

EN

# **EUROPEAN QUALIFYING EXAMINATION 2013**

# Pre-examination

## This paper comprises:

*	Instructions for answering the paper and marking scheme	Page 1
*	Legal questions (Questions 1-10)	Pages 2-11
*	Claim analysis (Questions 11-20)	Pages 12-31
*	Annexes: calendars for 2012 and 2013 with indication of days on which at least one of the EPO filing offices is not open for the receipt of documents	Pages 32-33

## Instructions for answering the paper and marking scheme

- 1. The pre-examination is in the form of a multiple choice paper. It comprises 20 questions in all, 10 questions relating to legal knowledge (questions 1-10) and 10 questions relating to the analysis of claims (questions 11-20). Questions must be answered by filling in the circles on the answer sheet printed on the reverse side of your personal cover sheet. The duration of this examination is four hours.
- a) Each question X has 4 separate statements, namely X.1, X.2, X.3 and X.4. For each statement X.1, X.2, X.3 and X.4 candidates must unambiguously indicate on the answer sheet whether the statement is true or false. For each statement X.1, X.2, X.3 and X.4 only one answer can be given, either true or false. Each statement within a question is to be considered independently of the other statements.
- b) To indicate that a statement X.1, X.2, X.3 or X.4 is true, the corresponding circle for true should be filled using a black medium soft HB pencil. To indicate that a statement X.1, X.2, X.3 or X.4 is false, the corresponding circle for false should be filled using a black medium soft HB pencil.
- c) If, in reply to a statement X.1, X.2, X.3 or X.4, no indication is given as to whether the statement is true or false, or if both true <u>and</u> false are indicated, then the answer to this statement will be deemed not to be correct. Accordingly, if a candidate fills or partly fills a circle they do not intend to submit as part of their answer, it is essential that any mark in that circle is fully erased.
- d) There is no possibility for submitting notes or remarks to the examiner. Any such submission will be disregarded.
- 2. Only one answer sheet per candidate will be available.
- 3. Marking
- a) Marks awarded per question
- If within one question X, none or only one of the answers to the statements X.1, X.2, X.3 and X.4 is correct, then 0 marks will be awarded for this question X.
- If within one question X, two of the answers to the statements X.1, X.2, X.3 and X.4 are correct, then 1 mark will be awarded for this question X.
- If within one question X, three of the answers to the statements X.1, X.2, X.3 and X.4 are correct, then 3 marks will be awarded for this question X.
- If within one question X, all four of the answers to the statements X.1, X.2, X.3 and X.4 are correct, then 5 marks will be awarded for this question X.
- b) Total number of marks awarded The total number of marks awarded for the pre-examination is the sum of the marks achieved for each question, calculated as stated above.

2013/PE/EN Page 1 of 33

## **QUESTION 1**

On 12 January 2012 an applicant filed a European patent application EP-1 at the EPO. EP-1 discloses subject-matter X but not subject-matter Y. On 6 September 2012 the same applicant filed a US patent application US-1 at the USPTO claiming priority from EP-1. Claim 1 of US-1 is directed to subject-matter X and claim 2 is directed to subject-matter Y. European patent application EP-2 was filed by the same applicant on 20 December 2012. The description and claims of EP-2 are the same as those of US-1.

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

If in EP-2 priority is claimed only from ...

- 1.1 ... EP-1, the effective date for claim 1 of EP-2 is 12 January 2012.
- 1.2 ... EP-1, the effective date for claim 2 of EP-2 is 6 September 2012.
- 1.3 ... US-1, the effective date for claim 1 of EP-2 is 12 January 2012.
- 1.4 ... US-1, the effective date for claim 2 of EP-2 is 20 December 2012.

2013/PE/EN Page 2 of 33

## **QUESTION 2**

An applicant validly filed a European patent application EP-Z on 8 April 2011 as a first filing.

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

- 2.1 The renewal fee for the third year for EP-Z is due on 30 April 2013.
- 2.2 If the applicant pays the renewal fee for EP-Z with the required additional fee on 9 October 2013, the renewal fee is deemed to be validly paid.
- 2.3 If the applicant fails to observe the time limit for paying a renewal fee for EP-Z, he may request further processing.
- 2.4 The renewal fee for the third year for EP-Z could have been validly paid on filing.

2013/PE/EN Page 3 of 33

#### **QUESTION 3**

An applicant receives on 14 February 2013 two communications from the EPO. Both communications are dated 11 February 2013. One communication relates to the European application EP-A. The other communication relates to the international application PCT-B, where the EPO is acting as the International Searching Authority. EP-A and PCT-B relate to different subject-matter. In both communications the applicant is invited to pay one additional search fee because of lack of unity of invention.

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

- 3.1 Regarding EP-A, the period for paying the additional fee is two months.
- 3.2 Regarding EP-A, the additional fee must be paid at the latest by 21 April 2013.
- 3.3 Regarding PCT-B, the period for paying the additional fee is two months.
- 3.4 Regarding PCT-B, the additional fee must be paid at the latest by 11 March 2013.

2013/PE/EN Page 4 of 33

#### **QUESTION 4**

Company X intends to file in its own name a European patent application EP-II claiming priority from an earlier European patent application EP-I. EP-I was filed on 29 February 2012 and it claims no earlier priority.

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

- 4.1 The priority period expires on 1 March 2013.
- 4.2 The priority declaration must be made at the latest by 1 July 2013.
- 4.3 In order to validly claim priority, EP-II must be in respect of the same invention as EP-I.
- 4.4 Company X can validly claim priority from EP-I only if it was the applicant of EP-I at the date of filing.

2013/PE/EN Page 5 of 33

## **QUESTION 5**

European patent application EP-P was a first filing filed in 2009. EP-P itself is not a European divisional application. You received the first communication under Article 94(3) EPC for EP-P in December 2011. EP-P was refused with a decision dated 6 February 2013. Today, 25 February 2013, you intend to file EP-D as a European divisional application of EP-P.

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

- 5.1 EP-D must be filed with the European Patent Office in Berlin, Munich or The Hague.
- 5.2 Renewal fees in respect of EP-P already due today shall also be paid for EP-D.
- 5.3 You must first file an appeal against the decision to refuse EP-P before you can validly file EP-D.
- 5.4 The language of the proceedings of EP-P and EP-D must be the same.

2013/PE/EN Page 6 of 33

#### **QUESTION 6**

In January 2009, the international application PCT-1 was filed in Japanese at the Japanese Patent Office. A translation of PCT-1 into English was provided upon entry into the European phase. In the examination phase before the EPO, the applicant notes that a term of the description was incorrectly translated into English. The applicant now requests the correction of this translation error.

For each of the statements 6.1 - 6.4, indicate on the answer sheet whether the statement is true or false:

- 6.1 The correction can only be made if it is immediately evident from the English translation as filed upon entry into the European phase.
- 6.2 The correction can be made if it has a basis in the Japanese text as originally filed at the Japanese Patent Office.
- 6.3 A wrongly translated term in a European patent application can always be replaced by the correct term given in the priority document.
- 6.4 The correction cannot be made because PCT-1 was not filed in an official language of a Contracting State of the European Patent Organisation.

2013/PE/EN Page 7 of 33

#### **QUESTION 7**

The mention of the grant of a European patent EP-X was published on 16 May 2012. A Portuguese citizen resident in Portugal filed a notice of opposition by fax on 15 February 2013 to the EPO, explaining why the subject-matter claimed in EP-X was not inventive in view of two published patents D1 and D2 explicitly identified in the fax. The fax was entirely written in Portuguese. The opposition fee was paid on the same day. Today, 25 February 2013, a letter from the Portuguese citizen that was sent three days ago reaches the EPO. Annexed to the letter is:

- (a) a complete translation in English of the fax sent on 15 February 2013,
- (b) copies of the two prior art documents D1 and D2.

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

- 7.1 The opposition is not admissible, as the copies of the two prior art documents were filed after expiry of the opposition period.
- 7.2 The notice of opposition could have been filed at the latest on 18 February 2013.
- 7.3 The translation was filed within the prescribed time limit.
- 7.4 The opposition is not validly filed, as the Portuguese citizen should have appointed a professional representative for filing the opposition.

2013/PE/EN Page 8 of 33

#### **QUESTION 8**

The international application PCT-Q claims priority from an earlier US-application, US-P. Upon entry into the European phase before the EPO, the claims of PCT-Q were replaced by a modified set of claims R. After receiving the supplementary European search report from the EPO, a further modified single independent claim S was filed in January 2013.

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

To fulfil the requirements of Article 123(2) EPC, it is sufficient if the only basis for the single independent claim S is found in ...

- 8.1 ... the priority document US-P.
- 8.2 ... the set of modified claims R.
- 8.3 ... the abstract of PCT-Q.
- 8.4 ... one claim of PCT-Q having the same wording as claim S.

2013/PE/EN Page 9 of 33

#### **QUESTION 9**

The mention of the grant of European patent EP-G was published in July 2012. The patent proprietor of EP-G is Mr. G. EP-G was filed without claiming priority in January 2009. Your client, Mr. O, wants the patent to be revoked. He thinks that claim 1 of EP-G is unclear. In fact, there are two possible interpretations of claim 1. Product Z, which has been on the market since November 2008, falls under one of the two interpretations.

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

A valid element of my advice to Mr. O is that ...

- 9.1 ... lack of clarity is not a valid ground for opposition.
- 9.2 ... if product Z was put on the market by Mr. G, product Z does not form part of the state of the art.
- 9.3 ... EP-G should be opposed for lack of novelty, explaining in the notice of opposition why product Z anticipates the subject-matter of claim 1 of EP-G.
- 9.4 ... product Z does not form part of the state of the art, as it is not a pre-published written document.

2013/PE/EN Page 10 of 33

#### **QUESTION 10**

European patent application EP-Y was refused at oral proceedings before the examining division. The oral proceedings took place on 28 January 2013. Today, 25 February 2013, you received the written reasoned decision.

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

- 10.1 A notice of appeal against the decision to refuse the patent application must be filed at the latest by 28 March 2013.
- 10.2 The statement setting out the grounds of appeal and possibly amendments must be filed together with the notice of appeal.
- 10.3 The examining division shall rectify its decision if it finds the appeal to be admissible and well-founded.
- 10.4 The appeal fee is always reimbursed, if the board of appeal sets aside the decision of the examining division.

2013/PE/EN Page 11 of 33

## **Description of Client's Patent Application (Filed on 01.03.2010)**

[001] The present invention relates to stoppers for wine bottles.

[002] Bottle stoppers for wine bottles comprising a body made of cork are known (see for example document D1). Cork is provided from layers of bark of cork oak trees. Cork is a material with a randomly distributed, continuous network of interconnected air channels running through the material. The material itself is impermeable to liquids and to gasses such as air. However, gasses can flow through the interconnected air channels. Thus, cork is impermeable to liquids, but permeable to gasses such as air. When a bottle stopper made of cork closes the neck of a bottle, gasses can flow through the interconnected air channels of the cork between the interior and the exterior of the bottle. An exchange of gasses between the interior of the bottle and the exterior of the bottle is necessary for the wine to mature. The optimal rate of exchange of gasses through the stopper differs from wine to wine.

[003] A drawback with these known stoppers is that the gas permeability of the cork varies greatly depending on the tree from which it was sourced. It is therefore difficult to predict how quickly wine will mature in bottles closed with these stoppers.

[**004**] It is an object of the present invention to provide bottle stoppers which overcome this drawback. This object is achieved by the subject-matter of the attached claims.

[005] Brief description of the drawings:

FIG. 1 shows a bottle stopper 10 according to a first embodiment of the invention, with one half cut away.

FIG. 2 shows a bottle stopper 20 according to a second embodiment of the invention, with one half cut away.

FIG. 3 shows a bottle stopper 30 according to a third embodiment of the invention, with one half cut away.

2013/PE/EN Page 12 of 33

[**006**] The bottle stopper 10 of FIG. 1 comprises a body 2. The body 2 is made of synthetic rubber. The synthetic rubber is impermeable to liquid and gas. The bottle stopper 10 further comprises a narrow air channel 3, which extends through the body 2. When the stopper closes the neck of a bottle, gasses can flow through the air channel between the interior and the exterior of the bottle. Because the air channel 3 is very narrow, liquid cannot flow through it. The optimal rate of exchange of gasses for maturing a specific wine can be achieved by selecting a stopper 10 having an air channel 3 of an appropriate diameter.

[007] The second embodiment of our invention enables the rate of exchange of gasses through a stopper to be more precisely determined. The bottle stopper 20 of FIG. 2 comprises all the components of the bottle stopper 10 shown in FIG. 1. The bottle stopper 20 additionally comprises a filter plate 4. The filter plate 4 is attached to the body 2 with glue.

[008] The filter plate 4 can for example be made of an aluminium foil with perforations forming micro air channels. The filter plate 4 has a predetermined permeability to gasses such as air but is impermeable to liquids. The filter plate 4 therefore prevents liquids from coming into contact with the air channel 3. The diameter of the air channel 3 and the gas permeability of the filter plate 4 determine the gas permeability of the stopper 20.

[009] The filter plate may fall into the wine if it is pushed away from the body of the stopper by a corkscrew when opening the wine bottle. For this reason bottle stoppers of the second embodiment should be made longer than conventional bottle stoppers.

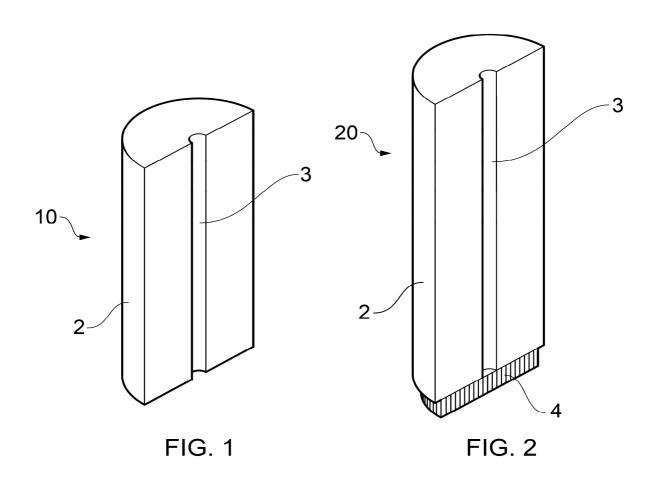
2013/PE/EN Page 13 of 33

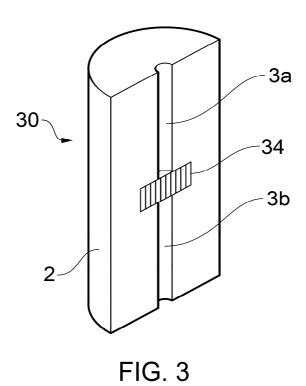
[010] The bottle stopper 30 of FIG. 3 comprises a body 2. The body 2 is made of synthetic rubber. The synthetic rubber is impermeable to all fluids, whereby the term fluids includes both liquids and gasses. The bottle stopper 30 further comprises a first air channel 3a, a second air channel 3b and a filter plate 34. The first air channel 3a extends from a first planar surface of the stopper 30 through the body 2. The second air channel 3b continues from the first air channel 3a and extends through the body 2 up to a second planar surface opposite to the first planar surface. The filter plate 34 is fixed within the body 2 so that gasses can flow between the first air channel 3a and the second air channel 3b through a part of the filter plate 34. Fixing the filter plate 34 within the body prevents the filter plate 34 from falling into the wine by the action of a corkscrew.

[011] The filter plate 34 can be made of any metal foil with perforations forming micro air channels, thereby providing a predictable permeability to gasses such as air but being impermeable to liquids. Hence, the gas permeability of the stopper 30 is determined by selecting the diameter of the air channels 3a and 3b and by selecting a filter plate 34 with a predetermined gas permeability.

2013/PE/EN Page 14 of 33

# **Drawings of Client's Application**





2013/PE/EN Page 15 of 33

## **Document D1 (Published June 2000)**

[001] FIG. 1 shows a stopper 100 for closing a bottle, with one half cut away. The stopper 100 is made of cork. Cork is provided from layers of bark of cork oak trees. Cork is a material with a randomly distributed, continuous network of interconnected air channels running through the material. The material itself is impermeable to liquids and to gasses such as air. However, gasses can flow through the interconnected air channels. Thus, a stopper made of cork is impermeable to liquids, but permeable to gasses such as air.

[002] An exchange of gasses between the interior of the bottle and the exterior of the bottle is necessary for the wine to mature. When the bottle stopper 100 closes the neck of a bottle, gasses can flow between the interior and the exterior of the bottle via the air channels 103. The optimal rate of exchange of gasses through the cork differs from wine to wine.

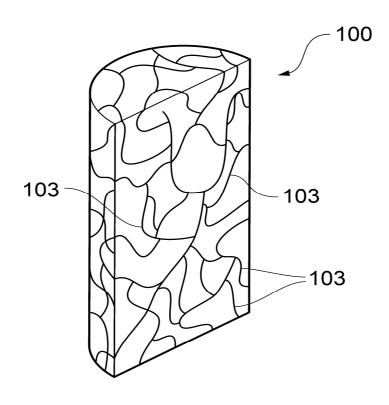


FIG. 1

2013/PE/EN Page 16 of 33

#### **QUESTION 11**

For question 11, assume that claim I is a single independent claim filed with the client's patent application.

- I. Stopper (10, 20, 30) for inserting into the neck of a bottle to close the bottle whereby:
  - the stopper (10, 20, 30) comprises a body (2) made of liquid-impermeable and gas-impermeable material, for example synthetic rubber,
  - the body (2) comprises an air channel,
  - the air channel extends through the whole body (2) and is arranged so that when the stopper (10, 20, 30) closes the bottle, air inside the bottle can pass to the outside of the bottle via the air channel.

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

- 11.1 The subject-matter of claim I covers a stopper when it is not in the neck of a bottle.
- 11.2 D1 discloses a stopper comprising a body and an air channel extending through the whole body.
- 11.3 The third embodiment of the stopper of the application is covered by the scope of claim I.
- 11.4 The subject-matter of claim I is limited to a stopper comprising a body made of synthetic rubber.

2013/PE/EN Page 17 of 33

#### **QUESTION 12**

For question 12, assume that claim II is a single independent claim filed with the client's patent application.

- II. Stopper (10, 20, 30) which is at least partly inserted into the neck of a bottle so that the bottle is closed by the stopper (10, 20, 30) whereby:
  - the stopper (10, 20, 30) comprises a body (2) which is preferably made of rubber, more particularly synthetic rubber,
  - the body (2) comprises a straight air channel extending through the whole body (2) and ending at two opposing openings,
  - the air channel is arranged in the body (2) so that when the stopper (10, 20, 30) closes the bottle, one opening of the air channel opens to the inside of the bottle and the other opposing opening of the same air channel opens to the outside of the bottle.

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

- 12.1 The subject-matter of claim II covers a stopper when it is not in the neck of a bottle.
- 12.2 D1 discloses a stopper comprising a body and a straight air channel extending through the whole body.
- 12.3 The third embodiment of the stopper of the application is covered by the scope of claim II.
- 12.4 The subject-matter of claim II is limited to a stopper comprising a body made of synthetic rubber.

2013/PE/EN Page 18 of 33

#### **QUESTION 13**

For question 13, assume that claim III is a single independent claim filed with the client's patent application.

- III. Stopper (10, 20, 30) for closing a bottle whereby:
  - the stopper (10, 20, 30) consists of a liquid-impermeable and air-impermeable rubber body (2),
  - the stopper (10, 20, 30) is shaped such that an air channel extends continuously through the whole body (2) so that air inside the bottle can pass to the outside of the bottle via the air channel,
  - the stopper (10, 20, 30) is dimensioned so that it can be at least partially inserted into the neck of the bottle.

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

- 13.1 The subject-matter of claim III covers a stopper when it is not in the neck of a bottle.
- 13.2 D1 discloses a stopper comprising a body and an air channel extending continuously through the whole body.
- 13.3 The third embodiment of the stopper of the application is covered by the scope of claim III.
- 13.4 The subject-matter of claim III is limited to a stopper with a synthetic rubber body.

2013/PE/EN Page 19 of 33

## **Document D2 (Published April 2001)**

[001] This document describes a stopper for closing a bottle with an improved seal between the stopper and the neck of a bottle compared to stoppers made only from cork.

[**002**] FIG. 1 shows a stopper 200, with one half cut away. The stopper 200 comprises a cylindrical core 202a made of cork and a cylindrical tube 202b made of synthetic rubber. The synthetic rubber is impermeable to liquids and gasses.

[**003**] When the stopper 200 closes a bottle, the core 202a enables air to be exchanged between the interior and exterior of the bottle via a randomly distributed, continuous network of interconnected air channels running through the cork. The tube 202b ensures that the cork core 202a does not disintegrate when the stopper 200 is in contact with wine for a long time.

[004] The stopper 200 is made by gluing a cylindrical core 202a made of cork into a cylindrical tube 202b made of synthetic rubber. A strong glue is used so that the core 202a does not detach from the tube 202b, even when the bottle is opened using a corkscrew.

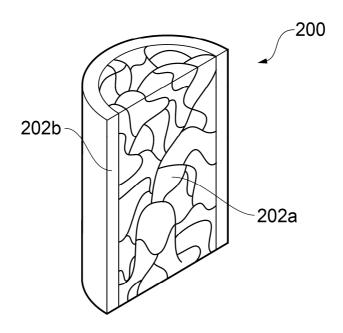


FIG. 1

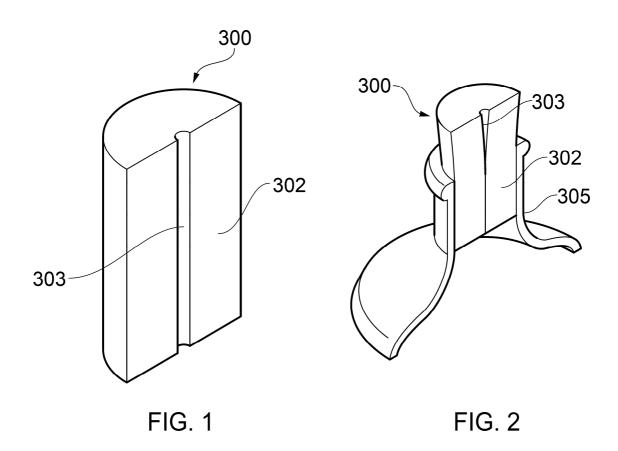
2013/PE/EN Page 20 of 33

## **Document D3 (Published April 2002)**

[**001**] This document describes a stopper for closing a bottle, which can be easily compressed when it is inserted into the neck of the bottle. This makes it easy to insert the stopper into the neck of the bottle.

[**002**] FIG. 1 shows the stopper 300, with one half cut away. The stopper 300 comprises a cylindrical body 302 and a through-hole 303. The body 302 is made of natural or synthetic rubber. Rubber is a resilient material which is impermeable to liquids and gasses. Synthetic rubber is preferred, since it is less prone to deteriorate over time than natural rubber. Due to the through-hole the stopper can be easily compressed.

[003] FIG. 2 shows, in cross section, the stopper 300 after it has been inserted into the neck of a bottle 305. The body 302 is compressed and the lower part of the through-hole is completely closed. The stopper is completely impermeable to liquids and gasses and tightly closes the bottle.



2013/PE/EN Page 21 of 33

#### **QUESTION 14**

For question 14, assume that claim IV is a single independent claim filed with the client's patent application and assume that a European search report cites D1 and further documents D2 and D3 whereby all documents are published prior to the filing date of the client's patent application.

- IV. A bottle with a stopper (10, 20, 30) closing the bottle, whereby:
  - the stopper (10, 20, 30) has a body (2) comprising a liquid-impermeable and air-impermeable rubber,
  - the body (2) has an air channel (3) extending through the body (2),
  - the body (2) is configured so that air inside the bottle can pass to the outside of the bottle via the air channel (3).

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

- 14.1 Claim IV is novel with respect to D1.
- 14.2 Claim IV is novel with respect to D2.
- 14.3 Claim IV is novel with respect to D3.
- 14.4 D3 discloses a stopper comprising a body and an air channel extending through the body.

2013/PE/EN Page 22 of 33

## **Document D4 (Published March 2002)**

[001] This document describes a stopper for closing a wine bottle. Exchange of gasses between the interior and exterior of a wine bottle is necessary for wine to mature. Red wine requires more gas to be exchanged than white wine.

[002] The stopper comprises a body made of synthetic rubber. Synthetic rubber is a material which is impermeable to liquids and to gasses such as air. However, when synthetic rubber is produced as a foam, the synthetic rubber foam becomes gas permeable via a randomly distributed, continuous network of interconnected air channels running through the synthetic rubber foam. The rate at which gasses can flow through the synthetic rubber foam cannot be predicted due to the random distribution of the air channels.

[003] FIG. 1 shows a stopper 400 with part cut away. It comprises a body 402 made of synthetic rubber foam and a filter plate 404. The filter plate 404 is glued onto a first planar surface of the body 402. The filter plate 404 is made of an aluminium foil with perforations forming micro air channels. The filter plate 404 prevents wine from coming into contact with the synthetic rubber foam.

[004] When the stopper closes the neck of a bottle, the filter plate 404 is located inside the bottle. Gasses can flow between the inside and the outside of the bottle via the micro air channels in the filter plate 404 and the air channels in the body 402.

[**005**] The stopper 400 comprises a blind hole 405 formed when producing the synthetic rubber foam. The blind hole 405 has an opening on a second planar surface of the stopper. The second planar surface is on the outside of the bottle when the stopper is inserted in a bottle. The hole 405 acts as a guide for inserting a corkscrew 406 into the stopper 400.

2013/PE/EN Page 23 of 33

# **Drawings Document D4**

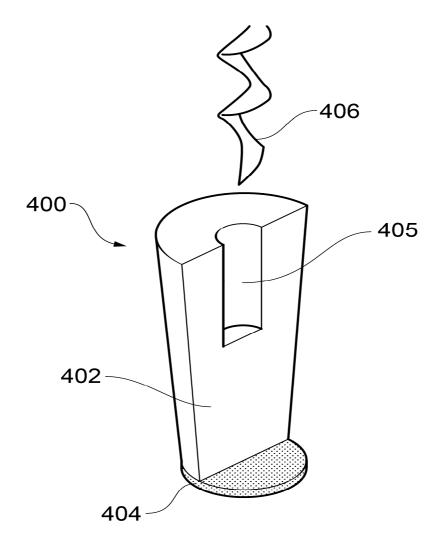


FIG. 1

2013/PE/EN Page 24 of 33

#### **QUESTION 15**

For questions 15 to 18, assume that claim set V, which comprises claims V.1 to V.3, was filed with the client's patent application and assume that a European search report cites D1 to D4 as documents published prior to the filing date of the client's patent application.

- V.1 Stopper (10, 20, 30) for inserting into the neck of a bottle to close the bottle, whereby:
  - the stopper (10, 20, 30) comprises a body (2) made of liquid-impermeable and air-impermeable material,
  - the body (2) has a first planar surface and a second planar surface,
  - the body (2) has an air channel (3) opening at least on the first planar surface,
  - a filtering unit (4) is attached on the first planar surface,
  - the stopper (10, 20, 30) is arranged so that air can pass through the stopper (10, 20, 30) via the filtering unit (4) and the air channel (3),
  - the first planar surface is inside the bottle and the second planar surface is outside the bottle when the stopper (10, 20, 30) closes the bottle.
- V.2 Stopper (10, 20, 30) according to claim V.1 whereby the air channel is a straight channel extending from the first planar surface to the second planar surface.
- V.3 Stopper (20) according to claim V.1 whereby the air channel (3) is a through-hole extending from the first planar surface to the second planar surface and the filtering unit (4) is attached to cover an end of the through-hole.

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

- 15.1 Claim V.1 is novel with respect to D1.
- 15.2 Claim V.1 is novel with respect to D2.
- 15.3 Claim V.1 is novel with respect to D3.
- 15.4 The stopper of D4 has a filtering unit.

2013/PE/EN Page 25 of 33

#### **QUESTION 16**

For this question consider only claim V.2 of claim set V and assume that:

- a) the EPO examiner considers D4 to be the closest prior art;
- b) the EPO examiner identifies the straight air channel extending from the first planar surface to the second planar surface as the distinguishing feature with respect to D4.

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

Given a) and b), a valid identification of a technical effect for claim V.2 using the problem-solution approach is that ...

- 16.1 ... a straight air channel extending from the first planar surface to the second planar surface is quicker to manufacture than foam.
- 16.2 ... with a straight air channel extending from the first planar surface to the second planar surface it is easier to determine by its diameter the rate of exchange of gasses.
- 16.3 ... with a straight air channel extending from the first planar surface to the second planar surface the rate of exchange of gasses is determined only by the gas permeability of the filter plate.
- 16.4 ... the provision of a straight air channel extending from the first planar surface to the second planar surface saves material of the stopper.

2013/PE/EN Page 26 of 33

#### **QUESTION 17**

For this question consider only claim V.3 of claim set V and assume that:

- a) the EPO examiner considers D4 to be the closest prior art;
- b) the EPO examiner identifies as a distinguishing feature with respect to D4 the fact that 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.

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

Given a) and b), a valid formulation of the objective technical problem for analysing claim V.3 using the problem-solution approach is ...

- 17.1 ... how to make a stopper for a bottle having a predictable gas permeability.
- 17.2 ... how to make a stopper for a bottle comprising a straight air channel.
- 17.3 ... how to make an air permeable stopper without using cork.
- 17.4 ... how to make a stopper for a bottle that allows to better predict the maturation of the wine.

2013/PE/EN Page 27 of 33

#### **QUESTION 18**

Considering the description of the application and claim set V only, assume that after receiving a first communication, the applicant suggests that you amend the application by filing an additional claim V.4.

Following are four different proposals for the additional claim V.4:

- A. V.4. A stopper according to claim V.1 whereby the body is made of natural rubber foam.
- B. V.4. A stopper according to claim V.1 whereby the stopper comprises an additional perforated aluminium foil.
- C. V.4. A stopper according to claim V.1 whereby the filter unit is a filter plate that is arranged to prevent wine from coming into contact with the air channel.
- D. V.4. A stopper according to claim V.1 whereby the body comprises micro perforations.

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

Subject-matter that extends beyond the content of the application as filed is added by ...

- 18.1 ... the wording proposed in A.
- 18.2 ... the wording proposed in B.
- 18.3 ... the wording proposed in C.
- 18.4 ... the wording proposed in D.

2013/PE/EN Page 28 of 33

## **QUESTION 19**

For question 19, assume that claim VI is a single independent claim filed with the client's patent application.

- VI. Stopper (30) for inserting into the neck of a bottle to close the bottle, whereby:
  - the stopper (30) comprises a body (2) made of liquid-impermeable and air-impermeable material, a filter plate (4), a first air channel (3a) and a second air channel (3b),
  - the filter plate (4) is fixed within the body (2) between the first and second air channels (3a, 3b),
  - the stopper (30) is arranged so that when the stopper (30) closes the bottle, air can pass between the inside and outside of the bottle via the second air channel (3b), the filter plate (4) and the first air channel (3a).

2013/PE/EN Page 29 of 33

For this question also assume that:

- a) the closest prior art is D4;
- b) the objective technical problem is "to provide a stopper having a filter plate whereby the filter plate is securely held".

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

Given a) and b), a valid argument as to why it is not obvious to solve the objective technical problem by the features of claim VI is that ...

- 19.1 ... starting from D4, the person skilled in the art would not consider to combine it with the teaching of D1, since the stopper of D1 is made of cork instead of synthetic rubber as is the stopper of D4.
- 19.2 ... starting from D4, and considering D2, which teaches to use a strong glue, the skilled person would glue the filter plate of D4 to the body of D4 using a strong glue but would not consider integrating the filter plate of D4 within the body of D4.
- 19.3 ... starting from D4, the person skilled in the art would not consider to combine it with the teaching of D3, since D3 does not provide a filter plate.
- 19.4 ... starting from D4 alone, the person skilled in the art would not consider to provide two air channels.

2013/PE/EN Page 30 of 33

#### **QUESTION 20**

Consider that the applicant suggests to file the following claim VII as an amended version of claim VI after filing of the application. The changes to claim VI are highlighted by underlining additional words and striking through words which are deleted.

- VII. Stopper (30) for inserting into the neck of a bottle <u>containing sparkling wine</u> to close the bottle, whereby:
  - the stopper (30) comprises a body (2) made of liquid-impermeable and air-impermeable material <u>such as rubber</u>, a <u>filter plate filter element</u> (4), a first air channel (3a) and a second air channel (3b),
  - the filter plate filter element (4) is fixed within the body (2) between the first and second air channels (3a, 3b),
  - the stopper (30) is arranged so that when the stopper (30) closes the bottle, air can pass between the inside and outside of the bottle via the second air channel (3b), the <u>filter plate</u> <u>filter element</u> (4) and the first air channel (3a).

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

- 20.1 The added wording "containing sparkling wine" is allowable under Article 123(2) EPC.
- 20.2 The added wording "such as rubber" is allowable under Article 123(2) EPC.
- 20.3 The substituted wording "filter element" is allowable under Article 123(2) EPC.
- 20.4 The deletion of the wording "between the first and second air channels (3a, 3b)" is allowable under Article 123(2) EPC.

2013/PE/EN Page 31 of 33

## Annex 1

## 2012

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

Tage / Days / Jours		München Munich	Den Haag The Hague La Haye	Berlin
Heilige Drei Könige - Epiphany - Epiphanie	06.01.2012	х		
Karfreitag - Good Friday - Vendredi Saint	06.04.2012	х	х	х
Ostermontag - Easter Monday - Lundi de Pâques	09.04.2012	х	х	х
Nationalfeiertag - National Holiday - Fête Nationale	30.04.2012		х	
Maifeiertag - Labour Day - Fête du Travail	01.05.2012	х	х	х
Christi Himmelfahrt - Ascension Day - Ascension	17.05.2012	х	х	х
Pfingstmontag - Whit Monday - Lundi de Pentecôte	28.05.2012	х	х	х
Fronleichnam - Corpus Christi - Fête-Dieu	07.06.2012	х		
Mariä Himmelfahrt - Assumption Day - Assomption	15.08.2012	х		
Tag der Deutschen Einheit - Day of German Unity - Fête Nationale	03.10.2012	х		х
Allerheiligen - All Saints' Day - Toussaint	01.11.2012	х		
Heiliger Abend - Christmas Eve - Veille de Noël	24.12.2012	х	х	х
Weihnachtstag - Christmas Day - Jour de Noël	25.12.2012	х	х	х
2. Weihnachtstag - Boxing Day - Lendemain de Noël	26.12.2012	х	х	х
Brückentag - Bridging Day - Pont	27.12.2012	х	х	х
Brückentag - Bridging Day - Pont	28.12.2012	х	х	х
Silvester - New Year's Eve - Saint-Sylvestre	31.12.2012	х	х	х

2013/PE/EN Page 32 of 33

## Annex 2

## 2013

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

Tage / Days / Jours		München Munich	Den Haag The Hague La Haye	Berlin
Neujahr - New Year's Day - Nouvel An	01.01.2013	х	х	х
Karfreitag - Good Friday - Vendredi Saint	29.03.2013	х	х	Х
Ostermontag - Easter Monday - Lundi de Pâques	01.04.2013	х	х	х
Nationalfeiertag - National Holiday - Fête nationale	30.04.2013		х	
Maifeiertag - Labour Day - Fête du Travail	01.05.2013	х	х	Х
Christi Himmelfahrt - Ascension Day - Ascension	09.05.2013	х	х	Х
Pfingstmontag - Whit Monday - Lundi de Pentecôte	20.05.2013	х	х	Х
Fronleichnam - Corpus Christi - Fête-Dieu	30.05.2013	х		
Mariä Himmelfahrt - Assumption Day - Assomption	15.08.2013	х		
Tag der Deutschen Einheit - Day of German Unity - Fête Nationale	03.10.2013	х		Х
Allerheiligen - All Saints' Day - Toussaint	01.11.2013	х		
Heiliger Abend - Christmas Eve - Veille de Noël	24.12.2013	х	х	х
Weihnachtstag - Christmas Day - Jour de Noël	25.12.2013	х	х	Х
2. Weihnachtstag - Boxing Day - Lendemain de Noël	26.12.2013	х	х	х
Silvester - New Year's Eve - Saint-Sylvestre	31.12.2013	х	х	х

2013/PE/EN Page 33 of 33