



DELTAPATENTS

Training for Patent Professionals

MAIN-EXAM QUESTIONS FOR PAPER D

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D

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Table of Contents

Introduction and acknowledgement	3
1. EQE 2024 preparation courses	4
2. Other EQE 2024 material: model solutions, reference books	4
Model Solutions	4
Reference books	4
3. Notification: special situation EQE 2024	5
Rules 126(2), 127(2) and 131(2) EPC as in force until and on 31/10/2023	6
Amended Rules 126(2), 127(2) and 131(2) EPC as in force as of 1/11/2023	6
4. Update of Study Guide	7
Training Material and Sources – Law + Regulations	7
B3, Institutional provisions – Law and regulations	7
C2, State of the Art – Law + Regulations	8
C2, State of the Art – Case Law, Headnotes / Reasons	8
C7, Priority – Case Law	8
H8, Decision to grant – Guidelines	8
H10, Appeal – Case Law	8
H11, Common provisions – Law + Regulations	9
H12, Periods – Law + Regulations	9
L3, International search and publication; preliminary examination – Law + Regulations	9
5. Update of Main-Exam Questions	10
DEALING WITH LEGAL CHANGES OF 2023 (UNTIL 31 OCTOBER 2023)	10
DEALING WITH FUTURE LEGAL CHANGES (AFTER 31 OCTOBER 2023)	10
H7-07a (new in this update document)	10
H9-48	10
H12-01	11
L4-34	11
6. Update of Main-Exam Questions in German	12
H7-07a (new in this update document)	12
G-01	12
H3-18	12
H9-48	12
H9-49	12
L4-33 – L4-36	12
L4-34 (accidentally numbered L4-33)	13
7. Update of Calendars Main-Exam Questions	14
2017 calendar	14
2024 calendar	14
8. Update of Answers to Main-Exam Questions	15
General	15
C2-01 and C2-08	15
G-01	15
H7-07a (new in this update document)	15
H10-14	17
H11-25	17
H14-06	17

H14-15	17
I/J-06	17
L2-20	18
L4-34	18
Annex: Schedule EQE 2024 (paper D)	19



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 2023-2024, and “D-book” (edition June 2023, EQE 2024), so as to reflect the status of the legal texts as of 31 October 2023 (the relevant date for EQE 2024 – Rules 2 and 22(1) IPREE):

- Publications in OJ EPO after the Book was printed (OJ June 2023 – October 2023; OJ Suppl 3/2023.);
- Publications in PCT Newsletter after the Book was printed (PCT NL June 2023 – Oct 2023);
- 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 2023 are available from our webshop. The updated papers and Model Solutions 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,
8 January 2024

1. EQE 2024 preparation courses

DeltaPatents organizes further training sessions for candidates preparing for Pre-Exam 2024 and for the Main Exam 2024 in the period from May 2023 until February 2024.

Please check our website for course details, further announcements and enrolment:

<https://www.deltapatents.com/eqe/>

<https://www.deltapatents.com/eqe-pre-exam/>

<https://www.deltapatents.com/eqe-paper-d/>

<https://www.deltapatents.com/eep-training-auf-deutsch/>

<https://www.deltapatents.com/eqe-formation-en-francais/>

or contact us via email at:

training@deltapatents.com

2. Other EQE 2024 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”** (including Unitary Patent and UPC) by Roel van Woudenberg and Cees Mulder

3. Notification: special situation EQE 2024

In view of the change of R.126(2)/127(2)/131(2) per 1 November 2023, while the IPREE defines the texts as in force on 31 October 2023 to be the relevant legal texts for EQE 2024, the Supervisory Board of the EQE decided:

DECISION OF THE SUPERVISORY BOARD OF THE EQE

Whereas:

1. The syllabus cut-off date for the EQE 2024 is 31 October 2023.
2. In its decision CA/D 10/22, the Administrative Council adopted amendments to Rules 126, 127 and 131 EPC for entry into force on 1 November 2023.
3. Candidates sitting the EQE 2024 are required to apply Rules 126, 127 and 131 EPC as in force on 31 October 2023, while on the day of the exam, the new provisions as set out in CA/D 10/22 will already have been in force for several months.

The Supervisory Board has decided as follows:

1. Candidates sitting the EQE 2024 (pre-examination and main examination) can use as legal basis Rules 126, 127 and 131 EPC as in force on 31 October 2023 or Rules 126, 127 and 131 EPC as in force on 1 November 2023.
2. In the main exam papers, the default Rules 126, 127 and 131 EPC to be applied are those in force on 1 November 2023. If the candidate chooses to apply Rules 126, 127 and 131 EPC as in force on 31 October 2023, this must be clearly indicated.
3. Candidate papers will be marked accordingly.

This decision will enter into force on 1 July 2023.

Done at Munich, 26 June 2023

For the Supervisory Board of the EQE

The Chairman
Michael Liebetanz

So when calculating time limits during Paper D 2024 that run from the (fictitious) date of notification of a document, you are free to use:

- either the current "10-day rule" for deemed notification (with true date of receipt if received later) according to current Rule 126(2)/127(2) (as in force until 31/10/2023 in line with Rules 2 & 22 IPREE) - in which case **you need to indicate that you use** the version as in force in 31/10/2023; [Guidelines E-II, 2.3](#) and 2.4
- or the new PCT-like version (as in force from 1/11/2023) with deemed notification on date of dispatch/date of the document and a compensation for receipt later than 7 days ([OJ 2022, A101, article 1\(10\)-\(12\)](#); [OJ 2022, A114, section IV](#); and [OJ 2023, A29](#); also [Guidelines E-II, 2.3](#) and 2.4) - in this case, you do not need to indicate that you use the new version (despite it deviating from Rule 2 & 22 IPREE).

Our Q&A books "[Basic Legal Questions for Pre-Exam and Paper D](#)" and "[Main Exam Questions for Paper D](#)" provide time limit calculations for **both versions** of R.126(2)/127(2) for (almost) all questions involving time limits calculated from the notification of a document.

Rules 126(2), 127(2) and 131(2) EPC as in force until and on 31/10/2023

Rule 126(2) EPC as in force **until and on** 31/10/2023:

(2) Where notification is effected in accordance with paragraph 1, **the letter shall be deemed to be delivered to the addressee on the tenth day following its handover to the postal service provider**, unless it has failed to reach the addressee or has reached him at a later date; in the event of any dispute, it shall be incumbent on the European Patent Office to establish that the letter has reached its destination or to establish the date on which the letter was delivered to the addressee, as the case may be.

Rule 127(2) EPC as in force **until and on** 31/10/2023:

(2) Where notification is effected by means of electronic communication, **the electronic document shall be deemed to be delivered to the addressee on the tenth day following its transmission**, unless it has failed to reach its destination or has reached its destination at a later date; in the event of any dispute, it shall be incumbent on the European Patent Office to establish that the electronic document has reached its destination or to establish the date on which it reached its destination, as the case may be.

Rule 131(2) EPC as in force **until and on** 31/10/2023:

(2) Computation shall start on the day following the day on which the relevant event occurred, the event being either a procedural step or the expiry of another period. **Where the procedural step is a notification, the relevant event shall be the receipt of the document notified, unless otherwise provided.**

Amended Rules 126(2), 127(2) and 131(2) EPC as in force as of 1/11/2023

Amended Rule 126(2) EPC as in force **as of** 1/11/2023:

(2) Where notification is effected in accordance with paragraph 1, **the document shall be deemed to be delivered to the addressee on the date it bears**, unless it has failed to reach the addressee. In the event of any dispute concerning the delivery of the document, it shall be incumbent on the European Patent Office to establish that the document has reached its destination and to establish the date on which the document was delivered to the addressee. If the European Patent Office establishes that the document was delivered to the addressee **more than seven days after the date it bears**, a period for which the deemed receipt of that document is the relevant event under Rule 131, paragraph 2, shall expire later by the number of days by which the seven days were exceeded.

Amended Rule 127(2) EPC as in force **as of** 1/11/2023:

(2) Where notification is effected by means of electronic communication, **the electronic document shall be deemed to be delivered to the addressee on the date it bears**, unless it has failed to reach its destination. In the event of any dispute concerning the delivery of the electronic document, it shall be incumbent on the European Patent Office to establish that the document has reached its destination and to establish the date on which it reached its destination. If the European Patent Office establishes that the electronic document has reached its destination **more than seven days after the date it bears**, a period for which the deemed receipt of that document is the relevant event under Rule 131, paragraph 2, shall expire later by the number of days by which the seven days were exceeded.

Amended Rule 131(2) EPC as in force **as of** 1/11/2023:

(2) Computation shall start on the day following the day on which the relevant event occurred, the event being either a procedural step or the expiry of another period. **Where the procedural step is a notification, the relevant event shall be the deemed receipt of the document notified, unless otherwise provided.**

4. Update of Study Guide

Training Material and Sources – Law + Regulations

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

- “National Law relating to the EPC”
 - The latest edition is July 2023 (22th edition), published on 3 August 2023. The pdf version reflects the status of July 2023

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

- “Arrangements for deposit accounts” [OJ Suppl 3/2022, per 10 September 2022; superseded OJ Suppl 4/2019] Amended by:
 - OJ Suppl 3/2023, 10 “Decision of the President dd 24 April 2023 concerning the revision of the ADA and their annexes in view of the entry into force of the Unitary Patent system”.
 - OJ Suppl 3/2023, 20: “Notice from the EPO dd 24 April 2023 concerning the revision of the ADA their annexes in view of the entry into force of the Unitary Patent system”
 - OJ 2023, A58 “Decision of the President dd 13 June 2023 concerning the revision of the Arrangements for deposit accounts (ADA)”: MyEPO Portfolio added to ADA 7.1.2 per 1/7/2023

EQE

1. EQE Regulation

- “Information on the schedule for the EQE 2024 examination papers” dd 27 July 2023 (Supervisory Board) – available on EQE website
- Decision of the Supervisory Board dd 26 June 2023 “EQE 2024: Notification and time limit calculation”:
 1. Candidates sitting the EQE 2024 (pre-exam and main examination) can use as legal basis Rules 126, 127 and 131 EPC as in force on 31 Oct 2023 or Rules 126, 127 and 131 EPC as in force on 1 Nov 2023.
 2. In the main exam papers, the default Rules 126, 127 and 131 EPC to be applied are those in force on 1 November 2023. If the candidate chooses to apply Rules 126, 127 and 131 EPC as in force on 31 October 2023, this must be clearly indicated.
- “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 and regulations

Update:

- OJ 2023, A57 “Decision of the President of the EPO dd 11 May 2023 amending the decision of 17 November 2022”: UPC added to list of entities considered to ensure adequate protection

C2, State of the Art – Law + Regulations

Add:

- OJ 2023, A79 (August issue), par. II.1.2 “International exhibitions as referred to in Art.55 EPC”
 - Doha QA 02.20.2023-28.03.2024, Osaka JP 13.04-13.10.2025, Yokohama JP 19.03.2027-26.09.2027

C2, State of the Art – Case Law, Headnotes / Reasons

Add:

- Referral G 1/23 by T 438/19: Technical Board of Appeal 3.3.03 has by interlocutory decision T 438/19 referred the following questions to the Enlarged Board of Appeal (referral pending under G 1/23 "solar cell"):

 1. Is a product put on the market before the date of filing of a European patent application to be excluded from the state of the art within the meaning of Article 54(2) EPC for the sole reason that its composition or internal structure could not be analysed and reproduced without undue burden by the skilled person before that date?
 2. If the answer to question 1 is no, is technical information about said product which was made available to the public before the filing date (e.g. by publication of technical brochure, non-patent or patent literature) state of the art within the meaning of Article 54(2) EPC, irrespective of whether the composition or internal structure of the product could be analysed and reproduced without undue burden by the skilled person before that date?
 3. If the answer to question 1 is yes or the answer to question 2 is no, which criteria are to be applied in order to determine whether or not the composition or internal structure of the product could be analysed and reproduced without undue burden within the meaning of opinion G 1/92? In particular, is it required that the composition and internal structure of the product be fully analysable and identically reproducible?

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):

- ‘The following questions are referred to the Enlarged Board of Appeal:
 - I. Does the EPC confer jurisdiction on the EPO to determine whether a party validly claims to be a successor in title as referred to in Article 87(1)(b) EPC?
 - II. If question I is answered in the affirmative: Can a party B validly rely on the priority right claimed in a PCT-application for the purpose of claiming priority rights under Article 87(1) EPC, in the case where 1) a PCT-application designates party A as applicant for the US only and party B as applicant for other designated States, including regional European patent protection and 2) the PCT-application claims priority from an earlier patent application that designates party A as the applicant and 3) the priority claimed in the PCT-application is in compliance with Article 4 of the Paris Convention?”
- + OJ 2022, A27: all examination and opposition proceedings before the EPO in which the decision depends entirely on the outcome of the referrals will be stayed ex officio.

H8, Decision to grant – Guidelines

Please delete


- ~~C-V, 4.11 “Rule 71(3) waiver”~~

H10, Appeal – Case Law

Please correct a strange correction made by Word’s Autocorrect (2x)

Reformatio in peius

- G9/92 hn. “Prohibition of reformatio in peius”
- G1/99 hn. r.1-12 “Reformatio in peius allowed if patent as maintained in amended form would have to be revoked due to inadmissible amendment held allowable by the Opposition Division”

- 
- T 1843/09 (OJ 2013, 508) “Exceptions from the prohibition of reformatio in peius”

H11, Common provisions – Law + Regulations

Add after OJ 2023, A50:

- OJ 2023, A59 “Notice from the EPO dd 31 May 2023 concerning the introduction of a shared area in MyEPO Portfolio”: for use during personal consultation; changes are informal; changes made by examiners are merely suggestions made to assist users - responsibility for amendments remains with the applicants (Art 113(2)); Copy of uploaded document/ relevant parts thereof will be attached to the minutes of the consultation

H12, Periods – Law + Regulations

Please add:

- OJ 2023, A80 “Notice 11 September 2023 concerning the days on which EPO filing offices are closed in 2024”

L3, International search and publication; preliminary examination – Law + Regulations

Update: add the underlined:

- OJ 2020, A4 (Decision) & OJ 2020, A18 (Notice) “Reduction in the fees for international search and international preliminary examination carried out on international applications filed by nationals of certain states”
→ *Notice updated by OJ 2022, A72 “Notice from the EPO dd 6 July 2022” per 1/7/2022*
→ *Notice updated by OJ 2023, A67 “Notice from the EPO dd 10 July 2023” per 1/7/2023*

5. Update of Main-Exam Questions

DEALING WITH LEGAL CHANGES OF 2023 (UNTIL 31 OCTOBER 2023)

Please update the OJ citations for Amendments to ADA2022/AAD2022 to:

- Amendments to ADA2022/AAD2022 Various
 OJ Suppl 3/2023, 10 & 25 (per 1/6/2023): in view of UP
 OJ 2023, A58 (per 1/7/2023): in view of MyEPO Portfolio

Please update the OJ citations for MyEPO to:

- MyEPO Portfolio and electronic notification to the Mailbox H12-01 (comments)
 OJ 2023, A49 & A50 (follow-up of OJ 2022, A51; no longer a pilot)
 OJ 2023, A58 (per 1/7/2023): update ADA 7.1.2 H14-15
 OJ 2023, A59: shared area

DEALING WITH FUTURE LEGAL CHANGES (AFTER 31 OCTOBER 2023)

Please add the second paragraph:

Legal changes entering into force after 31 October of the year before the exam are not to be considered when answering exam papers – Rules 2 and 22 IPREE.

However, for EQE 2024, note the Decision of the Supervisory Board dd 26 June 2023 “EQE 2024: Notification and time limit calculation”:

- Candidates sitting the EQE 2024 (pre-exam and main examination) can use as legal basis Rules 126, 127 and 131 EPC as in force on 31 October 2023 or Rules 126, 127 and 131 EPC as in force on 1 November 2023.
- In the main exam papers, the **default Rules 126, 127 and 131 EPC** to be applied are those in force on **1 November 2023**. If the candidate chooses to apply Rules 126, 127 and 131 EPC as in force on 31 October 2023, this must be clearly indicated.

H7-07a (new in this update document)

Please add a new question H7-07a (6 points):


A European patent application EP-1 was filed, on the last day of the priority period, with reference to and claiming the priority of a previously filed French application FR-1. The reference to the French application FR-1 indicated that it replaces the description and drawings. A set of claims was filed together with the European patent application.

When checking the application documents of EP-1 the next day, the applicant noted that a wrong set of claims had been filed: rather than a set of claims corresponding of that of the French application FR-1, an earlier draft of those claims had been filed which did not cover all embodiments of the invention.

The applicant asks you whether he can correct the claims of European patent application EP-1.

H9-48

Please correct the today-date from 05.03.2023 into 05.03.2024.



H12-01

To align with the wording from the decision of the SB on the notification rules for EQE 2024, in (b) and (d):
amend 1 November 2024 to “1 November 2023 (as in force on the day of the D 2024 exam)”

L4-34

Please correct the filing date of PCT-JP to 20 September 2016, so that the question reads:

An international application PCT-JP was filed in Japanese at the Japanese Patent Office without claiming priority on 20 September 2016. The international application PCT-JP was published on 22 March 2018, the international search report on 28 June 2018. In September 2018, the applicant has been informed of an infringer in one of the designated EPC Contracting States. He wishes to claim reasonable compensation from the infringer prior to the grant of the European patent Euro-PCT-JP.

How should the applicant proceed (today is 1 October 2018)?

6. Update of Main-Exam Questions in German

H7-07a (new in this update document)

Please add a new question H7-07a (6 points):

Eine europäische Patentanmeldung EP-1 wurde unter Bezugnahme auf eine zuvor eingereichte französische Anmeldung und unter Inanspruchnahme von deren Priorität, am letzten Tag der Prioritätsfrist, eingereicht. In der Bezugnahme auf die frühere nationale Anmeldung wurde angegeben, dass sie die Beschreibung und die Zeichnungen ersetzt. Ein Satz von Ansprüchen wurde zusammen mit der europäischen Patentanmeldung EP-1 eingereicht.

Bei einer Überprüfung der Anmeldeunterlagen durch den Anmelder am nächsten Tag, stellte der Anmelder fest, dass ein falscher Anspruchssatz eingereicht wurde: Statt eines Anspruchssatzes, der dem der französischen Anmeldung FR-1 entspricht, war ein früherer Entwurf dieser Ansprüche eingereicht worden, der nicht alle Ausführungsformen der Erfindung abdeckt.

Der Anmelder fragt Sie, ob er die Ansprüche der europäischen Patentanmeldung EP-1 korrigieren kann.

G-01

Please amend the date in the last sentence from 26 February 2019 to 2 March 2021.

H3-18

Accidentally, H3-018 repeated H3-17. Here is the correct German version of H3-18:

Die Recherchenabteilung bemängelt die Einheitlichkeit einer europäischen Patentanmeldung. Der Anmelder zahlt keine weitere Recherchegebühr und es ergeht ein Bescheid der Prüfungsabteilung, in dem der Einwand der fehlenden Einheitlichkeit aufrechterhalten wird. Auf diesen Bescheid hin ändert der Anmelder unverzüglich die Anmeldeunterlagen, indem er die zweite Erfindung streicht. Nach 6 Monaten wird das Patent in dieser Form für die erste Erfindung erteilt. Einen Monat nach der Erteilung seines Patents möchte der Anmelder die zweite Erfindung schützen lassen. Er legt Beschwerde ein, um den Status der Anhängigkeit wiederherzustellen, und reicht anschließend eine Teilanmeldung ein. Alle entsprechenden Gebühren wurden entrichtet.

Ist die Beschwerde zulässig?

H9-48

Please correct the today-date from 05.03.2023 into 05.03.2024.

H9-49

Please correct " Im März 2019 wurde ..." into " Im Mai 2019 wurde... "

L4-33 – L4-36

Please correct the numbering of the questions from L4-33 – L4-36 to L4-34 – L4-37.



L4-34 (accidentally numbered L4-33)

Please correct the filing date of PCT-JP to 20 September 2016, so that the question reads:

Eine internationale Anmeldung PCT-JP wurde am 20. September 2016 ohne Inanspruchnahme einer Priorität in Japan beim japanischen Patentamt eingereicht. Die internationale Anmeldung PCT-JP wurde am 22. März 2018 veröffentlicht, der internationale Recherchenbericht am 28. Juni 2018. Im September 2018 wurde der Anmelder über einen Verletzer in einem der benannten EPÜ-Vertragsstaaten informiert. Er möchte vor der Erteilung des europäischen Patents Euro-PCT-JP von dem Verletzer eine angemessene Entschädigung verlangen.

Wie sollte der Anmelder vorgehen (heute ist der 1. Oktober 2018)?

7. Update of Calendars Main-Exam Questions

2017 calendar

- OJ 2017, A97 did not include the usual 31.05 and 15.08 as closure dates for 2018. We did however include these in the calendars as 31.05.2018 and 15.08.2018 were included in the 2018 calendars provided with the 2018 and 2019 D papers.

2024 calendar

- Please be informed that the 2024 closure dates from the EPO were published in the September 2023 issue in OJ 2023, A80. The closure dates in our provisional calendar are the same as those in OJ 2023, A80.

8. 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.

C2-01 and C2-08

Please add to the comments:

- (a) Referral G 1/23 “solar cell” by T 438/19 is currently pending – to which extent is an insufficient disclosure prior art (relevant e.g. as it is decisive as to whether it can be closest prior art in inventive step or has to fully be ignored):
1. Is a product put on the market before the date of filing of a European patent application to be excluded from the state of the art within the meaning of Article 54(2) EPC for the sole reason that its composition or internal structure could not be analysed and reproduced without undue burden by the skilled person before that date?
 2. If the answer to question 1 is no, is technical information about said product which was made available to the public before the filing date (e.g. by publication of technical brochure, non-patent or patent literature) state of the art within the meaning of Article 54(2) EPC, irrespective of whether the composition or internal structure of the product could be analysed and reproduced without undue burden by the skilled person before that date?
 3. If the answer to question 1 is yes or the answer to question 2 is no, which criteria are to be applied in order to determine whether or not the composition or internal structure of the product could be analysed and reproduced without undue burden within the meaning of opinion G 1/92? In particular, is it required that the composition and internal structure of the product be fully analysable and identically reproducible?

G-01

Please update in the comments, following the upgrade of the EP) website:

- See the “European publication server”, section “Conditions” on EPO website: “The publication of European patent documents takes place every Wednesday at 14.00 hrs CET.” There is no legal basis for the Wednesday, it is just a practical solution to not need to published every day of the week. The publication will always be the Wednesday, irrespective of whether this day is a public holiday or not (different from PCT, where the IB does not publish on the usual Thursday if the IB is closed on that day).
- Also see “European Patent Bulletin”, section “Conditions” on EPO website: “The European Patent Bulletin is a free online service. It is published every Wednesday.”

H7-07a (new in this update document)

Answer to the new question H7-07a:

Answer

- EPC:
- The wrong set of claims was filed together with the application EP-1, and thus forms part of the application as filed for R.139 and Art. 123(2).
- When filing by reference, the applicant could also have indicated that he wished the claims of the previously filed French application to take the place of claims in the application as filed [see R.57(c)].
- However,
 - such an indication should have been made on the date of filing, preferably by crossing the appropriate box on the Request-for-Grant form (Form 1001) [see GL (2023) A-II, 4.1.3.1]; and
 - the applicant instead filed a wrong set of claims – he should have filed the correct claims.

- A correction under R.139 cannot be used, as that requires the error and its correction to be clear to the skilled person from EP-1 as originally filed, without considering the priority document FR-1 [R.139 EPC; G3/89 and G11/91; GL (2023) H-VI, 2.2.1.
- Filing the correct claims as amendments is probably also not possible, as there is no indication that EP-1 as filed contains that subject-matter on the description or the original, wrong, claims so, that such amendments would probably introduce subject-matter extending beyond content of application-as-filed - Art.123(2); GL (2023) H-IV 2.2.4
- It is not allowed to add this feature if it is only in the French application of which priority is claimed - T260/85; GL (2023) H-IV, 2.2.6
- However, the provisions for erroneously filed parts of R.56a(4) can be used to file the correct, complete claim set of the earlier application within 2m from the (initial) filing date to “replace” the erroneously filed claim set that was filed after 1 month as:
 - The application claimed priority of the earlier French application on its filing date,
 - the correct claim set is completely contained in the French priority application
- The applicant shall:
 - Request that the requests that the correct claims be based on the claimed priority – R.56a(4)
 - File a copy of the earlier French application – R.56a(4)(a)
 - Indicate where the correct claims are completely contained in the earlier French application – R.56a(4)(c)
- Then:
 - The correct claims are included in the application – R.56a(4)(c)
 - The erroneously filed claims remain in the application – R.56a(4)(c)
 - The filing date remains unchanged – R.56a(4)
- The erroneously filed claims will need to be amended out later – GL (2023) A-II, 6.4; Art. 123(2)

Comment

- *Distinguish between missing parts and erroneously filed parts:*
- *GL (2023) Missing parts of the description or missing drawings:*
 - *GL (2023) A-II, 5 Late filing of missing drawings or missing parts of the description and subsections*
 - *GL (2023) H-IV, 2.2.2: The procedure under R.56 allows the applicant to file missing drawings or parts of the description subsequently, and to rely on the priority document in order to avoid re-dating of the application to the date of filing of the missing parts. Under R.56(3), re-dating is only avoided where the missing parts were "completely contained" in the priority document (see C-III, 1 and A-II, 5). Rule R.56(3) applies only to the filing stage of the application. At later stages of the procedure it is not permissible to rely on the priority documents to correct or amend the application as filed (in keeping with G 3/89 and G 11/91). For Euro-PCT applications a similar provision exists under R.20.6 PCT, whereby a review by the EPO as eO or dO is possible under R.82ter PCT.*
 - *Missing parts of the description and/or missing drawings allowed under Rule 56(3) are always considered to be part of the application documents "as originally filed".*
 - *R.56(3) can be used in the filing stage, i.e., with 2m from a communication issued during the filing date examination (R.56(1)) or 2m from the (initial) filing date (R.56(2)) – GL (2023) A-II, 5.4; GL (2023) H-IV, 2.2.2.*
 - *But R.56(3) cannot be used to recover missing parts of the claims – only in the description and drawings.*
- *Erroneous parts of the description, claims or drawings:*
 - *GL (2023) A-II, 6.4 Correct application documents based on priority application, no change in the filing date*
 - *GL (2023) H-IV, 2.2.3: Rule 56a allows the applicant to file correct application documents or parts if wrong application documents or parts have been filed erroneously. Under Rule 56a(4) the applicant can rely on the priority document to avoid redating the application to the date of filing of the correct application documents or parts.*
If applicants realise on the filing date (or earlier if the filing date cannot yet be accorded) that they erroneously filed incorrect application documents, they can file correct application documents under Rule 56a(2) on or before the filing date, without changing the filing date (A-II, 6.6).
 - *R.56a(4) can be used in the filing stage, i.e., with 2m from a communication issued during the filing date examination (R.56a(1)) or 2m from the (initial) filing date (R.56a(3)&(4)) – GL (2023) A-II, 6.4; GL (2023) H-IV, 2.2.3.*
 - *Note that R.56a does not indicate that the erroneous application documents need to be part of the application as filed on the filing date – this, in our interpretation, R.56a can also be used to file correct claims if the erroneous claims were filed subsequently, as long as the applicable 2m time limit is satisfied. It is not*

certain whether this interpretation is correct, as R.56a(1) indicates “If the examination under Article 90, paragraph 1, reveals that....”, such that one could argue that R.56a(1) (invitation) implicitly refers to the application documents filed on the filing date. However, R.56a(2) (own motion) does not refer to the filing date examination and thus seems to allow to replace/file correct claims also if the original, erroneous claims were subsequently filed. In this context, note that R.56a(3) and R.56a(4) refer to inclusion of the correct claims “in the application”, and not “in the application as filed”.

H10-14

Please update the conclusion non the last date for filing the appeal by adding the calculation for new R.126(2), using a compensation for late receipt of number of days more than 7:

- So - R.125(4) - document deemed notified on date established by EPO as date of receipt
- Representative actually received decision on 22/2/19
- So last date for filing appeal is - Art.108 :
 22/2/19 + 2m [R.126(2) as in force on 31.10.2023 for EQE2024; R.131(4)] => 22/4/19 (Easter Mon)
 [R.134(1)] => 23/4/19 (Tue)
 Or, when using R.126(2) as in force per 1/11/2023: 22/2/19 is 72 days after 5/12/18+7 days, so:
 5/2/19 (original expiry) + 72d [R.126(2) as in force per 1/11/2023] => 18/4/19 (Thu)
- So filing notice of appeal is actually still possible

H11-25

Add as last bullet to the answer:

- If claim is maintained, EP1-DIV will be refused – Art.97(2) jo Art.125; G 4/19

H14-06

Please correct the typo under main request:

- Ask for decision - R.112(2) – on considering € ~~200~~ 100 a small amount, and pay this missing amount - RFees 8

H14-15

Please update the list of possibilities to pay from the deposit account with MyEPO:

- Pay by debiting EPO deposit account:
 - Using Central Fee Payment – ADA2022 7.1.2, 3rd dash, or
 - EPO Online Filing, or Online Filing 2.0 using EPO Form 1038E – ADA2022 7.1.2, 1st dash, or
 - MyEPO Portfolio – ADA2022 7.1.2 as amended by OJ 2023, A58 per 1/7/2023

I/J-06

In view of updates in the National Law tables, please update the second block of the answer to:

- But conversion into national patent applications is possible in some states – Art.135(1)(b)
- HU allows conversion if EP application was deemed withdrawn - Art.78(2) – for non-payment
- PL and SK allow conversion into a national patent application when an EP application is deemed withdrawn for any reason - Nat. Law (2023) Tab. VII, col. 1
- And EE, IT and LV allow conversion into a utility model application due to withdrawal for “any other reason” - Nat. Law (2023) Tab. VII, col. 1, item 2(b) for EE and IT

L2-20

Please add to the comments:

- *GL (2023) E-VIII, 3.2 does no longer explicitly mention fire as a possible excusable cause. Earlier editions of the Guidelines did mention: “The provisions of Art. 122 and Rule 136 might be invoked if e.g. the applicant's working documents have been destroyed by fire and he has been obliged to prepare fresh ones; or if a specialist agency sent him the wrong set of drawings relating to a priority document, and the error was not immediately apparent. In all instances it is necessary for the applicant or proprietor or representative, as the case may be, to supply evidence that he had exercised all due care required by the circumstances and that the delay was caused by unforeseeable factors. Errors of law, however, do not constitute grounds for re-establishment (see e.g. D 6/82, J 31/89 and J 2/02).” (citation from E-VII, 2.2.1 in 2013 edition)*

L4-34

See corrections to Question L4-34: filing date of PCT-JP is to be corrected to 20 September 2016, so that the time limit calculation shall be corrected to refer to 20/9/16 and read:

- The normal time limit for EP entry with Euro-PCT-JP is:
20/9/16 + 31m [R.159(1); R.131(4)] → 20/4/19 (Sat) [R.134(1)] → 23/4/19.

Annex: Schedule EQE 2024 (paper D)

The document “Information on the schedule for the EQE 2024 examination papers” dd 26 July 2023 provides:

Paper D - 5 March 2024

Paper D is 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. No documents will be available for printing.

Part	Content	Duration	CET time
D1 - 1	Part D1 - two questions (26 points)	1 h 35 min	9:30 - 11:05
	Break	30 min	11:05 - 11:35
D1 - 2	Part D1 - three questions (29 points)	1 h 45 min	11:35 - 13:20
	Break	45 min	13:20 - 14:05
D2	Part D2 (45 points)	2 h 40 min	14:05 - 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.