



DELTA PATENTS

Training for Patent Professionals

BASIC LEGAL QUESTIONS FOR PRE-EXAM AND PAPER D

Update 20 December 2022

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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,
20 December 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
- “Instructions to candidates concerning the conduct of the European qualifying examination” dated December 2022 – EQE online webpage on EQE website
- **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 was **superseded by ADA/AAD2022 per 10 September 2022** – OJ Suppl 3/2022 (published on 10 August 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.

D-10 (first occurrence)

Please renumber the first occurrence of D-10 into D-09.

H5-04

Correct statement b) to:

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

L1-16

Replace the case statement by:

The IB as receiving Office invites the applicant to remedy pursuant PCT R.26.2 certain defects in the international application within a period of 2 months. As the applicant checked the “notifications are requested to be sent exclusively by postal mail” box in the PCT Request form, the letter with the invitation was dispatched, as a paper copy, on 4 February 2019. The applicant receives the letter today, 7 February 2019.

And delete sub-question c)

L2a-07

Correct statement c) to:

- (b) 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)

D-10 (first occurrence)

Please renumber the first occurrence of D-10 into D-09.

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), replace references to Online Fee Payment in EPO Online Services to Central Fee Payment

In a), delete references to PCT-SAFE

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 PCT-SAFE

In b), replace references to Online Fee Payment in Online Services to Central 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"

L1-16

Replace the answer to a) and b) by:

(a) Time limit:

- Time limit runs from date of despatch and expires:
4/2/19 + 2m [R.80.2] → 4/4/19 (Thu)

(b) Yes

- It was received more than seven days after date it bears (13/2 vs 4/2), so period may expire later - R.80.6
13/2/19 – 4/2/19 = 9 days, which is 2 days over limit of seven
- So 2m period will expire:
4/4/19 + 2d [R.80.3] → 6/4/19 (Sat) [R.80.5] → 8/4/19 (Mon)

Delete the answer to c)

Replace the first bullet in the Comments by:

- *If the box "notifications are requested to be sent exclusively by postal mail" would not have been checked, the indication of an e-mail address in Box II (for the applicant) or IV (for the agent or common representative) would have authorized the receiving Office, the ISA and the IB, if they provide such a service, to send notifications exclusively by e-mail to that address.*
- *See also PCT AG-IP Annex B: IB allows communications to be sent by e-mail*
- *The basis for notification per email seems to be Rule 4.4(c) "In order to allow rapid communication with the applicant, it is recommended to indicate any teleprinter address, telephone and facsimile machine numbers, or **corresponding data for other like means of communication**, of the applicant or, where applicable, the agent or the common representative."*



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.*

Annex: Schedule EQE 2023 (Pre-Exam)

The document "Information on the schedule for the EQE 2023 examination papers" dd 19 December 2022 provides:



Munich, 19 December 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.

Pre-examination - 17 March 2023

The pre-examination will have the same syllabus and character as before, but it will be split into four parts. Each part must be completed before the start of the next break, with the next set of questions only becoming available after the break. The pre-examination lasts four hours and forty minutes.

Candidates will be allowed to print the description of the invention as well as the prior-art documents for the claim analysis parts before the start of the appropriate part. The documents allowed for printing will be made available during the break preceding the relevant claim analysis part.

Part	Content	Duration	CET time
Part 1	5 x 4 legal questions	70 min	9:30 - 10:40
	Break	20 min	10:40 - 11:00
Part 2	5 x 4 legal questions	70 min	11:00 - 12:10
	Break	80 min	12:10 - 13:30
Part 3	5 x 4 claim analysis, case 1	70 min	13:30 - 14:40
	Break	20 min	14:40 - 15:00
Part 4	5 x 4 claim analysis, case 2	70 min	15:00 - 16:10

Note: No calendars will be provided as part of the exam paper; bring your own!– see Notice "Calculation of time limits in paper D and pre-examination" on EQE website.