



**DELTA PATENTS**

Training for Patent Professionals

**MAIN-EXAM  
QUESTIONS  
FOR PAPER D**

**Update 29 November 2021**

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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 2021-2022, and “D-book” (edition June 2021, EQE 2022):

- Publications in OJ EPO after the Book was printed (OJ July 2021 – 31 October 2021);
- Publications in PCT Newsletter after the Book was printed (PCT NL June 2021 – 31 October 2021);
- Updates and corrections to the questions and answers;
- Answers to referrals G 4/19 (double patenting) and G 1/21 (oral proceedings by videoconference);
- Notices on the EQE website

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 2021 for EQE 2022, on <https://www.deltapatents.com/course-links.html>:

- [EQE 2022 references](#)
- [EQE 2022 references - EQE \(compilation legal texts\)](#)
- [EQE 2022 references - EQE \(GL EPO\)](#)
- [EQE 2022 references - EPO and PCT \(compilation legal texts\)](#)
- [EQE 2022 references - EPO and PCT \(GL PCT-EPO\)](#)
- [EQE 2022 references - PCT \(WIPO\)](#)

Our EQE blogs provide further information as well as a platform for comments, discussion and tips. Please feel invited to contribute!:

- [DeltaPatents EQE Blog](#)
- [DeltaPatents Paper D Blog](#)

Roel van Woudenberg,  
November 2021

## 1. EQE 2022 preparation courses

DeltaPatents organizes further training sessions for candidates preparing for Pre-Exam 2022 and for the Main Exam 2022 in the period from April 2021 until February 2022.

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](mailto:training@deltapatents.com)

## 2. Other EQE 2022 material: model solutions, reference books

### Model Solutions

DeltaPatents provides **updated exam papers and model solutions** for all main exam papers.

Please order in our [webshop](#).

### Reference books

The DeltaPatents [webshop](#) also provides:

- **“References to the European Patent Convention”** by Jelle Hoekstra
- **“The Cross-Referenced Patent Cooperation Treaty”** by Cees Mulder, and
- **“Topic-Related Index to the EPC and PCT”** by Cees Mulder.



## 3. Update of Study Guide

### Training Material and Sources – Recommended Reference Books (English)

Add:

- C. Mulder: “Topic-Related Index to the EPC and PCT” from [www.helze.com](http://www.helze.com) or [webshop.deltapatents.com](http://webshop.deltapatents.com)

### Training Material and Sources – Law + Regulations

#### 4. Fee payments to the EPO from [www.epo.org](http://www.epo.org)

“Arrangements for deposit accounts” [OJ Suppl 4/2019, per 1 October 2019; superseding OJ Suppl 5/2017]

Add:

- ADA/AAD2019 have been amended by OJ 2020, A77 per 1 July 2020 (Ex officio revocation of all pending automatic debit orders upon closure of a deposit account; additional search fee under R.40bis jo R.20.5bis PCT in the event of correction of an erroneous filing), by OJ 2021, A26 per 1 April 2021 (introduction of Online Filing 2.0) and by OJ 2021, A60 per 11 September 21 (introduction of Central Fee Payment).

### EQE

#### 1. EQE Regulation

Add:

- On EQE website:
  - “Information on the schedule for the EQE 2022 examination papers”
  - “Information on planned mock examinations”
- Check EQE website for updates! <https://www.epo.org/learning/eqe.html>

### C1, Case Law – Headnotes / Reasons

- G 1/19 has been published in OJ 2021, A77 (September issue)

### H8, Case Law – Headnotes / Reasons

Add:

- G4/19 “Double patenting by same applicant – 3 situations: 2 EP filed on same date, divisional-parent, internal priority (legitimate interest due to filing date setting patent term)” - Decision dd 22 June 2021:
  1. A European patent application can be refused under Art.97(2) and 125 EPC if it claims the same subject-matter as a European patent which has been granted to the same applicant and does not form part of the state of the art pursuant to Article 54(2) and (3) EPC.
  - 2.1 The application can be refused on that legal basis, irrespective of whether it
    - a) was filed on the same date as, or
    - b) is an earlier application or a divisional application (Article 76(1) EPC) in respect of, or
    - c) claims the same priority (Article 88 EPC) asthe European patent application leading to the European patent already granted.

## H10 & H11, Case Law – Headnotes / Reasons

Add to *Oral proceedings by ViCo*:

- Order G 1/21 (order issued 16.07.2021; full, reasoned decision not yet available): “During a general emergency impairing the parties' possibilities to attend in-person oral proceedings at the EPO premises, the conduct of oral proceedings before the boards of appeal in the form of a videoconference is compatible with the EPC even if not all of the parties to the proceedings have given their consent to the conduct of oral proceedings in the form of a videoconference.” (Not covered by the order: in case of absence of a period of general emergency; examination or opposition proceedings before the EPO's departments of first instance)

## H11, Law + Regulations:

Add to OJ 2020, A89:

- OJ 2020, A67 “Notice from the EPO dated 19 August 2021 concerning the termination of the pilot project on notification by email during examination proceedings under the decision of the Vice-President Legal and International Affairs (DG 5) of the EPO dated 23 July 2020.”: pilot project on notification by email not extended (in view of enhanced mailbox functionality) and will therefore come to an end on 31 August 2021.

## H14, Law + Regulations:

Add:

- OJ 2021, A60 “Decision of the President dd 13 July 2021 concerning revision of the ADA”: introduction of Central fee Payment in ADA5.1.1, ADA 5.1.2 and ADA 5.3 per 11/9/21
- OJ 2021, A61 “Notice from the EPO dd 13 July 2021 concerning Central Fee Payment” supersedes OJ 2020, A130 per 11/9/21

Add to OJ 2020, A130:

- superseded by OJ 2021, A61 per 11/9/21

Add to OJ 2020, A62:

- superseded by OJ 2021, A73 “Notice from the EPO dd 23 September 2021 concerning the payment of fees by credit card” per 1/10/21: introduction of a daily limit for credit card payments in item 4 (EUR 10 000.00 per credit card and per user account)

## L1, Law + Regulations:

Replace OJ 2020, A91 by:

- OJ 2021, A58 “Reduction of fees – revised lists of states” – supersedes OJ 2020, A91 per 1/7/21

Add:

- PCT NL Jul-Aug 2021, Practical Advice “Requesting incorporation by reference of correct drawings in the case of erroneously-filed drawings”

## L3, Law + Regulations:

Add:

- OJ 2021, A60 “Decision of the President dd 13 July 2021 concerning revision of the ADA”: introduction of Central fee Payment in ADA5.1.1, ADA 5.1.2 and ADA 5.3 per 11/9/21

## 4. Calendars

### Notice from the Examination Board dd 19 November 2021

The Examination Board published a Notice which supersedes the notice from the Examination Board dated 18 July 2013 concerning the use of calendars (i.e., supersedes the Notice shown in the Book).

***For EQE 2022, no calendars will be provided with the examination papers anymore!!!***

***You will need to take the EPO closure dates from the OJ (accessible via External Resources in Wiseflow, and you will need to bring a list showing on which dates Saturdays and Sundays fall in 2020, 2021 and 2022.***



Europäisches  
Patentamt  
European  
Patent Office  
Office européen  
des brevets

**19 November 2021**

**Notice from the Examination Board for the European qualifying examination (EQE)**

Calendars are a necessary tool for calculating time limits, in particular where Rule 134(1) EPC, first sentence, applies. According to this provision, time limits expiring on a day on which at least one EPO filing office is not open for receipt of documents (closing day) 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.

As of the 2022 examination, the practice concerning calendars will change: calendars will no longer be provided to candidates as part of the examination papers for the pre-examination and Paper D.

A notice listing the dates on which the EPO filing offices are closed is published each year in the Official Journal. For the purposes of applying Rule 134(1), first sentence, EPC and Rule 80.5 PCT, candidates should refer to the relevant notice on EPO closing days. They will be able to access the EPO website for this during the exam.

Candidates are allowed to use their own calendar to identify dates falling on a Saturday or Sunday.

This notice supersedes the notice from the Examination Board dated 18 July 2013 concerning the use of calendars.

For the Examination Board  
The Chairman

Nicolas Favre

Candidates may refer to our blog post <http://eqe-deltapatents.blogspot.com/2021/11/calendars-for-eqe-2022.html>

## Calendars in the Wiseflow Mocks

Instead of a calendar, Wiseflow provides a pdf with information about the calendars indicating:

### Important notice for candidates: Use of calendars

For the EQE 2022 the basis for calculating time limits are the days on which the EPO filing offices are closed as published in the Official Journal. Candidates are encouraged to have the closing days of 2020, 2021 and 2022 at hand during the examination. No calendars will be provided with the examination papers.

For the Mock exams that are based in former EQE papers, Wiseflow refers to the Compendium.

**Wichtiger Hinweis für Bewerber: Verwendung von Kalendern**

Für die EEP 2022 sind die im Amtsblatt veröffentlichten Tage, an denen die Annahmestellen des EPA geschlossen sind, Grundlage zur Berechnung von Fristen. Den Bewerbern wird empfohlen, die geschlossenen Tage der Jahre 2020, 2021 und 2022 während der Prüfung zur Hand zu haben. Es werden keine Kalender mit den Prüfungsaufgaben zur Verfügung gestellt.

Für diese Probeproofung verweisen wir Sie auf das Compendium, in dem Sie die entsprechenden Kalender finden.

Vorprüfung: [https://www.epo.org/learning/eqe/compendium/preexamination\\_de.html](https://www.epo.org/learning/eqe/compendium/preexamination_de.html)  
Aufgabe D: [https://www.epo.org/learning/eqe/compendium/D\\_de.html](https://www.epo.org/learning/eqe/compendium/D_de.html)

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**Important notice for candidates: Use of calendars**

For the EQE 2022 the basis for calculating time limits are the days on which the EPO filing offices are closed as published in the Official Journal. Candidates are encouraged to have the closing days of 2020, 2021 and 2022 at hand during the examination. No calendars will be provided with the examination papers.

For this mock examination, please be referred to the Compendium where you can find the respective calendars.

Pre-examination: <https://www.epo.org/learning/eqe/compendium/preexamination.html>  
Paper D: <https://www.epo.org/learning/eqe/compendium/D.html>

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**Avis important pour les candidats : Utilisation des calendriers**

Pour l'EEP 2022, le calcul des délais est basé sur les jours de fermeture des bureaux de réception de l'OEB tels que publiés au Journal Officiel. Il est recommandé aux candidats d'avoir à portée de main les jours de fermeture des années 2020, 2021 et 2022 pendant l'examen. Aucun calendrier ne sera fourni avec les épreuves d'examen.

Pour cet examen blanc, veuillez-vous référer au Compendium où vous trouverez les calendriers respectifs.

Examen préliminaire : [https://www.epo.org/learning/eqe/compendium/preexamination\\_fr.html](https://www.epo.org/learning/eqe/compendium/preexamination_fr.html)  
Epreuve D : [https://www.epo.org/learning/eqe/compendium/D\\_fr.html](https://www.epo.org/learning/eqe/compendium/D_fr.html)





## 5. Update of Main-Exam Questions

### C7-20

Correct:

USCO is the only applicant for EP-1.

Into:

USCO is the only applicant for PCT-1.

## 6. Update of Answers to Main-Exam Questions

### H3-32, H9-23, H9-35, H12-04, H14-04, H14-13, H14-14, h14-15, H14-24, L3-39

Add/Amend to Comments:

- ADA2019 superseded ADA2017 per 1/10/2019 – OJ Suppl 4/2019; ADA2019 was amended by OJ 2020, A77; OJ 2021, A26 (Online Filing 2.0 per 1/4/21) and OJ 2021, A60 (Central Fee Payment per 11/9/21)

### H3-33

Add to beginning of the Answer:

- The language of proceedings of the earlier application EP-PCT1 is German as:
  - International application PCT-1 was filed in German – Art.14(3)- and German is an EPO official language – Art.14(1), and
  - the filing of the English translation on EP entry has no effect, as the language of proceedings cannot be changed on EP entry – G 4/08.

### H7-04

Add as first two bullets of Advice:

- At any time up to the moment the decision to grant is handed over to the EPO's internal postal service for transmittal to the applicant – G 12/91 -, the examining division may resume the examination procedure – R.71a(2); GL (2021) C-V, 6.1
- So amendments and arguments can still be filed

### H10-26

Add a reference to R.99 to the case law in:

- Debit order filed with an application number cannot be a substitute for an explicit and unequivocal statement expressing the definite intention to contest an appealable decision – **R.99(1)(b) & (c)**; J 767/18, r.6; J 19/90; J 16/94, r.4; T 778/00, r.2.2.

### H14, various questions (credit card payments)

Replace references to OJ 2020, A62 by OJ 2021, A73:

- OJ 2021, A73 “Notice from the EPO dd 23 September 2021 concerning the payment of fees by credit card” superseded OJ 2020, A62 per 1/10/21: introduction of a daily limit for credit card payments in item 4 (EUR 10 000.00 per credit card and per user account.).

### L3-37

In the Answer, replace the reference to OJ 1993, 504 by OJ 1993, 540.