Antwortblatt / Answer sheet / Feuille de réponses

Anweisung zum Ausfüllen des Antwortblatts		Instruction on how to fill in the answer sheet		Instructions pour remplir la feuille de réponses	
Füllen Sie den Kreis so aus:	Füllen Sie den Kreis NICHT so aus:	Fill in the circle this way:	DO NOT fill in the circle this way:	Remplir le cercle de la façon suivante:	NE PAS remplir le cercle de la façon suivante:
●	⊗ ◐ ⊘ ◉ ⊜ ○	●	⊗ ◐ ⊘ ◉ ⊜ ○	●	⊗ ◐ ⊘ ◉ ⊜ ○
1. Verwenden Sie einen schwarzen mittelweichen HB Bleistift		1. Use a black medium soft HB pencil		1. Utiliser un crayon noir à mine moyenne HB	
2. Entfernen Sie unbeabsichtigte Markierungen vollständig		2. Erase any unintended marks completely		2. Gommer complètement toutes marques involontaires	
3. Knicken Sie dieses Blatt nicht		3. Do not bend this sheet		3. Ne pas plier cette feuille	

	AUSSAGE / STATEMENT / AFFIRMATION							
	1		2		3		4	
Frage Question Question	wahr true vraie	falsch false fausse	wahr true vraie	falsch false fausse	wahr true vraie	falsch false fausse	wahr true vraie	falsch false fausse
1	●	○	○	●	○	●	○	●
2	●	○	●	○	○	●	○	●
3	●	○	○	●	○	●	●	○
4	○	●	●	○	●	○	○	●
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7	○	●	●	○	●	○	○	●
8	○	●	○	●	○	●	●	○
9	●	○	○	●	●	○	○	●
10	○	●	○	●	●	○	○	●
11	●	○	●	○	●	○	○	●
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13	●	○	●	○	○	●	○	●
14	●	○	○	●	●	○	●	○
15	●	○	●	○	●	○	●	○
16	○	●	●	○	○	●	○	●
17	●	○	○	●	○	●	●	○
18	●	○	●	○	○	●	●	○
19	○	●	●	○	●	○	○	●
20	○	●	○	●	○	●	●	○

Examiner's report pre-examination 2013

Preliminary remark: the references from the Guidelines are from the version of the Guidelines which was to be used in the present examination.

Question 1

The first application disclosing subject-matter X is EP-1, filed on 12 January 2012. The first application disclosing subject-matter Y is US-1 filed on 6 September 2012. US-1 is not the first application within the meaning of Article 87(4) EPC for subject-matter X: consequently, it is not possible to validly claim priority from US-1 for subject-matter X. EP-2 was filed within the priority period of twelve months from the date of filing of both EP1 and US1, Article 87(1) EPC.

If in EP-2 priority is claimed only from EP-1, the effective date of claim 1 is 12 January 2012.
If in EP-2 priority is claimed only from EP-1, the effective date of claim 2 is the date of filing of EP-2, 20 December 2012.
If in EP-2 priority is claimed only from US-1, the effective date of claim 1 is the date of filing of EP-2, 20 December 2012: US-1 is not the first application.
If in EP-2 priority is claimed only from US-1, the effective date of claim 2 is 6 September 2012.

1.1 - True
1.2 - False
1.3 - False
1.4 - False

Question 2

The renewal fee for the coming year (the third year in the case of EP-Z) is due on the last day of the month containing the anniversary of the date of filing, i.e. 30 April 2013, Article 86(1) EPC and Rule 51(1) EPC. The renewal fee with an additional fee may still be paid within six months of the due date, Rule 51(2) EPC. Further processing for paying a renewal fee is excluded by the provisions of Article 121(4) EPC and Rule 135(2) EPC. Renewal fees may not be validly paid more than three months before they fall due, Rule 51(1) EPC, second sentence.

2.1 - True
2.2 - True
2.3 - False
2.4 - False

Question 3

Regarding EP-A, the period for paying the additional search fee is two months and the fees must be paid at the latest by 22 April 2013 [11 February 2013 + 10 days (=21 February 2013) + 2 months (=21 April 2013), extended to Monday 22 April 2013], Rule 64(1) EPC, Rule 126(2) EPC, Rule 131(4) EPC and Rule 134(1) EPC.
Regarding PCT-B, the period for paying the additional fee is one month and the fees must be paid at the latest on 11 March 2013, Rule 40.1(ii) PCT and Rule 80.2 PCT. The PCT provisions do not have the so-called "10-day-rule".

3.1 - True
3.2 - False
3.3 - False
3.4 - True

Question 4

The priority period expires on 28 February 2013 [29 February 2012 + 12 months (=28 February 2013)], Article 87(1) EPC and Rule 131(4) EPC. The priority declaration must be made at the latest by 1 July 2013 [29 February 2012 + 16 months (=29 June 2013), extended to Monday 1 July 2013], Rule 52(2) EPC, Rule 131(4) EPC and Rule 134(1) EPC. In order to validly claim priority, EP-II must be in respect of the same invention as EP-I, Article 87(1) EPC. According to the same provision, not only the applicant of EP-I can validly claim priority from EP-I: the successor in title as well as any person to whom the right to claim priority from EP-I was validly transferred can validly claim priority from EP-I.

4.1 - False
4.2 - True
4.3 - True
4.4 - False

Question 5

The European divisional application EP-D must be filed with the European Patent Office in Berlin, Munich or The Hague (Rule 36(2) EPC, third sentence, as entered into force on 1 April 2010). Irrespective of whether EP-P was filed in an official language of the EPO or in another language, the language of the proceedings of EP-P and EP-D has to be the same (Rule 36(2) EPC, first and second sentence, as entered into force on 1 April 2010). Renewal fees were already due for EP-P for at least the third and fourth year: these renewal fees are also due for EP-D, Rule 51(3) EPC. In view of decision G1/09, in the case where no appeal is filed, a European patent application which has been refused by a decision of an Examining division is still pending within the meaning of Rule 36(1) EPC during the period for filing a notice of appeal. Thus, it is not necessary to file an appeal to render the application pending so as to validly file a European divisional application. The twenty-four months time limit –triggered by the first communication under Article 94(3) EPC in respect of EP-P according to Rule 36(1)(a) EPC as entered

into force on 26 October 2010– for filing a divisional application to EP-P is still running.

5.1 - True
5.2 - True
5.3 - False
5.4 - True

Question 6

The provisions of Article 14(2) EPC, second sentence, apply also to Euro-PCT applications in view of Article 153(2) EPC. The applicant of PCT-1 may bring the English translation into conformity with the application documents of the international application PCT-1 as originally filed.
In this context it is irrelevant whether the correction is immediately evident from the English translation. Corrections cannot be derived from the priority document, Guidelines, H-VI, 4.2.1. (The provisions of Rule 56(3) EPC do not apply here.)

6.1 - False
6.2 - True
6.3 - False
6.4 - False

Question 7

To file an admissible opposition, it is not required to file copies of D1 and D2 together with the notice of opposition, Rule 83 EPC (see also Guidelines D-IV 1.2.2.1 (v), last two paragraphs). An opposition against patent EP-X could have been filed at the latest on 18 February 2012 [16 May 2012 + 9 months (=16 February 2013), extended to Monday, 18 February 2013], Article 99(1) EPC, Rule 131(4) EPC and Rule 134(1) EPC. The translation of the notice of opposition shall be filed within one month of filing the notice of opposition: therefore it was filed in time, Article 14(4) EPC and Rule 6(2) EPC. The Portuguese citizen resident in Portugal need not be represented in opposition proceedings, Article 133(2) EPC.

7.1 - False
7.2 - True
7.3 - True
7.4 - False

Question 8

Amendments to PCT-Q must be based on the application documents as originally filed, Article 123(2) EPC: It is not allowable to add matter only present in the priority document (Guidelines, H-IV, 2.3.5), in the abstract (Article 85 EPC) or in a set of claim modified in the course of the proceedings.

8.1 - False
8.2 - False
8.3 - False
8.4 - True

Question 9

Lack of clarity is not a valid ground for opposition, Article 100 EPC. Everything made available to the public, for instance by use or by selling, before the date of filing of EP-G constitutes state of the art within the meaning of Article 54(2) EPC for EP-G. It is irrelevant who put product Z on the market. A possible way to have patent EP-G revoked is to oppose it for lack of novelty using product Z as prior art.

9.1 - True
9.2 - False
9.3 - True
9.4 - False

Question 10

The appealable decision is the written reasoned decision received on 25 February 2013, Rule 111(2) EPC: the period of two months for filing an appeal is computed from the notification of the decision and not from the announcement of the decision at oral proceedings. Following the provisions of Article 108 EPC, the statement setting out the grounds of appeal or possibly amendments may be filed after the notice of appeal but within four months of the notification of the decision. The examining division shall rectify its decision if it finds the appeal to be admissible and well-founded, Article 109(1) EPC. If the board of appeal sets aside the decision of the examining division, reimbursement of appeal fees occurs only if it is equitable in view of a substantial procedural violation, Rule 103(1)a) EPC.

10.1 - False
10.2 - False
10.3 - True
10.4 - False

Question 11

The subject matter of claim I reads on to a stopper as shown in Figs. 1-3.
The stopper of claim I is suitable for being inserted into the neck of a bottle to close the bottle: the subject-matter of claim I covers a stopper even when it is not in the

neck of a bottle. The wording “when the stopper closes the bottle...” specifies the stopper when in use, but does not limit the stopper itself.
The wording “the air channel extends through the whole body” includes partly extending air channels which are interconnected with each other so as to form at least an air channel extending through the whole body, as shown by the air channels 103 of D1.
The third embodiment of the stopper of the application is covered by the scope of claim I, since the wording “the air channel extends through the whole body” does not exclude an interposed filter plate through which air can pass.
The synthetic rubber is specified to be only an example for the material of the stopper, i.e. it does not limit the scope of claim I.

11.1 - True
11.2 - True
11.3 - True
11.4 - False

Question 12

The stopper of claim II is at least partly inserted into the neck of a bottle so that the bottle is plugged by the stopper; therefore, the subject-matter of claim II does not cover a stopper when it is not in the neck of a bottle.
The stopper of the third embodiment of the application is described in paragraphs [010] and [011]. The stopper comprises a body and a filter plate. The straight air channel in the body does not exclude the presence of the filter plate 34 either at the end of the body, as shown in Fig. 2 or within the body as shown in Fig. 3. Claim II relates to a stopper whenever it is inserted in the neck of a bottle. The last sentence of paragraph [010] describes the advantage of the stopper of the third embodiment which only applies when it is inserted into the bottle. Therefore, claim II covers the stopper of the third embodiment of the application.
The randomly distributed, continuous network of interconnected air channels of D1 cannot be regarded as a “straight air channel extending through the whole body”.
The synthetic rubber is defined to be “more particularly” a material of the stopper, i.e. it does not limit the scope of claim II.

12.1 - False
12.2 - False
12.3 - True
12.4 - False

Question 13

The subject matter of claim III reads on to a stopper as shown in Fig. 1.
The stopper of claim III is suitable for closing a bottle; therefore, the subject-matter of claim III covers a stopper even when it is not in the neck of a bottle (“being dimensioned..” is only a functional definition).
The term “continuously” implies partly extending air channels which are interconnected with each other so as to form at least a continuous air channel extending through the whole body.

The third embodiment of the stopper of the application is not covered by the scope of claim III, since the stopper is defined to consist (see Guidelines, F-IV 4.21) of a liquid-impermeable and air-impermeable rubber body which excludes the presence of the filter plate.
No specific rubber is defined for the stopper, i.e. a synthetic rubber is not a feature defined in claim III.

13.1 - True
13.2 - True
13.3 - False
13.4 - False

Question 14

The subject matter of claim IV is novel over D1, since the body of D1 is made of cork and does not comprise rubber.
The subject matter of claim IV lacks novelty over D2. The body of D2 comprises rubber tube 202b (paragraph [004]). The air channel is provided by the core of D2 made of cork. When the stopper of D2 closes a bottle, air can pass between the interior and the exterior of the bottle, see paragraph [003].
The subject matter of claim IV is novel over D3, since as shown in Fig. 2 of D3 air can not pass through the hole 303 when the stopper of D3 is inserted in the bottle. D3 discloses a stopper comprising a body and an air channel extending through the body, since as shown in Fig. 1 of D3 air can pass through the hole 303 when the stopper of D3 is not inserted in the bottle.

14.1 - True
14.2 - False
14.3 - True
14.4 - True

Question 15

The subject matter of claim V.1 is limited to the second embodiment of the application shown in Fig. 2.
The subject matter of claim V.1 is novel over any of D1 to D3, since none of these documents discloses a filtering unit.
The filter plate 404 of D4 is a specific form of the more generalised filtering unit, i.e. the stopper of D4 has a filtering unit.

15.1 - True
15.2 - True
15.3 - True
15.4 - True

Question 16

In the context of the problem-solution approach, the technical effect is based on the identified distinguishing feature of claim V.2 over D4 (Guidelines G-VII, 5.2). With a straight air channel extending from the first planar surface to the second planar surface, different rate of exchange of gasses by the stopper can be easily determined by varying the diameter of the straight air channel, see last sentences of paragraphs [006] and [008].
The blind-hole of D4 is formed together with the foam body, whereby the straight air channel is not necessarily quicker to manufacture.
The gas permeability of the stopper is also dependent on the diameter of the air channel, and not only on the gas permeability of the filter plate (see paragraph [0008]).
There is no basis for drawing any conclusion with regard to the amount of material used for making the stopper of claim V.2 or for making the stopper of D4.

16.1 - False
16.2 - True
16.3 - False
16.4 - False

Question 17

In the context of the problem-solution approach, the objective technical problem means the aim and task of modifying or adapting D4 to provide the technical effect that the distinguishing feature of claim V.3 provides over D4 (Guidelines G-VII, 5.2). The distinguishing feature over D4 (the air channel is a through-hole extending from the first planar surface to the second planar surface and that the filter unit is attached to cover an end of the through-hole) provides the technical effect that gas can pass only through the filter plate and the air channel. Hence, the rate of exchange of gasses through the stopper can be more precisely determined by the diameter of the air channel and the gas permeability of the filter plate. In view of this, a valid definition of the objective technical problem is how to make a stopper for a bottle having a predictable gas permeability (see paragraphs [0007] and [0008]). Another more general definition is how to make a stopper for a bottle that allows to better predict the maturation of the wine (paragraph [0003]), last sentence).
Statement 17.2 is not related to the claimed distinguishing feature. For statement 17.3 it is noted that D4 is already air permeable without using cork, i.e. permeability in general is not the problem to be solved.

17.1 - True
17.2 - False
17.3 - False
17.4 - True

Question 18

The wording of A.V.4 extends beyond the content of the application as filed, since only synthetic rubber is disclosed in the application for all the embodiments.
The wording of B.V.4 extends beyond the content of the application as filed, since none of the embodiments comprises more than one filter plate.
The wording of C.V.4 does not extend beyond the content of the application as filed, since this wording is explicitly disclosed for liquids (paragraph [0008]) and the stopper is for wine bottles (see paragraph [0001]) and wine as a specific liquid.
The wording of D.V.4 extends beyond the content of the application as filed, since the body itself of the second embodiment shown in Fig. 2 has no micro perforations. The filter plate with the micro perforations is glued onto the body.

18.1 - True
18.2 - True
18.3 - False
18.4 - True

Question 19

The subject matter of claim VI. is limited to the third embodiment of the application shown in Fig. 3.
The argument given in statement 19.1 is irrelevant for the stated problem. However, the statement 19.2 is valid as it demonstrates that D4 teaches a different solution and that D2 does not suggest any alternative to gluing as taught in D4. Statement 19.3 is a valid argument, since the air channel of D3 is closed when the stopper is inserted in the bottle, so that a filter plate is of no use. Statement 19.4 is incorrect, since D4 already teaches the use of a plurality of air channels in the foam.

19.1 - False
19.2 - True
19.3 - True
19.4 - False

Question 20

The application does not explicitly disclose sparkling wine, which may have different constraints on the stopper and the bottle.
The application only discloses the specific synthetic rubber; “rubber” includes also the undisclosed natural rubber. In the wording “such as rubber” a preferable undisclosed embodiment is unallowably introduced.
The term “element” generalizes the form of the filter plate, which has no basis in the application.
The deletion of the wording is allowable, since it is redundant with the direction of the flow of air already defined in the last three lines of claim VII.

20.1 - False
20.2 - False
20.3 - False
20.4 - True