



# DELTA PATENTS

Training for Patent Professionals

# PRE-EXAM BOOK CASES/EXAMS

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# P

# Contents

<b>Introduction and acknowledgement.....</b>	<b>1</b>
<b>EQE 2017 preparation courses.....</b>	<b>1</b>
<b>4. Update Pre-Exam papers.....</b>	<b>3</b>
PRE-EXAM 2014, QUESTION 2 .....	3
PRE-EXAM 2014, QUESTION 6 .....	3
PRE-EXAM 2015, QUESTION 3 .....	3
<b>5. Update of Answers.....</b>	<b>5</b>
General comments.....	5
- Guidelines EPO.....	5
- Guidelines PCT-EPO .....	5
Case H3-01 – ANSWER TO STATEMENT 3 .....	5
Case H12-02 - COMMENTS .....	6
Case H14-03 – ANSWER TO STATEMENT 4 .....	6
Case L3-03 – ANSWER TO STATEMENT 1.....	6
Case L4-02 – COMMENTS .....	6
Case L4-04 – ANSWER TO STATEMENT 1.....	6
PRE-EXAM 2014, QUESTION 3 - ANSWER .....	6
PRE-EXAM 2014, QUESTION 6 – ANSWER TO STATEMENT 6.3 .....	7
PRE-EXAM 2016, QUESTION 5 – ANSWER TO STATEMENT 5.4 .....	7

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## Introduction and acknowledgement

This document comprises an update to P-book”, edition July 2016, EQE 2017. It takes into account:

- Publications in OJ EPO after the Book was printed (OJ May 2016 – December 2016);
- Publications in PCT Newsletter after the Book was printed (PCT NL June – December 2016);
- Corrections to the questions and answers.

We thank all who provided any comments and all candidates who participated in our legal and pre-exam training courses, as well as those that gave feedback on our material via email, for useful feedback. Any further comments are highly appreciated.

The latest version of this document is available on our website.

Roel van Woudenberg,

28 February 2017

## EQE 2017 preparation courses

DeltaPatents organizes further training sessions for candidates preparing for Pre-Exam 2017 and for the Main Exam 2017 in the period from April 2016 until February 2017. Also, our Correction Papers programme for the EQE Main Exam papers will start after the summer and be active until late January.

Please check our website for course details, further announcements and enrolment:

<http://www.deltapatents.com/eqe.html>

<http://www.deltapatents.com/eqe-pre-exam.html>

<http://www.deltapatents.com/eqe-main-exam-paper-d.html>

<http://www.deltapatents.com/registration--cancellation.html>

or contact us via email at:

[training@deltapatents.com](mailto:training@deltapatents.com) .

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## 4. Update Pre-Exam papers

### PRE-EXAM 2014, QUESTION 2

Please correct the date of filing if EP-P to 1 December 2014, and change:

European patent application EP-P was filed as a first filing on 1 December ~~2015~~ and ...  
into

European patent application EP-P was filed as a first filing on 1 December 2014 and ...

### PRE-EXAM 2014, QUESTION 6

Please correct the day of receipt, and change:

You received the communication on 14 December ~~2017~~.

Into

You received the communication on 14 December 2016.

Also, please change the date in statement 6.1 from

~~17~~ February 2017

Into

16 February 2017

### PRE-EXAM 2015, QUESTION 3

Please correct the dates in the question as shown below:

You filed an international application PCT-A on 5 March 2016 without claiming priority. The EPO as the International Searching Authority considered that the application did not comply with the requirement of unity of invention. The invention first mentioned in the claims was searched. An invitation to pay one additional search fee was sent to you. The invitation is dated 13 January 2017. You received the invitation on 16 January 2017.

For each of the statements 3.1 – 3.4, indicate on the answer sheet whether the statement is true or false:

- 3.1 The additional search fee can be validly paid on 23 February 2017.
- 3.2 Today, 6 March 2017, you can file an international application PCT-B validly claiming priority from PCT-A, wherein the claims of PCT-B are directed to the second invention.
- 3.3 A valid option would be to request a supplementary international search for the second invention of PCT-A to be carried out by the EPO.
- 3.4 According to the provisions of the PCT, the additional search fee is paid directly to the International Searching Authority.

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## 5. Update of Answers

### General comments

A new edition of the EPO Guidelines and the EPO-PCT Guidelines entered into force on 1 November 2016 and is the edition to be used at the EQE 2017.

The EPO website has two pages which list the amended sections. When viewing the html-page of a section, a box “Show modifications” can be ticked.

Most changes are updated OJ references and editorial updates.  
The paragraph numbering remained largely the same, but with some changes.

Particularly worth noting are the following:

#### - Guidelines EPO

- GL A-IV, 1.1.1 pendency until end of 6m period to pay renewal fee with additional fee has not been amended despite a recent decision that ruled differently and distinguished from earlier (EPC1973) case law (T 1402/13).
  - o Note that R.51(2) EPC is amended per 1/1/2017 to clarify when the deemed withdrawal occurs, and the amendment confirms GL A-IV, 1.1.1 – OJ 2016, A102 & A103. Although not yet in force on 31/12/2016, it may be seen as confirming that the R.51(2) as in force until 31/12/2016 has to be interpreted as in GL A-IV, 1.1.1
- GL E-VII, 2 has been split into GL-E-VII, 2 for FP and GL E-VII, 3 for RE. Several paragraphs have been renumbered as a consequence
- GL E-I, 2.4 Electronic Notification has been added – 2.4-2.5 have been renumbered accordingly
- A new chapter E-X Impartiality of the Exam/Oppo Divs has been added. Chapter X-XII have been renumbered accordingly
- GL E-XIII, 3: the sentence that a signature of the assignor may be sufficient is deleted:
  - o ~~A declaration of the assignor only is likewise sufficient, provided that the request has been filed by the assignee.~~ **Article 72** requires that the signatures of the parties appear on the documents submitted as evidence of the transfer.
- GL F-IV, 3.9 & 3.9.1 & 3.9.2 (Computer Implemented Inventions) have been added:
  - o F-IV, 3.9 Claims directed to computer-implemented inventions
  - o F-IV, 3.9.1 Cases where all method steps can be fully implemented by generic data processing means
  - o F-IV, 3.9.2 Cases where method steps require specific data processing means and/or require additional technical devices as essential features

#### - Guidelines PCT-EPO

- Part F added
- H-II, 2.2 deleted. H-II, 2.3 & 2.4 & subparagraphs renumbered
- Several references to the Euro-PCT Guide, which “has the status of a Notice of the EPO”

### Case H3-01 – ANSWER TO STATEMENT 3

The answer to statement 3 is wrongly indicated as T. Please correct to F.

The legal references given are correct. Claims are not indicated in R.40 EPC and are not needed for a filing date (in contrast to a PCT application).

### Case H12-02 - COMMENTS

Please add to the comments:

- *OJ 2007 – SE3 – A.1 just says that the automated mailbox can be used at any time; it does not provide which date is assigned to the documents posted therein.*  
*OJ 1992, 603 (can be found via EPG (2016), 110) provides what the filing date is where the application is filed by post, fax, hand-over, automated mailbox.*

### Case H14-03 – ANSWER TO STATEMENT 4

The answer to statement 4 is wrongly indicated as F. Please correct to T.  
The legal references given are correct.

### Case L3-03 – ANSWER TO STATEMENT 1

Please correct the answer to statement 1 to read False and the time limit calculation into:

- 3m period - R.54bis.1(a)(i) - expired:  
1/8/16 + 3m [R.80.2] → 1/11/16 (Tue) [R.80.5] → 2/11/16 (Wed)
- 22m period - R.54bis.1(a)(ii) - expired:  
5/12/14 + 22m [R.80.2] → 5/10/16 (Wed)
- 3m period expires later, so demand could at latest be filed on 2/11/16

### Case L4-02 – COMMENTS

Some candidates reported that they considered the answers to be wrong because today, 6 March 2017, the time limit for entry into the EP phase had expired.

However, EP-entry can still be done with further processing, in which case the filing fee and search fee both need to be paid, together with 50% extra as FP fee. So, the answers indicated for statements 1 and 2 are correct.

### Case L4-04 – ANSWER TO STATEMENT 1

Please correct the answer to statement 1 to read True.

The legal references are correct, and indicate that a R.161/162 communication will always be send, also if amendments were already filed – except where the R.161/162 communication is waived and the opinion was positive.

### PRE-EXAM 2014, QUESTION 3 - ANSWER

Please correct the time limit calculation for 12m from EP-1 from:

- f.d. EP-1 (X) + 12m = 8/1/16 + 12m [R.131(4)] → ~~9/1/17 (Sat)~~ [R.134(1)] → 9/1/17
- into:
- f.d. EP-1 (X) + 12m = 8/1/16 + 12m [R.131(4)] → 8/1/17 (Sun) [R.134(1)] → 9/1/17





### PRE-EXAM 2014, QUESTION 6 – ANSWER TO STATEMENT 6.3

Please correct the time limit calculation into:

- earliest date on which loss-of-rights can be noted by EPO is the first day after the last day of the period, so 17/2/17 (see 6.1)
- the 10-day rule of R.126(2) applies
- so, the earliest possible expiry of FP period is 17/2/17 + 10d [R.126(2)] + 2m [R.135(1); R.131(4)] → 27/4/17
- you would wrongly have concluded to T if you calculated 2m from the date on which the loss-of-rights occurred: 17/2/17 + 2m → 17/4/17 [Easter Monday, R.134(1)] → 18/4/17 (Tue)

### PRE-EXAM 2016, QUESTION 5 – ANSWER TO STATEMENT 5.4

- After successful appeals, both answers T and F were marked as correct for statement 5.4 as the Disciplinary Board of Appeal concluded statement 5.4 to be a clear and confusing examination question due to the *German* version being self-contradictory and confusing and due to the *inconsistency* between the English and German version.
- Refer to D 1/16, D 2/16, D 13/16 (all in German) and D 4/16 (in English) for details.

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