

Legal bases are not necessary to get full points but are indicated in the answers for teaching purposes.

Q1 The applicant has to request entry into the regional phase before the EPO either by using Form 1200 or in a separate letter giving all the information required by Form 1200.

The applicant has to:

- select the box for early processing on Form 1200
- pay the filing fees and search fees
- PCT-C was filed in Chinese, searched by the CNIPA as International Searching Authority and, in accordance with Rule 48.3(a) PCT, published in Chinese. Since the Euro-PCT application was published in "another language", Article 153(4) EPC requires that a translation into German, English or French be filed. In accordance with Rule 159(1)(a) EPC, this translation has to be filed upon entry into the European phase, i.e. today.
- submit a translation of the amended claims filed under Article 34 PCT
- pay claims fees for 4 claims and the examination and designation fees

The applicant has to specify the application documents on which the European grant procedure is to be based (Rule 159(1)(b) EPC). The applicant must file a valid request for examination, which includes paying the examination fee (see point 15 of the notice from the EPO concerning the request for early processing, OJ EPO 2013, 156). The applicant should waive the right to be asked under Rule 70(2) EPC whether it wishes to proceed further (see point 16 of the notice from the EPO), and waive the right to receive the communication under Rule 161(2) EPC, (see OJ EPO 2011, 354).

Q2-1 Applicant E can file the application without going through a representative (Article 133(2) EPC) and can therefore file the description himself. The application can be filed in Spanish (Article 14(2) EPC). Since Form 1001 has been used, the formal requirements (Rule 40(1)(a) EPC) are met. The requirements (under Rule 40 EPC) for according a date of filing were fulfilled on 14 October 2022, which will be accorded as the date of filing (in accordance with Article 80 EPC and Rule 40 EPC).

Q2-2 A representative has to be appointed under Article 133(2) EPC. The invitation under Rule 58 EPC to correct the deficiency of the missing appointment of a representative (required under Rule 57(h) EPC) sets a time limit of 2 months. This time limit expires on 16 January 2023 (Monday) (4 November 2022 + 10 days (Rule 126(2) EPC) + 2 months (Rule 58 EPC), extended (Rule 134(1) EPC) to Monday). The translation should have been signed by the representative (Guidelines A-VIII, 3.1). Documents signed by a person who is not entitled are treated as if they had not been signed. The representative has to provide the missing signature in response to the invitation under Rule 50(3) EPC. The abstract also has to be filed (Rule 57(d) EPC).

Q3-1 You should fill in EPO Form 1001 and file the application online (reduced filing fee) today. On Form 1001, provide your company address as the information allowing the applicant to be contacted and refer to ES, indicating that it replaces the description, the drawings and the claims. Also request examination in Spanish and select: "The applicant hereby declares that he is an entity or a natural person under Rule 6(4) EPC" or else file a separate declaration to this effect.

Q3-2 Yes, it can be filed without a signature.

(Rule 58 EPC Correction of deficiencies in the application documents
Rule 57(b) EPC and Rule 41(2)(h) EPC)

Q3-3

Supply a certified copy of the previously filed application within two months of the filing date (Rule 40(3) EPC) and a translation of this application within the same period (Article 14(2) EPC, Rule 40(3) EPC).

Submit the designation of inventor; you can use EPO Form 1002 for this.

Submit an abstract (Article 78 EPC).

Pay the examination fee (reduced under Rule 6 EPC).

Within one month of the date of filing:

Pay the filing fee, which includes the page fee (5 pages) (reduced under Rule 6 EPC for online filing).

Pay the search fee

Pay the claims fee (three claims)

Q4-1 PCT Direct procedure (OJ EPO 2014, A89, 1-3).

Q4-2 The EPO has to be used as International Searching Authority (OJ EPO 2014, A89, 1) because PCT Direct is a service offered by the EPO. Receiving office can be any office open to a German applicant (OJ EPO 2017, A21): DPMA, IB, EPO.

Q4-3 Taiwan is not a PCT contracting state (PCT Applicant's Guide – International Phase – Annex A). The solution is to file national patent application in Taiwan within the priority year, claiming priority of the European patent application.

Q4-4. 10 November 2022.

(Rule 26*bis*.1(a)) The applicant may correct a priority claim or add a priority claim to the request by a notice submitted to the receiving Office or the International Bureau within a time limit of 16 months from the priority date or, where the correction or addition would cause a change in the priority date, 16 months from the priority date as so changed, whichever 16-month period expires first, provided that such a notice may be submitted until the expiration of four months from the international filing date.

16 months from 10 July 2021 (earlier of 2 priority dates) = 10 November 2022

4 months from 3 June 2022 = 3 October 2022

The answer is therefore 10 November 2022, as it is later than 3 October 2022.

Q4-5 7 August 2023.

(Rule 54*bis*.1(a)): 22 months from priority date or 3 months from the date of transmittal to the applicant of the international search report and of the written opinion established under R. 43*bis*.1, whichever period expires later.

7 October 2021 + 22 months = 7 August 2023.

Receipt of the international search report on 1 September 2022 + 3 months = 1 December 2022, which is earlier.

Q4-6 Only the EPO (PCT Applicant's Guide, Annex C, EP).

Q4-7 No, entry into the national/regional phase is possible at any time after validly filing the PCT application. The applicable time limit for performing the acts for entry into the national/regional phase is 30-31 months from the filing date or, if priority has been claimed, the priority date. Therefore, the national/regional offices will not commence processing an international application before the 30-31-month time limit has expired. An exception applies if the applicant lifts the processing ban earlier. To do this, the applicant has to file a request for early processing (under Article 23(2) or 40(2) PCT) with the designated/elected Office and comply with the requirements for the request to be effective.

Q5-1 The deadline for filing notice of appeal is 2 months from the date of notification of the decision to refuse.

Therefore: 14 March 2022 + **10 days** = 24 March 2022

24 March 2022 + 2 months = 24 May 2022 (Tuesday)

Deadline for filing notice of appeal = 24 May 2022.

Q5-2 The deadline for filing the grounds of appeal is 4 months from the date of notification of the decision to refuse.

Therefore: 14 March 2022 + **10 days** = 24 March 2022

24 March 2022 + 4 months = 24 July 2022 (Sunday)

Deadline for filing grounds of appeal = 25 July 2022

(Under Rule 103(1)(b)) If the appeal is withdrawn before the grounds of appeal are filed and before the period for filing them has expired, the appeal fee will be reimbursed in full.
In this case, the appeal was withdrawn on 5 July 2022. Therefore, the appeal fee will be refunded in full (under Rule 103(1)(b)).

Q5-3

(Under Rule 103(3)(b)) If the appeal is withdrawn after the Board of Appeal has issued a communication inviting observations but before expiry of the period set by the Board for filing them, the appeal fee will be reimbursed at 50%.
In this case, as the appeal was withdrawn immediately after the communication inviting observations, the appeal fee will be refunded at 50%.