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|---|---|---|---|--|---|
| Anweisung zum Ausfüllen des Antwortblatts | | Instruction on how to fill in the answer sheet | | Instructions pour remplir la feuille de réponses | |
| Füllen Sie den Kreis so aus:  | Füllen Sie den Kreis NICHT so aus:       | Fill in the circle this way:  | DO NOT fill in the circle this way:       | Remplir le cercle de la façon suivante:  | NE PAS remplir le cercle de la façon suivante:       |
| 1. Verwenden Sie einen schwarzen mittelweichen HB Bleistift | | 1. Use a black medium soft HB pencil | | 1. Utiliser un crayon noir à mine moyenne HB | |
| 2. Entfernen Sie unbeabsichtigte Markierungen vollständig | | 2. Erase any unintended marks completely | | 2. Gommer complètement toutes marques involontaires | |
| 3. Knicken Sie dieses Blatt nicht | | 3. Do not bend this sheet | | 3. Ne pas plier cette feuille | |

| AUSSAGE / STATEMENT / AFFIRMATION | | | | | | | | | |
|-----------------------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|--|
| Frage Question Question | 1 | | 2 | | 3 | | 4 | | |
| | wahr true vraie | falsch false fausse | wahr true vraie | falsch false fausse | wahr true vraie | falsch false fausse | wahr true vraie | falsch false fausse | |
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| 12 | <input checked="" type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | |
| 13 | <input type="radio"/> | <input checked="" type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | |
| 14 | <input checked="" type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | |
| 15 | <input checked="" type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | |
| 16 | <input type="radio"/> | <input checked="" type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | |
| 17 | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | |
| 18 | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | |
| 19 | <input type="radio"/> | <input checked="" type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | |
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Examiner's report pre-examination 2012

Question 1

A European patent application may be filed in any language, such as in Danish, Korean or Japanese, Article 14(2) EPC. If a European patent application is not filed in one of the official languages, a translation must be filed within two months of filing the application, Rule 6(1) EPC.

- 1.1 - True**
- 1.2 - True**
- 1.3 - True**
- 1.4 - False**

Question 2

Mr X can validly claim priority from the German patent application if he files the European patent application on 10 April 2012 [6 April 2011 + 12 months (=6 April 2012), extended due to Easter holidays to 10 April 2012], Article 87(1) EPC, Rule 131(4) EPC and Rule 134(1) EPC. The priority declaration must be made within sixteen months from the priority date claimed, i.e. latest on 6 August 2012, Rule 131(4) EPC. Also a utility model application gives rise to a right of priority, Article 87(1) EPC. The outcome of the priority application (such as a subsequent withdrawal) is irrelevant, Article 87(3) EPC.

- 2.1 - True**
- 2.2 - False**
- 2.3 - True**
- 2.4 - True**

Question 3

An element that the receiving Office must be provided with for according an international filing date to an international application is a description and one or more claims (Article 11(iii)(d) and (e) PCT). The abstract and the title of the invention are not required for obtaining an international filing date.

- 3.1 - True**
- 3.2 - False**
- 3.3 - True**
- 3.4 - False**

Question 4

If an additional search fee is paid under protest, the EPO as the International Searching Authority examines the protest in accordance with Rule 40.2(c) and (e) PCT provided that the prescribed protest fee, Rule 158(3) EPC, is also paid. If the applicant chooses to pay an additional fee for the third invention, the applicant can limit in the European phase the

application to an invention that was covered by the international search report, i.e. the third invention, Rule 164(2) EPC. After entry into the European phase the applicant can file a divisional application directed to the third invention, G 2/92 and Article 76(1) EPC. A supplementary European search report is not drawn up where the international search report was drawn up by the EPO, Article 153(7) EPC and Decision of the Administrative Council of 28.10.2009 (OJ EPO 2009, 594). The applicant will have no opportunity to pay additional search fees in the European phase.

4.1 - False

4.2 - True

4.3 - True

4.4 - False

Question 5

Feature A is part of the state of the art under Article 54(2) EPC by publication of US1 on 1 February 2010. Feature B is part of the state of the art under Article 54(2) EPC by publication of EP1 in December 2011. The subject-matter of claim 2 of EP2 is inventive as it was not obvious to the skilled person until feature B became part of the prior art in December 2011, Article 56 EPC, second sentence. If EP2 had not claimed priority from EP1 the situation would have been as follows: the fiction under Article 89 EPC that 1 June 2010 counts as date of filing of EP2 for the purpose of Article 54, paragraphs 2 and 3, EPC would not apply; EP1 would have been prior art under Article 54(3) EPC against EP2; and the content of EP1 would have rendered claim 1 of EP2 not novel. However, as EP2 claims priority from EP1, the effective date for feature B is 1 June 2010, Article 89 EPC. Thus no valid novelty objection against claim 1 of EP2 can be made using EP1. The subject-matter of claim 2 is novel as it is not disclosed in the prior art: neither US1 nor EP1 disclose the combination of features B and A.

5.1 - False

5.2 - False

5.3 - False

5.4 - True

Question 6

If EP-D contains subject-matter extending over the earlier application it cannot be converted into an independent application taking 10 February 2012 as its date of filing for all or part of its subject-matter. In such a case, EP-D can be amended to remove all additional matter to comply with the requirements of Article 76(1) EPC. If the applicant is unwilling to remedy the defect by removal of the additional subject-matter, the divisional application is refused under Article 97(2) EPC due to non-compliance with Article 76(1) EPC. The claims of a divisional application need not be limited to subject-matter already claimed in the earlier application. (Guidelines, C-VI, 9.1.4, G 1/05).

6.1 - False

6.2 - False

6.3 - False

6.4 - True

Question 7

The European patent application contains (including the abstract page) 38 pages and 19 claims. Claims fees are due in respect of the sixteenth and each subsequent claim, i.e. for 4 claims, Rule 45(1) EPC. Irrespective of how the application was filed, an additional fee for three pages has to be paid, Rule 38(2) EPC and Article 2(1), No.1a Rfees, see also Guidelines, A-III, 13.2. If a claims fee is not paid in due time, the claim concerned is deemed to be abandoned, Rule 45(3) EPC.

7.1 - False

7.2 - False

7.3 - True

7.4 - False

Question 8

A notice of opposition must be filed within nine months of the publication of the mention of the grant, i.e. by 22 March 2012, Article 99(1) EPC and Rule 131(4) EPC. The notice of opposition shall, in particular, contain: a statement of the extent to which the European patent is opposed; and a statement of the grounds of opposition together with supportive facts and evidence, Rule 76(2)(c) EPC. After expiry of the opposition period, it is not possible to extend the opposition to independent claims that had not been attacked in the notice of opposition, G9/91, see also Guidelines, D-V, 2.1. Lack of unity is not a valid ground for opposition, Article 100 EPC and G1/91.

8.1 - True

8.2 - False

8.3 - False

8.4 - False

Question 9

As PCT1 was filed in French it is not possible to change the language of proceedings to English upon entry into the European phase, G4/08. On 5 March 2012 it was possible to file a European application EP-FR validly claiming priority from FR2, as the period of twelve months for claiming priority had not yet expired, Article 87(1) EPC. The language of the priority document does not matter. If EP-FR is filed in French, its European divisional application can only be filed in the language of the proceedings of the earlier application, i.e. in French, Rule 36(2) EPC.

9.1 - False

9.2 - True

9.3 - False

9.4 - False

Question 10

The time limit for requesting further processing expired on 3 February 2012 [23 November 2011 + 10 days (= 3 December 2011) + 2 months (= 3 February 2012)], Rule 112(2) EPC, Rule 126(2) EPC and Rule 131(4) EPC. In accordance with Article 122 EPC and Rule 136(1) EPC, the request for re-establishment of rights has to be filed within two months of the removal of the cause for non-compliance with the period (i.e. the discovery of the notice of loss of rights), which is latest on 4 April 2012 [4 February 2012 + 2 months (= 4 April 2012)], Rule 131(4) EPC. The criterion of all due care is not required with regard to requests for further processing. This requirement only applies to requests for re-establishment of rights. To save the application it is necessary to comply with all requirements of Article 122 and Rule 136: Among others, the omitted act has to be completed, in the present case filing of an adapted description, Rule 136(2) EPC.

10.1 - True

10.2 - False

10.3 - False

10.4 - False

Question 11

The subject-matter of Claim I reads on to a closure as shown in Figures 1-3 and in Figure 4. The thermoweldable material is on a first surface of the sealing part. It is not specified whether or not the sealing part includes the polyester film (22); both options are possible.

The subject-matter of Claim I lacks novelty over D1. D1 also discloses a closure on a bottle, the closure comprising an aluminium foil (6) with a thin layer of thermoweldable material (9) on a first surface; the thermoweldable material allowing attaching of the closure to an opening of a bottle; and a tab part (8) extending over part of the second surface of the aluminium foil (6), the pull-tab (8) being arranged to be gripped to remove the closure from the bottle.

The closure of Claim I is on a bottle; therefore the subject-matter of Claim I does not protect a closure independently of a bottle.

11.1 - True

11.2 - False

11.3 - False

11.4 - True

Question 12

The subject-matter of Claim II reads on to a closure as shown in Figures 1-3 and in Figure 4. The thermoweldable material is on a first surface of the sealing part. It is not specified whether or not the sealing part includes the polyester film (22); both options are possible.

The subject-matter of Claim II is novel over D1. D1 discloses only two layers of material (6 and 9) but the closure of Claim II includes at least three material layers: a thermoweldable material (26), a first sheet (24) and tab-part (12) comprising a second sheet of material.

The closure of Claim II is attachable to a bottle as opposed to being attached. Therefore, Claim II protects a closure independently of a bottle.

12.1 - True

12.2 - True

12.3 - True

12.4 - True

Question 13

The subject-matter of Claim III reads on to a closure as shown in Figure 4 but not to a closure as shown in Figures 1-3. The thermoweldable material is on a first surface of the metal foil (24). On the second surface of the metal foil (24) the tab-part (12) is attached. The polyester film (22) is excluded by the wording of Claim III.

The subject-matter of Claim III is novel over D1. D1 does not disclose a tab-part attached to the second surface of the metal foil.

The closure of Claim III is (suitable) for a bottle; the bottle is not claimed as such.

Therefore, Claim III protects a closure independently of a bottle, see also Guidelines, C-III, 4.13.

13.1 - False

13.2 - True

13.3 - True

13.4 - True

Question 14

The subject-matter of Claim IV reads on to a closure as shown in Figures 1-3 and in Figure 4. The thermoweldable material is on a first surface of the sealing part (20). It is not specified whether or not the sealing part includes the polyester film (22); both options are possible.

The subject-matter of Claim IV is novel over D1. D1 does not disclose a tab part (12) comprising a polyester film.

The subject-matter of Claim IV is not novel over D2. D2 discloses all features of Claim IV including a tab part (6) comprising a polyester film, a first portion of the polyester film being attached to a second surface of the sealing part (2) and a second portion of the polyester film serving as a pull-tab (9).

14.1 - True

14.2 - True

14.3 - False

14.4 - True

Question 15

Statements that form at least part of an argument in support of the modification by replacement in Claim V being allowable under Article 123(2) EPC are that

(i) the use of aluminium for the metal foil was not explained as essential in the application;

(ii) the aluminium foil is not, as such, indispensable as the invention will work using a metal foil, as is also confirmed by D2 (D2 provides evidence that the skilled person would realise that the invention will work with a metal foil); and
(iii) the replacement of an aluminium foil by a metal foil does not require modification of any other feature of the closure (see also Guidelines, C-VI, 5.3.10).
Whether the amended claim relates to searched subject-matter may be relevant in view of the requirements of Rule 137(5) EPC. But it is irrelevant for deciding whether the amendment adds subject-matter under Article 123(2) EPC.

- 15.1 - True**
- 15.2 - True**
- 15.3 - True**
- 15.4 - False**

Question 16

The subject-matter of Claim VI does not extend beyond the content of the application as filed, as it is based on paragraph [008] of the description, first two sentences.

The subject-matter of Claim VI reads on to a closure as shown in Figures 1-3. The thermoweldable material (26) is on a first surface of the sealing part (20) and the sealing part may contain the polyester layer (22).

The two-part form is incorrectly set with respect to D1, as the preamble of Claim VI contains features not disclosed in D1, such as the tab part (12) comprising a polyester film. The subject-matter of Claim VI is not novel over D2. D2 also discloses: a tab part comprising a polyester film (6); a first portion of the polyester film being attached to a second surface of the sealing part (2) by a layer of adhesive covering up to half of the area of the sealing part; a second portion of the polyester film serving as a pull-tab (9). The second portion of the polyester film is attached to the second surface of the sealing part by a layer of adhesive that can be regarded as incomplete, as it does not cover the entire second surface.

- 16.1 - False**
- 16.2 - True**
- 16.3 - False**
- 16.4 - False**

Question 17

The subject-matter of Claim VII does not extend beyond the content of the application as filed, as it is based on paragraph [012] of the description, first sentence.

The subject-matter of Claim VII does not read on to a closure as shown in Figures 1-3: only the embodiment shown in Figure 4 without the polyester film 22 is configured to provide evidence of tampering.

Claim VII lacks clarity as the characterising portion is defined as a result to be achieved: it claims the underlying technical problem rather than the features that are essential for solving the problem. However, it is not worded as a method step (an example of a method

step could be "characterised by removing the closure by pulling the pull-tab so that the sealing part provides evidence of tampering.").

17.1 - False

17.2 - False

17.3 - True

17.4 - False

Question 18

In the context of the problem-solution approach, the objective technical problem means the aim and task of modifying or adapting the closest prior art to provide the technical effect that the invention provides over the closest prior art, see Guidelines, C-IV, 11.5.2, third paragraph. The distinguishing feature over D2 (the sealing part consists solely of the aluminium foil) provides the technical effect that the aluminium foil tears on removing the closure. In view of this, the only valid definition of the objective technical problem is to enable the detection of tampering. Statement 18.1 recites an effect of the distinguishing feature and is a part of the solution, but is not an objective technical problem with respect to D2. Statements 18.2 and 18.4 are at best speculative aspects that are not derivable from the application as filed and are not related to the claimed distinguishing feature.

18.1 - False

18.2 - False

18.3 - True

18.4 - False

Question 19

The closest prior art is the second embodiment of D2, where the pull tab is lightly attached to the sealing part. The statement of 19.1, which is directed solely to the first embodiment of D2 and does not acknowledge the second embodiment of D2, is not helpful to define why it would not be obvious to provide the claimed features. However, the statement 19.2 is relevant as it demonstrates that D2 teaches a different solution to that claimed in Claim IX. A valid argument is necessarily directed to the features recited in the independent claim. The argument set out in 19.3 is therefore a valid argument in respect of Claim IX. However, as Claim IX does not recite dots of adhesive, the argument set out in 19.4 relating to dots of adhesive is irrelevant.

19.1 - False

19.2 - True

19.3 - True

19.4 - False

Question 20

The closest prior art is the second embodiment of D2, where the pull tab is lightly attached to the sealing part. The statement of 20.1, which is directed solely to the first embodiment of D2 and does not acknowledge the second embodiment of D2, is not helpful to define

why it would not be obvious to provide the claimed features. However, the statement 20.2 is relevant as it demonstrates that D2 teaches a different solution to that claimed in Claim X. A valid argument is necessarily directed to the features recited in the independent claim. The argument set out in 20.3 is not directed to the characterising features of Claim X and is therefore not a valid argument in support of inventive step being provided by the claimed features. However, the argument set out in 20.4 is a valid argument in the light of the claimed features.

20.1 - False

20.2 - True

20.3 - False

20.4 - True