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## **Examiners' Report - Paper C 2006**

### **General Comments**

1. The overall standard of candidates' answers was comparable to the standard of last year. It is confirmed once more that candidates have difficulties handling issues which have not been raised in previous papers. This year the major difficulty related to the use of Annex 3.

2. The answer papers indicate that many candidates adopt a formulaic approach to prepare their notice of opposition based on the papers of previous years. This year, valuable time was lost by many candidates making multiple attacks against claims for which only a single attack was required for the award of full marks. Candidates who spent time raising and developing attacks of secondary relevance, for which marks were seldom awarded, were often unable to complete the paper.

Claims 1 and 2 are mentioned as examples of claims for which unambiguous novelty attacks could be made and for which there was no requirement for additional inventive step attacks.

It was noted that many candidates who managed to deal with the last claim 7 handled the attack very superficially, very often based on an inappropriate combination of documents.

3. The status of Annex 3 as prior art appears to have confused many candidates. Although the majority correctly acknowledged that Annex 3 belonged to the state of the art from the date it was made available to the public, they did not use it in the notice of opposition against claim 6 when dependent on claim 1, as they were expected to do.

A considerable number of candidates who relied on Annex 3 to attack claim 6 when dependent on claim 1, did not realize that Annex 3 is state of the art taken alone, independent of Annex 2, with no requirement to refer to or combine it with Annex 2. Furthermore, whilst many candidates mentioned that Annex 3 contains general technical knowledge, they did not use it in novelty attacks against claims 1 and 2 or in an inventive step attack against claim 3.

4. Candidates are reminded to read carefully the instructions in the special edition of the OJ EPO concerning use of their own technical knowledge as general technical knowledge of the person skilled in art. All necessary information concerning general technical knowledge was provided in the Annexes. For example, support for stating that it is common general knowledge that the starch and the gums of Annex 2 are natural polymers was provided in Annex 3.

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5. Candidates who did not fully analyze the claims lost marks for not specifically identifying all claim features and their specific location in the prior art documents. In the context of this examination, this level of detail is expected from candidates and applies to both novelty and inventive step attacks.

6. Candidates are reminded that when comparing a claim with a prior art document, it may not be sufficient to equate a claim feature with a disclosure in a prior art document simply by reference to the wording of the claim. Where the claim and the prior art document use different terminology, an explanation is expected as to why the disclosures are construed to have the same meaning.

For example, explanation is required to equate the terms “major amount” and “minor amount” used in claim 1 with the disclosure in Annex 2 of stable dispersions of particles even at very low concentrations, to support the assertion that Annex 2 discloses that a minor amount of particles are dispersed in a major amount of base oil.

Similarly, some terms need to be interpreted in order to assert general technical knowledge of the skilled person in the art. Thus, as already mentioned above, some explanation is required why it is common general knowledge that “starch” and “gums” are natural polymers in view of Annex 3.

7. Whilst the majority of candidates used the problem-solution approach for the inventive step attacks, many candidates still lost marks due to poor argumentation.

For example, when identifying a document as the closest prior art, it was not sufficient merely to state that it has the most features in common with the claim and belongs to the same technical field. A brief rationale was expected, supported by reference to the subject matter of the claim and setting out why the document is chosen as the closest prior art.

When applying the problem-solution approach, a full identification of the difference between the claim features and the disclosure in the closest prior art is central to the assessment of the technical effect and the objective technical problem. An incomplete identification often led to an incorrect or incomplete analysis of the technical significance of a differing feature in relation to the prior art.

Many candidates, after having correctly identified the differences between the claim under consideration and the closest prior art, immediately defined the technical problem to be solved without specifying the effect of the distinguishing feature. Reference to the relevant passage of Annex 1 was required as support of the effect.

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A number of candidates defined the problem quite arbitrarily without basing it on the information given in Annex 1. As an example, the technical problem solved by the difference in the core material of the dispersed particles of claim 4 from those disclosed in Annex 4, is the ability for the ERF to perform within a broad temperature range as mentioned in Annex 1, paragraph [007].

8. Candidates are reminded that all relevant facts and arguments relating to the grounds of opposition must appear in the notice of opposition, since this is the document filed with the EPO. In this year's paper, these included the priority issue and the objection under Article 100 (c) EPC against the added subject-matter of paragraph 11 of Annex 1 and of claim 5. Candidates are advised to plan their answers to avoid unnecessary duplication in the notice of opposition and in their response to the client's letter.

9. As in past examinations, a number of candidates appeared to know the relevant law, but failed to apply it correctly. For example, in the legal questions, the legal basis for the question concerning partiality was correctly mentioned but the wrong conclusion was often made.

10. Some candidates gave numbers to the features of the claims and used only this numbering for making their attacks. This not only made marking more difficult, but often led to loss of marks due to incomplete substantiation.

11. A number of candidates used personalized abbreviations or even used a different numbering of the annexes. This practice is both time-consuming for the candidate and confusing for the marker.

12. It is pointed out that the submission of pre-prepared materials as part of the answer paper is contrary to the Regulations (see "Instructions to candidates concerning the conduct of the examination"). Feature charts prepared during the examination by candidates as an aid to analysis of the prior art should not be submitted with the answer paper. All such materials were disregarded for marking.

13. Contrary to previous years, fewer candidates lost time in writing long explanatory letters to their client rather than giving short precise answers to the questions posed in the client's letter.

14. Most candidates were confident with the legal context of the divisional application.

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## **Specific Comments**

Notice of opposition

Priority

The priority issue was generally poorly answered. It was not necessary to repeat what the client mentioned in the letter but rather to provide the legal basis for the correctness of the information.

Few candidates realized that claim 5 had no valid date since it was not entitled to the priority date or the filing date of the parent application. Whilst the originally filed divisional application was correctly filed and enjoyed both the priority date and filing date of the parent application, claim 5 was an additional claim introduced during the prosecution of the correctly filed divisional application before the examining division. The subject matter of claim 5 which was based on the abstract, could be objected to only on the basis of Article 123 EPC.

Annex 3

The majority of the candidates realized that Annex 3 was prior art under Article 54(2) for claims 6 and 7. However, very few used it against claim 6 when dependent on claim 1.

Few candidates realized that A3 was prior art per se, independent of Annex 2. Reference is made to the definition of the prior art given in Art. 54. The condition for Annex 3 to be available to the public and thus to belong to the state of the art is that Annex 2 must have been published so that the file of Annex 2 is open to public inspection.

Some candidates correctly used the content of Annex 3 as general technical knowledge of the person skilled in the art. As noted above, Annex 3 disclosed that the starch and gums disclosed in Annex 2 are natural polymers, and that acacia gum is a synonym for arabic gum. It also disclosed that the person skilled in the art knew of the equivalence between starch from corn and from potato for many years.

Added subject-matter

Most candidates raised the correct objection against the subject-matter of claim 5 and the corresponding part of the description (paragraph [011]) and gave the expected argumentation.

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**Claim 1**

The majority of candidates raised the expected novelty attack on the basis of Annex 2. Marks were lost by not identifying the relevant disclosure for “base oil”, “minor amount”, “major amount” and “natural polymer”.

With regard to “natural polymer”, many candidates used their own technical knowledge instead of the general technical knowledge of the person skilled in the art as disclosed in Annex 3. Some of the candidates, who made reference to Annex 3, failed to mention the specific passage and lost marks.

With regard to the reasoning why starch of Annex 2 is a natural polymer, argumentation was accepted that this document discloses that starch is a polymer obtained from potato [005] and [007], which potato is a natural product – general technical knowledge; thus starch obtained from potato is a natural polymer.

It was also accepted reasoning that starch is a natural polymer in view of Annex 1 paragraphs [004] and [005], which discloses as general technical knowledge that starch is a natural polymer.

Many candidates raised an additional inventive step attack on the basis of the combination of Annex 4 with Annex 5. An inventive step attack was not required and this combination was not appropriate since the particles of claim 1 do not have a metallic coating and Annex 4 cannot be the closest state of the art.

**Claim 2**

The novelty attack on the basis of Annex 2 was an easy attack, which was raised by the majority of the candidates, although the use of personal technical knowledge (that arabic gum is an alternative name for acacia gum) and the omission of citing the relevant passage of Annex 3 led to loss of marks.

As with claim 1, candidates lost time raising an additional inventive step attack on the basis of the combination of Annexes 4 and 5.

**Claim 3**

Claim 3 is dependent on claim 2. The requirement for the starch to be obtainable from corn means that the starch should be either starch from corn or starch from other sources that is identical to starch from corn.

Consequently starch from potato, which is not identical to starch from corn, cannot anticipate the subject-matter of claim 3 which is therefore novel over Annex 2 in the light of general technical knowledge derived from Annex 3.

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The majority of candidates who correctly raised an attack based on lack of inventive step applied the problem/solution approach very superficially. Some candidates did however correctly argue that the claimed subject-matter lacked an inventive step on the basis of the equivalence of starch from potato to starch from corn, because of the absence of any technical effect.

As already mentioned above, an attack based on lack of inventive step in view of the combination of Annex 4 with Annex 5 was incorrect.

Some candidates argued that the subject-matter lacks an inventive step in view of the combination of Annex 2 with Annex 3, which is clearly incorrect because Annex 3 was made available to the public after the priority date of the claim and cannot be considered state of the art in the sense of Article 56 EPC.

#### **Claim 4**

Claim 4 is an independent claim because the structure of the dispersed particles is different from that of claim 1. The particles of claim 1 consist of the mixture of two different natural polymers and nothing else.

The particles of claim 4 comprise a core of a mixture of two different natural polymers and a metallic coating.

Therefore there was no reason to consider Annex 2 as the closest state of the art as for the previous claims.

Many candidates correctly identified Annex 4 as the closest state of the art; it relates to ERFs for use in pipelines which in addition to crude oil and dispersed particles, contain additives protective for the pipeline.

Annex 5 is not the closest state of the art since it does not relate to the use of ERFs in pipelines and does not disclose any pipeline protective additive.

Similarly Annex 2 is not the closest prior art document because it does not relate to the use of ERFs in pipelines and its dispersed particles should not be coated.

Although many candidates did relate the technical effect and the technical problem to performance within a broad temperature range as mentioned in Annex 1, paragraph [007], a number of candidates misunderstood the invention underlying this claim and argued that the technical effect and the technical problem concerned the enhancement of the dispersion stability.

Some candidates incorrectly combined Annex 4 with Annex 2. The latter does not provide the solution to the raised technical problem since it stipulates that the surface of the particles should not be covered with any further constituent (see paragraph [008]).

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**Claim 5**

Most candidates correctly raised an attack under Article 123(2) EPC.

Since there is no doubt that this attack would succeed because of clear legal irregularity, no further attack was expected as a fall back position. Candidates who also raised a lack of inventive step attack lost valuable time.

**Claim 6**

Claim 6 dependent on claim 1

Few candidates formulated an attack against this claim and even fewer attacked the claim for lack of novelty in view of Annex 3. Since claim 6 was not entitled to the priority date, Annex 3 became state of the art under Article 54(2).

The novelty attack required interpretation of the term “about” in relation to the claimed feature of the average particle diameter range and why the feature is therefore disclosed in Annex 3.,

Nevertheless, marks were awarded to candidates who made a lack of inventive step attack based on Annex 3 and argued that the patent did not disclose any technical effect related to the value of 30 micrometers, which is very close to the value of 32 micrometers of Annex 3.

Claim 6 dependent on claim 4

Many candidates made the expected inventive step attack on the basis of the combination of Annexes 4 and 5. Where the combination of these two documents was relied on in the context of claim 4, it was not necessary to repeat the same argumentation again. Back reference to the argumentation for claim 4 was sufficient.

Very few candidates explained that the additional feature of claim 6, i.e. the average particle diameter, was not novel in view of the disclosure of Annex 4 because it did not fulfill all the criteria for a selection.

**Claim 7**

A large number of candidates did not have the time to make an attack against this claim. Of those who did, many correctly combined Annex 6 and Annex 4 for an inventive step attack, but were brief in their argumentation. Annex 6, as the only document dealing with the repair of pipelines, is the closest prior art and Annex 4 provides the solution to the technical problem of reducing the repair time by a faster solidification technique for crude oil than that used in Annex 6.

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## Legal Issues

The question on partiality of the opposition division was generally well answered using the correct legal basis (Article 24 EPC and G5/91), although some candidates wasted time explaining the procedural consequences of a request for a different opposition division.

Most candidates advised that accelerated proceedings could be requested. However, few candidates noted that accelerated proceedings might not be granted since the infringement proceedings related to the parent patent and not to the divisional patent.

The question concerning the scope of the claims of the divisional compared to the scope of the claims of the parent was correctly dealt with by most candidates.



## POSSIBLE SOLUTION – PAPER C

### Notice of opposition

(the first marks are for “use of information” and the second for “argumentation”)

### PRIORITY: (3/0)

Claims 1-4 are entitled to the priority date of the parent application 14.12.1999. The subject-matter of these claims was present in the originally filed parent application [Art. 76 EPC] and in the priority document [Art. 87, 89 EPC].

Claims 6, 7 are entitled to the filing date of the parent application 11.12.2000. The subject-matter of these claims was present in the originally filed parent application [Art. 76 EPC] but not in the priority document [Art 87 EPC].

Claim 5 is entitled neither to the priority nor to the filing date of the divisional application. The subject-matter was not present in the originally filed divisional application.

### ADDED SUBJECT-MATTER: (2/5)

Claim 5 and paragraph [011] of the description do not fulfill the requirements of Article 123(2) EPC and an objection under Art. 100(c) EPC is raised.

Claim 5 and paragraph [011] of the description contain the technical feature that the metallic layer is made of nickel. The only basis for this feature is found in the abstract. However, the abstract serves merely for use as technical information. It is not part of the application [Art. 85 EPC] and cannot be used to justify the addition of new subject-matter into the description or the claims (see Guidelines C-II, 2 or B-XI, 2; T246/86 or G11/91 or G3/89).

The conclusion is that neither claim 5 nor paragraph [011] of the description find support in the divisional application as filed.

It should be remarked that the feature “the metallic layer is made of nickel” provides a technical contribution in the sense of G1/93 and cannot be ignored (see T201/83, Guidelines C-VI, 5.3.1).

**CLAIM 1, independent: (4/5)****Lack of novelty, Art 54(2) EPC, in view of Annex 2**

Annex 2 discloses an ERF comprising crude oil (see paragraph [004]) and dispersed particles (see paragraphs [004], [005], [007] and [008]). Crude oil is a base oil following the definition given in Annex 1 (see paragraphs [001] and [006]). Paragraph [008] of Annex 2 discloses that stable dispersions of particles are provided “even at very low concentrations”. This is construed to mean that Annex 2 discloses ERFs having a minor amount of dispersed particles in a major amount of crude oil.

According to one alternative in paragraph [007] of Annex 2, the particles are a mixture of two different polymers, the first being starch and the second, gums selected from a specific list. Annex 2 does not disclose that the starch and gums are natural polymers.

In this respect Annex 3, which is post-published in relation to claim 1, is considered to reflect the general technical knowledge of the person skilled in the art although it does not belong to the state of the art under Article 54(2) EPC (T1110/03). Annex 3 discloses that starch and the specific gums of Annex 2 are natural polymers (see table 1 and paragraph 1, lines 3-4).

Consequently, in the light of Annex 3, Annex 2 discloses the ERF composition of claim 1.

**CLAIM 2, dependent: (4/2)****Lack of novelty, Art 54(2) EPC, in view of Annex 2**

Claim 2 depends on claim 1, the features of which are disclosed in Annex 2.

The additional feature of “crude oil” of claim 2 is also disclosed in Annex 2 (see paragraphs [003]-[005] and [008]).

With regard to the further additional feature of claim 2, that the mixed natural polymers are starch and acacia gum, Annex 2 does not use the term acacia gum. It does, however, disclose a mixture of starch and arabic gum (see paragraph [007]).

It is general technical knowledge that arabic gum is an alternative name for acacia gum as evidenced by Annex 3 (see page 2, 1st paragraph). Consequently, in the light of Annex 3, Annex 2 discloses the mixture of starch with acacia gum.

**CLAIM 3, dependent: (7/7)****Lack of inventive step, Art 56 EPC, in view of Annex 2 and general technical knowledge**

Claim 3 depends on claim 2 and contains one additional technical feature, which is that the starch is obtainable from corn.

Annex 2 is the closest prior art document, because it relates to the same technical field of ERFs with particles consisting of a mixture of two natural polymers.

Annex 2, in addition to the features of claim 2, discloses that starch from potato is one of the most commonly used starches (see paragraph [005]). Annex 2 further discloses that starches have small structural differences depending on their origin (see paragraph [005]). Annex 1 (see paragraph [003]) and Annex 3 (see page 2, last paragraph) confirm that there is a difference between starch from potato and starch from corn. Therefore the subject-matter of claim 3 differs from the disclosure of Annex 2 in the structure of the starch.

There is no technical effect resulting from this difference. Annex 1 (see paragraph [003]), states that starch from potato and corn are similar and can be used with equal effect in ERFs.

The technical problem to be solved in view of Annex 2 is to find an alternative starch to the starch from potato.

Annex 3 (see page 2, last paragraph) discloses that the similarity in structure and properties of the two types of starch was general technical knowledge since the 1920s.

Consequently the person skilled in the art would consider it obvious to replace the starch from potato in the dispersed particles of Annex 2 by the starch from corn without modifying the ERF effect and arrive at the claimed subject-matter without exercising any inventive skill.

**CLAIM 4, independent : (11/8)****Lack of inventive step, Art 56 EPC, in view of Annex 4 + Annex 5**

Annex 4 is the closest state of the art because it belongs to the technical field of ERFs, which can be used in pipelines, and because the ERF has the most similar composition to that of claim 4.

Annex 4 discloses an ERF, which is a dispersion of particles in a fluid (see paragraph [003]). The fluid can be crude oil (see paragraph [004], first sentence). Paragraph [003] discloses “dispersing small amounts of the spherical particles into the fluid”, which is construed to mean that a minor amount of particles are dispersed in a major amount of crude oil. Annex 4 also discloses that, when the ERF is to be used in pipelines (see paragraph [004], third sentence), it should comprise additives in order to prevent the pipeline material from interacting with the fluid components. It further discloses that the dispersed particles comprise a core and a metallic layer around the core (see paragraph [003]).

Claim 4 differs from Annex 4 in that it requires the core material to be a mixture of starch and a second natural polymer. Annex 4 (see paragraph [007]), discloses synthetic resin as the preferred core material.

The core material of the contested patent has the technical effect of allowing the ERF to perform within a broad temperature range (see Annex 1, paragraph [007]).

The technical problem is to enable an ERF to perform within a broad temperature range, which allows it to be used in various environments.

Annex 5, which relates to the technical field of ERFs, discloses metal-coated particles (aluminum coated particles) having a core of starch and guar gum (paragraph 1). These core materials are generally known to be natural polymers (see Annex 3, table 1 and arguments provided for claim 1). The particles provide the ERF with the property to perform in a much broader temperature range (see paragraph 2).

The skilled person in the art starting from Annex 4 and intending to solve the technical problem will find in Annex 5 the motivation to replace the particles of Annex 4 by the particles of Annex 5.

The additional technical effect of dispersion stability, disclosed in Annex 4 (see paragraph [007]), is linked to the aspect of low-density core-material. This additional technical effect is maintained, when replacing the core material of Annex 4 by that of Annex 5, which is also disclosed as having a low density (see paragraph 2).

**CLAIM 6 (dependent on claim 1): (2/6)****Lack of novelty, Art. 54(2) EPC, in view of Annex 3**

Annex 3 is a letter, which arrived at the EPO on 30.10.2000 and was incorporated into the file of Annex 2. Since at that date Annex 2 was already published, its file was open to inspection. Consequently Annex 3 is prior art under Article 54(2) EPC for claim 6, which has the valid date of 11.12.2000.

Annex 3 discloses an ERF comprising particles made of starch as a first natural polymer and a gum as a second natural polymer dispersed in crude oil (see paragraph 2 and table 1). The crude oil is a base oil following the definition of Annex 1 (see paragraphs [001] and [006]). Annex 3 (see paragraph 2) discloses that 5 grams of particles are dispersed in 1 liter of crude oil, which means that a minor amount of particles are dispersed in a major amount of crude oil.

Annex 3 discloses that the average particle diameter is about 32 micrometers (see paragraph 2), whereas the claimed average particle diameter is “about 20 to about 30 micrometers”.

The term “about” used in claim 6 allows a broad interpretation of the ends of the claimed range. In view of the broad interpretation the disclosed value “about 32 micrometers” cannot be distinguished from the claimed value “about 30 micrometers” (Guidelines C-III, 4.5a). Consequently the disclosed value of Annex 3 is novelty destroying for the claimed average particle diameter range.

Therefore all features of claim 6 depending on claim 1 are disclosed in Annex 3.

**CLAIM 6 (dependent on claim 4): (2/6)****Lack of inventive step, Art. 56 EPC, in view of Annex 4 + Annex 5**

Claim 6, in addition to the features of claim 4, claims that the average particle diameter is about 20 to about 30 micrometers.

Annex 4 is the closest state of the art for the same reasons set out above (see claim 4). In addition to the features identified above (see claim 4) Annex 4 also discloses that the size of the particles is usually smaller than 100 micrometers but that it cannot be less than 15 micrometers (see paragraph [009]).

The claimed sub-range of 20-30 micrometers lies within the range disclosed in Annex 4. This sub-range cannot be considered as a novel selection for the following reasons:

- it is not related to any new technical effect (see Annex 1, paragraph [008])
- it is not sufficiently far removed from the lower end of the range of Annex 4, which is 15 micrometers.

As the sub-range does not fulfill all the criteria set out for a selection invention (see Guidelines C-IV, 7.7(ii) or T198/84 or T279/89), it is not novel over the disclosure of Annex 4.

Claim 6 therefore differs from Annex 4 by the same features set out in respect of claim 4.

Consequently for the reason set out above in relation to claim 4, the subject-matter of claim 6 dependent on claim 4, lacks inventive step over the combination of Annex 4 with Annex 5.

**CLAIM 7, independent** : (6/6)

Lack of inventive step, Art. 56 EPC, in view of Annex 6 + Annex 4

The closest state of the art is Annex 6 because it relates to a method of repairing leakages in crude oil pipelines by solidification of the oil upstream and downstream of the leakage.

The method of Annex 6 discloses that solidification is obtained by freezing the crude oil until the pipeline is repaired (see paragraphs 1 and 2).

The claimed method differs from that of Annex 6 in that solidification is obtained by: (i) forming an ERF by dispersing metal-coated particles in the oil and (ii) applying an electric field.

The technical effect of this different solidification method is the faster change between the solid and the liquid phase. Annex 1 discloses that ERFs undergo rapid reversible change in approximately 1 millisecond (see paragraph [001]), whereas Annex 6 points to a much longer process. Paragraph 3 of Annex 6 discloses that thawing can be completed within a couple of hours.

The technical problem is to provide a solidification method which reduces the repair-time of crude oil pipelines.

Annex 4, which relates to the solidification of crude oil and to its transportation in pipelines, discloses that ERFs containing metal-coated particles dispersed in crude oil can be swiftly solidified and equally swiftly fluidized by respectively applying and removing an electric field (see paragraphs [001], [003] and [004]).

It is thus obvious to the skilled person in the art starting from the method of Annex 6 and intending to reduce the repair-time of the pipeline to replace the solidification method disclosed in Annex 6 by that of Annex 4. Such a replacement does not involve an inventive step.

**Legal issues** (14 marks)

### **PARTIALITY**

Yes, it is possible to request a different opposition division.

The requirement for impartiality stated in Art. 24 EPC applies to the members of the boards of appeal. However, this requirement applies also to members of opposition divisions in view of G5/91.

### **ACCELERATED PROCEEDINGS**

You can request accelerated proceedings in opposition (see Guidelines D-VII,1.2 (iii) or E-VIII.4 or Notice from the President of the EPO 19.05.1998, OJ 7/1998, p361).

A reasoned, written request is required and can be based on infringement proceedings pending in a contracting state relating to a European patent. In the present case, it appears that infringement proceedings are pending in Belgium against the parent and not the divisional patent. It is, therefore, not certain that the EPO will grant the request for accelerated opposition proceedings.

### **SCOPE OF THE DIVISIONAL**

Yes, the subject-matter of claim 1 of the granted divisional patent can be broader than the subject-matter of the granted claims of the parent patent.

However, the subject-matter of the divisional patent has to fulfill the requirements of Art 76 EPC, i.e. it must not extend beyond the content of the originally filed parent application.

This has been dealt with in T587/98 or T1221/97 (see also Guidelines C-VI, 9.1.4).

### **ANNEX 3**

Yes, Annex 3 can be used (see the notice of opposition).

Annex 3 is a written disclosure, which arrived at the EPO on 30.10.2000 (see the official stamp). Since at this date Annex 2 was already published, Annex 2 was open to file inspection (Art. 128 EPC or Guidelines C-VI, 5.3.6).

Consequently Annex 3 is relevant prior art under Article 54 and 56 against claims 6 and 7.

Annex 3, although post-published in relation to claims 1-4, contains general technical knowledge, which can be used against these claims.

**EXAMINATION COMMITTEE II**

Candidate No.

Paper C 2006 - Schedule of marks

Category	Maximum possible	Marks awarded	
		Marker	Marker
Use of information	41		
Argumentation	45		
Legal aspects	14		
Total	100		

Examination Committee II agrees on ..... marks and recommends the following grade to the Examination Board:

PASS  
(50-100)

FAIL  
(0-49)

COMPENSABLE FAIL  
(45-49, in case the candidate sits  
the examination for the first time)

07 July 2006

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Chairman of Examination Committee II