



DELTA PATENTS

Training for Patent Professionals

BASIC LEGAL QUESTIONS FOR PRE-EXAM AND PAPER 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 Integrated Pre-Exam Courses in 2021, and to the 'Basic legal Questions for Pre-Exam and Paper D -book ("L-book", edition June 2021, EQE 2022):

- Publications in OJ EPO after the Book was printed (OJ July 2021 – 31 Oct 2021);
- Publications in PCT Newsletter after the Book was printed (PCT NL June 2021 – 31 Oct 2021);
- Corrections to the questions and answers;
- 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](#)
- [EQE 2022 references - EPC \(compilation legal texts\)](#)
- [EQE 2022 references - EPC \(GL EPO\)](#)
- [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 and Pre-Exam blogs provide further information as well as a platform for comments, discussion and tips. . Please feel invited to contribute!:

- [DeltaPatents EQE Blog](#)
- [DeltaPatents Pre-Exam 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. 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 .

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

P-book

After having practiced legal questions with the Basic Legal Questions Book (L-book), candidates, preparing for the Pre-Exam can start practicing exams. legal and claim analysis part from our P-book. This book offers cases in Pre-Exam style (proprietary cases and cases derived from the EPO Mock Pre-Exams and the Pre-Exams of 2012 – 2013), as well as our own model solutions for the EQE Pre-Exams of 2014 – 2021, with exception of the 2018 exam paper.

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.

Q&A Books and Model Solutions for the Main Exam

For your further legal study and practice after passing the Pre-Exam, in preparing for paper D (in particular D1), Deltapatents provides the book [“Main Exam Questions for Paper D”](#) in the [webshop](#). An updated version will become available in summer, to reflect the legal texts as applicable for the next EQE.

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

Please order in our [webshop](#).



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 or webshop.deltapatents.com

Training Material and Sources – Law + Regulations

4. Fee payments to the EPO from 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 European Patent Office 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 (Directorate-General 5) of the European Patent Office 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>

5. Update of Basic Legal Questions

No updates.



6. Update of Answers to Basic Legal Questions

C1-18

Change the answer to (c) to:

- (c) Yes, but such method as such is as a business method not regarded as an invention under Art.52(2)(c) – GL (2021) G-III, 3:
- “Susceptible of industrial application” in Art.52(1) is not a requirement that overrides the restriction of Art.52(2), e.g. an administrative method of stock control is not patentable as such, having regard to Art.52(2)(c), even though it could be applied to the factory store-room for spare parts.

H6-06

Add to first bullet of answer

- GL (2021) A-III, 6.12

H7-02, H14-11, H14-12, H14-14, H14-15, H14-16, H14-17

Add to Comments:

- *ADA2019 was amended per 1/4/2021 by OJ 2021, A26 in view of the launch of Online Filing 2.0 and per 11/9/2021 in view of the launch of Central Fee Payment*

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.)

H14-14

Correct time limit calculation in answer to a) to:

15/11/2017 + 6m [R.70(1), R.131(4)]] → 15 May 2018 (Tue)

In answer to a) and b), replace “holder is informed by fax or email ” by “holder is informed by email or post”
(Comment: this changed from ADA2017 to ADA2019)

H14-16

In answer to b), replace “holder is informed by fax or email ” by “holder is informed by email or post”
(Comment: this changed from ADA2017 to ADA2019)

L3-30

In the Comments, item (b) and (c), update OJ2010, 304 to EPO-WIPO Agreement in OJ 2017, A115

L4-04

Correct the Answer to (h) to:

- (h) T [If demand was filed, any amendments made to the claims under Art. 19 PCT must also be translated but only if the applicant wishes these amendments to form the basis of further proceedings and they are not annexed to the IPER, such as in this cases where the amendments under Art. 19 were considered reversed by the amendments under Art. 34 PCT on which the EP procedure is to be based; GL (2021) E-IX, 2.1.3; R.76.5(iv) PCT]

Add to the Comments:

- (h): Also EPG (2021) 5.5.012: *“In addition, if the EPO acts as **elected** Office, translations of **any annexes** to the international preliminary examination report (IPER) **must always be furnished**, i.e. including any accompanying letter under Rules 66.8(a) or (b) PCT indicating the basis for the amendments in the application as filed. Such translations must be filed regardless of whether protection is sought for the same version of the application documents as was the subject of the IPER. Therefore, a translation of any amendments made under Article 19 PCT (and the accompanying letter under Rule 46.5(b) PCT, **if annexed to the IPER**) must also always be filed if such amendments are annexed to the IPER.”*
But EPG (2021) 5.5.013: *“If the applicant wishes the amendments to the claims made before the IB under Article 19 PCT to form the basis of the subsequent procedure before the EPO as elected Office, and **these amendments are not annexed to the IPER (for instance because they were considered reversed by an amendment under Article 34 PCT)**, then these amendments must also be furnished in translated form, as otherwise they will be disregarded for the further proceedings.”*
- (h): R.70.16(a) PCT provides that no translation of Art.19 amendments have to be provided because they are considered superseded by the later Art.34 amendment

L4-18

Correct the Answer to (e) to:

- (e) T (WO-ISA was positive, so amendment voluntary; own volition amendment allowed – R.137(2); GL (2021) E-IV, 3.3.4)