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Training for Patent Professionals

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5. Update of Answers to Basic Legal Questions	Fout! Bladwijzer niet gedefinieerd.
C2-02	Fout! Bladwijzer niet gedefinieerd.
C4-04	Fout! Bladwijzer niet gedefinieerd.

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Introduction and acknowledgement

This document comprises an update to Cases and exam papers as used in our Integrated Pre-Exam Courses in 2018, and to the 'Pre-Exam Book ("P-book", edition June 2018, EQE 2019):

- Publications in OJ EPO after the Book was printed (OJ May 2018 – 31 Oct 2018);
- Publications in PCT Newsletter after the Book was printed (PCT NL May 2018 – 31 Oct 2018);
- Corrections to the cases, the exams and the answers & model solutions.

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.

Roel van Woudenberg,
20 November 2018

EQE 2019 preparation courses

DeltaPatents organizes further training sessions for candidates preparing for Pre-Exam 2019 and for the Main Exam 2019 in the period from April 2018 until February 2019. 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 .

Section 3 – legal cases: cases

L3-05

Statement 2 was sometimes understood differently than intended. Please clarify the statement by rephrasing it as follows:

2. It is possible to file a demand tomorrow if the applicant withdraws the priority declaration today.

L4-01

One of the dates was incorrectly updated when the questions were updated for EQE2019 dates. Please correct the filing date of NA-X:

International application PCT-X was filed with the EPO on 16 June 2017, validly claiming priority from earlier application NA-X filed on 24 July ~~2017~~ 2016. The international application was published together with the international search report , established by the EPO, on 16 November 2017.



Section 3 – legal cases: answers to the legal cases

H3-09

Add to comments:

- *If an amendment is done to unsearched subject-matter:*
 - *If the newly introduced independent claim was originally claimed but not been searched, legal basis is R.64(1) & G 2/92; see GL (2017) H-II, 6.2.*
 - *Legal basis is different if the invention would not have been claimed originally, and the newly introduced claim was based on the description: then R.137(5); see GL (2017) H-II, 7.2.*

H4-01

Correct answer to statement 3 and 4: legal basis is R.64 & G 2/92

Add to comments:

- *If an amendment is done to unsearched subject-matter:*
 - *If the newly introduced independent claim was originally claimed but not been searched, legal basis is R.64(1) & G 2/92; see GL (2017) H-II, 6.2.*
 - *Legal basis is different if the invention would not have been claimed originally, and the newly introduced claim was based on the description: then R.137(5); see GL (2017) H-II, 7.2.*

H11-02

Correct “OJ 2018, A86” in the answer to “OJ 2017, A86”

L3-05

Clarify the answer to statement 2 by adding the underlined parts:

- The time limit for filing a demand has already expired,
- Time limits which have already expired will not be recalculated if the priority declaration is withdrawn
- So not possible to recalculate demand time limit after withdrawal of the priority declaration

Section 5 – pre-exam papers

Pre-Exam 2015 - Question 9

One of the dates was incorrectly updated when the questions were updated for EQE2019 dates. Please correct the filing date of EP-Q:

A European patent application EP-R was filed in December 2017 without claiming priority. The search division stated in the search opinion that the invention described in EP-R is not sufficiently disclosed. In the description of the invention of EP-R, reference is made to a co-pending European patent application EP-Q. EP-Q was filed with the EPO in October ~~2018~~ 2017.



Section 6 – answers and model solutions to the pre-exam papers

Pre-Exam 2015 - Question 9

See updates to section 5.

Pre-Exam 2016 - Question 3

Please correct the answer to statement 3.3 to be T (True).

Pre-Exam 2017 - Question 18

The Examiner's Report was later amended to refer to D 1/17, and the statement was neutralized (both T and F considered correct).

D 1/17 provides:

1. In accordance with Article 24(1) and (4) REE and the Disciplinary Board's of Appeal (DBA) consistent case law (following D 1/92, OJ EPO 1993, 357), decisions of the Examination Board may in principle only be reviewed for the purposes of establishing that they do not infringe the REE, the provisions relating to its application, or higher-ranking law. It is not the function of the DBA to reconsider the entire examination procedure on the merits. This is because the Examination Committee and the Examination Board have some latitude in their evaluation which is subject to only limited judicial review by the appeal board. Only if the appellant can show that the contested decision is based on serious and obvious mistakes can the Board take this into account. The alleged mistake must be so obvious that it can be established without reopening the entire marking procedure. An example of an obvious mistake would be a question whose wording was ambiguous or incomprehensible (D 13/02). That would be clear straight away, without any reference to marks awarded, from the meaning that common sense would ascribe to the wording of the question concerned.
2. It is undisputed and also admitted in the Examiner's Report that there is a "slight difference" of the German language version compared to the French and English version in the third sentence of paragraph [003] of document D2. While according to the English and French versions the vibrations of the loudspeaker are converted into vibrations of the air, due to the reference "deren" in the German version the vibrations of the melody are converted into vibrations of the air. In the decision in case D 2/17, which concerned the same question as the present appeal and where the appellant used the German language version in the pre-examination, the Board held that the formulation "vibrations of the melody" (Vibrationen der Melodie) does not have an accepted technical meaning. The Board in that case (point 2.5 of the Reasons) qualified the divergence in the English and French version and the German version respectively as a substantial and clear error ("schwerer und eindeutiger Fehler").
3. As confirmed by the representative of the President of the EPO during the oral proceedings the candidates sitting the pre-examination for the EQE receive the papers in the three official languages, i.e. in English, French and German and are allowed to compare the wordings in the papers of the two other languages different of the preferred language for clarification. Due to this fact the Board considers that the translation error did not only have a disadvantageous effect on those Candidates which sat the pre-examination using the German language as held by the Board in case D 2/17 (point 2.2 of the Reasons), but equally at least on those Candidates, for which none of the three official languages English, French and German, is the native language, as it applies to the appellant.
4. Taking into account all these circumstances the Board cannot sufficiently exclude the appellant's submission that due to the translation error the candidate was not able to clearly answer question 18.4 as "true" or "false". At least when referring to the German version "Solange das Musikmodul mit elektrischer Energie versorgt wird, spielt es über seinen Lautsprecher eine Melodie ab, deren Vibrationen in Luftvibrationen umgewandelt werden" the Candidate could arrive at the conclusion that the vibrations belong to the melody and not to the loudspeaker. When resorting to the German version the Candidate in an attempt to solve any possible ambiguity emanating from the English and

French versions could consider that the vibrations of the melody could be independent and not generated via the loudspeaker. A Candidate resorting only to the English or French version was therefore provided with different information compared to Candidates also referring to the German version. When taking into account the German version there could also be some doubts whether or not the Candidate had to revert to common general knowledge or even whether any special knowledge on the technical field underlying question 18.4 was necessary what, however, would have contravened Rule 22(3) IPREE. This provision provides that Candidates shall accept the facts given in the examination paper and limit themselves to those facts and that they shall not use any special knowledge they may have on the technical field of the invention.

5. Hence, the Board considers that for an examination question statement 18.4 has not been formulated in a sufficiently clear, comprehensible and unambiguous manner to ensure that the answer could be only "true" or "false" what is required by a "multiple-choice" question of the pre-examination. An unclear and confusing examination question constitutes an obvious mistake (D 13/02, point 4 of the Reasons).

6. Therefore, the contested decision is based on an obvious mistake which has been established without reopening the entire marking procedure. The appeal is thus allowable. [...]

Also see D 2/17, in German.

Pre-Exam 2018 - Question 4

In June 2018, Statement 4.4 was neutralized (True and False both considered correct) and the Examiners' Report was amended to include:

"In view of arguments raised on appeal the examining division responsible for issuing a technical opinion under Article 25 EPC may consider third party observations, which were filed after notification of the decision to grant. On account of this rare possibility the statement 4.4 has been neutralised and marks are awarded for both answers."

Pre-Exam 2018 - Question 5

In June 2018, Statement 5.3 was neutralized (True and False both considered correct) and the Examiners' Report was amended to include:

"In view of arguments raised on appeal it appears that the statement 5.3 could be understood as referring to the concept of "entry" versus "early entry" into the European phase with regard to 26 February 2018. This would additionally require the lifting of the processing ban before the 31-month time limit has expired by filing a request for early entry (cf. GL E-IX, 2.8 and OJ EPO 213, 156). Thus in view of this interpretation it was decided to neutralise the statement 5.3 and award marks for both answers."

Pre-Exam 2018 - Question 13.1

In June 2018, Statement 13.1 was neutralized (True and False both considered correct) and the Examiners' Report was changed into:

"The application does not explicitly disclose an embodiment with both a detector operable to detect a flap moving and one detecting a level of a liquid. Nevertheless, since this subject-matter is disclosed in the dependent claims, i.e. in the application as filed, it is permissible to amend the description so that it includes this subject-matter (Guidelines F-IV, 6.6). In view of these arguments both possible answers are considered to be correct. For this reason it was exceptionally decided to award marks for both answers. "