

EUROPEAN QUALIFYING EXAMINATION 2003

PAPER D - PART I

This paper comprises:

- * Questions 1 - 10 2003/DI/e/1 - 5
 - Question 1 : 4 points
 - Question 2 : 4 points
 - Question 3 : 4 points
 - Question 4 : 6 points
 - Question 5 : 5 points
 - Question 6 : 4 points
 - Question 7 : 4 points
 - Question 8 : 5 points
 - Question 9 : 6 points
 - Question 10 : 3 points

TOTAL : 45 POINTS

- * Annex : Calendars for 2002 and 2003 with 2003/DI/e/6 - 7
indication of the days on which at least one
of the EPO filing offices is not open for the
receipt of documents

45% of the marks available for paper D are awarded for part I,
55% for part II.

Question 1

The examining division decided to refuse a European patent application. The decision dated 06.12.2002 was sent by the EPO to the representative of the applicant without a written communication of the possibility of appeal.

On 06.03.2003, the applicant instructs his representative to file an appeal.

Would such an appeal be admissible?

Question 2

(4 points)

(a) Applicant X filed a European patent application EP1. On 27.12.2002, the applicant pays the fees for grant and printing, and files the translation of the claims in accordance with Rule 51(4) EPC. On 02.01.2003, X would like to file a divisional application relating to EP1. Is this possible?

(b) Applicant X filed a European patent application EP2. On 23.04.2003 the mention of the grant of the European patent will be published. Until when can a divisional application relating to EP2 be filed?

(c) Opposition proceedings related to European patent EP3 are pending. Is it possible to file a divisional application relating to EP3?

Question 3

An appeal was validly lodged by the sole appellant (opponent) against the decision of the opposition division to maintain the patent in amended form.

On 11.03.2003, at 16:09 hrs, a telefax was received by the EPO from the sole appellant withdrawing his appeal. On the same day, at 20:12 hrs, the EPO received a telefax from a third party filing a notice of intervention according to Article 105 EPC together with the order to deduct the opposition and the appeal fees from their deposit account. On 18.03.2003 the EPO duly received the confirmation of both telefax letters.

What is the legal situation?

Question 4

(6 points)

A Spanish client, who has filed an opposition to a European patent, asks you to represent him during opposition proceedings before the EPO. Today, 26.03.2003, you receive the file and notice the following:

- The mention of the grant of the patent was published on 19.06.2002. The opposition was filed with the EPO in Spanish by telefax on 14.03.2003.
- The amount of EUR 488 with respect to this opposition was entered into the bank account held by the EPO on 20.03.2003. The order for the transfer was duly given to a Spanish bank on the same day the telefax was sent.

Which steps are necessary in order to ensure that the opposition is validly filed?

Question 5

Today, 26.03.2003, your Japanese client asks you to enter the regional phase before the EPO for a PCT-application filed in Japanese with the Japanese Patent Office on 28.08.2001, validly claiming priority from a Japanese patent application dated 28.08.2000. The International Preliminary Examination was carried out by the Japanese Patent Office.

Due to an overload of work in the translation department of your client, you are informed that you will receive the English translation of the PCT-application on 15.04.2003.

How would you proceed in order to enter the regional phase, keeping costs for your client to a minimum?

Question 6

(4 points)

Mr. A produced toys made of a plastic material P. His competitor B was granted a European patent with two claims, claim 1 for the composition of P and claim 2 for a method of producing P.

Mr. A filed a valid opposition against B's patent. This opposition is pending. Because Mr. A has always bought P, and was not interested in methods for producing P, the extent of the opposition was limited to claim 1.

There is no further opposition and the time limit for filing an opposition has expired.

Mr. A died during the opposition proceedings.

Can his sole heir Mr. H become a party to the opposition proceedings?

If so, can the opposition be extended to cover the method of producing P?

Question 7

You are in receipt of a decision of a Board of Appeal, refusing your Portuguese client's European patent application designating all Contracting States. The application had been filed without claiming priority. When informing your client about the decision, he asks you whether he could still obtain protection for the subject-matter of this application in Portugal.

Which steps do you propose?

Question 8

(5 points)

By a final decision of a national court dated 11.02.2003, it was adjudged that your client is entitled to the grant of a European patent on the basis of a European patent application A filed by a third party. Your client intends to file a new European patent application in respect of the invention of application A.

- a) If application A is pending:
 - i) Would your client be allowed to include some further embodiments of his invention in this new European patent application?
 - ii) Would your client have to pay renewal fees in respect of the year in which the new European patent application is filed and any preceding year?
- (b) If application A is no longer pending:

Would your client still be entitled to file a new European patent application?

Question 9

Dr. Feelgood filed a PCT-application with the EPO without claiming priority. The sole independent claim is directed to a method in which an implant is inserted into the heart of a patient. The implant itself is disclosed in the description and is considered to be new and revolutionary by Dr. Feelgood.

Yesterday Dr. Feelgood received a declaration in accordance with Article 17(2)(a)(i) PCT.

Dr. Feelgood would like you to inform him:

- a) whether, in accordance with the PCT or the EPC, he is entitled to a partial or complete reimbursement of the international search fee; and
- b) whether and how he could obtain a European patent on the basis of his application?

Question 10

(3 points)

A Dutch company validly filed a first national patent application in Thailand.

Would it be possible for them to validly claim the priority of this application in a subsequent PCT-application?

2002

INFORMATION FROM THE EUROPEAN PATENT OFFICE

Notice from the President of the European Patent Office dated 29 August 2001 concerning the days on which EPO filing offices are closed in 2002

1. Under Rule 85(1) EPC time limits expiring on a day on which at least **one** of the filing offices of the EPO is not open for receipt of documents (closing days) 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.

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. The other closing days in 2002 are listed below.

<p>JANUARY</p> <p>S M T W T F S</p> <p>1 2 3 4 5</p> <p>6 7 8 9 10 11 12</p> <p>13 14 15 16 17 18 19</p> <p>20 21 22 23 24 25 26</p> <p>27 28 29 30 31</p>	<p>FEBRUARY</p> <p>S M T W T F S</p> <p>1 2</p> <p>3 4 5 6 7 8 9</p> <p>10 11 12 13 14 15 16</p> <p>17 18 19 20 21 22 23</p> <p>24 25 26 27 28</p>	<p>MARCH</p> <p>S M T W T F S</p> <p>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</p>
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Tage/Days/Jours 2002		München Munich	Den Haag The Hague La Haye	Berlin
Neujahr - New Year's Day - Nouvel An	01.01.02	x	x	x
Karfreitag - Good Friday - Vendredi Saint	29.03.02	x	x	x
Ostermontag - Easter Monday - Lundi de Pâques	01.04.02	x	x	x
Nationalfeiertag - National Holiday - Fête nationale	30.04.02		x	
Maifeiertag - May Day - Fête du travail	01.05.02	x	x	x
Christi Himmelfahrt - Ascension Day - Ascension	09.05.02	x	x	x
Pfingstmontag - Whit Monday - Lundi de Pentecôte	20.05.02	x	x	x
Fronleichnam - Corpus Christi - Fête-Dieu	30.05.02	x		
Mariä Himmelfahrt - Assumption Day - Assomption	15.08.02	x		
Tag der Deutschen Einheit - Day of German Unity - Fête Nationale	03.10.02	x		x
Allerheiligen - All Saints' Day - Toussaint	01.11.02	x		
Heiliger Abend - Christmas Eve - Veille de Noël	24.12.02	x	x	x
1. Weihnachtstag - Christmas Day - Noël	25.12.02	x	x	x
2. Weihnachtstag - Boxing Day - Lendemain de Noël	26.12.02	x	x	x
Silvester - New Year's Eve - Saint-Sylvestre	31.12.02	x	x	x

2003

INFORMATION FROM THE EUROPEAN PATENT OFFICE

Notice from the President of the European Patent Office dated 10 October 2002 concerning the days on which EPO filing offices are closed in 2003

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Heilige Drei Könige – Epiphany – Epiphanie	06.01.2003	x		
Karfreitag – Good Friday – Vendredi Saint	18.04.2003	x	x	x
Ostermontag – Easter Monday – Lundi de Pâques	21.04.2003	x	x	x
Nationalfeiertag – National Holiday – Fête nationale	30.04.2003		x	
Maifeiertag – May Day – Fête du Travail	01.05.2003	x	x	x
Tag der Befreiung – Liberation Day – Journée de la Libération	05.05.2003		x	
Christi Himmelfahrt – Ascension Day – Ascension	29.05.2003	x	x	x
Pfingstmontag – Whit Monday – Lundi de Pentecôte	09.06.2003	x	x	x
Fronleichnam – Corpus Christi – Fête-Dieu	19.06.2003	x		
Mariä Himmelfahrt – Assumption Day – Assomption	15.08.2003	x		
Tag der Deutschen Einheit – Day of German Unity – Fête nationale	03.10.2003	x		x
Heiliger Abend – Christmas Eve – Veille de Noël	24.12.2003	x	x	x
1. Weihnachtstag – Christmas Day – Noël	25.12.2003	x	x	x
2. Weihnachtstag – Boxing Day – Lendemain de Noël	26.12.2003	x	x	x
Silvester – New Year's Eve – Saint-Sylvestre	31.12.2003	x	x	x