



DELTA PATENTS

Training for Patent Professionals

**MAIN-EXAM
QUESTIONS
FOR PAPER D**

Update 2 November 2022

Edition June 2022

D

Contents

Introduction and acknowledgement	1
1. EQE 2023 preparation courses.....	2
2. Other EQE 2023 material: model solutions, reference books	2
Model Solutions	2
Reference books	2
3. Update of Study Guide	3
Training Material and Sources – Law + Regulations	3
B3, institutional provisions – Law + Regulations.....	4
C7, Priority – Law + Regulations.....	4
C7, Priority – Case Law	4
H3, Filing the application; Filing date; Formalities examination – Law + Regulations	4
H4, Search, search opinion and search report – Law + Regulations	4
H14, Law + Regulations:.....	4
L1, Introduction PCT – Law + Regulations	4
L2, The international application; Filing; Filing date; Formalities examination – Law + Regulations	5
L3, International search and publication; preliminary examination – PCT Newsletter	5
L4, National phase and Euro-PCT application – Law + Regulations	5
4. Concordance table ADA/AAD2019 – ADA/AAD2022 (indicative)	6
5. Update of Main-Exam Questions.....	10
C7-23	10
H12-11.....	10
H13-08.....	10
6. Update of Answers to Main-Exam Questions	11
General.....	11
C7-23	11
C7-23	11
D-10.....	11
ADA/AAD: H3-32, H8-04, H9-23, H9-35, H12-04, H14-04, H14-13, H14-14, H14-15, H14-23, H14-24, H14-25, L3-33, L3-39, L4-27.....	11
Annex: Schedule EQE 2023 (paper D)	12

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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 2022-2023, and “D-book” (edition June 2022, EQE 2023), so as to reflect the status of the legal texts as of 31 October 2022 (the relevant date for EQE 2023 – Rules 2 and 22(1) IPREE):

- Publications in OJ EPO after the Book was printed (OJ July – Oct 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 – please 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 Paper D Blog](#)

Our Model Solutions (including updated papers) for D 2014 – D 2021 are available from our webshop; the model solution for D 2022 will be issued shortly after the tutor meeting which takes place on 8-9 November 2022. They allow to practice up-to-date versions of the latest EQE D papers:

- [DeltaPatents Webshop - Analysis and Model Solutions for Paper D](#)

Roel van Woudenberg,
2 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 April 2022 until February 2023.

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

2. Other EQE 2023 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:

- **“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
- **“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 European Patent Office dated 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 all IAs filed \geq 1/10/2022)

4. Concordance table ADA/AAD2019 – ADA/AAD2022 (indicative)

The revised ADA2022 and AAD2022 ([supplementary publication 3, OJ EPO 2022](#)) supersede the texts dated 1 October 2019 ([supplementary publication 4, OJ EPO 2019](#)) as amended by decisions of the President of the European Patent Office dated 4 June 2020 ([OJ EPO 2020, A77](#): amendment 10.3 AAD to introduce ex officio closure of pending automatic debit orders and added paragraph (k) to 3.2 AAD in view of additional search under Rule 40bis jo. Rule 20.5bis PCT per 1/7/2020), 18 March 2021 ([OJ EPO 2021, A26](#): amendment 5.1.2 ADA, 8.2 ADA and 1.2 AAD per 1/4/2021 for Online Filing 2.0) and 13 July 2021 ([OJ EPO 2021, A60](#): amendment 5.1.1 ADA, 5.1.2 ADA and 5.3 ADA per 11/9/21 for Central Fee Payment).

The ADA provisions have been split, rearranged and renumbered extensively – a rough concordance table is given below. A rough concordance table is given below. Please note that some details may have been overlooked and that some isolated sentences from earlier provisions and/or some combined provisions are not fully correctly reflected in the below table. Note that Online Fee Payment is abolished per 10 September 2022 (succeeded by Central Fee Payment).

Restructuring ADA

ADA2019, 3.2	→ ADA2022, 3.2/3.3 SPLIT: 3.2 Payments to replenish deposit accounts must be made in euro into the EPO bank account. 3.3: Replenishments are credited to the deposit account on the date on which the payment is actually entered in the EPO bank account
ADA2019, 3.3	→ ADA2022, 4.1
ADA2019, 3.4	→ ADA2022, 4.2
ADA2019, 3.5	→ ADA2022, 5.1
ADA2019, 3.6	→ ADA2022, 5.2
ADA2019, 4.1	→ SPLIT: first sentence: ADA2022, 6.1 – must ensure sufficient funds in account; and second sentence: ADA2022, 7.5 - Safety-net provision for replenishments of deposit account
ADA2019, 4.2	→ ADA2022, 6.2
ADA2019, 4.3	→ ADA2022, 6.3
ADA2019, 5	→ ADA2022, 7
ADA2019, 5.1	→ ADA2022, 7.1
ADA2019, 5.1.1	→ ADA2022, 7.1.1
ADA2019, 5.1.2	→ ADA2022, 7.1.2
ADA2019, 5.1.3	→ ADA2022, 7.1.3
ADA2019, 5.2	→ ADA2022, 7.2
ADA2019, 5.2.1	→ ADA2022, 7.2.1 / 7.2.2 SPLIT 7.2.1 + AMENDED: debit orders immediately upon receipt 7.2.2: should have enough funds
ADA2019, 5.2.2	→ ADA2022, 7.3 / 7.4.1 SPLIT: 7.3 + AMENDED: order of processing if debit orders for multiple applications 7.4.1: insufficient funds to cover all fees



ADA2019, 5.2.3 → ADA2022, 7.4.2 / 7.4.3 SPLIT:
7.4.2: order after replenishment
7.4.3: date of payment after replenishment

ADA2019, 5.2.4 → ADA2022, -- : included in
7.2.2 (must make sure sufficient funds to cover all orders submitted) and
7.2.1 (when debited)

ADA2019, 4.1,
second sentence → ADA2022, 7.5 NEW - Safety-net provision for replenishments of deposit account

7.5.1 Where a payment is considered under point 7.4.3 to have been made only after expiry of a period in which it should have been made, the EPO will deem that period to have been observed if evidence is provided within a period to be specified by it that

(a) a SEPA ("Single European Payment Area") Credit Transfer for adequate replenishment of the deposit account was ordered at least one day before expiry of the period for paying the fee;

(b) a SEPA Instant Credit Transfer for adequate replenishment of the deposit account was ordered at the latest on the last day of the period for paying the fee;

(c) any other type of order for adequate replenishment of the deposit account was given to a banking establishment located in an EPC contracting state not participating in the SEPA at least three days before expiry of the period for paying the fee.

7.5.2 If no evidence is provided or if the evidence is insufficient, the period for paying the fee will be deemed not to have been observed. The party to the proceedings may then make use of any of the legal remedies available under the EPC or the PCT.

ADA2019, 5.2.5 → ADA2022, 8.1 & 8.2

ADA2019, 5.3 → ADA2022, 9:

ADA2019, 5.3.1 → ADA2022, 9.1

ADA2019, 5.3.2 → ADA2022, 9.2

ADA2019, 5.3.3 → ADA2022, 9.3

ADA2019, 5.4 → ADA2022, 10

ADA2019, 5.4.1 → ADA2022, 10.1

ADA2019, 5.4.2 → ADA2022, 10.2

ADA2019, 5.4.3 → ADA2022, 10.3

ADA2019, 5.5 → ADA2022, 11

ADA2019, 5.6 → ADA2022, 12:

ADA2019, 5.6.1 → ADA2022, 12.1

ADA2019, 5.6.2 → ADA2022, 12.2

ADA2019, 5.6.3 → ADA2022, 12.3

ADA2019, 5.6.4 → ADA2022, 12.4

ADA2019, 6 → ADA2022, 13

ADA2019, 6.1 → ADA2022, 13.1

ADA2019, 6.3 → ADA2022, 13.2 NEW:

A debit order with a deferred payment date pursuant to point 10.2 may be revoked in whole or in part in Central Fee Payment until one day before the date specified as the execution date at the latest. However, it may still be revoked on the date specified as the execution date by following the procedure under point 13.1.

ADA2019, 6.2 → ADA2022, 13.3 AMENDED

ADA2019, 7 → ADA2022, 14

ADA2019, 8 → ADA2022, 15

ADA2019, 8.1 → ADA2022, 15.1

ADA2019, 8.2 → ADA2022, 15.2

ADA2019, 8.3 → ADA2022, 15.3

ADA2019, 8.4 → ADA2022, 15.4

ADA2019, 9 → ADA2022, 16

ADA2019, 9.1 → ADA2022, 16.1

ADA2019, 9.2 → ADA2022, 16.2

ADA2019, 9.3 → ADA2022, 16.3

ADA2019, 9.4 → ADA2022, 16.4

AAD:

AAD2019, 1.2 → AAD2022, 1.2: reference to ADA 5.1.3 and 5.4.2 replaced by 7.1.3 and 10.3

-- → AAD2022, 3.2(k): additional search fee in the event of correction of an erroneous filing (Rule 40bis PCT in conjunction with Rule 20.5bis PCT)

-- → AAD2022, 3.2(l) NEW: further search fee for a European search pursuant to Rule 56a(8) EPC and any further processing fee due in the event of late payment of that fee. – *per 1/11/2022 (not for EQE 2023)*

-- → AAD2022, 4.4 NEW - EPO processes automatic debit orders at the end of the day marking the decisive payment date within the meaning of point 5

-- → AAD2022, 4.5 NEW - If fees for multiple applications are to be debited automatically from the same deposit account at the same time, [...] Individual fees are booked in the following order of priority, for as long as sufficient funds are available:
 (a) appeal fee (011)
 (b) all other fees in ascending order of their fee codes

AAD2019, 5.1(c) → AAD2022, 5.1(c) amended: added “if the request [for early entry] 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”

AAD2019, 6 → AAD2022, 6 AMENDED: expanded and reference to ADA 5.2 replaced by ADA 8

AAD2019, 7 → AAD2022, 7,1 / 7.2 SPLIT:

7.1: If the deposit account is sufficiently replenished to enable each fee to be paid, the EPO debits any pending debit orders ...

7.2: The outstanding payment is considered to have been made on the date on which the deposit account is duly replenished.



- → AAD2022, 10.2 NEW - Revoking an automatic debit order in any other form [than via CFP] is invalid and fees will continue to be debited automatically until the automatic debit order is revoked in Central Fee Payment.
- AAD2019, 10.2 → AAD2022, 10.3
- AAD2019, 10.3 → AAD2022, 10.4 + expanded: if account closed, all pending orders revoked ex officio

5. Update of Main-Exam Questions

C7-23

Please add the underlined part to the first sentence of the question.

A European patent application was filed a week ago, on 18 February 2019, together with the request for grant form.

H12-11

Please replace the term appellant by proprietor (2x):

[...] However, that communication was not received by the ~~appellant~~ proprietor. On his request for information in this matter, the EPO was only able to confirm the proper dispatch of the relevant communication, stating that as more than six months since dispatch had elapsed, it was not possible to investigate whether notification had taken place (see F2911O of 18 May 2018).

Can the ~~appellant~~ proprietor recover his patent?

H13-08

Please correct a typo:

[...] Subsequently, a ~~noticed~~ notice appeared in the June edition of the Official Journal, [...]



6. Update of Answers to Main-Exam Questions

General

- Some legal provisions have been updated/replaced since the book was printed: refer to the Study Guide section and -for some main changes- the questions indicated below.

C7-23

In the answer, please correct:

- However PCT-1 is the first application from USCO + RESI together for invention A:

into:

- However PCT-1 is the first application from USCO alone for invention A, but not from USCO+ RESI together:

C7-23

Please add to the Comments:

- (a) GL (2022) A-III, 4.1: *“The request for grant must be made on the appropriate EPO form (EPO Form 1001), even though the request (the indication that a patent is sought, referred to in A-II, 4.1(i)) need initially be in no particular form. The form is available via the EPO website on the internet (epo.org) and, with the exception of the web-form filing service, is also included in the software provided by the EPO for electronic filing (see A-II, 1.2.2).”*

D-10

In the answer, please replace

if one or more renewal fee falls due in the “dead” period, there due date(s) are deferred to the date of resumption - GL (2022) E-VII, 1.5 mut.mut

by

Renewal fees continue to fall due due in the “dead” period

Note: although it may be argued that GL (2022) E-VII, 1.5, relating to R.14, applies mutatis mutandis, and despite “Stay of proceedings implies that the legal status quo existing at the time of the suspension is maintained, i.e. neither the EPO nor the parties can validly perform any legal acts while proceedings are suspended (J 38/92)” – GL (2022) A-IV, 2.2.4 Legal nature and effect of the stay –, the EPO considers it necessary that the renewal fees are paid during the stay. This is apparent from the letter that the applicant receives when a case is stayed, which explicitly tells the applicant that renewals falling due during the stay also need to be paid during the stay.

ADA/AAD: H3-32, H8-04, H9-23, H9-35, H12-04, H14-04, H14-13, H14-14, H14-15, H14-23, H14-24, H14-25, L3-33, L3-39, L4-27

- ADA/AAD2019 is superseded by ADA/AAD2022 per 10 September 2022 – OJ Suppl 3/2022 (published on 10 Aug 2022): refer to the above section for an indicative concordance table.

Annex: Schedule EQE 2023 (paper D)

The document "Information on the schedule for the EQE 2023 examination papers" dd 27 September 2022 provides:



Munich, 27 September 2022

Information on the schedule for the EQE 2023 examination papers

General

The EQE 2023 exam schedule is now available. Candidates are advised that this document may be subject to minor changes as testing continues.

The EQE 2023 will take place online using the same setup as the EQE of 2021 and 2022. On examination days, candidates are advised to log on to the online examination system's internet platform at least 20 minutes before the start of the relevant paper. Information on how to register and log on to the online examination system will be communicated in due course.

The pre-examination and both papers C and D will be split into parts. This means that candidates will not be free to allocate their time as they see fit across the different parts of the papers. To compensate for this restriction, the total duration of the relevant papers has been extended. Once the time allowed for a part has elapsed, it will not be possible to go back to that part.

Paper D - 7 March 2023

Paper D will have the same syllabus and character as before, but it will be split into three parts. Each part must be completed before the start of the next break, with the next part only becoming available after the break. Paper D lasts six hours.

No calendars will be provided.

Part	Content	Duration	CET time
D1 - 1	Part D1 - three questions (27 points)	1 h 35 min	9:30 - 11:05
	Break	30 min	11:05 - 11:35
D1 - 2	Part D1 - three questions (28 points)	1 h 40 min	11:35 - 13:15
	Break	45 min	13:15 - 14:00
D2	Part D2 (45 points)	2 h 45 min	14:00 - 16:45

During part D2, candidates may take unscheduled breaks. Further instructions relating to taking unscheduled breaks will be communicated at a later stage. It should be noted, however, that the exam clock will continue to run during unscheduled breaks, i.e. the examination will not be stopped.