Examiners' Report - Paper D 2023

Purpose and extent of the examiner's report

The purpose of the present examiner's report is to enable candidates to prepare for future examinations (cf. Art 6(6) of the Regulations on the European qualifying examination for professional representatives).

General comments

Candidates are reminded that they should pay attention to the way questions are asked and should not simply repeat information from the paper in the answer. Repeating information per se is not awarded any marks. Alternative answers, one being correct and one being wrong, for the markers to choose from do not attract any marks.

In part I, full marks are only awarded when the full legal basis is cited to support the analysis. Candidates lost many marks due to missing or incomplete legal basis. The examiners note that this issue has become more acute in recent years, with the 2023 answers showing an all-time low in the citation of legal basis from e.g. the guidelines and case law. It is noted that "answering legal question" as is the purpose of Part I, requires not only understanding the legal provisions, but also being able to cite the correct legal basis for the answers.

Citing only the legal basis or repeating the text therefrom without any further explanation, reasoning or providing advice generally does not attract any marks. However, alternative relevant legal basis not mentioned in the possible solution also attracted marks. It is noted in this respect that the online examination with direct access to part of the syllabus in electronic form, appears to be seen as an invitation to copy articles, rules and paragraphs from the guidelines, for which full marks are only awarded if, apart from the copied text, the explanation is also provided in view of the situation in the question.

Marks were also often missed due to mistakes in calculations of time limits.

Candidates are reminded that the PCT questions make up a substantial part of paper D.

Examiners' Report - Paper D 2023, Part I

Question 1 (10 marks)

This question was generally well answered. Most candidates realised that DIV1 cannot lead to a valid patent, because the omission of feature B violates Art. 76(1) EPC and B cannot be reintroduced in DIV1 because of Art. 123(2) EPC. However, the majority of candidates did not cite the legal basis in Guidelines H-V, 3.1 that the omission of a feature that is indispensable for the function of the invention in the light of the technical problem violates Art. 123(2) EPC and that the same criterion is applied for the assessment of Art. 76(1) EPC.

The majority of candidates realised that optional feature F needs to be removed from DIV2. However, many candidates did not realise that the fact that EP-A was pending when divisional DIV2 was filed constitutes a condition for obtaining a valid patent for DIV2. Moreover, a number of candidates failed to argue that there is no relevant prior art for B+D and that B+D is thus new and inventive.

Most candidates correctly noted that a divisional application based on EP-A needs to be filed to prosecute invention E+F. Most candidates also realised that EP-A is still pending until the expiry of the period for filing a notice of appeal. However, the correct legal basis G 1/09 was not always cited.

Question 2 (10 marks)

Parts (a) and (b) of this question were reasonably well answered. Most candidates realised that the time limit to correct the priority claim under Rule 26bis PCT has already expired. Most candidates also realised that the priority claim is considered to have been made and correctly calculated the time limit to file a demand.

Part (c) was less well answered. Some candidates suggested to rectify the priority claim under Rule 91.1 PCT, but not all of them indicated the necessary steps that applicant B needs to carry out for requesting the rectification. Few candidates indicated the reasons why the conditions for rectifying the priority claim were met if the steps were carried out. Some candidates wrongly suggested to proceed according to Rule 26bis.2(e) PCT, which does not lead to a rectification of the priority claim, but to a publication of "information concerning the matter".

Question 3 (7 marks)

Fewer than half of the candidates noticed that a debit order cannot be filed by fax and revocation proceedings are thus not pending.

Most candidates realised that there is still time to file an opposition. Regarding the calculation of the opposition period, full marks were also awarded to candidates not having noted the closure of the Berlin office on 08.03.2023 (only published in OJ 2022, A107 in November 2022) and thus concluded that the opposition period ends on 08.03.23.

Some candidates noticed that the renewal fee to pay to the German Patent and Trademark Office could still be paid with surcharge and that EP-C was currently in force in Germany.

Few candidates noted that a revocation or limitation of the patent in opposition proceedings has an ex tunc effect, whereas company D could still be sued for infringement if the patent merely lapses.

Many candidates did not realise that the purpose and effect of actively filing an opposition are different than passively awaiting lapse of the patent or the outcome of possible revocation proceedings.

Question 4 (7 marks)

This question was generally well answered. Most candidates realised that the appeal was currently likely to be rejected as inadmissible. Most candidates also suggested to correct the appellant's identity under Rule 139 EPC. However, few candidates indicated that the request for correction of the appellant's name should be filed as soon as possible and that evidence of the original intention should be provided.

Few candidates mentioned that after correction of the appellant's name, the appeal is admissible because company F is adversely affected by the decision.

Marks were also awarded to candidates suggesting to request the correction under Rule 101(2) EPC.

Question 5 (11 marks)

Most candidates gave the correct reason why PCT-G was declared withdrawn and correctly stated the legal consequence that PCT-G will cease to have the effect of a regular national application in each designated state.

Although some candidates referred to the excuse procedure, few candidates indicated the steps that must be carried out to revive PCT-G before the EPO. In particular, few candidates noted that G must request the International Bureau to send copies of documents forming PCT-G to the EPO and pay the filing fee under Rule 159(1)(c) EPC.

Many candidates did not realise that the removal of the cause of non-compliance is the date of actual receipt of the communication noting a loss of rights (Guidelines E-VIII, 3.1.3) and thus did not correctly calculate the time limit for requesting excuse (re-establishment).

Question 6 (10 marks)

This question was generally well answered.

Regarding part (a), most candidates suggested to replace the granted claim by a use claim and by a method claim. However, few candidates noted that the granted claim lacks novelty and that this is a ground for opposition under Art. 100(a) EPC. Some candidates wrongly suggested to file a purpose-related product claim, e.g. a product claim disclaiming the use as a detergent, or a product-by-process claim.

Most candidates realised that in situation (b) the use claim is excluded from patentability and needs to be reformulated as a purpose-related product claim, i.e. "product P for use as a medicament". However, few candidates gave reasons why such a claim does not extend the conferred protection.

Possible Solution - Paper D 2023, Part I

References to the legal basis refer to the situation on 31 October 2022

Answer to Question 1 (10 marks):

(a)

No valid patent can be obtained for DIV1.

A claim without B extends beyond the content of the parent application, Guidelines H-V, 3.1, because the same principles as for assessing added subject-matter under Art. 123(2) EPC are to be applied in the assessment of Art. 76(1) EPC, G 1/05. On the other hand, B cannot be reinstated in DIV1, because it is not originally disclosed in DIV1, Art. 123(2) EPC.

For DIV2, a valid patent can be obtained. Parent application EP-A was pending when DIV2 was filed, R. 36(1) EPC. As it stands, the claim of DIV2 with feature F extends beyond the content of the parent application, Art. 76(1) EPC, because EP-A does not disclose F in combination with B+D. Hence, feature F needs to be removed from DIV2 to satisfy Art. 76(1) EPC. According to G 1/05, DIV2 can be amended even if EP-A was no longer pending. Feature F is optional. Therefore, removing feature F does not violate Art. 123(2) EPC. Since there is no relevant prior art for B+D, B+D is new and inventive, Art. 52(1), 54 and 56 EPC.

(b)

An application which has been refused by the first instance is still pending until the expiry of the period for filing an appeal, G 1/09.

Hence, EP-A is pending until 03.01.2023 + 10 days (Rule 126(2) EPC) + 2 months (Art. 108 EPC) = 13.03.2023 (Mon).

To prosecute invention E+F, applicant A should thus file a divisional application claiming and describing E+F based on EP-A until 13.03.23, Rule 36(1) EPC.

Answer to Question 2 (10 marks):

(a)

The priority claim and the number in the priority document are inconsistent. Although the applicant failed to reply to the invitation, the priority claim is considered to have been made under the PCT, because the exceptions under Rule 26bis.2 PCT apply:

- The deficiency relates to an inconsistency between an indication in the priority claim and the corresponding indication appearing in the priority document, Rule 26bis.2 (c)(ii) PCT, and
- PCT-B was filed within the priority period of US-B, Rule 26bis.2(c)(iii) PCT, i.e. before 09.07.2021 + 12 months = 09.07.2022 (Sat), Art. 8 PCT and Art. 4C(1) PC, extended to 11.07.2022, Rule 80.5 PCT.

(b)

The demand may be made at any time before the expiration of the later of the following periods, Rule 54bis.1(a)(i) and (ii) PCT:

- A first period which is three months from the date of transmittal of the international search report to the applicant, i.e. 12.07.2022 + 3 months = 12.10.2022 (Wed)
- A second period which is 22 months from the priority date, i.e. 09.07.2021 + 22 months
 = 09.05.2023 (Tue)

Hence, the demand may be made until 09.05.2023.

(c)

Yes, the mistake in the priority claim can be rectified under Rule 91.1 PCT, because it would not cause a change in the priority date, Rule 91.1(g)(iv) PCT.

The mistake was made in the request. Therefore B should submit a request for rectification to the EPO acting as receiving Office, Rule 91.1(b)(i) PCT and Rule 91.2 PCT.

The request should be submitted at the latest on 09.07.2021 + 26 months = 09.09.2023 (Sat), extended to 11.09.2023, Rule 80.5 PCT.

It shall specify the mistake to be rectified, i.e. the erroneous application number, and the proposed rectification, i.e. claiming priority from US-B with the correct application number.

The PCT request is part of the international application as filed, Art. 3(2) PCT. Hence the "applicable date" for the purposes of R. 91.1(c) PCT is the international filing date, Rule 91.1(f)(i) PCT.

It is obvious that at the filing date, something else was intended than the erroneous priority application number and that nothing else could have been intended by applicant A than the correct application number of US-B, i.e. the proposed rectification, because:

- the description of PCT-B comprises the correct priority claim,
- the description, claims and drawings of PCT-B are otherwise identical to those of US-B, and
- the certified copy of US-B was filed on the filing date.

The criteria for correction applied by the EPO acting as receiving Office specified in Rule 91.1(c) PCT are therefore met and the priority claim will be corrected.

Answer to Question 3 (7 marks):

(a)

The request for revocation was validly filed by fax. However, the debiting order is not valid because it was filed by fax, ADA2022 7.1.3.

Therefore, revocation proceedings are not pending at present, Art. 105a(1) EPC.

(b)

The period for filing an opposition expires on 08.06.22 + 9 months (Art. 99(1) EPC) = 08.03.23 (Wed) extended to 09.03.23 (Rule 134(1) EPC) since the EPO in Berlin is closed on that day.

A first reason for filing an opposition against EP-C is that there is no certainty that EP-C will be revoked, because revocation proceedings are not pending.

A second reason is that the renewal fee to pay to the German Patent and Trademark Office fell due on 30.09.22, but may still be paid with surcharge until 31.03.23, National Law Table VI. Since Germany is a party to the London agreement, EP-C is currently in force in Germany.

The renewal fee with surcharge may be paid after the end of the opposition period. Hence, at the end of the opposition period, there will be no guarantee that EP-C will lapse in Germany.

A third reason is that, irrespective of whether or not company C lets EP-C lapse by not paying the renewal fees, it is still advisable to file an opposition because a revocation or a limitation in opposition has an *ex tunc* effect, Art. 68 EPC. If the patent merely lapses, company D may still be sued for having infringed the patent with their products sold between July 2022 and lapse of the patent.

Answer to Question 4 (7 marks):

(a)

The time limit for filing the notice of appeal ended on 19.12.2022 +10 days (Rule 126(2) EPC) + 2 months (Art. 108 EPC) = 28.02.2023 (Tue), so the notice of appeal was filed in time.

The transfer of the patent was registered by the EPO before the decision was issued. Hence, company E was not a party to the proceedings. Therefore, company E was not entitled to file the appeal, Art. 107 EPC.

Currently, the appeal is thus likely to be rejected as inadmissible, Rule 101(1) EPC.

(b)

The error in the appellant's identity can be corrected under Rule 139 EPC, provided that the correction does not reflect a later change of mind as to whom the appellant should be, but on the contrary only expresses what was intended when filing the appeal (G 1/12).

Therefore, you can improve the situation by requesting correction of the appellant's name under Rule 139 EPC as soon as possible, such that company F becomes the appellant. For that you have to provide evidence of the original intention, e.g. a copy of the email of company F instructing you to file an appeal.

The EPO will then correct the appellant's identity to be company F.

Since company F is an adversely affected party to the proceedings, the appeal will be admissible, Art. 107 EPC.

Answer to Question 5 (11 marks):

(a)

A PCT application shall contain an abstract, Art. 3(2) PCT. A missing abstract is a defect under Art. 14(1)(a)(iv) PCT. The invitation from the INPI is an invitation under Art. 14(1)(b) and Rule 26.1 PCT.

A time limit of two months was set under Rule 26.2 PCT, which expired on 9 February 2023 (Thu).

PCT-G was thus declared withdrawn by the INPI, because G filed the abstract too late, Art. 14(1)(b) PCT.

If nothing is done, according to Art. 24(1)(ii) PCT, PCT-G will cease to have the effect of a regular national application in each designated state, pursuant to Art. 11(3) PCT.

(b)

The EPO acting as designated Office shall excuse the missing of the time limit for reasons admitted under the EPC, Art. 48(2)(a) PCT, namely further processing or re-establishment, Rule 82bis.2 PCT, Art. 121 and Art. 122 EPC.

Under the EPC, regarding the time limit of two months provided for in Rule 58 EPC in case of a missing abstract, further processing is ruled out (Rule 135(2) EPC), but re-establishment of rights is possible (Art. 122 EPC and Rule 136(3) EPC).

According to Guidelines E-IX, 2.9.1 and 2.9.2, G must:

- request the International Bureau to send copies of documents forming PCT-G to the EPO acting as designated Office;
- pay the filing fee under Rule 159(1)(c) EPC;
- request the EPO acting as designated Office to excuse the missing of the time limit, pay the fee for re-establishment (Rule 136(1) EPC) and prove all due care (Rule 136(2) EPC).

These steps have to be carried out before 06.03.2023 + 2 months (Rule 136(1) EPC) = 06.05.2023 (Sat), extended under Rule 134(1) EPC to 08.05.2023 (Mon), because removal of the cause of non-compliance is the date of actual receipt of the communication noting a loss of rights, Guidelines E-VIII, 3.1.3.

Answer to Question 6 (10 marks):

(a)

The granted claim lacks novelty, Art. 100(a), 52(1) and 54(3) EPC. There is no basis for an amended product claim that would satisfy the requirement of novelty.

EP-H should thus be amended as follows:

The granted claim should be replaced by a claim directed to the "use of product P as a fertilizer". This claim satisfies the requirements of Art. 123(3) EPC, because it defines the use of product P for a particular purpose to achieve an effect, G2/88. Moreover, the use claim satisfies the requirements of Art. 123(2) EPC because this use is originally disclosed in EP-H. This claim is also new, Art. 54 EPC, because EP-J does not show the particular use of P as a fertilizer.

In addition, a claim directed to the method of producing P as disclosed in EP-H should be added. Since this method only results in product P and a product claim confers protection to all processes for making that product, this claim does not extend the protection conferred thereby, Art. 123(3) EPC and Guidelines H-V, 7.2. Moreover, as this method claim is originally disclosed in EP-H, it fulfils the requirement of Art. 123(2) EPC. Since EP-J discloses a different method, the method claim is new (Art. 54 EPC).

(b)

The amended claim to the use of product P will have to be re-formulated to a purpose-related product claim, i.e. "product P for use as a medicament." The reason is that a claim relating to "the use of product P as a medicament" is excluded from patentability as it relates to a method for treatment of the human or animal body by therapy, Art. 53(c) EPC. Such a claim does not extend the conferred protection (Art 123(3) EPC), because the scope of protection of purpose-related product claims is limited to the substance or composition in the context of its medical use, Guidelines G-VI, 7.1. Since the medical use of product P is not known from the prior art, such a claim satisfies the requirement of novelty under Art. 54(4) EPC.

Examiners' Report - Paper D 2023, Part II

Almost all candidates did follow in their response the scheme for the questions and discussed the patent situation by subject matter, as was asked. This way of structuring the answer was intended to help the candidate not to lose marks because of an incomplete analysis. The analysis of the claim of EP-Z was expected as part of the answer for question 1 (as provided below), but it was also presented by some candidates together with the advice to oppose the patent in the answer to question 3. Here, the swapping of the corresponding parts of the answer was not detrimental to completeness and to the awarding of marks. On the other hand, the candidates who proposed the possible solution for the invalid filing of the divisional application while analysing the current situation did not always score full marks for this aspect.

The candidates are expected to analyse the available prior art given in the paper, to discuss the effective date of claimed subject-matter, and to conclude on patentability and/or validity of the claim(s), even if it is stated in the exam paper that a search report only contains documents of category A, or that a communication for the intention to grant has been issued. Some candidates did not provide a complete analysis as outlined above and were not awarded full marks.

Candidates are reminded that no marks are awarded for speculation beyond the facts given in the examination paper.

Question 1.

Question 1 was in general well answered and, in particular, the majority of candidates recognised the invalid priority claim in EP-Z. However, the consequences of the invalid priority were not always analysed in complete and/or correct manner. For example, fewer candidates explained that the invalid priority claim caused the status of the disclaimer to change from an allowable undisclosed disclaimer, fulfilling the criteria of G1/03, to added matter under Art. 123(2) EPC. Many candidates correctly answered that EP-Y became full prior art, but quite a few lost sight of the remaining prior art. Only the good candidates provided an answer containing both the complete reasonings for added matter and lack of inventive step with respect to the claim of EP-Z. A surprisingly high number of candidates argued, incorrectly, lack of novelty on the basis of EP-Y.

The peculiarity of two different first filings for nappies with metal electrodes, i.e. a filing (EP-Y) for the specific silver electrodes and another filing (EP-Z) for the generic metal electrodes, was treated correctly by very few candidates. However, the majority of candidates did score marks by writing in the answer about one of the two filings and by concluding on the invalidity of the priority claim.

Not many candidates picked up on the fact that renewal fees were due for EP-WA.

Question 2.

The right to carry out the invention or the freedom to operate was very often analysed in a superficial manner, because the candidates made no distinction between the countries, which were mentioned in the exam paper, and did not consider the patent rights of the parties in each country of interest.

Surprisingly, a few candidates considered a patent to be a licence to operate, rather than a right to stop others from operating.

Question 3.

Many candidates proposed to remedy the mistake in filing EP-WDIV by means of a new divisional application. Answers with a proposal to remedy by requesting a correction under Rule 139 EPC were also awarded some marks.

Almost all the candidates proposed to oppose EP-Z. Many candidates suggested filing the opposition on the ground of added subject-matter. Fewer proposed the ground of inventive step. The ground of lack of novelty attracted no mark. Many candidates recognised that the disclaimer cannot simply be deleted, but fewer explained why the conclusion of the opposition proceedings would not be of concern for Whiter.

It was generally well answered that a PCT application had to be filed for the nappies comprising substance X, because the International application can provide protection in US and China. Not many candidates recognised the relevance of Zuma's announcement if an earlier effective date was not secured by claiming priority from EP-WC. Candidates proposing to file a divisional from EP-WC were not awarded full marks.

Not many candidates scored points in relation to the need to file at least one more application claiming CU-Em-transmit to secure the non-EPC markets for the new product of Whiter.

Possible Solution - Paper D 2023, Part II

Question 1 – Current situation

a) CU-Em

EP-Y is the first filing for nappies comprising a control unit and electrodes, which are however made of a specific metal, i.e. silver, to detect the presence of urine. EP-Y is withdrawn and cannot be revived.

EP-Z is the first filing for nappies comprising a control unit and electrodes made of metal in general to detect the presence of urine.

Irrespective of the disclaimer, the claimed subject-matter of EP-Z does not validly claim the priority date from US-Z, because the two applications do not relate to the same invention, as the electrode material is more generic in US-Z than in EP-Z.

The effective date is therefore the filing date of EP-Z.

EP-Y was filed before and published in the priority period of EP-Z, and it is full prior art.

The subject-matter of the amended claim is novel because none of the prior art documents discloses electrodes, which are made of metal other than silver. However, it does not involve an inventive step over the handbook, because the distinguishing feature is a well-known alternative for nappy electrodes to detect the presence of urine.

By claiming electrodes not made of silver, there is an undisclosed disclaimer in the granted claim of EP-Z, because silver was not mentioned in EP-Z.

An undisclosed disclaimer can be allowed to restore novelty over an accidental disclosure and/or a prior right. EP-Y is neither a mere prior right, nor an accidental disclosure, as it relates to nappies for the detection of urine, like EP-Z. Hence, the undisclosed disclaimer is not allowable, as it represents added matter.

Altogether, the claim of EP-Z is invalid.

b) CU-Em-sound

EP-WA is the first and only application for nappies comprising acoustic warning means, a control unit and electrodes made of metal to detect the presence of urine.

EP-WA does not claim priority, and the effective date is the filing date.

The claimed subject-matter is novel, because there is no disclosure of nappies comprising acoustic warning means in the prior art. It also involves an inventive step, because it is not suggested and it remedies the drawback of the visual indicator.

Renewal fees fell due on 30.09.2022. It shall be checked if they have been paid. Anyway, they are still payable with surcharge until 31.03.2023.

EP-WA could proceed to grant.

c) CU-EG

EP-WB is the first and only application for nappies comprising a control unit and special electrodes G made of conductive plastic to determine glucose in the urine.

EP-WB does not claim priority, and the effective date is the filing date.

The claimed subject-matter is novel, because there is no disclosure of nappies with the special electrodes G configured to measure glucose in the prior art. It also involves an inventive step, because it was not obvious to adopt known electrodes used in a remote field.

EP-WB was limited to claim this subject-matter, and Whiter already approved the documents for grant, so that the decision to grant can be expected.

d) CU-EP

EP-WB is the first application for nappies comprising a control unit and special electrodes P made of conductive plastic to measure the pH of urine.

This subject-matter is now only claimed in EP-WDIV in an invalid manner, because EP-WA is the parent application due to the mistake in Form 1001.

EP-WA does not disclose CU-EP and therefore this subject-matter in EP-WDIV goes beyond the content of the parent application as filed.

There is no claim directed to CU-EP, which could lead to patent protection.

e) CU-Em-transmit

EP-WC is the first and only application for nappies comprising a transmitter for a baby phone, a control unit and electrodes made of metal to detect the presence of urine.

EP-WC does not claim priority, and the effective date is the filing date.

The claimed subject-matter is novel, because there is no disclosure of nappies comprising transmitters in the prior art. It also involves an inventive step, because it is not suggested and it provides an improvement for the quality of the sleep of the new-borns.

EP-WC could proceed to grant with the claim covering CU-Em-transmit.

f) nappies X

EP-WC is the first and only application for nappies that comprise substance X for capturing urine odours.

This subject-matter is however not claimed in any application.

Question 2 - Freedom

- a) Zuma is free to produce and sell nappies that neutralise urine odours and in which the absorbent comprises substance X, because there is no patent protection anywhere, including the US, where they intend to be active.
- b) Irrespective of the invalidity of the claim, the scope of the granted claim in EP-Z covers the nappies comprising a control unit and gold electrodes to detect the presence of urine, which Whiter produces, and will be producing, because gold is a metal not excluded by the disclaimer.

In Europe, where EP-Z is in force, Whiter is neither free to produce and sell the nappies comprising acoustic warning means, a control unit and electrodes made of gold, nor the nappies comprising a transmitter, a control unit and electrodes made of gold for detecting the presence of urine.

In Europe, Whiter is free to produce and sell both the nappies CU-EG and CU-EP, because the electrodes are made of conductive plastic and EP-Z claim is limited to metal electrodes.

In both US and China, Whiter is free to produce and sell, because there is no patent protection covering any of the nappies above, as US-Z was abandoned and no other patent was filed.

Question 3 – Improvements

Re-file a divisional application for CU-EP

As EP-WDIV will be refused; do not pay fees for it.

File new divisional application EP-WDIV2 correctly based on EP-WB.

You have already approved the text for the grant of EP-WB, and therefore the EPO will soon proceed with the decision to grant. The new divisional shall be filed as soon as possible, while EP-WB is still pending.

EP-WDIV2 shall have claims directed CU-EP.

EP-WB does not claim priority, and the effective date is the date of filing.

The claimed subject-matter is novel, because there is no relevant prior art to nappies with special electrodes for measuring pH. It also involves an inventive step, because it was not obvious to adopt known electrodes used in a remote field.

EP-WDIV2 could be granted, providing Whiter with patent protection for the nappies CU-EP in Europe.

Oppose EP-Z

Whiter shall file an opposition against the grant of EP-Z.

The time-limit for the notice is 17.08.22+9M=17.05.2023(Wed).

Based on the analysis made in the answer of Q1, file a notice of opposition on the grounds of inventive step and added matter.

The disclaimer can only be replaced by another limiting feature disclosed in EP-Z as originally filed. Otherwise the protection EP-Z confers will be extended.

The only suitable features in EP-Z would be copper and platinum, and therefore there is no basis in EP-Z as originally filed to limit it to gold or any metal subgroup comprising gold.

EP-Z will be revoked or at most maintained in an amended form, which does not cover the embodiment having electrodes made of gold.

Whiter will then be free to produce and sell, also in Europe, the nappies with gold electrodes.

File a PCT application for X

Whiter shall file a PCT application with a claim directed to a nappy which comprises substance X as absorbent. Priority should be claimed from EP-WC, otherwise Zuma's announcement will be novelty-destroying prior art.

The claimed subject-matter will be novel, because there is no other relevant prior art to nappies with substance X.

It will also involve an inventive step, because of the surprising neutralization of odour.

Filing should be done as soon as possible, and not later than 06.05.23 (Sat), extended to 08.05.23 (Mon), for respecting the 12-month period.

Early publication of the PCT application shall be requested.

Prosecute in the national/regional phase in US, EP, China.

Once patents are granted, Whiter will be able to stop Zuma from producing and/or selling the nappies, which comprise X, particularly in the US, where they have planned to start the business.

File a PCT application from EP-WC

Whiter shall file a PCT application with a claim directed to CU-Em-transmit, claiming priority from EP-WC. Hence, not later than 06.05.2023 (Sat), extended to 08.05.2023 (Mon).

Prosecute in the national/regional phase in US, EP and China.

Once patents are granted, Whiter will be able to stop Zuma from producing and/or selling CU-Em-transmit.