

# **EUROPEAN QUALIFYING EXAMINATION 2010**

# Paper D

### This paper comprises:

\* Client's letter including four (4) questions

2010/DII/EN/1 - 6

\* Annex: Calendars for 2008, 2009 and 2010 with indication of the days on which at least one of the EPO filing offices is not open for the receipt of documents 2010/DII/EN/7 - 9

40% of the marks available for paper D are awarded for part I, 60% for part II.

You are a European patent attorney and this morning you received the following letter.

We, KA (Knowledge for All), are a research institution based in Scotland and we are very active in developing new methods, systems and apparatuses used in marine biology and diving.

We have contact with KM (Knowledge is Money), a Swedish research laboratory, which is doing research in a similar field.

On 12 January 2009, we filed at the EPO, without claiming priority, a European patent application EP1 for a new and revolutionary electromagnetic signal which attracts fish and thereby allows divers to photograph them. Such an electromagnetic signal attracts only adult fish, which are the most colourful ones. It works only in coastal regions.

EP1 discloses the structure of the signal as well as a way of producing it using conventional apparatuses and gives examples to prove that this signal really is effective for attracting adult fish. EP1 only discloses the use of the signal for underwater photography. EP1 includes only one claim defining the structure of the new signal, i.e the amplitudes and frequencies of the different components of the signal.

On 20 January 2009, we hosted a public conference attended by KM where we presented a video showing the effectiveness of this signal for attracting adult fish in order to photograph them. However, we did not disclose the characteristics of the signal, but we mentioned the application number EP 09123456 of EP1.

On 11 February 2009, we were very surprised to read on the KM public Internet site that on 10 February 2009, KM had filed at the EPO a European patent application, EPKM, without claiming priority. The content of EPKM was published on the KM public Internet site. The following statement in the description of EPKM shocked us: "The new signal developed by KA and explained in European patent application number EP09123456 (corresponding to EP1) filed on 12 January 2009 allows a new fishing method which permits a better regulation of fish stocks." The only claim of EPKM reads: "Fishing method characterised by use of an electromagnetic signal attracting only adult fish in a coastal region, said signal being emitted by transmitters integrated into a fishing net."

We asked KM for an explanation and they replied that they had the idea of developing such a fishing method. The combination of a fishing net and transmitters is, without doubt, new and inventive.

We also invented a new electronic filter F1 for producing the signal disclosed in EP1, this filter being so small that it can be connected to the standard electronic circuit C of an underwater camera. The new circuit C1, which is constituted by the combination of F1 and C, can still be incorporated into a standard underwater camera.

Then on 1 March 2009 we filed a new European patent application EP2 without claiming priority. The description of EP2 includes the complete description of EP1 as pages 1 to 5 and adds pages 6 to 10, which disclose the new electronic filter F1 on pages 6 to 9 and the new circuit C1 on page 10. We mentioned in the description that the final new circuit C1 is so compact that it can be included in an underwater camera.

EP2 includes the following claims: the structure of the signal as claim 1 (same claim 1 as in EP1), the filter F1 as claim 2 and the circuit C1 as claim 3.

In September 2009, we received the European search report with one document cited as "A" and a positive European Search Opinion for EP1, which is apparently ready for grant.

Also in September 2009, KM received the European search report for EPKM, with the same document cited as "A" and a positive European Search Opinion. The search report and the accompanying opinion are available on KM's public Internet site.

EPKM also appears to be ready for grant.

In November 2009, we received the European search report for EP2. The same "A" document was cited but the accompanying opinion was partly negative because the EPO examiner stated - and, according to our technical department, he was right - that the disclosed circuit C1 could not produce any signal. In fact we had failed to describe an essential and inventive electrical connection in circuit C1 between filter F1 and standard circuit C. According to the examiner, claim 1 and claim 2 are allowable.

We then filed on 12 January 2010 a new European patent application EP3, as usual without claiming priority, by adding to the description of EP2 pages 11 and 12, which describe the essential and inventive electrical connection in C1 between the filter F1 and the standard circuit C. The circuit claim, claim 3, was modified accordingly.

At the beginning of every year, KA makes a report which includes a summary of the research carried out during the previous year and we annex to this report a copy of our most interesting patent application. This year we decided to annex a copy of EP3. While preparing the report, we realised we had forgotten to file pages 6 to 9 of the description of EP3, which concern the new filter F1. The report, however, includes the complete version of EP3 with all pages 1 to 12 of the description as well as the claims.

The report was first made accessible at the end of January 2010 in our public library but nobody has consulted it so far.

We will send the report to our principal sponsors at the end of March 2010.

On 2 February 2010, we transmitted the missing pages 6 to 9 to the EPO in order to correct EP3.

On 19 February 2010, we received a communication according to Rule 56 EPC dated 17 February 2010 notifying us that the filing date of EP3 had been changed to 2 February 2010.

We are not interested in having a patent for a fishing method and we do not want KM or anyone else to have a patent for the fishing method disclosed in EPKM.

- 1) This is our main concern. How can we achieve this objective?
- 2) Keeping our main concern in mind, how can we improve our patent situation in Europe?

Last week we were contacted by Norwayfish (NF), which is one of our most important sponsors.

The only activity of Norwayfish (NF) is operating fish farms in Norway. Since June 2009, Norwayfish (NF) have been using for their fish farm nets a material M particularly well adapted for resisting the storms of the Norwegian Sea. Each farm of Norwayfish (NF) manufactures its own nets locally.

Swedishfish (SF) is a Swedish firm, a competitor of Norwayfish (NF). All fish farms of Swedishfish (SF) are located in Norway.

Swedishfish (SF) has developed a fish farm net using the same material M.

Each farm of Swedishfish (SF) manufactures its own nets locally.

Swedishfish (SF) filed a Swedish patent application, S1, in October 2007 and a European patent application, EPF, validly claiming the priority of S1, in February 2008. EPF was granted without amendment and the mention of the grant of the patent was published on 9 September 2009. The patent has been duly validated in all EPC contracting states.

EPF discloses and claims fish farm nets made of material M.

Norwayfish (NF) have asked us if we could help them because they are being sued for infringement of EPF in Norway.

We have looked into the matter and found the following:

We have developed together with a Japanese research institution JU the same technology as Swedishfish (SF).

We filed a PCT application (PCTJU) and an EP application (EP4) with JU as co-applicant for both applications.

The two applications were filed on the same day in May 2007, at the EPO for EP4 and at the Japan Patent Office for PCTJU, both without claiming priority, and both designating all possible states.

Both applications were published in November 2008.

JU was in charge of the prosecution of PCTJU filed in Japanese and we were responsible for prosecuting EP4.

The content of the two applications was almost the same, disclosing and claiming fish farm nets made of materials belonging to class G.

The description of PCTJU was more detailed and described the use of the known material M, which belongs to class G, for making fish farm nets.

JU informed us in February 2010 that, as they were no longer interested in this kind of technology, they would be happy to transfer their patent rights to us if we wanted to continue alone with the prosecution of the patent applications.

We have not replied to this offer.

We have seen from the European Patent Register that the PCTJU application was deemed to be withdrawn at the EPO according to a communication dated

4 January 2010 because none of the requirements for entering the regional phase was fulfilled.

The search report of EPF cites only EP4, and during the examination of EPF before the EPO only EP4 was mentioned by the examiner.

Nevertheless, for reasons that we do not understand, EPF was granted.

Last week we also received a communication according to Rule 71(3) EPC for EP4.

- 3) Can we help Norwayfish (NF) in their conflict with Swedishfish (SF)?
- 4) Can patent rights be used against Swedishfish (SF)?

## Annex 1

# 2008

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Tage / Days / Jours		München Munich	Den Haag The Hague La Haye	Berlin
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Karfreitag - Good Friday - Vendredi Saint	21.03.2008	х	х	х
Ostermontag - Easter Monday - Lundi de Pâques	24.03.2008	х	х	Х
Nationalfeiertag - National Holiday - Fête nationale	30.04.2008		х	
Maifeiertag - May Day - Fête du Travail	01.05.2008	х	х	х
Christi Himmelfahrt - Ascension Day - Ascension	01.05.2008	х	х	х
Tag der Befreiung - Liberation Day - Journée de la Libération	05.05.2008		х	
Pfingstmontag - Whit Monday - Lundi de Pentecôte	12.05.2008	х	х	х
Fronleichnam - Corpus Christi - Fête-Dieu	22.05.2008	х		
Mariä Himmelfahrt - Assumption Day - Assomption	15.08.2008	х		
Tag der Deutschen Einheit - Day of German Unity - Fête Nationale	03.10.2008	x		х
Heiliger Abend - Christmas Eve - Vieille de Noël	24.12.2008	х	х	х
1. Weihnachtstag - Christmas Day - Noël	25.12.2008	х	х	х
2. Weihnachtstag - Boxing Day - Lendemain de Noël	26.12.2008	х	х	х
Silvester - New Year's Eve - Saint-Sylvestre	31.12.2008	х	Х	х

### Annex 2

# 2009

	lon		Feb		Mar		Anr		Max		lun		Jul		<u> </u>		200		Oct		Nov		Dec
	Jan	0 .			-		Apr		May	_	Jun	147 - 1			Aug		Sep						
Thu	01	Sun	01	Sun	01	Wed	01	Fri	01	Mon	01	Wed	01	Sat	01	Tue	01	Thu	01	Sun	01	Tue	01
Fri	02	Mon Tue	02	Mon Tue	02	Thu Fri	02	Sat	02	Tue	02	Thu Fri	02	Sun	02	Wed	02	Fri	02	Mon	02	Wed Thu	02
Sat	03	Wed	03	Wed	03	Sat	03	Sun	03	Thu	03		03	Mon Tue	03 04	Thu Fri	03	Sat	03	Tue Wed	03	Fri	03 04
	-				-			Mon				Sat						Sun			-		05
Mon	05	Thu	05	Thu Fri	05 06	Sun	05 06	Tue Wed	05 06	Fri	05	Sun	05 06	Wed	05	Sat	05	Mon	05	Thu	05 06	Sat	06
Tue	06 07	Fri Sat	06			Mon	06		06	Sat	06	Mon	06	Thu Fri	06 07	Sun	06	Tue Wed	06 07	Fri		Sun	06
Thu	07	Sun	07 08	Sat Sun	07 08	Tue Wed	08	Thu Fri	07	Sun	07	Tue Wed	08		08	Mon	07 08	Thu	08	Sat	07 08	Mon	07
Fri	09	Mon	09	Mon	09	Thu	09	Sat	09	Mon Tue	09	Thu	09	Sat Sun	09	Tue Wed	09	Fri	09	Sun	09	Tue Wed	09
Sat	10	Tue	10	Tue	10	Fri	10	Sun	10	Wed	10	Fri	10	Mon	10	Thu	10	Sat	10	Tue	10	Thu	10
Sun	11	Wed	11	Wed	11	Sat	11	Mon	11	Thu	11	Sat	11	Tue	11	Fri	11	Sun	11	Wed	11	Fri	11
Mon	12	Thu	12	Thu	12	Sun	12	Tue	12	Fri	12	Sun	12	Wed	12	Sat	12	Mon	12	Thu	12	Sat	12
Tue	13	Fri	13	Fri	13	Mon	13	Wed	13	Sat	13	Mon	13	Thu	13	Sun	13	Tue	13	Fri	13	Sun	13
Wed	14	Sat	14	Sat	14	Tue	14	Thu	14	Sun	14	Tue	14	Fri	14	Mon	14	Wed	14	Sat	14	Mon	14
Thu	15	Sun	15	Sun	15	Wed	15	Fri	15	Mon	15	Wed	15	Sat	15	Tue	15	Thu	15	Sun	15	Tue	15
Fri	16	Mon	16	Mon	16	Thu	16	Sat	16	Tue	16	Thu	16	Sun	16	Wed	16	Fri	16	Mon	16	Wed	16
Sat	17	Tue	17	Tue	17	Fri	17	Sun	17	Wed	17	Fri	17	Mon	17	Thu	17	Sat	17	Tue	17	Thu	17
Sun	18	Wed	18	Wed	18	Sat	18	Mon	18	Thu	18	Sat	18	Tue	18	Fri	18	Sun	18	Wed	18	Fri	18
Mon	19	Thu	19	Thu	19	Sun	19	Tue	19	Fri	19	Sun	19	Wed	19	Sat	19	Mon	19	Thu	19	Sat	19
Tue	20	Fri	20	Fri	20	Mon	20	Wed	20	Sat	20	Mon	20	Thu	20	Sun	20	Tue	20	Fri	20	Sun	20
Wed	21	Sat	21	Sat	21	Tue	21	Thu	21	Sun	21	Tue	21	Fri	21	Mon	21	Wed	21	Sat	21	Mon	21
Thu	22	Sun	22	Sun	22	Wed	22	Fri	22	Mon	22	Wed	22	Sat	22	Tue	22	Thu	22	Sun	22	Tue	22
Fri	23	Mon	23	Mon	23	Thu	23	Sat	23	Tue	23	Thu	23	Sun	23	Wed	23	Fri	23	Mon	23	Wed	23
Sat	24	Tue	24	Tue	24	Fri	24	Sun	24	Wed	24	Fri	24	Mon	24	Thu	24	Sat	24	Tue	24	Thu	24
Sun	25	Wed	25	Wed	25	Sat	25	Mon	25	Thu	25	Sat	25	Tue	25	Fri	25	Sun	25	Wed	25	Fri	25
Mon	26	Thu	26	Thu	26	Sun	26	Tue	26	Fri	26	Sun	26	Wed	26	Sat	26	Mon	26	Thu	26	Sat	26
Tue	27	Fri	27	Fri	27	Mon	27	Wed	27	Sat	27	Mon	27	Thu	27	Sun	27	Tue	27	Fri	27	Sun	27
Wed	28	Sat	28	Sat	28	Tue	28	Thu	28	Sun	28	Tue	28	Fri	28	Mon	28	Wed	28	Sat	28	Mon	28
Thu	29			Sun	29	Wed	29	Fri	29	Mon	29	Wed	29	Sat	29	Tue	29	Thu	29	Sun	29	Tue	29
Fri	30			Mon	30	Thu	30	Sat	30	Tue	30	Thu	30	Sun	30	Wed	30	Fri	30	Mon	30	Wed	30
Sat	31			Tue	31			Sun	31			Fri	31	Mon	31			Sat	31			Thu	31

Tage / Days / Jours		München Munich	Den Haag The Hague La Haye	Berlin
Neujahr - New Year's Day - Nouvel An	01.01.2009	х	х	х
Brückentag - Bridging Day - Pont	02.01.2009	х	х	х
Heilige Drei Könige - Epiphany - Epiphanie	06.01.2009	Х		
Karfreitag - Good Friday - Vendredi Saint	10.04.2009	х	х	х
Ostermontag - Easter Monday - Lundi de Pâques	13.04.2009	х	х	х
Nationalfeiertag - National Holiday - Fête nationale	30.04.2009		х	
Maifeiertag - May Day - Fête du Travail	01.05.2009	х	х	х
Tag der Befreiung - Liberation Day - Journée de la Libération	05.05.2009		Х	
Christi Himmelfahrt - Ascension Day - Ascension	21.05.2009	х	х	х
Brückentag - Bridging Day - Pont	22.05.2009	Х	Х	Х
Pfingstmontag - Whit Monday - Lundi de Pentecôte	01.06.2009	Х	х	х
Fronleichnam - Corpus Christi - Fête-Dieu	11.06.2009	Х		
Heiliger Abend - Christmas Eve - Vieille de Noël	24.12.2009	Х	х	х
Weihnachtstag - Christmas Day - Noël	25.12.2009	х	х	х
Silvester - New Year's Eve - Saint-Sylvestre	31.12.2009	Х	Х	х

### Annex 3

### 2010

	110						_		_										_				_
	Jan		Feb		Mar		Apr		lay	,	Jun		Jul		Aug	,	Sep		Oct		Nov		Dec
Fri	01	Mon	01	Mon	01	Thu	01	Sat	01	Tue	01	Thu	01	Sun	01	Wed	01	Fri	01	Mon	01	Wed	01
Sat	02	Tue	02	Tue	02	Fri	02	Sun	02	Wed	02	Fri	02	Mon	02	Thu	02	Sat	02	Tue	02	Thu	02
Sun	03	Wed	03	Wed	03	Sat	03	Mon	03	Thu	03	Sat	03	Tue	03	Fri	03	Sun	03	Wed	03	Fri	03
Mon	04	Thu	04	Thu	04	Sun	04	Tue	04	Fri	04	Sun	04	Wed	04	Sat	04	Mon	04	Thu	04	Sat	04
Tue	05	Fri	05	Fri	05	Mon	05	Wed	05	Sat	05	Mon	05	Thu	05	Sun	05	Tue	05	Fri	05	Sun	05
Wed	06	Sat	06	Sat	06	Tue	06	Thu	06	Sun	06	Tue	06	Fri	06	Mon	06	Wed	06	Sat	06	Mon	06
Thu	07	Sun	07	Sun	07	Wed	07	Fri	07	Mon	07	Wed	07	Sat	07	Tue	07	Thu	07	Sun	07	Tue	07
Fri	80	Mon	80	Mon	80	Thu	80	Sat	08	Tue	80	Thu	80	Sun	80	Wed	80	Fri	80	Mon	80	Wed	80
Sat	09	Tue	09	Tue	09	Fri	09	Sun	09	Wed	09	Fri	09	Mon	09	Thu	09	Sat	09	Tue	09	Thu	09
Sun	10	Wed	10	Wed	10	Sat	10	Mon	10	Thu	10	Sat	10	Tue	10	Fri	10	Sun	10	Wed	10	Fri	10
Mon	11	Thu	11	Thu	11	Sun	11	Tue	11	Fri	11	Sun	11	Wed	11	Sat	11	Mon	11	Thu	11	Sat	11
Tue	12	Fri	12	Fri	12	Mon	12	Wed	12	Sat	12	Mon	12	Thu	12	Sun	12	Tue	12	Fri	12	Sun	12
Wed	13	Sat	13	Sat	13	Tue	13	Thu	13	Sun	13	Tue	13	Fri	13	Mon	13	Wed	13	Sat	13	Mon	13
Thu	14	Sun	14	Sun	14	Wed	14	Fri	14	Mon	14	Wed	14	Sat	14	Tue	14	Thu	14	Sun	14	Tue	14
Fri	15	Mon	15	Mon	15	Thu	15	Sat	15	Tue	15	Thu	15	Sun	15	Wed	15	Fri	15	Mon	15	Wed	15
Sat	16	Tue	16	Tue	16	Fri	16	Sun	16	Wed	16	Fri	16	Mon	16	Thu	16	Sat	16	Tue	16	Thu	16
Sun	17	Wed	17	Wed	17	Sat	17	Mon	17	Thu	17	Sat	17	Tue	17	Fri	17	Sun	17	Wed	17	Fri	17
Mon	18	Thu	18	Thu	18	Sun	18	Tue	18	Fri	18	Sun	18	Wed	18	Sat	18	Mon	18	Thu	18	Sat	18
Tue	19	Fri	19	Fri	19	Mon	19	Wed	19	Sat	19	Mon	19	Thu	19	Sun	19	Tue	19	Fri	19	Sun	19
Wed	20	Sat	20	Sat	20	Tue	20	Thu	20	Sun	20	Tue	20	Fri	20	Mon	20	Wed	20	Sat	20	Mon	20
Thu	21	Sun	21	Sun	21	Wed	21	Fri	21	Mon	21	Wed	21	Sat	21	Tue	21	Thu	21	Sun	21	Tue	21
Fri	22	Mon	22	Mon	22	Thu	22	Sat	22	Tue	22	Thu	22	Sun	22	Wed	22	Fri	22	Mon	22	Wed	22
Sat	23	Tue	23	Tue	23	Fri	23	Sun	23	Wed	23	Fri	23	Mon	23	Thu	23	Sat	23	Tue	23	Thu	23
Sun	24	Wed	24	Wed	24	Sat	24	Mon	24	Thu	24	Sat	24	Tue	24	Fri	24	Sun	24	Wed	24	Fri	24
Mon	25	Thu	25	Thu	25	Sun	25	Tue	25	Fri	25	Sun	25	Wed	25	Sat	25	Mon	25	Thu	25	Sat	25
Tue	26	Fri	26	Fri	26	Mon	26	Wed	26	Sat	26	Mon	26	Thu	26	Sun	26	Tue	26	Fri	26	Sun	26
Wed	27	Sat	27	Sat	27	Tue	27	Thu	27	Sun	27	Tue	27	Fri	27	Mon	27	Wed	27	Sat	27	Mon	27
Thu	28	Sun	28	Sun	28	Wed	28	Fri	28	Mon	28	Wed	28	Sat	28	Tue	28	Thu	28	Sun	28	Tue	28
Fri	29			Mon	29	Thu	29	Sat	29	Tue	29	Thu	29	Sun	29	Wed	29	Fri	29	Mon	29	Wed	29
Sat	30			Tue	30	Fri	30	Sun	30	Wed	30	Fri	30	Mon	30	Thu	30	Sat	30	Tue	30	Thu	30
Sun	31			Wed	31			Mon	31			Sat	31	Tue	31			Sun	31			Fri	31

Tage / Days / Jours		München Munich	Den Haag The Hague La Haye	Berlin
Neujahr - New Year's Day - Nouvel An	01.01.2010	х	х	Х
Heilige Drei Könige - Epiphany - Epiphanie	06.01.2010	х		
Karfreitag - Good Friday - Vendredi Saint	02.04.2010	х	х	х
Ostermontag - Easter Monday - Lundi de Pâques	05.04.2010	х	х	х
Nationalfeiertag - National Holiday - Fête nationale	30.04.2010		х	
Tag der Befreiung - Liberation Day - Journée de la Libération	05.05.2010		х	
Christi Himmelfahrt - Ascension Day - Ascension	13.05.2010	х	х	х
Brückentag - Bridging Day - Pont	14.05.2010	х	х	х
Pfingstmontag - Whit Monday - Lundi de Pentecôte	24.05.2010	х	х	Х
Fronleichnam - Corpus Christi - Fête-Dieu	03.06.2010	х		
Allerheiligen - All Saints' Day - Toussaint	01.11.2010	х		
Heiliger Abend - Christmas Eve - Vieille de Noël	24.12.2010	х	х	х
Silvester - New Year's Eve - Saint-Sylvestre	31.12.2010	х	х	х