

EUROPEAN QUALIFYING EXAMINATION 1991

PAPER D

This paper comprises:

- Instructions to Candidates 91/D/e/1
- Part I - Questions 1-13 91/D/e/2-6
- Part II - Legal Advice 91/D/e/7-10
- Annex - Calendars for 1989, 1990 and 1991 with indication of the days on which at least one of the EPO filing offices is not open for the receipt of documents 91/D/e/11-13

91/D/e

INSTRUCTIONS TO CANDIDATES

Paper D comprises:

- 13 questions, all to be answered - no choice for candidates;
- an inquiry from a client requiring an answer in the form of a legal opinion.

Half the marks available are awarded for the 13 questions, the other half for the legal advice.

The answers to questions 1 to 13 should be brief and to the point and the candidate must cite any Articles, Rules or other legal basis relevant to his answer.

In the legal opinion the candidate should demonstrate his professional ability to master a complex industrial property law situation. He must explain any legal consequences of the situation postulated and preferably cite any Articles, Rules or other legal basis relevant to his answer.

P A R T I

Question 1

A US applicant is invited by a communication of the Receiving Section sent on 31 July 1990 to appoint and duly authorise a professional representative within a time limit of two months.

When does the time limit expire?

Question 2

From which provisions does it follow that a European patent application is deemed to be withdrawn when none of the designation fees are paid?

Question 3

- (a) Pursuant to which provision should terminology and signs be consistent throughout the European patent application?
- (b) In cases where this provision has not been observed, does the Receiving Section invite the applicant to remedy such a deficiency?

Question 4

One day after expiry of the time limit set by the Examining Division, the applicant for a European patent application realises that he has failed to reply to a communication from the Examining Division, and that the application must therefore be deemed to be withdrawn.

- (a) Can this time limit be extended?
- (b) Which is the appropriate legal remedy to the present loss of rights?
- (c) When can this be applied for at the earliest?

Question 5

The applicant of an international application, filed with the EPO, would like to amend the claims directly after having received the international search report:

- (a) With which authority must he file the amendments?
- (b) Is a time limit laid down for doing so?

Question 6

In an international application, filed with the EPO on 1 October 1989, the sheets containing the drawings referred to in the application are not in fact included. On 10 October 1989 the EPO notifies the applicant accordingly.

What can the applicant do, until when and with what legal consequences?

Question 7

A European patent application has a date of filing of 14 February 1989.

- (a) If the applicant is in financial difficulties, has missed the due date for paying the renewal fee for the third year, and decides to delay payment together with the additional fee under EPC Art. 86(2) for as long as possible, what was the due date and when is the last day for payment of the additional fee?
- (b) If a deposit account debit order sent by facsimile to the EPO in Munich was received on 15 February 1991 signed by a European patent attorney, but not by one authorised in the specific authorisation for the application, is the renewal fee validly paid?

Question 8

Mr Fujimoto has devised a spinnaker (a particular sail for sailboats), whose structure and shape have new aesthetic features in addition to new and advantageous technical features. His spinnaker is covered by a Japanese utility model application filed 3 months ago. The Japanese application describes and shows both the technical and the aesthetic features.

Mr Fujimoto wishes to protect both the technical and the aesthetic features of his new spinnaker in EPC Contracting States, claiming the priority of his domestic utility model application under the Paris Convention. State briefly the options open to him and the time limits involved.

Question 9

A medium-sized firm with its principal place of business in Finland asks you to represent it in opposition proceedings in which it is the opponent and has been represented until now by another attorney's office. The language of the proceedings is German. At the same time you are informed that in about two months' time oral proceedings under Article 116(1) EPC will be held and that a Swedish technical specialist employed by the firm, who has a good command of English as well as Finnish and Swedish, would also like to take part in them.

- (a) You receive no official authorisation in writing from your client prior to the oral proceedings. Can you still take part in the proceedings as representative?
- (b) Can your client's employee also take part in the proceedings? If so, in what capacity?

Question 10

Your client, firm X, has acquired from firm Y European industrial property rights A-G insofar as they affect the designated Contracting State DE. In a letter dated 1 July 1991 you are instructed to effect the transfer of rights. (A, B and C are European patent applications which are under substantive examination; in the case of D, notice of the grant of the patent was published on 30 January 1991; E, F and G are patents which were granted in the years 1987-89; in the case of G an opposition was rejected at first instance, but appeal proceedings are still pending). Can European patent applications and Patents also be transferred for one particular designated State, what requirements must be met for the transfer to be registered, and which EPO provisions apply to the different cases specified?

Question 11

A client asks whether he can proceed with an opposition filed against a European patent by the German firm W he has taken over. The Dutch patent attorneys acting for W filed the notice of opposition in Dutch on the very last day of the opposition period. What is the legal position?

Question 12

Shortly after the publication of the European patent application, competitor Y opens proceedings in one of the Contracting States against applicant X. Y claims that he is entitled to the grant of the European patent. As X has serious doubts as to whether the outcome of the proceedings will be in his favour he sees no use in continuing the patent application procedure before the EPO at this stage. X considers asking for a suspension of the proceedings or even a withdrawal of the application. Does X have each of these options? Provide reasons.

Question 13

- (a) May financial difficulties constitute grounds for granting re-establishment of rights (Restitutio in integrum)?
Justify your answer.
- (b) In the affirmative, what proof should be produced by the requester?

1989

	January					February					March				
Wk.	1	2	3	4	5	5	6	7	8	9	9	10	11	12	13
M	2	9	16	23	30		6	13	20	27		6	13	20	27
T	3	10	17	24	31		7	14	21	28		7	14	21	28
W	4	11	18	25	1	8	15	22	1	8	15	22	29		
T	5	12	19	26	2	9	16	23	2	9	16	23	30		
F	6	13	20	27	3	10	17	24	3	10	17	24	31		
S	7	14	21	28	4	11	18	25	4	11	18	25			
S	1	8	15	22	29	5	12	19	26	5	12	19	26		

Notice of the President of the European Patent Office dated 21 October 1988 concerning days on which at least one of the EPO filing offices is not open for the receipt of documents during 1989

	April					May					June				
Wk.	13	14	15	16	17	18	19	20	21	22	22	23	24	25	26
M		3	10	17	24	1	8	15	22	29		5	12	19	26
T		4	11	18	25	2	9	16	23	30		6	13	20	27
W		5	12	19	26	3	10	17	24	31		7	14	21	28
T		6	13	20	27	4	11	18	25	1	8	15	22	29	
F		7	14	21	28	5	12	19	26	2	9	16	23	30	
S	1	8	15	22	29	6	13	20	27	3	10	17	24		
S	2	9	16	23	30	7	14	21	28	4	11	18	25		

1. Under Rule 85(1) EPC time limits expiring on a day on which one of the filing offices of the EPO is not open for receipt of documents are extended until the first day thereafter on which all the filing offices are open for receipt of documents and on which ordinary mail is delivered.

	July					August					September					
Wk.	26	27	28	29	30	31	31	32	33	34	35	35	36	37	38	39
M		3	10	17	24	31		7	14	21	28		4	11	18	25
T		4	11	18	25	1	8	15	22	29		5	12	19	26	
W		5	12	19	26	2	9	16	23	30		6	13	20	27	
T		6	13	20	27	3	10	17	24	31		7	14	21	28	
F		7	14	21	28	4	11	18	25	1	8	15	22	29		
S	1	8	15	22	29	5	12	19	26	2	9	16	23	30		
S	2	9	16	23	30	6	13	20	27	3	10	17	24			

2. The EPO's filing offices in Munich and The Hague will be closed for the receipt of documents on every Saturday and Sunday in 1989.

	October					November					December					
Wk.	39	40	41	42	43	44	44	45	46	47	48	48	49	50	51	52
M		2	9	16	23	30		6	13	20	27		4	11	18	25
T		3	10	17	24	31		7	14	21	28		5	12	19	26
W		4	11	18	25	1	8	15	22	29		6	13	20	27	
T		5	12	19	26	2	9	16	23	30		7	14	21	28	
F		6	13	20	27	3	10	17	24	1	8	15	22	29		
S		7	14	21	28	4	11	18	25	2	9	16	23	30		
S	1	8	15	22	29	5	12	19	26	3	10	17	24	31		

3. The other days in 1989 on which at least one of the EPO filing offices will not be open for receipt of documents are listed below.

Tage - Days - Jours		München Munich	Den Haag The Hague La Haye
Heiligedreikönigstag - Epiphany - Epiphanie	6.1.1989	X	
Karfreitag - Good Friday - Vendredi Saint	24.3.1989	X	X
Ostermontag - Easter Monday - Lundi de Pâques	27.3.1989	X	X
Maifeiertag - May Day - Fête du travail	1.5.1989	X	X
Christi Himmelfahrt - Ascension Day - Ascension	4.5.1989	X	X
Tag der Befreiung - Liberation Day - Jour de la Libération	5.5.1989		X
Pfingstmontag - Whit Monday - Lundi de Pentecôte	15.5.1989	X	X
Fronleichnam - Corpus Christi - Fête-Dieu	25.5.1989	X	
Mariä Himmelfahrt - Assumption Day - Assomption	15.8.1989	X	X
Allerheiligen - All Saints Day - Toussaint	1.11.1989	X	X
Buß- und Betttag - Day of Prayer and Repentance - Jour de pénitence et de prière	22.11.1989	X	
1. Weihnachtstag - Christmas Day - Noël	25.12.1989	X	X
2. Weihnachtstag - Boxing Day - Lendemain de Noël	26.12.1989	X	X

1990

Notice of the President of the European Patent Office dated 3 October 1989 concerning days on which at least one of the EPO filing offices is not open for the receipt of documents during 1990

JANUARY

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

FEBRUARY

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28			

MARCH

S	M	T	W	T	F	S
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

APRIL

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

MAY

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

JUNE

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

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JULY

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

AUGUST

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

SEPTEMBER

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

2. The EPO's filing offices in Munich, The Hague and Berlin will be closed for the receipt of documents on every Saturday and Sunday in 1990.

OCTOBER

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

NOVEMBER

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

DECEMBER

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

3. The other days in 1990 on which at least one of the EPO filing offices will not be open for receipt of documents are listed below:

Tage - Days - Jours		München Munich	Den Haag The Hague La Haye	Berlin
Neujahr - New Year's Day - Nouvel An	1.1.1990	X	X	X
Karfreitag - Good Friday - Vendredi Saint	13.4.1990	X	X	X
Ostermontag - Easter Monday - Lundi de Pâques	16.4.1990	X	X	X
Nationalfeiertag - National Holiday - Fête Nationale	30.4.1990		X	
Maifeiertag - May Day - Fête du travail	1.5.1990	X	X	X
Christi Himmelfahrt - Ascension Day - Ascension	24.5.1990	X	X	X
Pfingstmontag - Whit Monday - Lundi de Pentecôte	4.6.1990	X	X	X
Fronleichnam - Corpus Christi - Fête-Dieu	14.6.1990	X		
Mariä Himmelfahrt - Assumption Day - Assomption	15.8.1990	X	X	X
Allerheiligen - All Saints' Day - Toussaint	1.11.1990	X	X	X
Buß- und Betttag - Day of Prayer and Repentance - Jour de pénitence et de prière	21.11.1990	X		X
Heiliger Abend - Christmas Eve - Veille de Noël	24.12.1990	X	X	X
1. Weihnachtstag - Christmas Day - Noël	25.12.1990	X	X	X
2. Weihnachtstag - Boxing Day - Lendemain de Noël	26.12.1990	X	X	X
Sylvester - New Year's Eve - Saint-Sylvestre	31.12.1990	X	X	X

1991

Notice of the President of the European Patent Office dated 7 November 1990 concerning holidays observed by EPO filing offices in 1991

JANUARY

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

FEBRUARY

S	M	T	W	T	F	S
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3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28		

MARCH

S	M	T	W	T	F	S
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3	4	5	6	7	8	9
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24	25	26	27	28	29	30
31						

APRIL

S	M	T	W	T	F	S
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21	22	23	24	25	26	27
28	29	30				

MAY

S	M	T	W	T	F	S
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12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

JUNE

S	M	T	W	T	F	S
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2	3	4	5	6	7	8
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16	17	18	19	20	21	22
23	24	25	26	27	28	29
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JULY

S	M	T	W	T	F	S
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7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

AUGUST

S	M	T	W	T	F	S
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4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

SEPTEMBER

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

2. The EPO's filing offices in Munich, The Hague and Berlin will be closed for the receipt of documents on every Saturday and Sunday in 1991.

OCTOBER

S	M	T	W	T	F	S
	1	2	3	4	5	
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

NOVEMBER

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

DECEMBER

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

3. The other days in 1991 on which at least one of the filing offices will not be open for receipt of documents are listed below:

Tage - Days - Jours		München Munich	Den Haag The Hague La Haye	Berlin
Neujahr - New Year's Day - Nouvel An	1.1.1991	X	X	X
Karfreitag - Good Friday - Vendredi Saint	29.3.1991	X	X	X
Ostermontag - Easter Monday - Lundi de Pâques	1.4.1991	X	X	X
Nationalfeiertag - National Holiday - Fête Nationale	30.4.1991		X	
Maifeiertag - May Day - Fête du travail	1.5.1991	X	X	X
Christi Himmelfahrt - Ascension Day - Ascension	9.5.1991	X	X	X
Pfingstmontag - Whit Monday - Lundi de Pentecôte	20.5.1991	X	X	X
Fronleichnam - Corpus Christi - Fête-Dieu	30.5.1991	X		
Mariä Himmelfahrt - Assumption Day - Assomption	15.8.1991	X	X	X
Tag der Deutschen Einheit - Day of German Unity - Fête Nationale	3.10.1991	X		X
Allerheiligen - All Saints' Day - Toussaint	1.11.1991	X	X	X
Buß- und Betttag - Day of Prayer and Repentance - Jour de pénitence et de prière	20.11.1991	X		X
Heiliger Abend - Christmas Eve - Veille de Noël	24.12.1991	X	X	X
1. Weihnachtstag - Christmas Day - Noël	25.12.1991	X	X	X
2. Weihnachtstag - Boxing Day - Lendemain de Noël	26.12.1991	X	X	X
Silvester - New Year's Eve - Saint-Sylvestre	31.12.1991	X	X	X