



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 2022, and to the 'Basic legal Questions for Pre-Exam and Paper D -book ("L-book", edition June 2022, EQE 2023):

- Publications in OJ EPO after the Book was printed (OJ October 2022; OJ Suppl 3/2022 of 10.08.2022);
- Publications in PCT Newsletter after the Book was printed (PCT NL June - Oct 2022);
- Updates and 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 – pleased send them to training@deltapatents.com.

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

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 Pre-Exam Blog](#)
- [DeltaPatents D Blog](#)

Roel van Woudenberg,
November 2022

1. EQE 2023 preparation courses

DeltaPatents organizes further training sessions for candidates preparing for Pre-Exam 2023 and for the Main Exam 2023 in the period from May 2022 until February 2023. 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 2023 material: model solutions, reference books

Model Solutions

DeltaPatents provides **updated exam papers and model solutions** for (most) of the Pre-Exam papers since 2014 in the book "[Pre-Exam book – Cases/Exams](#)".

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

Please order in our [webshop](#).

Reference books

The DeltaPatents [webshop](#) also provides:

- **"Basic Legal Questions for Pre-Exam and Paper D"** by DeltaPatents
- **"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 and Roel van Woudenberg.



3. Update of Study Guide

Training Material and Sources – Law + Regulations

1. European Patent Convention (EPC2000) from www.epo.org

Add:

- Latest accession to the EPC:
 - OJ 2022, A78: “Montenegro (ME) accedes to the EPC with effect of 1/10/2022” – also refer to OJ 2022, A82 for (side-)effects of this accession (rO function delegated to EPO, closure of national route)

New editions of:

- “European Patent Guide – How to get a European patent”
 - The latest edition is the 22nd edition, updated to 1 May 2022, published 24 Aug 2022.
 - Available online in the EPO's three official languages in both HTML and PDF format.
 - <https://www.epo.org/applying/european/Guide-for-applicants.html>
- “National Law relating to the EPC”
 - <http://www.epo.org/patents/law/legal-texts/national-law-epc.html>
 - The latest edition is March 2022 (21th edition), published on 29 June 2022 [OJ 2022, A66]. The pdf version reflects the status of March 2022. The HTML version is routinely updated whenever the EPO learns of any changes at national level.
- “Case Law of the Boards of Appeal of the European Patent Office” (Case law Book) [10th edition, July 2019; published on 11 Aug 2022]

4. Fee payments to the EPO from www.epo.org

- ADA/AAD2019 will be **superseded by ADA/AAD2022 per 10 September 2022** – OJ Suppl 3/2022 (published on 10 Aug 2022):
 - Main changes are new provisions:
 - To implement a process of direct clearing of debit orders;
 - To introduce a safety net for replenishments of deposit accounts;
 - To reflect the full deployment of Central Fee Payment (and the abolishment of Online Fee Payment; OJ 2022, A81: “Notice from the EPO dd 19 July 2022 concerning Central Fee Payment”) and the changes this will entail for managing automatic debit orders.
 - The need to make these amendments has also been taken as an opportunity to rearrange and split up a number of existing ADA provisions to improve readability, without, however, substantially changing their content.
 - The ADA provisions have been split, rearranged and renumbered extensively – an indicative concordance table is given below.

EQE

1. EQE Regulation

- “Information on the schedule for the EQE 2023 examination papers” dated 27 September 2022 – EQE website
- No details on Mock exams for EQE 2023 are available yet. Please monitor the EQE website for availability of:
 - “Information on planned mock examinations for EQE 2023 papers”
- **Check EQE website for updates!:**
<https://www.epo.org/learning/eqe.html>

B3, institutional provisions – Law + Regulations

Add:

- OJ 2022, A78 “Montenegro (ME) accedes to the EPC with effect of 1/10/2022”

C7, Priority – Law + Regulations

Add:

- OJ 2022, A79 (Decision) and A80 (Notice) “Utilisation scheme includes Czech Republic (CZ) per 3/10/2022”

C7, Priority – Case Law

Add to Referral G 1/22 & G 2/22 “Entitlement to priority” (by T 1513/17 and T 2719/19 of 28.01.2022; OJ 2022, A36):

- OJ 2022, A92, Decision of Technical Board of Appeal 3.3.04 dated 28 January 2022 - T 1513/17 and T 2719/19

H3, Filing the application; Filing date; Formalities examination – Law + Regulations

Update:

- OJ 2022, A70 supersedes OJ 2020, A105 “EPO Online Filing software to be used for electronic filing” per 1/9/2022: version 5.13 (build 5.0.13.179) or later must now be used for electronic filings by OLF

Add to OJ 2021, A97:

- OJ 2022, A60 “Notice from the EPO dd 27 May 2022 concerning the filing of sequence listings in the international (PCT) procedure before the EPO as receiving Office” supplements OJ 2021, A97

H4, Search, search opinion and search report – Law + Regulations

Add/update:

- OJ 2022, A58 “PPH programme EPO and IP Australia based on PCT and national work products”
- OJ 2022, A59 “PPH pilot programme EPO and Saudi Authority for Intellectual Property (Saudi Arabia) based on PCT and national work products”
- OJ 2022, A88 “PPH pilot programme EPO and Superintendence of Industry and Commerce of Colombia (SIC) based on PCT and national work products” (replaces OJ 2019, A78; extension from 1/10/22 for indefinite period)

H14, Law + Regulations:

Updates:

- ADA/AAD2019 will be **superseded by ADA/AAD2022 per 10 September 2022** – OJ Suppl 3/2022 (published on 10 Aug 2022)
- OJ 2022, A81 “Notice from the EPO dd 19 July 2022 concerning Central Fee Payment” (supersedes OJ 2021, A61 and OJ 2022, A25 per 10/9/2022)

L1, Introduction PCT – Law + Regulations

Update:

- OJ 2022, A72 supersedes OJ 2021, A58 “Reduction of fees – revised lists of states” per 1/7/22
- OJ 2022, A65 “Fees for international applications: new equivalent amounts per 1/7/2022”



L2, The international application; Filing; Filing date; Formalities examination – Law + Regulations

Update:

- OJ 2022, A65 “Fees for international applications: new equivalent amounts per 1/7/2022”

Add:

- OJ 2022, A82 “Notice dd 19 Nov 2022 wrt delegation to the EPO of the rO functions of Montenegro and closure of the national route” (for all IAs filed \geq 1/10/2022)

L3, International search and publication; preliminary examination – PCT Newsletter

Add:

- PCT NL Jun 2022, Practical Advice “Avoiding submitting sensitive information during the international phase, where possible”: conditions under which a document may not be published or made publicly accessible.

L4, National phase and Euro-PCT application – Law + Regulations

Add:

- OJ 2022, A82 “Notice dd 19 Nov 2022 wrt delegation to the EPO of the rO functions of Montenegro and closure of the national route” (for IAs filed \geq 1/10/2022)

4. Update of Basic Legal Questions

C7-19

Clarify statement b) and c) by changing the statements to:

- (b) If A-SE and the priority right originating from filing were ~~was~~ transferred from both companies to Company S2 only before EP1 is filed, priority is validly claimed.
- (c) If A-SE and the priority right originating from filing were ~~was~~ transferred from both companies to Company S2 only after the Examiner notes a deficiency, priority is validly claimed.

H5-04

Correct statement b) to:

- (b) The EP1 application should be published in July 2021 ~~2022~~

L2a-07

Correct statement c) to:

- (c) The change of applicant can be recorded by the IB during the national phase after the expiry of 30 months from the priority date, with effect to all designated offices (provided that the request is filed within the applicable time limit).



5. Update of Answers to Basic Legal Questions

General

- Some legal provisions have been updated/replaced since the book was printed: refer to the Study Guide section.
- In particular, for ADA/AAD elements of answers note ADA/AAD2019 will be superseded by ADA/AAD2022 per 10 September 2022 – OJ Suppl 3/2022 (published on 10 Aug 2022). The main occurrences are indicated below.

B2-06

Update references for ADA/AAD from OJ Suppl 4/2019 to OJ Suppl 3/2022 (per 10 Sep 2022)

H2-11

Add to the answer to a) – EPC states:

- 1/10/2022: Montenegro (ME) – OJ 2022, A78 (& OJ 2022, A82); extension state 1/3/2010-30/9/2023

Delete Montenegro from the answer to b) – Extension states

H3-32, H6-06, H6-07,

Add to comments:

- Utilisation scheme includes Czech Republic (CZ) per 3/10/2022 - OJ 2022, A79 (Decision) and A80 (Notice)

H9-02 -c)

In c), update reference to ADA2019 5.1.3 to ADA2022 7.1.3

H9-02 -d), H10-05,

Update reference to ADA2019 5.1.2 to ADA2022 7.1.2, delete CMS and delete Online Fee Payment

H9-13

In comment to a), update reference to ADA2019 5 to ADA2022 7.1.1

H14-11

In a), update references to ADA2019 5.x to ADA2022 7.x & update ADA2019 5.4.1 to ADA2022 10.2

In b), update ADA2019 7 to ADA2022 14 & replace AAD2019 x by AAD2022 x (no renumbering in AAD).

In b), delete references to CMS and Online Fee Payment

H14-12

In a), update reference to ADA2019 6.1-6.3 to ADA2022 13.1-13.3

In a), add “debit orders with deferred execution date can be revoked until the indicated deferred execution date – ADA2022 13.2&13.3”

H14-14

In b), update reference to ADA2019 5.4.2 to ADA2022 10.1
In b), update reference to ADA2019 5.1.3 to ADA2022 7.1.3
In b), delete references to CMS and Online Fee Payment

H14-16

In b), update reference to ADA2019 5.2.2 to ADA2022 7.3

H14-17

Update reference to ADA2019 5.3.1 to ADA2022 9.1

L1-07

Add to comments:

- OJ 2022, A78 “Montenegro (ME) accedes to the EPC with effect of 1/10/2022”

L2a-15

Change the ME-entry in “Via EP-designation under PCT” to:”

- ME** (if filed < 1/10/22: as extension state; if filed ≥ 1/10/2022: as EPC state - OJ 2022, A78 & OJ 2022, A82),

And change the note to:

- **: ME acceded to the EPC on 1/10/2022. After accession, ME closed the national route – PCT-NL Jan 2019; OJ 2022, A82

L4-18

In the answers to (a) and (b) and in the comments, first two bullets:

- please correct the references from GL (2022) E-2a into GL (2022) E-IX

L4-27

In the comments, extend the citation of AAD2022 5.1(c) with the extension made to that provision:

- AAD2022 5.1(c) *For the purposes of Article 7(2) RFees, payments under the automatic debiting procedure in European and PCT proceedings are considered to have been received: [..] (c) on the date of receipt of the relevant (procedural) request for*
 - *fees falling due for an international application on the date of the request for early processing under Article 23(2) or 40(2) PCT, provided that the documents under Article 20 PCT are available to the EPO. If the request is received on a day on which the EPO is not open for the receipt of documents, the decisive payment date will be the next day it is open for this.*