



DELTA PATENTS

Training for Patent Professionals

**MAIN-EXAM
QUESTIONS
FOR PAPER D**

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D

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Introduction and acknowledgement

This document comprises an update to the Study Guide and Questions and Answers as used in our LEGAL Main Exam Courses in 2020-2021, and “D-book” (edition June 2020, EQE 2021):

- Publications in OJ EPO after the Book was printed (OJ June 2020 – 31 October 2020);
- Publications in PCT Newsletter after the Book was printed (PCT NL June 2020 – 31 October 2020);
- Updates and corrections to the questions and answers;
- Answers to referrals G 1/19, G 3/19 and G 4/19

We thank all who provided any comments and all candidates who participated in our legal 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.

Also refer to our compilations of key parts of the EQE syllabus as in force on 31 October 2020 for EQE 2021, on <https://www.deltapatents.com/course-links.html>:

- EQE 2021 references - EQE
- EQE 2021 references - EPC
- EQE 2021 references - EPO and PCT
- EQE 2021 references - PCT

Roel van Woudenberg,
9 November 2020

EQE 2021 preparation courses

DeltaPatents organizes further training sessions for candidates preparing for Pre-Exam 2020 and for the Main Exam 2021 in the period from April 2020 until February 2021. 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-main-exam-paper-d.html>
<http://www.deltapatents.com/registration--cancellation.html>

or contact us via email at:

training@deltapatents.com

1. Update of Study Guide

Notes on the references & Training Material and Sources – Law + Regulations

How to get.../ Guide for applicants / Euro-PCT Guide (HTG)

A new, 20th edition of "European Patent Guide - How to get a European patent (April 2020)", based on the information available on 1 April 2020, was published on 7 October 2019.

- Numbering is (largely) unchanged.
- Please replace all references to "European patent Guide: How to get a European patent", 19th edition to "European Patent Guide: How to get a European patent", 20th edition.

Case Law (EPC)

Add:

- "EPO Boards of Appeal Case Law 2018 and 2019" (Case Law supplement), OJ Suppl 4/2020

Training Material and Sources – Law + Regulations

EQE

1. EQE Regulation

Add:

- "EQE 2021 – Important information from the Supervisory Board", 23.07.2020 (EQE website)
- e-EQE FAQ on <https://www.epo.org/learning/eqe/faq.html>
- **Check EQE website for updates!** <https://www.epo.org/learning/eqe.html>

B5, How to get...

Add to Advanced, OJ 2014, A6:

- Supplemented per 1/7/2020 with OJ 2020, A80 "R.20.8(c), 82ter.1(c) and (d) PCT items"

C4, Law + Regulations:

Add to Art.53(b):

- OJ 2020, A79 "Notice from the EPO dd 3 June 2020 concerning resumption of proceedings following G 3/19"

G2, Law + Regulations:

Add to OJ 2014, A6

→ Supplemented per 1/1/2016 with OJ 2015, A104 (R.140 decisions, corr. of granted text)

→ Supplemented per 1/7/2020 with OJ 2020, A80 (R.20.8(c), 82ter.1(c) and (d) PCT items)

Add to Advanced:

- OJ 2020, A80 "Decision of the President dd 14 June 2020 concerning the entrustment to non-examining staff of certain duties incumbent on the examining or opposition divisions": added item "23a, Examination, communications and decisions under Rule 20.8(c) PCT and Rule 82ter.1(c) and (d) PCT" per 1/7/2020



H4, Law + Regulations:

Add:

- OJ 2019, A106 “PPH pilot programme between the IP5 Offices based on PCT and national work products”
- OJ 2019, A107 “PPH pilot programme EPO and Peru based on PCT and national work products”
- OJ 2020, A11 “PPH pilot programme EPO and ROSPATENT based on PCT and national work products”
- OJ 2020, A21 “PPH pilot programme EPO and Mexico based on PCT and national work products”
- OJ 2020, A82 “PPH pilot programme EPO and Malaysia based on PCT and national work products” (including corrigendum of OJ 2020, A92)
- OJ 2020, A83 “PPH pilot programme EPO and Philippines based on PCT and national work products”
- OJ 2020, A114: “PPH programme between the EPO and the Eurasian Patent Office (EAPO) based on PCT and national work” (replaces OJ 2017, A77)

H6, Law + Regulations:

Update reference to OJ 2020, Axx (June 2020) by OJ 2020, A71 (2x)

H8, Law + Regulations:

Update reference to OJ 2020, Axx (June 2020) by OJ 2020, A73 (2x)

H9, Law + Regulations:

Add:

- OJ 2020, A31 “Notice from the EPO dated 13 March 2020 concerning improved online file inspection in the European Patent Register of documents cited in opposition proceedings” (for oppositions filed per 1/7/2019)
- OJ 2020, A106 “Notice dd 28 August 2020 concerning the communication for information purposes of observations made by parties to opposition proceedings to the other parties to the proceedings” (per 1/10/20)
 - Consolidated list of opposition citations (patent documents, other documents filed during oppo)
 - No longer automatically transmission of documents which are available for inspection in the Register.
 - EPO still communicates notices of opposition & observations to the other parties for info (R.79).

Updates:

- OJ 2009, 434 was superseded by OJ 2020, A106 per 1/10/2020
- Update reference to OJ 2020, Axx (June 2020) by OJ 2020, A71 (2x)

H10, Law + Regulations:

Add:

- OJ 2020, A103 “Notice of the President of the Boards of Appeal dd 1 August 2020 concerning oral proceedings before the Boards in Haar and in the Isar building in Munich during the coronavirus (COVID-19) pandemic”

H10, Case Law :

The EBA has answered G 2/19: see B3.

H11, Law + Regulations:

Updates:

- OJ 2015, A28 is supplemented by OJ 2020, A89
- Update reference to OJ 2020, Axx (June 2020) by OJ 2020, A71 (Decision) and A72 (Notice)

Add:

- OJ 2020, A107 “Notice 14 September 2020 concerning the expansion of electronic notification via the Mailbox in opposition proceedings” (per 1/12/2020): all communications in opposition, except for the transmission of the patent certificate if the patent is maintained in amended form (R.87 jo R.74).

- OJ 2020, A89 “Decision of the Vice-President Legal and International Affairs (Directorate-General 5) of the EPO dd 23 July 2020 concerning the pilot project on notification by email during examination proceedings”
- OJ 2020, A90 “Notice from the EPO dd 23 July 2020 concerning the pilot project on notification by email during examination proceedings under the decision of the VP Legal and International Affairs (DG 5) dd 23 July 2020”
- OJ 2020, A103 “Notice of the President of the Boards of Appeal dd 1 August 2020 concerning oral proceedings before the Boards in Haar and in the Isar building in Munich during the coronavirus (COVID-19) pandemic”

H12, Law + Regulations:

Add:

- OJ 2020, A76 “Notice from the EPO dd 29 May 2020 concerning implementation of amended Rule 142(2) EPC”

Update:

- Update reference to OJ 2020, Axx (June 2020) “Notice 27 May 2020” by OJ 2020, A74
- Update reference to OJ 2020, Axx (June 2020) “Decision 28 May 2020” by OJ 2020, A70
- Update reference to OJ 2020, Axx (June 2020) “Notice 29 May 2020” by OJ 2020, A75

H14, Law+ Regulations:

Add:

- OJ 2020, A77 “Decision of the President dd 4 June 2020 amending Annex A.1 to ADA – AAD and Annex A.2 to the ADA – Information from the EPO concerning the automatic debiting procedure” (amended AAD 10.3 & 3.2; amended Point 10 AAD in Annex A.2 to the ADA) per 1 July 2020
- OJ 2020, A78 “Notice from the European Patent Office dated 4 June 2020 concerning changes to fee payment via the automatic debiting procedure”:
 - I. Ex officio revocation of all pending automatic debit orders upon closure of a deposit account
 - II. Additional search fee under R.40bis jo 20.5bis PCT in the event of correction of an erroneous filing
 - III. Abolition of the option to waive a further communication under Rule 71(3) EPC

Update:

- Update reference to OJ 2020, Axx (June 2020) “Decision 28 May 2020” by OJ 2020, A70
- Update reference to OJ 2020, Axx (June 2020) “Notice 29 May 2020” by OJ 2020, A75

L1, Law + Regulations:

Add to EPO-WIPO Agreement:

- - OJ 2020, A91 “Updated Annex D, Part II reduction of fees – revised lists of states”

L1, PCT Newsletter:

Add:

- PCT NL June 2020, Practical Advice “Entitlement to practice before the International Bureau as receiving Office (when an international application is assigned to an applicant from a different country)”
- PCT NL Jul-Aug 2020 “End of COVID-19-related RO/IB Extended Period for Considering PCT Applications as Withdrawn for Failure to Pay Fees”: RO/IB restarted on 1 July 2020 the issuance of Form PCT/RO/117 for failure to pay the required PCT fees

L1, Amendments to the PCT in the last few years:

- PCT NL Jul-Aug 2020 “Excuse of Delay in Meeting Time Limits Due to Unavailability of Electronic Means of Communication (PCT Rule 82quater.2 per 1 July 2020)”:
 - IB as rO will use R.82quater if ePCT or PCT Contingency Upload Service was being used but was unavailable for a minimum of a continuous one-hour period on a specific working day at the IB
 - (does not apply to the priority period).



L2, PCT Newsletter:

Add:

- PCT NL Oct 2020, Practical Advice: “Access by third parties to the inventor’s address that was included in the request form upon filing, but is subsequently changed following a request under PCT Rule 92bis”
- PCT NL July/Aug 2020, Practical Advice “The furnishing of a correct element of an international application where the originally filed element was filed erroneously” (on R.20.5bis, 40bis.1 & 20.8, introduced per 1/7/20)

L2, Law + Regulations:

Add:

- OJ 2020, A81 “Notice of the EPO dated 14 June 2020 concerning new Rule 20.5bis PCT on the correction of erroneous filings in the procedures before the EPO” (per 1 July 2020)

L3, PCT Newsletter:

Add:

- PCT NL Sept 2020, Practical Advice “Access by third parties to information in the file of the international preliminary examination”

L3, Law + Regulations:

Add to OJ 2020, A4:

→ *republished with up-to-date list of states as OJ 2020, A91 “Notice from the EPO dd 10 July 2020 concerning the reduction of the fees for the international search and the international preliminary examination carried out on international applications in favour of nationals of certain states – revised list of states”*

Add:

- OJ 2020, A77 “Decision of the President dd 4 June 2020 amending Annex A.1 to the Arrangements for deposit accounts (ADA) – Arrangements for the automatic debiting procedure (AAD) and Annex A.2 to the ADA – Information from the EPO concerning the automatic debiting procedure” (amended AAD 10.3 & 3.2; amended Point 10 AAD in Annex A.2 to the ADA) per 1 July 2020
- OJ 2020, A78 “Notice from the European Patent Office dated 4 June 2020 concerning changes to fee payment via the automatic debiting procedure”:
 - I. Ex officio revocation of all pending automatic debit orders upon closure of a deposit account
 - II. Additional search fee under R.40bis jo 20.5bis PCT in the event of correction of an erroneous filing
 - III. Abolition of the option to waive a further communication under Rule 71(3) EPC

L4, Law + Regulations:

Add:

- OJ 2020, A81 “Notice of the EPO dated 14 June 2020 concerning new Rule 20.5bis PCT on the correction of erroneous filings in the procedures before the EPO” (per 1 July 2020)

Annex – Table of Contents OJ2016-SE4:

Update references:

- C.1, p.74: OJ 2014, A66 superseded by OJ 2020, A80 A80 “Decision of the President dd 14 June 2020 concerning the entrustment to non-examining staff of certain duties incumbent on the examining or opposition divisions”: added item “23a, Examination, communications and decisions under Rule 20.8(c) PCT and Rule 82ter.1(c) and (d) PCT” per 1/7/2020
- C.4, p.194: OJ 2015, A52 superseded by OH 2020, A73 for R.71(3) dated ≥ 1/7/2020

2. Update of Main-Exam Questions

QUESTIONS DEALING WITH LEGAL CHANGES OF 2020

- G 2/19 was published in OJ 2020, A87
- G 3/19 was published in OJ 2020, A119

- Replace OJ 2020, Axx Notice 27/5: end of dislocation in DE) by OJ 2020, A74 (end of dislocation in DE)
- Replace OJ 2020, Axx (June) (Notice from the EPO dated 13 may 2020 revising OJ 2020, A40) by OJ 2020, A72

- Add OJ 2020, A91 (supersedes OJ 2020, A18 per 1/7/2020) to PCT: Fee reduction search/IPE for certain nationals

C1-14

Delete the last 4 words “makes a technical contribution” from (a)



3. Update of Answers to Main-Exam Questions

C1-15

In answer, part 3):

- replace GL (2019) G-VII, 7.1.2 by GL (2019) G-VI, 7.1.2, and
- replace GL (2019) G-VII, 7.1.5 by GL (2019) G-VI, 7.1.5

H7-04

- Answer: Replace OJ 2020, Axx (June 2020))(Notice 27 May) by OJ 2020, A74
- Comment: Replace OJ 2020, Axx (June 2020))(Notice 26 May) by OJ 2020, A73

H8-11

- Answer & Comment: Replace OJ 2020, Axx (June 2020))(Notice 26 May) by OJ 2020, A73

H9-19

Add to Answer:

- A translation into of German, English and French of the Dutch notice can also not become the original; whatever the date on which it is filed it remains a translation, with all ensuing legal consequences – G 6/91, r.10; T 1152/05, T 41/09.

H12-10

Answer & Comments:

- Replace OJ 2020, Axx (June 2020))(Notice 27 May) by OJ 2020, A74
- Replace OJ 2020, Axx (June 2020))(Decision 28 May) by OJ 2020, A70
- Replace OJ 2020, Axx (June 2020))(Notice 29 May) by OJ 2020, A75

H14-14

Comment: correct search fee from 1.340 to 1.350

L2-19

Extend answer to b) to read:

- EPC
- Last day to add priority claim – R.52(2) :
17/1/17 + 16m [R.131(4)] => 17/5/18 (Thu)
- So today, 26/2/19, this has expired
- Application published 18m after earliest priority - Art.93)(1)(a) -, so in Sep 2018,
- So technical preparation have already been completed (they are completed 5 weeks before expiry of 18m) – R.67(2), OJ2007-SE3-D.1 (or GL (2019) A-VI, 1.2)
- So it is too late to include a warning in publication – J4/82
- So correction of the priority - R.139 – is probably not possible
- EPO will only allow correction after publication if it is self-evident - J8/80; J7/94
- But no facts are available to conclude that it is.
- FP excluded for the period of R.52(2) – R.135(2)
- So only possibility is RE – Art.122 – for R.52(2) period, assuming we can prove all due care

L2-20

Second bullet of answer to a):

- Add GL2019/PCT-EPO F-VI, 3.7 to as alternative further legal basis for EPO as rO requiring all due care.

Add to comments:

- *GL2019/PCT-EPO F-VI, 3.7 "Re-establishment of rights in respect of the priority period":*
 - *In the international phase, restoration can be granted under both the "due care" and "unintentional" criteria. The EPO as receiving Office and as designated Office in the regional phase will decide on the basis of the "due care" criterion (which is the same criterion as used for EP applications with respect to re-establishment of rights under Art. 122 EPC). If the EPO was not the receiving Office, the request may have been decided upon under the "unintentional" criterion.*

L3-35

Comments: update "OJ 2010, 304" by "OJ 2017, A115 and updates"

L4-14

Answer and Comments: update "OJ 2020, A18 by "OJ 2020, A91 (superseded OJ 2020, A18 per 1/7/2020)"

Comment: replace citation from OJ 2020, A18 by:

- *OJ 2020, A91 (superseded OJ 2020, A18 per 1/7/2020) defines these two groups, per 1/7/2020:*
 - 3. The 75% reduction applies:*
 - *where said applicant or, if there are two or more applicants, each applicant is a natural person who is a national and resident of a state that is not party to the EPO and that, on the date of filing of the application or on the date of payment of the supplementary international search fee or of the international preliminary examination fee, is classified by the World Bank as a low-income or lower-middle-income economy as shown in Annex I to this notice;*
 - *where said applicant or, if there are two or more applicants, each applicant is a natural or legal person who, within the meaning of Rule 18 of the Patent Cooperation Treaty, is a national and resident of a state in which a validation agreement with the European Patent Organisation is in force.*
 - 4. Currently, the following states fall under the second category: Morocco (MA), the Republic of Moldova (MD), Tunisia (TN) and Cambodia (KH).*