Europäisches Patentamt
European Patent Office
Office européen des brevets

EN

EUROPEAN QUALIFYING EXAMINATION 2022

Pre-examination

Part 1

Question 1

Francesca has filed a European patent application EP-F before the EPO. Francesca did not develop the invention which is the subject of EP-F. In drafting EP-F Francesca used information in Andrew's laboratory notebook, without Andrew's consent. EP-F was published in December 2017 and is still pending.

For each of the statements 1.1–1.4, indicate on the answer sheet whether the statement is true or false:

1.1 Andrew can seek a stay of proceedings if he provides evidence that he has instituted proceedings against Francesca seeking a decision that Andrew is entitled to the grant of the European patent based on EP-F.

1.2 Francesca can withdraw EP-F at any time from the date on which Andrew provides evidence to the EPO that he has instituted proceedings against Francesca seeking a decision that Andrew is entitled to the grant of the European patent based on EP-F.

1.3 No renewal fee has to be paid during a stay of proceedings.

1.4 Andrew can validly request that EP-F be refused no later than three months after the decision recognising his entitlement to EP-F has become final.

Question 2

Hans filed an admissible notice of opposition against European patent EP-1, which was granted with two independent claims, namely claim 1 and claim 2 relating respectively to two different parts of the patent. The only ground for opposition that he raised was lack of inventive step in respect of claim 1. The opposition is not filed against the patent as a whole, but only against claim 1. In particular, he argued in the notice of opposition that the subject-matter of claim 1 lacked inventive step over the combination of D1 and D2, both published before the effective date of EP-1. Theresa filed third-party observations during the pending opposition proceedings, arguing that claim 2 lacked novelty over D3, a Japanese patent application published before the effective date of EP-1.

For the following statements, assume that the right to be heard of all parties involved has been respected and no amendments have been filed during the opposition proceedings.

For each of the statements 2.1–2.4, indicate on the answer sheet whether the statement is true or false:

2.1 If the opposition division considers that the subject-matter of claim 1 lacks novelty over D1, the opposition division may revoke EP-1 for lack of novelty of the subject-matter of claim 1.

2.2 If the opposition division considers that the subject-matter of claim 2 lacks inventive step over D2 in combination with D3, the opposition division may revoke EP-1 for lack of inventive step of the subject-matter of claim 2 over D2 in combination with D3.

2.3 If the opposition division considers that the subject-matter of claim 1 is not sufficiently disclosed, the opposition division may revoke EP-1 because the subject-matter of claim 1 is not disclosed in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

2.4 After the opposition division has considered Theresa's third-party observations, the opposition division may revoke EP-1 based on lack of novelty of the subject-matter of claim 2.

Question 3

For each of the statements 3.1–3.4, indicate on the answer sheet whether the statement is true or false:

A board of appeal …

3.1 … may decide in a three-member composition without a legally qualified member.

3.2 … may exercise any power within the competence of the department which was responsible for the decision appealed.

3.3 … may remit a case to the department which was responsible for the decision appealed for further prosecution.

3.4 ... may base its decision on a fresh ground for opposition only submitted during the appeal proceedings without the consent of the patentee.

Question 4

Company A has filed a European patent application EP-A with the EPO. Company B has negotiated with Company A the transfer of European patent application EP-A to Company B.

For each of the statements 4.1–4.4, indicate on the answer sheet whether the statement is true or false:

4.1 It is possible to validly transfer EP-A from Company A to Company B only for the designated contracting states FR and DE.

4.2 The transfer of EP-A may be recorded in the European Patent Register at the request of Company B, upon production of documents providing evidence of such transfer and payment of an administration fee.

4.3 The transfer of a European patent application becomes effective vis-à-vis the EPO only when it is published in the European Patent Register.

4.4 The transfer of a European patent may be recorded in the European Patent Register during the opposition period.

Question 5

Roberto and Mario are Brazilian citizens living in São Paolo, Brazil. They are the applicants for European patent application EP1, which has been filed today in Portuguese together with a French translation. EP1 claims the priority of a previous Brazilian application P1.

For each of the statements 5.1–5.4, indicate on the answer sheet whether the statement is true or false:

5.1 Roberto and Mario are entitled to a reduction of the filing fee.

5.2 EP1 will be accorded by the EPOa filing date, only if the content of EP1 does not extend beyond the content of P1 as originally filed.

5.3 If the French translation had not been filed in due time, EP1 would be deemed not to have been filed.

5.4 If EP1 is assigned to a British company, the language of the proceedings may be changed to English after registration of the transfer.

Part 2

Question 6

Roberto and Mario are Brazilian citizens living in São Paolo, Brazil. They are the applicants for European patent application EP1, which has been filed today in Portuguese together with a French translation. EP1 claims the priority of a previous Brazilian application P1. Starting from the same conditions as outlined above in Question 5 and assuming now Assuming now that Roberto and Mario intend to file a divisional application EP1-DIV relating to the pending patent application EP1, indicate whether the following statements are true or false.

6.1 EP1-DIV may be validly filed with the EPO at the filing offices in Munich, The Hague and Vienna.

6.2 EP1-DIV may be validly filed in Portuguese.

6.3 EP1-DIV may be validly filed in English.

6.4 EP1-DIV must be filed within 12 months from the filing date of EP1.

Question 7

The dimethyl fumarate molecule (DMF) is known from the prior art in the following respects:
Document **D1** discloses DMF as a biocide for the treatment of clothing, shoes and furniture against mould growth.
Document **D2** concerns a patent which discloses DMF for the treatment of the skin disease psoriasis and of multiple sclerosis.
The prior art does not disclose any further disease that can be treated with DMF.

For each of the statements 7.1–7.4, indicate on the answer sheet whether the statement is true or false:

7.1 The subject-matter of the claim “DMF for use as a medicament” in a European patent application filed today is novel over the above-mentioned prior art.

7.2 The subject-matter of the claim “DMF for use in the treatment of cancer” in a European patent application filed today is novel over the above-mentioned prior art.

7.3 The following claim wording is allowable in a European patent application filed today: “Use of DMF for the manufacture of a medicament for the treatment of cancer”.

7.4 The subject-matter of the claim “DMF for use in the treatment of skin diseases” in a European patent application filed today is novel over the above-mentioned prior art.

Question 8

Jan, a US national and resident of living in the USA, filed an international application PCT-J with the USPTO on 10 January 2022. On filing, Jan indicated the EPO as one of the designated Offices. The EPO was immediately informed of its designation.
The USPTO charges the late payment fee for a delayed payment of the international filing fee as allowed under the PCT.

For each of the statements 8.1–8.4, indicate on the answer sheet whether the statement is true or false:

8.1 Jan must pay the international filing fee to the International Bureau.

8.2 If the international filing fee is not paid in due time, Jan can validly pay the international filing fee together with the late payment fee within a time limit of one month from the date of the invitation sent by the receiving Office.

8.3 A consequence of not paying the international filing fee with the late payment fee within the prescribed time limit is that the USPTO will declare that PCT-J is considered to be withdrawn.

8.4 A consequence of not paying the international filing fee with the late payment fee within the prescribed time limit is that the USPTO will notify the EPO as the designated Office that PCT-J is considered to be withdrawn.

Question 9

For each of the statements 9.1–9.4, indicate on the answer sheet whether the statement is true or false:

9.1 The EPO will accord a date of filing to a European patent application filed by an identifiable applicant using EPO Form 1001, even if the description is filed in Chinese.

9.2 If a request for grant is not filed on a form drawn up by the EPO, an application filed together with that request will not be dealt with as a European patent application.

9.3 If an international application contains no part which on the face of it appears to be a claim or claims, a date of filing will not be accorded to that international application.

9.4 A Japanese citizen resident in Japan may validly file a European patent application without being represented by a professional representative.

Question 10

A communication pursuant to Rule 71(3) EPC has been issued for a European patent application. The applicant has fulfilled all the necessary requirements. The related decision to grant a European patent has been despatched on the basis of the documents (Druckexemplar) transmitted to the applicant with the communication under Rule 71(3) EPC. The mention of the grant of the European patent has been published in the European Patent Bulletin.

However, in the course of the preparation of the publication of the specification of this European patent an error arose, whereby page 2 of the description is missing in the published specification of this European patent. As a result of this error, the published specification of this European patent as a whole does not disclose the claimed invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

For each of the statements 10.1–10.4, indicate on the answer sheet whether the statement is true or false:

10.1 This error in the published specification of this European patent may be corrected at any time.

10.2 The European patent could be revoked on the basis of an opposition based on the ground of Art. 100(b) EPC because in the published specification of this European patent the invention without page 2 of the description is not disclosed in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

10.3 If the language of the grant proceedings for this European patent was English, a notice of opposition may be validly filed in German.

10.4 In order to request a transfer of the status of opponent to a different person during opposition proceedings, it is sufficient to file a declaration including the names, addresses and signatures of both the original opponent and the person wishing to take over the status of opponent.

Part 3

Description of a European patent application

[001] It is generally known that yoga mats are used by athletes to perform yoga exercises. Yoga mats are thin, soft mats which are easily rolled and transported to allow the athlete to use them in various locations. Once rolled out on the floor, a yoga mat has a length of 1.5 to 2.2 metres and a width of 0.6 to 1.0 metres. Described herein is an improved yoga mat.

[002] In an embodiment, we provide a yoga mat with a first colour on a first face and a different second colour on the second face. When the yoga mat is rolled out and in use, the first face is in contact with the floor and the second face is in contact with the athlete. This allows the athlete to always use the yoga mat such that the same face of the yoga mat is in contact with the floor.

[003] In an embodiment, the first face of the yoga mat has a coating of material which provides secure but reversible adhesion of the yoga mat onto the floor. Preferably, the material is poly-X. The material covers 10 to 100% of the first face.

[004] In an embodiment, the yoga mat contains antibacterial material, such as e.g. silver ions on the second face, so as to reduce the growth of bacteria.

[005] In an embodiment, the second face contains a material which reduces the generation of sweat on the athlete's body. We have found that poly-Y is a highly suitable material, since it provides improved reduction of sweat generation on the body of the athlete while the athlete is in contact with the mat. Using our new special secret test protocol we established a sweat reduction value (SRV) of 100 for yoga mats made of poly-Y. Higher SRVs correspond to a higher level of sweat reduction. For yoga mats made of poly-X the SRV is 84, and for yoga mats made of poly-Z the SRV is 93. In an embodiment of the invention the yoga mat has an SRV of 90 or more.

[006] In an embodiment, we provide the yoga mat with a very fashionable, fully organic textile container made from slow-growing cotton.

Claims filed together with the above European patent application:

1. Yoga mat having a first face and a second face.
2. Yoga mat according to claim 1, wherein the first face and the second face are distinguishable.
3. Yoga mat according to claim 2, wherein the first face has a first colour and the second face has a second colour different from the first colour.
4. Yoga mat according to any of claims 1 to 3, wherein, in use, the first face is in contact with the floor and the second face is in contact with the athlete.
5. Yoga mat according to any of claims 1 to 4, wherein the first face has a coating of material, said material providing secure but reversible adhesion of the mat onto the floor.
6. Yoga mat according to claim 5, wherein the material is poly-X.
7. Yoga mat according to any of claims 1 to 6, wherein the second face contains an antibacterial material.
8. Yoga mat according to any of claims 1 to 6, wherein the second face of the yoga mat contains silver ions.
9. Yoga mat according to claim 6, wherein the material covers 10 to 100% of the first face.
10. Yoga mat according to any of claims 1 to 9, wherein the second face contains a material, preferably poly-Y, wherein the material is such that upon contact with the athlete’s body it reduces the generation of sweat on the athlete’s body.
11. Textile bag for completely covering and for transporting yoga mats.
12. The textile bag of claim 11, containing the yoga mat according to any of claims 1 to 10.
13. The textile bag of claim 12, wherein the bag is made from fully organic material which grows relatively slowly.
14. Use of poly-Y in the production of yoga mats.

Assume in the following that documents D1, D2, D3, and D4 are prior art in accordance with Art. 54(1) and (2) EPC:

D1: This document discloses a yoga mat. Before use, the athlete rolls out the yoga mat onto the floor. Then, the athlete steps on it to perform exercises. After use, the athlete rolls up the yoga mat and places it in a bag made from plastic or cotton, in order to transport it from one location to another. The yoga mat is very easy to transport, because it is made entirely of poly-Y, a very light, synthetic material.

D2: This document discloses a yoga mat containing the material poly-Z on at least one face of the mat. Poly-Z has the following advantage: upon contact with the athlete's body it reduces the generation of sweat on the athlete's body. Advantageously, in a preferred embodiment, one face of the yoga mat is partially coated with a layer of poly-X. This material provides a strong adhesion of the yoga mat onto the floor while the athlete performs exercises. After use, the mat can be easily removed from the floor.

D3: Many athletes mark their yoga mats (e.g. by writing their names on one of the faces) to clearly distinguish the first face of the mat, which is in contact with the athlete, and the second face, which remains in contact with the floor.

D4: Silver ions are used as antibacterial materials in many textiles (such as clothes, carpets) and on polymer material used for covering the floor of gymnastic halls. Antibacterial materials have the effect that they prevent or at least reduce the growth of bacteria. Such an effect is only to be found in very special metal materials such as silver ions or copper ions.

Question 11

For each of statements 11.1–11.4, indicate on the answer sheet whether it is true or false:

11.1 A yoga mat consisting of poly-X is covered by the scope of claim 7.

11.2 The material of claim 5 is defined by means of a functional feature.

11.3 The features of claim 11 imply a limitation of the dimensions of the textile bag.

11.4 The subject-matter of claim 13 lacks clarity.

Question 12

For each of statements 12.1–12.4, indicate on the answer sheet whether it is true or false:

12.1 The subject-matter of claim 2 is novel over D3.

12.2 A valid argument that the subject-matter of claim 4 is novel over D3 is that in D3 the first face is the face that is in contact with the athlete.

12.3 A valid argument that the subject-matter of claim 6 is novel over D2 is that in D2 the yoga mat is only partially coated with a layer of poly-X.

12.4 The subject-matter of claim 8 is novel over each of D1, D2, D3 and D4.

Question 13

For each of statements 13.1–13.4, indicate on the answer sheet whether it is true or false:

13.1 The subject-matter of claim 10 is novel over D1.

13.2 The subject-matter of claim 10 is novel over D2.

13.3 The present application indicates that a yoga mat made of poly-Y is more effective than a yoga mat made of poly-X or poly-Z in reducing sweat generation on the body of the athlete while the athlete is in contact with the yoga mat.

13.4 The subject-matter of claim 13 is novel over D2.

Question 14

For each of statements 14.1–14.4, indicate on the answer sheet whether it is true or false:

14.1 A modified single claim 1 which reads “Yoga mat having a first face and a second face, wherein the yoga mat has an SRV of 90 or more.” would be allowable under Article 123(2) EPC.

14.2 A modified single claim 1 which reads “Yoga mat having a first face and a second face, wherein the yoga mat has an SRV of 90 or more.” would be clear under Article 84 EPC.

14.3 A modified single claim 1 which reads “Yoga mat having a first face and a second face, wherein the first face has a coating of poly-X, the poly-X covering 100% of the first face.” would be allowable under Article 123(2) EPC.

14.4 A modified single claim 1 which reads “Yoga mat having a first face and a second face, wherein the first face and the second face contain silver ions.” would be allowable under Article 123(2) EPC.

Question 15

For each of statements 15.1–15.4, indicate on the answer sheet whether it is true or false:

15.1 In D2 and in the present application the material poly-X has essentially the same purpose.

15.2 The additional features defined in claim 8, whereby the second face of the yoga mat contains silver ions, has the technical effect of reducing bacteria growth.

15.3 The subject-matter of claim 13 solves the objective technical problem of providing an organic, sustainable yoga mat with respect to D1 as closest prior art.

15.4 The subject-matter of claim 14 is novel over D1.

Part 4

Description of a second European patent application

[001] The present invention aims at preserving wine (or other alcoholic beverages like beer or other beverages having 10 vol.% alcohol or more) that remains in a bottle once the bottle has been opened but not all the wine in the bottle has been consumed. Oxygen from the air that remains in the bottle, in the space between the wine level and the opening of the bottle (the so-called “headspace”), causes oxidation of the wine. The oxidation of the wine renders the wine unpleasant in taste.

[002] A device for preserving wine is known from D11. This device consists of a hand-actuated vacuum pump that is used to remove air (and therefore also oxygen) from the headspace of the opened bottle. A disadvantage of this device is that the volatile aroma substances included in the wine are also removed by the pumping process. Another disadvantage is that many hand actuations are necessary to remove sufficient air from the headspace.

[003] The present invention provides a device that instead of creating a vacuum simply replaces air (and therefore also oxygen) in the headspace with another gas comprising less oxygen than air. A preferred other gas is an inert gas. This is achieved by injecting the other gas (e.g. the inert gas) into the headspace. The injected gas pushes the air out of the headspace.

[004] By inert gas we mean a gas that does not undergo any chemical reaction with the volatile aroma substances included in the wine. Examples of inert gases are carbon dioxide, nitrogen and argon. Argon is the most preferred inert gas, because it is heavier than oxygen and heavier than air, so that a layer of argon creates a “gas cap” on top of the wine level. Even a very small volume of argon is sufficient to create the gas cap and prevent the oxidation processes.

Claims filed together with the second European patent application:

II.1. Method for preserving wine in a bottle, wherein the composition of a gas in the headspace of the bottle is modified.

II.2. Method for preserving an alcoholic beverage in a bottle, wherein the amount of oxygen in the headspace of the bottle is reduced.

II.3. Method for preserving an alcoholic beverage according to claim II.2, wherein an inert gas is injected directly into the headspace of the bottle.

II.4. Method for preserving an alcoholic beverage according to claim II.3, wherein the inert gas is carbon dioxide.

II.5. Method for preserving an alcoholic beverage according to claim II.3 or II.4, wherein the inert gas is exclusively nitrogen.

II.6. Method for preserving an alcoholic beverage according to claim II.3, wherein the inert gas is a mixture of carbon dioxide with nitrogen or with argon.

II.7. Method for preserving an alcoholic beverage according to claim II.3, wherein the inert gas is argon.

II.8. Method for preserving an alcoholic beverage according to claim II.5, wherein the alcoholic beverage is wine and the wine is contained in an opened bottle.

II.9. Method for preserving an alcoholic beverage according to claim II.7, wherein the alcoholic beverage is wine and the wine is contained in an opened bottle.

Assume in the following that documents D11, D12, and D13 are prior art in accordance with Art. 54(1) and (2) EPC:

Document D11

[001] This document discloses a vacuum pump that is used to extract air or oxygen from an opened bottle in order to preserve the wine contained in the opened bottle.

[002] The principle is very simple. The opened bottle is closed with a water-tight and air-tight reusable stopper. The stopper is easily applied onto the neck of the bottle to hermetically seal the opening of the bottle. The stopper can be easily removed again from the bottle by hand. The stopper has a one-way valve through which air and oxygen from within the bottle can be extracted using a vacuum pump. In this way the quality of the wine in the opened bottle can be preserved for many days.

Document D12

[001] Devices for household use are known for introducing carbon dioxide into water. Carbon dioxide is a gas that is contained in a pressurized capsule within the device. Once carbon dioxide is released into water, the gas and the water undergo a chemical reaction to provide carbonic acid, which gives water pleasant taste and fizz. With the help of such devices sparkling water can be prepared inexpensively from tap water.

[002] We have now found that the same devices can be used to inject the carbon dioxide into wine. When carbon dioxide is injected into wine, a similar chemical reaction occurs as when carbon dioxide is added to water. Thereby a pleasant fizz is added to the wine. We have additionally noted that a part of the injected carbon dioxide reaches the headspace of the bottle and pushes the air (and therefore also oxygen) contained therein out of the headspace of the bottle. Moreover, we found that wine can be better preserved when carbon dioxide is injected therein.

Document D13

[001] This document discloses an industrial method for preserving liquids. It is known that fish oil is easily spoiled by oxygen upon storage. The method consists of injecting nitrogen into the headspace of a bottle filled with fish oil before closing the bottle and transporting such bottles to the various points of sale.

[002] It is known by the skilled person that nitrogen is lighter than oxygen. Therefore, the nitrogen must be injected just above the level of the fish oil within the bottle. Nitrogen evacuates through the opening of the bottle, but some oxygen is removed as well. After injecting a volume of nitrogen equal to 20 times of the volume of the headspace into the headspace of the bottle, virtually no oxygen can be traced in the headspace of the bottle.

[003] Clearly, this method can be applied to many types of liquid, such as perfumes and beer.

Question 16

For each of statements 16.1–16.4, indicate on the answer sheet whether it is true or false:

16.1 D13 destroys the novelty of the subject-matter of claim II.1.

16.2 D12 destroys the novelty of the subject-matter of claim II.1.

16.3 D11 destroys the novelty of the subject-matter of claim II.2.

16.4 D12 destroys the novelty of the subject-matter of claim II.2.

Question 17

For each of statements 17.1–17.4, indicate on the answer sheet whether it is true or false:

17.1 D11 destroys the novelty of the subject-matter of claim II.3.

17.2 D12 describes that wine can have a chemical reaction with a gas.

17.3 D12 destroys the novelty of the subject-matter of claim II.4.

17.4 D13 destroys the novelty of the subject-matter of claim II.5.

Question 18

For each of statements 18.1–18.4, indicate on the answer sheet whether it is true or false:

18.1 The EPO may issue a communication under Rule 62a EPC in the search phase for the present set of claims.

18.2 The subject-matter of claim II.5 is clear.

18.3 The presence of an inert gas is described in the application documents as an essential feature.

18.4 The subject-matter of claim II.6 can be introduced into the description without contravening Article 123(2) EPC.

Question 19

For each of statements 19.1–19.4, indicate on the answer sheet whether it is true or false:

19.1 Amending claim II.7 to recite “Method for preserving an alcoholic beverage according to claim II.3, wherein the inert gas is a noble gas” would not be allowable under Article 123(2) EPC.

19.2 Although argon is described as the most preferred inert gas, deleting all references to argon from the claims would be allowable under Article 123(2) EPC.

19.3 Amending claim II.3 to recite “Method for preserving an alcoholic beverage according to claim II.2, wherein an inert gas is directly injected into the headspace of the bottle to create a gas cap on top of the wine level” would be allowable under Article 123(2) EPC.

19.4 Amending claim II.2 to recite “Method for preserving an alcoholic beverage having 10 vol.% alcohol or more, wherein the amount of oxygen in the headspace of the bottle is reduced” would be allowable under Article 123 (2) EPC.

Question 20

Assume in the following that inventive step has to be assessed in respect of claim II.9.

For each of statements 20.1–20.4, indicate on the answer sheet whether it is true or false:

20.1 One valid argument as to why D11 is not the closest prior art is that D11 does not require the addition of gas.

20.2 If D12 is selected as the closest prior art, a possible objective technical problem can be formulated as how to preserve an alcoholic beverage by injecting an inert gas directly into the headspace of the bottle.

20.3 One valid argument as to why D13 is not the closest prior art is that D13 deals only with the preservation of fish oil.

20.4 Assuming that D13 is considered to be the closest prior art, an objective technical problem to be solved may be regarded as how to reduce the amount of gas required to remove air from above the wine level.