22(5) UPR.

The proprietor should then follow the limitation procedure under Article 105a EPC, pay the limitation fee, file a single claim with the content of claim 2 and, as the case may be, an amended description, Rule 92(2)(d) EPC. Further, they should file a translation of the amended claims in the official languages of the EPO, Rule 95(3) EPC, in reply to a corresponding communication from the examining division. The effect of the limitation is ex.tunc, because the unitary effect is deemed not to have arisen to the extent to which EP-G has been limited, Article 3(3) of the EU Regulation No 1257/2012 published in OJ 2013, 111.